RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CHS. 86—90]
Postmining Discharges; Licensing and Bonding

The Environmental Quality Board (Board) by this order amends Chapters 86—90. The amendments implement provisions of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P. S. §§ 1396.1—1396.19a), concerning coal mine operator licensing, bonding, postmining polutional discharges and liability insurance.

This order was adopted by the Board at its meeting of August 19, 1997.

A. *Effective Date*

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

B. *Contact Persons*

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C. *Statutory Authority*

These amendments are adopted under the rulemaking authority of the following acts: sections 4(d), 4.2(a), 4.5(f) and 18.4 of SMCRA (52 P. S. §§ 1396.4(d), 1396,4b(a), 1396.4e(f) and 1396.18d); sections 5(b), 315(b) and 605(b) of The Clean Streams Law (35 P. S. §§ 691.5(b), 691.315(b) and 691.605(b)); section 3.2(a) of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b(a)); section 7(b) of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7(b)); and under Article 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*

Advisory Committee Role in Development of the Regulations

The Mining and Reclamation Advisory Board (MRAB) is the Department's advisory body for the purpose of developing and updating regulations pertaining to the surface mining of coal.

Drafts of the proposed rulemaking were discussed with the MRAB in May and July 1994, and the MRAB concurred with the proposed changes. The Department reviewed the draft final rulemaking with the MRAB at its meeting on July 10, 1997. The MRAB recommended approval of the final rulemaking at that meeting.

General Background

These amendments implement various provisions of SMCRA, as amended by the act of December 18, 1992 (P. L. 1384, No. 173) (Act 173) and the act of May 22, 1996 (P. L. 232, No. 43) (Act 43). A summary of the revisions to specific sections of the regulations, along with relevant background information, follows.

Mine Operator Licensing

Act 173 expanded SMCRA to provide for licensing of underground coal mine operators, in addition to surface coal mine operators. Further clarifications in this regard were incorporated by Act 43. Act 173 also modified the fee structure for issuance and renewal of licenses. The provisions of §§ 87.11—87.21, have been appropriately modified and relocated to Chapter 86, in the form of a new Subchapter K, Mine Operator's License, §§ 86.351—86.359. In addition to these changes, a cross reference in § 86.195 (relating to penalties against corporate officers) has been updated to reflect the revised numbering system for the licensing regulations.

Bonding—General

Act 173 amended section 4(d) of SMCRA to expand the types of financial instruments which can now be used for bonding of coal mining and reclamation operations. Sections 86.142, 86.156 and 86.158 (relating to definitions; form of the bond; and special terms and conditions for collateral bonds) have been revised to reflect the acceptability of life insurance policies, annuities and trust funds as bonding instruments. Section 86.142 is revised to add definitions for "annuity," "trust fund" and "trustee."

Act 173 amended section 4(g) of SMCRA to allow a person having an interest in a bond, including the Department, to request bond release. Prior to this amendment, only the permittee could request bond release. Section 86.171(g) (relating to procedures for seeking release of bond) is revised to allow a person having an interest in a mine site bond to request bond release. The Department can initiate bond release in cases where the permittee (that is, mine operator) has neglected to do so. A surety company also could request bond release on behalf of a permittee if circumstances warrant.

Act 173 amended section 4(h) of SMCRA to require the forfeited bonds to be paid to the Department within 30 days and require the Department to hold the money in escrow (including any accrued interest on the bonds) pending resolution of any appeals relative to the forfeiture action. Section 86.182 (relating to procedures) has been revised by adding a provision requiring a surety company to pay the amount of a forfeited surety bond to the Department within 30 days of notice of forfeiture. The bond will be held in escrow pending resolution of any appeals to the forfeiture action. Section 86.182 also reflects the surety's option to reclaim the mining activity site in lieu of paying over the bond amount to the Department.

Bonding for Postmining Pollutional Discharges

Acts 143 and 43 added provisions to SMCRA to allow for bond releases on permits where postmining pollutional discharges exist. This bond release would occur only upon the permittee or mine operator providing for the sound future treatment of the postmining discharges associated with the permit. One method for providing for the sound

future treatment of a discharge would be to establish a site-specific trust fund to pay for the treatment.

The proposed amendments, which appeared at 25 Pa.B. 5885 (December 16, 1995) contained language which reflected those provisions in the SMCRA. At the recommendation of the Department, that language has been removed from this final rulemaking, specifically, from §§ 86.142, 86.149, 86.152, 86.172 and 86.174. At the request of the MRAB, the Department has undertaken an evaluation of the overall environmental and economic costs associated with postmining pollutional discharges, including mechanisms to assure future treatment of postmining discharges. The results of this evaluation are expected to have a significant influence on how postmining discharges are addressed. The issue of treatment of postmining discharges is also engaging the attention of the Office of Surface Mining (OSM). The Department has recently had several discussions with the OSM personnel about this issue, and there is now the potential for changes in Federal oversight. Both of these activities—the work started at the request of the MRAB and the assessment at the Federal level—could result in approaches that are in conflict with the provisions as currently proposed. Consequently, the Department recommends that rulemaking on the subject be postponed until the evaluation is completed and clarification is obtained on the Federal thinking on this issue.

The removal of language dealing with the sound future treatment of postmining pollutional discharges does not prevent the Department from entering into agreements with mine operators for the purpose of establishing site-specific trust funds to assure the long-term treatment of postmining discharges. Authority for these agreements is provided by the Acts 173 and 43 amendments to SMCRA.

Definitions have been added to § 86.1 for "postmining pollutional discharge" and "passive treatment system."

Sections 86.151(b), (c) and (j) and 86.152(b) (relating to period of liability; and bond adjustments) have been revised to clarify the concepts of bonding, period of liability and bond adjustment where postmining pollutional discharges exist.

Section 86.171(b) has been revised to require anyone seeking bond release to state whether any postmining pollutional discharges have occurred and to describe the type of treatment provided for the discharges. Section 86.175 has been rewritten with simpler language and appropriate cross references to §§ 86.171 and 86.174 (relating to procedures for seeking release of bond; and standards for release of bonds).

Technology-Based Effluent Requirements for Postmining Pollutional Discharges

New §§ 87.102(e), 88.92(e), 88.187(e), 88.292(e), 89.52(f) and 90.102(e) have been added to clarify the technology-based effluent requirements for postmining pollutional discharges for various types of coal mining activities, both in general and where the discharges can be adequately treated using passive treatment.

As pointed out in the preamble language for the proposed rulemaking, these new provisions do not preempt the continuing regulatory provisions that would require a more stringent degree of treatment where necessary to protect the water quality of the receiving stream.

Other Changes Not Related to Act 173 and Act 43

Bonding

Section 86.157 (relating to special terms and conditions for surety bonds) has been revised to clarify when the Department will accept a bond which is in excess of the surety company's maximum single risk exposure.

Section 86.158(c)(6) (relating to special terms and conditions for collateral bonds) has been modified to eliminate a restriction on accepting certificates of deposit from only Commonwealth chartered banks. Certificates of deposit will now be accepted from banks chartered in the United States.

Section 4(e) of SMCRA provides under certain circumstances, that the Department may allow an operator to use a phased deposit of collateral bond over a period of 10 years. Section 4(e) of SMCRA also requires that interest accumulated by the collateral shall become a part of the bond. The purpose of this requirement is to help the operator to achieve the full bond amount and to offset some of the risk associated with allowing phased depositing of a collateral bond. Accordingly, § 86.161(3) (relating to phased deposits of collateral) has been amended to state that interest accumulated by the phased deposit of collateral shall become a part of the bond.

Liability Insurance

Under section 3.1(c) of SMCRA coal mining operators are required to maintain a general liability insurance policy. The purpose of having the insurance is to provide financial protection to the public and the operator against liability such as damage from blasting, water supply loss or degradation, personal injury or other property damage.

Changes have been made to § 86.168 (relating to terms and conditions for liability insurance) to clarify various provisions concerning terms and conditions for liability insurance; to increase the minimum amounts of insurance coverage for bodily injury and property damage; and procedures for suspending mine operator licenses and mining activity permits for failure to maintain the insurance.

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

The proposed rulemaking was published at 25 Pa.B. 5885. The public comment period expired on February 14, 1996. Public hearings on the proposed rulemaking were held on January 22, 1996, and January 24, 1996.

Written comments were received from six commentators and the Independent Regulatory Review Commission (IRRC). A detailed description of comments, along with responses, is contained in the Department's Comment and Response Document which is available from the Bureau of Mining and Reclamation at the address shown in Section B of this Preamble.

The following abbreviations and acronyms are used to facilitate discussion of comments and responses:

SMCRA—The Surface Mining Conservation and Reclamation Act

Act 43—The 1996 amendments to SMCRA

Act 173—The 1992 amendments to SMCRA

EPA—The United States Environmental Protection Agency

OSM—The Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior

The sections of regulations which are being revised, along with a discussion of comments and responses, are presented in the sequence in which they appear in the proposed rulemaking.

Chapter 86—Surface and Underground Coal Mining: General

Subchapter F—Bonding and Insurance Requirements

§ 86.142. Definitions.

"Annuity"

Although no comments were received on this definition, it has been revised to reflect the more common definition of the term "annuity."

"Minimal-Impact Postmining Discharge"

Commentators suggested various changes to the wording of this definition. In conjunction with changes to §§ 86.152 and 86.174, the term "minimal-impact postmining discharge" is being deleted from the final rulemaking for two reasons. First, the concept of "minimal-impact postmining discharge" was incorporated into Act 173 as an interim step in order to describe applicable bonding and treatment requirements prior to the development of regulations. Second, the term "postmining pollutional discharge'' actually encompasses ''minimal-impact postmining discharges" and it is not necessary to mention both terms when describing the applicable bonding and treatment requirements in the regulations.

"Passive Treatment System"

One commentator suggested that the definition be modified by adding the word "physical" as an example of treatment, and deleting the wording after "Department" in order to provide more flexibility to determine what constitutes passive treatment technology.

Modifications are not possible since the language of the proposed definition tracks the definition language in section 3 of SMCRA, and is flexible enough to allow the Department to consider additional examples of passive treatment technology. This definition has been relocated to § 86.1 because of its general applicability to Chapters 87—90.

"Postmining Pollutional Discharge"

This definition has been modified to incorporate "minimal-impact postmining discharge," as discussed above. References to §§ 87.207 and 88.507 have been deleted to avoid confusion with preexisting pollutional discharges. This definition has been placed in § 86.1 because of its use in Chapters 87—90.

§ 86.149. Determination of Bond Amount.

Commentators expressed concern that the new provision in § 86.149(b)(6) to include the cost for treating postmining discharges for at least 50 years is excessively burdensome on the coal mining industry by making it very difficult, or impossible, to obtain the necessary surety bond amount. One commentator questioned the need for a requirement in view of the Department's prohibition on issuing mining activity permits where there is presumptive evidence of pollution of waters of this Commonwealth, and that SMCRA allows for other forms of security (for example, site specific trust funds) to address financial liability. Concern was expressed over the impact of this regulation on small operations in the anthracite region and it was suggested that the Department and the Legislature revise Act 173 as it pertains to the anthracite region.

One commentator suggested that it is not appropriate to consider contingency costs under § 86.149(b)(6)(v) since they are not really quantifiable over the long term, nor are they necessary if construction and operational costs are known.

IRRC supported the concerns and suggested that the provisions of § 86.149(b)(6) be relocated to § 86.174 (standards for release of bond).

IRRC also recommended either deleting the contingency factor or, if kept, justifying its inclusion.

Although the proposed amendments to this section have been removed from this final rule, the Board believes that a response to the comments on this section is warranted.

The Board agrees that the language in proposed § 86.149(b)(6) was in the wrong place and could be interpreted as a presumption, at the time of permit issuance, that postmining pollutional discharges may occur. This would contradict the intent of SMCRA and § 86.37. The Board also agrees that the use of a contingency factor would be inappropriate. The Board acknowledges the concern of the anthracite industry; however, the concern may be largely unwarranted due to the nature of anthracite mining activities.

§ 86.151. Period of Liability.

The proposed language in § 86.151(c) states that, for coal refuse disposal activities, the period of liability for the bond related to risk of water pollution will be determined by the Department on a case-by-case basis. A member of the IRRC staff asked what factors would be used in making this determination.

Coal refuse disposal operations are long-term facilities. Many of the existing operations have been active for 10 to 20 years. Almost all will have postclosure pollutional discharges. The size and quality of a discharge and the length of time for the discharge to stabilize depends on, among other things, the chemical and physical character of the coal refuse and its degree of hydrologic isolation.

The Department's determination of the period of liability for risk of water pollution will be based on an evaluation of the factors which affect the discharge. Specific factors which may be considered include the surface contours of the coal refuse and adjacent land, the permeability of the cover material, the compaction of the coal refuse, the acid-producing potential of the coal refuse, and the presence and adequacy of liners and underdrains which isolate the refuse from groundwater. These and other factors vary considerably between coal refuse disposal sites. § 86.152. Bond Adjustments.

One commentator and IRRC noted that the original language in § 86.152(a) allows the Department to require permittees to post additional bond for any changes in cost of reclamation, restoration or abatement work. This would not make sense where the costs would decrease. This needs to be clarified.

Section 86.152(a) has been revised to more clearly tie the increase in bond required to increased reclamation, restoration or abatement costs, and the discretionary term "may" has been restored.

§ 86.156. Form of the Bond.

One commentator suggested that the revised language of § 86.156(b) implies that the financial institution must

issue all of the financial instruments listed, which would not make sense.

This has been clarified in the final-form regulations.

§ 86.157. Special Terms and Conditions for Surety Bonds

No comments were received on this section; however, paragraph (8) has been revised to reflect the surety's option under SMCRA, subject to the consent and approval of the Department, to carry out the permittee's reclamation obligations in lieu of paying over the bond to the Department as part of a bond forfeiture action.

§ 86.158. Special Terms and Conditions for Collateral Bonds.

No comments were received on this section; however, a new § 86.158(f)(4) has been added to more clearly indicate that trust funds and annuities are intended to serve a public purpose and not to accrue in value to the benefit of the mine operator. This clarification is aimed at addressing potential concern over the taxability of investment proceeds of trust funds and annuities.

§ 86.159. Self-Bonding.

Although this section of the regulations was not included in the proposed rulemaking, one commentator suggested that self-bonding be allowed for addressing long-term liability for treating postmining discharges. The commentator stated that there are probably six or fewer mining companies that could generally qualify for self-bonding under the rigorous criteria of § 86.159, and the regulatory safeguards such as annual reevaluations do protect the interests of the Department.

The specific provision in question is contained in § 86.159(a) and states that: "The Department may accept a self-bond to cover all or part of the permittee's liabilities arising from coal mining activities. The Department will not accept a self-bond covering long-term indeterminate liabilities. These liabilities include, but are not limited to, obligations to treat discharges from mining activities which exist after completion of mining and reclamation activities...."

Self-bonding is a nontraditional alternative to the use of surety or collateral bonds. Under self-bonding, the Department does not retain a specific bond instrument which is set aside to cover the cost of future reclamation. This approach relies upon the presumption that the self-bonded entity will continue in business and remain financially viable during the time period associated with the reclamation liability. There are currently no mine operators using self-bonding, presumably due to the rigorous qualification criteria under § 86.159.

The proposed regulations did not include changes to the self-bonding regulations. The nature of the change proposed by the commentator should not be made without the opportunity for public comment and is not reflected in this final rulemaking. The Department is evaluating this and several other aspects of the self-bonding regulations under its Regulatory Basics Initiative.

§ 86.161. Phased Deposits of Collateral.

No comments were received on this section.

§ 86.168. Terms and Conditions for Liability Insurance.

One commentator stated that the proposed remedy in § 86.168(f) of issuing a license or permit suspension if a permittee fails to maintain insurance is unreasonable. As written, the Department could suspend a license or permit immediately upon termination of insurance, even if the termination is beyond the control of the permittee, such as when the insurance carrier goes out of business or cancels the policy. The commentator suggested that § 86.168(f) be revised to provide that the Department will issue notice of intent to suspend a license or permit based upon termination of liability insurance.

The Board agrees and appropriate changes have been made in the final rulemaking. The revised language of § 86.168(f) reflects the longstanding practice of the Department to first notify the permittee or licensee of the lapse in insurance coverage and to provide time to correct the situation prior to suspending the license or permit.

86.171. Procedures for Seeking Release of Bond.

One commentator suggested that the requirement under § 86.171(b)(6) for identifying postmining discharges in the newspaper public notice for bond release needs to be clarified as to the level of detail needed.

Clarifications have been made in the final rulemaking to require a statement as to whether any postmining pollutional discharges have occurred and a description of the treatment provided.

§ 86.172. Criteria for Release of Bond.

No comments were submitted on this section. However, the proposed amendments to this section have been removed from this final rule as explained in Section D of this Preamble.

§ 86.174. Standards for Release of Bonds.

With the exception of a minor change to the title of § 86.174(d), all proposed amendments have been withdrawn. However, the Board believes that a summary of the comments it received and its general response may be of value.

One commentator felt that § 87.174(a)—(c) should be further amended by adding the words "if such discharges exist" following the new language concerning long-term liability for postmining discharges. The commentator and IRRC also stressed the importance of allowing other forms of financial assurances, besides trust funds, to provide for the long-term liability. The Board agrees that these clarifications would have been appropriate. However, the proposed amendments to these subsections have been withdrawn as indicated.

Relative to the proposed language in § 86.174(d)(3), one commentator expressed concern that the Department is being overly conservative in its evaluation of the long-term annual inflation and annual investment interest rates which are to be used in calculating the initial amount of the trust fund to cover the 50-year cost of treatment for postmining discharges. The commentator evaluated these rates during a 14-year time frame between 1981 and 1995 (a period of "modest inflation") and pointed out that the average long term interest rate (yield on 30-year U.S. Treasury Bonds) was 9.3%. The interest rate was at or below 7% for only about 10% of this time period. The commentator also stated that general inflation during this same period of time as measured by the Implicit Price Deflator for Gross Domestic Product/Gross National Production averaged 3.4% per year. The annual inflation exceeded the 4% level in only 3 of those 14 years, or approximately 20% of the time. Based on the information the commentator believes that the "real interest rate" (the difference between investment interest

and inflation rates) was 6% (for example, 9.3-3.4) during this 14-year period, but suggested a 5% figure to represent this difference.

IRRC expressed similar concerns over the interest and inflation rates, and the historic time frame used in developing values for these rates. IRRC also indicated that there may be more appropriate construction cost indices which could be used to estimate inflation for future treatment costs. The commentator also suggested that the two equations used to develop the present value of future treatment costs could be simplified further by plugging in the respective values of (i), (E), (a) and (n) or that the values of (i) and (E) be based on definable indices instead of being fixed by regulation.

These comments pertain to the provisions for determining the amount of financial assurance needed to provide for the sound future treatment of postmining discharges. The Board agrees that the proposed annual rate of inflation and the annual investment interest rate were too conservative and that definable indices should be used for these factors. However, the proposed amendment to § 86.174(d)(3) has been withdrawn as indicated.

§ 86.175. Schedule for Release of Bonds.

No comments were received on this section.

§ 86.182. Procedures (for bond forfeiture).

One commentator and IRRC noted that § 86.182(a)(3) ignores the option available to a surety company, under section 4(h) of SMCRA, to reclaim a bond forfeiture mining activity site in lieu of paying over the bond amount to the Department, and that this section should be revised to reflect that option.

Clarifying language has been added in the form of new § 86.182(d) to reflect this option and to provide some specific structure to the procedure for exercising this option.

§ 86.195. Penalties Against Corporate Officers

No comments were received on this section.

§ 86.351. License Requirement.

No comments were received on this section. A minor clarification has been made.

§ 86.352. Mine Operator's License Application.

No comments were received on this section.

§ 86.353. Identification of Ownership.

One commentator pointed out that some of the informational requirements of this section appear more appropriate for submittal with permit applications and requested deletion of those items from the regulation.

This section has been revised by deleting information which is applicable only to permit applications.

§ 86.354. Public Liability Insurance.

No comments were received on this section.

§ 86.355. Compliance Information.

No comments were received on this section; however, this section has been deleted since the information it requires is applicable only to permit applications.

§ 86.356. Criteria for Approval of Application.

§ 86.357. License Renewal Requirements.

§ 86.358. Informal Conference.

§ 86.359. Suspension and Revocation.

No comments were received on § 86.358. One commentator and IRRC requested that §§ 86.356, 86.357 and 86.359 be rewritten to be specific to surface mine operators, to reflect the Act 43 amendments to SMCRA which were pending at the time of this comment. This was also based on the commentator's understanding of the original intent of Act 173 which, for the first time, provided for licensing of underground mine operators. Additionally, IRRC recommended that § 86.359 be revised to identify specifically those violations which will result in revocation or suspension of a license.

The Act 43 amendments revised section 3.1(b) of SMCRA to clarify that the requirements for compliance with SMCRA, regulations and orders of the Department as a prerequisite to license issuance and renewal pertains only to surface mine operators. Appropriate changes have been made to §§ 86.356 and 86.357 in that regard. However, neither Act 43 nor Act 173 affected section 4.3 of SMCRA which provides for suspension or revocation of licenses. Consequently, § 86.359(a) has only been revised, as recommended by IRRC, to further identify specific violations which will result in revocation or suspension of licenses.

It should be noted that, although § 86.359(a) lists a variety of causes for the Department to suspend or revoke a license, historically the Department has only done so as a last resort prior to, or in conjunction with, a bond forfeiture action. Consequently, subsection (a)(1) which refers to notice of violation has been deleted. The Board further notes that the factor most frequently contributing to bond forfeiture is bankruptcy of the operator and abandonment of all of the operator's mining activities.

§ 86.360. Fees.

IRRC suggested that this section either be revised to clarify the conditions under which a license fee is refundable, or that subsection (b) be deleted.

The Board agrees that clarification of subsection (b) is warranted and has revised it accordingly.

Chapter 87—Surface Mining of Coal

Subchapter E—Surface Coal Mines: Minimum Environmental Protection Performance Standards

§ 87.102. Hydrologic Balance: Effluent Standards.

§ 87.102(e). Postmining Pollutional Discharges.

Several comments were received on this portion of the proposed rulemaking. Although most comments focused on § 87.102, they would be equally relevant to the proposed changes in §§ 88.92 and 88.187. Several revisions to these provisions have been made in response to the comments received, as noted. In response to comments from IRRC § 87.102(e)(1) and (2) and related subsections have been rewritten to lay out a more straightforward approach for mine operators to follow when a postmining pollutional discharge occurs.

Several commentators expressed concern that the description of discharges amenable to passive treatment in proposed § 87.102(e)(2)(ii) would overlook other categories of discharges which are being successfully remediated with passive treatment technology. One commentator also

questioned the need for category (B) of this subsection, since that category would be already included in category (C).

The description of categories (A) and (B) was drawn from the authorizing language in section 4.2(j) of SMCRA. Adjustments have been made in the language of the final rulemaking to allow for other discharges to be considered for passive treatment.

Several commentators and IRRC questioned the percent-reduction approach expressed in proposed § 87.102(e)(3)(i), since it could result in more stringent effluent requirements for iron than the current Group A limitations which are based on Federal EPA regulations. Two commentators requested that a lesser reduction be allowed so long as the Group A limit for iron is achieved. One commentator suggested a specific revision to (i) to read: "The system shall reduce iron concentration by at least 70% provided that the effluent limit shall not exceed 10 mg/l or be more stringent than the Group A effluent requirements for iron in subsection (a)." One commentator suggested adopting a pollutant loading reduction approach, which would also take into consideration seasonally or intermittently high flow periods. Another commentator further suggested that the iron loading requirements be based upon the reduction needed to protect the water quality of the receiving stream.

It must first be noted that this particular regulation is intended to address technology-based effluent requirements for pollutant reduction, and that the commentator's concern over water quality-based pollutant load reduction is already addressed under § 87.102(f). The Board agrees that the proposed percent reduction requirements may impose unnecessary costs in some cases, by requiring an effluent quality which is better than the current Group A limits for iron. The language in § 87.102(e)(3)(i) has been modified to reflect a more simplified percent-reduction approach. It should also be kept in mind, however, that more stringent treatment may be required where necessary to protect receiving stream water quality.

In regard to proposed language in § 87.102(e)(3)(ii), that the passive system must produce an effluent alkalinity which exceeds the effluent acidity, one commentator noted that effluent acidity associated with unoxidized manganese (for example, mineral acidity) is not chemically available. This should perhaps be taken into account when a passive system is having difficulty achieving a net alkalinity due to the level of unoxidized manganese present.

As a general rule, the presence of unoxidized manganese should not be a problem. The Department's analysis of wetlands, which was described in the Preamble for the proposed regulations, included discharges containing acidity due to unoxidized manganese. The conclusion from the analysis is that a properly sized and constructed wetland can be expected to produce an effluent alkalinity greater than effluent acidity.

Section 87.102(e)(4)(v) has been rewritten to be grammatically consistent with the other subparagraphs.

With regard to proposed § 87.102(e)(5), two commentators expressed concern that, under some circumstances, passive treatment may prove to be effective but cannot be maintained for a 25-year period (either because of size or maintenance constraints, or both, arising from precipitate accumulation). They suggested that systems with shorter design lives be allowed. Revised language has been included to address this concern.

IRRC reflected the concern of the above commentators on the useful life of treatment facilities, but further pointed out that Act 173 did not specify such a design criterion and suggested that this portion of the regulation be made more consistent with Act 173.

Although Act 173 is silent on this aspect, the Department believes it is important to have a criterion of this nature since these systems are intended to function for long periods of time without regular maintenance.

Two commentators questioned the provision in § 87.102(e)(6) which would only allow qualified licensed professionals to design and supervise the construction of passive treatment systems. This could exclude many highly experienced, qualified persons who are fully capable of doing so but who have had educational and professional backgrounds (for example, environmental science, biology and the like) for which there is no licensing mechanism.

The Board agrees and has modified the language in this subsection.

One commentator suggested adding a provision to the regulations which allows the Department to amend effluent limits for postmining discharges with passive treatment systems operating in compliance with the requirements in § 87.102(e) and related sections of other chapters.

The language in subsection (e)(1) and (2) would allow for the permit amendments to be made.

One commentator questioned why the Department had not proposed alternative effluent limitations in Chapters 89 and 90 (relating to underground mining of coal; and coal refuse disposal). The commentator pointed out that discharges from the activities are covered under the definition of "surface mining activities" in SMCRA.

In originally proposing the changes to Chapters 87 and 88, the Department was focusing upon surface mining operations, which have historically been the source of most postmining discharges for which passive treatment appears to be a viable long-term treatment process. In response to the commentator's concern, the Department reviewed EPA's effluent limitation guideline regulations for coal mining activities (40 CFR 434) and discussed this question with EPA personnel familiar with 40 CFR 434.

The effluent limitation provisions for the postmining activity discharges, as outlined in 40 CFR 434, apply up until the time of bond release under Federal SMCRA. When EPA originally developed 40 CFR 434, it was with the firm understanding that SMCRA bond release occurs once mining and reclamation activity (backfilling, regrading, mine sealing, structure demolition and revegetation) was complete. EPA also assumed that postmining discharges might occur during the interim time frame between cessation of active mining and release of bonds, but did not contemplate postmining discharges existing after that point in time. The best professional judgment (BPJ) analysis which the Department carried out relative to postmining discharges from surface mining activities

would be generally relevant to any other type of postmining discharge which can be adequately treated using passive treatment technology. Based on these considerations, the Department believes that this BPJ rulemaking process can be extended to cover postmining pollutional discharges from underground mining activities and coal refuse disposal operations, where discharges can be adequately treated using passive treatment. Appropriate changes are therefore being made to §§ 88.292, 89.52 and 90.102 (relating to anthracite refuse disposal activities; bituminous underground mining; and bituminous coal refuse disposal). Anthracite deep mining activities are addressed through existing cross references in § 88.493 to § 89.52.

One commentator expressed concern over the impact of these postmining discharge bonding and treatment requirements to preexisting discharges in the anthracite region of this Commonwealth.

Neither Act 173 nor the proposed rulemaking were aimed at making operators suddenly liable for discharges which existed prior to commencement of mining activities. The mechanisms to address the preexisting discharges are contained in Chapter 87, Subchapter F and Chapter 88, Subchapter G. The discharges are a separate category of regulated activity.

One commentator also expressed concern that the proposed definition of "postmining pollutional discharge" refers to "mine drainage" which does not comply with applicable requirements of § 87.102 and the like. The commentator further pointed out that some naturally-occurring waters in the anthracite region exhibit some characteristics of "mine drainage" and was concerned that these regulations would create liability on the part of anthracite mine operators for discharges of naturally-occurring waters.

The definitions in section 3 of SMCRA and § 86.142 are not intended to create liabilities. The definition of "postmining pollutional discharge" in § 86.142 has been modified to delete reference to §§ 87.207 and 88.507 which relate to preexisting discharge situations.

F. *Benefits, Costs and Compliance*

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

Benefits

Mine Operator Licensing

SMCRA has required licensing of surface mine operators for many years. Under the Act 173 amendments to SMCRA, underground mine operators must also be licensed. The licensing and annual license renewal process is also used to obtain updated ownership and control information for each mine operator, as required by OSM's regulations. This is convenient for operators and the Department. The new licensing provisions will also increase revenues to the Surface Mining Reclamation and Conservation Fund by approximately $30,000 per year. This will help the Department in carrying out a remining incentives program under the Act 173 amendments to SMCRA.

New Bond Instruments

By including certain types of life insurance policies, annuities and trust funds as acceptable forms of bonding, the Department is providing mine operators with more flexibility to address their financial obligations under SMCRA. Also, the use of annuities and trust funds will greatly enhance the Department's ability to ensure long-term funding for treatment of postmining discharges of mine drainage from various types of coal mining activities.

Bond Release—General

The primary benefit of these changes is to allow the Department, or a third party (such as a surety company), to initiate the bond release process if the permittee (that is, the mine operator) has not. The Department is currently holding bonds for many mine sites eligible for bond release, but cannot release the bonds because the permittee has not made a request. The primary beneficiaries of these changes will be banks and surety companies which have been maintaining those bond instruments. This will also enable the Department to reduce its inventory of releasable bond instruments.

Phased Deposit of Collateral Bond

Under the proposed rulemaking, a permittee would no longer be able to receive the interest accruing on phased deposits of collateral as it accrues. The interest would become part of the bond. On the other hand, by having the accrued interest retained along with the collateral on deposit with the Department, the process of achieving the full bond amount will be expedited.

Escrow of Forfeited Surety Bond

In the past, when a surety company had appealed a bond forfeiture it was able to retain the bond principal (and accrued interest) during the course of appeal proceedings and negotiations. The Act 173 amendments require that the bond principal be turned over to the Department to be placed in an interest bearing escrow account. The Department is now entitled to retain the interest if the surety company loses the appeal. If the surety company prevails, the bond principal and accrued interest will be paid to the surety company. The Department expects that this proposed new procedure will help both to resolve the appeals, and to achieve the necessary degree of site reclamation in a more timely fashion.

Liability Insurance

The proposed amendments to the insurance regulations will help insure that the public is adequately covered against loss, damage or bodily injury. The proposed amendments will require that the insurance company provide the Department with a notice prior to the termination or nonrenewal of a policy. This will provide the Department and the mining industry with more time to rectify the problem or to find a replacement policy without a lapse in coverage. The increases in insurance coverage dollar amounts will benefit both the industry and the public.

Technology-Based Effluent Requirements for Postmining Pollutional Discharges

Passive treatment technology is a cost-effective environmentally-sound approach to achieve technology-based effluent requirements. It will greatly reduce the long-term (50 year) treatment costs for postmining discharges and related bond amounts which must be posted by operators.

Passive treatment may not be an option in some cases, particularly where the relative size and quality of the discharge and the receiving stream would necessitate more stringent effluent requirements. In these cases, more conventional mine drainage treatment techniques would be needed.

In developing this aspect of the proposed rulemaking, the Department prepared a technical report entitled,

"Best Professional Judgment Analysis for the Treatment of Postmining Discharges From Surface Mining Activities" (8/94). In that report comparisons were made between the annual 25-year costs of conventional treatment versus passive treatment.

Based on those comparisons, the annual 25-year cost of passive treatment is expected to be between 15-50% of the cost of conventional treatment. For more acidic postmining discharges the initial cost of constructing a passive treatment system may be significantly higher than for a conventional system, but the annual operation and maintenance costs are substantially lower for a passive treatment system. For less-acidic postmining discharges, the construction costs are comparable. For alkaline postmining discharges the construction cost for passive treatment could be lower than for conventional treatment.

Based on the number of older mining activity sites with postmining discharges, and the Department's general estimates of the costs of treatment for those discharges, it would appear that the use of passive treatment technology could save between $9.1-15.4 million in annual treatment costs.

Compliance Costs

Mine Operator Licensing

As described under the Benefits section of this Preamble, the new licensing provisions are expected to impose additional costs upon licensed coal mine operators of approximately $30,000 per year. Many small anthracite mine operators will experience a subsequent drop in fee from $500 to $50 for a new license and from $300 to $50 for renewal. Most bituminous surface coal mine operators will experience no increase in initial license fee and a $200 increase in license renewal fee. Bituminous underground operators will now pay $1,000 for both their initial license and annual license renewal.

New Bond Instruments

There are no additional costs associated with these provisions.

Bond Release—General

There are no additional costs associated with these provisions.

Bonding and Bond Release for Postmining Discharge Situations

As described in the Preamble to the proposed rulemaking (25 Pa.B. 5885) the problem of postmining pollutional discharges is primarily a historic problem associated with coal mining activity permits issued prior to the mid-1980's. Many mine operators which originally had sites with postmining pollutional discharges have since abandoned those sites and have forfeited whatever reclamation bonds were associated with those sites. Those operators are no longer allowed to mine coal in this Commonwealth or in any other state. These amendments will, therefore, not have a direct impact on those operators.

Other operators with older sites having postmining discharges have elected to continue in the coal mining business and have been continuously treating their discharges in order to avoid bond forfeiture and to retain the legal ability to obtain new permits. There are currently about 130 operators in this situation It is these operators who will continue to experience the financial impact of treating postmining discharges. Since the proposed language dealing with bond releases for postmining discharges has been removed from final rulemaking, there will be no change in compliance costs.

Phased Deposit of Collateral Bond

These revisions are not expected to have a significant economic impact upon the mining industry, and may actually help certain operators to more quickly achieve the goal of phased deposit of collateral bond.

Escrow of Forfeited Surety Bond

These revisions should not impose an economic impact on the surety industry.

Liability Insurance

In conjunction with developing the proposed rulemaking, the Department made some inquiries and found that insurance companies assess premium costs in different ways. One company assesses its costs for the current insurance amounts at a minimum of $2,000 annually for up to 60,000 tons of coal mined, plus approximately $3.10 to $3.30 per 100 tons of additional coal mined. The premium cost for the new insurance amounts would be a minimum of $4,000 annually for up to 70,000 tons of coal mined, plus $3.10 to $3.30 per 100 tons of additional coal mined. A second company assesses premium costs based on payroll. For the current insurance amounts the cost would be $12 per $1,000 of payroll. For the proposed new insurance amounts the cost would be $13.851 per $1,000 of payroll.

Technology-Based Effluent Requirements for Postmining Pollutional Discharges

These amendments do not create new liability or new costs for mine operators with postmining discharges. The costs of achieving technology-based requirements for discharges which can be adequately treated using passive treatment technology are expected to be substantially lower than the corresponding costs to construct, operate and maintain conventional mine drainage treatment facilities. The primary reasons for this are the much lower operation and maintenance costs associated with passive treatment.

Compliance Assistance Plan

The Department expects to hold a series of meetings with the coal industry and other interested parties to review and discuss these amendments.

The Department also anticipates organizing technical seminars for its own staff, the public and industry personnel to review various principles and practices associated with constructing, operating and maintaining passive treatment systems for postmining pollutional discharges.

Paperwork Requirements

There should be little or no additional paperwork requirements associated with these amendments.

G. *Sunset Review*

These amendments 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 December 5, 1995, the Department submitted a copy of the proposed amendment to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(b.1) of the Regulatory Review Act, the

Department also provided IRRC and the Committees with copies of the comments as well as other documentation.

In preparing this final-form regulations, the Department has considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this Preamble. The Committees did not provide comments on the proposed rulemaking.

This final-form regulations were deemed approved by the House and Senate Environmental Resources and Energy Committee on September 29, 1997. IRRC met on October 9, 1997, and deemed approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

I. *Findings*

The Board finds that:

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

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

(3) These final-form regulations do not enlarge the purpose of the proposal published at 25 Pa.B. 5885 (December 16, 1995).

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

J. *Order*

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

(a) The regulations of the Department, 25 Pa. Code, Chapters 86—90, are amended by amending §§ 86.1, 86.142, 86.151, 86.152, 86.156—86.158, 86.161, 86.168, 86.171, 86.174, 86.175, 86.182, 86.195, 87.102, 88.92, 88.187, 88.292 89.52 and 90.102; by adding §§ 86.351—86.359; and by deleting §§ 87.11—87.21 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

(e) This order shall take effect immediately upon publication.

JAMES M. SEIF,
Chairperson

(*Editor's Note*: Proposals amending §§ 86.149 and 86.172, included in the proposed rulemaking at 25 Pa.B. 5885, have been withdrawn by the Board.

The following sections, amended by this document, were not included in the proposal at 25 Pa.B. 5885: 86.1, 88.292, 89.52 and 90.102.

A proposal to amend §§ 86.1, 86.152, 86.156, 86.171, 86.182 and 86.195, amended by this document, remains outstanding at 27 Pa.B. 730 (February 8, 1997). A proposal to amend §§ 86.174, 87.102, 88.92, 88.187, 88.292, 89.52 and 90.102, amended by this document, remains outstanding at 27 Pa.B. 2255 (May 3, 1997).)

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 5561 (October 25, 1997).)

Fiscal Note: Fiscal Note 7-285 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter A. GENERAL PROVISIONS

§ 86.1. Definitions.

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

* * * * *

Passive treatment system—A mine drainage treatment system which does not require routine operational control or maintenance. The term includes biological or chemical treatment systems, alone or in combinations, as approved by the Department, such as artificially constructed wetlands, cascade aerators, anoxic drains or sedimentation basins.

Postmining pollutional discharge—A discharge of mine drainage emanating from or hydrologically connected to the permit area, which may remain after coal mining activities have been completed, and which does not comply with the applicable effluent requirements described in § 87.102, § 88.92, § 88.187, § 88.292, § 89.52 or § 90.12. The term includes minimal-impact postmining discharges, as defined in section 3 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.3).

* * * * *

Subchapter F. BONDING AND INSURANCE REQUIREMENTS

GENERAL PROVISIONS

§ 86.142. Definitions.

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

* * * * *

Annuity—A financial instrument which provides a sum payable periodically over a length of time.

* * * * *

Trustee—One in whom some estate, interest or power in or affecting property of any description is vested for the benefit of another.

Trust fund—A fund held by a trustee which provides moneys to address specific reclamation or pollution abatement requirements, or both, associated with a mining activity.

AMOUNT AND DURATION OF LIABILITY

§ 86.151. Period of liability.

(a) Liability under bonds posted for a coal surface mining activity shall continue for the duration of the mining activities and its reclamation as provided in the acts, regulations adopted thereunder and the conditions of the permit and for 5 additional years after completion of augmented seeding, fertilization, irrigation or other work necessary to achieve permanent revegetation of the permit area.

(b) Liability under bonds posted for the surface effects of an underground mine, coal preparation activity or other long-term facility shall continue for the duration of the mining operation or use of the facility, its reclamation as provided in the acts, regulations adopted thereunder and the conditions of the permit, and for 5 years thereafter, except for:

(1) The risk of water pollution for which liability under the bond shall continue for a period of time after completion of the mining and reclamation operation. This period of time will be determined by the Department on a case-by-case basis.

(2) The risk of subsidence from bituminous underground mines for which liability under the bond shall continue for 10 years after completion of the mining and reclamation operation.

(c) Liability under bonds posted for coal refuse disposal activities shall continue for the duration of the activities and for 5 years after the last year of augmented seeding and fertilizing and other work to complete reclamation to meet the requirements of the acts, regulations adopted thereunder, the conditions of the permit and to otherwise protect the environment. Liability under the bond related to the risk of water pollution from activities shall continue for a period of time after completion of the coal refuse disposal activities. This period of time will be determined by the Department on a case-by-case basis.

(d) The extended period of liability which begins upon completion of augmenting seeding, fertilization, irrigation or other work necessary to achieve permanent revegetation of the permit area shall include additional time taken by the permittee to repeat augmented seeding, fertilization, irrigation or other work under a requirement by the Department but may not include selective husbandry practices approved by the Department, such as pest and vermin control, pruning, repair of rills and gullies or reseeding or transplanting, or both, which constitute normal conservation practices within the region for other land with similar land uses. Augmented seeding, fertilization, irrigation and repair of rills and gullies performed at levels or degrees of management which exceed those normally applied in maintaining use or productivity of comparable unmined land in the surrounding area, would necessitate extending the period of liability.

(e) A portion of a permit area requiring extended liability may be separated from the original area and bonded separately upon approval by the Department. Before determining that extended liability should apply to only a portion of the original permit area, the Department will determine that the area portion is:

(1) Not significant in extent in relation to the entire area under bond.

(2) Limited to a distinguishable contiguous portion of the permit area.

(f) If the Department approves a long-term intensive agricultural postmining land use, in accordance with § 87.159, § 88.133, § 88.221, § 88.334, § 88.381, § 88.492, § 89.88 or § 90.165, the 5-year period of extended liability shall commence at the date of initial planting for the long-term intensive agricultural land use.

(g) If the Department issues a written finding approving a long-term intensive agricultural land use, the operation shall be exempt from the requirements of § 87.147(b), § 88.121(b), § 88.209(b), § 88.322(b), § 88.492, § 89.86 or § 90.150(b). A finding does not constitute a grant of an exception to the bond liability periods of this section.

(h) The bond liability of the permittee shall include only those actions which the operator is obliged to take under the permit, including completion of the reclamation plan so that the land will be capable of supporting a postmining land use approved under § 87.159, § 88.133, § 88.221, § 88.334, § 88.381, § 88.492, § 89.88 or § 90.166. Implementation of an alternate postmining land use approved under these sections which is beyond the control of the permittee need not be covered by the bond.

(i) If an area is separated under subsection (e), that portion shall be bonded separately, and the applicable period of liability, in accordance with this section, shall begin again. The amount of bond on the original bonded area may be adjusted in accordance with § 86.152 (relating to adjustments).

(j) Release of any bond under this section does not alleviate the operator's responsibility to treat discharges of mine drainage emanating from or hydrologically connected to the site, to the standards in the permit, the act, The Clean Streams Law, the Federal Water Pollution Control Act and the rules and regulations thereunder.

§ 86.152. Bond adjustments.

(a) The Department may require a permittee to deposit additional bonding if the methods of mining or operation change, standards of reclamation change or the cost of reclamation, restoration or abatement work increases so that an additional amount of bond is necessary. This requirement shall only be binding upon the permittee and does not compel a third party, including surety companies, to provide additional bond coverage.

(b) A permittee may request reduction of the required bond amount upon submission of evidence to the Department that warrants a reduction of the bond amount by proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the Department to complete the reclamation, restoration or abatement responsibilities.

(c) Bond adjustments which involve unaffected portions of a permit area upon which no reclamation liability has been incurred or permits that have not been activated and upon which no reclamation liability has been incurred, and bond adjustments which are based on revisions of the cost estimates of reclamation, are not subject to the procedures of §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond), except as provided in § 86.172(b) and (c).

FORM, TERMS AND CONDITIONS OF BONDS AND INSURANCE

§ 86.156. Form of the bond.

(a) The Department will accept the following types of bonds:

(1) A surety bond.

(2) A collateral bond.

(3) A combination surety and collateral bond as provided in § 86.160 (relating to surety/collateral combination bond), for coal surface mining activities.

(4) A phased deposit of collateral bond as provided in § 86.161 (relating to phased deposits of collateral), for long-term mines, long-term facilities and coal refuse disposal activities.

(5) Subsidence insurance as provided in § 86.162 (relating to subsidence insurance in lieu of bond), for risk of subsidence from bituminous underground mines.

(b) A financial or other institution which issues or provides annuities, trust funds, letters of credit, certificates of deposit, life or property and casualty insurance or surety bonds, shall certify in writing to the Department that it will immediately notify the Department and the permittee, if permissible under the law, of any action filed either alleging the insolvency or bankruptcy of the institution, or permittee or alleging violations which would result in suspension or revocation of its charter or license to do business in this Commonwealth.

(c) A permittee executing a bond shall certify in writing to the Department that it will immediately notify the Department, if permissible under the law, of action filed alleging the insolvency or bankruptcy of the permittee.

§ 86.157. Special terms and conditions for surety bonds.

Surety bonds are subject to the following conditions:

(1) The Department will not accept the bond of a surety company which has failed or unduly delayed in making payment on a forfeited surety bond.

(2) The Department will not accept the bond of a surety company unless the bond is not cancellable by the surety for reasons including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability.

(3) The Department will not accept a single bond from a surety company for a permittee if the single bond is in excess of the surety company's maximum single risk exposure as provided in The Insurance Company Law of 1921 (40 P. S. §§ 341—991), unless the surety company complies with The Insurance Company Law of 1921 for exceeding the maximum single risk exposure.

(4) The Department will provide in the bond that the amount shall be confessed to judgment upon forfeiture.

(5) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(6) The bond shall provide that the surety will give prompt notice to the permittee and the Department of a notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.

(7) The Department will accept only the bond of a surety authorized to do business in this Commonwealth when the surety bond is signed by an appropriate official of the surety as determined by the Department. If the principal place of business of the surety is outside this Commonwealth, the surety bond shall be signed by an authorized resident agent of the surety.

(8) The bond shall provide that liability on the bond may not be impaired or affected by a renewal or extension of the time for performance, or a forbearance or delay, in declaring or enforcing forfeiture of the bond. In the event of forfeiture, the surety shall have the option, subject to the consent and approval of the Department, to cover or perform the principal's obligation on the bond, in lieu of paying the bond amount to the Department. The surety shall notify the Department within 30 days of receiving the Department's notice of forfeiture of the surety's intent to perform the principal's obligation under the bond. If the surety does not notify the Department within the 30-day period, the Department may proceed with enforcing the forfeiture and collecting the bond.

§ 86.158. Special terms and conditions for collateral bonds.

(a) The Department will obtain possession of and keep in custody collateral deposited by the permittee until authorized for release or replacement as provided in this subchapter.

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

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

(2) The current market value is at least equal to the amount of the required bond amount.

(3) The Department may periodically revalue the securities and may require additional amounts if the current market value is insufficient to satisfy the bond amount requirements for the facility.

(4) The operator may request and receive the interest accruing on governmental securities with the Department as the interest becomes due and payable. The Department will not make interest payments for postforfeiture interest accruing during appeals, and after resolution of the appeals, when the forfeiture is adjudicated and decided in favor of the Commonwealth.

(c) A collateral bond pledging certificates of deposit is subject to the following conditions:

(1) The Department will require that certificates of deposit be assigned to the Department, in writing, and the assignment recorded upon the books of the bank issuing the certificates.

(2) The Department will not accept an individual certificate of deposit for denominations in excess of $100,000, or maximum insurable amount as determined by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation.

(3) The Department will require the banks issuing these certificates of deposit to waive rights of setoff or liens which they have or might have against those certificates.

(4) The Department will only accept automatically-renewable certificates of deposit.

(5) The Department will require the permittee to deposit sufficient amounts of certificates of deposit, to assure that the Department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this subchapter.

(6) The Department will only accept certificates of deposit from banks or banking institutions licensed or chartered to do business in the United States.

(7) The Department will not accept certificates of deposit from banks which have failed or unduly delayed in making payment on defaulted certificates of deposit.

(8) The permittee is not entitled to interest accruing after forfeiture is declared by the Department unless the forfeiture declaration is ruled invalid by a court having jurisdiction over the Department, and the ruling is final.

(d) A collateral bond pledging a letter of credit is subject to the following conditions:

(1) The letter of credit shall be a standby letter of credit issued by a Federally-insured or equivalently protected bank or banking institution, chartered or authorized to do business in the United States which agrees to jurisdiction within this Commonwealth.

(2) A letter of credit is irrevocable. The Department may accept a letter of credit which is irrevocable for a term of a year if:

(i) The letter of credit is automatically renewable for additional terms unless the bank gives at least 90 days prior written notice to the Department and the permittee of its intent to terminate the credit at the end of the current term.

(ii) The Department has the right to draw upon the credit before the end of its term and convert it into a cash collateral bond, if the permittee fails to replace the letter of credit with other acceptable bond within 30 days of the bank's notice to terminate the credit.

(3) The letter shall be payable to the Department in part or in full upon demand and receipt from the Department of a notice of forfeiture issued in accordance with §§ 86.180—86.182 and 86.185—86.190, or demand for payment under paragraph (2)(ii).

(4) The Department will not accept letters of credit from a bank for a permittee, on permits held by that permittee, in excess of 10% of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(5) A letter of credit written by Commonwealth banks or other institutions is governed by:

(i) The laws of the Commonwealth, including 13 Pa.C.S. §§ 1101—9507 (relating to Uniform Commercial Code).

(ii) The current version of the *Uniform Customs and Practices for Documentary Credits*, published by the International Chamber of Commerce.

(iii) A bank or other institution outside this Commonwealth which writes letters of credit, shall agree to be governed by the documents identified within this subsection.

(6) Letters of credit shall provide that the bank will give prompt notice to the permittee and the Department of notices received or actions filed alleging the insolvency or bankruptcy of the bank, or alleging violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business.

(7) The Department will not accept letters of credit from a bank that has failed or unduly delayed in making payment on a defaulted letter of credit.

(e) A collateral bond in the form of a life insurance policy is subject to the following conditions:

(1) The policy shall be fully paid and noncancellable with a cash surrender value irrevocably assigned to the Department at least equal to the amount of the required bond, and which may not be borrowed against and may not be utilized for any other purpose.

(2) The policy shall be a single-premium, ordinary whole life policy.

(3) The policy shall be designed so that in the event of the death of the insured, the Department receives from the proceeds of the policy an amount equal to the amount of the bond. The Department will hold the proceeds as cash collateral until release of all or part of the bond is authorized by the Department.

(4) The insurance company shall be licensed by the Insurance Commissioner to do business in this Commonwealth or be designated by the Insurance Commissioner as an eligible surplus lines insurer.

(5) The policy shall bear no liens, loans or encumbrances, and none shall become effective without the prior written consent of the Department.

(6) The person applying for the permit or the permittee, once the permit is issued, shall own the policy.

(7) The Department will maintain possession of the policy until authorized for bond release or replacement.

(f) A collateral bond in the form of an annuity or trust fund is subject to the following conditions:

(1) The amount of the trust fund or annuity shall be determined and set by the Department. The amount shall be that amount determined by the Department as necessary to meet the bonding requirements established by the Department for a permittee.

(2) The trust fund or annuity shall be in a form and contain terms and conditions as required by the Department. At a minimum, trust fund or annuity shall provide that:

(i) The Department is irrevocably established as the beneficiary of the trust fund or of the proceeds from the annuity.

(ii) Investment objectives of the trust fund or annuity shall be specified by the Department.

(iii) Termination of the trust fund or annuity may occur only as specified by the Department.

(iv) Release of money to the permittee from the annuity or trust fund may be made only upon written authorization of the Department.

(3) A financial institution serving as a trustee or issuing an annuity shall be a State-chartered or National bank or other financial institution with trust powers or a trust company with offices located in this Commonwealth and whose activities are examined or regulated by a State or Federal agency. An insurance company issuing an annuity shall be licensed or authorized to do business in this Commonwealth by the Insurance Commissioner or be designated by the Insurance Commissioner as an eligible surplus lines insurer.

(4) Trust funds and annuities, as described in this subsection, are established under government authority for the public purpose to guarantee that moneys are available for the Department to pay for treatment of postmining pollutional discharges or reclamation of the mine site or both. Trust funds and annuities constitute

property of the Commonwealth and, as such, any earnings, profits and distributions shall have the same tax status accorded the Commonwealth.

(g) Collateral shall be in the name of the permittee, and shall be pledged and assigned to the Department free of rights or claims. The pledge or assignment shall vest in the Department a property interest in the collateral which shall remain until released under the terms of this chapter, and will not be affected by the bankruptcy, insolvency or other financial incapacity of the operator, as allowed by law. The Department will ensure that ownership rights to deposited collateral are established to make the collateral readily available upon forfeiture. The Department may require proof of ownership and other means, such as secondary agreements, as it deems necessary to meet the requirements of this chapter.

§ 86.161. Phased deposits of collateral.

A permittee for a long-term mining operation or facility may post a collateral bond for a permit area according to the following requirements:

(1) The permittee shall submit a collateral bond to the Department.

(2) The permittee shall deposit $10,000 or 25%, whichever is greater, of the total amount of bond determined under §§ 86.148—86.152 (relating to amount and duration of liability) in approved collateral with the Department.

(3) The permittee shall submit a schedule agreeing to deposit a minimum of 10% of the remaining amount of bond, in approved collateral in each of the next 10 years or in a proportion so that final payment is made by the date required by the Department. The entire bond amount shall be submitted by the operator no later than the actual or expected completion of operations at the mine or the facility. An annual payment becomes due on the anniversary date of the issuance of the permit, unless otherwise established by the Department. A payment shall be accompanied by appropriate bond documents required by the Department. Interest accumulated by phased deposits of collateral shall become part of the bond, and may be used to reduce the amount of the final phased deposit.

(4) The Department may require additional bonding if the Department determines that a higher bond amount is necessary. The increase in the total bond amount required shall proportionately increase the remaining annual payments. The operator shall submit a new schedule within 30 days of notice by the Department of the increase in the total bond amount due.

(5) The operator shall deposit the full amount of the bond required for the long-term operation or facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department may make the demand when the Department determines that the purposes of this section, this chapter or the acts, have not been met, including, but not limited to, when one of the following occurs:

(i) The operator has failed to make a deposit of bond amount when required according to the schedule for the deposit.

(ii) The operator has violated the requirements of the acts, this chapter, other terms or conditions of the permit or orders of the Department.

(iii) The actual or expected completion of operations of the mine or the facility will occur prior to the expiration of the 10-year period determined under this section.

(6) The Department will not accept phased deposit of collateral as bond for long-term operation or facility when the Department determines that the purposes of this section, this chapter or the acts have not been met, including, but not limited to, the following:

(i) The operator has failed to pay the Department, when due, permit or reclamation fees, fines, penalties or other payments, or has failed to deposit bond amounts with the Department when due.

(ii) The operator has indicated a pattern or history of violations of applicable statutes, this chapter, the terms and conditions of the permit or orders of the Department, even if later corrected, which demonstrate a lack of ability or intention to comply with the requirements applicable to long-term mining operations or facilities.

§ 86.168. Terms and conditions for liability insurance.

(a) A permittee shall submit proof of liability insurance coverage before a permit or license is issued. The proof may consist of either a certificate filed at the time of license application and renewal thereof, or, otherwise annually filed with the Department certifying that the permittee has a public liability insurance policy in force covering all of the permittee's mining and reclamation operations in this Commonwealth.

(b) The insurance shall be written on an occurrence basis and shall provide for bodily injury and property damage protection in a total amount determined by the Department on a case by case basis, and adequate to compensate persons injured or property damaged as a result of the permittee's mining and reclamation operation and entitled to compensation under Pennsylvania law.

(c) The insurance shall include and the certificate shall provide a rider covering bodily injury and property damage from the use of explosives if explosives are to be used by the permittee and loss or diminution in quantity or quality of public or private sources of water. The limits of the rider shall be at least equivalent to the limits of the general liability portion of the policy.

(d) The insurance shall include a rider requiring that the insurer notify the Department 30 days prior to substantive changes being made in the policy, or prior to termination or failure to renew.

(e) Minimum insurance coverage for bodily injury shall be $500,000 per person and $1 million aggregate; and minimum insurance coverage for property damage shall be $500,000 for each occurrence and $1 million aggregate.

(f) The insurance coverage shall be maintained in full force for the duration of the permittee's mining and reclamation operation. The permittee shall submit proof of the coverage annually. If a permittee fails to maintain the insurance, the Department will issue a notice of intent to suspend the license or permit. The notice will allow the permittee or licensee 30 days from receipt of the notice to submit proof of insurance coverage. If proof is not submitted within the 30-day period, the Department will suspend the license or permit.

(g) A bond or an individual insurance policy as required under subsection (c) for each permit may be provided in lieu of liability insurance to cover replacement or restoration of water supplies.

RELEASE OF BONDS

§ 86.171. Procedures for seeking release of bond.

(a) The permittee, or another person having an interest in the bond, may file an application with the Department to release all or part of the bond liability applicable to a permit or designated phase of permit area after reclamation, restoration and abatement work in a reclamation stage, as defined in § 86.172 (relating to criteria for release of bond) has been completed on the permit area or designated phase of a permit area subject to the following conditions:

* * * * *

(b) At the time of filing an application under this section, the permittee shall advertise the filing of the application in a newspaper of general circulation in the locality of the permit area. The advertisement shall:

* * * * *

(6) State whether any postmining pollutional discharges have occurred and describe the type of treatment provided for the discharges.

(7) State that written comments, objections and requests for a public hearing or informal conference may be submitted to the appropriate office of the Department, provide the address of that office and the closing date by which comments, objections and requests shall be received.

* * * * *

(f) Departmental review and decision will be as follows:

* * * * *

(4) The notice of the decision shall state the reasons for the decision, recommend corrective actions necessary to secure the release and notify the permittee and the interested parties of their right to request a public hearing in accordance with subsection (h).

(g) If the permittee is unwilling or unable to request bond release, and if the criteria for bond release have been satisfied, the Department may release the bond by following the procedures of subsections (a)(2), (b), (d)—(f).

(h) Following receipt of the decision of the Department under subsection (f), the permittee or an affected person may appeal. Appeals shall be filed with the EHB under section 4 of the Environmental Hearing Board Act of 1988 (35 P. S. § 7514) and the requirements of Chapter 1021 (relating to practice and procedures).

§ 86.174. Standards for release of bonds.

(a) When the entire permit area or a portion of a permit area has been backfilled and regraded to the approximate original contour or approved alternative, and when drainage controls have been installed in accordance with the approved reclamation plan, Stage 1 reclamation standards have been met.

(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 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 the requirements of the acts, regulations thereunder or the permit.

(3) If prime farmlands are present, the soil productivity has been returned to the required level when compared with nonmined prime farmland in the surrounding area, to be determined from the soil survey performed under the reclamation plan approved in Chapters 87—90.

(4) If a permanent impoundment has been approved as an alternative postmining land use, the plan for management of the permitted impoundment has been implemented to the satisfaction of the Department.

(c) When the entire permit area or a portion of the permit area meets the following performance standards, Stage 3 reclamation has been achieved:

(1) The permittee has successfully completed mining and reclamation operations in accordance with the approved reclamation plan so that the land is capable of supporting postmining land use approved under §§ 87.159, 88.133, 89.88 and 90.166.

(2) The permittee has achieved compliance with the requirements of the acts, regulations thereunder, the conditions of the permit and the applicable liability period under § 86.151 (relating to period of liability) has expired.

(d) Additional standards for release of bonds for underground mining operations are as follows: release of the bond posted for mine subsidence, 10 years after completion of mining and reclamation.

§ 86.175. Schedule for release of bond.

(a) The Department will not release any portion of the liability under bonds applicable to a permit area or designated phase of a permit area until it finds that the permittee has complied with §§ 86.171, 86.172 and 86.174 (relating to procedures for seeking release of bond; criteria for release of bond; and standards for release of bonds).

(b) The amount of bonds applicable to a permit area or designated phase of a permit area which may be released shall be calculated on the following basis:

(1) Release of an amount not to exceed 60% of the total bond amount on the permit area or designated phase of a permit area upon completion and approval by the Department of Stage 1 reclamation.

(2) Release of an additional amount of bond on the permit area or designated phase of a permit area upon completion and approval by the Department of Stage 2 reclamation but retaining an amount of bond coverage sufficient to cover the cost of reestablishing vegetation and reconstructing drainage structures if completed by a third party and for the period specified for permit liability in § 86.151 (relating to period of liability).

(3) Release of the remaining portion of the total bond on the permit area or designated phase of a permit area after standards of Stage 3 reclamation have been attained.

§ 86.182. Procedures.

(a) If forfeiture of the bond is required, the Department will:

(1) Send written notification by mail to the permittee, and the surety on the bond of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the permittee and surety of their right to appeal to the EHB under section 4 of the Environmental Hearing Board Act of 1988 (35 P. S. § 7514).

(3) Notify the surety of the requirement to pay the amount of the forfeited bond over to the Department within 30 days after notice by certified mail from the Department. The money shall be held in escrow with any interest accruing to the Department pending the resolution of any appeals. If it is determined, by a court of competent jurisdiction, after exhaustion of appeals, that the Commonwealth was not entitled to all or a portion of the amount forfeited, the interest shall accrue proportionately to the surety in the amount determined to be improperly forfeited by the Department.

(4) Proceed to collect on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this section, if timely appeal is not filed or if an appeal is filed and the appeal is unsuccessful.

(b) The written determination to forfeit the bond, including the reasons for forfeiture, shall be a final decision by the Department.

(c) The Department will forfeit bonds deposited for a permit area, including designated phases of a permit area and amended permit areas, except for that portion of the bond which has been released as provided in §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond). Liability on every bond posted for a permit area, designated phase of a permit area, or an amendment thereof, shall cover violations within the permit area or resulting from mining of the permit area.

(d) In lieu of paying the amount of the forfeited bond within 30 days after notice, a surety may reclaim the forfeited site upon the consent and approval of the Department. The surety shall notify the Department of its intent to reclaim the site within 30 days after the notice of forfeiture. The notification shall include a time frame within which the surety will submit a proposal which describes both the reclamation work to be done and a schedule for completion of the reclamation. Subject to the Department's approval of the time frame and the subsequent reclamation proposal, the Department and the surety will enter into a consent order and agreement specifying the terms of the reclamation work to be done.

(e) If the Department declares a collateral bond forfeited, it will pay, or direct the State Treasurer to pay, the collateral funds into the Surface Mining Conservation and Reclamation Fund. If upon proper demand and presentation, the banking institution or other person or municipality which issued the collateral refuses to pay the Department the proceeds of a collateral undertaking, such as a certificate of deposit, letter of credit or government negotiable security, the Department will take appropriate steps to collect the proceeds.

(f) The Department will use funds collected from bond forfeiture to complete the reclamation plan, or remaining portion thereof, on the permit area or increment to which bond coverage applies.

(g) If the amount forfeited is:

(1) Insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The Department may complete, or authorize completion of, the reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

(2) More than the amount necessary to complete the reclamation, the excess funds will be used by the Department, as approved by the Secretary, for any of the purposes provided in section 18(a) of the act (52 P. S. § 1396.18(a)).

Subchapter G. CIVIL PENALTIES FOR COAL MINING ACTIVITIES

GENERAL PROVISIONS

§ 86.195. Penalties against corporate officers.

(a) The Department may assess a civil penalty against a corporate officer who participates in a violation or whose misconduct or intentional neglect causes or allows a violation.

(b) Whenever the Department issues an order to an operator for failing to abate violations contained in a previous order, it will send by certified mail to each corporate officer listed in the surface mining operator's license application under § 86.353 (relating to identification of ownership), or to each corporate officer listed in a coal mining activities application under § 86.62 (relating to identification of interests), a copy of the failure to abate order and a notice of the officer' liability under this section. If the violations are not abated within 30 days of issuance of the failure to abate order, the Department may assess a civil penalty against each officer receiving the notice provided by this subsection.

Subchapter K. MINE OPERATOR'S LICENSE

Sec.

§ 86.351. License requirement.

A person who intends to mine coal as an operator within this Commonwealth shall first obtain a mine operator's license from the Department.

§ 86.352. Mine operator's license application.

Application for license shall be made in writing on forms prepared and furnished by the Department and contain information pertaining to:

(1) Identification of ownership.

(2) Public liability insurance.

(3) Compliance information.

§ 86.353. Identification of ownership.

The application shall indicate whether the applicant is a corporation, partnership, sole proprietorship, association or other business entity. For all entities, the application shall contain the following information, as applicable, for each person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls" in § 86.1 (relating to definitions) except that the submission of a Social Security number is voluntary:

(1) The name, address, Social Security number and employer identification number of every:

(i) Officer.

(ii) Partner.

(iii) Associate.

(iv) Shareholder of at least 10% of the voting stock.

(v) Director.

(vi) Other person performing a function similar to a director of the applicant.

(vii) Person having the ability to commit the financial or real property assets or working resources of an entity.

(viii) Person who has another relationship with the applicant which gives the person authority directly or indirectly to determine the manner in which mining is conducted.

(ix) Person who owns or controls the persons specified in subparagraphs (i)—(viii), either directly or indirectly through intermediary entities.

(2) For each person listed in paragraph (1), the following:

(i) The title of the person's position.

(ii) The date the position or stock ownership was assumed, and if applicable, the date of departure from the position or the date of sale of stock.

(iii) The percentage of ownership.

(iv) The location in the organizational structure.

(v) The relationship to the applicant.

(3) The following related entity information:

(i) The names of companies who, under the definition of "owned or controlled" or "owns or controls" in § 86.1, own or control the applicant or who are owned or controlled by the applicant and provide the following information for each entity:

(A) Identifying numbers, including Employer Identification numbers, Federal or State permit numbers and Mine Safety and Health Administration (MSHA) numbers with the date of issuance for each permit.

(B) The application number or other identifier of and the regulatory authority for any other pending mining operation permit application filed by the entity in any other state.

(C) The name, address, Social Security number and Employer Identification Number of every officer, partner, associate, principal shareholder, director or other person performing a function similar to director of the applicant, including the title of the person's position and the date the position was assumed, and if applicable, the date of departure from the position or date of sale of stock.

(ii) For each person listed in paragraph (1), who is, or has been, associated with another company as an owner or controller, under the definition of "owned or controlled" and "owns or controls" in § 86.1, within the 5-year period preceding the date of application, provide the following information:

(A) The name of each entity they are, or were, associated with.

(B) The identifying numbers, including Employer Identification numbers, Federal or State permit numbers and MSHA numbers with the date of issuance for each permit.

(C) The application number or other identifier of and the regulatory authority for other pending mining operation permit applications filed by the entity with which the person is affiliated in other states.

§ 86.354. Public liability insurance.

The applicant shall provide a certificate of insurance for the term of the license covering all surface mining activities of the applicant in this Commonwealth and in accordance with § 86.168 (relating to terms and conditions for liability insurance).

§ 86.355. Criteria for approval of application.

(a) The Department will not issue, renew or amend the license of any person who mines coal by the surface mining method if, after investigation and an opportunity for an informal conference, it finds one or more of the following:

(1) The applicant has failed, and continues to fail, to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree, or as indicated by a written notice from the Department of a declaration of forfeiture of a person's bonds. The Department will consider the applicant to be in compliance, for purposes of determining whether the license will be issued, renewed or amended, when the applicant is in compliance with a schedule approved by the Department in writing.

(2) The applicant has shown a lack of ability or intention to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree, or as indicated by written notice from the Department of a declaration of forfeiture of a person's bonds.

(3) The applicant has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which has failed and continues to fail to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree, or as indicated by a written notice from the Department of a declaration of forfeiture of a persons' bonds. The Department will consider the applicant to be in compliance, for purposes of determining whether the license shall be issued, renewed or amended, when the conduct is being corrected to the satisfaction of the Department in accordance with a schedule approved by the Department in writing.

(4) The applicant has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which has shown a lack of ability or intention to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree, or as indicated by a written notice from the Department of a declaration of forfeiture of a person's bonds.

(b) The Department will issue a notice of intention not to issue, renew or amend a license for the reasons in subsection (a).

(c) Prior to the final action of not issuing, renewing or amending a license, the Department will notify the applicant, in writing, of the intention not to issue, renew or amend the license, and the opportunity for an informal conference.

(d) A person who opposes the Department's decision on issuance, renewal or amendment of a license has the burden of proof.

(e) For the purposes of this section, "adjudicated proceeding" means a final unappealed order of the Department or a final order of the EHB or other court of competent jurisdiction.

§ 86.356. License renewal requirements.

(a) A person licensed as a mine operator shall renew the license annually according to the schedule established by the Department.

(b) The application for renewal shall be made at least 60 days before the current license expires.

(c) If the Department intends not to renew a license of any person who mines coal by the surface mining method, the Department will notify the licensee a minimum of 60 days prior to expiration of the license. Nothing in this section prevents the Department from not renewing the

license for violations occurring or continuing within this 60-day period if the Department provides an opportunity for an informal conference.

§ 86.357. Informal conference.

(a) If the applicant requests an informal conference, the applicant shall, within 15 days of receipt of notice under § 86.355(c) (relating to criteria for approval of application), request, in writing, that the Department hold an informal conference to provide the applicant with an opportunity to informally discuss the Department's intention not to issue, renew or amend the license.

(b) If the applicant requests an informal conference under this section, the license shall remain in effect until the Department has made its decision after the informal conference.

§ 86.358. Suspension and revocation.

(a) The Department may suspend or revoke a license for the following reasons:

(1) Failure to comply with an order of the Department for which a supersedeas has not been granted.

(2) Failure to comply with the conditions of a permit.

(3) Failure to comply with the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1391.1—1396.19a) or the regulations thereunder.

(4) Failure to maintain public liability insurance.

(b) If the Department intends to revoke or suspend a license, it will provide an opportunity for an informal conference before suspending or revoking a license. The Department will notify the licensee of its intent to revoke or suspend a license and of the opportunity for an informal conference at least 15 days prior to revoking or suspending the license, unless the Department determines that a shorter period is in the public interest.

§ 86.359. Fees.

(a) The application for licensure or renewal of licensure shall be accompanied by a fee of $50 in the case of persons mining 2,000 tons or less of marketable coal per year, a fee of $500 in the case of persons mining more than 2,000 or up to 300,000 tons of marketable coal per year and a fee of $1,000 for all others.

(b) A fee may be refunded at the applicant's request if the application is withdrawn prior to the Department deciding to issue or deny the license. Once the Department notifies the applicant of its final decision concerning issuance or denial of a license or renewal, the fee is not refundable.

CHAPTER 87. SURFACE MINING OF COAL

Subchapter B. (Reserved)

§§ 87.11—87.21 (Reserved).

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

§ 87.102. Hydrologic balance: effluent standards.

* * * * *

(e) *Postmining pollutional discharges.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with this title, including Chapters 91—93, 95, 97, 101 and 102.

CHAPTER 88. ANTHRACITE COAL

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

§ 88.92. Hydrologic balance: effluent standards.

* * * * *

(e) *Postmining pollutional discharges.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with Chapters 91—93, 95, 97, 101 and 102.

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

§ 88.187. Hydrologic balance.

* * * * *

(e) *Postmining pollutional discharges.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with Chapters 91—93, 95, 97, 101 and 102.

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

§ 88.292. Hydrologic balance: effluent standards.

* * * * *

(e) *Postmining pollutional discharges.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with this title, including Chapters 91—93, 95, 97, 101 and 102.

CHAPTER 89. UNDERGROUND MINING OF COAL AND COAL PREPARATION FACILITIES

Subchapter B. OPERATIONS

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

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(f) *Postmining pollutional discharges.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) *Single facilities for sediment and erosion control.* If a single facility is used for sediment and erosion control facilities and treatment facilities covered by this section, the concentration of each pollutant in the combined discharge may not exceed the most stringent limitations for that pollutant applicable to a component waste stream of the discharge.

(h) *Additional requirements.* In addition to the requirements of subsections (c)—(g), the discharge of water from the permit area shall comply with this title, including Chapters 91—93, 95, 97, 101 and 102.

(i) *Responsibility.* The permittee is permanently responsible for discharges which are encountered or are affected by or connected with the mining or reclamation activities.

(j) *Exemption.* The Department may grant an exemption to subsection (b) only if the person who conducts the operation demonstrates, and the Department finds, in writing, that:

(1) Sedimentation ponds or treatment facilities are not needed to achieve the effluent limitations in subsections (c)—(f) and the water quality standards in Chapter 93.

(2) There is no mixture of surface runoff with drainage from underground mine workings.

(3) The disturbed area is small for drainage from areas affected by surface facilities.

CHAPTER 90. COAL REFUSE DISPOSAL

Subchapter D. PERFORMANCE STANDARDS FOR COAL REFUSE DISPOSAL

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

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(e) *Postmining pollutional discharges.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) *Additional requirements.* In addition to the requirements of subsections (a)—(e), the discharge of water from coal refuse disposal activities shall comply with this title, including Chapters 91—93, 95, 97, 101 and 102.

(g) *Abatement plan.* If water from a coal refuse disposal area is discharged into a mine for treatment with the drainage from the mine, that mine may not be closed or sealed until an approval for the abatement of the discharges from the coal refuse disposal area is granted by the Department. The abatement plan, including necessary permit applications, shall be submitted to the Department at least 18 months prior to the anticipated closure date of the mine to assure that necessary facilities and measures will be implemented prior to the mine closure or sealing.

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