

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 86]

New Reclamation and Remining Incentives

The Environmental Quality Board (Board) by this order amends Chapter 86 (relating to surface and underground coal mining: general). The regulations implement various remining and reclamation incentives contained in the Surface Mining Conservation and Reclamation Act (act) (52 P. S. §§ 1396.1—1396.19a).

This order was adopted by the Board at its meeting of June 18, 1996.

A. *Effective Date*

These regulations will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Peter T. Slack, Director, Bureau of Mining and Reclamation, Room 209 Executive House, P.O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5103 or Leigh Cohen, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection (Department) web site (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

The final rulemaking is being made under the authority of section 4.2 of the act (52 P. S. § 1396.4b), which contains the general rulemaking authority for establishing a remining and reclamation incentive program; and under section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20) which authorizes the Board to adopt regulations necessary for the Department to perform its work.

D. *Background and Summary*

The Board is revising Chapter 86 by adding a new subchapter which creates a remining and reclamation incentive program to encourage reclamation of abandoned mine lands by active coal mine operators. This program is authorized by the 1992 amendment to the act (the act of December 18, 1992 (P. L. 1384, No. 173) (Act 173)) and by the 1996 amendment to the act (the act of May 22, 1996) (P. L. 232, No. 43) (Act 43). Acts 43 and 173 also authorized funding for this program by establishing the Remining Environmental Enhancement Fund and the Remining Financial Assurance Fund.

The act, as amended by Acts 43 and 173, directs the Board to propose regulations implementing certain remining and reclamation incentives. Section 4.2(h) of the act authorizes the Board to establish an operator qualification system with standards and criteria for operators wishing to participate in the remining and reclamation incentives program (ROAP). Section 4.10 of the act (52 P. S. § 1396.4j) provides for a remining operator's assistance program (ROAP) to assist and pay for the preparation of applications for qualified operators proposing to

remine abandoned mine lands. Section 4.12 of the act (52 P. S. § 1396.4l) authorizes the Department to financially guarantee the bond obligation on remining areas for certain qualified operators who make payments to the Department. This section also identifies the Remining Financial Assurance Fund as the sole source of funds for this program. Section 4.13 of the act (52 P. S. § 1396.4m) authorizes the Department to issue bond credits to a qualified mine operator for voluntary reclamation of abandoned mine lands. The bond credit program is supported solely by the Remining Financial Assurance Fund.

Section 18(a.1) of the act (52 P. S. § 1396.18(a.1)) establishes the Remining Environmental Enhancement Fund to support the remining and reclamation incentives program including ROAP. Section 18(a.1) of the act authorizes the Department to transfer \$1 million annually into the Remining Environmental Enhancement Fund from license and permit fees and from fees, fines and penalties collected under the various coal mining acts. Section 18(a.2) of the act establishes the Remining Financial Assurance Fund to support the financial guarantees on remining areas program and the bond credit program. Section 18(a.2) of the act authorizes the Governor to transfer up to \$5 million from the allotment in section 16(a)(1) of the Land and Water Conservation and Reclamation Act (32 P. S. § 5116(a)(1)) to the Remining Financial Assurance Fund. Finally, section 18(a.3) of the act establishes qualifications which an operator must have in order to participate in the remining and reclamation incentives program.

These regulations were discussed with the Mining and Reclamation Advisory Board (MRAB). The MRAB recommended these amendments be moved to final rulemaking at its meetings on July 6, 1995, and April 25, 1996.

E. *Summary of Comments and Responses on the Proposed Rulemaking*

Notice of proposed rulemaking was published at 24 Pa.B. 2110 (April 23, 1994). The proposal set forth a 60-day public comment period which concluded on June 22, 1994.

The Board held one public hearing (May 26, 1994) for the purpose of accepting comments on the proposed amendments. The Department has considered the comments received at this hearing in formulating the final amendments to these regulations.

A comment and response document summarizing and responding to all comments received by the Board during the public comment period, and from the Independent Regulatory Review Commission (IRRC), was prepared by the Department and is available upon request from Peter T. Slack, whose address is identified in Section B of this Preamble.

The Department solicited and received informal comments from the Federal Office of Surface Mining (OSM) and the MRAB on this rulemaking package.

After the public comment period on the proposed amendments expired, Act 43 became effective. This act contains several corrections to technical errors in Act 173, and it authorizes several recommendations by the MRAB which revise sections 4.12 and 4.13 of the act dealing with payment in lieu of bond and bond credits, respectively. The revisions to section 4.12 of the act replaced an erroneous reference to the Remining Environmental En-

hancement Fund with the correct reference to the Remining Financial Assurance Fund, and replaced the payment in lieu of bond program with a program which financially guarantees the bond obligation of a qualified operator on remining areas. Section 4.13 of the act was amended to allow transfer of bond credits, to allow bond credits to be used a second time and to provide for termination of unused bond credits.

The following is a summary of major comments received and changes which have been made to the proposed rulemaking as a result of the comments received, as well as the effect of Act 43 on the act. The summary of comments is listed in the same order as the proposed amendments found at 24 Pa.B. 2110.

1. Definitions

Section 86.252.

a. Abandoned mine lands

Several commentators stated that the definition of "abandoned mine lands" does not clearly include bond forfeiture sites, since it is not clear whether a bond would be considered to be in effect after it has been forfeited by the operator but before the Department has received the funds.

The Board agrees. The definition of "abandoned mine lands" has been revised to specifically refer to bond forfeiture sites for which the bonds have been collected by the Department.

b. Remining area

One commentator stated that designation of a remining area must be done on a site specific basis according to section 4.9 of the act (52 P.S. § 1396.4i). The commentator further noted that defining a remining area under section 4.9 of the act would conflict with the intent of ROAP.

The Board finds that a definition of "remining area" is needed in order to implement ROAP (section 4.10 of the act) and the financial guarantees program (section 4.12 of the act). Sections 4.10 and 4.12 of the act allow operators to remine areas that meet certain criteria regardless of whether or not the Department has previously designated the area as suitable for remining. The section 4.9 of the act process for designating areas suitable for remining may be developed by future rulemaking.

Other commentators suggested that areas unaffected by previous mining may be needed to support the remining operation. The areas would be used for facilities such as haul roads, drainage controls, equipment storage, coal preparation and storage. These areas should be included in the remining area. IRRC recommended that the definition be amended to allow the remining area to extend beyond 300 feet if the operator can demonstrate that a larger area is needed to undertake the remining operation.

The Board agrees that in some cases unaffected lands may be needed to support remining activities. As proposed, the definition allowed additional undisturbed area if the permittee demonstrated the need for it. However, the definition of "remining area" has been clarified by specifically referring to previously undisturbed areas needed for support activities related to the remining.

In its comments, OSM expressed concern that these provisions and definitions may allow use of alternate reclamation standards on sites not eligible for alternate standards under the Federal program.

The Board points out that these amendments do not change the reclamation performance standards contained in the existing, OSM-approved coal mining program.

c. Other terms

The definitions of "adverse opinion," "payment in lieu of bond," "percent profit before taxes to total assets" and "profit before taxes" have been deleted due to significant revisions to §§ 86.281—86.284 of the proposed amendments relating to payment in lieu of bonds. A definition has been added for "financial guarantee" in order to implement the revisions to section 4.12 of the act. Section 4.12 of the act now deals with financial guarantees for operators conducting remining. Further discussion of these changes can be found in the subsection of this Preamble dealing with financial guarantees.

2. Operator and project qualification.

Section 86.253.

Two commentators objected to § 86.253(a)(5) being more stringent than the act. They noted that an operator who had a single violation of one of the listed regulations would be ineligible even if the violation was corrected in a timely manner.

Subsection (a)(5) has been deleted, making the criteria in revised subsection (a) equivalent to the criteria established by the act.

In its comments, OSM suggested that an applicant for ROAP remining incentive should meet compliance as well as ownership and control requirements before the Department expends funds for assistance.

The Board notes that these requirements are contained in subsection (a)(1) which refers to the mining license including ownership and control information and subsection (a)(2) which refers to the compliance requirements for obtaining a permit. An operator must meet these requirements before being approved for ROAP.

Three commentators stated that subsection (b)(1), which requires the operator to demonstrate that the proposed activity is technologically and economically feasible, contradicts section 4.9 of the act. Section 4.9 of the act states that the Department, when designating areas suitable for remining, must make this determination. Furthermore, they note that section 4.9 of the act requires the Department to prepare a report which contains enough information to allow its use in preparation of a permit application.

The Board disagrees. The statutory authority section of the preamble for the proposed amendments specifically excluded any reference to section 4.9 of the act from this rulemaking. Additionally, the Board points out that § 86.253 reiterates the requirements of section 18(a.3) of the act. These requirements apply to any operator proposing to participate in a program funded by the Remining Environmental Enhancement Fund or the Remining Financial Assurance Fund, namely ROAP, the financial guarantees on remining areas and reclamation bond credits. The process for designating areas suitable for remining may be the subject of future rulemaking.

IRRC found that the right of entry requirements of subsection (b)(4) were similar to the right of entry requirements in §§ 86.263(1) and 86.264(b)(6)(i) (relating to eligibility for assistance; and applications for assist-

ance). IRRC recommended the amendments address the applicant's responsibility to demonstrate the right to enter, mine, and the like, in a single provision such as subsection (b)(4).

The Board disagrees with this recommendation. The Board believes that §§ 86.263(1) and 86.264(b)(6)(i) differ substantively from subsection (b)(4) and from each other. Subsection (b)(4) requires a person who wishes to utilize any of the three incentives to demonstrate his right to enter onto and affect that property by remining or reclamation and his right to remove materials as necessary to accomplish reclamation. The removal of materials and structures is not the same as mining. An example would be the removal of abandoned equipment, buildings or coal refuse. In many cases, the owners of these items may not be the landowner.

Sections 86.263(1) and 86.264(b)(6)(i) are provisions in ROAP and refer to the person's right to enter the property and mine coal under section 4(a)(2)(F) of the act. Section 86.263(1) provides notice to an operator that he must have the right to enter and mine the property to be eligible for ROAP while § 86.264(b)(6)(ii) identifies specific documents which must be included in the operator's application for assistance.

3. *Program services and application approval.*

Sections 86.261 and 86.265.

Two commentators recommended that the operator be given an opportunity to participate in the selection of a qualified consultant. As written, § 86.261 states that the Department will select the consultant.

Section 86.261 reflects the Department's ultimate responsibility over ROAP. However, § 86.265, which deals with application approval, has been revised to state that the operator may select a qualified consultant from the list of consultants approved by the Department.

4. *Eligibility for assistance.*

Section 86.263.

Several commentators found the reference to § 86.253 in this section to be confusing. Section 86.253(b)(1) requires the operator to demonstrate that the proposed activity will not result in a violation of applicable water quality standards. The commentators note that this demonstration requires submitting information equivalent to an application for permit, and that the purpose of ROAP is to obtain this information.

To eliminate confusion, § 86.263 has been revised to refer to § 86.253(a), which relates only to the operator's eligibility. An additional change was made to paragraph (1) to indicate that it applies specifically to the remining area.

Two commentators noted that paragraph (3) refers to abandoned mine lands or lands for which the Department has forfeited and collected reclamation bonds. They questioned its applicability to coal refuse.

The Board notes that the definition of "abandoned mine lands" specifically includes unreclaimed coal refuse. Paragraph (3) has been further revised by the deletion of superfluous wording.

5. *Applications for assistance.*

Section 86.264.

Three commentators were concerned that under this section the Department would be paying a consultant to

obtain information and prepare reports while section 4.9 of the act clearly states that the Department will prepare the report.

The Board again notes that this rulemaking does not address section 4.9 of the act which deals with designating areas suitable for remining. Furthermore, section 4.10 of the act clearly directs the Department to pay for this information. Other changes were made to this section to indicate that these requirements apply specifically to the remining area.

6. *Notice*

Section 86.266.

Under this section, the Department will inform the applicant if the application for assistance is denied. One commentator was concerned about the operator's right to redress for losses if the application is rejected or delayed due to unacceptable work by a consultant not chosen by the operator.

The Board believes that this commentator is confusing the application for assistance with a permit application. Section 86.266 deals only with the application for assistance under ROAP. The mine operator is responsible for preparing this application. Once the application for assistance is approved and a consultant selected, the consultant is responsible for obtaining specific information for use in a permit application. The Department will make sure that this information is of adequate quality before the consultant is paid. Additionally, under revised § 86.265 (relating to application approval) the operator will select the qualified consultant to perform the services.

An additional change was made to subsection (c) to clearly indicate its applicability to the remining area.

7. *Basic qualifications for consultants and laboratories.*

Section 86.269.

Three commentators stated that the analytical laboratory performing ROAP work should be properly certified.

The Board believes this concern is already addressed. In order to participate in ROAP, a laboratory must demonstrate to the Department's satisfaction that it meets the applicable requirements of subsection (a).

Since subcontracting laboratory services is allowed, several commentators requested that subcontracting the services of other specialists such as biologists, hydrologists, chemists, and the like, should also be allowed.

The Board agrees with the suggestion. Subsection (b) has been redrafted to allow consultants to subcontract various specialties in addition to laboratory services.

Subsection (a)(6)(iv) contains a reference to the Department's *Overburden Sampling and Testing Manual*. One commentator objected to this publication stating that, unless the Board intends to proceed with rulemaking for overburden analysis, subsection (a)(6)(iv) should be deleted.

The document identified in the proposed regulation and titled *Overburden Sampling and Testing Manual* describes sampling and analytical procedures for overburden testing. The commentator had confused this document with a proposed Department manual for interpreting overburden analysis data as a means of predicting the occurrence of acid mine drainage. The commentator later withdrew his objection to the document identified in the regulation.

8. *Operator liability.*

Section 86.270.

Two commentators expressed concern with subsection (a)(4) which requires an operator to reimburse the Department for services performed under ROAP if the operator fails to mine within 3 years of obtaining a permit. They noted that there are many factors beyond the operator's control which could result in an operator failing to meet this requirement and that the act has no such requirement.

A similar concern was expressed over subsection (a)(5), which requires reimbursement if the operator sells, transfers or assigns the permit to an operator who does not qualify under § 86.253. One commentator suggested that if a provision to prevent fraud is necessary, this subsection should be redrafted to provide that an operator must reimburse the Department if the operator knowingly transfers the permit to an operator who does not meet the qualifications in § 86.253 and fails to complete the reclamation plan in the transferred permit.

While the act contains no specific provisions concerning reimbursement for ROAP services, sections 4.2(h) and 18(a.3) of the act provide the Department with the authority to establish a program which includes provisions for protecting funds and accomplishing reclamation in a timely manner. The requirement to begin mining within 3 years of receiving a permit utilizing ROAP funds is consistent with § 86.40(b) (relating to permit terms), which relates to permit terms. Section 86.40(b) states that a permit shall terminate if coal mining activities have not begun within 3 years. If the expected remining will not be initiated in a timely manner, the money spent by the Department should be returned for others to use. This same provision is also found in the small operator assistance program (SOAP) in § 86.94 (relating to applicant liability). Since ROAP and SOAP are similar programs in services provided and since SOAP has operated effectively for many years, the Board has not changed this section.

The Board also rejects the suggestion to require reimbursement only if the operator knowingly transfers the permit to an unqualified operator. It would be impossible for the Department to determine if the first operator knew that the successor was not qualified. This requirement does not prevent the transfer of a permit obtained with ROAP money. It merely requires the operator who sells the permit to reimburse the Remining Environmental Enhancement Fund if the new operator is not qualified to participate in the remining and reclamation incentives program.

9. *Financial guarantees to insure reclamation—general.*

Section 86.281.

During proposed rulemaking, § 86.281 was entitled "Financial assurance for payment in lieu of bond-general." As a result of the Act 43 amendments to section 4.12 of the act, this section has been retitled and revised.

The phrase "financial guarantees" replaces payment in lieu of bond as a better descriptor of the program. The latter phrase may have suggested that § 86.143 (relating to requirement to file a bond) would not apply to remining areas under this program. The new wording more accurately represents the money reserved for an operator in the special account in the Remining Financial Assurance Fund as a financial guarantee which can be used for the operator's bonding obligation under § 86.143.

Act 43 also revised the basis for determining the total amount of guarantees which may be supported by the special account in the Remining Financial Assurance Fund. The total amount is to be determined by the Department on a loss reserves basis established by the historical rate of mine operator bond forfeiture with a reasonable margin of safety. In other words, the total amount of guarantees which can be issued will equal the amount of money in the special account divided by the sum of the forfeiture rate and margin of safety. The forfeiture rate for permits issued since 1985 has been approximately 6%.

Section 86.281 has been further revised for clarity and as recommended by the MRAB. This section now limits the total amount from the special account which may be reserved per permit to 10% and per operator to 30%.

10. *Participation requirements.*

Section 86.282.

The general consensus among the commentators was that under the proposed requirements for participation, very few, if any, operators would qualify. Many believed that the proposed paperwork requirements alone were onerous enough to cause any operators who could qualify to avoid the program. An example of one specific problem was basing operator eligibility on a profit ratio of 6.2% over each of the past 5 years. The commentators have suggested that this requirement would have eliminated many financially sound companies from participation.

Another comment was that this section required statements from a certified public accountant (CPA) for the current and preceding 5 years. Several commentators believe that this may be an unreasonable expense for small operators who do not otherwise need the services of a CPA.

The Board has reconsidered and eased the financial standards for participation in this program. The ratio of profit before taxes to total assets has been removed from the financial test. The remaining criteria must be met only at the time the operator applies for participation or for an increased level of participation in the program. The requirement to meet these criteria on an annual basis has been removed. Financial statements from an officer of the operator's bank or the person who manages the operator's accounts will be accepted.

The MRAB recommended that, in addition to meeting certain financial criteria, an operator wishing to participate in this program should demonstrate 5 years of experience in coal mining and reclamation. This requirement has been added to subsection (a)(1).

One commentator asked if the eligibility test at subsection (a)(2) should consider the denial of coverage by surety companies as opposed to the ability to obtain coverage. He noted that surety bonds were not readily available to many surface coal mine operators.

The Board does not agree. Section 4.12(a) of the act requires consideration of an operator's eligibility "...such as financial tests and criteria..., including factors indicative of an operator's ability to complete reclamation and payments into the fund..." The Board's understanding of this language, as well as the interpretation of the MRAB is that this program is to be limited to operators who are financially capable of making the annual payments and completing the reclamation. One test of this is an ability to obtain a surety bond. Denial of coverage by a surety company suggests that the operator may not be finan-

cially able to complete reclamation and make the annual payments to the Remining Financial Assurance Fund.

The Board has accepted an MRAB suggestion to revise subsection (a)(2) to include an ability to obtain a letter of credit collateral bond on the portion of the permit area which does not involve remining.

In its informal comments on the proposed § 86.282, OSM suggested the following terms be defined: "current assets," "total assets," "current liabilities" and "total liabilities." The OSM also asked what is meant in subsection (a)(2) by the phrase "...the remaining permit area."

The Board does not see the need to define "current assets," "total assets," "current liabilities" and "total liabilities." These terms have a standard usage within the financial world.

Remining will be conducted under a surface coal mining permit. The Board believes that many permits which involve remining will also include the mining of areas which do not qualify as remining areas. Therefore, the remaining permit area is that portion of a permit area which is outside of the remining area.

11. *Procedures.*

Section 86.283.

The commentators have said that the proposed fee of 2.5% of the average per acre cost for the Department to reclaim the mine site will not provide an economic incentive to participate in this program.

The Board agrees with this comment. The rate for determining the annual payments has been changed to 1% of the amount of bond which would have been required under normal bonding procedures.

IRRC commented that during a discussion of these amendments, the Department said that its average estimated cost to reclaim an acre of abandoned mine land is \$7,000. However, under the regular bonding program and under § 86.145 (relating to Department responsibilities), the cost is \$3,000 per acre for areas being mined and \$1,000 per acre for support areas. IRRC recommended the Board either establish a single reclamation cost or provide a convincing argument for maintaining two different reclamation amounts.

The comment appears to indicate a misunderstanding of the bonding program. The coal mining bonding program consists of a per acre bond which is returned upon successful reclamation and a per acre reclamation fee which is nonreturnable. The bond is posted at a rate of \$3,000 per acre for areas to be mined and \$1,000 per acre for areas which support the mining operation. The reclamation fee is deposited into the Surface Mining Conservation and Reclamation Fund and is used to supplement forfeited bonds. Since the actual average cost to reclaim a forfeited site is approximately \$7,000 per acre, when a forfeiture does occur, the fees make up the difference between the actual cost of reclamation and the bonds posted for the site.

12. *Forfeiture.*

Section 86.284.

One commentator objected to the provision in subsection (d) which requires substitution with regular bonds if the program be discontinued. The commentator noted that section 4.12 of the act does not require replacement with regular bonds and that to do so would discourage participation.

The Board agrees and has revised this section to allow outstanding obligations on the special account to remain in effect.

In addition, the Board finds that further revisions are necessary. Act 43 extends the bond obligations which may be placed on the financial guarantees special account beyond the monetary value of the account. As a result, the Department may not be able to discontinue the program until the special account is overextended. To prevent this situation from occurring, a provision has been added to § 86.284 allowing the Department to suspend additional participation in the program if a certain number of participating permits should undergo bond forfeiture. This number is based on the historical rate of coal mining bond forfeitures. The suspension would remain in place until the money lost from the special account to forfeiture is replaced through annual payments.

The Board also has revised subsection (d) by replacing the ambiguous phrasing "subject to forfeiture" with the term "declared forfeit." The latter denotes a specific, observable action.

13. *Financial assurance for bond credit-general.*

Section 86.291.

In their informal comments, the OSM, the MRAB and others suggested that the bond credit payment cap of \$3,000 per acre would entice few operators to reclaim abandoned mine lands.

The Board agrees and has raised the amount of the bond credit to the lesser of the operator's cost or the Department's cost to reclaim the project area.

14. *Procedures and requirements.*

Section 86.292.

Three commentators questioned the need for the operator to provide an estimate of the cost of reclamation. The operator already has to meet the requirements of § 86.253(b)(1) by demonstrating that the project is technologically and economically feasible.

Section 4.13 of the act specifically states that the Department will require the operator to submit an estimated cost of reclamation along with the proposal to reclaim when applying for a bond credit. The operator's estimated cost of reclamation will be used to determine the amount of the bond credit to be earned. The operator's proposed reclamation plan will provide the demonstration that the project is technologically and economically feasible as required by § 86.253(b)(1).

Section 86.292(b) allows the Department to require a performance bond to ensure that the operator completes the reclamation as proposed. Two commentators recommended suspending the requirement for a performance bond if the reclamation work is adding to or creating offsite detrimental impacts. IRRC recommended rewriting § 86.292 to allow an operator to submit amendments to the reclamation plan subject to Departmental approval.

The Board disagrees with the recommendation to suspend the requirement for a performance bond. Offsite detrimental impacts are considered when the reclamation plan is approved. The bond only guarantees completion of the work described in the approved reclamation plan. The Board agrees with IRRC and has inserted a provision in § 86.292 to allow an operator, with Department approval, to amend the reclamation plan.

Four commentators were concerned that the bond credit agreement between the operator and the Department had

to specify a fixed completion date. Three of the commentators stated that a completion date cannot be specified because reclamation occurs after coal removal, and coal removal cannot be predicted because of market forces. IRRC expressed concern that an operator could be subject to sanctions even if there were valid reasons for a delay in completing the reclamation work. IRRC recommended that subsection (d) be amended to allow an extension for good cause.

The Board disagrees that reclamation will always occur after coal removal. Many sites can be reclaimed without coal removal. However, the Board acknowledges the uncertainty in determining a completion date. Subsection (c)(5) has been revised to allow the agreement to contain an expected completion date. The Board agrees with IRRC that, as written, the operator could be subject to sanctions even if there were valid reasons for delays in completing the work. A new subsection (d) has been written to allow amendments to the agreement, including an extension of the completion date. Section (d) of the proposed amendments will become subsection (e). The Board believes that this change will satisfy the concerns of the other commentators.

Two commentators objected to subsection (c)(3) which requires that agreements between an operator and the Department include a provision which allows the Department to assess penalties for default and a waiver of the right to appeal in the event of default. Since these agreements are voluntary no penalties should be attached. They believe that the Department is adequately protected by penal bonds. Furthermore, they noted that an operator should not be required to waive the right to appeal a decision of the Department in order to participate in this program and recommended subsection (c)(3) be deleted.

While the Board does not agree with certain aspects of the commentators' arguments, it does agree to delete subsection (c)(3). The Board, however, believes that the potential for abuse of this program is significant. Precautions are needed to minimize the possibility that an operator will redisturb an area of abandoned mine lands, decide that the cost or effort to complete reclamation as planned is unacceptable, and simply leave the area. Since redisturbance typically results in increased erosion and sedimentation, stabilization of the redisturbed area is necessary. Because performance bonds will not be posted on all projects, enforcement authority must remain as an option. This authority is provided by subsection (d) of the proposed amendments. In reference to the comment about penal bonds, the Board notes that the act provides for the posting of performance bonds. Performance bonds are not penal in nature. They only guarantee the completion of the work specified in the agreement.

To further reduce some of the impediments associated with the use of this reclamation incentive, the Board has deleted subsection (c)(4) which required the operator to remain qualified under § 86.253 from the time the reclamation agreement is signed until the bond credit was issued.

15. *Issuance.*

Section 86.293.

The commentators indicated that the paperwork and time involved in obtaining a bond credit plus the limited uses and limited availability outweigh any incentive to participate.

The Board agrees that the amount of bond credit on a per acre basis must be increased if participation in this

program is to be encouraged. Reference to the amount of the bond credit has been deleted from § 86.293, and § 86.291 has been rewritten to make the bond credit equivalent to the lesser of the operator's cost or the Department's cost to reclaim the project area. The Board does not agree with the statement that paperwork is excessive. There must be some assurance that the reclamation work is well defined, that it accomplishes good reclamation and that the public interest is protected.

16. *Uses and limitations.*

Section 86.294.

This section has been revised to implement suggestions made by the MRAB. These changes are authorized by the Act 43 amendments to section 4.13 of the act. A new subsection (b) has been added which allows bond credits to be used a second time. Proposed subsection (d) has been rewritten to allow bond credits to be transferred as allowed by Act 43. Subsection (h) has been added which sets a 5-year limit on the length of time a bond credit may remain unused.

F. *Benefits, Costs and Compliance.*

Executive Order 1996-1 requires a cost/benefit analysis of the final regulations.

Benefits

The reining and reclamation incentives established by these regulations are intended to encourage active coal mine operators to reclaim abandoned mine lands and thereby improve the environment and enhance land value. Operators who participate could benefit from financial assistance for the collection of data for permit applications and through bonding incentives.

Compliance Costs

The regulations impose no mandatory costs, direct or indirect, on coal mine operators. However, operators who choose to avail themselves of the reining and reclamation incentives will find additional forms, reports, paperwork and, in some cases, engineering costs beyond that normally required for a coal mining activity permit. The incentives provided by these regulations should more than offset these costs.

Administration of these regulations will place additional workload and costs on the Department. There will be no additional costs imposed on local government or the general public.

Compliance Assistance Plan

No compliance assistance plan has been developed. These regulations place no additional regulatory requirements on the coal mining industry. The new regulations establish procedures and qualifications for the operators who voluntarily choose to participate in the reining and reclamation incentives programs. When the incentives become available, the Department plans to provide notice to all licensed coal operators. Roundtable meetings will be held to help coal operators, their consultants and the public understand these incentives.

Paperwork Requirements

These regulations will result in three new programs. Each will require application forms, recordkeeping and reporting. The three programs are reining operator's assistance for data collection, financial guarantees for bond obligations on reining areas and bond credits for voluntary reclamation of abandoned mine lands.

G. *Sunset Review Date*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which it were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 5, 1994, the Department submitted a copy of the notice of proposed rulemaking published at 24 Pa.B. 2110 to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of comments received as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Environmental Resources and Energy Committee on July 10, 1996, and were deemed approved by the Senate Environmental Resources and Energy Committee on July 10, 1996. IRRC met on July 18, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. *Findings*

The Board finds that:

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

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

(3) These final-form regulations do not enlarge the purpose of the proposal published at 24 Pa.B. 2110.

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of the Preamble.

J. *Order of the Board*

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

(a) The regulations of the Department, 25 Pa.Code Chapter 86, are amended by adding §§ 86.251—86.253, 86.261—86.270 and 86.281—86.295 to read as set forth in Annex A.

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

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 3776 (August 3, 1996).)

Fiscal Note: Fiscal Note 7-265 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter J. REMINING AND RECLAMATION INCENTIVES

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BONDING INCENTIVES

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GENERAL PROVISIONS

§ 86.251. Purpose.

This subchapter provides incentives to encourage qualified operators to undertake reclamation and remining of abandoned mine lands and bond forfeiture sites for the purpose of eliminating hazards to human health and safety, abating pollution of surface and groundwaters and the contribution of sediment to adjacent areas, restoring land to beneficial uses and recovering remaining coal resources.

§ 86.252. Definitions.

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

Abandoned mine lands—For the purposes of this subchapter, unreclaimed lands affected by surface or underground coal mining or coal refuse disposal activities, including bond forfeiture sites for which the bonds have been collected by the Department.

Act—The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a).

Bond credit—A specified amount of money reserved by the Department in the Remining Financial Assurance Fund under section 4.13 of the act (52 P. S. § 1396.4m) to be used by an operator to meet the bonding requirements of section 4 of the act (52 P. S. § 1396.4).

Financial guarantee—A specified amount of money reserved by the Department in the Remining Financial Assurance Fund for a qualified operator's permitted remining area as authorized by section 4.12 of the act (52 P. S. § 1396.4l).

Qualified consultant—A designated public agency or private consulting firm which the Department has found capable of providing the services of ROAP.

Qualified laboratory—A designated public agency or private analytical laboratory which the Department has found capable of providing the services of ROAP.

ROAP—Remining Operator's Assistance Program.

Remining—Reaffecting and reclaiming abandoned mine lands, under a coal mining activity permit, which exhibit one or more of the following features:

(i) Highwalls, spoil piles, abandoned buildings and structures, unsealed deep mine openings, subsidence features or safety hazards.

(ii) Exposed or unvegetated coal refuse.

(iii) A source of excess settleable solids to stream flow.

(iv) A source of mine drainage pollution to surface or groundwaters.

(v) Pollution abatement areas as that term is defined in §§ 87.202 and 88.502 (relating to definitions).

Remining area—An area of land on which remining will take place, including that amount of previously undisturbed area up to 300 feet from the edge of the unreclaimed area which must be affected to achieve a final grade compatible with adjacent areas. Additional undisturbed land may be within a remining area if the permittee demonstrates that a larger area is needed to accomplish backfilling and grading of the unreclaimed area or is needed for support activities for the remining activity.

Tangible net worth—Total assets minus intangibles such as goodwill and rights to patents or royalties.

§ 86.253. Operator and project qualification.

(a) To participate in the remining and reclamation incentives program established by this subchapter, a coal mining operator shall demonstrate that:

(1) The operator holds a valid coal mining license issued under section 3.1 of the act (52 P. S. § 1396.3a).

(2) The operator, a related party, a person who owns or controls the operator or a person who is owned or controlled by the operator, satisfies the requirements of § 86.37(a)(8)—(11) and (16) (relating to criteria for permit approval or denial).

(3) The operator, a related party, a person who owns or controls the operator or a person who is owned or controlled by the operator, has no liability for reclamation or pollution at the proposed abandoned mine site.

(4) The operator's past history of compliance with environmental laws does not indicate a lack of intention or ability to comply with those laws or the regulations promulgated thereunder.

(b) For a project to be approved for reclamation under the remining and reclamation incentives program, the operator shall demonstrate that:

(1) The proposed activity is technologically and economically feasible at the proposed abandoned mine lands site and will not result in a violation of applicable effluent limitations or water quality standards.

(2) When applicable, the operator has submitted a mining permit application to the Department clearly indicating which areas the operator intends to remine and which areas, if any, are to be mined for the first time.

(3) When applicable, the operator has accurately calculated the amount of bond that would be needed to cover the area to be remined and the amount needed to cover the initial area of remining.

(4) The operator has the right to enter onto and affect the property and, if applicable, the right to remove structures or materials, including soil, spoil, rock, coal or coal refuse.

ROAP

§ 86.261. Program services.

To the extent that funds are available in the Remining Environmental Enhancement Fund and in response to a request from a qualified remining operator, the Department will:

(1) Select and pay a qualified consultant to:

(i) Provide, in accordance with Chapter 87, Subchapter C and §§ 88.21—88.27 and 88.29—88.33, a description of the existing resources within and adjacent to the proposed remining area that may be affected by the proposed surface coal mining activities.

(ii) Determine the probable hydrologic consequences of the proposed surface coal mining activities on the proposed remining area and adjacent area as remining areas are defined in § 86.252 (relating to definitions), in accordance with §§ 87.69 and 88.49 (relating to protection of hydrologic balance).

(iii) Prepare a statement of the results of test borings or core samplings in accordance with §§ 87.44 and 88.24 (relating to geology description; and geology).

(iv) Prepare a detailed description of the proposed surface coal mining activities showing the manner in which the proposed remining area will be mined and reclaimed in accordance with §§ 87.54, 87.61—87.63, 87.65—87.84, or 88.41—88.44 and 88.46—88.62.

(2) Collect and provide general hydrologic information on the basin or subbasin watershed areas within which the proposed surface coal mining will occur. The information provided shall be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed remining area.

§ 86.262. Department responsibilities.

The Department will:

(1) Review requests for assistance and determine eligibility for assistance.

(2) Develop and maintain a list of qualified consultants and laboratories in accordance with § 86.269 (relating to basic qualifications for consultants and laboratories), se-

lect consultants and laboratories to perform program services and pay for services rendered.

(3) Conduct periodic evaluations of the program activities with the remining operator and consultant.

§ 86.263. Eligibility for assistance.

An operator is eligible for assistance if the requirements of § 86.253(a) (relating to operator qualification) are met and the operator:

(1) Has a legal right to enter and commence mining within the proposed remining area.

(2) Intends to apply for a permit and to conduct surface coal mining activities and reclamation within the proposed remining area.

(3) Proposes to remine an area which contains abandoned mine lands.

§ 86.264. Applications for assistance.

(a) Persons wishing to receive assistance shall file an application for remining operator assistance with the Department.

(b) The application shall contain the following information:

(1) A statement of intent to file a permit application under this chapter and to conduct the proposed surface coal mining and reclamation activities on the proposed remining area.

(2) The names and addresses of:

(i) The intended permit applicant.

(ii) The intended contract operator, if different from the applicant.

(iii) Controlling interests in accordance with § 86.62 (relating to identification of interests).

(3) The mining license number of the applicant and contract operator identification number, if applicable.

(4) A description of:

(i) The coal to be mined and the method of coal mining activities proposed.

(ii) The number of acres of remining area and the number of acres of abandoned mine land in the proposed remining area.

(iii) A general statement of the probable depth and thickness of the coal resource or a general statement of the percentage and quality of recoverable coal contained in the coal refuse.

(5) A United States Geological Survey topographic map or facsimile thereof of 1:24000 scale or larger which clearly shows:

(i) The area of abandoned mine land to be affected and the natural drainage area above and below the proposed remining area.

(ii) The names of property owners within the proposed remining area and of adjacent lands.

(iii) The location of existing structures and developed water sources within the proposed remining area and adjacent lands.

(iv) The location of existing and proposed test borings or core samplings and the location and extent of known workings of surface and underground mines.

(6) Copies of documents which show:

(i) The applicant has a legal right to enter and commence surface coal mining within the proposed remining area.

(ii) A legal right of entry has been obtained for Department, consultant and laboratory personnel to inspect the lands proposed to be mined and adjacent lands which may be affected in order to collect environmental data or install necessary instruments in accordance with § 86.64 (relating to right of entry).

(c) The application shall be attested by a notary public and signed by an officer, partner or owner of the company.

§ 86.265. Application approval.

(a) If the Department finds that the applicant is eligible for assistance, and it is not aware of information that would preclude issuance of a surface coal mine activities permit to the applicant for mining in the area proposed, it will:

(1) Determine the minimum data requirements necessary to meet the provisions of §§ 86.261 and 86.267 (relating to program services; and determination of data requirements).

(2) Provide the applicant with a list of qualified consultants.

(b) The applicant may select the services of one or more qualified consultants or qualified laboratories, subject to the approval of the Department, to perform the required data collection, analyses and the preparation of maps, cross sections and reports.

(c) The granting of assistance under this program will not be a factor in the Department's decision on a subsequently filed surface coal mine activities permit application.

§ 86.266. Notice.

(a) If the application for assistance is approved, the Department will provide the applicant a copy of the appropriate work orders for the services to be provided and the final approved report.

(b) The Department will inform the applicant in writing if the application for assistance is denied and the reasons for denial.

(c) The applicant shall immediately notify the Department and the designated consultant if at any time the applicant becomes aware of circumstances which could preclude the issuance of a permit to the applicant for the proposed remining area.

§ 86.267. Determination of data requirements.

(a) The Department will determine the data collection requirements needed to meet the objectives of the program for each applicant or group of applicants.

(b) The data requirements will be based on:

(1) The extent of currently available hydrologic and overburden analysis data for the applicable area.

(2) The data collection, analysis and evaluation requirements of this chapter and either Chapter 87 or Chapter 88 (relating to surface mining of coal; and anthracite coal), whichever is applicable.

§ 86.268. Public records; evidence.

Upon approval of the ROAP project report submitted by the consultant, the data collected under this Program shall be made available to interested persons.

§ 86.269. Basic qualifications for consultants and laboratories.

(a) To be designated as a qualified consultant or qualified laboratory, the consultant or laboratory shall demonstrate that it:

(1) Is staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology and chemistry applicable to the work to be performed as either a consulting firm, analytical water laboratory or analytical overburden laboratory.

(2) Is capable of collecting necessary field data and samples.

(3) Has adequate space for stationary equipment, material preparation, cleaning and sterilization of necessary equipment, and storage and space to accommodate periods of peak workloads.

(4) Meets the requirements of the Occupational Safety and Health Act of 1970 (29 U.S.C.A. §§ 651—678).

(5) Has the financial capability and business organization necessary to perform the work required.

(6) Has analytical and monitoring equipment capable of meeting the applicable standards and methods contained in:

(i) The current edition of *Standard Methods of the Examination of Water and Waste Water*, prepared and published jointly by the American Public Health Association, American Water Works Association and Water Pollution Control Federation. (American Public Health Association, 1015 Fifteenth Street, N.W., Washington, DC 20005).

(ii) The current edition of the *Environmental Protection Agency (EPA) Methods for Chemical Analysis of Water and Wastes*, as amended. The standards contained therein are incorporated by reference.

(iii) The EPA standards as described in 40 CFR Part 136 (relating to guidelines establishing test procedures for the analysis of pollutants).

(iv) The Department's *Overburden Sampling and Testing Manual*.

(7) Has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, engineering or analytical methods or by those appropriate methods or guidelines for data acquisition recommended by the Department.

(b) The qualified consultant shall be capable of performing the services under § 86.261 (relating to program services). Subcontractors may be used to provide the services required if the subcontractor is identified by the qualified consultant and approved by the Department.

§ 86.270. Operator liability.

(a) The operator shall reimburse the Department for the cost of the services performed under this subchapter, including interest from the date the Department demands reimbursement, if the operator does one of the following:

(1) Submits false information.

(2) Fails to provide the services required to complete the permit application, including submission of reclamation bond.

(3) Fails to submit a complete surface mine activities permit application within 1 year from the date of receipt of the approved consultant report, unless the report indicates that the application is not approvable for technical reasons.

(4) Fails to mine within 3 years after obtaining a permit.

(5) Sells, transfers or assigns the permit to an operator who does not meet the requirements of § 86.253 (relating to operator and project qualification).

(b) If the operator fails to reimburse the Department under subsection (a), licenses and permits may be suspended by the Department.

(c) If funds allocated for the services are less than those required to pay for the services, the operator is responsible for costs exceeding the amount of funds allocated for the services provided to the operator.

(d) The Department may waive the reimbursement requirement of subsection (a) if the operator demonstrates one of the following:

(1) The consultant and laboratory reports indicate that mining could have potentially adverse environmental impacts.

(2) The application for a mining permit is denied as a result of potentially adverse environmental impacts or other technical reasons beyond the operator's control.

(3) Other factors are identified which would preclude mining of the site, and the operator does not intend to file a mine permit application.

BONDING INCENTIVES

§ 86.281. Financial guarantees to insure reclamation—general.

(a) In the Remining Financial Assurance Fund there is a special account providing financial guarantees for qualified operators who conduct remining. Funds in this special account may be used to financially assure bonding obligations under § 86.143 (relating to requirement to file a bond) of a qualified operator engaged in remining.

(b) The financial guarantee applies to remining areas approved by the Department. Operators who wish to participate in this program shall demonstrate, for each permit, their eligibility under §§ 86.253 and 86.282 (relating to operator and project qualification; and participation requirements).

(c) For each approved permit of an eligible operator for a remining area, the Department will reserve a portion of the financial guarantees special account in the Remining Financial Assurance Fund as collateral for reclamation obligations on the remining area. The amount of the reserve will be the average cost per acre for the Department to reclaim a mine site multiplied by the number of acres in the remining area.

(d) Department may not issue financial guarantees on a permit in excess of 10% of the then current 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 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 amount in the special account in the Remining Financial Assurance Fund by the historical rate of bond forfeiture under § 86.181 (relating to bond forfeiture-general) with a margin of safety determined by the Department.

(e) Upon declaration of forfeiture, the reserved funds will be used by the Department to complete reclamation of the remining area in accordance with the procedures and criteria in §§ 86.187—86.190. If the actual cost of reclamation by the Department exceeds the amount reserved, additional funds from the Remining Financial Assurance Fund will be used to complete reclamation.

§ 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:

(1) The operator would be able to post a collateral bond otherwise required by this chapter and demonstrate appropriate experience in coal mining and reclamation.

(i) The operator shall demonstrate ability to post a collateral bond by meeting the following conditions for the operator's most recently completed fiscal year and the 2 preceding fiscal years:

(A) A ratio of current assets to current liabilities of 1.5 or greater.

(B) A ratio of total liabilities to tangible net worth of 3 or less.

(ii) The operator shall submit a notarized statement signed by the operator and an independent certified public accountant (CPA), an officer of a financial institution with which the operator conducts business or other person or entity responsible for the accounts of the operator. The statement shall list the operator's ratio of current assets to current liabilities and the operator's ratio of total liabilities to tangible net worth for the most recently completed fiscal year and the 2 preceding fiscal years.

(iii) The operator shall demonstrate appropriate experience in coal mining and reclamation by showing that he has had a coal mining license under section 3.1 of the act (52 P. S. § 1396.3a) for 5 years or the person designated by the operator to manage the operation has a minimum of 5 years of experience in coal mining and reclamation.

(2) The operator would be able to obtain a surety bond or letter of credit collateral bond otherwise required under this chapter. The operator will demonstrate this by submitting a letter of acceptance from a surety company licensed to do business in this Commonwealth and which writes bonds for reclamation of mine sites located in this Commonwealth or by submitting a surety bond or letter of credit collateral bond for the remaining permit area. The acceptance letter shall indicate the complete name and address of the surety company and state that the surety company would write the bond.

(3) The operator would be eligible to self-bond under § 86.159 (relating to self-bonding).

(b) Notwithstanding subsection (a), an operator will not be approved to participate in the financial guarantees program when the financial guarantees exceed the limits established in § 86.281(d) (relating to financial guarantees to insure reclamation—general).

(c) If an operator, CPA or other person submits false information in the financial test or falsifies other information required by this section, the operator shall be ineligible to participate in the financial guarantees pro-

gram. In addition, the operator, the CPA or other person are subject to 18 Pa.C. S. §§ 4903 and 4904 (relating to false swearing; and unsworn falsification to authorities).

§ 86.283. Procedures.

(a) An operator's participation in the financial guarantees program is subject to the following:

(1) Annual payments will be 1% of the total amount of the number of acres of remining area to be affected multiplied by the Department's current applicable bond rates.

(2) The first payment is due upon receipt of notice of the Department's approval of the operator's application to participate in the program. Payments shall be made annually thereafter concurrent with the license renewal or in accordance with a schedule determined by the Department.

(3) Payments are not refundable and will be deposited into the financial guarantees special account in the Remining Financial Assurance Fund to be used in case of operator forfeiture. When the special account becomes actuarially sound, excess payments may be used under section 18(a.1) and (a.2) of the act (52 P. S. § 1396.18(a.1) and (a.2)).

(4) The operator may not substitute financial guarantees for existing collateral or surety bonds.

(b) The operator is responsible for making the annual payment as calculated by the Department, until the amount of the bond is reduced or released in accordance with §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond).

(c) An operator approved to participate in the financial guarantees program is not required to pay the per acre reclamation fee required by § 86.17(e) (relating to permit and reclamation fees) for the remining area.

(d) The Department will issue a letter to the operator specifying the amount of money in the financial guarantees special account in the Remining Financial Assurance Fund which has been reserved as collateral for the operator's reclamation obligations on the remining area. A copy of the letter will be kept in the operator's permit application file.

(e) The obligation covered by the financial guarantees program bond will be reduced or released prior to any other bond submitted by the operator to cover the reclamation obligations of that permit. This portion of the bond may not be used to cover the reclamation obligation on another section of the permit area.

§ 86.284. Forfeiture.

(a) Upon forfeiture under § 86.181 (relating to general), the Department will declare forfeit the amount reserved for the operator in the financial guarantees special account in the Remining Financial Assurance Fund in addition to other bonds posted by the operator to cover the reclamation obligation on the permit.

(b) The Department's declaration of forfeiture under this section does not excuse the operator from meeting the requirements of this chapter or other requirements under the act.

(c) Upon declaration of forfeiture, the Department will use the bond money and reserved funds to complete the reclamation of the mine site in accordance with the procedures and criteria in §§ 86.187—86.190.

(d) The financial guarantees program will be discontinued immediately and notice published in the *Pennsylvania*

nia Bulletin, if 25% or greater of the total outstanding financial guarantees are declared forfeit. 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.

(e) The financial guarantees program may be suspended upon notice in the *Pennsylvania Bulletin* when the number of participating permits declared forfeit is equal to that number of permits calculated by multiplying the historical rate of forfeiture plus a margin of safety times the number of permits participating in the program. No additional financial guarantees will be approved until the total amount of financial guarantees declared forfeit has been replaced through the accumulation of annual payments or by other means.

§ 86.291. Financial assurance for bond credit—general.

(a) In the Remining Financial Assurance Fund there is a special account providing financial assurance for the bond credit program. Funds in the special account may be used to financially assure bond obligations of a qualified operator who has voluntarily completed a reclamation project approved by the Department under the bond credit program.

(b) Under the bond credit program, the Department will reserve a portion of the bond credit special account in the Remining Financial Assurance Fund as collateral for a bond credit upon execution of the agreement for reclamation provided for in § 86.293 (relating to issuance). The amount of the reserve will be the lesser of the operator's cost of reclamation or the Department's cost of reclamation for the abandoned mine lands to be reclaimed under the agreement. The Department will not reserve funds for bond credits in excess of the amount of funds available in the special account.

(c) Upon declaration of forfeiture on a permit where a bond credit is being used, the reserved funds will be used by the Department in accordance with the procedures and criteria in §§ 86.187—86.190.

§ 86.292. Procedures and requirements.

(a) To apply for a bond credit a qualified mining operator shall, at a minimum:

(1) Meet the requirements of § 86.253 (relating to operator and project qualification).

(2) Submit a proposed reclamation plan for abandoned mine lands. This plan shall include provisions for water handling and erosion and sedimentation control to prevent offsite impacts from the reclamation activities.

(3) Provide an estimate of the cost of reclamation.

(4) Demonstrate that the operator, any related party or any person who is owned or controlled by the operator or who owns or controls the operator, bears no responsibility for reclamation of the area to be reclaimed, including, but not limited to, obligations under a mining permit, reclamation under section 18 of the act (52 P. S. § 1396.18) or reclamation under a contract with the Department including abandoned mine land contracts.

(b) If the proposed reclamation activities have potential for significant offsite impacts, the Department may require, as a condition of approving the proposed reclamation plan, that the operator post a performance bond at least in an amount necessary to ensure that the operator completes the reclamation as proposed. The performance

bond shall be released by the Department upon completion of the work described in the approved reclamation plan.

(c) Upon approval of the proposed reclamation plan and performance bond, if required, the Department will execute an agreement with the operator on forms prepared and furnished by the Department. At a minimum, the agreement will:

(1) Require the reclamation to be completed in accordance with the approved reclamation plan.

(2) State the bond credit amount which will be extended upon satisfactory completion of the reclamation work.

(3) Specify a date by which reclamation work is expected to be completed.

(d) The bond credit agreement may be amended or terminated at any time by mutual consent of the operator and the Department. Amendments may include changes to the approved reclamation plan, including the type and extent of reclamation, the completion and termination dates and the amount of bond credit. All areas affected by the operator's activities shall be permanently stabilized in accordance with Chapter 102 (relating to erosion control) before the agreement may be terminated.

(e) An operator who fails to complete the reclamation as specified in the agreement will be subject to enforcement action by the Department, including, but not limited to, assessment of civil penalties, license suspension or revocation, permit suspension or revocation.

§ 86.293. Issuance.

Upon a finding by the Department that the operator has met the terms of the agreement established by § 86.292(c) (relating to procedures and requirements) and section 4.13 of the act (52 P. S. § 1396.4m), the Department will issue a bond credit letter to the operator in the amount specified in the agreement. This amount is the amount of money in the bond credit special account in the Remining Financial Assurance Fund which has been reserved as collateral for the operator's reclamation obligation.

§ 86.294. Uses and limitations.

(a) An operator may apply a bond credit to an original or additional bond required under § 86.143 (relating to requirement to file a bond) for a permit issued for surface or underground mining, coal preparation or coal refuse disposal.

(b) An operator may use a bond credit or part of a bond credit on a single permit or multiple permits. A bond credit or part of a bond credit may be used two times; however, it cannot be used a second time until it is released from its first use under §§ 86.170—86.175.

(c) A bond credit may be used in combination with other types of bonds authorized by the act.

(d) A bond credit may be transferred to a qualified operator, as authorized by section 4.13 of the act (52 P. S. § 1396.4m).

(e) A bond credit may not be used to bond water loss or to bond long-term water treatment.

(f) If a discharge not meeting the effluent criteria of § 87.102, § 88.92, § 88.187, § 88.292, § 89.52 or § 90.102 develops on a permit on which a bond credit is being used, the operator shall within 90 days of receipt of written notice by the Department replace the bond credit with other types of bonds authorized by the act for that

purpose. If an acceptable bond has not been received and approved by the Department within the specified time limit, the Department will issue a cessation order for mining activities except for reclamation and other activities required to maintain the permit area.

(g) Bond credits will be released prior to any other surety or collateral bond on a permit area.

(h) A bond credit or part of a bond credit that is not used within 5 years from the date it is issued under § 86.293 (relating to issuance) or released under §§ 86.170—86.175 will expire, including bond credits that have been transferred.

§ 86.295. Forfeiture.

(a) Upon forfeiture under § 86.181 (relating to general), the Department will declare forfeit the amount reserved in the bond credit special account in the Remin-

ing Financial Assurance Fund in addition to other bonds posted by the operator to cover the reclamation obligation on a permit.

(b) The Department's declaration of forfeiture under this section does not excuse the operator from meeting the requirements of this chapter or the act.

(c) Upon declaration of forfeiture and collection of the bond credit, the Department will use the bond money and reserved funds to complete the reclamation of the mine site in accordance with the procedures and criteria in §§ 86.187—86.190.

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