

# PROPOSED RULEMAKING

## DEPARTMENT OF TRANSPORTATION

[ 67 PA. CODE CH. 15 ]

### Authorized Vehicles and Special Operating Privileges

The Department of Transportation (Department), under the authority in 75 Pa.C.S. §§ 4572(b), 6103 and 6107 (relating to visual signals on authorized vehicles; promulgation of rules and regulations by department; and designation of authorized vehicles by department), proposes to amend Chapter 15 (relating to authorized vehicles and special operating privileges) to read as set forth in Annex A.

#### *Purpose of Chapter 15*

Chapter 15 establishes the types of vehicles which are considered authorized vehicles under 75 Pa.C.S. § 102 (relating to definitions) and 75 Pa.C.S. §§ 4572(b) and 6107 and establishes special operating privileges for these authorized vehicles.

#### *Purpose of Proposed Rulemaking*

The purpose of this proposed rulemaking to designate additional Type I authorized vehicles, including vehicles used by those that carry out a governmental function or public service regarding the protection, care and control of animals. The proposed rulemaking will allow newly-authorized vehicles to be equipped with yellow flashing or revolving lights which can be activated when the vehicle is engaged in performing work within the scope of its authority.

#### *Summary of Significant Amendments*

Section 15.2(1) (relating to types of authorized vehicles) is proposed to be amended to designate the following vehicles as Type I authorized vehicles: 1) Commonwealth-owned vehicles which are used by a State dog warden employed by the Department of Agriculture; and 2) vehicles owned by a nonprofit society or association duly incorporated under 15 Pa.C.S. §§ 5301—5341 (relating to incorporation) for the prevention of cruelty to animals and used by a humane society police officer as the term is defined in 22 Pa.C.S. § 3701 (relating to scope of chapter). These proposed amendments will permit these vehicles to be equipped with yellow flashing or revolving lights which may be activated by State dog wardens or humane society police officers while in performance of their duties in the protection, care and control of animals.

#### *Persons and Entities Affected*

This proposed rulemaking will affect State dog wardens and humane society police officers in the performance of their duties. It will also affect the motoring public, which will be alerted to the presence of State dog warden and humane society police officer vehicles on or along the highways so as to encourage the motoring public to slow down and proceed with caution.

#### *Fiscal Impact*

Implementation of this proposed rulemaking will require the procurement of yellow flashing or revolving lights for State dog warden and humane society police officer vehicles. This proposed rulemaking will not impose additional costs to other entities.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 15, 2014, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

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

#### *Sunset Provisions*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* following appropriate evaluation of comments, suggestions or objections received during the public comment period. The Department is not establishing a sunset date for these regulations, as it anticipates an ongoing value in providing State dog wardens and humane society police officers the ability to use yellow flashing or revolving lights in carrying out their respective duties. The Department, however, will continue to closely monitor these regulations for their effectiveness.

#### *Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Glenn C. Rowe, PE, Acting Chief, Highway Safety and Traffic Operations Division, Bureau of Maintenance and Operations, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17105, glrowe@pa.gov within 30 days of the publication of in the *Pennsylvania Bulletin*.

#### *Contact Person*

The contact person for technical questions about this proposed rulemaking is Glenn C. Rowe, PE, Acting Chief, Highway Safety and Traffic Operations Division, Bureau of Maintenance and Operations, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120-0064, (717) 783-6479, glrowe@pa.gov.

BARRY J. SCHOCH, PE,  
*Secretary*

**Fiscal Note:** 18-463. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 67. TRANSPORTATION

#### PART I. DEPARTMENT OF TRANSPORTATION

#### Subpart A. VEHICLE CODE PROVISIONS

#### ARTICLE II. TITLE

#### CHAPTER 15. AUTHORIZED VEHICLES AND SPECIAL OPERATING PRIVILEGES

#### § 15.2. Types of authorized vehicles.

The vehicles enumerated in this section are designated as authorized vehicles of the type indicated. They may be

equipped with one or two flashing or revolving yellow lights as provided in 75 Pa.C.S. § 4572(b) (relating to [ flashing or revolving yellow lights ] visual signs on authorized vehicles), and as defined in Chapter 173 (relating to flashing or revolving lights on emergency and authorized vehicles), except that school buses shall be equipped with red and amber flashing lights as defined in 75 Pa.C.S. § 4552 (relating to general requirements for school buses). The flashing or revolving yellow lights on all authorized vehicles except school buses shall be activated only when the vehicle is performing the type of work which is the basis of the designation of the vehicle as an authorized vehicle, except lights on Type VI vehicles may be activated whenever an emergency condition requires police assistance. The enumeration of vehicles is as follows:

- (1) *Type I.* Type I vehicles include the following:
  - (i) Highway construction and maintenance vehicles. Such vehicles shall include, but not be limited to, traffic-line-painting trucks, sign and signal maintenance trucks, dump trucks, street sweepers, mowers, highway inspection vehicles, and vehicles involved in traffic studies or investigations or right-of-way operations.
  - (ii) Vehicles which are used in utility operations.
  - (iii) Highway service vehicles such as, but not limited to, tow trucks and road-service vehicles.
  - (iv) Vehicles used to collect money from parking meters.
  - (v) **Commonwealth-owned vehicles which are used by a State dog warden employed by the Department of Agriculture.**
  - (vi) **Vehicles owned by a nonprofit society or association duly incorporated under 15 Pa.C.S. §§ 5301—5341 (relating to incorporation) for the prevention of cruelty to animals and used by a humane society police officer as the term is defined in 22 Pa.C.S. § 3701 (relating to scope of chapter).**
- (2) *Type II.* Snowplows, snowblowers and vehicles modified or equipped for the attachment of snowplows, snowblowers or similar devices.

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[Pa.B. Doc. No. 14-2186. Filed for public inspection October 24, 2014, 9:00 a.m.]

# ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CHS. 77, 86—90 AND 211 ]

## Land Reclamation Financial Guarantees and Bioenergy Crop Bonding

The Environmental Quality Board (Board) proposes to add §§ 86.162b and 86.162c (relating to Land Reclamation Financial Guarantees; and Bioenergy Crop Bonding) to read as set forth in Annex A. Proposed §§ 86.162b and 86.162c will implement the act of July 5, 2012 (P. L. 918, No. 95) (Act 95) and the act of October 24, 2012 (P. L. 1276, No. 157) (Act 157). Act 95 provides a financial incentive to surface mining operators reclaiming remaining sites with bioenergy crops. Act 157 establishes Land Reclamation Financial Guarantees (LRFG) to satisfy the

bonding obligations of qualifying surface mining operators. A proposed amendment to § 86.187(a)(1)(iii) (relating to use of money) will reflect the establishment of LRFGs. The financial guarantees established by Acts 95 and 157 are voluntary and intended to assist surface mining operators to satisfy their statutory bonding obligations.

As part of this proposed rulemaking, the Board also proposes to amend Chapters 77, 86—90 and 211 to correct citations to the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P. S. §§ 1396.1—1396.19b), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003). These corrections are necessary to account for the addition of section 19.2 of the SMCRA (52 P. S. § 1396.19b), which was added by Act 157, and to correct citation errors in Chapters 77, 86—90 and 211.

This proposed rulemaking was adopted by the Board at its meeting of July 15, 2014.

### A. Effective Date

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

### B. Contact Persons

For further information, contact Thomas Callaghan, PG, Director, Bureau of Mining Programs, Rachel Carson State Office Building, 5th Floor, 400 Market Street, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5015; or Robert “Bo” Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection’s (Department) web site at [www.dep.state.pa.us](http://www.dep.state.pa.us) (select “Public Participation Center,” then select “The Environmental Quality Board”).

### C. Statutory Authority

This proposed rulemaking is authorized under the authority of section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the SMCRA (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

### D. Background and Purpose

This proposed rulemaking will accomplish three things. First, it will correct citations to statutes as they appear in Chapters 77, 86—90 and 211. Second, it proposes regulations to implement Act 95. Third, it proposes regulations to implement Act 157.

The amendments to Chapters 77, 86—90 and 211 correct citations to the SMCRA, the Dam Safety and Encroachments Act and the Solid Waste Management Act. This is strictly a housekeeping matter.

Act 95 amended SMCRA by adding section 4.14 (52 P. S. § 1396.4n) and allows surface coal mining operators to seek reclamation bond coverage at no cost when reclaiming a remaining site with bioenergy crops. This proposed rulemaking will provide the framework for implementing Act 95’s bioenergy crop reclamation incentive. Seeking Bioenergy Crop Bonding established by Act 95 is voluntary.

Act 157 is a statutory amendment that makes LRFGs available to operators. LRFGs offer financial guarantees

to assure the bonding obligations of qualifying surface mining operators, and this rulemaking proposes the framework for providing LRFGs to surface mining operators. Seeking LRFGs established by Act 157 is voluntary.

#### *Citation updates*

Amendments to Chapters 77, 86—90 and 211 are necessary to correct certain citations to the SMCRA, the Dam Safety and Encroachments Act and the Solid Waste Management Act. These corrections account for the adoption of section 19.2 of the SMCRA, which was added by Act 157, and correct existing citation errors in Chapters 77, 86—90 and 211.

#### *Acts 95 and 157*

Acts 95 and 157 establish financial guarantees that are intended to assist surface mining operators in meeting their SMCRA bonding obligations. Accordingly, the proposed regulations implementing Acts 95 and 157 have been included in this proposed rulemaking.

By way of background, SMCRA bonding obligations ensure that surface mining sites are reclaimed which eliminates environmental and safety hazards. Prior to 2001, the Department implemented an alternate bonding system (ABS). Under the ABS, the bond amount for a surface mining site was determined by a per-acre flat rate that was supplemented by a nonrefundable per-acre "Reclamation Fee." The ABS ultimately failed to ensure adequate bonding, leaving some mine sites in an unreclaimed state. These unreclaimed sites are known as ABS legacy sites and the Department is responsible for reclaiming the ABS legacy sites and treating post-mining pollutional discharges emanating therefrom.

Due to funding deficiencies, which ultimately resulted in ABS legacy sites, the ABS was discontinued and replaced with the full-cost bonding program. Full-cost bonding guarantees that all surface mining sites will be sufficiently bonded to meet reclamation obligations. The transition from the ABS to the full-cost bonding program was facilitated through the use of financial guarantees known as Conversion Assistance. As part of Conversion Assistance, the General Assembly appropriated \$7 million to the Department through section 213 of the act of June 22, 2001 (P. L. 979, No. 6A) (Act 6A), known as the General Appropriation Act of 2001. Consistent with the SMCRA, this appropriation allowed for the use of sum-certain financial guarantees to satisfy the bonding obligations for a surface mining site. See section 4(d.2) of the SMCRA. Acts 95 and 157 establish programs that offer these financial guarantees.

Financial guarantees, such as those established in Acts 95 and 157, help surface mining operators meet their statutory bonding obligations by reducing capital costs. A reduction in capital costs means more cash is available to surface mining operators for their operations. Financial guarantees thus reduce the financial impact of statutory bonding requirements on surface mining operators.

#### *Act 95—Bioenergy Crop Bonding*

As a surface mining site is reclaimed, the bond posted to financially guarantee reclamation is released. Under Chapter 86 (relating to surface and underground coal mining: general), bond release occurs in three stages. After a surface mining site has been regraded and planted with permanent vegetation, thus satisfying Stage 2 reclamation obligations, a portion of the bond posted will be held for at least 5 years. This is the Stage 3 reclamation liability period.

Act 95 offers a sum-certain financial guarantee at no cost to a permittee to cover Stage 3 reclamation liability when the permittee reclaims a remining site with bioenergy crops such as switchgrass, camelina or canola. In the event of bond forfeiture, the financial guarantee established by Act 95 finances reclamation of the forfeited site in an amount not to exceed the sum-certain guarantee. Participation in the Bioenergy Crop Bonding program established by Act 95 is voluntary.

Act 95 permits funding of this program only to the extent funds are available from the appropriation to the Department under section 213 of Act 6A or to the extent funds are otherwise appropriated.

Proposed § 86.162c will implement the requirements of Act 95.

#### *Act 157—Land Reclamation Financial Guarantees*

Act 157 established the LRFG Account, authorized a one-time transfer of \$500,000 from Conversion Assistance moneys to the Remining Financial Assurance Fund, and authorized the transfer of the remaining Conversion Assistance moneys to the LRFG Account. The transfers were executed in 2013. The funds in the LRFG Account are to be used, in part, to underwrite LRFGs established by Act 157. At this time, more than \$12 million is available to support the LRFG program as it is structured in Act 157 and for other uses authorized by Act 157.

LRFGs are offered to assist surface mining operators achieve full-cost bonding as required by the SMCRA by making available to applicants sum-certain financial guarantees to cover reclamation obligations. This proposed rulemaking provides the framework for offering LRFGs.

Act 157 establishes eligibility guidelines to determine which surface mining operators may receive LRFGs. In determining eligibility, the Department is to consider a number of factors including the operator's long-term financial stability, compliance history, time in business and prior denial of coverage for a surety bond, if any. The Department may also consider other factors that are indicative of an operator's ability to complete reclamation and make payments under the program. Beyond these eligibility requirements, the Department is to consider the environmental hazards, safety hazards and coal reserves available at the site.

Act 157 establishes LRFGs and the LRFG fee. This fee, along with interest earned on the funds in the LRFG Account, may be transferred into the Reclamation Fee Operation and Maintenance (O&M) Trust Account established under § 86.17 (relating to permit and reclamation fees) and § 86.187 so long as the financial stability of the LRFG program is not threatened. The transfer of funds from the LRFG Account to the Reclamation Fee O&M Trust Account is intended to supplement the Reclamation Fee O&M Trust Account which is used to pay for the operation and maintenance of treatment systems at ABS legacy sites.

Furthermore, Act 157 requires the total amount of LRFGs that can be supported by the LRFG Account to be calculated. This is based on loss reserves and calculated by applying the historical rate of mine operator bond forfeiture plus a reasonable margin of safety to protect the account from the risk of forfeiture. Additionally, regulation underwriting methods adequate to ensure the account against the risk of forfeiture of the guarantees must be established. According to Act 157, the LRFG Account is to be the sole source of funds used to

underwrite LRFGs, and the Commonwealth is not obligated to expend funds beyond the amount in the LRFG Account.

Act 157 also includes a provision for the annual appropriation of up to \$2 million collected from the Gross Receipts Tax by the General Assembly to the Department for transfer into the Reclamation Fee O&M Trust Account established in § 86.17.

Finally, Act 157 permits the discontinuance of LRFGs if 25% or more of the total outstanding bond obligation for all issued LRFGs is subject to forfeiture.

The LRFGs established by Act 157 share many concepts with the reining financial guarantee (RFG) program. The experience gained from implementing the RFG program since 1996 has been useful in establishing the proposed requirements for implementing LRFGs.

#### *Mining and Reclamation Advisory Board collaboration*

The Department collaborated with the Mining and Reclamation Advisory Board's (MRAB) Regulation, Technical and Legislative Committee to develop this proposed rulemaking. The MRAB voted for the proposed rulemaking to proceed at its October 24, 2013, meeting and provided one recommendation to the portion of the rulemaking implementing Act 157. The MRAB specifically recommended the following language be added to the regulation regarding the appropriation of money from the Gross Receipts Tax as described in section 19.2(b)(7) of the SMCRA and Act 157:

No later than the date of the Department's annual budget request to the Governor's Budget Office, the Department shall report to the MRAB as to when a transfer from the Gross Receipts Tax to the Reclamation Fee O&M Trust Account is necessary to supplement the funding of the Reclamation Fee O&M Trust Account in order to offset an increase in the reclamation fee in the subsequent fiscal year.

Though not adopting this language verbatim, the Department incorporated the substance of this recommendation in a proposed amendment to § 86.17(e). Section 86.17(e) requires the Department to provide information to the MRAB on the status of the operation and maintenance of treatment facilities at ABS legacy sites and the funding status of the Reclamation Fee O&M Trust Account. In the course of fulfilling this existing obligation under § 86.17(e), the Department, as recommended by the MRAB and proposed in this rulemaking, will provide information on the appropriation from the Gross Receipts Tax by the time the Department's budget request is provided to the Governor's Budget Office. This proposed amendment to § 86.17(e) will satisfy the provision in Act 157 and the MRAB's recommendation.

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

##### *SMCRA citation updates*

Sections 77.1, 77.126, 77.254, 86.1, 86.6, 86.12, 86.121, 86.159, 86.185, 86.187, 86.232, 86.252, 86.358, 87.1, 87.205, 88.482, 88.505, 89.5, 90.305 and 211.121 are proposed to be amended to make minor nonsubstantive technical corrections because Act 157 added section 19.2 of the SMCRA.

This proposed rulemaking also corrects a typographical error in the citation to the SMCRA in § 86.182(h)(2) (relating to procedures).

This proposed rulemaking also includes another correction to citations of the Dam Safety and Encroachments Act and the Solid Waste Management Act in § 77.254 (relating to preservation of remedies).

This proposed rulemaking includes a correction to the citation of the Dam Safety and Encroachments Act in § 86.232 (relating to definitions).

##### *Act 95—Bioenergy Crop Bonding*

Proposed § 86.162c(a) describes conditions of eligibility to obtain Bioenergy Crop Bonding. Bioenergy Crop Bonding may be obtained where crops, including switchgrass, canola or camelina, or those grown to produce feedstock for biofuels, including biodiesel and ethanol, and biomass for electricity generation, are grown to reclaim reining sites. To obtain Bioenergy Crop Bonding, Stage 2 bond release needs to have been achieved and water treatment liability must not have been triggered under Chapter 87, Subchapter F, Chapter 88, Subchapter G or Chapter 90, Subchapter F (relating to surface coal mines: minimum requirements for reining areas with pollutional discharges; anthracite surface mining activities and anthracite bank removal and reclamation activities: minimum requirements for reining areas with pollutional discharges; and coal refuse disposal activities on areas with preexisting pollutional discharges).

Proposed § 86.162c(b) describes the application requirements of Bioenergy Crop Bonding. An application must provide: verification that the entire permitted area has achieved Stage 2 bond release consistent with § 86.174(b) (relating to standards for release of bonds); a demonstration that the crops grown are bioenergy crops; crop yield data that demonstrates that the bioenergy crops are achieving acceptable crop production; a demonstration that all temporary structures have been reclaimed; a demonstration that there are no post-mining pollutional discharges or that all liability associated with post-mining pollutional discharges is fully covered with a full-cost bond or a fully funded post-mining treatment trust; and acknowledgement that the permittee intends to apply for final release of the Bioenergy Crop Bonding in a timely manner.

Proposed § 86.162c(c) provides that upon approval of the Bioenergy Crop Bonding application, the Department will release the existing bond held for Stage 3 liability.

Proposed § 86.162c(d) establishes that the liability period under the Bioenergy Crop Bonding cannot exceed 5 years. Moreover, permits with a bond liability period greater than 5 years are not eligible because of the risk of water pollution under § 86.151(b)(1) and (c) (relating to period of liability).

Proposed § 86.162c(e) provides that the Bioenergy Crop Bonding for a permit will expire no later than 120 days after the expiration of the 5-year liability period. In the case when the final bond release cannot be accomplished upon expiration of the Bioenergy Crop Bonding, the Bioenergy Crop Bonding must be replaced.

Proposed § 86.162c(f) requires Bioenergy Crop Bonding to be replaced if the final bond release is not achieved upon the expiration of Bioenergy Crop Bonding.

##### *Act 157—Land Reclamation Financial Guarantees*

This proposed rulemaking, in part, addresses the provision in Act 157 on the annual appropriation of funds from the Gross Receipts Tax to the Reclamation Fee O&M Trust Account. In response to that provision, the MRAB suggested language to be included in this proposed rulemaking requiring the Department to issue a report to the MRAB on the Reclamation Fee O&M Trust Account. Section 86.17 currently requires an annual report from the Department which includes an update on the Reclamation Fee O&M Trust Account, a financial analysis of the revenue and expenses from the account, and estab-

lishes a process for presenting the report to the MRAB for its review and comment. The information made available through this process is the same information necessary for the Department to determine when additional funds are needed to supplement the Reclamation Fee O&M Trust Account to offset an increase in the Reclamation Fee. Offsetting an increase in the Reclamation Fee is important to operators because the Reclamation Fee impacts operating expenses.

While the exact language of the MRAB's recommendation was not used, proposed language has been added to § 86.17(e)(2) that incorporates the substance of the MRAB's recommendation. This proposed language in § 86.17 is the most effective way to assure that the MRAB is provided with the information necessary to fully implement Act 157.

Proposed amendments to § 86.17(e)(2) will incorporate the MRAB's recommendation by requiring the Department's annual report on the Reclamation Fee O&M Trust Account to include information necessary for determining the need to supplement the funding of the Reclamation Fee O&M Trust Account. The proposed amendment also provides that the need to supplement the funding of the Reclamation Fee O&M Trust Account will be based on the need to offset an increase in the reclamation fee and the need to provide for long-term operations at ABS legacy sites.

Proposed § 86.162b(a) establishes that the Department will designate funds in the LRFG Account to underwrite LRFGs.

Proposed § 86.162b(b) provides that funds in the LRFG Account will be used to cover obligations for all existing sum-certain financial guarantees needed to facilitate the implementation of full-cost bonding previously issued by the Department.

Proposed § 86.162b(c) establishes that LRFGs may be used to financially assure the bonding obligations of qualified surface coal mining operators engaged in surface mining activities under § 86.143 (relating to requirement to file a bond).

Proposed § 86.162b(d) provides that the Department will hold in reserve in the LRFG Account funds that are not designated to underwrite LRFGs. Proposed § 86.162b(d) and (e) implements the distinction drawn in Act 157 between funds in the LRFG Account designated to underwrite LRFGs (subsection (d)) and funds in the LRFG Account held in reserve (subsection (e)) for purposes such as assuring the availability of funding to cover reclamation liabilities.

Proposed § 86.162b(e) identifies the purposes for which funds held in reserve in the LRFG Account may be used. These funds may be used to: assure the availability of funds to cover reclamation liabilities in the event of forfeiture; underwrite sum-certain guarantees made available by Bioenergy Crop Bonding; and provide for transfers of available funds to the Reclamation Fee O&M Trust Account.

Proposed § 86.162b(f) places three restrictions on the amount of LRFGs the Department may issue. First, the Department may not issue LRFGs for a permit in excess of 50% of the required bond amount for that permit, which is the Permit Limit. Second, the Department may not issue LRFGs to a mine operator in excess of the Operator Limit, which is exceeded if the aggregate amount of LRFGs on permits issued to the operator exceeds 30% of the designated amount in the LRFG Account. Third, the Department may not issue additional

LRFGs in excess of the Program Limit which is when the aggregate amount of outstanding LRFGs is greater than the current designated amount in the LRFG Account divided by the historical rate of mine operator bond forfeiture under § 86.181 (relating to general), plus a margin of safety determined by the Department.

Proposed § 86.162b(g) establishes that any existing sum-certain financial guarantee needed to facilitate the implementation of full-cost bonding previously issued by the Department shall be converted into an LRFG. However, if the conversion results in the LRFG exceeding the Permit Limit established in subsection (f)(1), the LRFG amount does not need to be reduced, but the permit will be ineligible for additional LRFGs until the total for the permit is under the Permit Limit. Furthermore, if the conversion results in the LRFG for an operator exceeding the Operator Limit established in subsection (f)(2), the LRFG does not need to be reduced, but the operator will be ineligible for additional LRFGs until the total for the operator is under the Operator Limit.

Proposed § 86.162b(h) provides for the Department to prepare an evaluative report containing a financial analysis of the revenue and expenditures for the LRFG Account. The report may be prepared at the request of the MRAB and is to be provided no less than every 5 years irrespective of a request by the MRAB. During the initial implementation of this program, it is likely that more frequent evaluations will be completed.

The subsection further provides that: the report will evaluate the annual payment percentage rate referenced in subsection (m)(1), the Permit Limit, the Operator Limit and the Program Limit for the LRFG program; the report will be submitted to the members of the MRAB for their review and advice and will be published on the Department's web site; notice of the report's availability will be published in the *Pennsylvania Bulletin*; the Department will review the report at a public meeting of the MRAB; if the Department's review of the report at a public meeting of the MRAB results in a change to the Permit Limit, the Operator Limit, the Program Limit or the annual payment percentage rate, the Department will publish a notice of the changes in the *Pennsylvania Bulletin*; changes to the Permit Limit, the Operator Limit, the Program Limit or the annual payment percentage rate will become effective upon publication in the *Pennsylvania Bulletin*.

Proposed § 86.162b(i) establishes that interest earned and payments collected and deposited in the LRFG Account may be transferred by the Department into the Reclamation Fee O&M Trust Account, established under §§ 86.17 and 86.187, to be used to supplement the funding of the Reclamation Fee O&M Trust Account consistent with section 19.2(b)(5) and (6) of the SMCRA.

Proposed § 86.162b(j) states that the Department will provide to the MRAB information about proposed transfer of funds to the Reclamation Fee O&M Trust Account. The Department may solicit advice from the MRAB prior to a transfer.

Proposed § 86.162b(k) establishes the eligibility requirements for participation in the LRFG program. These requirements include being a licensed mine operator, having a good compliance record, and having a good record of making timely payments and completing reclamation obligations. The subsection further proposes requirements for new participants including having been licensed for at least 5 years and being eligible for surety bond coverage.

Proposed § 86.162b(l) provides that an application for an LRFG must include a description of the environmental and safety hazards of the site for which a guarantee is proposed, a description of the availability of coal reserves at the site and any prior denials of surety coverage.

Proposed § 86.162b(m) places certain restrictions on obtaining an LRFG including: a participating operator shall make annual payments to the Department in the amount of 1.5% of the total amount of the LRFG; the first annual payment is due upon the operator's receipt of notice of the Department's approval of the operator's application to participate in the program and payments shall be made annually thereafter concurrent with the permit anniversary date or in accordance with a schedule determined by the Department; the operator is responsible for making the annual payment as calculated by the Department until the amount of the bond is reduced or released in accordance with §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond); payments are not refundable and will be deposited into the LRFG Account to be used in the event of mine operator forfeiture and excess payments may be transferred by the Department to the Reclamation Fee O&M Trust Account consistent with section 19.2(b)(6) of the SMCRA; the operator may not substitute LRFGs for existing collateral or surety bonds.

Proposed § 86.162b(n) provides that the Department may adjust the annual payment percentage rate to assure financial stability of the LRFGs and to cover the Department's costs to administer the guarantees, after consultation with the MRAB and publication in the *Pennsylvania Bulletin* for public comment.

Proposed § 86.162b(o) establishes that the Department will reduce or release an obligation covered by the LRFGs prior to any other bond submitted by the operator to cover the reclamation obligations of a permit, except that RFGs issued under section 4.12 of the SMCRA (52 P. S. § 1396.41) will be released before LRFGs.

Proposed § 86.162b(p) provides that if a post-mining pollutional discharge develops on a permit for which the LRFG has been obtained, the operator shall, within 90 days of receipt of written notice by the Department, provide to the Department a separate bond or alternative financial assurance mechanism to cover the long-term treatment costs associated with the discharge or replace the LRFG with other types of financial assurance mechanisms authorized for the purpose of covering the costs of treating the discharge.

Proposed § 86.162b(q) provides that upon forfeiture under § 86.181 the Department will declare forfeit the specified amount of the LRFG for the permit in the LRFG Account in addition to other bonds posted by the operator to cover the reclamation obligation on the permit.

Proposed § 86.162b(r) provides that the Department's declaration of forfeiture under this section does not discharge the operator's obligation to meet the requirements of this chapter or other requirements under the SMCRA.

Proposed § 86.162b(s) establishes that upon declaration of forfeiture, the Department will use the bond money posted by the operator and the specified amount of the LRFG and any other alternative financial assurance mechanisms to complete the reclamation of the mine site in accordance with the procedures and criteria in § 86.187 and §§ 86.188—86.190 (relating to evaluation of bond forfeiture sites; reclamation of bond forfeiture sites; and sites where reclamation is unreasonable, unnecessary or impossible; excess funds).

Proposed § 86.162b(t) provides that the Department may suspend the issuance of LRFGs upon notice in the *Pennsylvania Bulletin* when the number of participating permits declared forfeit equals the number of participating permits multiplied by the historical rate of bond forfeiture plus a margin of safety. Issuance of LRFGs may resume after the Department conducts an evaluation, taking into account advice from the MRAB, which demonstrates that adequate funding is available.

Proposed § 86.162b(u) establishes that the Department will discontinue the LRFGs and notice will be published in the *Pennsylvania Bulletin* if 25% or more of the outstanding bond obligation for the LRFGs is declared forfeit. If the LRFGs are discontinued, no additional LRFGs may be approved. Outstanding LRFGs will remain in effect until released under §§ 86.170—86.172 and §§ 86.174 and 86.175 (relating to standards for release of bonds; and schedule for release of bond).

Proposed § 86.162b(v) provides that the Department will not approve additional LRFGs if LRFGs are discontinued. Outstanding LRFGs will remain in effect until released under §§ 86.170—86.172, 86.174 and 86.175.

The proposed amendment to § 86.187 will account for the implementation of LRFGs under Act 157 by providing that the Department may deposit other moneys into the Reclamation Fee O&M Trust Account, including the fees collected for LRFGs implemented by § 86.162b needed to facilitate full-cost bonding in accordance with applicable law.

#### F. Benefits, Costs and Compliance

##### Benefits

This proposed rulemaking will improve clarity and accuracy in existing regulations by correcting statutory citations.

This proposed rulemaking also promotes the use of bioenergy crops for mine reclamation by providing a no-cost incentive to operators choosing to reclaim sites with bioenergy crops. This incentive has the potential to restore the environment and alleviate some of the financial burden on surface mining operators since bonding costs have a substantial impact on a mine operator's financial status.

Likewise, the portion of this proposed rulemaking implementing Act 157 will reduce costs to surface mining operators by providing them with a means of covering part of their bond liability at a low cost. The proposed rules implementing Act 157 also provide a discretionary source of funding for ABS legacy sites by allowing an optional transfer of interest and premiums from the LRFG Account to the Reclamation Fee O&M Trust Account. This has the potential to offset an increase in the Reclamation Fee, which is welcomed by the industry, and may help fund projects aimed at eliminating the environmental and safety hazards associated with ABS legacy sites.

More generally, bonding assistance in the form of financial guarantees is quite helpful to surface mining operators because it reduces capital costs. Unlike traditional surety and collateral bonds, which require cash or property as a security, financial guarantees provide reclamation liability coverage to surface mining operators without the need for posting a security. Securing a bond encumbers cash flow and since financial guarantees do not require securities more capital is available to surface mining operators for their operations. Financial guaran-

tees, including those offered by Acts 95 and 157, reduce the financial impact of statutory bonding obligations on surface mining operators.

#### *Compliance costs*

The citation corrections will not result in compliance costs.

Obtaining Bioenergy Crop Bonding and LRFGs is optional for coal mine operators. Bioenergy Crop Bonding is offered at no-cost, and there is only a minimal fee required to obtain an LRFG. Compliance costs will be minimal.

#### *Compliance Assistance Plan*

Compliance assistance for this proposed rulemaking will be provided through routine interaction with trade groups and individual applicants. There are about 500 licensed surface coal mining operators in this Commonwealth, most of which are small businesses that will be subject to this proposed rulemaking. It is not anticipated that the proposed rulemaking will increase costs since the proposed rulemakings provide no-cost and low-cost financial incentives to surface coal mining operators.

#### *Paperwork requirements*

Since Bioenergy Crop Bonding and LRFGs are voluntary, surface coal mining operators will experience a marginal increase in paperwork only if they choose to obtain these financial guarantees. The additional paperwork requirements associated with this proposed rulemaking for both Bioenergy Crop Bonding and LRFGs include submitting additional documents with the permit application relating to the programs.

#### *G. Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

#### *H. Sunset Review*

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

#### *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 7, 2014, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior

to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *J. Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board. Comments, suggestions or objections must be received by the Board by November 24, 2014. In addition to the submission of comments, interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by November 24, 2014. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final-form rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by e-mail, by mail or by express mail as follows. If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board by accessing the Board's online comment system at <http://www.ahs.dep.pa.gov/RegComments>. Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

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

DANA K. AUNKST,  
*Acting Chairperson*

**Fiscal Note:** 7-489. (1) Surface Mining Conservation & Reclamation Fund; (2) Implementing Year 2014-15 is \$0; (3) 1st Succeeding Year 2015-16 is \$5,000; 2nd Succeeding Year 2016-17 is \$10,000; 3rd Succeeding Year 2017-18 is \$11,000; 4th Succeeding Year 2018-19 is \$12,000; 5th Succeeding Year 2019-20 is \$13,000; (4) 2013-14 Program—\$0; 2012-13 Program—\$0; 2011-12 Program—\$0; this proposed rulemaking will implement new programs that were enacted in Acts 95 and 157; (7) General Operations; (8) recommends adoption. Funds have been included in the budget to cover this increase.

#### **Annex A**

### **TITLE 25. ENVIRONMENTAL PROTECTION PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

#### **Subpart C. PROTECTION OF NATURAL RESOURCES**

#### **ARTICLE I. LAND RESOURCES**

#### **CHAPTER 77. NONCOAL MINING**

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

#### **§ 77.1. Definitions.**

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

\* \* \* \* \*

*Environmental acts*—The term includes the following:

\* \* \* \* \*

(vi) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.31 ] 1396.19b).

\* \* \* \* \*

**Subchapter C. PERMITS AND PERMIT APPLICATIONS**

**REVIEW, PUBLIC PARTICIPATION, ITEMS AND CONDITIONS OF PERMIT APPLICATIONS**

**§ 77.126. Criteria for permit approval or denial.**

(a) A permit, permit renewal or revised permit application will not be approved, unless the application affirmatively demonstrates and the Department finds in writing, on the basis of the information in the application or from information otherwise available, that the following apply:

\* \* \* \* \*

(6) The applicant or related party, as indicated by past or continuing violations, has not shown a lack of ability or intention to comply with the act or the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.31 ] 1396.19b).

\* \* \* \* \*

**Subchapter D. BONDING AND INSURANCE REQUIREMENTS**

**BOND FORFEITURE**

**§ 77.254. Preservation of remedies.**

(a) Remedies provided in law for violation of the act, the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.31 ] 1396.19b), The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Air Pollution Control Act (35 P. S. §§ 4001—4015), [ the act of June 25, 1913 (P. L. 555, No. 355), known as the Water Obstructions Law (32 P. S. §§ 681—691) (Repealed) ] the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66), [ the Pennsylvania Solid Waste Management Act (Repealed) (35 P. S. §§ 6001—6017) ] the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21), regulations thereunder or the conditions of the permits, are expressly preserved.

(b) Nothing in this subchapter is an exclusive penalty or remedy for violations of law. Action taken under this subchapter does not waive or impair other remedies or penalties provided in law.

**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:

\* \* \* \* \*

*Acts*—Include the following:

(i) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.31a ] 1396.19b).

\* \* \* \* \*

**§ 86.6. Extraction of coal incidental to government-financed construction or government-financed reclamation projects.**

(a) Extraction of coal incidental to government-financed construction or government-financed reclamation projects is exempt from the permitting requirements of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.19a ] 1396.19b) and this chapter as it relates to surface mining activities and operations, and Chapters 87 and 88 (relating to surface mining of coal; and anthracite coal) if the following conditions are met:

\* \* \* \* \*

**Subchapter B. PERMITS**

**GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS**

**§ 86.12. Continued operation under interim permits.**

(a) A person conducting coal mining activities under a permit issued in accordance with Chapter 13 (relating to compliance with the Surface Mining Control and Reclamation Act of 1977), who has filed an application for permit under § 86.14(a) (relating to permit application filing deadlines) for which the Department has not rendered a decision may conduct these activities under the permit beyond the period prescribed in § 86.11(c) (relating to general requirements for permits) if:

(1) A timely and complete application for a permit has been made to the Department under this chapter.

(2) The Department has not yet rendered an initial administrative decision with respect to the application.

(3) The operations are conducted in compliance with terms and conditions of the permit, Chapter 13, the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.25 ] 1396.19b), the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66), [ the ] The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and the Air Pollution Control Act (35 P. S. §§ 4001—4015).

\* \* \* \* \*

**§ 86.17. Permit and reclamation fees.**

\* \* \* \* \*

(e) In addition to the bond established under §§ 86.143, 86.145, 86.149 and 86.150 and subject to the exception provided for in § 86.283(c) (relating to procedures), the applicant for a permit or a permit amendment shall pay a per acre reclamation fee for surface mining activities except for the surface effects of underground mining. This reclamation fee will be assessed for each acre of the approved operational area and shall be paid by the applicant prior to the Department's issuance of a surface mining permit. If a permit amendment results in an increase in the approved operational area, the reclamation fee will be assessed on the increased acreage and shall be paid by the operator prior to the Department's issuance of the permit amendment.

(1) The reclamation fee will be deposited into a separate subaccount within the Surface Mining Conservation and Reclamation Fund called the Reclamation Fee O&M Trust Account, as a supplement to bonds forfeited from ABS Legacy Sites. The reclamation fee will be used by the Department to pay the construction costs and operation and maintenance costs associated with treating



postmining pollutional discharges at ABS Legacy Sites, and the moneys may not be used for any other purpose. The interest earned on the moneys in the Reclamation Fee O&M Trust Account will be deposited into the Reclamation Fee O&M Trust Account and will be used by the Department to pay the construction costs and operation and maintenance costs associated with treating postmining pollutional discharges at ABS Legacy Sites. The interest may not be used for any other purpose. For purposes of this section, operation and maintenance costs include recapitalization costs.

(2) After the end of each fiscal year, the Department will prepare a fiscal-year report containing a financial analysis of the revenue and expenditures of the Reclamation Fee O&M Trust Account for the past fiscal year and the projected revenues and expenditures for the current fiscal year. **[ Beginning with the report for fiscal year 2008-09, the ]** The report will include the Department's calculation of the required amount of the reclamation fee, **[ and ]** the proposed adjustment of the reclamation fee amount **and information necessary for determining the need to supplement the funding of the Reclamation Fee O&M Trust Account. The need to supplement the funding of the Reclamation Fee O&M Trust Account will be based on the need to offset an increase in the reclamation fee and the need to provide for long-term operations at ABS Legacy Sites.** The fiscal-year report will be submitted to the members of the Mining and Reclamation Advisory Board for their review and comment and will be published on the Department's web site. Notice of the report's availability will be published in the *Pennsylvania Bulletin*. The Department will review the fiscal-year report at a meeting of the Mining and Reclamation Advisory Board.

\* \* \* \* \*

**Subchapter D. AREAS UNSUITABLE FOR MINING CRITERIA AND PROCEDURES FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE MINING**

**§ 86.121. Areas exempt from designation as unsuitable for surface mining operations.**

This section and §§ 86.122—86.129 do not apply to areas on which:

- (1) Surface mining operations were being conducted on August 3, 1977.
- (2) Surface mining operations have been authorized by a valid permit issued under **[ The ] the** Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—**[ 1396.19a ] 1396.19b**), the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66), The Clean Streams Law (35 P. S. §§ 691.1—691.1001) or The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21).
- (3) A person establishes that substantial legal and financial commitments in surface mining operations were in existence prior to January 4, 1977.

**Subchapter F. BONDING AND INSURANCE REQUIREMENTS**

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

**§ 86.155. Scope.**

This section and §§ 86.156—**[ 86.162a ] 86.162c** and 86.165—86.168 establish the minimum standards for the

form of the bond for mining and reclamation activities, and the terms and conditions applicable to bonds and liability insurance.

**§ 86.159. Self-bonding.**

\* \* \* \* \*

(k) The self-bond shall be in a form prepared and approved by the Department and may contain special conditions as the Department may require to assure the Commonwealth's interests are fully protected. The self-bond, in addition to another term or condition of forfeiture contained in a bond required by this subchapter, shall contain the following terms and conditions:

(1) The self-bond will be forfeited if either of the following occur:

(i) Ninety days after the Department is informed by or determines that the applicant is no longer eligible to self-bond and within the 90-day period the applicant fails to submit to the Department acceptable security as provided for in this subchapter to cover its self-bonded liability.

(ii) Within 90 days of the issuance of an order to abate conditions at a site covered by a self-bond which constitutes either an actual or potential risk of harm to the environment, the applicant fails to, except as provided for in § 86.211 (relating to enforcement-general), comply with the order or fails to submit to the Department acceptable security as provided for in this subchapter in an amount equal to the self-bonded liability.

(2) Liability under the self-bond shall be conditioned on:

(i) The applicant faithfully performing the following requirements:

(A) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—**[ 1396.31 ] 1396.19b**).

\* \* \* \* \*

*(Editor's Note: Sections 86.162b and 86.162c are new and printed in regular type to enhance readability.)*

**§ 86.162b. Land Reclamation Financial Guarantees.**

(a) The Department will designate funds in the Land Reclamation Financial Guarantee Account to underwrite Land Reclamation Financial Guarantees.

(b) The funds in the Land Reclamation Financial Guarantee Account will be used to cover obligations for all existing sum-certain financial guarantees needed to facilitate the implementation of full-cost bonding previously issued by the Department.

(c) The Department may issue Land Reclamation Financial Guarantees to financially assure the bonding obligations of qualified surface coal mining operators engaged in surface mining activities under § 86.143 (relating to requirement to file a bond).

(d) The Department will hold in reserve in the Land Reclamation Financial Guarantee Account funds that are not designated to underwrite Land Reclamation Financial Guarantees.

(e) The Department will use funds held in reserve in the Land Reclamation Financial Guarantee Account to:

(1) Assure the availability of funds to cover reclamation liabilities when there is a mine operator bond forfeiture under § 86.181 (relating to general).

(2) Underwrite sum-certain financial guarantees available under Bioenergy Crop Bonding implemented by § 86.162c (relating to Bioenergy Crop Bonding).

(3) Transfer funds available in the Land Reclamation Financial Guarantee Account to the Reclamation Fee O&M Trust Account.

(f) In administering the Land Reclamation Financial Guarantee Account, the Department will not issue:

(1) Land Reclamation Financial Guarantees for a permit in excess of 50% of the required bond amount for that permit, which is the Permit Limit.

(2) Additional Land Reclamation Financial Guarantees to a surface mining operator in excess of the Operator Limit, which is exceeded if the aggregate amount of Land Reclamation Financial Guarantees on permits issued to the operator exceeds 30% of the designated amount in the Land Reclamation Financial Guarantee Account.

(3) Additional Land Reclamation Financial Guarantees in excess of the Program Limit, which is exceeded when the aggregate amount of outstanding Land Reclamation Financial Guarantees is greater than the current designated amount in the Land Reclamation Financial Guarantee Account divided by the historical rate of mine operator bond forfeiture under § 86.181, plus a margin of safety determined by the Department.

(g) Any existing sum-certain financial guarantee needed to facilitate the implementation of full-cost bonding previously issued by the Department shall be converted into a Land Reclamation Financial Guarantee subject to the following:

(1) If the conversion results in a Land Reclamation Financial Guarantee exceeding the Permit Limit established in subsection (f)(1), the Land Reclamation Financial Guarantee amount does not need to be reduced, but the permit will not be eligible for additional Land Reclamation Financial Guarantees until the total amount of the Land Reclamation Financial Guarantees for the permit is under the Permit Limit.

(2) If the conversion results in a Land Reclamation Financial Guarantee for an operator exceeding the Operator Limit established in subsection (f)(2), the Land Reclamation Financial Guarantee does not need to be reduced, but the operator will not be eligible for additional Land Reclamation Financial Guarantees until the total amount of the Land Reclamation Financial Guarantees for the operator is under the Operator Limit.

(h) The Department will periodically, but no less frequently than every 5 years, or upon request by the Mining and Reclamation Advisory Board, prepare a report containing a financial analysis of the revenue and expenditures for the Land Reclamation Financial Guarantee Account.

(1) The report will evaluate the Permit Limit, the Operator Limit, the Program Limit and the annual payment percentage rate referenced in subsection (m)(1) for Land Reclamation Financial Guarantees.

(2) The report will be submitted to the members of the Mining and Reclamation Advisory Board for their review and advice.

(3) The report will be published on the Department's web site.

(4) Notice of availability of the report will be published in the *Pennsylvania Bulletin*.

(5) The Department will review the report at a public meeting of the Mining and Reclamation Advisory Board.

(6) If the Department's review of the report at a public meeting of the Mining and Reclamation Advisory Board results in a change to the Permit Limit, the Operator Limit, the Program Limit or the annual payment percentage rate, the Department will publish a notice of the changes in the *Pennsylvania Bulletin*.

(7) Changes to the Permit Limit, the Operator Limit, the Program Limit or the annual payment percentage rate will become effective upon publication in the *Pennsylvania Bulletin*.

(i) The Department may transfer interest earned and payments collected and deposited in the Land Reclamation Financial Guarantee Account into the Reclamation Fee O&M Trust Account established under §§ 86.17 and 86.187 (relating to permit and reclamation fees; and use of money) to supplement the funding of the Reclamation Fee O&M Trust Account consistent with section 19.2(b)(5) and (6) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.19b(b)(5) and (6)).

(j) The Department will provide information about any proposed transfer to the Reclamation Fee O&M Trust Account to the Mining and Reclamation Advisory Board and solicit advice from Mining and Reclamation Advisory Board before making the transfer.

(k) To be eligible for a Land Reclamation Financial Guarantee, a surface coal mining operator shall demonstrate the following:

(1) The mine operator holds a valid coal mining license issued under section 3.1 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.3a).

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

(3) For a mine operator that has previously obtained a remaining financial guarantee under section 4.12 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4) or a Land Reclamation Financial Guarantee that has met its reclamation obligations and made timely payments for the remaining financial guarantee program or has made timely payments for Land Reclamation Financial Guarantees.

(4) For operators that have not previously obtained a remaining financial guarantee under section 4.12 of the Surface Mining Conservation and Reclamation Act or a Land Reclamation Financial Guarantee, the operator shall demonstrate appropriate experience in surface coal mining and reclamation by showing that it has had a coal mining license under section 3.1 of the Surface Mining Conservation and Reclamation Act for at least 5 years and that the operator would be able to obtain a surety bond otherwise required under this chapter by submitting either of the following:

(i) A surety bond for a portion of the remaining reclamation liability for the proposed site.

(ii) A letter of acceptance from a surety company licensed to do business in this Commonwealth and which writes bonds for the reclamation of mine sites located in this Commonwealth. The acceptance letter must indicate

the complete name and address of the surety company and state that the surety company would write the bond.

(l) An application for a Land Reclamation Financial Guarantee must include a description of:

(1) The environmental and safety hazards of the site for which a guarantee is proposed.

(2) The availability of coal reserves at the site.

(3) Any prior denials of surety coverage.

(m) Obtaining a Land Reclamation Financial Guarantee is subject to the following:

(1) A mine operator shall make annual payments to the Department at a rate of 1.5% of the total amount of the Land Reclamation Financial Guarantee.

(2) The first annual payment is due upon the operator's receipt of notice of the Department's approval of the operator's application to obtain a Land Reclamation Financial Guarantee. Payments shall be made annually thereafter concurrent with the permit anniversary date or in accordance with a schedule determined by the Department.

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

(4) Payments are not refundable and will be deposited into the Land Reclamation Financial Guarantee Account to be used in the event of mine operator bond forfeiture. Excess payments may be transferred by the Department to the Reclamation Fee O&M Trust Account consistent with section 19.2(b)(6) of the Surface Mining Conservation and Reclamation Act.

(5) The operator may not substitute Land Reclamation Financial Guarantees for existing collateral or surety bonds.

(n) The Department may, after soliciting advice from the Mining and Reclamation Advisory Board and publication in the *Pennsylvania Bulletin*, adjust the annual payment percentage rate referred to in subsection (m)(1) to assure financial stability of the Land Reclamation Financial Guarantee Account and to cover the Department's costs to administer the guarantees.

(o) The Department will reduce or release an obligation covered by a Land Reclamation Financial Guarantee prior to any other bond submitted by the operator to cover the reclamation obligations of a permit, except that remining financial guarantees issued under section 4.12 of the Surface Mining Conservation and Reclamation Act will be released before Land Reclamation Financial Guarantees.

(p) If a post-mining pollutional discharge develops on a permit for which a Land Reclamation Financial Guarantee has been obtained, the operator shall, within 90 days of receipt of written notice by the Department, provide to the Department a separate bond or alternative financial assurance mechanism to cover the long-term treatment costs associated with the discharge or replace the Land Reclamation Financial Guarantee with other types of financial assurance mechanisms authorized for the purpose of covering the costs of treating the discharge.

(q) Upon mine operator bond forfeiture under § 86.181, the Department will declare forfeit the specified amount of the Land Reclamation Financial Guarantee for the

permit in the Land Reclamation Financial Guarantee Account in addition to other bonds posted by the operator to cover the reclamation obligation on the permit.

(r) The Department's declaration of forfeiture under § 86.181 may not discharge an operator's obligation to meet the requirements of this chapter or other requirements under the Surface Mining Conservation and Reclamation Act.

(s) Upon declaration of forfeiture, the Department will use the bond money posted by the operator, the specified amount of the Land Reclamation Financial Guarantee, and any other financial assurance mechanisms to complete the reclamation of the mine site in accordance with the procedures and criteria in § 86.187 and §§ 86.188—86.190 (relating to evaluation of bond forfeiture sites; reclamation of bond forfeiture sites; and sites where reclamation is unreasonable, unnecessary or impossible; excess funds).

(t) The Department may suspend the issuance of Land Reclamation Financial Guarantees upon notice in the *Pennsylvania Bulletin* when the number of participating permits declared forfeit under this section equals the number of participating permits multiplied by the historical rate of mine operator bond forfeiture plus a margin of safety. Issuance of Land Reclamation Financial Guarantees may resume after the Department conducts an evaluation which demonstrates that adequate funding is available. The Department's evaluation will take into account advice received from the Mining and Reclamation Advisory Board.

(u) The Department will discontinue the issuance of Land Reclamation Financial Guarantees and notice will be published in the *Pennsylvania Bulletin* if 25% or more of the outstanding bond obligation for all Land Reclamation Financial Guarantees is declared forfeit under § 86.181.

(v) The Department will not approve additional Land Reclamation Financial Guarantees if Land Reclamation Financial Guarantees are discontinued. Outstanding Land Reclamation Financial Guarantees will remain in effect until released under §§ 86.170—86.172 and §§ 86.174 and 86.175 (relating to standards for release of bonds; and schedule for release of bonds).

#### § 86.162c. Bioenergy Crop Bonding.

(a) A permit is eligible for Bioenergy Crop Bonding at no cost to a surface mining permittee if the applicant demonstrates the following:

(1) The site is a remining site as defined in § 86.252 (relating to definitions).

(2) Stage 2 bond release has been achieved at the remining site.

(3) The bioenergy crops listed in subparagraph (i) or (ii) have been grown at the remining site:

(i) Switchgrass, camelina or canola.

(ii) Other bioenergy crops grown to produce feedstock for biofuels, including biodiesel and ethanol, and biomass for electricity generation.

(4) Water treatment liability has not been triggered under Chapter 87, Subchapter F, Chapter 88, Subchapter G or Chapter 90, Subchapter F (relating to surface coal mines: minimum requirements for remining areas with pollutional discharges; anthracite surface mining activi-

ties and anthracite bank removal and reclamation activities: minimum requirements for remaining areas with pollutional discharges; and coal refuse disposal activities on areas with preexisting pollutional discharges).

(b) An application for Bioenergy Crop Bonding must provide the following:

(1) Verification that the entire permitted area has achieved Stage 2 bond release consistent with § 86.174(b) (relating to standards for release of bonds).

(2) A demonstration that the crops grown are bioenergy crops.

(3) Crop yield data that demonstrates that the bioenergy crops are achieving acceptable crop production.

(4) A demonstration that all temporary structures have been reclaimed.

(5) A demonstration that there are no post-mining pollutional discharges or that all liability associated with post-mining pollutional discharges is fully covered with a full-cost bond or a fully-funded post-mining treatment trust.

(6) Acknowledgement that the permittee intends to apply for final release of the Bioenergy Crop Bonding in a timely manner.

(c) Upon approval of a Bioenergy Crop Bonding application, the Department will release the existing bond held for Stage 3 liability.

(d) The liability period under Bioenergy Crop Bonding may not exceed 5 years. Permits with a liability period greater than 5 years because of the risk of water pollution under § 86.151(b)(1) and (c) (relating to period of liability) are not eligible for Bioenergy Crop Bonding.

(e) Bioenergy Crop Bonding for a permit will expire no later than 120 days after the expiration of the 5-year liability period.

(f) Bioenergy Crop Bonding will be replaced if the final bond release is not achieved upon the expiration of Bioenergy Crop Bonding.

**BOND FORFEITURE**

**§ 86.182. Procedures.**

\* \* \* \* \*

(h) 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 ] **Surface Mining Conservation and Reclamation Act** (52 P. S. § [ 1397.18(a) ] 1396.18(a)).

**§ 86.185. Preservation of remedies.**

Remedies provided in law for violation of but not limited to the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.31 ] 1396.19b), The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the Coal Refuse Disposal Control Act (52 P. S.

§§ 30.51—30.66), the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003)[ , and the ] **and The Bituminous Mine Subsidence and Land Conservation Act** (52 P. S. §§ 1406.1—1406.21), the regulations adopted thereunder, or the conditions of the permits, are expressly preserved. Nothing in this subchapter may be construed as an exclusive penalty or remedy for the violations of law. No action taken under this subchapter may waive or impair another remedy or penalty provided in law.

**§ 86.187. Use of money.**

(a) Moneys received from fees, fines, penalties, bond forfeitures and other moneys received under authority of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.31 ] 1396.19b), and interest earned on the moneys, will be deposited in the Fund.

(1) Moneys received from the reclamation fees required by § 86.17(e) (relating to permit and reclamation fees), and the interest accrued on these [ monies ] moneys will be deposited into a separate subaccount within the fund called the Reclamation Fee O&M Trust Account.

(i) The Department will deposit into the Reclamation Fee O&M Trust Account, up to \$500,000 in a fiscal year, the moneys collected from civil penalties assessed by the Department under the Surface Mining Conservation and Reclamation Act less the percentage of those penalty moneys due the Environmental Education Fund under section 8 of the Environmental Education Act (35 P. S. § 7528). If the amount of penalty moneys collected exceeds \$500,000 during a fiscal year, the Department may deposit the amount collected in excess of \$500,000 into the fund and use the excess amount in accordance with paragraph (3).

(ii) The Department may deposit into the Reclamation Fee O&M Trust Account a portion, to be determined at the Department's discretion, of the interest earned on other moneys in the fund.

(iii) The Department may deposit other moneys into the Reclamation Fee O&M Trust Account, including appropriations, donations[ , or, ] or the fees collected for [ sum-certain financial guarantees ] **Land Reclamation Financial Guarantees implemented by § 86.162b (relating Land Reclamation Financial Guarantees)** needed to facilitate full-cost bonding in accordance with applicable law.

\* \* \* \* \*

Subchapter I. [ EMPLOYE ] **EMPLOYEE CONFLICT OF INTEREST**

**§ 86.232. Definitions.**

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

*Coal mining laws*—Those provisions of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.31 ] 1396.19b), The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ [ 6018.101—6018.1003 ] 693.1—693.27), the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66), [ the ] **The Bituminous [ Coal ] Mine Subsidence and Land Conservation Act** (52 P. S. §§ 1406.1—1406.21) and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), related to the regulation of surface and underground coal mines and

facilities, and The Land and Water Conservation and Reclamation Act (32 P. S. §§ 5101—5121) related to abandoned mine lands reclamation for which Federal grants have been made under [ Title IV ] sections 401—415 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1231—[ 1243 ] 1244).

\* \* \* \* \*

**Subchapter J. REMINING AND RECLAMATION INCENTIVES**

**GENERAL PROVISIONS**

**§ 86.252. Definitions.**

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

\* \* \* \* \*

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

\* \* \* \* \*

**Subchapter K. MINE OPERATOR'S LICENSE**

**§ 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 ] 1396.19b) or the regulations thereunder.

\* \* \* \* \*

**CHAPTER 87. SURFACE MINING OF COAL**

**Subchapter A. GENERAL PROVISIONS**

**§ 87.1. Definitions.**

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

\* \* \* \* \*

*SMCRA*—The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.25 ] 1396.19b).

\* \* \* \* \*

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

**§ 87.205. Approval or denial.**

\* \* \* \* \*

(b) An authorization may be denied under this subchapter if granting the authorization will, or is likely to, affect a legal responsibility or liability under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.25 ] 1396.19b), Chapter 86 (relating to surface and underground coal mining: general) or Subchapters A and C—E, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

\* \* \* \* \*

**CHAPTER 88. ANTHRACITE COAL**

**Subchapter F. ANTHRACITE UNDERGROUND MINES**

**§ 88.482. Definitions.**

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

\* \* \* \* \*

*Operator*—A person or municipality engaged in underground mining activities as a principal, as distinguished from an agent or independent contractor. When more than one person is engaged in coal mining activities in a single operation, they shall be deemed jointly and severally responsible for compliance with the provisions of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.31 ] 1396.19b), The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66).

\* \* \* \* \*

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

**§ 88.505. Approval or denial.**

\* \* \* \* \*

(b) An authorization may be denied under this subchapter if granting the authorization will, or is likely to, affect legal responsibility or liability under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.25 ] 1396.19b), Chapter 86 (relating to surface and underground coal mining: general), Chapter 87, Subchapter B (Reserved) or Subchapters A—C, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

\* \* \* \* \*

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

**Subchapter A. EROSION AND SEDIMENTATION CONTROL**

**GENERAL PROVISIONS**

**§ 89.5. Definitions.**

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

\* \* \* \* \*

*Operator*—A person or municipality engaged in underground mining activities as a principal, as distinguished from an agent or independent contractor. When more than one person is engaged in coal mining activities in a single operation, they shall be deemed jointly and severally responsible for compliance with the provisions of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ 1396.31 ] 1396.19b), The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66).

\* \* \* \* \*

CHAPTER 90. COAL REFUSE DISPOSAL

Subchapter F. COAL REFUSE DISPOSAL  
ACTIVITIES ON AREAS WITH PREEXISTING  
POLLUTIONAL DISCHARGES

§ 90.305. Application approval or denial.

\* \* \* \* \*

(b) An authorization may be denied under this subchapter if granting the authorization will, or is likely to, affect a legal responsibility or liability under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ **1396.19a** ] **1396.19b**), Chapter 86 (relating to surface and underground coal mining: general) or Subchapters A—D, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

\* \* \* \* \*

Subpart D. ENVIRONMENTAL HEALTH AND  
SAFETY

ARTICLE IV. OCCUPATIONAL HEALTH AND  
SAFETY

CHAPTER 211. STORAGE, HANDLING AND USE  
OF EXPLOSIVES

Subchapter C. PERMITS

§ 211.121. General requirements.

\* \* \* \* \*

(c) A permit issued under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—[ **1396.19a** ] **1396.19b**), or the Noncoal Surface Mining [ **and** ] Conservation and Reclamation Act (52 P. S. §§ 3301—3326), and the regulations promulgated thereunder, authorizing blasting activity shall act as a blasting activity permit issued under this chapter.

\* \* \* \* \*

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