

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 86—90]

Coal Mining Permitting and Performance Standards

The Environmental Quality Board (Board) proposes to amend Chapters 86—90. The amendments address coal mine permitting requirements and various performance standards relating to coal mining.

This proposal was adopted by the Board at its meeting of February 18, 1997.

A. Effective Date

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

B. Contact Persons

For further information contact Evan T. Shuster, Bureau of Mining and Reclamation, P. O. Box 8461, Room 203 Executive House, Harrisburg, PA 17105-8461, (717) 787-7846, or Joseph Pizarchik, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, 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's (Department's) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

These amendments are adopted under the rulemaking authority of section 4.2(a) of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P. S. § 1396.4b(a)); section 5(b) of The Clean Streams Law (CSL) (35 P. S. § 691.5(b)); section 3.2(a) of the Coal Refuse Disposal Control Act (CRDCA) (52 P. S. § 30.53b(a)); and 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 Purpose

This proposal amends existing provisions relating to permitting and performance standards for surface coal mining, underground coal mining and coal refuse disposal operations. Permitting provisions being amended include modifying the criteria for permit approval; expanding upon circumstances when permit terms may be extended; expanding right of entry requirements to address circumstances where the mineral estate has been severed from the surface estate; revising a permit applicant's proof of publication requirement and adding an additional land use category. Performance standards being amended relate to coal exploration, casing and sealing drill holes, topsoil removal, general hydrology and effluent limits, use of explosives, grading, postmining land use, haul roads and access roads and auger mining. The proposed amendments also modify the regulatory scope of Chapters 86—90 and amend provisions relating to bond release after revegetation and bond release for remaining areas with pre-existing pollutional discharges.

These proposed amendments are the result of the Department's Regulatory Basics Initiative (RBI) which was initiated in August 1995 and Governor Ridge's Executive Order 1996-1, titled "Regulatory Review and Promulgation," dated February 6, 1996. Under the RBI, the Department solicited public input concerning existing regulations in the August 19, 1995, *Pennsylvania Bulletin*. Comments received by the Department and the Department's own review of the regulations under the RBI and Executive Order 1996-1 have identified the sections in this rulemaking which are more stringent than corresponding Federal requirements without a compelling and articulable State interest, imposing disproportionate economic costs, being too prescriptive or technology specific or lacking clarity. Additionally, the Department proposed to insert, when appropriate, equivalent measures in standard international metric system units.

These proposed regulatory changes were reviewed and discussed with the Mining and Reclamation Advisory Board (MRAB) which is the Department's advisory body for regulations pertaining to the surface mining of coal. A draft of the proposed rulemaking was reviewed and discussed with the MRAB's Regulation, Legislation and Technical Committee on September 26, 1996. The MRAB concurred with the proposed rulemaking at its meeting on October 3, 1996.

E. Summary of Regulatory Requirements

The following are the sections proposed for change along with a brief discussion of the changes. Since most of the proposed changes are being made so as to be no more stringent than Federal requirements, the corresponding Federal regulation for each section is also listed.

§ 86.2. Scope. 30 CFR 700.11

SMCRA's definition of surface mining activities exempts certain types of operations. The scope of this chapter is modified to exempt those operations from meeting the requirements of Chapters 86—90.

§ 86.37(a)(4). Criteria for permit approval or denial/hydrologic balance. 30 CFR 773.15(c)(5)

The criterion relating to the probable cumulative impacts of mining on the hydrologic balance is revised to require that the mining be designed to prevent "material" damage to the hydrologic balance "outside" the proposed permit area. The current regulation does not include the term "material" and includes the term "within" the proposed permit area. This proposed change is made to conform with the language of the corresponding Federal regulation and is not intended to lessen the requirements under the CSL and SMCRA for prevention of pollution to streams and other waters of this Commonwealth.

§ 86.37(a)(6). Criteria for permit approval or denial/historic resources. 30 CFR 761.11(c) and 773.15(c)

The criterion that permit applicants demonstrate that mining activities will not adversely affect historic resources is modified to apply only to historic places actually listed on the National Register of Historic Places. The Department must still take into account the effect of the proposed mining activities on properties listed on or eligible for listing on the National Register of Historic Places. In addition, the Department's consideration must be documented in writing and may be supported by

appropriate permit conditions or operational plan changes to protect historic resources or a documented decision that no additional protective measures are necessary. This proposed amendment conforms the regulation to the corresponding Federal regulations.

§ 86.40(b). *Permit term.* 30 CFR 773.19(e)(2)(ii)

This subsection requires operators to begin mining activities within 3 years of issuance of a permit unless the operator shows that additional time is needed because of litigation. This proposed amendment expands the reasons for extending the start of mining activities to include conditions which are beyond the control of the operator. This change matches similar provisions in the corresponding Federal regulation.

§ 86.64. *Right of entry.* 30 CFR 778.15

The requirement for permit applicants to demonstrate right of entry to conduct coal mining activities is amended to address circumstances where the mineral estate has been severed from the surface estate. Also, language is added to clarify the requirements for describing the documents which provide the applicant's right of entry. The corresponding Federal regulation contains the same requirements. The proposed amendment also clearly states that the Federal requirements for right of entry are in addition to those State law requirements arising under section 4 of SMCRA (52 P. S. § 1396.4).

§ 86.70. *Proof of publication.* 30 CFR 778.21

These proposed amendments allow a permit applicant to demonstrate its intent to publish a notice in a local newspaper instead of submitting a statement from the newspaper. Additionally, the applicant may submit a copy of each weekly newspaper advertisement (that is, 4 copies) as an alternative to submitting a notarized proof of publication. These proposed changes conform to the corresponding Federal regulation.

§ 86.132. *Definitions (relating to coal exploration).* 30 CFR 701.5

The definition of "substantially disturb," in the context of coal exploration, is proposed to be modified to apply to significant impacts upon land, air or water resources. The current language refers to any impacts. The amended language is consistent with the Federal definition of "substantially disturb."

§ 86.133. *General requirements.* 30 CFR 772.11(a) and 772.12(a)

The limit for coal removal during coal exploration is proposed to be changed from less than 250 tons (226 metric tons) of coal to 250 tons (226 metric tons) or less as found in Federal regulations.

§ 86.134. *Coal exploration performance and design standards.* 30 CFR 815.15

Requirements for measuring environmental characteristics during coal exploration, specifying who has responsibility for revegetating lands disturbed during exploration activities and placing limitations on vehicular travel on land where coal exploration occurs are proposed to be deleted. These proposed deletions eliminate overly prescriptive requirements.

§ 86.174(b). *Standards for release of bonds.* 30 CFR 800.40(c)(2)

This subsection is proposed to be revised to clarify the standards for Stage 2 reclamation bond release. The current wording of this section has the potential for being misinterpreted relative to application of the standards for

successful revegetation associated with Stage 2 bond release. This proposed amendment applies a more general standard to be consistent with section 4(b)(2) of SMCRA and the corresponding Federal regulations.

§§ 87.1, 88.1 and 90.1. *Definitions.* 30 CFR 701.5

A category of "unmanaged natural habitat" is proposed to be added to the list of recognized land uses included in the definition of "land use." This category is equivalent to the Federal land use definition for "undeveloped land or no current use or land management." This change provides a land use category which allows permit applicants to more realistically identify lands which remain in a basically unmanaged natural state. The change will provide more flexibility in approving land use changes.

§§ 87.77(a), 88.56(a), 88.492(f)(1), 30 CFR 780.31(a)
89.38(b) and 90.40(a). *Protection of parks and historic places.* and 784.17(a)

The requirement for a permit application to contain a description of measures for preventing or minimizing adverse impacts to public parks or historic places is proposed to be changed to apply only to publicly owned parks. There are no changes made to the protections afforded historic places actually listed on the National Register of Historic Places. However, consistent with Federal regulations, the Department retains the authority to require the applicant to protect places eligible for listing on the National Register of Historic Places. These proposed amendments are made so as to be no more restrictive than the corresponding Federal regulations.

§§ 87.93, 88.83, 88.283 and 90.93. 30 CFR 816.13
Casing and sealing of drill holes. and 817.13

The wording within §§ 87.93(a)(2) and 88.83(a)(2) for protection of the hydrologic balance is proposed to be changed from "prevent to the maximum extent possible" to "minimize" disturbance to the prevailing hydrologic balance. These proposed changes are not intended to lessen the requirements under the CSL and SMCRA for prevention of pollution to streams and other waters of this Commonwealth. The proposed changes are made solely for purposes of having these sections conform with the current language in §§ 88.283 and 90.93 and the language of the corresponding Federal regulations.

The requirement in §§ 87.93(e), 88.83(e), 88.283(e) and 90.93(e) for having oil and gas well operators agree in writing to mining activities closer than 125 feet to a well is proposed to be deleted. The corresponding Federal regulations do not contain this requirement. Also, the reference in § 90.93(d) to the act regulating oil and gas well operations is proposed to be corrected.

§§ 87.97 and 90.97. *Topsoil removal.* 30 CFR 816.22
and 817.22

The provisions which allow for supplementing or substituting other materials for subsoil are proposed to be changed to apply to topsoil in keeping with the corresponding Federal regulations.

§ 87.101(a), 88.91(a), 88.291(a) 30 CFR 816.41(a)
and 90.101(a). *Hydrologic balance/ general requirements.* and 817.41(a)

The wording that calls for mining activities to be planned and conducted to protect the hydrologic balance is proposed to be amended. The phrase "prevent to the maximum extent possible" has been replaced with "minimize" as it concerns disturbances to the prevailing hydro-

logic balance within the permit area and adjacent area. Also, a requirement for preventing material damage outside the permit area is proposed to be added. These proposed amendments are made solely to conform with the language of the corresponding Federal regulations and are not intended to lessen the requirements under the CSL and SMCRA for prevention of pollution to streams and other waters of this Commonwealth.

§§ 87.102(a), 88.92(a), 88.187(a), 30 CFR 816.42
88.292(a), 89.52(c) and 90.102(a). and 817.42
Hydrologic balance/effluent standards. 40 CFR Part 434

The effluent limit for manganese is deleted for surface water runoff from storm events of less than or equal to a 10-year, 24-hour storm to be consistent with the corresponding Federal regulations.

§§ 87.106, 88.96, 88.191, 88.296 and 30 CFR 816.45
90.106. Hydrologic balance/sediment and 817.45
control measures.

The wording which provides for the design, construction and maintenance of sediment control measures is proposed to be changed from "prevent erosion to the maximum extent possible" to "minimize erosion to the extent possible," and from "prevent to the maximum extent possible" to "prevent to the extent possible" contributions of sediment to stream flow or runoff outside the affected area. These proposed changes are made solely to conform with the language of the corresponding Federal regulations and are not intended to lessen the requirements under the CSL and SMCRA for prevention of pollution to streams and other waters of this Commonwealth.

§ 87.126(a)(1). Use of explosives/ 30 CFR 816.64(b)(1)
public notice of blasting schedule.

The requirement for the blasting schedule to be published in a newspaper is proposed to be changed from not more than 20 days to not more than 30 days before beginning blasting. This proposed amendment is made so as to be no more restrictive than the corresponding Federal regulations.

§ 87.127. Use of explosives/ 30 CFR 816.67(c)
surface blasting requirements. and 817.67(c)

The standard for fly rock from blasting is proposed to be changed from no fly rock beyond the "line of property owned or leased by the permittee" to no fly rock beyond the "permit boundary." This change conforms with Federal requirements.

§§ 87.138, 89.65, 89.82 and 90.150. 30 CFR 816.97
Protection of fish, wildlife and and 817.97
related environmental values.

The language dealing with protection of fish, wildlife and related environmental values is proposed to be amended by replacing the word "prevent" disturbances and adverse impacts with the term "minimize to the extent possible" relative to disturbances and adverse impacts on these protected resources. Additional proposed wording changes provide for roads to be located and operated to "avoid or minimize" instead of "prevent" impacts on fish and wildlife, and to "avoid and enhance where practicable or restore" instead of "prevent" disturbances to habitats of unusually high value to fish and wildlife. The proposed new terminology is intended solely to track the language of the corresponding Federal regulations and is not expected to result in less protection of these resources.

§§ 87.144 and 88.118. Backfilling 30 CFR 816.102
and grading/final slopes. and 817.102

Performance standards for construction of terraces and for final grading are proposed to be deleted. These proposed deletions eliminate unnecessarily prescriptive requirements.

§§ 87.146 and 89.87. Regrading or 30 CFR 816.95
stabilizing rills and gullies. and 817.95

The requirement to fill, grade or otherwise stabilize rills and gullies deeper than 9 inches (23 centimeters) is more prescriptive than Federal requirements. The language of this section is proposed to be rewritten to require that any rill or gully which is disruptive to the postmining land use or causing or contributing to a violation of water quality standards be filled, regraded or otherwise stabilized.

§§ 87.159, 88.133, 88.221, 88.334 30 CFR 816.133
and 89.88. Postmining land use. and 817.133

The requirements to consider premining land management practices and historic use of the land when comparing premining to postmining land use, for obtaining a written notarized request from a landowner for an alternate land use, and to have plans for the postmining land use designed by a registered engineer are more stringent than the Federal regulations without a compelling State interest and, therefore, are proposed to be deleted.

§§ 87.160, 88.138(a), 88.231(a), 30 CFR 816.150(b)
88.335(a), 89.90(a) and 90.134(a). and 817.150(b)
Haul roads and access roads.

The phrase "prevent to the maximum extent possible" erosion and other pollution or damage is proposed to be replaced with the Federal language to "control or prevent" erosion or other pollution or damage. These proposed amendments are not intended to lessen the requirements under the CSL and SMCRA for prevention of pollution to streams and other waters of this Commonwealth.

§§ 87.166, 88.144, 88.237, 30 CFR 816.150(c)—(f)
88.341 and 90.140. Haul and 817.150(c)—(f)
road and access road/restoration.

The time period for meeting various haul road and access road restoration standards is proposed to be changed from "immediately" to "as soon as practicable" after the road is no longer needed for the mining activities. Also, the standard for restoration is proposed to be changed from "ripping, plowing and scarifying" the roadbed to "ripping or scarifying" the roadbed. These changes are proposed so that the language of this section would be no more stringent than the corresponding Federal regulations.

§§ 87.173(a), 89.67(a) and 90.147(a). 30 CFR 816.181
Support facilities and utility installations. and 817.181

These proposed amendments delete the phrase "designed, constructed, maintained and used to prevent to the extent possible" which pertains to damage to fish, wildlife and related environmental values. The proposed wording requires support facilities to be "located, maintained and used to minimize damage" to these resources. The proposed language is equivalent to the terminology in the corresponding Federal regulations.

§ 87.174. Steep slope operations. 30 CFR 816.107
and 817.107

The requirement prohibiting unlined or unprotected drainage channels on backfilled areas with steep slopes

unless approved by the Department is proposed to be deleted. This requirement is unnecessarily prescriptive and is not found in the Federal regulations dealing with steep slope operations.

§ 87.176. *Auger mining.*

30 CFR 819.15

Existing subsection (d), which prohibits auger mining to the rise of the coal unless the mine operator demonstrates the augering will not pose a threat of water pollution, is proposed to be deleted since it is redundant with the provisions of subsection (e). The proposed amendment eliminates a technology specific requirement and imposes the obligation to make certain demonstrations with respect to adverse water quality impacts, fill stability, resource recovery and subsidence on persons conducting surface mining activities.

§§ 87.209 and 88.509. *Criteria and schedule for bond release on pollution abatement areas.* No equivalent Federal regulation

These sections relate to bond release on areas with preexisting pollutional discharges when re-mining was authorized under Chapter 87, Subchapter F and Chapter 88, Subchapter G. The maximum bond amount which may be released for completing backfilling, regrading and drainage control on pollution abatement areas is changed from 50% to 60%. Also, the maximum of 35% of the bond amount which may be released for completing revegetation is replaced with a requirement that the Department retain an amount of bond sufficient to reestablish vegetation. The proposed bond release amounts are equivalent to the standard Stage 1 and Stage 2 bond releases. Other modifications deal with the time period for demonstrating that the required standards for pollution loads have been achieved. In addition, the requirement relating to the 5-year period of liability on the bond is clarified. These proposed amendments are made to reduce requirements which impose disproportionate economic costs, to provide clarification and to conform with the 1996 amendments (Act 43) to SMCRA.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Benefits

These amendments are proposed for purposes of making the regulations no more stringent than Federal requirements and to modify regulations imposing disproportionate economic costs, lacking clarity or being too prescriptive or technology specific. The coal mining industry, the Department and local governments will benefit from these proposed amendments.

The benefit to the regulated community will be a potential cost savings of approximately \$28,000 annually. The savings to the regulated community is based upon: (1) eliminating the requirement to monitor and test runoff water for manganese which amounts to an estimated annual savings of \$24,000 based upon an estimated 1,000 water discharges monitored 4 times a year at a cost of \$6 per sample (1,000 discharges x 4 samples x \$6 per sample = \$24,000); and (2) expanding the circumstances upon which a permit term may be extended which amounts to an estimated annual savings of \$4,000 based upon an estimated 2 permits per year at a cost of \$2,000 per permit application (2 permits x \$2,000 per permit application = \$4,000).

The benefit to the Department will be a potential cost savings of \$20,000 annually. The savings to State government results from a general reduction in permit review efforts because the extraction of coal as an incidental part of a State government financed road construction project or the extraction of coal under a government financed reclamation contract does not require a permit. The annual savings is based on an estimated 5 road projects and 5 reclamation contracts at a savings of \$2,000 per project or contract (10 projects and contracts x \$2,000 per project and contract = \$20,000).

The benefit to local government will be a potential cost savings of \$10,000 annually. The savings to local government results from not having to obtain a permit for the extraction of coal as an incidental part of local government financed road construction. The annual savings of \$10,000 is based upon an estimated 5 road projects per year at a savings of \$2,000 per project (5 projects x \$2,000 per project = \$10,000).

Compliance Costs

The proposed changes will impose no additional compliance costs on the regulated community.

Compliance Assistance Plan

The Department will provide written notification of the changes to the coal mining industry. If necessary or requested, regional meetings with the industry will be arranged.

G. *Sunset Review*

These final-form 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 they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 16, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor and the General Assembly before final publication of the regulations.

I. *Public Comments*

Written Comments—Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments received by facsimile will not be ac-

cepted. Comments, suggestions or objections must be received by the Board by July 2, 1997 (within 60 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by July 2, 1997 (within 60 days of publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us and must also be received by the Board by July 2, 1997. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

J. *Public Hearings*

The Board will hold two public hearings for the purpose of accepting comments on this proposal. They will be held as follows:

June 10, 1997—1 p.m.—
Department of Environmental Protection
Greensburg District Office
Armbrust Professional Center, Building C
Route 819 South
Greensburg, PA

June 12, 1997—10 a.m.—
Department of Environmental Protection
Pottsville District Office
5 West Laurel Boulevard
Pottsville, PA

Persons wishing to present testimony at a hearing are requested to contact Nancy Roush at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Nancy Roush directly at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TTD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-307. (1) Surface Mining Conservation and Reclamation Fund; (2) Implementing Year 1997-98 is \$3,000; (3) 1st Succeeding Year 1998-99 is \$3,000; 2nd Succeeding Year 1999-00 is \$3,000; 3rd Succeeding Year 2000-01 is \$3,000; 4th Succeeding Year 2001-02 is \$3,000; 5th Succeeding Year 2002-03 is \$3,000; (4) Fiscal Year 1996-97 \$34,165,000; Fiscal Year 1995-96 \$29,758,000; Fiscal Year 1994-95 \$31,383,000; (7) Licenses and Fees; (8) recommends adoption.

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 MINING OF COAL: GENERAL

Subchapter A. GENERAL PROVISIONS

§ 86.2. Scope.

(a) This chapter specifies certain general procedures and rules for those persons who engage in coal mining activities. This chapter [,] together with Chapters 87—90 [specify] specifies the procedures and rules for those who engage in coal mining activities.

(b) This chapter together with Chapters 87—90 applies to all coal mining activities, with the following exceptions:

(1) Extraction of coal or coal refuse removal under a government-financed reclamation contract for the purposes of section 4.8 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4h).

(2) Extraction of coal his an incidental part of Federal, State or local government financed highway construction project.

(3) The reclamation of abandoned mine lands not involving extraction of coal or excess spoil disposal under a written agreement with the property owner and approved by the Department.

(4) Activities exempted from regulation as surface mining by the United States Office of Surface Mining Reclamation and Enforcement at 30 CFR 707 (relating to exemption for coal extraction limited to government financed highway or other construction).

Subchapter B. PERMITS REVIEW, PUBLIC PARTICIPATION AND APPROVAL, DISAPPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

§ 86.37. Criteria for permit approval or denial.

(a) A permit or revised permit application will not be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of the information in the application or from information otherwise available, which is documented in the approval, and made available to the applicant, that the following exist:

* * * * *

(4) The assessment of the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance as described in § 87.69, § 88.49, § 89.36 or § 90.35 has been made by the Department, and the activities proposed under the application have been designed to prevent material damage to the hydrologic balance [within and] outside the proposed permit area.

* * * * *

(6) The effect of the proposed coal mining activities on properties listed on or eligible for listing on the National

Register of Historic Places has been taken into account by the Department. The proposed activities will not adversely affect any publicly owned parks or places included on [or eligible for inclusion on] the National Register of Historic Places, except as provided for in Subchapter D. This finding may be supported in part by inclusion of appropriate permit conditions or operational plan changes to protect historic resources, or a documented decision that no additional protective measures are necessary.

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§ 86.40. Permit terms.

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(b) A permit shall terminate if the permittee has not begun the coal mining activities covered by the permit within 3 years of the issuance of the permit. However, the Department may grant reasonable extensions of time for commencement of these activities upon receipt of a written statement showing that the extensions of time are necessary if litigation precludes the commencement or threatens substantial economic loss to the permittee or if there are conditions beyond the control and without the fault or negligence of the permittee. Requests for extensions shall be submitted to the Department prior to expiration of the permit.

* * * * *

MINIMUM REQUIREMENTS FOR LEGAL FINANCIAL COMPLIANCE AND RELATED INFORMATION

§ 86.64. Right of entry.

(a) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and commence coal mining activities within the permit area and whether that right is the subject of pending court litigation. The description shall identify the documents by type and date of execution, identify the specific lands to which the document pertains and explain the legal rights claimed by the applicant.

[(b) The application for a permit shall provide one of the following for lands within the permit area:

(1) A copy of the written consent of the current surface owner to the extraction of coal by surface mining methods.

(2) A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods and an abstract of title relating the documents to the current surface land owner.]

(b) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit one of the following:

(1) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods.

(2) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods.

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under Pennsylvania law, the applicant has the legal authority to extract the coal by those methods.

(c) This section will not be construed to provide the Department with the authority to adjudicate property rights disputes.

[(c)] (d) ***

* * * * *

(3) The requirements of this subsection are in addition to the information required by subsections (a) and (b).

[(d)] (e) ***

(e) (f) The information required in [subsections (a) and (b)] this section shall be made part of the permit application prior to approval of the bond under Subchapter F (relating to bonding and insurance requirements).

§ 86.70. Proof of publication.

An application shall contain [a statement from the newspaper] an intent to publish and a copy of the language to appear in the public notice demonstrating that the advertisement requirement of § 86.31(a) (relating to public notices of filing of permit applications) is in the process of being satisfied, and prior to the issuance of the permit, but no later than 4 weeks after the last date of advertisement, the applicant shall submit a copy of [advertisement] the advertisements as required by § 86.31(a) [and] or the original notarized proof of publication to the Department.

Subchapter E. COAL EXPLORATION

§ 86.132. Definitions.

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

* * * * *

Substantially disturb—For purposes of coal exploration, including, but not limited to, to have [an] a significant impact upon land, air or water resources by activities such as blasting, mechanical excavation or altering coal or water exploratory holes or wells, construction of roads and other access routes, removal of topsoil or overburden and the placement of structures, excavated earth or other debris on the surface of land.

§ 86.133. General requirements.

* * * * *

(e) A person who intends to conduct coal exploration in which coal will be removed shall, prior to conducting the exploration, obtain a permit under this chapter. Prior to removal of coal, the Department may waive the requirements for the permit to enable the testing and analysis of coal properties, if [less than] 250 tons (226 metric tons) or less is removed. The removal of more than 250 tons [or more] (226 metric tons) of coal during coal exploration requires a permit under this chapter.

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§ 86.134. Coal exploration performance and design standards.

The following performance standards are applicable to coal exploration which substantially disturbs the land surface:

* * * * *

* * * * *

[(2) The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations to minimize environmental damage to the area and to provide supportive information for a permit application that person may submit under this chapter.

Land use—Specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department. Land use may be defined as:

* * * * *

(3) [(2) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration.] Roads used for coal exploration shall comply with the following:

(x) Unmanaged natural habitat. Idle land which does not require a specific management plan after the reclamation and revegetation have been accomplished.

* * * * *

[(4)] (3) ***

Subchapter D. SURFACE COAL MINES: MINIMUM REQUIREMENTS FOR OPERATION AND RECLAMATION PLAN

[(5)] (4) ***

§ 87.77. Protection of [public] publicly owned parks and historic places.

[(6)] (5) [Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration, or the person's agent] All areas disturbed by coal exploration activities shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective and permanent vegetative cover.

(a) For [public parks or historic places] publicly owned parks or historic places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each application shall describe the measures to be used to accomplish the following:

* * * * *

[(7)] (6) ***

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

[(8)] (7) ***

[(9)] (8) ***

§ 87.93. Casing and sealing of drilled holes.

* * * * *

* * * * *

(a) Each exploration hole, other drill or borehole, well or other exposed underground opening (except for holes solely drilled and used for blasting) shall be cased, sealed or otherwise managed as approved by the Department in order to:

* * * * *

[(10)] (9) ***

[(11)] (10) ***

[(12)] (11) ***

Subchapter F. BONDING AND INSURANCE REQUIREMENTS

RELEASE OF BONDS

§ 86.174. Standards for release of bonds.

* * * * *

(2) [Prevent to the maximum extent possible] Minimize disturbance to the prevailing hydrologic balance.

* * * * *

(b) When the entire permit area or a portion of the permit area meets the following standards, Stage 2 reclamation has been achieved:

(1) Topsoil has been replaced and revegetation has been successfully established in accordance with the approved reclamation plan [and the standards for the success of revegetation are met].

(2) The reclaimed lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of [their] the requirements of the acts, regulations thereunder or the permit.

* * * * *

(e) A solid barrier of undisturbed earth, 125 feet (38 meters) in radius shall be maintained around all oil and gas wells, except in the case of one of the following:

* * * * *

(2) The Department approves, in writing, a lesser distance, provided:

* * * * *

[(iii) The well operator agrees, in writing, to the lesser distance.]

§ 87.97. Topsoil: removal.

* * * * *

CHAPTER 87. SURFACE MINING OF COAL

Subchapter A. GENERAL PROVISIONS

§ 87.1. Definitions.

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

(c) If topsoil is less than 12 inches (30.48 centimeters), a 12-inch (30.48 centimeters) layer which includes the topsoil and the unconsolidated materials immediately below the topsoil shall be removed, segregated, conserved and replaced as the final surface soil layer. If the topsoil and the unconsolidated material measure less

than 12 inches (**30.48 centimeters**), the topsoil and all unconsolidated material shall be removed, segregated, conserved and replaced as the final surface soil layer.

* * * * *

(f) When approved by the Department in writing, other materials may be substituted for or used as a supplement to **[subsoil] topsoil** if the operator demonstrates that the resulting soil medium is equal to or more suitable than **[subsoil] topsoil** for sustaining vegetation and soil productivity. In making this demonstration, the Department may require chemical and physical analyses of the substituted material and **[subsoil] topsoil**. These analyses may include determinations of pH, net acidity or alkalinity, phosphorus, potassium, texture class, field site trials or greenhouse tests, or other analyses as required by the Department.

§ 87.101. Hydrologic balance: general requirements.

(a) Surface mining activities shall be planned and conducted to **[prevent, to the maximum extent possible, the] minimize** disturbances to the prevailing hydrologic balance in the permit and adjacent areas **and to prevent material damage to the hydrologic balance outside the permit area.**

* * * * *

§ 87.102. Hydrologic balance: effluent standards.

(a) *Discharge of water.* A person may not allow a discharge of water from an area disturbed by coal mining activities, including areas disturbed by mineral preparation, processing or handling facilities which exceeds the following groups of effluent criteria. The effluent limitations shall be applied under subsection (b).

<i>Parameter</i>	Group A		
	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
suspended solids	35 mg/l	70 mg/l	90 mg/l
pH ¹		greater than 6.0; less than 9.0	
alkalinity greater than acidity ¹			

¹ This parameter is applicable at all times

<i>Parameter</i>	<i>Instantaneous Maximum</i>
iron (total)	7.0 mg/l
[manganese (total)]	[5.0 mg/l]
settleable solids	0.5 ml/l
pH	greater than 6.0; less than 9.0
alkalinity greater than acidity	

<i>Parameter</i>	<i>Instantaneous Maximum</i>
pH	greater than 6.0; less than 9.0
alkalinity greater than acidity	

* * * * *

§ 87.106. Hydrologic balance: sediment control measures.

Appropriate sediment control measures shall be designed, constructed and maintained using the best technology currently available to:

(1) Prevent to the **[maximum]** extent possible contributions of sediment to streamflow or to runoff outside the affected area.

* * * * *

(3) **[Prevent] Minimize** erosion to the **[maximum]** extent possible.

* * * * *

§ 87.126. Use of explosives: public notice of blasting schedule.

(a) *Blasting schedule publication.*

(1) Each person who conducts surface mining activities shall publish a blasting schedule in a newspaper of

general circulation in the locality of the proposed site, at least 10 days, but not more than **[20] 30** days, before beginning a blasting program in which blasts that use more than 5 pounds of explosives or blasting agents are detonated.

* * * * *

§ 87.127. Use of explosives: surface blasting requirements.

* * * * *

(f) Requirements for blasting are as follows:

* * * * *

(5) Flyrock, including blasted material traveling along the ground, may not be cast from the blasting vicinity more than one-half the distance to the nearest dwelling or other occupied structure and in no case beyond the **[line of property owned or leased by the permit-**

tee] permit boundary, or beyond the area or regulated access required under subsection (d).

* * * * *

§ 87.138. Protection of fish, wildlife and related environmental values.

(a) A person conducting surface mining activities shall, to the extent possible using the best technology currently available:

(1) [Prevent] Minimize disturbances and adverse impacts of the activities on fish, wildlife and related environmental values, and achieve enhancement of the resources when practicable.

(2) Locate and operate haul and access roads to [prevent] avoid or minimize impacts to fish and wildlife species or other species protected by State or Federal law.

(3) [Prevent] Avoid disturbance to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

* * * * *

(b) A person who conducts surface mining activities shall promptly report to the Department the presence in the permit area of threatened or endangered species under State or Federal laws of which that person becomes aware and which was not previously reported to the Department by that person. Upon notification, the Department will consult with the Game Commission or the Fish and Boat Commission and appropriate Federal fish and wildlife agencies and, after consultation, will identify whether, and under what conditions, the operator may proceed.

* * * * *

§ 87.144. Backfilling and grading: final slopes.

* * * * *

(c) On approval by the Department in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut and fill terraces may be allowed if the terraces are compatible with the approved postmining land use and are substitutes for construction of lower grades on the reclaimed lands. [The terraces shall meet the following requirements:

(1) The width of the individual terrace bench shall not be less than 20 feet.

(2) The vertical distance between terraces shall be as approved by the Department to prevent excessive erosion and to provide long-term stability.

(3) The slope of the terrace outslope may not exceed 1v:2h—50%. Outslopes which exceed 1v:2h—50% may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(4) Culverts and underground rock drains may be used on the terrace only when approved by the Department.]

* * * * *

(f) All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil shall be [done along the contour to minimize subsequent erosion and instability. If the grading, preparation,

or placement along the contour is hazardous to equipment operators, then grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases grading, preparation or placement shall be] conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

§ 87.146. Regrading or stabilizing rills and gullies.

[When a rill or gully deeper than 9 inches forms in areas that have been regraded and planted, the rill and gully shall be filled, graded or otherwise stabilized and the area reseeded or replanted under §§ 87.147—87.153, 87.155 and 87.156. The Department will specify that a rill or gully of lesser size be stabilized and the area reseeded or replanted if the rill or gully is disruptive to the approved postmining land use or may result in additional erosion and sedimentation. The regrading or stabilization of a rill or gully to include the reseeded or replanting shall be completed by the first normal period for favorable planting as established within § 87.148 (relating to revegetation: timing), except a rill or gully contributing to impacts outside the permit area or a rill or gully occurring after removal of erosion and sedimentation control structures which shall be stabilized immediately.]

(a) Exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies, which form in areas that have been regraded and topsoiled and which do one of the following shall be filled, regraded or otherwise stabilized:

(1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover.

(2) Cause or contribute to a violation of water quality standards for receiving streams.

(c) For the areas listed in subsection (b), the topsoil shall be replaced and the areas shall be reseeded or replanted.

§ 87.159. Postmining land use.

* * * * *

(b) The premining use of land to which the postmining land use is compared shall be determined by the following:

* * * * *

[(3) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(4) The postmining land use of land which was changed within 5 years of the beginning of mining shall be judged on the basis of the historic use of the land as well as its use immediately preceding mining.]

(c) Alternative land uses may be approved by the Department after consultation with the landowner or the land management agency having jurisdiction over the

lands and after determining that the following criteria are met:

* * * * *

(2) [The owner of the surface requests in a notarized written statement that such alternative land use be approved.] The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by one or more of the following or other similar criteria:

- [(3)] (i) ***
- [(4)] (ii) ***
- [(5)] (iii) ***

[(6) Plans for the postmining land use are designed and certified by a registered professional engineer in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site.]

- [(7)] (3) ***
- [(8)] (4) ***
- [(9)] (5) ***

§ 87.160. Haul roads and access roads.

(a) Haul roads and access roads shall be designed, constructed and maintained to [prevent, to the maximum extent possible,] control or prevent erosion and [to prevent] contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; and flooding and damage to public or private property. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, in accordance with current, prudent engineering practices and necessary design criteria established by the Department. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 87.166 (relating to haul roads and access roads: restoration) unless retention of the road and its maintenance plan is approved as part of the postmining land use.

* * * * *

§ 87.166. Haul roads and access roads: restoration.

Unless the Department approves retention of a road as suitable for the approved postmining land use in accordance with § 87.159 (relating to postmining land use), [immediately] as soon as practicable after the road is no longer needed for the associated surface mining activities:

* * * * *

(4) Roadbeds shall be ripped [, plowed and] or scarified.

* * * * *

§ 87.173. Support facilities and utility installations.

(a) Support facilities required for, or used incidentally to, the operation of the mine, including, but not limited to, mine buildings, coal loading facilities at or near the

mine-site, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops and other buildings shall be [designed, constructed or reconstructed and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained and used in a manner which prevents, to the maximum extent possible using the best technology currently available:

(1) Damage to fish, wildlife and related environmental values.

(2) Erosion and additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions may not be in excess of limitations of State or Federal law.] located, maintained and used in a manner that does the following:

- (1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property.
- (2) To the extent possible using the best technology currently available:

(i) Minimizes damage to fish, wildlife and related environmental values.

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. These contributions may not be in excess of limitations of State or Federal law.

* * * * *

§ 87.174. Steep slope operations.

* * * * *

[(g) Unlined or unprotected drainage channels may not be constructed on the backfilled areas unless approved by the Department as stable and not subject to erosion.]

§ 87.176. Auger mining.

* * * * *

[(d) Auger mining operations may not be conducted to the rise of the coal unless the person who conducts mining activities demonstrates to the satisfaction of the Department that drainage from the auger hole will not pose a threat of pollution to surface waters and will comply with § 87.102 (relating to hydrologic balance: effluent standards).]

[(e)] (d) The Department will prohibit auger mining [if it determines that one of] unless the person conducting the surface mining activities demonstrates, the following [applies]:

- (1) Adverse water quality impacts [cannot] can be prevented or corrected.
- (2) Fill stability [cannot] can be achieved.
- (3) The [prohibition] auger mining is necessary to maximize the utilization, recoverability or conservation of the solid fuel resources.

(4) Subsidence resulting from auger mining [may] will not disturb or damage powerlines, pipelines, build-ings or other facilities.

Subchapter F. SURFACE COAL MINES: MINIMUM REQUIREMENTS FOR REMINING AREAS WITH POLLUTIONAL DISCHARGES

§ 87.209. Criteria and schedule for release of bonds on pollution abatement areas.

(a) The Department will release up to [50] 60% of the amount of bond for the authorized pollution abatement area if the applicant demonstrates and the Department finds that:

* * * * *

(4) The operator has not caused degradation of the baseline pollution load [for] at any time during a period of [a minimum of] 6 months prior to the submittal of the request for bond release under this subsection and until the bond release is approved as shown by all ground and surface water monitoring conducted by the permittee under § 87.206(1) (relating to operational requirements) or conducted by the Department.

* * * * *

(b) The Department will release an additional amount [not to exceed 35% of the amount of bond for the authorized pollution abatement area if the applicant demonstrates and the Department finds that] of bond for the authorized pollution abatement area but retain an amount sufficient to cover the cost to the Department of reestablishing vegetation if completed by a third party if the operator demonstrates and the Department finds that:

* * * * *

(3) The operator has complied with one [either] of the following:

* * * * *

(ii) Achieved the following:

(A) At a minimum has not caused degradation of the baseline pollution load as shown by ground and surface water monitoring conducted by the operator or the Department for one of the following:

(I) For a period of 12 months [from the date of initial bond release under subsection (a),] prior to the date of application for bond release and until the bond release is approved under subsection (b), if backfilling, final grading, drainage control, topsoiling, and establishment of revegetation to achieve the standard of success for revegetation [set forth] in § 87.205(a)(5) have been completed.

* * * * *

(c) The Department will release the remaining portion of the amount of bond on the authorized pollution abatement area if the applicant demonstrates and the Department finds that:

* * * * *

(4) The applicable liability period[, which shall be measured from the date of release of bond under subsection (b),] has expired under § 86.151 (relating to period of liability).

**CHAPTER 88. ANTHRACITE COAL
Subchapter A. GENERAL PROVISIONS
PRELIMINARY PROVISIONS**

§ 88.1. Definitions.

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

* * * * *

Land use—Specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. A change of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department. The term is further defined as:

* * * * *

(x) *Unmanaged natural habitat.* Idle land which does not require a specific management plan after the reclamation and revegetation have been accomplished.

* * * * *

§ 88.56. Protection of [public] publicly owned parks and historic places.

(a) For [public parks or historic places] publicly owned parks or historic places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each application shall describe the measures to be used to accomplish the following:

* * * * *

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

§ 88.83. Sealing of drilled holes: general requirements.

(a) An exploration hole, other drill or borehole, well or other exposed opening (except for holes solely drilled and used for blasting), shall be sealed, backfilled or otherwise managed, as approved by the Department, in order to do the following:

* * * * *

(2) [Prevent to the maximum extent possible] minimize disturbance to the prevailing hydrologic balance.

* * * * *

(e) A solid barrier or undisturbed earth, 125 feet (38 meters) in radius shall be maintained around all oil and gas wells, unless:

* * * * *

(2) The Department approves in writing a lesser distance provided:

* * * * *

[(iii) The well operator agrees in writing to the lesser distance.]

§ 88.91. Hydrologic balance: general requirements.

(a) Surface mining activities shall be planned and conducted to [prevent, to the maximum extent possible,] minimize disturbances to the prevailing hydro-

logic balance in [both] the permit and adjacent areas and to prevent material damage to the hydrologic balance outside the permit area. Where the area has been previously mined, the surface mining activity shall be planned and conducted to maximize the abatement of water pollution and the reclamation of the land.

* * * * *

§ 88.92. Hydrologic balance: effluent standards.

(a) Groups of effluent criteria. A person may not allow a discharge of water from an area disturbed by mining activities which exceeds the following groups of effluent criteria. The effluent limitations shall be applied under subsection (b).

Parameter	Group A		
	30-day Average	Daily Maximum	Instantaneous Maximum
iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
suspended solids	35 mg/l	70 mg/l	90 mg/l
pH ¹	greater than 6.0; less than 9.0		
alkalinity greater than acidity ¹			

¹ The parameter is applicable at all times.

Group B

Parameter	Instantaneous Maximum
iron (total)	7.0 mg/l
[manganese (total)]	[5.0 mg/l]
settleable solids	0.5 ml/l
pH	greater than 6.0; less than 9.0
alkalinity greater than acidity	

Group C

Parameter	Instantaneous Maximum
pH	greater than 6.0; less than 9.0
alkalinity greater than acidity	

* * * * *

§ 88.96. Hydrologic balance: sediment control measures.

Appropriate sediment control measures shall be designed, constructed and maintained to:

(1) Prevent, to the [maximum] extent possible, contributions of sediment to streamflow or to runoff outside the affected area.

* * * * *

(3) [Prevent] Minimize erosion to the [maximum] extent possible.

* * * * *

§ 88.118. Backfilling and grading: final slopes.

* * * * *

(c) Cut and fill terraces may be allowed on approval by the Department in order to conserve soil moisture, ensure stability and control erosion on final graded slopes, if the terraces are compatible with the approved postmining land use and are substitutes for construction of lower grades on the reclaimed lands. [The terraces shall meet the following requirements:

(1) The vertical distance between terraces shall be as approved by the Department to prevent excessive erosion and to provide long-term stability.

(2) The slope of the terrace outslope may not exceed 1v:2h—50%. Outslopes which exceed 1v:2h—

50% may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of a terrace face.

(3) Culverts and underground rock drains may be used on the terrace only when approved by the Department.]

* * * * *

(f) All final grading, preparation [or] of overburden before replacement of soil or suitable vegetation support material shall be [done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour is hazardous to equipment operators, the grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation or placement shall be] conducted in a manner which minimizes erosion and provides a surface for replacement of soil which will minimize slippage.

§ 88.133. Postmining land use.

(a) All affected areas shall be restored in a timely manner to conditions that are capable of supporting the uses which they were capable of supporting before min-

ing, or to higher or better uses achievable under criteria and procedures of this section and prior to the release of land from the permit area in accordance with Chapter 86 [Subchapter E (relating to coal exploration)], Subchapter F (relating to bonding and insurance requirements).

(b) The premining use of land to which the postmining land use is compared shall be determined by the following:

* * * * *

[(3) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.]

[(4) The postmining land use of land which was changed within 5 years of the beginning of mining shall be judged on the basis of the historic use of the land as well as its use immediately preceding mining.]

(c) Alternative land uses will be approved by the Department after consultation with the landowner or the land management agency having jurisdiction over the lands and after determining that the following criteria are met:

* * * * *

[(2) [The owner of the surface requests in a notarized written statement that such alternative land use be approved.] The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by one or more of the following or other similar criteria:

[(3) (i) ***

[(4) (ii) ***

[(5) Plans for the postmining land use are designed and certified by a registered professional engineer, in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site.]

[(6) (3) ***

[(7) (4) ***

[(8) (5) ***

§ 88.138. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to **[prevent to the maximum extent possible] control or prevent** erosion and **[to prevent]** contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; flooding and damage to public or private property. Upon completion of the associated surface mining activities the area disturbed by the road shall be restored in accordance with § 88.144 (relating to haul roads and access roads: restoration) unless retention of the road and its maintenance plan is approved as part of the postmining land use.

* * * * *

§ 88.144. Haul roads and access roads: restoration.

Unless the Department approves retention of a road as suitable for the approved postmining land use in accordance with § 88.133 (relating to postmining land use), **[immediately] as soon as practicable** after the road is no longer needed for the associated surface mining activities:

* * * * *

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

§ 88.187. Hydrologic balance: effluent standards.

(a) *Groups of effluent criteria.* A person may not allow a discharge of water from an area disturbed by mining activities which exceeds the following groups of effluent criteria. The effluent limitations shall be applied under subsection (b).

Group A

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
suspended solids	35 mg/l	70 mg/l	90 mg/l
pH ¹		greater than 6.0; less than 9.0	
alkalinity greater than acidity ¹			

¹ The parameter is applicable at all times.

Group B

<i>Parameter</i>	<i>Instantaneous Maximum</i>
iron (total)	7.0 mg/l
[manganese (total)]	[5.0 mg/l]
settleable solids	0.5 ml/l
pH	greater than 6.0; less than 9.0
alkalinity greater than acidity	

Group C

Parameter

Instantaneous Maximum

pH
alkalinity greater than acidity

greater than 6.0; less than 9.0

* * * * *

§ 88.191. Hydrologic balance: sediment control measures.

Appropriate sediment control measures shall be designed, constructed and maintained to:

(1) Prevent, to the [maximum] extent possible, contributions of sediment to streamflow or to runoff outside the permit.

* * * * *

(3) [Prevent] Minimize erosion to the [maximum] extent possible.

* * * * *

§ 88.221. Postmining land use.

* * * * *

(b) The premining use of land to which the postmining land use is compared shall be determined by the following:

* * * * *

[(3) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(4) The postmining land use of land which was changed within 5 years of the beginning of mining shall be judged on the basis of the historic use of the land as well as its use immediately preceding mining.]

(c) Alternative land uses shall be approved by the Department after consultation with the landowner or the land management agency having jurisdiction over the lands and after determining that the following criteria are met:

* * * * *

(2) [The owner of the surface requests in a notarized written statement that alternative land use be approved.] The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by one or more of the following or other similar criteria:

[(3)] (i) ***

[(4)] (ii) ***

[(5) Plans for the postmining land use are designed and certified by a registered professional engineer, in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site, appropriate professional, who shall ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover and esthetic design appropriate for the postmining use of the site.

(6)] (3) ***

[(7)] (4) ***

[(8)] (5) ***

§ 88.231. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to [prevent to the maximum extent possible] control or prevent erosion and [to prevent] contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; flooding and damage to public or private property. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 88.237 (relating to haul roads and access roads: restoration) unless retention of the road and its maintenance plan is approved as part of the postmining land use.

* * * * *

§ 88.237. Haul roads and access roads: restoration.

Unless the Department approves retention of a road as suitable for the approved postmining land use in accordance with § 88.221 (relating to postmining land use), [immediately] as soon as practicable after the road is no longer needed for the associated surface mining activities:

* * * * *

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

§ 88.283. Sealing of drilled holes: general requirements.

* * * * *

(e) A solid barrier of undisturbed earth, 125 feet (38 meters) in radius shall be maintained around all oil and gas wells, unless one of the following exists:

* * * * *

(2) The Department approves, in writing, a lesser distance, provided that:

* * * * *

[(iii) The well operator agrees to such lesser distance.]

* * * * *

§ 88.291. Hydrologic balance: general requirements.

(a) Coal refuse disposal activities shall be planned and conducted to [prevent, to the maximum extent possible,] minimize disturbances to the prevailing hydrologic balance in [both] the permit and adjacent areas and to prevent material damage to the hydrologic balance outside the permit area.

* * * * *

§ 88.292. Hydrologic balance: effluent standards.

(a) *Groups of effluent criteria.* A person may not allow a discharge of water from an area disturbed by mining activities which exceeds the following groups of effluent criteria. The effluent limitations shall be applied under subsection (b).

<i>Parameter</i>	Group A		
	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
suspended solids	35 mg/l	70 mg/l	90 mg/l
pH ¹		greater than 6.0; less than 9.0	
alkalinity greater than acidity ¹		greater than 6.0; less than 9.0	

¹ This parameter is applicable at all times.

<i>Parameter</i>	Group B
	<i>Instantaneous Maximum</i>
iron (total)	7.0 mg/l
[manganese (total)]	[5.0 mg/l]
settleable solids	0.5 ml/l
pH	greater than 6.0; less than 9.0
alkalinity greater than acidity	greater than 6.0; less than 9.0

<i>Parameter</i>	Group C
	<i>Instantaneous Maximum</i>
pH	greater than 6.0; less than 9.0
alkalinity greater than acidity	greater than 6.0; less than 9.0

* * * * *

§ 88.296. Hydrologic balance: sediment control measures.

Appropriate sediment control measures shall be designed, constructed and maintained to:

(1) Prevent, to the **[maximum]** extent possible, additional contributions of sediment to streamflow or to runoff outside the affected area.

* * * * *

§ 88.334. Postdisposal land use.

(a) All affected areas shall be restored in a timely manner to conditions that are capable of supporting the uses which they were capable of supporting before refuse disposal, or to higher or better uses achievable under criteria and procedures of this section and prior to the release of land from the permit area in accordance with **[this section (Bonds)] Chapter 86, Subchapter F (relating to bonding and insurance requirements.)**

(b) The predisposal use of land to which the postdisposal land use is compared shall be determined by the following:

* * * * *

[(3) The postdisposal land use for land that has received improper management shall be judged on the basis of the predisposal use of surrounding lands that have received proper management.

(4) The postdisposal land use of land which was changed within 5 years of the beginning of mining shall be judged on the basis of the historic use of the land as well as its use immediately preceding mining.]

(c) Alternative land uses shall be approved by the Department after consultation with the landowner or the

land management agency having jurisdiction over the lands and after determining that the following criteria are met:

(1) The proposed postdisposal land use is compatible with adjacent land use and applicable land use policies, plans and programs and Federal, State and local law. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans is submitted to the Department before refuse disposal activities begin. Any required approval, including any necessary zoning or other changes required for land use by local, State or Federal land management agencies, shall be obtained and remains valid throughout the **[surface mining] coal refuse disposal** activities.

(2) **[The owner of the surface shall request in a notarized written statement that such alternative land use be approved.] The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by one or more of the following or other similar criteria:**

[(3)] (i) Provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the person who conducts refuse disposal activities, as appropriate, to provide the public facilities in a manner compatible with the plans submitted under Subchapter A (relating to general provisions). The letters shall be submitted to the Department before **[surface mining] coal refuse disposal** activities begin.

[(4)] (ii) ***

[(5) Plans for the postdisposal land use are designed and certified by a registered professional engineer, in conformance with professional stan-

dards established to assure the stability, drainage and configuration necessary for the intended use of the site.

(6) (3) ***

[(7) (4) ***

[(8) (5) ***

§ 88.335. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to [prevent, to the maximum extent possible] control or prevent erosion and [to prevent] contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; and flooding and damage to public or private property. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 88.341 (relating to haul roads and access roads: restoration) unless retention of the road and its maintenance plan is approved as part of the postmining land use.

* * * * *

§ 88.341. Haul roads and access roads: restoration.

Unless the Department approves retention of a road as suitable for the approved postmining land use in accordance with § 88.334 (relating to postdisposal land use), [immediately] as soon as practicable after the road is no longer needed for the associated surface mining activities:

* * * * *

Subchapter F. ANTHRACITE UNDERGROUND MINES

§ 88.492. Minimum requirements for reclamation and operation plan.

* * * * *

(f) Protection of [public] publicly owned parks and historic places.

(1) For [a public park or historic place] publicly owned parks or historic places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each application shall describe the measures to be used to accomplish the following:

* * * * *

Subchapter G. ANTHRACITE SURFACE MINING ACTIVITIES AND ANTHRACITE BANK REMOVAL AND RECLAMATION ACTIVITIES: MINIMUM REQUIREMENTS FOR REMINING AREAS WITH POLLUTIONAL DISCHARGES

§ 88.509. Criteria and schedule for release of bonds on pollution abatement areas.

(a) The Department will release up to [50] 60% of the amount of bond for the authorized pollution abatement area if the applicant demonstrates and the Department finds that:

* * * * *

(4) The operator has not caused degradation of the baseline pollution load [for a minimum] at any time

during a period of 6 months prior to the submittal of the request for bond release under this subsection and until the bond release is approved as shown by all ground and surface water monitoring conducted by the permittee under § 88.506(1) (relating to operational requirements) or conducted by the Department.

* * * * *

(b) The Department will release an additional amount [not to exceed 35% of the amount of the bond for the authorized pollution abatement area if the applicant demonstrates and the Department finds that:] of bond for the authorized pollution abatement area but retaining an amount sufficient to cover the cost to the Department of reestablishing vegetation if completed by a third party if the operator demonstrates and the Department finds that:

* * * * *

(3) The operator has complied with [either] one of the following:

* * * * *

(ii) Achieved all of the following:

(A) At a minimum has not caused degradation of the baseline pollution load as shown by all ground and surface water monitoring conducted by the operator or the Department:

(I) For 12 months [from the date of initial bond release under subsection (a)] prior to the date of application for bond release and until the bond release is approved under subsection (b), if backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard of success for revegetation [set forth] in § 88.505(a)(5) have been completed[; or]

* * * * *

(c) The Department will release the remaining portion of the amount of bond on the authorized pollution abatement area if the applicant demonstrates and the Department finds that:

* * * * *

(4) The applicable liability period[, which shall be measured from the date of release of bond under subsection (b),] has expired under § 86.151 (relating to period of liability).

CHAPTER 89. UNDERGROUND MINING OF COAL AND COAL PREPARATION FACILITIES

Subchapter B. OPERATIONS INFORMATION REQUIREMENTS

§ 89.38. Archaeological and historical resources [and], public parks and publicly owned parks.

* * * * *

(b) For [a public park or historic place] publicly owned parks or historic places listed on the National Register of Historic Places that may be adversely affected by the proposed underground mining activities, the plan shall describe the measures to be used to accomplish one of the following:

* * * * *

PERFORMANCE STANDARDS

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

* * * * *

(c) *Effluent limitations.* A person may not allow a discharge of water from an area disturbed by underground mining activities, including areas disturbed by mineral preparation, processing or handling facilities which exceeds the following groups of effluent standards. The effluent limitations shall be applied under subsection (d).

Group A

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
suspended solids	35 mg/l	70 mg/l	90 mg/l
pH ¹		greater than 6.0; less than 9.0	
alkalinity greater than acidity ¹		greater than 6.0; less than 9.0	

¹ The parameter is applicable at all times.

Group B

<i>Parameter</i>	<i>Instantaneous Maximum</i>
iron (total)	7.0 mg/l
[manganese (total)]	[5.0 mg/l]
settleable solids	0.5 ml/l
pH	greater than 6.0; less than 9.0
alkalinity greater than acidity	greater than 6.0; less than 9.0

Group C

<i>Parameter</i>	<i>Instantaneous Maximum</i>
pH	greater than 6.0; less than 9.0
alkalinity greater than acidity	greater than 6.0; less than 9.0

* * * * *

§ 89.65. Protection of fish, wildlife and related environmental values.

(a) The operator shall **to the extent possible**, using the best technology currently available, **[prevent] minimize** disturbances and adverse impacts of the activities on fish, wildlife and related environmental values, and achieve enhancement of the resources when practicable.

* * * * *

(d) The operator shall **to the extent possible**, using the best technology currently available:

(1) Locate and operate haul and access roads to **[prevent] avoid or minimize** impacts to fish and wildlife species or other species protected by State or Federal law.

(2) **[Prevent] Avoid** disturbances to, **enhance where practicable, or restore**, habitats of unusually high value for fish and wildlife.

* * * * *

§ 89.67. Support facilities.

(a) Support facilities required for, or used incidentally to, the operation of the underground mine, including, but not limited to, mine buildings, coal loading facilities at or near the mine site, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops and other buildings, shall be **[designed, constructed or reconstructed, and located to prevent or control erosion and sedimentation, water pollution and damage to public or private property. Support facilities shall be de-**

signed, constructed or reconstructed, maintained and used in a manner which, using the best technology currently available prevents:

(1) **Damage to fish, wildlife and related environmental values.**

(2) **Additional contributions of suspended solids to streamflow or runoff outside the disturbed area. Contributions may not be in excess of limitations of State or Federal law.] located, maintained and used in a manner that does the following:**

(1) **Prevents or controls erosion and siltation, water pollution and damage to public or private property.**

(2) **To the extent possible using the best technology currently available:**

(i) **Minimizes damage to fish, wildlife and related environmental values.**

(ii) **Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Contributions may not be in excess of limitations of State or Federal law.**

* * * * *

**Subchapter C. RECLAMATION
PERFORMANCE STANDARDS**

§ 89.82. Protection of fish, wildlife and related environmental values.

(a) The operator shall, **to the extent possible** using the best technology currently available, **[prevent] minimize** disturbances and adverse impacts **[of the**

reclamation activities] on fish, wildlife and related environmental values, and achieve enhancement of the resources where practicable.

(b) The operator shall promptly report to the Department the presence in the permit area of threatened or endangered species under State or Federal laws of which that person becomes aware and which was not previously reported to the Department by that person. Upon notification, the Department will consult with the Game Commission or the Fish and Boat Commission and appropriate Federal fish and wildlife agencies and, after consultation, identify whether, and under what conditions, the operator may proceed.

(c) The operator shall, to the extent possible using the best technology currently available:

* * * * *

(e) Underground mining activities may not be conducted which are likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the Interior, the Game Commission or the Fish and Boat Commission or which are likely to result in the destruction or adverse modification of designated critical habitats of these species in violation of the Endangered Species Act of 1973, the act of December 28, 1973 (Pub. L. No. 93-205) (87 Stat. 884).

§ 89.87. Regrading or stabilizing rills and gullies.

[(a) When rills or gullies deeper than 9 inches form in areas that have been regraded and have had topsoil applied, the rills and gullies shall be filled, graded or otherwise stabilized and the areas reseeded or replanted according to § 89.86 (relating to revegetation). The Department may specify that rills or gullies of lesser size be stabilized, and the area reseeded or replanted, if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

(b) The regrading or stabilization of rills and gullies to include the reseeded or replanting shall be completed no later than the first normal period for favorable planting as established within § 89.86, except rills or gullies contributing to impacts outside the permit area or those rills or gullies occurring after removal of erosion and sedimentation control structures shall be stabilized immediately.]

(a) Exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies, which form in areas that have been regraded and topsoiled and which do one of the following shall be filled, regraded or otherwise stabilized:

(1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover.

(2) Cause or contribute to a violation of water quality standards for receiving streams.

(c) For areas listed in subsection (b), the topsoil shall be replaced, and the areas shall be reseeded or replanted.

§ 89.88. Postmining land use.

* * * * *

(b) The premining use of land to which the postmining land use is compared shall be those uses which the land

previously supported, if the land had not been previously mined and had been properly managed.

* * * * *

[(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within 5 years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.]

(c) Alternative land uses may be approved by the Department after consultation with the landowner or the land management agency having jurisdiction over the lands, provided that:

* * * * *

(2) The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by the following or other similar criteria:

[(2)] (i) ***

[(3) Plans for the postmining land use are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover and esthetic design appropriate for the postmining use of the site.]

[(4)] (3) ***

[(5)] (4) ***

[(6)] (5) ***

[(7)] (6) ***

* * * * *

§ 89.90. Restoration of roads.

(a) Unless the Department approves retention of a road as suitable for the approved postmining land use, [immediately] as soon as practicable after the road is no longer needed for operations, reclamation or monitoring:

* * * * *

(4) Roadbeds shall be ripped[, plowed and] or scarified.

* * * * *

CHAPTER 90. COAL REFUSE DISPOSAL

Subchapter A. GENERAL PERMIT AND APPLICATION REQUIREMENTS FOR COAL REFUSE DISPOSAL

§ 90.1. Definitions.

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

* * * * *

Land use—Specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use from one of the

following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department.

* * * * *

(x) **Unmanaged natural habitat.** Idle land which does not require a specific management plan after the reclamation and revegetation have been accomplished.

* * * * *

Subchapter C. MINIMUM OPERATION AND RECLAMATION PLAN INFORMATION REQUIRED IN APPLICATIONS FOR COAL REFUSE DISPOSAL

§ 90.40. Protection of [public] publicly owned parks and historic places.

(a) For [public park or historic places] publicly owned parks or historic places listed on the National Register of Historic Places that may be adversely affected by the proposed coal refuse disposal activities, each application shall describe the measures to be used to accomplish the following:

(1) [To prevent] Prevent adverse impacts and meet the requirements of Chapter 86, Subchapter D (relating to areas unsuitable for mining).

(2) [To minimize] Minimize adverse impacts if valid existing rights exist or joint agency approval is to be obtained under Chapter 86, Subchapter D.

* * * * *

Subchapter D. PERFORMANCE [STANDARD] STANDARDS FOR COAL REFUSE DISPOSAL

§ 90.93. Casing and sealing of drilled holes and underground workings.

* * * * *

(d) Gas and oil wells shall be sealed in accordance with [the requirements of] the [Gas Operations, Well-Drilling, Petroleum and Coal Mining Act (52 P. S. §§ 2101—2602).] Oil and Gas Act (58 P. S. §§ 601.101—601.605.)

(e) A solid barrier of undisturbed earth, 125 feet (38 meters) in radius, shall be maintained around all oil and gas wells, unless one of the following happens:

* * * * *

(2) The Department approves, in writing, a lesser distance, provided:

* * * * *

[(iii) The well operator agrees in writing to the lesser distance.]

* * * * *

§ 90.97. Topsoil: removal.

* * * * *

(c) If topsoil is less than 12 inches (30.48 centimeters), a 12-inch (30.48 centimeters) layer of topsoil, subsoil and unconsolidated materials shall be removed, segregated, conserved and replaced as the final surface soil layer. If the topsoil and all unconsolidated material measures less than 12 inches (30.48 centimeters), all the topsoil, subsoil and unconsolidated material shall be removed and the mixture segregated and redistributed as the final surface soil layer.

* * * * *

(f) When approved by the Department, in writing, other material may be substituted or used as a supplement to topsoil if the operator demonstrates that the resulting soil medium is equal or more suitable than topsoil for sustaining vegetation and soil productivity. In making this demonstration, the Department may require chemical and physical analyses of the substituted material and [subsoil] topsoil. These analyses may include determinations of pH, net acidity or alkalinity, phosphorus, potassium, texture class, field site trials or greenhouse tests or other analyses as required by the Department.

§ 90.101. Hydrologic balance: general requirements.

(a) Coal refuse disposal activities shall be planned and conducted to [prevent, to the maximum extent possible, changes] minimize disturbances to the prevailing hydrologic balance in the permit and adjacent areas and to prevent material damage to the hydrologic balance outside the permit area.

* * * * *

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

(a) A person may not allow a discharge of water from an area disturbed by coal refuse disposal activities, including areas disturbed by mineral preparation, processing or handling facilities which exceeds the following groups of effluent criteria. The effluent imitations are to be applied under subsection (b).

Group A

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
suspended solids	35 mg/l	70 mg/l	90 mg/l
pH ¹		greater than 6.0; less than 9.0	
alkalinity greater than acidity ¹			

¹The parameter is applicable at all times.

Group B

<i>Parameter</i>	<i>Instantaneous Maximum</i>
iron (total)	7.0 mg/l
[manganese (total)]	[5.0 mg/l]

Parameter

settleable solids
pH
alkalinity greater than acidity

Instantaneous Maximum

0.5 ml/l
greater than 6.0; less than 9.0

Group C

Parameter

pH
alkalinity greater than acidity

Instantaneous Maximum

greater than 6.0; less than 9.0

* * * * *

§ 90.106. Hydrologic balance: erosion and sedimentation control.

(a) Appropriate erosion and sediment control measures shall be designed, constructed and maintained using the best technology currently available to:

(1) Prevent, to the [**maximum**] extent possible, contributions of sediment to stream flow or to runoff outside the affected area.

* * * * *

(3) [**Prevent**] **Minimize** erosion to the [**maximum**] extent possible.

* * * * *

§ 90.134. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to [**minimize erosion and to prevent:**] control or prevent contributions of sediment to streams or runoff outside the affected area; flooding; air and water pollution; damage to fish and wildlife or their habitat; and damage to public or private property. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, in accordance with current, prudent engineering practices, and necessary design criteria established by the Department. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 90.140 (relating to haul roads and access roads: restoration) unless retention of the road and its maintenance plan are approved as part of the postmining land use.

* * * * *

§ 90.140. Haul roads and access roads: restoration.

Unless the Department approves retention of a road as suitable for the approved postdisposal land use in accordance with § 90.166 (relating to postdisposal land use), [**immediately**] as soon as practicable after the road is no longer needed for operations, reclamation or monitoring:

* * * * *

(4) Roadbeds shall be ripped [, **plowed and**] or scarified.

* * * * *

§ 90.147. Support facilities and utility installations.

(a) Support facilities required for, or used incidentally to, the operation of the coal refuse disposal area, including, but not limited to, buildings, coal loading facilities at or near the coal refuse disposal site, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops and other buildings, shall be [**designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property.** Support facilities shall be designed, constructed or reconstructed, maintained and used in a manner which prevents, using the best technology currently available:

(1) **Damage to fish, wildlife and related environmental values.**

(2) **Additional contributions of suspended solids to streamflow or runoff outside the permit area. The contributions may not be in excess of limitations of State or Federal law.] located, maintained and used in a manner that does the following:**

(1) **Prevents or controls erosion and siltation, water pollution and damage to public or private property.**

(2) **To the extent possible using the best technology currently available:**

(i) **Minimizes damage to fish, wildlife and related environmental values.**

(ii) **Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. These contributions may not be in excess of limitations of State or Federal law.**

* * * * *

§ 90.150. Protection of fish, wildlife and related environmental values.

(a) A person conducting coal refuse disposal activities shall, **to the extent possible** using the best technology currently available:

(1) [**Prevent**] **Minimize** disturbances and adverse impacts of the activities on fish, wildlife and related environmental values, and achieve enhancement of the resources when practical.

(2) [**Prevent**] **Locate and operate haul and access roads to avoid or minimize** impacts to fish and wildlife species or other species protected by State or Federal law.

(3) [**Prevent**] **Avoid** disturbance to, **enhance where practicable, or restore,** habitats of unusually high value for fish and wildlife.

* * * * *

(b) A person who conducts coal refuse disposal activities shall promptly report to the Department the presence in the permit area of threatened or endangered species under State or Federal laws of which that person becomes aware and which was not previously reported to the Department by that person. Upon notification, the Department will consult with the Game Commission or the Fish and Boat Commission and appropriate Federal fish and wildlife agencies and, after consultation, will identify whether, and under what conditions, the operator may proceed.

* * * * *

(d) Coal refuse disposal activities may not be conducted which are likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the Interior, the Game Commission or the Fish and Boat Commission or which are likely to result in the destruction or adverse modification of designated critical habitats of the species in violation of the Endangered Species Act of 1973, act of December 28, 1973 (Pub. L. No. 93-205, 87 Stat. 884).

§ 90.166. Postdisposal land use.

(a) Prior to the release of land from permit area in accordance with Chapter 86 [Subchapter E (relating to coal exploration)], Subchapter F (relating to bonding and insurance requirements), all affected areas shall be restored in a timely manner to conditions that are capable of supporting the uses which they were capable of supporting before any coal refuse disposal activities, or to higher or better uses achievable under criteria and procedures of this section.

(b) The predisposal use of land to which the postdisposal land use is compared shall be determined by the following:

* * * * *

[(3) The postdisposal land use for land that has received improper management shall be judged on the basis of the predisposal use of surrounding lands that have received proper management.

(4) The postdisposal land use of land which was changed within 5 years of the beginning of coal refuse disposal activities shall be judged on the basis of the historic use of the land as well as its use immediately preceding disposal.]

(c) Alternative land uses may be approved by the Department after consultation with the landowner or the land management agency having jurisdiction over the lands and after determining that the following criteria are met:

* * * * *

(2) [The owner of the surface requests in a notarized written statement that such alternative land use be approved.] The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by one or more of the following or other similar criteria:

[(3)] (i) ***

[(4)] (ii) ***

[(5)] (iii) ***

[(6) Plans for the postdisposal land use are designed and certified by a registered professional engineer, in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site.]

[(7)] (3) ***

[(8)] (4) ***

[(9)] (5) ***

[Pa.B. Doc. No. 97-725. Filed for public inspection May 2, 1997, 9:00 a.m.]
