

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p><b>INDEPENDENT REGULATORY REVIEW COMMISSION</b></p> <p>2019 DEC 30 P 1:52</p>	
(1) Agency: Department of Environmental Protection		<p>3217</p> <p>IRRC Number: 3517</p>	
(2) Agency Number: 7 Identification Number: 532			
(3) PA Code Cite: 25 Pa. Code Chapters 86, 87, 88, 89 & 90			
(4) Short Title: OSM Program Consistency			
(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Laura Edinger, 783-8727, ledinger@pa.gov Secondary Contact: Jessica Shirley 783-8727, jessshirley@pa.gov			
(6) Type of Rulemaking (check applicable box): <input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General	
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)  <p>To maintain Pennsylvania's program primacy, this final-form rulemaking primarily addresses inconsistencies between the Commonwealth's coal mining regulatory program and regulations developed by the federal Office of Surface Mining Reclamation and Enforcement (OSM). Specifically, it updates definitions and program processes within Pennsylvania's requirements to comply with the federal coal mining regulations at 30 CFR Parts 700 through 955 (relating to mineral resources). It also contains updates for general program maintenance, including correcting typographical errors, organization names, statutory citations, remaining requirements, and the use of reference data for the sizing of stormwater control facilities.</p>			
(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.  <p>This final-form rulemaking is authorized under the authority of Section 5 of The Clean Streams Law (35 P.S. § 691.5); Sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.4(a) and 1396.4b); Section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); Section 7(b) of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7 (b)); and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).</p>			

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes. Portions of the rulemaking are mandated under federal regulations. Section 101 of the Federal Surface Mining Control and Reclamation Act specifies that the primary governmental responsibility for regulating surface mining and reclamation operations should rest with the States. To achieve primary regulatory responsibility, often referred to as primacy, a State must develop and obtain OSM approval of a program that meets the requirements of the Act and that is no less effective than the federal regulations in achieving the requirements of the Act.

The following are required amendments to the Commonwealth's coal mining regulatory program codified in federal regulations at 30 CFR 938.16 (related to required regulatory program amendments):

This final-form rulemaking deletes the term "augmented" from 25 Pa. Code § 86.151(d)(relating to the period of liability) to match OSM's understanding of seeding that does not restart the period of liability. OSM disapproved the use of the term "augmented" in the last sentences of 25 Pa. Code §86.151(d) (relating to the period of liability) because it is less effective than the federal requirement (30 CFR 938.12(d)) that indicates that by definition, "augmented" seeding extends the period of liability for which an operator must maintain bond.

OSM requires that the Commonwealth revise its regulations relating to the valuation of collateral bonds at 25 Pa. Code § 86.158(b)(relating to special terms and conditions for collateral bonds) to match the federal requirements at 30 CFR 938.16(m)-(o):

(m) By November 1, 1991, Pennsylvania shall amend its rules at §86.158(b)(1) or otherwise amend its program to be no less effective than 30 CFR 800.21(a)(2) by requiring that the value of all government securities pledged as collateral bond shall be determined using the current market value.

(n) By November 1, 1991, Pennsylvania shall amend §86.158(b)(2) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(1) by requiring that the provisions related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture.

(o) By November 1, 1991, Pennsylvania shall amend §86.158(b)(3) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(2) to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that the collateral bond is sufficient to satisfy the bond amount requirements.

OSM has also required that the Commonwealth revise its regulations relating to the use of public roads as part of an anthracite mining operation to match the federal requirements at 30 CFR 938.16 (mmm), providing:

(mmm) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §88.1 to require that the definition of haul road include all roads (including public roads) that are used as an integral part of the coal mining activity and to clarify that the area of the road

includes the entire area within the right-of-way, including roadbeds, shoulders, parking and side areas, approaches, structures, and ditches.

In addition to the required regulatory amendments, OSM also has concerns related to the definition of surface mining activities. OSM has not taken formal action on this because the Commonwealth has committed to correcting the matter at the earliest opportunity. The final-form rulemaking meets this commitment.

These required regulatory amendments are overdue from the deadlines stated in 30 CFR Part 938 mainly caused by other required rulemaking priorities. In the interim, however, the Department has been implementing the provisions consistent with OSM's requirements.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This final-form rulemaking addresses three primary needs:

1. To maintain Pennsylvania's program primacy, this final-form rulemaking resolves inconsistencies between the Commonwealth's coal mining regulatory program and regulations from OSM. The loss of program primacy would threaten the federal grant provided through Title V of the federal Surface Mining Control and Reclamation Act of 1977, which funds about fifty percent of the Coal Mining Program. (Note: In FY 16-17, Pennsylvania's coal mining program cost \$25,413,733.). Further, it would cause disruption for the mining industry in the Commonwealth if permitting and enforcement of mining activities were transferred to OSM.
2. Stormwater control facilities have historically been designed based on the 10-year, 24-hour precipitation events data housed within the tables in sections 87.103, 88.93, 88.188, 88.293, 89.53 and 90.103. These tables currently use outdated climatological data from the early 1980s, which has resulted in stormwater facilities that are over-designed and require unnecessary earth disturbance. The final-form regulation replaces these tables with data from the National Oceanic and Atmospheric Administration's (NOAA) online precipitation and storm event tool, which provides a more accurate account of storm events and, generally, lower precipitation levels. This revision will potentially result in properly-sized stormwater control facilities and reduced costs for mine operators.
3. The Commonwealth's mine operators, of which there are approximately 400 in Pennsylvania, will benefit from the added clarity and corrections included in this regulation, which will improve the efficiency and implementation of the requirements.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The primary purpose of the final-form rulemaking is to bring the Commonwealth's coal mining requirements in conformance with the federal requirements. No requirements in this rule are more stringent than the federal standards. However, some of the regulatory requirements included in this final-form rulemaking are unique to the Commonwealth. For example, no other state has a remining financial guarantee or Anthracite Emergency Bond Loan program.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

All states with program primacy must have regulations that are no less stringent than the OSM requirements. Some states simply adopt the federal requirements by reference. Others, like the Commonwealth, customize the requirements to meet the circumstances in the state.

Revisions to sections 86.1 and 87.1 (amending the definition of surface mining activities), 88.1 (amending the definition of haul road), and 86.158 (amending bonding requirements) will make these regulations as effective as federal requirements. Revisions to sections 87.157, 88.131, and 88.219 will provide an alternative means of regulating temporary cessation of activities that removes an upper-time limit that is specific in the Commonwealth and replaces it with a more flexible approach compared to other states that terminates temporary cessation if the permittee fails to comply with the statutes, regulations, or permit.

Overall, the Commonwealth will remain in a competitive position compared with other states while retaining the flexibility needed for the particular circumstances described above.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The final-form rulemaking includes some corrections to cross-references to other regulations, but it does not impact the referenced regulations.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department collaborated with the Mining and Reclamation Advisory Board (MRAB), which is composed of representation from anthracite surface mine operators, the Pennsylvania Coal Alliance, the Pennsylvania Anthracite Council, the County Conservation Districts, the Citizens Advisory Council, the Pennsylvania House of Representatives, and the Pennsylvania Senate to develop the proposed rulemaking.

This included discussion at several Regulation, Legislation and Technical (RLT) committee meetings. In July 2016, the Department delivered a presentation summarizing the proposed requirements to the MRAB at their quarterly meeting. At its April 6, 2017, meeting, the MRAB voted to concur with the Department's recommendation that the proposed rulemaking move forward in the regulatory process. This presentation was available on the Department's MRAB web page prior to the meeting. At its April 25, 2019, meeting, the MRAB voted to concur with the Department's recommendation that the final-form rulemaking move forward in the regulatory process.

Additional opportunities for stakeholder input were made available when the program amendments were promulgated by OSM and subject to public comment in the *Federal Register*.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The regulated community is comprised of about 400 businesses, most of which are small businesses. The regulations will apply consistently among all operators for small and large businesses alike.

The amendments are primarily administrative, and therefore the impact on small businesses will be negligible. However, the amendment relating to stormwater control facilities is likely to save time and monetary resources for all businesses because the result will be more appropriately-sized (smaller) stormwater control facilities.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

There are about 400 coal mining companies conducting operations in the Commonwealth that will be subject to this regulation.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

By resolving inconsistencies with the federal requirements, this final-form rulemaking will allow the Commonwealth to maintain primacy over its coal mining regulatory program. Maintaining primacy prevents the disruption the mining industry in the Commonwealth would experience if permitting and enforcement of mining activities were transferred to OSM.

Additionally, the clarity and corrections included in this regulation will improve the efficiency and implementation of the requirements by mine operators. This will assist the regulated community to have a better understanding of compliance standards.

Another possible benefit as a result of this final-form rulemaking may be realized by stormwater facilities. Due to the reliance on out-of-date precipitation data, some stormwater facilities may have been over-designed and required unnecessary earth disturbance. The revisions should help future stormwater facilities to be properly-sized and possibly result in reduced costs for mine operators.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The benefits included in this final-form rulemaking generally focus on eliminating inconsistencies, reducing confusion, and improving efficiency. Further, aligning the Commonwealth's regulations with the federal regulations will allow the Commonwealth to maintain program primacy and secure the federal Title V grant, which funds approximately fifty percent of the Coal Mining Program. Mining operators may benefit by realizing financial savings from a reduction in stormwater controls.

As these regulatory amendments are primarily administrative, no additional costs are anticipated.



(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

One area where cost savings may be recognized is from the proper sizing of stormwater controls. While it is not possible at this time to provide a specific estimate, the potential savings will be based on the number of new facilities to be built, the location of those facilities and the specific designs.

Because registered mail is no longer a requirement, there are anticipated small savings related to this change for the cost of mailing.

No additional costs or savings to the regulated community are anticipated.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No additional costs or savings to local governments are anticipated. However, one amendment changes the way that a municipality is provided notice by the Department that a mining permit application has been received in their jurisdiction. This is an administrative change and, while it will impact the Department's compliance with the regulation, it is not anticipated to add costs to local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

No additional costs or savings to the state government are anticipated.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

It is not anticipated that the additional reporting, recordkeeping or other paperwork will be substantial as the changes made in this final-form rulemaking focus on clarifying program compliance rather than creating new procedures.

(22a) Are forms required for implementation of the regulation?

No forms will be needed to implement the requirements included in this final-form rulemaking.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Savings</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>						
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Revenue Losses</b>	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3 2015/16</b>	<b>FY -2 2016/17</b>	<b>FY -1 2017/18</b>	<b>Current FY 2018/19</b>
Coal Mining Program	\$24,011,704.00	\$25,078,176.00	\$23,876,588.00	\$26,348,138
	Note: This is based on the Title V grant expenditures on a federal FY basis.	Note: This is based on the Title V grant expenditures on a federal FY basis.	Note: This is based on the Title V grant expenditures on a federal FY basis.	Projected based on Title V grant request.

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

It is estimated that 400 small businesses will be subject to this regulation. Due to the nature of the updates in this final-form rulemaking, it is not anticipated that additional reporting, recordkeeping or other paperwork will be required.

This regulation is not expected to have an adverse impact on small businesses as it mainly focuses on eliminating inconsistencies from the federal requirements, reducing confusion, and improving efficiency for operators. No alternative method other than modification to the regulation exists to make the Commonwealth's regulations consistent with the federal regulations.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

These amendments are primarily administrative, and so minorities, the elderly, small businesses, and farmers will experience minimal, if any, impact. Therefore, no special provisions are included.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered during the development of this rulemaking. Although no alternative methods were explored, the Department expects the revisions to provide clarity and potential cost savings to the regulated community.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.



The amendments included in this final-form rulemaking will bring the Commonwealth in compliance with the minimum regulatory standards set by the Federal Government. Although no alternative methods were explored, the Department expects the revisions to provide clarity and potential cost savings to small businesses.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is implicated in these regulatory amendments, specifically by incorporating the reference to the NOAA tool for determining the size of storm events. The tool is currently available at the following web site: <https://hdsc.nws.noaa.gov/hdsc/pfds/>

These amendments are intended to make the Commonwealth's regulations consistent with the federal regulations.

(29) Include a schedule for review of the regulation including:

- |   |                 |
|---|-----------------|
| A. The length of the public comment period:   | 30 days         |
| B. The date or dates on which any public meetings or hearings will be held:                   | NA              |
| C. The expected date of delivery of the final-form regulation:                                | Quarter 4, 2019 |
| D. The expected effective date of the final-form regulation:                                  | Quarter 1, 2020 |
| E. The expected date by which compliance with the final-form regulation will be required:     | Quarter 1, 2020 |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | Quarter 1, 2020 |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Effectiveness will be gauged through ongoing interaction with the industry, advisory boards, and the public.



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**2019 DEC 30 P 1:52**

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Copy below is hereby approved as to form and legality.  
Attorney General

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL

☐ Check if applicable.  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-532

DATE OF ADOPTION NOVEMBER 19, 2019

BY

  
TITLE **PATRICK MCDONNELL  
CHAIRPERSON**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY



**DEC 10 2019**

DATE OF APPROVAL

(Deputy General Counsel)

(~~Chief Counsel - Independent Agency~~)  
(Strike inapplicable title)

☐ Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

**NOTICE OF FINAL RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**Federal Office of Surface Mining Reclamation and Enforcement (OSM)  
Program Consistency Rule**

**25 Pa. Code Chapters 86, 87, 88, 89 & 90**



**Title 25—ENVIRONMENTAL PROTECTION**  
**ENVIRONMENTAL QUALITY BOARD**  
**[25 PA. CODE CHS. 86—90]**

**Federal Office of Surface Mining Reclamation and Enforcement Program Consistency**

The Environmental Quality Board (Board) amends 25 Pa. Code Chapters 86-90 (relating to Surface and Underground Coal Mining; Surface Mining of Coal; Anthracite Coal; Underground Mining of Coal and Coal Preparation Facilities; and Coal Refuse Disposal) to read as set forth in Annex A. This final-form rulemaking primarily addresses inconsistencies between the Commonwealth's coal mining regulatory program and Federal regulations. This final-form rulemaking updates requirements to comply with the Federal coal mining regulations at 30 CFR Parts 700 through 955 (relating to mineral resources) and, for general program maintenance, includes additional revisions to correct typographical errors, organization names, statutory citations, remaining requirements, and the use of reference data for the sizing of stormwater control facilities.

This final-form rulemaking was adopted by the Board at its meeting on November 19, 2019.

**A. Effective Date**

This rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

**B. Contact Persons**

For further information, contact William Allen, Bureau of Mining Programs, Rachel Carson State Office Building, 5th Floor, 400 Market Street, P.O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5015, or Joseph Iole, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-9376. This final-form rulemaking is available on the Department's web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board (EQB)").

**C. Statutory Authority**

This final-form rulemaking is authorized under the authority of section 5 of The Clean Streams Law (35 P.S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.4(a) and 1396.4b); section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); section 7(b) of the Bituminous Mine Subsidence and Land Conservation Act (52 P.S. § 1406.7(b)); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

**D. Background and Purpose**

This final-form rulemaking addresses inconsistencies between the Commonwealth's coal mining program and Federal requirements. The Board also includes in this final-form



rulemaking additional revisions for general program maintenance, such as correcting typographical errors and updating organization names, statutory citations, remining requirements, and the use of reference data for the sizing of stormwater control facilities.

### Required Program Amendments

The Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (Federal SMCRA) “establish[ed] a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” See 30 U.S.C.A. § 1202(a). Federal SMCRA authorizes the Secretary of the Interior, through the Office of Surface Mining Reclamation and Enforcement (OSM), to administer the programs for controlling surface coal mining operations, and to review and approve or disapprove State programs for controlling the same. See 30 U.S.C.A. § 1211(c)(1).

Federal SMCRA allows a State to assume jurisdiction over the regulation of surface coal mining and reclamation operations if the State can administer that program according to Federal standards. See 30 U.S.C.A. § 1253. When a State program is approved by OSM, the State achieves “primacy” over the regulation of its surface coal mining program. The Commonwealth achieved primacy in 1982. See 47 FR 33,050, 33,076 (July 30, 1982). To keep its jurisdiction over the regulation of coal surface mining activities, the Commonwealth must maintain a State program in accordance with the requirements of Federal SMCRA, 30 U.S.C.A. § 1255(a), and with “rules and regulations consistent with regulations issued by the Secretary.” See 30 U.S.C.A. § 1253(a)(1) and (7).

OSM identified several of the Commonwealth’s regulations that require revision because they are not as effective as the Federal requirements. The Commonwealth is therefore required to revise existing regulations so that they are no less stringent than the Federal standards. See 30 CFR Part 938. The required program amendments are as follows:

#### *Augmented Seeding*

OSM disapproved of the use of the term “augmented” in the last sentence of section 86.151(d) (relating to period of liability) because it found it to be less stringent than the Federal requirement for the bond liability period. 30 CFR 938.12(d). According to the OSM, “augmented” seeding by definition restarts the period for liability. However, the Commonwealth’s proposed regulation had referred to a normal husbandry practice (per OSM) as augmented seeding that would not restart the period for which an operator is liable. Therefore, this final-form rulemaking deletes the term “augmented” from section 86.151(d) to match OSM’s understanding of seeding that does not restart the period of liability.

#### *Bonding*

OSM required the Commonwealth to revise its regulations relating to the valuation of certain collateral bonds at section 86.158(b) (relating to special terms and conditions for collateral bonds). OSM’s requirements are as follows:

Pennsylvania shall amend its rules at § 86.158(b)(1) or otherwise amend its program to be no less effective than 30 CFR 800.21(a)(2) by requiring that the value of all government securities pledged as collateral bond shall be determined using the current market value.

Pennsylvania shall amend § 86.158(b)(2) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(1) by requiring that the provisions related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture.

Pennsylvania shall amend § 86.158(b)(3) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(2) to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that the collateral bond is sufficient to satisfy the bond amount requirements.

30 CFR 938.16(m)—(o).

To address these issues, this final-form rulemaking includes revisions to section 86.158(b). In subsection (b)(1), “may” is changed to “will,” requiring the Department to be the entity responsible for valuing collateral at its current market value not at face value. This final-form rulemaking also adds “less any legal and liquidation costs” to subsection (b)(2) and revises subsection (b)(3) to require the posting of any needed additional bond amount with the permit renewal, which is at least every 5 years.

### *Haul Roads*

OSM also required that the Commonwealth revise its regulations at section 88.1 related to the use of public roads as part of an anthracite mining operation:

Pennsylvania shall submit a proposed amendment to § 88.1 to require that the definition of haul road include all roads (including public roads) that are used as an integral part of the coal mining activity and to clarify that the area of the road includes the entire area within the right-of-way, including roadbeds, shoulders, parking and side areas, approaches, structures, and ditches.

30 CFR 938.16(mmm).

This final-form rulemaking adds the following to the definition of a haul road at 25 Pa. Code § 88.1: “The term includes public roads that are used as an integral part of the coal mining activity.” OSM’s requirement to clarify that the activity includes the right-of-way and other features of the road does not require an additional revision in this final-form rulemaking. The elements OSM requires are already included in the existing definition of “Road” at section 88.1, and the definition of “Road” includes a reference to “haul roads.”

## General Consistency Amendments

Unrelated to issues of consistency with Federal law, the Department and various third parties have identified several typographical, citation, and reference errors within the Department's regulations, outdated source material, and areas of the program that require more clarity. These general consistency amendments are as follows:

### *Effluent Limitations for Bituminous Underground Mines*

The Commonwealth currently lists effluent limitations for bituminous underground mines at section 89.52 (relating to water quality standards, effluent limitations and best management practices). Subsection (f) includes alternative effluent limitations for underground mine discharges that can be adequately treated using passive treatment technology. However, the Federal effluent limit guidelines at 40 CFR Part 434 only include alternative limits for passive treatment systems applicable to surface mines instead of underground mines. When the Board revised the regulations to add subsection (f) related to underground mines, this distinction was missed. This discrepancy came to light during a recent evaluation comparing the Federal effluent limit guidelines with the requirements in section 89.52.

Therefore, this final-form rulemaking eliminates the alternative effluent limits for underground mine passive treatment systems from subsection (f).

### *Temporary Cessation*

The Commonwealth's regulations regarding the temporary cessation of operations for bituminous surface mines included a 180-day upper limit on the amount of time that an operation can be in temporary cessation status. The Federal rules that address temporary cessation at 30 CFR 816.131 do not include an upper limit on the duration of temporary cessation status. Therefore, this final-form rulemaking includes revisions to section 87.157 (relating to cessation of operations: temporary) removing the upper time limit.

Temporary cessation for anthracite coal mines is addressed at sections 88.131 (regarding anthracite surface mines), 88.219 (regarding anthracite bank removal), and 88.332 (regarding anthracite coal refuse disposal). Sections 88.131 and 88.219 do not include an upper time limit for temporary cessation status. Section 88.332, applicable to anthracite coal refuse disposal, includes a 1-year upper time limit.

To ensure temporary cessation for anthracite coal mines is regulated the same way as bituminous mines, this final-form rulemaking revises sections 87.157, 88.131 and 88.219 to include the same suite of revised requirements related to temporary cessation status, including a requirement for operators to submit information to the Department, consistent with 30 CFR 816.131, and triggers for when the status ends because of reactivation, or terminates through the permittee's failure to comply with the law, regulations or the permit.

This final-form rulemaking also requires permittees to submit a timely renewal application when applicable. Amendments included in this final-form rulemaking do not lessen environmental protection related to surface mining because the performance standards in existing regulations focus on pollution prevention. The Department provides the same attention to sites in temporary cessation status as it does to active sites, through monthly inspections to ensure compliance with performance standards and updates to bond amounts, as appropriate.

Because the Coal Refuse Disposal Control Act, 52 P.S. §§ 30.51-30.66, includes the 1-year upper time limit, this requirement is retained in section 88.332.

#### *Definition of Surface Mining Activities*

This final-form rulemaking replaces the existing definition of “surface mining activities” at 25 Pa. Code §§ 86.1 and 87.1 (relating to definitions) with a cross-reference to the Federal definition of “surface mining activities” from 30 CFR 701.5 (which in turn refers to “surface coal mining and reclamation operations” defined at 30 CFR 700.5). This amendment is in response to issues informally raised by OSM related to the scope of the existing definition.

#### *Civil Penalties*

As outlined in section 86.194, the Department uses a system for assessment to determine the amount of a civil penalty that depends on the specific circumstances of the violation. Currently, section 86.193(b) requires the Department to assess a civil penalty if the penalty the Department calculates equals \$1,100 or more. Correspondingly, section 86.193(c) affords the Department discretion whether to assess a civil penalty that equals less than \$1,100. The threshold dollar amount of \$1,100 in § 86.193(b) that triggers a mandatory assessment is based on the Federal civil penalty program found at 30 CFR 723 (relating to civil penalties).

The Federal program calculates penalty amounts by using a point system. Under this point system, a violation is given a certain number of points based on its circumstances and a formula is then used to equate those points to a dollar value. A violation that amounts to 30 points or more under the Federal system requires a penalty. Periodically, the Federal government revises the dollar amounts on the table, while the point threshold that triggers a mandatory penalty assessment remains fixed.

To address the fluctuating dollar amount from the Federal program’s penalty calculations, this final-form rulemaking includes references to 30 CFR 723.12 and 723.14 instead of listing a specific penalty amount, so the Commonwealth’s threshold for mandating the assessment of a penalty will always correctly reflect the Federal point system trigger.

#### *Administrative Requirements*

Two differences between the Commonwealth’s requirements and the Federal requirements came to light during the recent development of the ePermitting application for new bituminous surface mines.

First, section 86.31 (relating to public notices of filing of permit applications) requires notification by registered mail to the municipality where mining is proposed. This requirement for registered mail is not in the Federal rules. Therefore, this final-form rulemaking revises section 86.31(c)(1) to retain the notification but to delete the registered mail requirement. In addition to consistency with the Federal regulations, this proposal will allow for electronic notice in cases where it is appropriate. This update will allow the Department flexibility to use registered mail and electronic notices as needed.

Second, section 86.62(a)(3) (relating to identification of interests) requires the date of issuance of the Mine Safety and Health Administration Identification Number to be provided in an application. This date of issuance is not required under the Federal rules. Therefore, this final-form rulemaking deletes the date of issuance from this subsection.

#### *Employee Financial Interest Reporting Form*

Section 86.238 lists an old OSM form number for reporting employee financial interests. The current form number is OSM Form 23. Therefore, this final-form rulemaking changes "Form 705-1" to "Form 23."

#### *Storm Events*

Sections 87.103, 88.93, 88.188, 88.293 and 89.53 each include a table of data representing the amount of precipitation over 10 years for a 24-hour storm event on a county-by-county basis. Section 90.103 includes tables of similar data representing the 1-year and 10-year rainfall events. The Department derived the data in these tables from the climatological data available in the early 1980s, which only provided data for a limited number of stations in each county.

The regulations include the highest value in this data for each county. In subsequent years, additional data has been gathered and the National Oceanic and Atmospheric Administration (NOAA) has developed an online tool which provides the precipitation amount for various storm events for any location in the Commonwealth, currently available through the following link: <https://hdsc.nws.noaa.gov/hdsc/pfds/>.

Generally, the amount of precipitation for each storm event is lower than what is currently listed in the tables in the regulations. Therefore, in many cases, stormwater control facilities are over-designed and require unnecessary earth disturbance. This final-form rulemaking removes the tables and replaces them with a general reference to data available through NOAA or an equivalent resource. This will result in properly-sized stormwater controls and reduced costs for mine operators.

#### *Remining Financial Guarantees*

The Department identified and established best practices for managing accounts in the Remining Financial Guarantee (RFG) Program, similar to those established for the Land Reclamation Financial Guarantee Program. To provide stability to the RFG Program, the first



best practice designates a monetary threshold and a reserve in the account. The designated threshold establishes the program limits while the reserve provides funds to pay for costs incurred when the financial guarantee program is used for land reclamation.

This final-form rulemaking includes an addition to section 86.281(b) to describe the process used to determine the amount of an individual remaining financial guarantee. This final-form rulemaking also includes revisions to section 86.281(c) to clarify that the designated amount is maintained at the program level rather than on a permit-by-permit basis. This final-form rulemaking amends section 86.281(d) to refer to the designated amount when describing the permit limit, the operator limit, and the program limit and section 86.281(f) to describe the reserve.

An additional best practice targets risk management. For example, one method to manage risk includes limiting the participation of operators who previously failed to make the required payments on a timely basis. This final-form rulemaking revises section 86.282(a)(4) to add that to participate, the operator may not have been previously issued a notice of violation relating to maintaining bonds, including a missing or late payment. The requirement includes a 3-year window so as not to permanently prohibit participation for an operator who had a missing or late payment.

The existing regulatory language at section 86.284(d) (relating to forfeiture) differs from the statutory language in section 4.12 of the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA), 52 P.S. § 1396.4(d), which has resulted in confusion when interpreting the requirement. This final-form rulemaking revises section 86.284(d) to read the same as PA SMCRA.

#### *Natural Resources Conservation Service*

The existing regulations include numerous references to the Soil Conservation Service. This agency changed its name to the Natural Resources Conservation Service. This final-form rulemaking corrects these references.

#### *Conservation District*

Section 86.189(b)(4) includes a reference to the Soil Conservation District. The current name of the agency to which this refers is the Conservation District. This final-form rulemaking makes this revision.

#### *Chapter 92a Reference Correction*

The existing regulations include references to Chapter 92. In 2010, the Board reserved Chapter 92 and replaced it with Chapter 92a. This final-form rulemaking corrects these references throughout Chapters 86—90.

### *Department Reference*

Section 86.232 includes a reference to the Department of Environmental Resources. This final-form rulemaking updates this reference to be the Department of Environmental Protection.

### *Water Quality Standards Implementation*

In 2000, the Board finalized Chapter 96 (relating to water quality standards implementation). The mining regulations have not been updated to include reference to Chapter 96. This final-form rulemaking corrects this by including references to Chapter 96 in sections 87.102, 88.92, 88.187, 88.292 (relating to hydrologic balance: effluent standards), 89.52 (relating to water quality standards, effluent limitations and best management practices) and 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices).

### *Coal Ash and Biosolids*

Section 86.54 includes the terms “fly ash disposal” and “sewage sludge.” Section 87.100 also uses the terms “fly ash” and “sewage sludge.” The correct term instead of “fly ash” is “coal ash,” which is defined at section 287.1 (relating to definitions). This definition of coal ash includes fly ash and other materials. In addition, disposal of coal ash is not allowed in the context of active mining sites. Coal ash may be beneficially used to enhance reclamation under Chapter 290 (relating to beneficial use of coal ash). Similarly, “biosolids” is a term which includes reference to “sewage sludge”, so it is more appropriate to use. Therefore, this final-form rulemaking revises sections 86.54 and 87.100 to correct these terms to instead refer to “coal ash” and “biosolids”.

### *Anthracite Mine Operators Emergency Bond Fund*

In 1992, section 4.7 of PA SMCRA, 52 P.S. § 1396.4g, was revised to allow anthracite surface mining operators to participate in the Anthracite Mine Operators Emergency Bond program. Prior to this, participation was limited to only deep mine operators. This final-form rulemaking changes the references to “deep mine” to be “mine” in section 86.162a (relating to Anthracite Mine Operators’ Emergency Bond Fund). This clarifies that not only deep mines are eligible to participate in the Anthracite Mine Operators Emergency Bond program.

### *Coal Refuse Disposal Site Selection*

In 2010, section 4.1 of the Coal Refuse Disposal Control Act, 52 P.S. § 30.54a, was amended to add to the list of preferred sites for siting coal refuse disposal facilities. The amendment added the following language: “An area adjacent to or an expansion of an existing coal refuse disposal site.” This final-form rulemaking reflects this statutory change in section 90.201.

### *Reviews of active permits*

Section 86.51 (relating to reviews of active permits) includes the phrase "...a review of the permit shall be no less frequent than the permit midterm of every 5 years, whichever is more frequent." The "of" underlined above should be "or." This final-form rulemaking corrects this error.

### *Mine Safety and Health Administration*

Section 86.84 (relating to applications for assistance) includes a reference to the Mining Enforcement and Safety Administration. The reference should be the Mine Safety and Health Administration. This final-form rulemaking corrects this error.

### *"Road" Definition*

The definition of "road" at section 88.1 (relating to definitions) begins with "A surface right-of-way for purposes of travel by land vehicles used in coal exploration of surface coal mining and reclamation operations." The "of" underlined above should be "or." This final-form rulemaking corrects this error.

### *Remining Program*

After the Board finalized remining regulations in October 2016, discrepancies in the citations were identified in Chapter 88. In section 88.502 (relating to definitions) subsection (ii), the citation to section 88.295(b)—(g) is incorrect. The correct citation is section 88.295 (b)—(i). Similarly, in section 88.507(c) (relating to treatment of discharges) the citations are incomplete. The correct citations are sections 88.95(b)—(g), 88.190(b)—(g) and 88.295(b)—(i). Finally, section 88.508 (relating to request for bond release) lists "Section 86.172(a) (b) and (d)." Section 90.308 also refers to § 86.172(d). There is no subsection 86.172(d). This final-form rulemaking includes revisions to address each of these errors.

## ***E. Summary of Changes to the Proposed Rulemaking***

### *Section 86.1 and 87.1 Changes*

The language incorporating the definition of "surface mining activities" from 30 CFR 701.5 is revised to include language consistent with other Department regulations to denote that the Federal definition is adopted in its entirety.

### *Section 86.31 Changes*

The final-form rulemaking includes several revisions from the proposed rulemaking. The Board made the following two revisions to section 86.31 in response to comments on the proposed rulemaking. First, the Board will retain the existing language listing a "city, borough, incorporated town or township," replacing the proposed term "municipality." Second, the Board specified that the notice to local governments will be written notice.

The Board made several additional revisions for clarification and consistency with the Commonwealth's statutes and regulations. Sections 86.54 and 87.100 were revised in the proposed rulemaking to replace the term "sewage sludge" with the term "biosolids." To be consistent with Chapter 271 and the proposed amendment to section 87.100, the term "residential septage" is also added in this final-form rulemaking to section 86.54.

#### *Section 88.107 Changes*

The proposed rulemaking deleted language from section 88.107(g) regarding the recovery of "attorney fees and expert witness fees" by the operator because of the act of December 20, 2000 (P.L. 980, No. 2000-138). This act created a new scheme for recovery of litigation costs in mining proceedings at 27 Pa.C.S. Chapter 77 (relating to costs and fees) in order to conform to Federal law. The proposed change also reflected a similar amendment to section 87.119(g) in 2011. *See* 41 Pa.B. 3084 (June 18, 2011).

The act of December 20, 2000 also repealed section 4.2(f)(5) of PA SMCRA, which provided the statutory authority for these regulations in their entirety, and not only with respect to litigation costs. OSM did not approved either section 87.119(g) or 88.107(g) because the repeal of section 4.2(f)(5) of PA SMCRA left the regulations with no remaining statutory authority to support them. *See* 30 CFR 938.12(c)(6) and 70 FR 25472 at 25484 (May 13, 2005). In order to streamline OSM's review on this topic, the change to section 88.107 in this rulemaking will not be made, and revisions consistent with 27 Pa.C.S. Chapter 77 and the repeal of section 4.2(f)(5) of PA SMCRA are will be incorporated in proposed rulemaking #7-545 (related to water supply replacement) adopted by the Board on June 18, 2019. This proposed rulemaking is anticipated to open for public comment during the fourth quarter of 2019.

#### *Section 88.332 Changes*

Because the Coal Refuse Disposal Control Act includes a 1-year upper time limit related to requirements triggered by temporary cessation, the proposal to remove this time limit from section 88.332 has been undone. To improve clarity, the final-form rulemaking retains the current language and inserts a reference to the specific section of the Coal Refuse Disposal Control Act where this requirement is stated.

#### *Section 89.52 Changes*

In section 89.52(f)(3), the word "Any" which was proposed at the beginning of the section is being revised to be "A" for clarity.

### ***F. Summary of Comments and Responses on the Proposed Rulemaking***

The following summaries are based on comments that were received from three public commenters and the Independent Regulatory Review Commission (IRRC).

### *Related to Haul Roads*

One commenter was concerned that the term “public roads”, as used in the revised definition of “Haul roads” in Section 88.1, is very broad and could be used to impose additional bonding and other fees on common use public roads that are shared by thousands of other business concerns. Because of these concerns, they requested that the EQB include language in the preamble of the regulation to address these concerns.

In response to this comment, the language “integral part of the coal mining activity” is intended to address mining activities that normally would not occur on a public road. This includes any use of the public road by off-road vehicles or equipment that cannot be licensed for on-road use. The length of the public road to be defined as a haul road will be limited to the length of the public road used for travel by vehicles or equipment that are an integral part of the coal mining activity. Any use of a public road by licensed on-road vehicles is not considered to be an integral part of the coal mining activity for the purpose of the definition of “haul road.”

### *Related to Administrative Requirements*

Another commenter pointed out that Section 86.31 requires notification by registered mail and that the Federal rules do not change this requirement. The commenter asserts that the proposed regulation would revise section 86.31(c)(1) to retain the notice requirement but delete language that requires the notice be sent by registered mail. The commenter contends that this notification is too important to not notify by registered mail. The commenter states that since the Federal policy does not require electronic notification, the existing notification by registered mail should be retained. IRRC additionally asked the Board to explain the reasonableness of not requiring registered mail, under what circumstances electronic notice is appropriate, and how the new notification requirement adequately protects public health, safety, and welfare.

In response to this comment, the Federal requirement at 30 CFR 773.6(a)(3) requires: “[T]he regulatory authority shall issue written notification indicating the applicant’s intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted.” The Federal requirement is to provide written notice to the local government agency and does not specify the means by which written notice is given.

The regulation has been revised to require written notification to be consistent with the Federal requirement and allow the Department flexibility to use mail or electronic notice. The Department may provide notice by registered mail on a case-by-case basis. Authorizing the Department to provide notice by means other than registered mail is reasonable because it implements part of the Department’s “Permit Reform Initiative” to reduce permit backlogs, modernize the permitting process, and better utilize technology to improve both oversight and efficiency. As notice becomes automated through the Department’s electronic permitting system, parties will receive notice of completed permit applications in a more timely manner, and the resources the Department saves can be committed to other work directed at protecting the public health, safety, and welfare. The Department does not believe that the regulation requires standards to determine when electronic notice is appropriate because, in practice, the



method of written notice should not be an issue. Local government agencies are generally involved very early in the application process (before a complete application is submitted). The transition to electronic notification requires interaction and cooperation between the Department and the local government in order to establish the appropriate contacts. This interaction will provide the opportunity for the local government to express any concerns they have about the process at that time.

IRRC further noted that the Annex proposes to delete the phrase “the city, borough, incorporated town or township” and replace that language with “the municipality.” IRRC points out that Section 86.1 contains a definition of the term “municipality” that defines a municipality as, “A county, city, borough, town, township, school district, institution or an authority created by any one or more of the foregoing.” IRRC asked whether the Board intended to expand notification to all the entities listed under the definition of municipality.

In response to this comment, the Federal Rule at 30 CFR § 773.6(a)(3)(i) is to provide written notice to “[l]ocal governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation . . . .” The Department interprets this requirement to apply to general purpose units of government, specifically, the city, borough, incorporated town or township. The amendment in the proposed rulemaking was not intended to expand the notification requirement to counties or special purpose local government units in addition to relevant authorities included under 25 Pa. Code § 86.31(c)(2) (“Sewage and water treatment authorities that may be affected by the activities.”) and (c)(3) (“Governmental planning agencies with jurisdiction to act with regard to land use, air or water quality planning in the area of the proposed activities.”). Language in the final-form rulemaking is therefore revised by reverting to the existing language listing “the city, borough, incorporated town or township.”

#### *Related to the Regulatory Analysis Form*

IRRC also pointed out that the Regulatory Analysis Form indicates that no data was the basis of the proposed rulemaking, but that the data available through the NOAA on-line tool for precipitation events is referred to repeatedly in the proposed regulation, so the Board should clarify that the availability of the data from the NOAA tool is the basis for the revisions proposed.

In response, the Regulatory Analysis Form has been revised to reflect the fact that the data available through the NOAA on-line tool was used as a basis for the regulation. The response includes a link to the web page where the tool is available.

#### *Related to Storm Events*

IRRC also asked about the term “equivalent resources,” which is used in several sections, relating to the determination of the size of storm events.

In response to this comment, this term is intended to allow for continued reliance on the data in the case where there is a government reorganization, technological advance or other factor that would cause the specific description of the tool to be outdated. While this can be

corrected through further rulemaking, the “equivalent resources” reference will provide continuity.

### *In Support of the Regulatory Process*

One commentator acknowledged the collaborative process undertaken in developing the proposed regulations. In response, the Board acknowledges the comment.

### Mining and Reclamation Advisory Board Collaboration

The Department collaborated with the Mining and Reclamation Advisory Board’s (MRAB) Regulation, Legislation and Technical (RLT) committee to develop the proposed rulemaking. This included discussion at several RLT committee meetings and with the full board.

At its April 6, 2017, meeting, the MRAB voted to concur with the Department’s recommendation that the proposed rulemaking move forward in the regulatory process. At its April 25, 2019, meeting, the MRAB voted to concur with the Department’s recommendation that the final-form rulemaking move forward in the regulatory process.

### ***G. Benefits, Costs and Compliance***

#### *Benefits*

The revisions in this final-form rulemaking will resolve inconsistencies with Federal requirements, allow the Commonwealth to maintain program primacy, provide clarity to mine operators regarding compliance standards, and result in properly-sized stormwater facilities. In some cases, the latter benefit will result in reduced costs, because current regulations may require larger facilities than necessary.

#### *Compliance Costs*

None of the new or revised requirements are likely to increase costs. Due to the benefits described above, this final-form rulemaking is likely to reduce costs. For example, the rulemaking will result in properly-sized stormwater facilities. In many cases, this will result in reduced costs because the updated regulations may no longer require larger than necessary facilities.

#### *Compliance Assistance Plan*

Compliance assistance for this final-form rulemaking will be provided through the Department’s routine interaction with trade groups and individual applicants. There are about 400 licensed surface coal mining operators in this Commonwealth, most of which are small businesses that will be subject to this regulation.

### *Paperwork Requirements*

This final-form rulemaking does not require additional paperwork.

### **H. *Pollution Prevention***

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source through the substitution of environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final-form rulemaking has minimal impact on pollution prevention since it is predominantly focused on updating regulations to reflect current Federal requirements, amendments to state statutes and references to citations, names and data sources.

### **I. *Sunset Review***

The Board is not proposing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

### **J. *Regulatory Review***

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 2, 2018, the Department submitted a copy of this proposed rulemaking published at 48 Pa.B. 6844, October 27, 2018, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees, for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final rulemaking, the Department has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on \_\_\_\_\_, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, and approved the final-form rulemaking.

### ***K. Findings of the Board***

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 48 Pa.B. 6844 (October 27, 2018).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

### ***L. Order of the Board***

The Board, acting under the authorizing statutes, orders that:

(1) The regulations of the Department, 25 Pa. Code Chapters 86-90, are amended as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(2) The Chairman of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(3) The Chairman shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(4) The Chairman of the Board shall certify this order and Annex A, as approved for legality and form, and deposit them with the Legislative Reference Bureau, as required by law.

(5) This order shall take effect immediately.

PATRICK McDONNELL,  
Chairperson







**pennsylvania**  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

## **COMMENT AND RESPONSE DOCUMENT**

### **Federal Office of Surface Mining Reclamation and Enforcement (OSM) Program Consistency Rule**

25 Pa. Code Chapters 86 – 90  
48 Pa.B. 6844 (October 27, 2018)  
Environmental Quality Board Rulemaking #7-532  
(Independent Regulatory Review Commission #3517)

### **List of Commenters on the Proposed Rulemaking**

1. Duane C. Feagley, Executive Director  
Pennsylvania Anthracite Council
2. Elam M. Herr, Asst. Executive Director  
PSATS  
4855 Woodland Dr.  
Enola, PA 17025
3. Rachel Gleason, Executive Director  
Pennsylvania Coal Alliance  
202 3rd Street, Suite 203  
Harrisburg, PA 17101
4. Independent Regulatory Review Commission  
333 Market St., 14<sup>th</sup> Floor  
Harrisburg, PA 17101

### **Summary of Comments and Responses**

1. **Comment:** The commenter is concerned that the term “public roads” as used in the revised definition of “Haul roads” is very broad and could be used to impose additional bonding and other fees on common use public roads that are shared by thousands of other business concerns. The commenter requests that the EQB and the Department consider adopting the following language in the preamble of the regulation:

“‘Integral part of the coal mining activity’ is intended to address mining activities that normally would not occur on a public road. This would involve any use of the public road by off-road vehicles or equipment that cannot be licensed for on-road use. The length of the public road to be defined as a haul road is limited to the length of the public road used for travel by vehicles or equipment that are an ‘integral part of the coal mining activity.’ Any use of a public road by licensed on road vehicles would not be considered an integral part of the coal mining activity unless they exceed legal posted weight limits or otherwise do not meet legal state or local restrictions upon use the public road.” (1)

**Response:** The Department has clarified the preamble for the final-form rulemaking to include language similar to that requested by the commenter.

2. **Comment:** Presently, 25 Pa. Code, Section 86.31 requires notification by registered mail to the “city, borough, incorporated town or township in which the activities are located.” The federal rules do not change this requirement, yet the proposed regulation would revise 25 Pa. Code Section 86.31(c)(1) to still require notification but by electronic notice and delete the registered

mail requirement. The commenters contend that this notification is too important to not notify the municipality by registered mail. Since the federal policy does not require electronic notification, the commenters ask that the existing notification by registered mail be retained. IRRC notes that Pennsylvania is permitted to be more stringent than the federal rules and ask the Board to explain the reasonableness of not requiring notification by registered mail for proposed mining activities. IRRC asks in what circumstances is electronic notice appropriate and if electronic notice is retained in the final regulation to set standards when it is appropriate. IRRC asks the Board to explain how the notification requirements in the final regulation adequately protect public health safety and welfare. (2) (4)

**Response:** The Federal rule at 30 CFR 773.6(a)(3) requires: “[T]he regulatory authority shall issue written notification indicating the applicant’s intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted.” The Federal requirement is to provide written notice and does not specify the means by which written notice is given.

The regulation has been revised to require written notification to be consistent with the Federal requirement and allow the Department flexibility to use mail or electronic notice. The Department may provide notice by registered mail on a case-by-case basis. Authorizing the Department to provide notice by means other than registered mail is reasonable because it implements part of the Department’s “Permit Reform Initiative” to reduce permit backlogs, modernize the permitting process, and better utilize technology to improve both oversight and efficiency. As notice becomes automated through the Department’s electronic permitting system, parties will receive notice of completed permit applications in a more timely manner, and the resources the Department saves can be committed to other work directed at protecting the public health, safety, and welfare. The Department does not believe that the regulation requires standards to determine when electronic notice is appropriate. In practice, the method of written notice should not be an issue because local government agencies are generally involved very early in the application process (before a complete application is submitted). The transition to electronic notification requires interaction and cooperation between the Department and the local government in order to establish the appropriate contacts. This interaction will provide the opportunity for the local government to express any concerns they have about the process at that time.

3. **Comment:** IRRC notes that the Preamble states that Section 86.31(c)(1) “requires notification by registered mail to the municipality where mining is proposed.” IRRC further notes that the Annex proposes to delete the phrase “the city, borough, incorporated town or township” and replace that language with “the municipality.” IRRC points out that Section 86.1 contains a definition of the term “municipality”. Section 86.1 defines a municipality as, “A county, city, borough, town, township, school district, institution or an authority created by any one or more of the foregoing.” IRRC asks if it is the Board’s intention to expand the notification requirement to all of these entities. (4)

**Response:** The Federal Rule at 30 CFR § 773.6(a)(3)(i) is to provide written notice to “[l]ocal governmental agencies with jurisdiction over or an interest in the area of the proposed surface

coal mining and reclamation operation . . .” The Department interprets this requirement to apply to general purpose units of government, specifically, the city, borough, incorporated town or township. The amendment in the proposed rulemaking was not intended to expand the notification requirement to counties or special purpose local government units in addition to relevant authorities included under 25 Pa. Code § 86.31(c)(2) (“Sewage and water treatment authorities that may be affected by the activities.”) and (c)(3) (“Governmental planning agencies with jurisdiction to act with regard to land use, air or water quality planning in the area of the proposed activities.”). Language in the final-form rulemaking is therefore revised by reverting to the existing language listing “the city, borough, incorporated town or township.”

4. **Comment:** The Pennsylvania Department of Environmental Protection worked within the Department’s advisory board process and consulted with the Mining and Reclamation Advisory Board (MRAB) in developing the consistency regulations. While there is some need to further develop guidance or policy on the definition of surface mining activities, the MRAB unanimously voted to move forward with the regulation and continue constructive conversation regarding the specifics of that definition. As such, the Pennsylvania Coal Alliance supports the proposed regulatory changes in the aforementioned proposed rulemaking. (3)

**Response:** The Department acknowledges the comment.

5. **Comment:** The Regulatory Analysis Form indicates that no data was the basis of the proposed rulemaking. However, the data available through the National Oceanic and Atmospheric Administration (NOAA) on-line tool for precipitation events is referred to repeatedly in the proposed regulation. The Board should clarify that the availability of the data from the NOAA tool is the basis for the revisions proposed. (4)

**Response:** The Regulatory Analysis Form has been revised to reflect the fact that the data available through the NOAA on-line tool was used as a basis for the regulation. The response includes a link to the web page where the tool is available.

6. **Comment:** The proposed rulemaking includes, in several sections, “...shall be determined by reference to data provided by the National Oceanic Atmospheric Administration or equivalent resources.” The commenter asked for greater clarity on what constitutes as “equivalent resources?” (4)

**Response:** This language is intended to allow for continued reliance on the data in the case where there is a government reorganization, technological advance or other factor that would cause the specific description of the tool to be outdated. While this can be corrected through further rulemaking, the “equivalent resources” reference will provide continuity.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter A. GENERAL PROVISIONS

§ 86.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Surface mining activities*—[Activities whereby coal is extracted from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between the coal or otherwise exposing and retrieving the coal from the surface, including, but not limited to, strip, auger mining, dredging, quarrying and leaching, and surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, slope, shaft, drift and borehole drilling and construction, and activities related thereto. The term does not include portions of mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. The term includes activities in which the land surface has been or is disturbed as a result of, or incidental to, surface mining operations of the operator, including, but not limited to, private ways and roads appurtenant to a surface mining operation, land excavations, workings, refuse banks, spoil banks, culm banks, tailings, repair areas, storage areas, processing areas, shipping areas and areas in which facilities, equipment, machines, tools or other materials or property which result from, or are used in, surface mining activities are situated. The term includes the construction of a road or similar disturbance for any purpose related to a surface mining activity, including that of moving or “walking” a dragline or other equipment, or for the assembly or disassembly or staging of equipment.] Any activities meeting the definition of “surface mining activities” as it is defined at 30 CFR 701.5, which is ADOPTED IN ITS ENTIRETY AND incorporated herein by reference.

\* \* \* \* \*

## Subchapter B. PERMITS

### REVIEW, PUBLIC PARTICIPATION AND APPROVAL, DISAPPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

#### § 86.31. Public notices of filing of permit applications.

\* \* \* \* \*

(c) Upon receipt of a complete application, the Department will publish notice of the proposed activities in the *Pennsylvania Bulletin* and send **WRITTEN** notice to the following:

(1) ~~{By registered mail, the~~ **THE city, borough, incorporated town or township}the municipality in which the activities are located.**

\* \* \* \* \*

### PERMIT REVIEWS, RENEWALS, REVISIONS AND TRANSFERS

#### § 86.51. Reviews of active permits.

(a) The Department will review each permit issued and outstanding during the term of the permit. This review shall occur at the discretion of the Department during the permit term except as required by § 87.175 (relating to variance to contouring). For permits of longer than 5-year terms, a review of the permit shall be no less frequent than the permit midterm [of] or every 5 years, whichever is more frequent.

\* \* \* \* \*

#### § 86.54. Public notice of permit revision.

A permit revision request shall be subject to the notice requirements of § 86.31 (relating to public notices of filing of permit applications) under the following circumstances:

(1) For surface mining activities:

\* \* \* \* \*

(iii) The addition of coal refuse disposal, [fly ash disposal or sewage sludge] beneficial use of coal ash or biosolids, **OR RESIDENTIAL SEPTAGE** for land reclamation to the operation.

\* \* \* \* \*

## MINIMUM REQUIREMENTS FOR LEGAL FINANCIAL COMPLIANCE AND RELATED INFORMATION

### 86.62. Identification of interests.

(a) *Application information.* An application shall contain the following information, except that the submission of a social security number is voluntary:

\* \* \* \* \*

(3) The name of the proposed mine and the Mine Safety and Health Administration (MSHA) Identification Number[, with the date of issuance,] for the mine and all mine-associated structures that require MSHA approval.

\* \* \* \* \*

### Subchapter C. SMALL OPERATORS ASSISTANCE PROGRAM

### § 86.84. Applications for assistance.

(a) An application for assistance shall contain the following information:

\* \* \* \* \*

(3) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under this section. For each location, the schedule shall include:

\* \* \* \* \*

(ii) The permit number and [Mining Enforcement and Safety] Mine Safety and Health Administration identification number, if available.

\* \* \* \* \*

### Subchapter F. BONDING AND INSURANCE REQUIREMENTS

#### AMOUNT AND DURATION OF LIABILITY

### § 86.151. Period of liability.

\* \* \* \* \*

(d) The extended period of liability which begins upon completion of augmenting seeding, fertilization, irrigation or other work necessary to achieve permanent revegetation of the permit area shall include additional time taken by the permittee to



repeat augmented seeding, fertilization, irrigation or other work under a requirement by the Department but may not include selective husbandry practices approved by the Department, such as pest and vermin control, pruning, repair of rills and gullies or reseeding or transplanting, or both, which constitute normal conservation practices within the region for other land with similar land uses. **[Augmented seeding] Seeding,** fertilization, irrigation and repair of rills and gullies performed at levels or degrees of management which exceed those normally applied in maintaining use or productivity of comparable unmined land in the surrounding area, would necessitate extending the period of liability.

\* \* \* \* \*

## **FORM, TERMS AND CONDITIONS OF BONDS AND INSURANCE**

### **§ 86.158. Special terms and conditions for collateral bonds.**

\* \* \* \* \*

(b) Collateral bonds pledging negotiable government securities are subject to the following conditions:

(1) The Department **[may]will** determine the current market value of government securities for the purpose of establishing the value of the securities for bond deposit.

(2) The current market value, **less any legal and liquidation costs,** is at least equal to the amount of the required bond amount.

(3) The Department may periodically revalue the securities and may require additional amounts if the current market value is insufficient to satisfy the bond amount requirements for the facility. **At a minimum, the Department shall require any necessary additional amounts with each permit renewal.**

\* \* \* \* \*

### **§ 86.162a. Anthracite [Deep] Mine Operators Emergency Bond Fund.**

(a) For permitted anthracite **[deep]** mine operators required to post a bond under § 86.143 (relating to requirements to file a bond), and who can demonstrate to the Department that they are unable to post a conventional surety or collateral bond as described in § 86.156 (relating to the form of the bond), and do not meet the requirements of § 86.161 (relating to phased deposits of collateral), may apply to the Department for an Anthracite **[Deep] Mine Operator's** Emergency Bond Loan. The purpose of this loan is to guarantee a collateral bond posted by the operator.

(b) Permitted anthracite **[deep]** mine operators who wish to use the anthracite **[deep]** mine emergency bond loan program shall demonstrate one of the following:

(c) The Department and the qualified operator shall enter into a written loan agreement, on forms provided by the Department, which shall contain at a minimum, the following provisions:

(d) The Department will deposit appropriations and moneys collected under this section into the Anthracite **[Deep Mine Emergency Bond Loan Fund] Mine Operators Emergency Bond Fund**.

\* \* \* \* \*

## **BOND FORFEITURE**

### **§ 86.189. Reclamation of bond forfeiture sites.**

\* \* \* \* \*

(b) The Department will provide for reclamation of bond forfeiture sites through one of the following:

\* \* \* \* \*

(4) Under cooperative agreements among the Department, the State Conservation Commission and the County **[Soil]** Conservation District in which the bond forfeiture site is located, the District may enter into a contract with the landowner of the bond forfeiture site to reclaim the site.

\* \* \* \* \*

## **Subchapter G. CIVIL PENALTIES FOR COAL MINING ACTIVITIES**

### **GENERAL PROVISIONS**

#### **§ 86.193. Assessment of penalty.**

\* \* \* \* \*

(b) The Department will assess a civil penalty for each violation if the violation is assessable in an amount **[of \$1,100 or more] consistent with 30 CFR 723.12(b) and 723.14** under the system for assessment described in § 86.194 (relating to system for assessment of penalties).

(c) The Department may assess a penalty for each violation which is assessable in an amount **[less than \$1,100] consistent with 30 CFR 723.12(c) and 723.14** under the system for assessment described in § 86.194.

## Subchapter I. EMPLOYEE CONFLICT OF INTEREST

### § 86.232. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Department*—The Department of Environmental [Resources] Protection.

\* \* \* \* \*

### § 86.238. What to report.

(a) Each employe shall report information required on the statement of employment and financial interests of the employe, the employe spouse, minor children or other relatives who are full-time residents of the employe home. The report shall be on OSM Form [705-1] 23 as provided by the Department. The statement consists of three major parts:

\* \* \* \* \*

## Subchapter J. REMINING AND RECLAMATION INCENTIVES

### BONDING INCENTIVES

### § 86.281. Financial guarantees to insure reclamation—general.

\* \* \* \* \*

(b) The financial guarantee applies to a permit with remining areas approved by the Department. Operators who wish to participate in this program shall demonstrate, for each permit, their eligibility under §§ 86.253 and 86.282 (relating to operator and project qualification; and participation requirements). The amount will be the estimated cost for the Department to reclaim the remining area, subject to the limitations established in subsection (d).

(c) [For each approved permit of an eligible operator for a remining area, the] The Department will designate a specified amount of the financial guarantees special account in the Remining Financial Assurance Fund to financially assure reclamation obligations on the [permit] permits with an approved remining area. [The specific amount designated will be the estimated cost for the Department to reclaim the remining area.]

(d) The Department may not issue financial guarantees on a permit in excess of 10% of the then current designated amount in the special account in the Remining Financial

Assurance Fund. The Department will not issue financial guarantees to a mine operator if the aggregate amount of financial guarantees on permits issued to the operator will exceed 30% of the then current designated amount in the special account in the Remining Financial Assurance Fund. The Department will not issue additional financial guarantees when the aggregate amount of outstanding financial guarantees exceeds that amount resulting from dividing the current designated amount in the special account in the Remining Financial Assurance Fund by the historical rate of bond forfeiture under § 86.181 (relating to general) with a margin of safety determined by the Department.

(e) Upon declaration of forfeiture, the specified amount of the financial guarantee from the financial guarantee special account will be used with other bonds forfeited on the permit by the Department to complete reclamation of the mine site in accordance with the procedures and criteria in §§ 86.187—86.190. If the actual cost of reclamation by the Department exceeds the specified amount of the financial guarantee, additional funds from the Remining Financial Assurance Fund may be used to complete reclamation.

**(f) The Department will hold in reserve in the remining financial assurance fund funds that are not designated to underwrite remining financial guarantees. The Department will use funds held in reserve in the remining financial assurance fund to assure the availability of funds to cover reclamation liabilities when there is a mine operator bond forfeiture under § 86.181 (relating to general).**

#### **§ 86.282. Participation requirements.**

(a) Upon completion of the technical review of a permit application and receipt of a request for bond, an operator may apply to participate in the financial guarantees program for a remining area if the requirements of § 86.253 (relating to operator and project qualification) are met. To participate in this program, an operator shall demonstrate to the Department's satisfaction one of the following:

\* \* \* \* \*

(4) The operator has previously participated in the remining financial guarantee program and met its reclamation obligations and made timely payments. **An operator will be eligible under this subsection if it has not been cited through a notice of violation under § 86.165(a) (relating to failure to maintain proper bond) within the previous 3 years prior to the request for a remining financial guarantee.**

\* \* \* \* \*

#### **§ 86.284. Forfeiture.**

\* \* \* \* \*

(d) The financial guarantees program [will] may be discontinued immediately and notice published in the *Pennsylvania Bulletin*, if 25% or greater of the total outstanding

financial guarantees are **[declared forfeit] subject to forfeiture**. If the financial guarantees program is discontinued, no additional financial guarantees may be approved. Outstanding financial guarantees will remain in effect until released under §§ 86.170—86.175.

\* \* \* \* \*

## **CHAPTER 87. SURFACE MINING OF COAL**

### **Subchapter A. GENERAL PROVISIONS**

#### **§ 87.1. Definitions.**

\* \* \* \* \*

***Surface mining activities***—[Activities whereby coal is extracted from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between the coal or otherwise exposing and retrieving the coal from the surface, including, but not limited to, strip and auger mining, dredging, quarrying and leaching, and surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, slope, shaft, drift and borehole drilling and construction and activities related thereto. The term does not include portions of mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. The term includes activities in which the land surface has been disturbed as a result of or incidental to surface mining operations of the operator, including, but not limited to, private ways and roads appurtenant to a surface mining operation, land excavations, workings, refuse banks, spoil banks, culm banks, tailings, repair areas, storage areas, processing areas, shipping areas and areas in which facilities, equipment, machines, tools or other materials or property which result from, or are used in, surface mining activities are situated in. The term includes the construction of a road or similar disturbance for any purpose related to a surface mining activity, including that of moving or walking a dragline or other equipment, or for the assembly or disassembly or staging of equipment.] Any activities meeting the definition of “surface mining activities” as it is defined at 30 CFR 701.5, which is ADOPTED IN ITS ENTIRETY AND incorporated herein by reference.

\* \* \* \* \*

### **Subchapter C. SURFACE COAL MINES: MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES**

#### **§ 87.53. Prime farmland investigation.**

\* \* \* \* \*

(b) Land will not be considered prime farmland if the applicant can demonstrate one of the following:

(1) The land has not been historically used as cropland.

(2) Other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season, more often than once in 2 years, and the flooding has reduced crop yields.

(3) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the United States **[Soil] Natural Resources** Conservation Service.

(c) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination which shows that the land for which the negative determination is sought meets one of the criteria of subsection (b).

(d) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the United States **[Soil] Natural Resources** Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause a survey to be made.

(1) When a soil survey, as required in this subsection, contains soil map units which have been designated as prime farmlands, the applicant shall submit a soil survey of the proposed permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures in the *United States Department of Agriculture Handbooks 436* (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951) as amended. The soil survey shall include a map unit and representative soil profile description as determined by the United States **[Soil] Natural Resources** Conservation Service for each prime farmland within the proposed permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey, are available and their use is approved by the State Conservationist, United States **[Soil] Natural Resources** Conservation Service.

(2) When a soil survey, as required in this subsection, contains soil map units which have not been designated as prime farmland after review by the United States **[Soil] Natural Resources** Conservation Service, the applicant shall submit a request for negative determination for nondesignated land with the permit soil survey establishing compliance with subsection (b).

**Subchapter E. SURFACE COAL MINES: MINIMUM ENVIRONMENTAL  
PROTECTION PERFORMANCE STANDARDS**

**§ 87.100. Topsoil: nutrients and soil amendments.**

\* \* \* \* \*

(d) The use of [fly ash and sewage sludge] coal ash, biosolids, and residential septage as soil amendments may be approved by the Department if demonstrated to be a suitable soil amendment and the requirements of Subpart D, Articles VIII and IX (relating to municipal waste; and residual waste management) are met.

**§ 87.102. Hydrologic balance: effluent standards.**

\* \* \* \* \*

(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with this title, including Chapters 91—93, 95, 96, 97 (reserved) and 102.

**§ 87.103. Precipitation event exemption.**

\* \* \* \* \*

(b) [The 10-year, 24-hour precipitation event for specific areas in this Commonwealth are listed as follows:

<i>County</i>	<i>Rainfall (inches)</i>
<b>Allegheny</b>	<b>3.9</b>
<b>Armstrong</b>	<b>3.9</b>
<b>Beaver</b>	<b>3.8</b>
<b>Bedford</b>	<b>4.5</b>
<b>Blair</b>	<b>4.7</b>
<b>Bradford</b>	<b>4.2</b>
<b>Butler</b>	<b>3.8</b>
<b>Cambria</b>	<b>4.2</b>
<b>Cameron</b>	<b>4.0</b>
<b>Centre</b>	<b>4.3</b>
<b>Clarion</b>	<b>3.7</b>
<b>Clearfield</b>	<b>4.0</b>
<b>Clinton</b>	<b>4.2</b>
<b>Crawford</b>	<b>3.6</b>



Elk	3.9
Fayette	4.1
Forest	3.8
Franklin	4.8
Fulton	4.6
Greene	3.9
Huntingdon	4.6
Indiana	4.0
Jefferson	3.9
Lawrence	3.7
Lycoming	4.3
McKean	3.9
Mercer	3.7
Potter	4.0
Somerset	4.3
Sullivan	4.2
Tioga	4.2
Venango	3.7
Warren	3.8
Washington	3.9
Westmoreland	4.0

**The 10-year, 24-hour precipitation event for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic Atmospheric Administration or equivalent resources.**

(c) For the permittee to demonstrate that the **10-year, 24-hour precipitation** event [listed in subsection (b)] has for the permittee's mine area been exceeded or that dry weather flow conditions did not exist, the permittee shall do one of the following:

\* \* \* \* \*

(3) Prepare an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 10-year, 24-hour precipitation event specified for the mine area[ in subsection (b)].

\* \* \* \* \*

**§ 87.112. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.**

\* \* \* \* \*

(b) The design, construction and maintenance of dams, ponds, embankments and impoundments shall achieve the minimum design criteria contained in the United States [Soil] Natural Resources Conservation Service's Pennsylvania Field Office Technical Guide, Section IV, Standards 350, "Sediment Basin," and 378, "Pond," as amended, or United States [Soil] Natural Resources Conservation Service's Technical Release No. 60, Earth Dams and Reservoirs, whichever is applicable. The standards contained therein are incorporated by reference. In addition to the requirements in "Sediment Basin," a minimum static safety factor of 1.3 is required. These structures shall also meet the following requirements:

\* \* \* \* \*

**§ 87.117. Hydrologic balance: surface water monitoring.**

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter [92] 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored to accurately measure and record the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 87.69 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, acidity, alkalinity, total iron, total manganese, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

\* \* \* \* \*

**§ 87.155. Revegetation: standards for successful revegetation.**

(a) When the approved postmining land use is cropland, or as provided in subsection (c):

(1) The standards for successful revegetation shall be based upon crop productivity or yield.

(2) The approved standards shall be the average yields per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture [Soil] Natural Resources Conservation Service.

\* \* \* \* \*

**§ 87.157. Cessation of operations: temporary.**

**[(a) As soon as it is known that the operation will temporarily cease for more than 30 days, the operator shall submit a notice of intention in writing to temporarily cease the operation. The notice shall include a statement of the exact number of acres that will have been affected in the permit area, the extent and kind of reclamation of the areas and identification of the backfilling, regrading, vegetation, monitoring and water treatment activities which will continue during the temporary cessation.**

**(b) Temporary cessation of an operation may not exceed 90 days unless the Department approves a longer period not to exceed 180 days or unless the Department approves a longer period.**

**(c) Temporary cessation does not relieve the operator of the obligations to comply with the permit.]**

**(a) Before temporary cessation status of operations for a period of 30 days or more, an operator shall submit to the Department a notice of intention to temporarily cease operations. The notice shall include a statement of the exact number of acres affected in the permit area, the extent and kind of reclamation of the areas and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation status.**

**(b) Temporary cessation status of operations does not relieve the operator of the obligations to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit, including the obligation to submit an application for permit renewal at least 180 days before the expiration of the existing permit. The Department may enforce these obligations during the temporary cessation status of operations.**

**(c) Temporary cessation status will end with the resumption of coal extraction. Any subsequent notices of temporary cessation status must include updated information outlined in paragraph (a).**

**(d) Temporary cessation status will terminate where the Department finds a failure to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit. Termination of temporary cessation status due to failure to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit will place the mining operation in permanent cessation status, subject to the provisions of § 87.158 (cessation of operations: permanent).**

**§ 87.177. Prime farmland: special requirements.**

(a) When the surface mining activities are being conducted on prime farmland historically used for cropland, a permit for the mining and reclamation operation may be granted by the Department if it first finds, in writing, and after consultation with the [Soil] Natural Resources Conservation Service, that the applicant has demonstrated that:

\* \* \* \* \*

(b) If a permit is granted under this section, the permit shall be specifically conditioned as containing the plan submitted under § 87.83 (relating to prime farmlands), including any revisions to that plan suggested by the [Soil] Natural Resources Conservation Service.

\* \* \* \* \*

**§ 87.181. Prime farmland: revegetation.**

\* \* \* \* \*

(c) Standards for determining success of restoration on prime farmlands soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture [Soil] Natural Resources Conservation Service.

\* \* \* \* \*

**CHAPTER 88. ANTHRACITE COAL**

**Subchapter A. GENERAL PROVISIONS**

**PRELIMINARY PROVISIONS**

**§ 88.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Haul road*—Roads that are planned, designed, located, constructed, reconstructed or improved, utilized and maintained for the transportation of equipment, fuel, personnel, coal, spoil and other operating resources from a public road to points within the surface mine or between principal operations on the mine site or both, but not including roads

within the pit or on unreclaimed spoil areas. **The term includes public roads that are used as an integral part of the coal mining activity.**

\* \* \* \* \*

**Road**—A surface right-of-way for purposes of travel by land vehicles used in coal exploration [of] **or** surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed shoulders, parking and side area, approaches, structures, ditches, surface and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved or maintained for use in coal exploration or surface coal mining activities, including use by coal-hauling vehicles leading to transfer, processing or

\* \* \* \* \*

## **ANTHRACITE COAL MINING ACTIVITIES: APPLICATION REQUIREMENTS AND PREMINING RESOURCES**

### **§ 88.32. Prime farmland investigation.**

\* \* \* \* \*

(b) Land may not be considered prime farmland if the applicant can demonstrate one of the following:

- (1) The land has not been historically used for cropland.
- (2) The slope of the land is 10% or greater.
- (3) There are no soil map units that have been designated prime farmland by the United States Department of Agriculture [Soil] **Natural Resources** Conservation Service, on the basis of a soil survey of lands within the permit area.

\* \* \* \* \*

(d) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the United States Department of Agriculture [Soil] **Natural Resources** Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause a survey to be made.

(e) When a soil survey as required in subsection (d) includes soil map units that have been designated as prime farmlands, the applicant shall submit with the permit application a soil survey of the proposed permit area according to the standards of the National Cooperative Soil Survey and the procedures in the *United States Department of*

*Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951), as amended. The soil survey shall include a map unit and representative soil profile description as determined by the United States [Soil] Natural Resources Conservation Service for each prime farmland soil within the proposed permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey, are available and their use is approved by the State Conservationist, United States [Soil] Natural Resources Conservation Service.*

(f) When a soil survey as required in subsection (d) includes map units that have not been designated as prime farmland after review by the United States Department of Agriculture [Soil] Natural Resources Conservation Service, the applicant shall submit with the permit application a request for negative determination for nondesignated land establishing compliance with subsection (b).

## **Subchapter B. SURFACE ANTHRACITE COAL MINES: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS**

### **§ 88.92. Hydrologic balance: effluent standards.**

\* \* \* \* \*

(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with Chapters 91—93, 95, 96, 97 (reserved) and 102.

\* \* \* \* \*

### **§ 88.93. Hydrologic balance: precipitation event exemption.**

\* \* \* \* \*

(b) [The 10-year, 24-hour precipitation event for specific areas in this Commonwealth are listed as follows:

<i>County</i>	<i>Rainfall (inches) 10 Yr.</i>
<b>Bradford</b>	<b>4.2</b>
<b>Carbon</b>	<b>4.8</b>
<b>Columbia</b>	<b>4.6</b>
<b>Dauphin</b>	<b>4.8</b>
<b>Lackawanna</b>	<b>4.7</b>
<b>Lebanon</b>	<b>4.8</b>
<b>Luzerne</b>	<b>4.7</b>
<b>Northumberland</b>	<b>4.6</b>

**The 10-year, 24-hour precipitation event for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic Atmospheric Administration or equivalent resources.**

(c) For the permittee to demonstrate that the **10-year, 24-hour precipitation** event [listed in subsection (b)] has for his mine area been exceeded, or that dry weather flow conditions did not exist, the permittee shall do one of the following:

\* \* \* \* \*

(3) Prepare an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 10-year, 24-hour precipitation event [specified] for the mine area[ in subsection (a)].

\* \* \* \* \*

**§ 88.102. Hydrologic balance: dams, ponds, embankments and impoundments—  
design, construction and maintenance.**

\* \* \* \* \*

(b) The design, construction and maintenance of dams, ponds, embankments and impoundments that are not of the class of subsection (a) shall achieve the minimum design criteria contained in United States [Soil] **Natural Resources** Conservation Service's Pennsylvania Field Office Technical Guide, Section IV, Standards 350 "Sediment Basin" and 378, "Pond" as amended. In addition to the requirements in "Sediment Basin," a minimum static safety factor of 1.3 is required.

**§ 88.103. Hydrologic balance: coal processing waste dams and embankments.**

A dam and embankment constructed of coal processing waste or intended to impound coal processing waste, shall meet the requirement criteria established by Chapter 105 (relating to dam safety and waterway management) and the United States [Soil] **Natural Resources** Service's *Pennsylvania Field Office Technical Guide, Section IV, Standard 378, "Pond"* as applicable.

**§ 88.106. Hydrologic balance: surface water monitoring.**

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter [92] **92a** (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored to measure and record accurately the water quantity and quality of the



discharges from the permit area and the effect of the discharge on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in 88.49 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, acidity, alkalinity, total iron, total manganese, sulfates and flow shall be monitored and reported to the Department every 3 months for each monitoring location.

\* \* \* \* \*

**§ 88.107. Hydrologic balance: water rights and replacement.**

\* \* \* \* \*

(g) *Operator cost recovery.* A surface mine operator or mine owner who appeals a Department order, provides a successful defense during the appeal to the presumptions of liability and is not otherwise held responsible for the pollution or diminution is entitled to recovery of reasonable costs incurred, including, but not limited to, the costs of temporary water supply, design, construction, restoration or replacement costs{, attorney fees and expert witness fees} from the Department.

\* \* \* \* \*

**§ 88.129. Revegetation: standards for successful revegetation.**

\* \* \* \* \*

(e) When the approved postmining land use is cropland, the approved standard shall be the average yields per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture [Soil] Natural Resources Conservation Service. The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last two consecutive growing seasons of the extended period of responsibility established in § 86.151 (relating to period of liability). Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

(f) Standards for determining success of restoration on prime farmlands soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture [Soil] Natural Resources Conservation Service.

\* \* \* \* \*

**§ 88.131. Cessation of operations: temporary.**

**[(a) Operations that are temporarily ceased but are to be resumed under the permit, shall be effectively secured. Temporary abandonment, including such factors as equipment removal from the site for reasons of security or maintenance, does not relieve the operator of the obligations to comply with any provision of the permit. Temporary cessation of an operation may not exceed 90 days unless approved by the Department.**

**(b) As soon as it is known that the operation will temporarily cease for more than 30 days, the operator shall submit a notice of intention to temporarily cease the operation. The notice shall include a statement of the exact number of acres which will have been affected in the permit area, the extent and kind of reclamation of those areas, and identification of the backfilling, regrading, revegetation, monitoring and water treatment activities that will continue during the temporary cessation.]**

- (a) Before temporary cessation status of operations for a period of 30 days or more, an operator shall submit to the Department a notice of intention to temporarily cease operations. The notice shall include a statement of the exact number of acres affected in the permit area, the extent and kind of reclamation of the areas and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation status.**
- (b) Temporary cessation status of operations does not relieve the operator of the obligations to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit, including the obligation to submit an application for permit renewal at least 180 days before the expiration of the existing permit. The Department may enforce these obligations during the temporary cessation status of operations.**
- (c) Temporary cessation status will end with the resumption of coal extraction. Any subsequent notices of temporary cessation status must include updated information outlined in paragraph (a).**
- (d) Temporary cessation status will terminate where the Department finds a failure to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit. Termination of temporary cessation status due to failure to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit will place the mining operation in permanent cessation status, subject to the provisions of § 88.132 (cessation of operations: permanent).**

**Subchapter C. ANTHRACITE BANK REMOVAL AND RECLAMATION:  
MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS**

**§ 88.187. Hydrologic balance: effluent standards.**

\* \* \* \* \*

(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with Chapters 91—93, 95, 96, 97 (reserved) and 102.

\* \* \* \* \*

**§ 88.188. Hydrologic balance: precipitation event exemption.**

\* \* \* \* \*

(b) [The 10-year, 24-hour precipitation event for specific areas in this Commonwealth are listed as follows:

<i>County</i>	<i>Rainfall (inches) 10 Yr.</i>
Bradford	4.2
Carbon	4.8
Columbia	4.6
Dauphin	4.8
Lackawanna	4.7
Lebanon	4.8
Luzerne	4.7
Northumberland	4.6
Schuylkill	4.7]

**The 10-year, 24-hour precipitation event for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic Atmospheric Administration or equivalent resources.**

(c) For the permittee to demonstrate that the 10-year, 24-hour precipitation event [listed in subsection (b)] has for [his] the mine area been exceeded, or that dry weather flow conditions did not exist, the permittee shall do one of the following:

\* \* \* \* \*

(4) Prepare an analysis identifying the runoff area tributary to the treatment facility and compare the actual runoff as measured and depicted by the flow measuring device with

the runoff expected from the 10-year, 24-hour precipitation event specified for the mine area [in subsection (b)].

\* \* \* \* \*

**§ 88.193. Hydrologic balance: collection ponds within disturbed areas.**

\* \* \* \* \*

(b) The ponds or collection areas shall be capable of treating the runoff. Runoff shall be calculated using the [Soil]Natural Resources Conservation Service methods.

\* \* \* \* \*

**§ 88.197. Hydrologic balance: ponds, embankments and impoundments—design, construction and maintenance.**

\* \* \* \* \*

(b) The design, construction and maintenance of dams, ponds, embankments and impoundments that are not of the class of subsection (a) shall achieve the minimum design criteria contained in United States [Soil] Natural Resources Conservation Service's Pennsylvania Field Office Technical Guide, Section IV, Standards 350 "Sediment Basin" and Standard 378, "Pond," as amended. In addition to the requirements in "Sediment Basin," a minimum static safety factor of 1.3 is required.

**§ 88.198. Hydrologic balance: coal processing waste dams and embankments.**

A dam and embankment constructed of coal processing waste or intended to impound coal processing waste, shall meet the criteria established by Chapter 105 (relating to dam safety and waterway management) and the United States [Soil] Natural Resources Conservation Service's *Pennsylvania Field Office Technical Guide, Section IV, and Standard 378 "Pond,"* as applicable.

**§ 88.202. Hydrologic balance: surface water monitoring.**

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter [92] 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored to measure and record accurately the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 88.49 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total

suspended solids, pH, acidity, alkalinity, total iron, total manganese, sulfates and flow shall be monitored and reported to the Department every 3 months for each monitoring location.

\* \* \* \* \*

**§ 88.217. Vegetation: standards for successful vegetation.**

\* \* \* \* \*

(e) When the approved postmining land use is cropland, the approved standard shall be the average yields per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture [Soil] Natural Resources Conservation Service. The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last two consecutive growing seasons of the extended period of responsibility established in § 86.151 (relating to period of liability). Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

(f) Standards for determining success of restoration on prime farmlands soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture [Soil] Natural Resources Conservation Service.

\* \* \* \* \*

**§ 88.219. Cessation of operations: temporary.**

**[(a) Operations that are temporarily ceased but are to be resumed under the permit, shall be effectively secured. Temporary abandonment, including factors such as equipment removal from the site for reasons of security or maintenance, does not relieve the operator of the obligations to comply with any provision of the permit. Temporary cessation of an operation may not exceed 90 days unless approved by the Department.]**

**(b) As soon as it is known that the operation will temporarily cease for more than 30 days, the operator shall submit a notice of intention to temporarily cease the operation. The notice shall include a statement of the exact number of acres which will have been affected in the permit area; the extent and kind of reclamation of those areas; and identification of the backfilling, regrading, revegetation, monitoring and water treatment activities that will continue during the temporary cessation.]**

**(a) Before temporary cessation status of operations for a period of 30 days or more, an operator shall submit to the Department a notice of intention to temporarily cease operations. The notice shall include a statement of the exact number of acres affected in the permit area, the extent and kind of reclamation of the areas and**

identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation status.

- (b) Temporary cessation status of operations does not relieve the operator of the obligations to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit, including the obligation to submit an application for permit renewal at least 180 days before the expiration of the existing permit. The Department may enforce these obligations during the temporary cessation status of operations.
- (c) Temporary cessation status will end with the resumption of coal extraction. Any subsequent notices of temporary cessation status must include updated information outlined in paragraph (a).
- (d) Temporary cessation status will terminate where the Department finds a failure to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit. Termination of temporary cessation status due to failure to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit will place the mining operation in permanent cessation status, subject to the provisions of § 88.220 (cessation of operations: permanent).

#### **Subchapter D. ANTHRACITE REFUSE DISPOSAL: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS**

**§ 88.292. Hydrologic balance: effluent standards.**

\* \* \* \* \*

(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with this title, including Chapters 91—93, 95, 96, 97 (reserved) and 102.

**§ 88.293. Hydrologic balance: precipitation event exemption.**

\* \* \* \* \*

(b) [The 1-year and 10-year; 24-hour precipitation events for specific areas in this Commonwealth are listed as follows:

<i>County</i>	<i>Rainfall (inches)</i>	
	<i>1-Year</i>	<i>10 Year</i>
<b>Bradford</b>	<b>2.3</b>	<b>4.2</b>
<b>Carbon</b>	<b>2.5</b>	<b>4.8</b>
<b>Columbia</b>	<b>2.4</b>	<b>4.6</b>
<b>Dauphin</b>	<b>2.5</b>	<b>4.8</b>
<b>Lackawanna</b>	<b>2.4</b>	<b>4.7</b>
<b>Lebanon</b>	<b>2.5</b>	<b>4.8</b>
<b>Luzerne</b>	<b>2.4</b>	<b>4.7</b>
<b>Northumberland</b>	<b>2.4</b>	<b>4.6</b>
<b>Schuylkill</b>	<b>2.5</b>	<b>4.7]</b>

**The 1-year and 10-year; 24-hour precipitation events for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic Atmospheric Administration or equivalent resources.**

(c) For the permittee to demonstrate that the [10-year, 24-hour precipitation] event [listed in subsection (b)] has for [his] the mine area been exceeded, or that dry weather flow conditions did not exist, the permittee shall comply with one of the following:

- (1) Collect 24-hour rainfall information from official United States Weather Bureau Stations within a 25-mile distance—radius—of the site.
- (2) Calculate the estimated rainfall event for the site, by appropriate interpolation of the data collected under paragraph (1). Appropriate interpolation shall be accomplished by the following:
  - (i) Preparing a verified copy of the chart or readout from a Department approved flow measuring device which continuously records the influent to the permitted treatment facility. The device shall be approved by the Department in writing prior to the rainfall event for which the exemption is sought and shall be secured to prevent tampering and acts of third parties.
  - (ii) Preparing an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 1-year or 10-year, 24-hour rainfall event specified for the mine area[ in subsection (b)].

\* \* \* \* \*

(4) Prepare an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 1-year or 10-year, 24-hour rainfall event specified for the mine area[ in subsection (b)].



\* \* \* \* \*

**§ 88.302. Hydrologic balance: dams, ponds, embankments and impoundments—  
design, construction and maintenance.**

\* \* \* \* \*

(b) The design, construction and maintenance of dams, ponds, embankments and impoundments that are not of the class of subsection (a) shall achieve the minimum design criteria contained in United States [Soil] Natural Resources Conservation Service's Pennsylvania Field Office Technical Guide, Section IV, Standards 350 "Sediment Basin" and 378, "Pond," as amended. In addition to the requirements in "Sediment Basin," a minimum static safety factor of 1.3 is required.

**§ 88.303. Hydrologic balance: coal processing waste dams and embankments.**

A dam and embankment constructed of coal processing waste or intended to impound coal processing waste, shall meet the requirement criteria established under Chapter 105 (relating to dam safety and waterway management) and the United States [Soil] Natural Resources Conservation Service's *Pennsylvania Field Office Technical Guide, Section IV, Standard 378, "Pond"*, as applicable.

**§ 88.306. Hydrologic balance: surface water monitoring.**

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter [92] 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored to measure and record accurately the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 88.49 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, acidity, alkalinity, total iron, total manganese, sulfates and flow shall be monitored and reported to the Department every 3 months for each monitoring location.

\* \* \* \* \*

**§ 88.330. Revegetation: standards for successful revegetation.**

\* \* \* \* \*

(e) When the approved postmining land use is cropland, the approved standard shall be the average yields per acre for the crop and soil type as specified in the Soil Surveys of

the United States Department of Agriculture, [Soil] Natural Resources Conservation Service. The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last two consecutive growing seasons of the extended period of responsibility established in § 86.151 (relating to period of liability). Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

(f) Standards for determining success of restoration on prime farmlands soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture [Soil] Natural Resources Conservation Service.

\* \* \* \* \*

**§ 88.332. Cessation of operations: temporary.**

**{(a) As soon as it is known that the operation will temporarily cease for more than 30 days, the operator shall submit a notice of intention, in writing, to temporarily cease the operation. The notice shall include a statement of the exact number of acres which will have been affected in the permit area, the extent and kind of reclamation of those areas, and identification of the backfilling, regrading, revegetation, monitoring and water treatment activities that will continue during the temporary cessation. The system for preventing precipitation from contacting the coal refuse shall be installed when the temporary cessation exceeds 90 days. The Department may approve a longer period, not to exceed 1 year, under subsection-(b) CONSISTENT WITH SECTION 6.1(i) OF THE COAL REFUSE DISPOSAL CONTROL ACT, 52 P.S. § 30.56a(i).}**

**(b) Temporary cessation of an operation may not exceed 90 days unless the Department approves a longer period for reasons of seasonal shutdown or labor strike.**

**(c) Temporary cessation does not relieve the operator of the obligation to comply with any provisions of the permit.}**

**~~{(a) Before temporary cessation status of operations for a period of 30 days or more, an operator shall submit to the Department a notice of intention to temporarily cease operations. The notice shall include a statement of the exact number of acres affected in the permit area, the extent and kind of reclamation of the areas and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation status.}~~**

**~~{(b) Temporary cessation status of operations does not relieve the operator of the obligations to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit, including the obligation to submit an application for permit renewal at least 180 days before the expiration of the existing permit. The}~~**

~~Department may enforce these obligations during the temporary cessation status of operations.~~

~~(c) Temporary cessation status will end with the resumption of coal extraction. Any subsequent notices of temporary cessation status must include updated information outlined in paragraph (a).~~

~~(d) Temporary cessation status will terminate where the Department finds a failure to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit. Termination of temporary cessation status due to failure to comply with the acts as defined in § 86.1, chapters 86-90, or the approved permit will place the mining operation in permanent cessation status, subject to the provisions of § 87.158 (cessation of operations: permanent).~~

#### Subchapter F. ANTHRACITE UNDERGROUND MINES

##### § 88.491. Minimum requirements for information on environmental resources.

\* \* \* \* \*

(k) *Preapplication investigation.* The applicant shall conduct a preapplication investigation of the proposed permit area to determine whether lands within the area may be prime farmland.

(1) Land will not be considered prime farmland if the applicant can demonstrate one of the following:

(i) The land has not been historically used for cropland.

(ii) The slope of the land is 10% or greater.

(iii) There are no soil map units that have been designated prime farmland by the United States Department of Agriculture [Soil] Natural Resources Conservation Service, on the basis of a soil survey of lands within the permit area.

(iv) The area of prime farmland is minimal in size—less than 5 acres—and has been or will be in use for an extended period of time—more than 10 years.

(2) If the applicant determines after investigation that all or part of the lands in the proposed permit area are not prime farmland, the applicant shall submit with the permit application a request for a negative determination showing that the lands meet one of the criteria of paragraph (1).

(3) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the United States Department of Agriculture

**[Soil] Natural Resources** Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed area, the applicant shall cause a survey to be made.

(4) When a soil survey as required in paragraph (3) includes soil map units that have been designated as prime farmlands, the applicant shall submit with the permit application a soil survey of the proposed permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in the United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951) as amended. The soil survey shall include a map unit and representative soil profile description as determined by the United States **[Soil] Natural Resources** Conservation Service for each prime farmland soil within the proposed permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey are available and their use is approved by the State Conservationist, United States **[Soil] Natural Resources** Conservation Service.

(5) When a soil survey as required in paragraph (3) includes soil map units that have not been designated as prime farmland after review by the United States Department of Agriculture **[Soil] Natural Resources** Conservation Service, the applicant shall submit with the permit application a request for negative determination for nondesignated land establishing compliance with paragraph (1).

#### **§ 88.493. Minimum environmental protection performance standards.**

A person who conducts underground mining activities shall comply with the performance standards and design requirements of this section. The following performance standards shall be met:

\* \* \* \* \*

(8) Standards for determining success of restoration on prime farmland soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture **[Soil] Natural Resources** Conservation Service. Soil productivity for prime farmland shall be returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed under § 88.491(k) (relating to minimum requirements for information on environmental resources).

\* \* \* \* \*

### **Subchapter G. ANTHRACITE SURFACE MINING ACTIVITIES AND ANTHRACITE BANK REMOVAL AND RECLAMATION ACTIVITIES: MINIMUM REQUIREMENTS FOR REMINING AREAS WITH POLLUTION DISCAHRGES**

**§ 88.502. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Encountered discharge—*

(i) A pre-existing discharge intercepted in the course of active surface mining activities, including, but not limited to, overburden removal, coal extraction and backfilling, or that occurs in the pit, any mining-related conveyance, sedimentation pond or treatment pond.

(ii) The term does not include diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the pollution abatement plan which would otherwise drain into the affected area so long as they are designed, operated and maintained in accordance with § 88.95(b)—(g), § 88.190(b)—(g) or [§ 88.295(b)—(g)] § 88.295(b)—(i) (relating to hydrologic balance: diversions; hydrologic balance: diversions; and hydrologic balance: diversions and conveyances), as applicable.

\* \* \* \* \*

**§ 88.507. Treatment of discharges.**

\* \* \* \* \*

(c) For purposes of subsections (a) and (b), the term "encountered" may not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the pollution abatement plan which would otherwise drain into the affected area, so long as the diversions are designed, operated and maintained under [§§ 88.95(b), 88.190(b) and 88.295(b)] §§ 88.95(b)—(g), 88.190(b)—(g) and 88.295(b)—(i) (relating to hydrologic balance: diversions; hydrologic balance: diversions; and hydrologic balance: diversions and conveyances).

\* \* \* \* \*

**§ 88.508. Request for bond release.**

Sections 86.172(c) and 88.509 (relating to criteria for release of bond; and criteria and schedule for release of bonds on pollution abatement areas) apply to the release of bonds for pollutional abatement areas authorized by this subchapter. Section [86.172(a), (b) and (d)] 86.172(a) and (b) shall be inapplicable to the release of bonds.

## **CHAPTER 89. UNDERGROUND MINING OF COAL AND COAL PREPARATION FACILITIES**

### **Subchapter B. OPERATIONS**

#### **PERFORMANCE STANDARDS**

**§ 89.52. Water quality standards, effluent limitations and best management practices.**

\* \* \* \* \*

*(f) Postmining polluttional discharges.*

(1) If a postmining polluttional discharge occurs, the discharger shall immediately provide interim treatment to comply with the Group A effluent requirements in subsection (a), including modifications authorized or required under subsection (e), (g) or (h). The discharger shall also take whatever measures are necessary and available to abate the discharge, including modifying the operation and reclamation plan for the mining activity.

(2) If the discharge continues to exist, after implementation of the abatement measures required under paragraph (1), the discharger shall make provisions for sound future treatment of the discharge to achieve the Group A effluent requirements in subsection (c), including modifications authorized or required under subsection (e) or (h). If the untreated discharge can be adequately treated using a passive treatment system, **[paragraph (3) applies in lieu of the Group A effluent requirements of subsection (a). Discharges which can be adequately treated using a passive treatment system include, but are not limited to:**

(i) **Discharges with a pH which is always greater than 6.0 and an alkalinity which always exceeds the acidity.**

(ii) **Discharges with an acidity which is always less than 100 milligrams per liter, an iron content which is always less than 10 milligrams per liter, a manganese content which is always less than 18 milligrams per liter and a flow rate which is always less than 3 gallons per minute.**

(iii) **Discharges with a net acidity always less than 300 milligrams per liter which is calculated by subtracting the alkalinity of the discharge from its acidity.**

(3) **A passive treatment system authorized under paragraph (2) shall comply with the following effluent requirements:**

(i) The system shall reduce the iron concentration by at least 90% or by that percentage necessary to achieve the Group A effluent requirements in subsection (c), whichever percentage is less.

(ii) The system shall produce an effluent alkalinity which exceeds effluent acidity.

(4) **In** in addition to achieving the effluent requirements [of paragraphs (2) and (3)], the passive treatment system shall be designed and constructed to accomplish the following:

(i) Prevent discharge of mine drainage into the groundwater.

(ii) Prevent extraneous sources of groundwater and surface water runoff from entering the treatment system.

(iii) Hydraulically handle the highest average monthly flow rate which occurs during a 12-month period.

(iv) Have inlet and outlet structures which will allow for flow measurement and water sampling.

(v) Prevent to the maximum extent practicable physical damage, and associated loss of effectiveness, due to wildlife and vandalism.

(vi) Be of a capacity so that it will operate effectively and achieve the required effluent quality for 15 to 25 years before needing to be replaced.

[(5)] (3) [The] Any passive treatment system shall be designed by, and constructed under the supervision of, a qualified professional knowledgeable in the subject of passive treatment of mine drainage.

\* \* \* \* \*

(h) *Additional requirements.* In addition to the requirements of subsections (c)—(g), the discharge of water from the permit area shall comply with this title, including Chapters 91—93, 95, 96, 97 (reserved) and 102.

\* \* \* \* \*

#### § 89.53. Precipitation event exemption.

\* \* \* \* \*

(b) [The 10-year, 24-hour rainfall events for specific areas in this Commonwealth are as follows, in inches:

<i>County</i>	<i>Inches 10 yr</i>
<b>Allegheny</b>	<b>3.9</b>
<b>Armstrong</b>	<b>3.9</b>
<b>Beaver</b>	<b>3.8</b>
<b>Bedford</b>	<b>4.5</b>
<b>Blair</b>	<b>4.7</b>
<b>Bradford</b>	<b>4.2</b>
<b>Butler</b>	<b>3.8</b>
<b>Cambria</b>	<b>4.21</b>
<b>Cameron</b>	<b>4.0</b>
<b>Centre</b>	<b>4.3</b>
<b>Clarion</b>	<b>3.7</b>
<b>Clearfield</b>	<b>4.0</b>
<b>Clinton</b>	<b>4.2</b>
<b>Crawford</b>	<b>3.6</b>
<b>Elk</b>	<b>3.9</b>
<b>Fayette</b>	<b>4.1</b>
<b>Forest</b>	<b>3.8</b>
<b>Franklin</b>	<b>4.8</b>
<b>Fulton</b>	<b>4.6</b>
<b>Greene</b>	<b>3.9</b>
<b>Huntingdon</b>	<b>4.6</b>
<b>Indiana</b>	<b>4.0</b>
<b>Jefferson</b>	<b>3.9</b>
<b>Lawrence</b>	<b>3.7</b>
<b>Lycoming</b>	<b>4.3</b>
<b>McKean</b>	<b>3.9</b>
<b>Mercer</b>	<b>3.7</b>
<b>Potter</b>	<b>4.0</b>
<b>Somerset</b>	<b>4.3</b>
<b>Tioga</b>	<b>4.2</b>
<b>Venango</b>	<b>3.7</b>
<b>Warren</b>	<b>3.8</b>
<b>Washington</b>	<b>3.9</b>
<b>Westmoreland</b>	<b>4.0</b>
<b>Bradford</b>	<b>4.2</b>



Carbon	4.8
Columbia	4.6
Dauphin	4.8
Lackawanna	4.7
Lebanon	4.8
Luzerne	4.7

<i>County</i>	<i>Inches</i> <i>10 yr</i>
Northumberland	4.6
Schuylkill	4.7
Sullivan	4.2]

**The 10-year, 24-hour rainfall events for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic Atmospheric Administration or equivalent resources.**

(c) For the permittee to demonstrate that the 10-year, 24-hour event [listed in subsection (b)] has for [his] the mine area been exceeded, or that dry weather flow conditions did not exist, the permittee shall comply with one of the following:

\* \* \* \* \*

(2) The permittee shall comply with the following:

(i) Prepare a verified copy of the chart or readout from a Department-approved flow measuring device which continuously records the influent to the permitted treatment facility. The device shall be approved by the Department in writing prior to the rainfall event for which the exemption is sought and shall be secured to prevent tampering and acts of third parties.

(ii) Prepare an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 10-year, 24-hour rainfall event specified for the mine area[ in subsection (b)].

\* \* \* \* \*

#### **§ 89.59. Surface water and groundwater monitoring.**

(a) Surface water and groundwater monitoring shall be conducted under § 89.34 (relating to hydrology) and with the monitoring plan contained in the permit. At a

minimum, surface water and groundwater monitoring shall include the following conditions:

\* \* \* \* \*

(3) In addition to the monitoring and reporting requirements in Chapter [92] 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored accurately to measure and record the water quantity and quality of discharges from the permit area and the effect of the discharges on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 89.36 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, total iron, total manganese, acidity, alkalinity, pH, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

\* \* \* \* \*

### **Subchapter C. RECLAMATION**

### **PERFORMANCE STANDARDS**

#### **§ 89.86. Revegetation.**

\* \* \* \* \*

(e) Standards for successful revegetation shall be as follows:

(1) When the approved postmining land use is cropland:

(i) The standards for successful revegetation shall be based upon crop productivity, yield or soil tests.

(ii) The approved standard shall be the average yield per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture [Soil] Natural Resources Conservation Service.

(iii) The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last 2 consecutive growing seasons of the 5-year responsibility period established in this section. Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

\* \* \* \* \*

## **Subchapter D. STRUCTURAL REQUIREMENTS FOR IMPOUNDMENT**

### **PERFORMANCE STANDARDS**

#### **§ 89.112. Impoundments.**

An impoundment shall be designed in accordance with the United States [soil] Natural Resources Conservation Service's Pennsylvania Field Office Technical Guide, Section IV, Standards 350, "Sediment Basin," and 378, "Pond," or United States [Soil] Natural Resources Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs," whichever is applicable. The standards are incorporated by reference. In addition to the requirements in "Sediment Basin," a minimum static safety factor of 1.3 is required. Each impoundment shall be certified that it has been constructed and is being maintained as designed and in accordance with the approved plan and all applicable performance standards. These structures shall also meet the following requirements:

\* \* \* \* \*

## **Subchapter E. PRIME FARMLANDS**

### **INFORMATION REQUIREMENTS**

#### **§ 89.121. Prime farmland investigation.**

(a) The applicant shall contact the county office of the [Soil] Natural Resources Conservation Service to determine whether lands within the area may be prime farmland.

(b) Land shall not be considered prime farmland when the applicant can demonstrate one or more of the following:

\* \* \* \* \*

(5) On the basis of a soil survey of the lands proposed to be affected by surface operations or facilities, there are no soil map units that have been designated prime farmland by the United States [Soil] Natural Resources Conservation Service; or

\* \* \* \* \*

(d) The applicant shall submit the results of the investigation along with certification by the [Soil] Natural Resources Conservation Service that the conclusions are correct.

\* \* \* \* \*

#### **§ 89.122. Prime farmlands.**

\* \* \* \* \*

(b) A person who conducts or intends to conduct underground mining activities on prime farmlands historically used for cropland, except those persons exempted under subsection (a), shall submit a plan as part of the permit application for the mining and restoration of the land. A plan shall contain, at a minimum, the following:

(1) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures in *United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951)*. The soil survey shall include a map unit and representative soil profile description as determined by the United States **[Soil] Natural Resources** Conservation Service for each prime farmland soil within the permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey, are available and their use is approved by the State Conservationist, United States **[Soil] Natural Resources** Conservation Service. The soil profile description shall include, but not be limited to, soil horizon depths, pH and range of soil densities for each prime farmland soil unit within the proposed permit area. The Department may require the applicant to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of § § 89.131—89.133 (relating to soil removal; soil stockpiling; and soil replacement).

\* \* \* \* \*

(8) Standards for determining success of revegetation on prime farmland soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture **[Soil] Natural Resources** Conservation Service. The current estimated yields under equivalent levels of management for each soil map unit and for each crop shall be used by the Department as the predetermined target level for determining success of revegetation. The target yields may be adjusted by the Department in consultation with the Secretary of Agriculture before approval of the permit application.

(c) Before a permit is issued for areas that include prime farmlands, the Department will consult the **[Soil] Natural Resources** Conservation Service. The **[Soil] Natural Resources** Conservation Service shall have the opportunity for review and comment of the proposed method of soil reconstruction in the plan submitted under subsection (b).

(d) When the underground mining activities are being conducted on prime farmland, a permit for the mining and reclamation operation may be granted by the Department, if it first finds, in writing, that:

\* \* \* \* \*

(4) The permit incorporates as specific conditions the contents of the plan submitted under subsection (b), after consideration of any revisions to the plan suggested by the **[Soil] Natural Resources** Conservation Service under subsection (c).

\* \* \* \* \*

## PERFORMANCE STANDARDS

### § 89.134. Revegetation.

\* \* \* \* \*

(c) Standards for determining success of restoration on prime farmlands soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture [Soil] Natural Resources Conservation Service.

\* \* \* \* \*

## CHAPTER 90. COAL REFUSE DISPOSAL

### Subchapter B. MINIMUM ENVIRONMENTAL RESOURCES INFORMATION REQUIRED IN PERMIT APPLICATIONS FOR COAL REFUSE DISPOSAL

### § 90.22. Prime farmland investigation.

\* \* \* \* \*

(b) Land will not be considered prime farmland when the applicant can demonstrate one or more of the following:

\* \* \* \* \*

(5) There are no soil map units that have been designated prime farmland by the United States [Soil] Natural Resources Conservation Service, on the basis of a soil survey of the lands proposed to be affected by coal refuse disposal activities.

\* \* \* \* \*

(d) If the investigation indicates that lands within the proposed area to be affected by coal refuse disposal activities may be prime farmlands, the applicant shall contact the United States [Soil] Natural Resources Conservation Service to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If a soil survey has not been made for these lands, the applicant shall cause a survey to be made.

(1) When a soil survey as required in this subsection contains soil map units which have been designated as prime farmlands, the applicant shall submit a soil survey of the proposed permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures in the *United States Department of Agriculture*

*Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951).* The soil survey shall include a map unit and representative soil profile description as determined by the United States [Soil] Natural Resources Conservation Service for each prime farmland soil within the proposed permit area, unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey, are available and their use is approved by the State Conservationist, United States [Soil] Natural Resources Conservation Service.

(2) When a soil survey as required in this subsection contains soil map units which have not been designated, after review by the United States [Soil] Natural Resources Conservation Service, as prime farmland, the applicant shall submit a request for negative determination for nondesignated land with the permit application establishing compliance with subsection (b).

#### **Subchapter D. PERFORMANCE STANDARD FOR COAL REFUSE DISPOSAL**

**§ 90.102. Hydrologic balance: water quality standards, effluent limitations and best management practices.**

\* \* \* \* \*

(f) *Additional requirements.* In addition to the requirements of subsections (a)—(e), the discharge of water from coal refuse disposal activities shall comply with this title, including Chapters 91—93, 95, 96, 97 (reserved) and 102.

\* \* \* \* \*

**§ 90.103. Precipitation event exemption.**

\* \* \* \* \*

(b) [The 1-year and 10-year 24-hour rainfall events for specific areas in this Commonwealth are listed as follows:

<i>County</i>	<i>Rainfall (inches)</i>	
	<i>1-Year</i>	<i>10 Year</i>
<b>Allegheny</b>	<b>2.3</b>	<b>3.9</b>
<b>Armstrong</b>	<b>2.3</b>	<b>3.9</b>
<b>Beaver</b>	<b>2.3</b>	<b>3.8</b>
<b>Bedford</b>	<b>2.4</b>	<b>4.5</b>
<b>Blair</b>	<b>2.4</b>	<b>4.7</b>
<b>Bradford</b>	<b>2.3</b>	<b>4.2</b>

Butler	2.3	3.8
Cambria	2.4	4.2
Cameron	2.3	4.0
Centre	2.3	4.3
Clarion	2.2	3.7
Clearfield	2.3	4.0
Clinton	2.3	4.2
Crawford	2.2	3.6
Elk	2.3	3.9
Fayette	2.4	4.1
Forest	2.2	3.8
Franklin	2.4	4.8
Fulton	2.4	4.6
Greene	2.3	3.9
Huntingdon	2.4	4.6
Indiana	2.3	4.0
Jefferson	2.3	3.9
Lawrence	2.2	3.7
Lycoming	2.4	4.3
McKean	2.2	3.9
Mercer	2.2	3.7
Potter	2.3	4.0
Somerset	2.4	4.3
Sullivan	2.4	4.2
Tioga	2.3	4.2
Venango	2.2	3.7
Warren	2.2	3.8
Washington	2.3	3.9
Westmoreland	2.3	4.0]

**The 1-year and 10-year 24-hour rainfall events for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic Atmospheric Administration or equivalent resources.**

(c) For the coal refuse disposal permittee to demonstrate that the event [listed in subsection (b)] has for [his] the mine area been exceeded, or that dry weather flow conditions did not exist, the permittee shall comply with paragraph (1), (2) or (3).

\* \* \* \* \*

(2) Complying with the following:

(i) Prepare a verified copy of the chart or readout from a Department-approved flow measuring device which continuously records the influent to the permitted treatment facility. The device shall be approved by the Department in writing prior to the event for which the exemption is sought and shall be secure to prevent tampering and acts of third parties.

(ii) Prepare an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 1-year or 10-year, 24-hour precipitation event specified for the mine area[ in subsection (b)].

\* \* \* \* \*

**§ 90.112. Hydrologic balance: dams, ponds, embankments and impoundments—  
design, construction and maintenance.**

\* \* \* \* \*

(b) The design, construction and maintenance of dams, ponds, embankments and impoundments shall achieve the minimum design criteria contained in the United States [Soil] Natural Resources Conservation Service's *Pennsylvania Field Office Technical Guide, Section IV, Standards 350 "Sediment Basin" and 378, "Pond,"* or United States [Soil] Natural Resources Conservation Service's Technical Release No. 60, *Earth Dams and Reservoirs*, whichever is applicable. The standards are incorporated by reference. In addition to the requirements in "Sediment Basin," a minimum static safety factor of 1.3 is required. These structures shall meet the following requirements:

\* \* \* \* \*

**§ 90.113. Hydrologic balance: coal processing waste dams and embankments.**

\* \* \* \* \*

(c) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet. The maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the United States [Soil] Natural Resources Conservation Service's Technical Release No. 60, "Earth Dams and Reservoirs." The standards contained therein are hereby incorporated by reference.

\* \* \* \* \*



**§ 90.116. Hydrologic balance: surface water monitoring.**

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter [92] 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored to accurately measure and record the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 90.35 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, acidity, alkalinity, total iron, total manganese, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

\* \* \* \* \*

**§ 90.159. Revegetation: standards for successful revegetation.**

(a) When the approved postdisposal land use is cropland or as provided in subsection (c), the following apply:

\* \* \* \* \*

(2) The approved standard shall be the average yields per acre for the crop and soil type as specified in the soil surveys of the United States Department of Agriculture [Soil Natural Resources Conservation Service.

\* \* \* \* \*

**§ 90.161. Prime farmland: special requirements.**

(a) When the coal refuse disposal activities are being conducted on prime farmland historically used for cropland, a permit for the mining and reclamation operation may be granted by the Department if it first finds, in writing and after consultation with the [Soil Natural Resources Conservation Service, that the applicant has demonstrated that:

\* \* \* \* \*

(b) If a permit is granted under this section, the permit shall be specifically conditioned as containing the plan submitted under § 90.33 (relating to reclamation plan), including any revisions to that plan suggested by the United States [Soil Natural Resources Conservation Service.

\* \* \* \* \*

**§ 90.165. Prime farmland: revegetation.**

\* \* \* \* \*

(c) Standards for determining success of restoration on prime farmland soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture [Soil] Natural Resources Conservation Service.

\* \* \* \* \*

**Subchapter E. SITE SELECTION**

**§ 90.201. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Preferred site*—A watershed polluted by acid mine drainage; a watershed containing an unreclaimed surface mine but which has no mining discharge; a watershed containing an unreclaimed surface mine with discharges that could be improved by the proposed coal refuse disposal operation; unreclaimed coal refuse disposal piles that could be improved by the proposed coal refuse disposal operation; [or] other unreclaimed areas previously affected by mining activities; or an area adjacent to or an expansion of an existing coal refuse disposal site.

\* \* \* \* \*

**Subchapter F. COAL REFUSE DISPOSAL ACTIVITIES ON AREAS WITH PRE-EXISTING POLLUTIONAL DISCHARGES**

**§ 90.308. Request for bond release.**

Sections 86.172(c) and 90.309 (relating to criteria for release of bond; and criteria and schedule for release of bonds on pollution abatement areas) apply to the release of bonds for pollutional abatement areas authorized by this subchapter. Section [86.172(a), (b) and (d)] 86.172(a) and (b) shall be inapplicable to the release of bonds.

December 30, 2019

David Sumner  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17120

Re: Final Rulemaking: Federal Office of Surface Mining Reclamation and Enforcement (OSM)  
Program Consistency Rule (#7-532)  
Final Rulemaking: Triennial Review of Water Quality Standards (#7-534)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed two final-form rulemakings for review by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (Board) adopted these rulemakings at its November 19, 2019, meeting.

The **Federal Office of Surface Mining Reclamation and Enforcement (OSM) Program Consistency Rule (#7-532)** final-form rulemaking addresses inconsistencies between the Commonwealth's surface mining regulatory program and the Federal Office of Surface Mining Reclamation and Enforcement (OSM) regulations, so that the Commonwealth may maintain primary regulatory authority over coal mining activities in Pennsylvania. This final-form rulemaking also includes updates for general program maintenance, which will provide clarity for the Commonwealth's mining operators and improve the implementation of these requirements.

This rulemaking is authorized under the Surface Mining Conservation and Reclamation Act, the Clean Streams Law, the Coal Refuse Disposal Control Act, the Bituminous Mine Subsidence and Land Conservation Act and the Administrative Code of 1929.

The Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) authorized OSM under the U.S. Department of the Interior to administer programs for controlling surface coal mining operations across the United States. A state can assume primacy over the regulation of its coal mining regulatory programs if a state's regulations are consistent with (*i.e.*, no less protective than) the Federal requirements. Pennsylvania achieved primacy over its surface coal mining program in 1982.

Over the past several years, OSM has identified provisions within the Commonwealth's regulatory program that are inconsistent with the Federal requirements. Therefore, the Commonwealth must revise its regulations so that they are no less stringent than Federal requirements. Failure to address these inconsistencies puts the Commonwealth at risk of losing



program primacy to the Federal government. The loss of program primacy would threaten the Federal Title V grant, which funds about fifty percent of the coal mining program and totaled about \$25,413,733 in FY 16-17.

To maintain jurisdiction over the regulation of coal surface mining activities, this final-form rulemaking addresses inconsistencies in definitions and program processes between the Commonwealth's coal mining regulations and the Federal requirements. Specifically, the following definitions are amended: the term used to describe the seeding period that an operator is liable for site revegetation, what qualifies as a "haul road" related to anthracite mining operations, the definition of "surface mining activities", and the language used to define what local government entities should receive a notice for mining permit applications. The final-form rulemaking also amends the following processes: the process by which certain collateral bonds are valued, the effluent limitations for bituminous underground mines, the upper limit for temporary cessation of operations at bituminous surface mines, the calculation threshold for assessing a civil penalty, and the means of notifying local governments of permit applications.

Also included are additional revisions to reflect general program maintenance, such as correcting typographical errors and updating organization names, statutory citations, remining requirements and the use of reference data for the sizing of stormwater control facilities.

The regulated community for this rulemaking is comprised of about 400 businesses, most of which are small businesses. The regulations will apply consistently among all operations for small and large businesses alike. Since the amendments are primarily administrative, the impact on small businesses will be negligible. One amendment relating to stormwater control facility size requirements is likely to save time and monetary resources for all businesses, because the result of adopting the updated requirements will be more appropriately-sized (smaller) stormwater control facilities. As these regulatory amendments are primarily administrative, no additional costs are anticipated.

The proposed rulemaking was adopted by the Board at its May 16, 2018, meeting and was published in the *Pennsylvania Bulletin* on October 27, 2018, (48 Pa.B. 6844) with provision for a 30-day public comment period that closed on November 26, 2018. Comments were received from three public commenters and the Independent Regulatory Review Commission (IRRC).

The Pennsylvania Anthracite Council was concerned that the term "public roads" as used in the revised definition of "Haul roads" in Section 88.1 was too broad. Language was included in the preamble to further explain what a "haul road" is to address this concern.

Related to the notification for local governments of a mining permit application, the Pennsylvania State Association of Township Supervisors (PSATS) and IRRC noted that Section 86.31 requires notification by registered mail to the municipality where the mining is proposed and that the Federal rules do not change this requirement. In addition, IRRC noted that the "municipality" is separately defined in Section 86.1 as: "A county, city, borough, town, township, school district, institution or an authority created by any one or more of the foregoing," and echoed these concerns. The final-form rulemaking reverts to the original language listing cities, boroughs, incorporated towns and townships, and adds that the



Department of Environmental Protection (Department) will provide written notice, which is consistent with Federal requirement at 30 CFR 773.6(a)(3).

Other comments were related to the use of the NOAA online tool. All comments were addressed in the final-form rulemaking.

The Department collaborated with the Mining and Reclamation Advisory Board (MRAB), which includes representation from anthracite surface mine operators, the Pennsylvania Coal Alliance, the Pennsylvania Anthracite Council, the County Conservation Districts, the Citizens Advisory Council, the Pennsylvania House of Representatives, and the Pennsylvania Senate to develop the proposed rulemaking. This included discussion at several MRAB Regulation, Legislation and Technical (RLT) committee meetings. At its April 25, 2019, meeting, the Department reviewed and discussed the final-form rulemaking with the MRAB. The MRAB voted to concur with the Department's recommendation that the final-form rulemaking move forward in the regulatory process.

The **Triennial Review of Water Quality Standards (#7-534)** final-form rulemaking amends 25 Pa. Code Chapter 93. Section 303(c)(1) of the Federal Clean Water Act (CWA, 33 U.S.C.A. § 1313) requires that states periodically, but at least once every three years, review and revise as necessary, their water quality standards. This rulemaking constitutes Pennsylvania's current triennial review of its water quality standards.

Pennsylvania's water quality standards are designed to implement the requirements of Sections 5 and 402 of The Clean Streams Law (CSL) and CWA Section 303. The water quality standards consist of the designated uses of the surface waters of this Commonwealth, along with the specific numerical and narrative criteria necessary to achieve and maintain those uses and an antidegradation policy. Thus, water quality standards are instream water quality goals that are implemented by imposing specific regulatory requirements, such as treatment requirements and effluent limitations, on individual sources of pollution.

The final-form rulemaking includes amendments to 25 Pa. Code Chapter 93 in order to, among other things: add a definition for 7-day average in § 93.1; update the water quality criteria in § 93.7 Table 3 for ammonia and bacteria and in § 93.8c Table 5 for many human health criteria using the latest scientific information and policies developed by the United States Environmental Protection Agency (EPA) under the CWA, Section 304(a); clarify in § 93.8c(a) how values are determined for local water quality conditions (hardness, pH, etc.) for use in formula-based criteria calculations as is used for some heavy metals criteria; clarify in § 93.8d(c) that the Biotic Ligand Model (BLM) will be required for the development of new or updated water quality criteria for copper in freshwater systems; and add reference in § 93.8d(f)(2) that identifies a new on-line table is available for a list of site-specific criteria that have been developed and are being used by the Department in permitting and other pollution control measures.

In addition, corrections are made to the water quality standards to use designations and stream entries found in Drainage Lists at §§ 93.9a-93.9z, which are not being addressed by separate stream redesignation rulemakings, including consolidating and reformatting of several Drainage Lists to address the continual changes and updates occurring to the United States Geological





Survey (USGS) National Hydrography Dataset (NHD) flowline. The NHD flowline forms the basis of the Department's Designated and Existing Use Geographic Information System (GIS) layers. The corrections do not change the current stream use designations.

Exceptions for fishable/swimmable waters: The Department routinely reevaluates, as part of its triennial review of water quality standards, the two water bodies where the fishable or swimmable uses specified in Section 101(a)(2) of the CWA required uses are not being met: (1) the Harbor Basin and entrance channel to Outer Erie Harbor/ Presque Isle Bay (§ 93.9x), and (2) several zones within a portion of the Delaware Estuary (§§ 93.9e and g).

Because the same conditions and hazards exist today, for the excluded portion of Lake Erie, no change is made to the designated use for Outer Erie Harbor/Presque Isle Bay, and the water contact sports (WC) use remains excluded from the designated uses in § 93.9x.

The WC use remains excluded from the designated uses for portions of the Delaware Estuary, for river miles 108.4 to 81.8 because of continuing significant impacts from combined sewer overflows (CSOs), and hazards associated with commercial shipping and navigation. However, the Board received comments indicating there are multiple instances where commenters have participated in and documented water contact on this stretch of the Delaware River and Estuary. In response to these comments, the Department will initiate an effort with Delaware River Basin Commission (DRBC) to reevaluate the applicable standards, and an updated recommendation regarding the WC use will be considered in the next triennial review of water quality standards, following outcome of this collaboration.

In addition, limited uses for Zones 3 and 4 of the Delaware Estuary were also incorporated into Drainage Lists E and G (§§ 93.9e and g), which do not meet the Section 101(a)(2) fishable uses. These are described as Warm Water Fishes (WWF) (Maintenance Only) and Migratory Fishes (MF) (Passage Only) for tidal portions of the basin, from river mile 108.4 to the Pennsylvania-Delaware state border. The current designated uses within these Zones do not include propagation and thus refer to DRBC's standards which were developed to protect fish maintenance and passage only. Recent data and observations, however, suggest recovery is occurring in propagation for some species in portions of these Zones. Therefore, DRBC initiated an evaluation of available data for resident and anadromous fishes collected since 2000, in an attempt to quantify spawning and early life stages and the extent of successful reproduction for estuarine species. The Department continues to work in cooperation with DRBC, and EPA to prepare a resolution describing DRBC's next steps for improving the recovery taking place in the lower river and estuary. It should be recognized that the demonstrated recovery in the propagation use for these Zones has occurred under the long-term implementation of the current criteria.

The Department provided specific rationale and other documentation that support the recommended amendments, revisions, and additions for this final-form rulemaking.

This final-form rulemaking includes revisions to water quality criteria and corrections or clarifications to designated uses. Facilities with point source discharges of treated wastewater to waters of the Commonwealth may be affected since all discharges are assigned effluent limits consistent with achieving water quality standards, including all applicable water quality criteria



and designated uses. The rule will be implemented through the Department's permit and approval actions.

The regulatory revisions have been developed as part of an established program that has been implemented by the Department since the early 1980s. The revisions are consistent with and based on existing regulations. The revisions extend appropriate protections to all waterbodies of this Commonwealth and are consistent with antidegradation requirements established by the CWA (33 U.S.C.A §§1251-1387) and the CSL. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The proposed rulemaking was adopted by the Board at its April 18, 2017 meeting, and was published in the *Pennsylvania Bulletin* on October 21, 2017 (47 Pa.B. 6609) with provision for a 70-day public comment period that was scheduled to end December 29, 2017. The Board held public hearings on December 6, 8, and 14, 2017, at the Department's Regional Offices in Wilkes-Barre (Northeast Region - NERO), Harrisburg (Southcentral Region - SCRO), and Pittsburgh (Southwest Region - SWRO), respectively. The Board received comments requesting the public comment period be extended, and that an additional public hearing be held in the southeast area of the Commonwealth. This request was granted. The additional public hearing was held on January 30, 2018, at the Department's Southeast Regional Office (SERO) in Norristown, Pennsylvania. The extended public comment period ended on February 16, 2018.

The Board received comments from 776 commenters and testimony from seven witnesses at the public hearings. The Board also received comments from IRRC. All comments were addressed in preparing this final-form rulemaking.

The final-form rulemaking was discussed with the Water Resources Advisory Committee (WRAC) at its November 29, 2018, and April 18, 2019, meetings. WRAC voted on May 23, 2019, to concur the Department's recommendation to present the final-form rulemaking to the Board. An update for this final-form rulemaking was also provided to Agricultural Advisory Board on April 25, 2019.

The Department will provide assistance as necessary to facilitate IRRC's review of the enclosed rulemaking under Section 5.1(e) of the Regulatory Review Act.

Please contact me by e-mail at [ledinger@pa.gov](mailto:ledinger@pa.gov) or by telephone at 717.783.8727 if you have any questions or need additional information.

Sincerely,



Laura Edinger  
Regulatory Coordinator

Enclosures



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7- 532

SUBJECT: Federal Office of Surface Mining Reclamation and Enforcement (OSM) Program Consistency Rule

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

- ☐ Proposed Regulation
- ☒ Final Regulation
- ☐ Final Regulation with Notice of Proposed Rulemaking Omitted
- ☐ 120-day Emergency Certification of the Attorney General
- ☐ 120-day Emergency Certification of the Governor
- ☐ Delivery of Tolerated Regulation
- a. ☐ With Revisions                      b. ☐ Without Revisions

RECEIVED  
IRRC  
2019 DEC 30 P 1:52

**FILING OF REGULATION**

**DATE**

**SIGNATURE**

**DESIGNATION**

12-30-19 Pamela J. Neysmead

Majority Chair, HOUSE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY  
Representative Daryl Metcalfe

12-30-19 Jenii Koll

Minority Chair, HOUSE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY  
Representative Corey Vitale

12/30/19 [Signature]

Majority Chair, SENATE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY  
Senator Gene Yaw

12-30-19 Kang Kair

Minority Chair, SENATE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY  
Senator Steve Santarsiero

12/30/19 [Signature]

INDEPENDENT REGULATORY REVIEW COMMISSION  
David Sumner

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

