

<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> <div style="border: 2px solid black; padding: 5px; text-align: center;"> <p><b>RECEIVED</b></p> <p>OCT - 2 2018</p> <p>Independent Regulatory Review Commission</p> </div> <p>IRRC Number: 3217</p>
<p>(1) Agency: Department of Environmental Protection</p>		
<p>(2) Agency Number:</p> <p>Identification Number: 7-532</p>		
<p>(3) PA Code Cite: 25 Pa. Code Chapters 86, 87, 88, 89, &amp; 90</p>		
<p>(4) Short Title: Federal Office of Surface Mining Reclamation and Enforcement (OSM) Program Consistency Rule</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Laura Edinger, 783-8727, ledinger@pa.gov                  Secondary Contact: Jessica Shirley 783-8727, jessshirley@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation  <input type="checkbox"/> Final Regulation  <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;  <input type="checkbox"/> Certification by the Governor  <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This proposed rulemaking primarily addresses inconsistencies between the Commonwealth's coal mining program and federal regulations. For general program maintenance, additional revisions were included to correct organization names, statutory citations, reminding requirements, and the use of reference data for the sizing of stormwater control facilities. These regulations are managed and overseen by the Federal Office of Surface Mining Reclamation and Enforcement ("OSM").</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>This proposed 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>		
<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.</p> <p>Portions of the rulemaking are mandated by federal regulations.</p>		

*The following are Required Program Amendments:*

OSM has not approved 25 Pa. Code §86.151(d) because it is less effective than the federal requirement:

We are not approving the word “augmented” in the last sentence of subsection 86.151(d) that we found to be less effective on April 8, 1993 (58 FR 18154). 30 CFR 938.12(d).

OSM has required that the Commonwealth revise its regulations relating to the valuation of collateral bonds 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. 30 CFR 938.16(m).

(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. 30 CFR 938.16(n).

(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. 30 CFR 938.16(o).

OSM has also required that the Commonwealth revise its regulations relating to the use of public roads as part of an anthracite mining operation:

(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. 30 CFR 938.16 (mmm).

In addition, OSM has taken exception to the interpretation of the definition of surface mining activities. OSM has not taken formal action on this because Pennsylvania has committed to correcting the matter at the earliest opportunity. The proposed rulemaking meets this commitment.

(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 regulation is needed to address inconsistencies between Pennsylvania’s coal mining regulatory program and the federal OSM requirements. Failure to address these issues puts the Commonwealth at risk for 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 which, in FY 16-17 cost about \$25,413,733.00.

Tables in sections 87.103, 88.93, 88.188, 88.293, 89.53, and 90.103 currently use outdated climatological data from the early 1980s. The proposed regulation replaces these tables with a general reference to data available from the National Oceanic and Atmospheric Administration (NOAA). NOAA's data is currently available online through its precipitation and storm event tool, which provides a more accurate account of storm events and, generally, lower precipitation levels. Therefore, in many cases, stormwater control facilities are over-designed and require unnecessary earth disturbance. This revision will result in properly-sized stormwater control facilities and reduced costs for mine operators.

Additionally, mine operators, of which there are approximately 400 in Pennsylvania, will benefit from the added clarity and corrections proposed 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 proposed rulemaking is to bring the Commonwealth's coal mining requirements in conformance with the federal requirements. No requirements in this proposed rule are more stringent than federal standards. However, some of the regulatory requirements included in this proposed rulemaking are unique to Pennsylvania. For example, there are no federal counterparts to the remaining financial guarantee or Anthracite Emergency Bond Loan programs.

(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 must be no less stringent than the OSM requirements. Some States simply adopt the federal requirements by reference. Others, like Pennsylvania, customize the requirements to meet the particular circumstances in the State. Pennsylvania will remain in a competitive position when compared with other States while retaining the flexibility needed for these particular circumstances.

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

The proposed rulemaking includes some corrections to cross-references to other regulations, but 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 this proposed rulemaking. This included discussion at several Regulation, Legislation and Technical (RLT) committee 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 DEP's recommendation that the proposed rulemaking move forward in the regulatory process. The July 2016 presentation was available on the Department's MRAB web page prior to the meeting.

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, and will be subject to this regulation. The regulations will apply consistently among all operations for small and large businesses alike.

The proposed amendments are primarily administrative, and therefore the impact on small businesses will be negligible. The proposed amendment relating to stormwater control facilities is likely to save time and monetary resources for all businesses because the result is 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 Pennsylvania that will be subject to this regulation, most of which are small businesses.

(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.

The revisions in this proposed 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.

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

The benefits included in this proposed rulemaking generally focus on eliminating inconsistencies, reducing confusion, and improving efficiency. Further, aligning the Commonwealth's regulations with the federal OSM 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 proposed regulatory amendments are primarily administrative, no additional costs or adverse effects 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.

It is not possible to provide a specific estimate of the savings resulting from the proper sizing of stormwater controls. The potential savings will be based on the number of new facilities to be built, the location of those facilities and the specific designs.

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 of the proposed amendments changes the way that the municipality is provided notice by the Department that an application has been received in their jurisdiction. This is an administrative change and, while it will impact 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.

No additional reporting, recordkeeping or other paperwork is anticipated because the proposed rulemaking either clarifies existing requirements or updates references to outdated citations, names, and data sources.

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

No forms will be needed to implement the requirements included in this proposed 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.**

No forms will be needed to implement the requirements included in this proposed rulemaking.

(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 2014/15</b>	<b>FY -2 2015/16</b>	<b>FY -1 2016/17</b>	<b>Current FY 2017/18</b>
Coal Mining Program	\$22,077,588.18	\$23,798,006.00	\$24,011,703.67	\$25,413,733.00
	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 proposed regulation. This proposed regulation does not include any additional reporting, recordkeeping or other administrative costs required for compliance. This proposed regulation is not expected to have an adverse impact on small businesses. No alternative method other than modification to the regulation exists to make the Commonwealth's regulations consistent with the federal OSM 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 proposed 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 alternate regulatory provisions were considered during the development of the rulemaking. Although no alternative methods were explored, DEP expects the proposed 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 proposed rulemaking will bring the Commonwealth in compliance with minimum regulatory standards set by the federal government. Because the proposed rulemaking clarifies existing requirements and updates references to outdated citations, names, and data sources, no

adverse impacts to small businesses are anticipated and therefore no alternative methods related to small businesses were explored. The Department expects the proposed 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 not the basis for these proposed regulatory amendments. These amendments are proposed to make the Commonwealth's regulations consistent with the federal OSM regulations.

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

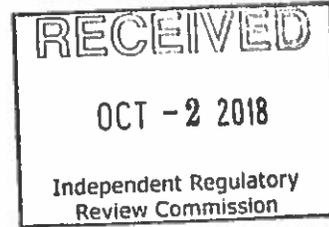
- |   |                 |
|---|-----------------|
| A. The length of the public comment period:   | 30 days         |
| B. The date or dates on which any public meetings or hearings will be held:                   | NA              |
| C. The expected date of delivery of the final-form regulation:                                | Quarter 2, 2019 |
| D. The expected effective date of the final-form regulation:                                  | Quarter 3, 2019 |
| E. The expected date by which compliance with the final-form regulation will be required:     | Quarter 3, 2019 |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | Quarter 3, 2019 |

(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.

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

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

By: *Angela M. Elliott*  
(Deputy Attorney General)

8/21/18  
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 May 16, 2018

By: *Patrick McDonnell*

TITLE PATRICK MCDONNELL  
CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY *Marisa H. J. Lehn*

JUN 01 2018  
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 PROPOSED 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



**NOTICE OF PROPOSED RULEMAKING  
ENVIRONMENTAL QUALITY BOARD  
[25 PA CODE CHS. 86, 87, 88, 89, 90]**

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

The Environmental Quality Board (Board) proposes to amend the regulations at 25 Pa. Code Chapter 86 (relating to Surface and Underground Coal Mining: General), 25 Pa. Code Chapter 87 (relating to Surface Mining of Coal), 25 Pa. Code Chapter 88 (relating to Anthracite Coal), 25 Pa. Code Chapter 89 (relating to Underground Mining of Coal and Coal Preparation Facilities), and 25 Pa. Code Chapter 90 (relating to Coal Refuse Disposal), to update requirements to comply with the federal coal mining regulations at 30 CFR Parts 700 through 955 (relating to Mineral Resources), correct errors, adopt regulations consistent with statutory changes and provide for general mining program improvements.

This proposed rulemaking was adopted by the Board at its meeting on May 16, 2018.

***A. Effective Date***

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

***B. Contact Persons***

For further information, contact William Allen, Bureau of Mining Programs, Rachel Carson State Office Building, 5<sup>th</sup> 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. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department or DEP) web site at [www.dep.state.pa.us](http://www.dep.state.pa.us) (select: "Public Participation Center," then select "The Environmental Quality Board").

***C. Statutory Authority***

This proposed 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 proposed rulemaking primarily addresses inconsistencies between the Commonwealth's coal mining program and federal requirements. DEP also includes in this rulemaking additional revisions to reflect general program maintenance, such as correcting typographical errors and updating organization names, statutory citations, remaining requirements, and the use of reference data for the sizing of stormwater control facilities.

#### ***Required Consistency of the Commonwealth's Mining Program with Federal Law***

The Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (SMCRA) established 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). 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).

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 maintain its jurisdiction over regulation of coal surface mining activities, the Commonwealth must maintain a State program in accordance with the requirements of SMCRA, and with "rules and regulations consistent with regulations issued by the Secretary." *See* 30 U.S.C.A. § 1253(a)(1) and (7). State laws must be consistent with the provisions of SMCRA, 30 U.S.C.A. § 1255(a), and any provision of state law that provides for more stringent land use and environmental controls and regulations shall not be construed to be inconsistent with SMCRA, 30 U.S.C.A. § 1255(b). In other words, a state program must be at least as effective as the requirements in SMCRA, but may be more stringent.

#### ***Required Program Amendments***

OSM has identified several of the Commonwealth's regulations that are not as effective as the federal requirements and therefore require revision. Therefore, DEP is required to revise existing regulations so that they are no less stringent than federal standards. The formal process for OSM to disapprove of regulations under Pennsylvania's program and require Pennsylvania to subsequently submit amendments for approval is outlined under 30 CFR Part 938.

#### ***Augmented Seeding***

In 1993, OSM disapproved of the use of the term "augmented" in the last sentence of 25 Pa. Code § 86.151(d) because it found it to be less effective than the federal requirement. 30 CFR 938.12(d). OSM had found that its presence created the inference that there could be instances when 'augmented' seeding would not necessitate restarting of the revegetation liability period. *See* 58 FR 18154. Pennsylvania's regulation refers to seeding that OSM considers non-

augmentative normal husbandry practice that would not restart the period for which an operator is liable for revegetation of its site. According to OSM, “augmented” seeding by definition would restart the period for which an operator is liable. Therefore, the proposed rulemaking deletes the term “augmented” from 25 Pa. Code § 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 collateral bonds at 25 Pa. Code § 86.158(b). OSM’s requirements are as follows:

(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. 30 CFR 938.16 (m).

(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. 30 CFR 938.16 (n).

(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. 30 CFR 938.16(o).

30 CFR 938.16(m)-(o).

To address these issues, the proposed rulemaking includes revisions to 25 Pa. Code § 86.158(b). In subsection (b)(1), “may” is changed to “will,” requiring the Department to determine current market value. The proposed 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 five years.

### *Haul Roads*

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

(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.

30 CFR 938.16(mmm).

The proposed 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 the proposed rulemaking. The elements OSM requires are already included in the existing definition of "Road" at § 88.1, and the definition of "Road" includes a reference to "haul roads."

#### Other consistency issues

##### *Effluent Limitations for Bituminous Underground Mines*

The Commonwealth lists effluent limitations for bituminous underground mines at 25 Pa. Code § 89.52. Subsection (f) includes alternative effluent limitations for discharges that can be adequately treated using passive treatment technology. The federal effluent limit guidelines at 40 CFR Part 434 include alternative limits for passive treatment systems applicable to surface mines, but not underground mines. When the Board revised the regulations to add subsection (f), this distinction was missed. During a recent evaluation comparing the federal effluent limit guidelines with the requirements in 25 Pa. Code § 89.52, this discrepancy came to light.

Therefore, the proposed rulemaking deletes the portion of subsection (f), eliminating the alternative effluent limits for passive treatment systems for underground mines.

##### *Temporary Cessation*

The Commonwealth's regulations regarding the temporary cessation of operations for bituminous surface mines include a 180-day upper limit on the amount of time that an operation can be in temporary cessation status. The federal rules about temporary cessation at 30 CFR 816.131 do not include an upper limit on the duration of temporary cessation status. Therefore, the proposed rulemaking includes revisions to 25 Pa. Code § 87.157 (relating to Cessation of Operations: Temporary) removing the upper time limit.

Temporary cessation for anthracite coal mines is addressed at 25 Pa. Code §§ 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. For consistency, the proposed rulemaking revises this section to remove the upper time limit from § 88.332.

The proposed rulemaking revises each of the above provisions 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 proposed rulemaking also requires permittees to submit a timely renewal application when applicable. Amendments included in this 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.

#### *Definition of Surface Mining Activities*

In 2007, the Environmental Hearing Board issued an adjudication which concluded that "there is no surface mining unless coal is extracted or exposed and retrieved." *Timothy A. Keck v. DEP*, EHB Docket No. 2005-280-L (June 26, 2007). In July 2010, OSM notified the Department that it had identified this conclusion as problematic because, under federal requirements, the extraction of coal is not required to establish that surface mining is underway. See, e.g., *Amerikohl Mining Inc. v. OSMRE*, 191 IBLA 11 (August 30, 2017) (under certain circumstances, timbering on permit area amounted to surface mining activities). In response, the Department indicated that it would undertake a rulemaking change to address this issue at the next opportunity to do so.

The Department has amended the definition of "surface mining activities" under Chapters 86 and 87 in this manner before to satisfy federal concerns about the scope of Pennsylvania's definition. For instance, in 1991, OSM disapproved of Pennsylvania's proposal to amend its definition of "surface mining activities" to meet federal requirements because the proposed amendment did not make it "unequivocally clear" that any road or similar disturbance related to mining "shall be deemed a surface mining activity and will be regulated," and therefore it was "less effective than the Federal definition of 'surface coal mining operations' at 30 CFR 700.5." 56 FR 24687, 24689 (May 31, 1991). Pennsylvania subsequently corrected that inconsistency by amending the definition, 25 Pa.B. 5821 (December 15, 1995), and OSM approved the amendment, 62 FR 60619, 60170 (November 7, 1997).

As the decision by the U.S. Interior Board of Land Appeals (IBLA) in *Amerikohl* demonstrates, certain activities such as timbering may or may not be surface mining activities under particular circumstances. Pennsylvania derives no benefit from amending the definition to list specific activities that OSM determines may fall within the definition in a particular instance. Instead, it is important that the Department and operators ascertain how OSM and federal tribunals interpret the scope of 'surface coal

mining operations' at 30 CFR 700.5 and "surface mining activities" under 30 CFR 701.5 to determine whether a particular activity falls within the Pennsylvania's definition, and is therefore a regulated activity. The proposed rulemaking addresses this issue by replacing the existing definition of "surface mining activities" at 25 Pa. Code §§ 86.1 and 87.1 and incorporates by reference the federal definition of "surface mining activities" from 30 CFR 701.5 (which in turn refers to "surface coal mining operations" defined at 30 CFR 700.5). This will assure absolute consistency with the federal requirements.

### *Civil Penalties*

Section 86.193(b) requires the Department to assess a civil penalty if the penalty the Department calculates equals \$1,100 or more. Correspondingly, § 86.193(c) affords the Department discretion whether to assess a civil penalty that equals less than \$1,100. The Department derives the dollar figure based on the circumstances of the violation as described under § 86.194. The threshold dollar amount that triggers a mandatory assessment is based on the federal civil penalty program found at 30 CFR 723 (relating to Civil Penalties). The federal regulations rely on a point system reflecting the circumstances of the violation. Under the federal system, a violation that amounts to 30 points or more under the federal formula requires the assessment of a penalty, along with a table that equates the number of points to a dollar value. Periodically, the federal government revises the dollar amounts on the table, while the point threshold that triggers a mandatory penalty assessment remains fixed. Therefore, rather than including the fluctuating dollar amount from the federal table into § 86.193(b) and (c), the proposed rulemaking includes references to 30 CFR 723.12 and 723.14, so that when changes are made to the federal table, the Commonwealth's threshold for mandating the assessment of a penalty will reflect the circumstances of the violation (i.e., the federal point trigger), not a specific dollar amount.

### *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, 25 Pa. Code § 86.31 requires notification by registered mail to the municipality where mining is proposed. The requirement for registered mail is not in the federal rules. Therefore, the proposed rulemaking revises 25 Pa. Code § 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. The proposed rulemaking also includes changing "the city borough, incorporated town or township" to "the municipality." Second, 25 Pa. Code § 86.62(a)(3) 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 unnecessary and not required under the federal rules. Therefore, this proposed 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, the proposed rulemaking changes “Form 705-1” to “Form 23.”

### *Updates and Corrections*

#### *Recovery of Litigation costs for Water Supply Replacement Cases*

The act of December 20, 2000 (P.L. 980, No. 2000-138) (27 Pa.C.S. Chapter 77 (relating to costs and fees)) introduced protections for citizens against Strategic Lawsuits Against Public Participation (SLAPP). This anti-SLAPP law also amended section 4.2(f)(5) of the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA) to remove the ability of operators to recover litigation costs for water supply replacement cases. Section 88.107 (relating to Hydrologic balance: water rights and replacement) of Title 25 of the Pennsylvania Code still includes “attorney fees and expert witness fees” in the description of the items for which operators may recover costs. This proposed rulemaking deletes this phrase to reflect the 2000 amendment to PA SMCRA.

#### *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 for a 10-year, 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. At that time, data was available 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 proposed 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. The reserve provides funds to pay for costs incurred when the financial guarantee program is used for land reclamation.

This proposed rulemaking includes an addition to § 86.281(b) to describe the process used to determine the amount of an individual remaining financial guarantee. This proposed rulemaking also includes revisions to § 86.281(c) to clarify that the designated amount is maintained at the program level rather than on a permit-by-permit basis, § 86.281(d) to refer to the designated amount when describing the permit limit, the operator limit, and the program limit, and § 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 proposed rulemaking revises § 86.282(a)(4) to add that to participate, the operator cannot have been previously issued a notice of violation relating to maintaining bonds, including a missing or late payment. The requirement includes a three-year window so as not to permanently prohibit participation for an operator who submitted a missing or late payment.

The existing regulatory language at § 86.284(d) (relating to forfeiture) differs from the statutory language in section 4.12 of PA SMCRA, 52 P.S. § 1396.4(d) which has resulted in confusion when interpreting the requirement. The proposed rulemaking revises § 86.284(d) to read the same as 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. Therefore, the proposed 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. Therefore, this proposed rulemaking makes this revision.

#### *Chapter 92a*

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

### *Department Reference*

Section 86.232 includes a reference to the Department of Environmental Resources. The proposed rulemaking updates this reference to be the Department of Environmental Protection.

### *Chapter 96*

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. The proposed rulemaking corrects this by including references to Chapter 96 in §§ 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 25 Pa. Code § 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 proposed rulemaking revises §§ 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 deep mine operators. This proposed rulemaking changes the references to “deep mine” to be “mine” in 25 Pa. Code § 86.162a (relating to Anthracite Deep 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:

An area adjacent to or an expansion of an existing coal refuse disposal site.

This proposed rulemaking reflects this statutory change.

### Corrections

#### *Section 86.51*

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 proposed 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 proposed rulemaking corrects this error.

#### *Section 88.1*

The definition of "road" at § 88.1 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 proposed 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 § 88.502 (relating to definitions) subsection (ii), the citation to § 88.295(b)-(g) is incorrect. The correct citation is § 88.295 (b)-(i). Similarly, in § 88.507(c) (relating to treatment of discharges) the citations are incomplete. The correct citations are §§ 88.95(b)-(g), 88.190(b)-(g) and 88.295(b)-(i). Finally, § 88.508 (relating to Request for bond release) lists "Section 86.172(a), (b) and (d)." Section 90.308 also refers to § 87.172(d). There is no subsection 86.172(d). This proposed rulemaking includes revisions to address each of these errors.

#### *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 this proposed rulemaking. This included discussion at several RLT committee meetings and with the full board.

The Department specifically solicited a recommendation from the MRAB about the revision to the definition of “surface mining activities” in §§ 86.1 and 87.1. Two alternatives were discussed. One alternative added elements of the definition at 30 CFR 701.5 to the existing definition (for example, excavation for the purpose of obtaining the coal) and added a reference to this definition. The other alternative was to delete the existing definition and replace it with the reference to the federal definition. The MRAB recommended the second alternative be included in the proposed rulemaking. The MRAB requested clarification regarding activities related to timbering included in the federal surface mining definition. DEP committed to collaborating with the MRAB RLT to develop guidance that details how this will be applied in Pennsylvania.

At its April 6, 2017, meeting, the MRAB voted to concur with DEP’s recommendation that the proposed rulemaking move forward in the regulatory process.

### ***E. Summary of Proposed Regulatory Requirements***

#### ***§ 86.1 Definitions***

The proposed amendment replaces the definition of “Surface mining activities” and incorporates by reference the same term at 30 CFR 701.5.

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

The proposed amendments delete the requirement to notify the municipality by registered mail and to replace “the city, borough, incorporated town or township” with “municipality.”

#### ***§ 86.51 Reviews of active permits***

The proposed amendment changes “of” to “or.”

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

The propose amendments change “fly ash disposal” to “beneficial use of coal ash” and to change “sewage sludge” to “biosolids.”

#### ***§ 86.62 Identification of interests***

The proposed amendment deletes the requirement to provide the date of issuance of the MSHA identification number.

#### ***§ 86.84 Applications for assistance***

The proposed amendment changes the “Mining Enforcement and Safety Administration” to the “Mine Safety and Health Administration.”

#### ***§ 86.151 Period of liability***

The proposed amendment deletes the work “augmented” in subsection (d) is as it modifies seeding.

§ 86.158 Special terms and conditions for collateral bonds

The proposed amendments change “may” to “will” under subsection (b)(1), add “less any legal and liquidation costs” to subsection (b)(2), and add “at a minimum, the Department shall require any additional amounts with each permit renewal” to subsection (b)(3).

§ 86.162a Anthracite Deep Mine Operators Bond Fund

The proposed amendments delete “Deep” from the title of this section, deletes “deep” twice each from subsections (a) and (b), and corrects the name of the fund used to manage the program used in subsection (d).

§ 86.189 Reclamation of bond forfeiture sites

The proposed amendment revises subsection(b)(4) to change “Soil Conservation District” to “Conservation District.”

§ 86.193 Assessment of penalty

The proposed amendment revises subsections (b) and (c) to incorporate elements of the federal rule at 30 CFR 723.12 and 723.14.

§ 86.232 Definitions

The proposed amendment changes “Department of Environmental Resources” to “Department of Environmental Protection.”

§ 86.238 What to report

The proposed amendment changes “Form 705-1” to “Form 23.”

§ 86.281 Financial guarantees to insure reclamation-general

The proposed amendment adds to subsection (b): “The amount will be the estimated cost for the Department to reclaim the remaining area, subject to the limitations established in subsection (d).”; deletes from subsection (c): “For each approved permit of an eligible operator for a remaining area” and “The specific amount designated will be the estimated cost for the Department to reclaim the remaining area.”; adds to subsection (d) “designated” in three locations; and adds subsection (f) to identify the reserve in the Remaining Financial Assurance Fund and to describe the use of the reserved funds.

§ 86.282 Participation requirements

The proposed amendment adds to subsection (a)(4) the eligibility requirements for remining financial guarantees the requirement to not have been cited for a violation under the regulations for maintaining proper bonds.

§ 86.284 Forfeiture

The proposed amendment revises subsection (d) to match the statutory language from SMCRA relating to the discontinuance of the Remining Financial Guarantee program based on the number of forfeitures.

§ 87.1 Definitions

The proposed amendment replaces the definition of “Surface mining activities” and incorporates by reference the same term at 30 CFR 701.5.

§ 87.100 Topsoil: nutrients and soil amendments

The proposed amendment revises subsection (d) to change “fly ash” to “coal ash” and “sewage sludge” to “biosolids.”

§ 87.157, 88.131, 88.219 and 88.332 Cessation of operations: temporary

The proposed amendments delete from Sections 87.157 and 88.332 the upper time limit on the length of temporary cessation status. The other sections do not currently have an upper time limit. The proposed amendments revise all sections to include the same requirements to qualify for, hold, and terminate temporary cessation status, including the information required to be provided in the notice of cessation to the Department, a requirement to submit a timely renewal application as needed, a description of how cessation ends, and specifications for when cessation terminates.

§ 88.1 Definitions

To comply with the program amendment required by OSM at 30 CFR 938.16(mmm), this proposed amendment adds to the definition of “Haul road”: “The term includes public roads that are used as an integral part of the coal mining activity.”; and revises the definition of “Road” to change “of” to “or.”

§ 88.107 Hydrologic balance: water rights and replacement

The proposed amendment deletes from Section 88.107(g): “attorney and expert witness fees.”

§ 88.502 Definitions

The proposed amendment revises the definition of “Encountered discharge” to correct the citation to § 88.295 (b)-(i).

§ 88.507 Treatment of discharges

The proposed amendment revises Section 88.507 correct three citations.

§ 88.508 Request for bond release

The proposed amendment deletes from Section 88.508 the reference to § 86.172(d).

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

The proposed amendments delete from Section 89.52(f)(2) alternative effluent limitations for passive treatment systems, and delete paragraph (3) in its entirety. The proposed amendments merge passive treatment system performance standards in paragraph (4) into paragraph (2), renumber paragraph (5) as paragraph (3), and rephrase paragraph (5) accordingly.

§ 90.201 Definitions

The proposed amendment adds to the definition of “Preferred site” a sixth category: an area adjacent to or an expansion of an existing coal refuse disposal site.

§ 90.308 Request for bond release

The proposed amendment deletes from Section 90.308 the reference to § 86.172(d).

*Precipitation events*

The proposed amendments delete the table of values for each county for the storm events and revise the regulations to include a reference to NOAA or equivalent data sources in the following sections:

§ 87.103	Precipitation event exemption
§ 88.93	Hydrologic balance: precipitation event exemption
§ 88.188	Hydrologic balance: precipitation event exemption
§ 88.293	Hydrologic balance: precipitation event exemption
§ 89.53	Precipitation event exemption
§ 90.103	Precipitation event exemption

*Natural Resources Conservation Service*

The proposed amendments to following sections include one or more corrections of “Soil” Conservation Service to “Natural Resources” Conservation Service:

§ 87.53	Prime farmland investigation
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§ 87.112	Hydrologic balance: dams, ponds, embankments and impoundments-design, construction and maintenance
§ 87.155	Revegetation: standards for successful revegetation
§ 87.177	Prime farmland: special requirements
§ 87.181	Prime farmland: revegetation
§ 88.32	Prime farmland investigation
§ 88.102	Hydrologic balance: dams, ponds, embankments and impoundments-design, construction and maintenance
§ 88.103	Hydrologic balance: coal processing waste dams and embankments
§ 88.129	Revegetation: standards for successful revegetation
§ 88.193	Hydrologic balance: collection ponds within disturbed areas
§ 88.197	Hydrologic balance: dams, ponds, embankments and impoundments-design, construction and maintenance
§ 88.198	Hydrologic balance: coal processing waste dams and embankments
§ 88.217	Revegetation: standards for successful revegetation
§ 88.302	Hydrologic balance: dams, ponds, embankments and impoundments-design, construction and maintenance
§ 88.303	Hydrologic balance: coal processing waste dams and embankments
§ 88.330	Revegetation: standards for successful revegetation
§ 88.491	Minimum requirements for information on environmental resources
§ 88.493	Minimum environmental protection performance standards
§ 89.86	Revegetation
§ 89.112	Impoundments
§ 89.121	Prime farmland investigation
§ 89.122	Prime farmlands
§ 89.134	Revegetation
§ 90.22	Prime farmland investigation
§ 90.122	Hydrologic balance: dams, ponds, embankments and impoundments-design, construction and maintenance
§ 90.113	Hydrologic balance: coal processing waste dams and embankments
§ 90.159	Revegetation: standards for successful revegetation
§ 90.161	Prime farmland: special requirements
§ 90.165	Prime farmland: revegetation

*Chapter 96 reference*

The proposed amendments revise following sections to add references to Chapter 96:

§ 87.102	Effluent standards
§ 88.92	Hydrologic balance: effluent standards
§ 88.187	Hydrologic balance: effluent standards
§ 88.292	Hydrologic balance: effluent standards
§ 89.52	Water quality standards, effluent limitations and best management practices

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

*Chapter 92a reference*

The proposed amendments revise the following sections to update references to Chapter 92a:

§ 87.117	Hydrologic balance: surface water monitoring
§ 88.106	Hydrologic balance: surface water monitoring
§ 88.202	Hydrologic balance: surface water monitoring
§ 88.306	Hydrologic balance: surface water monitoring
§ 89.59	Surface water and groundwater monitoring
§ 90.116	Hydrologic balance: surface water monitoring

***F. Benefits, Costs and Compliance***

*Benefits*

The revisions in this proposed 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*

The proposed rulemaking is likely to reduce costs. None of the new or revised requirements are likely to increase costs.

*Compliance Assistance Plan*

Compliance assistance for this 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 Pennsylvania, most of which are small businesses that will be subject to this regulation.

*Paperwork requirements*

This rulemaking does not require additional paperwork.

***G. 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 proposed 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.

#### **H. *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.

#### **I. *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 and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

#### **J. *Public Comments***

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by November 26, 2018. Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

Patrick McDonnell  
Chairperson  
Environmental Quality Board

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

§ 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 incorporated herein by reference.

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§ 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 notice to the following:

(1) **[By registered mail, the city, borough, incorporated town or township]the municipality** in which the activities are located.

\*\*\*\*\*

**§ 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:

\*\*\*\*\*

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

\*\*\*\*\*

**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.

\*\*\*\*\*

**§ 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] Mine Safety and Health Administration identification number, if available.

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**§ 86.151. Period of liability.**

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(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 reseeded 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.

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**§ 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 Operators Emergency Bond [Loan] Fund.

\*\*\*\*\*

**§ 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.

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**§ 86.193. Assessment of penalty.**

\*\*\*\*\*

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

\*\*\*\*\*

**§ 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:

\*\*\*\*\*

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

\*\*\*\*\*

(b) The financial guarantee applies to a permit with remaining 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.

\*\*\*\*\*

**(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.

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**CHAPTER 87. SURFACE MINING OF COAL**

§ 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 incorporated herein by reference.

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**§ 87.53. Prime farmland investigation.**

\*\*\*\*\*

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

\*\*\*\*\*

(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.

\*\*\*\*\*

(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).

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

\*\*\*\*\*

(d) The use of [fly] coal ash, [and sewage sludge] 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 shall be determined by reference to data provided by the National Oceanic Atmospheric Administration or equivalent resources. [are listed as follows:

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

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

(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 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**

**§ 88.1. Definitions.**

\*\*\*\*\*

*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

\*\*\*\*\*

**§ 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).

\*\*\*\*\*

**§ 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 shall be determined by reference to data provided by the National Oceanic Atmospheric Administration or equivalent resources. [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>
<b>Schuylkill</b>	<b>4.7 ]</b>

(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 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).

\*\*\*\*\*

**§ 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 shall be determined by reference to data provided by the National Oceanic Atmospheric Administration or equivalent resources. [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>

Lackawanna	4.7
Lebanon	4.8
Luzerne	4.7
Northumberland	4.6
Schuylkill	4.7 ]

(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.

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

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter 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.

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

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(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.

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**§ 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).

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§ 88.292. Hydrologic balance: effluent standards.

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(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.

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

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(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.** [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>

(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:

(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)**].

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

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(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.

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

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter 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.

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

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(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.

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**§ 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).**

**(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 § 88.333 (cessation of operations: permanent).**

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

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(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).

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**§ 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:

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(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).

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**§ 88.502. Definitions.**

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*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) (relating to hydrologic balance: diversions; hydrologic balance: diversions; and hydrologic balance: diversions and conveyances), as applicable.

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**§ 88.507. Treatment of discharges.**

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(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)—(g), 88.190(b)—(g) and 88.295(b)—(i) (relating to hydrologic balance: diversions; hydrologic balance: diversions; and hydrologic balance: diversions and conveyances).

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**§ 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 pollution abatement areas authorized by this subchapter. Section 86.172(a)[,] **and** (b) [**and** (d)] shall be inapplicable to the release of bonds.

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

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

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**(f) *Postmining pollutional discharges.***

(1) If a postmining pollutional 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, in [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] 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.

**(3)(5)** Any [The] 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.

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(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.

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**§ 89.53. Precipitation event exemption.**

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(b) 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.** [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>
<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>

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

(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:

(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)].

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**§ 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:

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(3) In addition to the monitoring and reporting requirements in Chapter 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.

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**§ 89.86. Revegetation.**

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(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.

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**§ 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:

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**§ 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.

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**§ 89.122. Prime farmlands.**

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(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).

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(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:

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(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).

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#### **§ 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.

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### **CHAPTER 90. 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:

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(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).

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**§ 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.

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**§ 90.103. Precipitation event exemption.**

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(b) 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.** [are listed as follows:

<i>County</i>	<i>Rainfall (inches)</i>	
	<i>1-Year</i>	<i>10 Year</i>
<b>Allegheny</b>	2.3	3.9
<b>Armstrong</b>	2.3	3.9
<b>Beaver</b>	2.3	3.8
<b>Bedford</b>	2.4	4.5
<b>Blair</b>	2.4	4.7
<b>Bradford</b>	2.3	4.2
<b>Butler</b>	2.3	3.8
<b>Cambria</b>	2.4	4.2
<b>Cameron</b>	2.3	4.0
<b>Centre</b>	2.3	4.3
<b>Clarion</b>	2.2	3.7
<b>Clearfield</b>	2.3	4.0
<b>Clinton</b>	2.3	4.2
<b>Crawford</b>	2.2	3.6
<b>Elk</b>	2.3	3.9
<b>Fayette</b>	2.4	4.1
<b>Forest</b>	2.2	3.8
<b>Franklin</b>	2.4	4.8
<b>Fulton</b>	2.4	4.6
<b>Greene</b>	2.3	3.9
<b>Huntingdon</b>	2.4	4.6
<b>Indiana</b>	2.3	4.0
<b>Jefferson</b>	2.3	3.9
<b>Lawrence</b>	2.2	3.7
<b>Lycoming</b>	2.4	4.3
<b>McKean</b>	2.2	3.9
<b>Mercer</b>	2.2	3.7
<b>Potter</b>	2.3	4.0
<b>Somerset</b>	2.4	4.3
<b>Sullivan</b>	2.4	4.2
<b>Tioga</b>	2.3	4.2
<b>Venango</b>	2.2	3.7
<b>Warren</b>	2.2	3.8
<b>Washington</b>	2.3	3.9
<b>Westmoreland</b>	2.3	4.0 ]

(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).

(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)].

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**§ 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 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.

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**§ 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:

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(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.

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**§ 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.

\*\*\*\*\*

**§ 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.

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**§ 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)[,] and (b) [and (d)] shall be inapplicable to the release of bonds.





October 2, 2018

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

Re: Proposed Rulemaking: Federal Office of Surface Mining Reclamation and Enforcement (OSM) Program Consistency Rule (#7-532)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed a copy of a proposed regulation for review by the Independent Regulatory Review Commission (Commission). This proposal is scheduled for publication in the *Pennsylvania Bulletin* on October 27, 2018, opening a 30-day public comment period. The Environmental Quality Board (Board) adopted this proposal on May 16, 2018.

The enclosed rulemaking proposes to amend the coal mining regulations at 25 Pa. Code Chapter 86 (Surface and Underground Coal Mining: General), Chapter 87 (Surface Mining of Coal), Chapter 88 (Anthracite Coal), Chapter 89 (Underground Mining of Coal and Coal Preparation Facilities) and Chapter 90 (Coal Refuse Disposal). 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 Office of Surface Mining Reclamation and Enforcement (OSM), under the U.S. Department of the Interior, reviews state coal mining regulatory programs and approves state primary regulatory authority if a state's regulations are consistent with (*i.e.*, no less protective than) federal requirements. Over the past several years, OSM has identified several regulations within the Commonwealth's regulatory program that are inconsistent with federal requirements. Therefore, the Department of Environmental Protection (Department) must revise its regulations so that they are no less stringent than federal requirements. In this rulemaking, the Department included additional revisions to reflect general program maintenance, such as correcting typographical errors and updating organization names, statutory citations, reminding requirements, and the use of reference data for stormwater control facilities. This rulemaking proposes amendments to tables in sections 87.103, 88.93, 88.188, 88.293 and 89.53 of the existing regulations that include outdated climatological data from the early 1980s. The proposed rulemaking 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. Therefore, in many cases, stormwater control facilities are over-designed and require unnecessary earth disturbance.



This revision is anticipated to result in properly-sized stormwater control facilities and reduced costs for mine operators.

The revisions included in this proposed rulemaking will eliminate 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. The revisions further correct errors, update information to improve the functions of the regulatory program, or are required by federal law. The revisions in this rulemaking also bring the Commonwealth's regulations in line with federal requirements by removing upward time limits after which point the operator must resume operations or reclaim its site. While the revisions take a different approach to regulating temporary cessation, the approach is equally as protective as current requirements and benefits the regulated community by relieving an economic burden.

Ultimately, failure to address the inconsistencies with the Federal OSM regulations puts the Commonwealth at risk for losing program primacy to the federal government. The loss of program primacy would threaten the federal Title V grant. This grant funds about fifty percent of the coal mining program which, in FY 16-17, totaled approximately \$25,413,733.

The regulated community for this proposed 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. The proposed amendments are primarily administrative, and therefore the impact on small businesses will be negligible. The proposed amendment relating to stormwater control facilities is likely to save time and monetary resources for all businesses because the result is more appropriately-sized stormwater control facilities. As these proposed regulatory amendments are primarily administrative, no additional costs are anticipated.

The Department collaborated with the Mining and Reclamation Advisory Board (MRAB) to develop this proposed rulemaking. This included discussion at several of the MRAB's 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. Prior to this, preliminary discussions focused on the definition of surface mining activities. At its April 6, 2017, meeting, the MRAB voted to concur with the Department's recommendation that the proposed rulemaking move forward for Environmental Quality Board consideration.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendations or suggestions made by the Commission, as well as the Committees and public commentators, prior to final adoption of this rulemaking.



Mr. David Sumner, Executive Director - 3 -

October 2, 2018

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,

A handwritten signature in cursive script that reads "Laura F. Edinger". The signature is written in black ink and is positioned above the typed name and title.

Laura Edinger  
Regulatory Coordinator

Enclosures

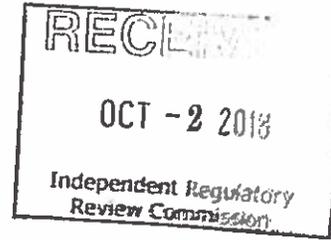


**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
 THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7-532  
 SUBJECT: Federal Office of Surface Mining Reclamation & Enforcement (OSM)  
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION Program Consistency Rule

**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



**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
<u>10-2-18</u>	<u>Dan Onych</u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <u>Representative John Maner</u>
<u>10-2-18</u>	<u>Sandy Metzger</u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <u>Representative Mike Carroll</u>
<u>10-2-18</u>	<u>Patti Cedeno</u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <u>Senator Gene Yaw</u>
<u>10/2/18</u>	<u>John Hudichak</u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <u>Senator John Hudichak</u>
<u>10/2/18</u>	<u>K. Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION <u>David Sumner</u>
		ATTORNEY GENERAL (for Final Omitted only)
<u>10/2/2018</u>	<u>Adrian P. Layden</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

