

**CHAPTER 86. SURFACE AND UNDERGROUND COAL
MINING: GENERAL**

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Authority

The provisions of this Chapter 86 issued and amended under The Clean Streams Law (35 P.S. §§ 691.1—691.1001); the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.31); The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.21); the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); and Article XIX-A of The Administrative Code of 1929 (71 P.S. §§ 510-1—510-108), unless otherwise noted.

Notes of Decisions

Construction

Department of Environmental Resources employment of the “all permits” test in 25 Pa. Code § 86.1 to define “valid existing rights” as that term is employed in section 4.5(h) of the Pennsylvania Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4(e)(h)), was consistent with the Federal regulation, 30 CFR 761.5 employing the same test, but it would not be consistent with amended Federal regulation (which had been temporarily nullified due to failure to conform to Federal Administrative Procedures Act) which defines “valid existing rights” in terms of unconstitutional taking of property. *Willowbrook Mining Co. v. Department of Environmental Resources*, 499 A.2d 2 (Pa. Cmwlth. 1985).

Federal Requirements

The Federal standards under the Surface Mining Control and Reclamation Act (30 U.S.C.A. § 1201), serve as a floor. The Federal sanction is to act only as the base rather than the ceiling for the state programs. Indeed, there would be no reason to allow the states to impose their own regulations if the regulations had to be the same as the Federal act and regulations. *Pennsylvania Coal Ass'n v. Babbitt*, 63 F.3d 231 (3d Cir. 1995).

State regulations requiring permit for all mining activity are not preempted by Federal surface writing statute, since statute contains provision allowing for the law or regulations to provide for more stringent land use and environmental controls than those required by Federal law. *Budinsky v. Department of Environmental Resources*, 819 F.2d 418 (3rd Cir. 1987); cert. denied 484 U. S. 926 reh'g denied 484 U. S. 1083 (U. S. 1988).

General Comment

Because the Department's standard conditions met the “binding norm test,” the conditions were regulations and not statements of policy which may only be applied after they have been promulgated after notice and comment. The Department was, therefore, without authority to impose such condi-

tions on the issuance and reissuance of mining permits. *Department of Environmental Resources v. Rushton*, 591 A.2d 1168 (Pa. Cmwlth. 1991); appeal denied 600 A.2d 541 (Pa. 1991).

Cross References

This chapter cited in 25 Pa. Code § 23.1 (relating to petitions); 25 Pa. Code § 87.2 (relating to scope); 25 Pa. Code § 87.201 (relating to scope); 25 Pa. Code § 87.204 (relating to application for authorization); 25 Pa. Code § 87.205 (relating to approval or denial); 25 Pa. Code § 87.206 (relating to operational requirements); 25 Pa. Code § 87.207 (relating to treatment of discharges); 25 Pa. Code § 87.209 (relating to criteria and schedule for release of bonds on pollution abatement areas); 25 Pa. Code § 87.210 (relating to effluent limitations); 25 Pa. Code § 88.2 (relating to scope); 25 Pa. Code § 88.481 (relating to scope); 25 Pa. Code § 88.494 (relating to performance standards—in situ processing of anthracite coal); 25 Pa. Code § 88.501 (relating to scope); 25 Pa. Code § 88.504 (relating to application for authorization); 25 Pa. Code § 88.505 (relating to approval or denial); 25 Pa. Code § 88.506 (relating to operational requirements); 25 Pa. Code § 88.507 (relating to treatment of discharges); 25 Pa. Code § 88.509 (relating to criteria and schedule for release of bonds on pollution abatement areas); 25 Pa. Code § 88.510 (relating to effluent limitations); 25 Pa. Code § 89.2 (relating to scope); 25 Pa. Code § 89.5 (relating to definitions); 25 Pa. Code § 89.7 (relating to applicability); 25 Pa. Code § 89.161 (relating to general requirements); 25 Pa. Code § 89.171 (relating to general requirements); 25 Pa. Code § 90.2 (relating to scope); 25 Pa. Code § 90.3 (relating to general requirements: permit); 25 Pa. Code § 90.5 (relating to site selection and permitting); 25 Pa. Code § 90.301 (relating to scope); 25 Pa. Code § 90.304 (relating to application for authorization); 25 Pa. Code § 90.305 (relating to application approval or denial); 25 Pa. Code § 90.306 (relating to operational requirements); 25 Pa. Code § 90.307 (relating to treatment of discharges); 25 Pa. Code § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas); 25 Pa. Code § 90.310 (relating to effluent limitations); 25 Pa. Code § 90.401 (relating to general); 25 Pa. Code § 92a.2 (relating to definitions); 25 Pa. Code § 102.8 (relating to PCSM requirements); 25 Pa. Code § 102.14 (relating to riparian buffer requirements); 25 Pa. Code § 211.194 (relating to general requirements for handling explosives on a seismic exploration operation); 25 Pa. Code § 290.101 (relating to general requirements for beneficial use); and 25 Pa. Code § 290.104 (relating to beneficial use at coal mining activity sites).

Subchapter A. GENERAL PROVISIONS

Sec.	
86.1.	Definitions.
86.2.	Scope.
86.3.	Use of Coal Refuse Disposal Control Fund.
86.5.	Extraction of coal incidental to noncoal surface mining.
86.6	Extraction of coal incidental to government-financed construction or government-financed reclamation projects.

§ 86.1. Definitions.

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

ABS Legacy Sites—Mine sites, permitted under the Primacy Alternate Bonding System, that have a postmining polluttional discharge where the operator has defaulted on its obligation to adequately treat the discharge and, either the bond posted for the site is insufficient to cover the cost of treating the discharge, or a trust to cover the costs of treating the discharge was not fully funded and is insufficient to cover the cost of treating the discharge.

Acts—Include the following:

- (i) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19b).
- (ii) The Air Pollution Control Act (35 P. S. §§ 4001—4015).
- (iii) The Clean Streams Law (35 P. S. §§ 691.1—691.1001).
- (iv) The Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66).
- (v) Article XIX-A of The Administrative Code of 1929 (71 P. S. §§ 510-1—510-108).
- (vi) The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21).
- (vii) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).
- (viii) The Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).
- (ix) The Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326).

Applicant—A person who seeks to obtain a permit from the Department to conduct coal mining activities under this chapter.

Application—The documents and other information filed with the Department for the issuance of a permit.

Bond—A bond by which a permittee assures faithful performance of the requirements of the acts, this chapter, Chapters 87—90 and the requirements of the permit and reclamation plan.

Coal mining activity—Surface mining activities, underground mining activities, coal preparation activities or coal refuse disposal activities as these terms are defined in this section.

Coal preparation activity—An operation in which coal is subject to chemical or physical processing or cleaning, concentrating or other processing or preparation. The term includes a facility associated with the coal preparation activity and the activity by which the land surface has been or is disturbed as a result of or incidental to coal preparation activity of the operator, including, but not limited to, the following:

- (i) Private ways and roads appurtenant to the area, land excavations and loading facilities.
- (ii) Storage and stockpile facilities.
- (iii) Sheds, shops and other buildings.
- (iv) Water treatment and water storage facilities.
- (v) Settling basins and impoundments.
- (vi) Areas in which are situated facilities, equipment, machines, tools or other materials or property which result from or are used in the coal preparation activity.

Coal refuse disposal activities—Activities whereby a plot of land is used as a place for disposing, dumping or storage of coal refuse. These areas may

include land thereby affected, including, but not limited to, a deposit of coal refuse on or buried in the earth and intended as permanent disposal of or long-term storage of the material, but not including coal refuse deposited within an active mine itself or coal refuse never removed from a mine. The term includes activities in which the natural land surface has been disturbed as a result of or incidental to the coal refuse disposal activities of the operator, including, but not limited to, private ways and roads appurtenant to the area, land excavations, workings, tailings, repair areas, storage areas, processing areas, shipping areas and areas in which structures, facilities, equipment, machines, tools or other materials or property which result from or are used in coal refuse disposal activities are situated.

Complete application—An application for a permit which contains an application form properly completed, signed and witnessed, a filing fee, proof of publication, the standard reports or forms required by the Department to process a permit and which demonstrates compliance with applicable statutes and regulations.

Cumulative measurement period—For purposes of § 86.5 (relating to extraction of coal incidental to noncoal surface mining), the period of time over which both cumulative production and cumulative revenue are measured.

Cumulative production—For purposes of § 86.5, the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by § 86.5(k).

Cumulative revenue—For purposes of § 86.5, the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

Entity—A person including, but not limited to, a corporation, association, general and limited partnership, agency and instrumentality of Federal or State government, contractor, operator, permit holder and other forms of business organization.

Existing structure—A structure or facility used in connection with or to facilitate coal mining activities for which construction began prior to the effective date of this chapter.

General area—The topographic and groundwater basin, with respect to hydrology, surrounding a permit area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface water and groundwater systems in the basins.

Groundwater—Subsurface waters of the Commonwealth.

Historically used for cropland—Includes the following:

(i) Lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of coal mining activities.

(ii) Lands that the Department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved.

(iii) Lands that would likely have been used as cropland for any 5 out of the last 10 years immediately preceding the acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

Historic resource—A building, structure, object, district, place, site or area significant in the history, architecture, maritime heritage, archaeology or culture of this Commonwealth, its communities or the Nation. The term includes the terms “cultural resource,” “archaeological resource,” “historic place,” “historic property,” “archaeological site” and “archaeological property” as used in this chapter and Chapters 87—90.

Interim permit—A permit issued by the Department prior to the effective date of this chapter and in accordance with the requirements of Chapter 13 (relating to compliance with the Surface Mining Control and Reclamation Act of 1977).

Landowner—The person or municipality in whom legal title to the land is vested.

Land use—A specific use or management-related activity, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur.

MSHA—The Mine Safety and Health Administration of the United States Department of Labor.

Major permit revision—A revision to a coal mining permit that requires public notice.

Mining area—For purposes of § 86.5, an individual excavation site or pit from which coal, other minerals and overburden are removed.

Municipality—A county, city, borough, town, township, school district, institution or an authority created by any one or more of the foregoing.

Occupied dwellings—A permanent building or fixed mobile home that is currently being used on a regular or temporary basis for human habitation.

Operational area—The maximum portion of the permitted area that the permittee is authorized to disturb at any specific time during the permit term in accordance with the approved mining and reclamation plan, including all of the land affected by mining activities that is not planted, growing and stabilized.

Operation and maintenance costs—Expenses associated with the day-to-day operation and maintenance of a conventional or a passive treatment facility, such as chemicals, electricity, labor, water sampling, sludge removal and disposal, maintenance of access roads, mowing, snow removal, inspecting facilities, repairing and maintaining all aspects of the treatment facility, equipment and buildings.

Operator—A person or municipality engaged in coal 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, The Clean Streams Law, the Coal Refuse Disposal Control Act and The Bituminous Mine Subsidence and Land Conservation Act.

Other minerals—For purposes of § 86.5, a commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

Owned or controlled and owns or controls—One or a combination of the relationships specified in subparagraphs (i)—(iv):

- (i) Being a permittee of a coal mining activity.
- (ii) Based on instruments of ownership or voting securities, owning of record in excess of 50% of an entity.
- (iii) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant coal mining activity is conducted:
 - (A) Being an officer or director of an entity.
 - (B) Being the operator or contractor of a coal mining activity.
 - (C) Having the ability to commit the financial or real property assets or working resources of an entity.
 - (D) Being a general partner in a partnership.
 - (E) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record a percentage of the entity as established in the definition of “own, owner, or ownership” in 30 CFR 701.5 (relating to definitions).
 - (F) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a coal mining activity.
- (iv) Having another relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator or other entity conducts coal mining activities.

Participates—To take part in an action or to instruct another person or entity to conduct or not to conduct an activity.

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.

Permit—A permit issued by the Department to conduct coal mining activities.

Permit application fee—A nonrefundable filing fee due at the time of submission of an application. The permit application fee is required for an application to be considered complete.

Permit area—Includes the following:

(i) For surface mining activities and refuse disposal activities: the area of land and water within the boundaries of the permit, which area is designated on the permit application maps as approved by the Department. This area shall include areas which are or will be affected by the surface mining activities or refuse disposal activities.

(ii) For underground mining activities: the mine and areas where underground mining activities occur.

Permittee—A person holding, or required to hold by the acts, a permit issued by the Department to conduct coal mining activities.

Person—A natural person, partnership, association or corporation, or an agency, instrumentality or entity of Federal or State government. Whenever used in a clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term “person” may not exclude the members of an association and the directors, officers or agents of a corporation.

Postmining polluttional 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 § 90.102. 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).

Primacy Alternate Bonding System—The bonding system utilized by the Commonwealth from July 31, 1982, until August 4, 2001, for surface coal mines, coal refuse reprocessing facilities and coal preparation plants in which a central pool of money to be used by the Department for reclamation of forfeited sites was funded in part through imposition of a per-acre reclamation fee paid by operators of permitted sites.

Prime farmland—Land which is defined by the Secretary of Agriculture in 7 CFR Part 657 (relating to prime and unique farmlands) and which has been historically used for cropland.

Principal shareholder—A person who is the legal owner of 10% or more of any class of voting stock.

Property—Real or personal property.

Public road—A thoroughfare open to the public which has been or is being used by the public for vehicular travel.

Recapitalization costs—The costs associated with replacing discharge treatment facility components or the costs to install treatment systems with lower operation and maintenance costs than the system being replaced.

Related party—A partner, associate, officer, director, shareholder, parent corporation, subsidiary corporation, affiliate or persons under common control with the applicant, contractor or subcontractor. The term does not include persons who are excluded, based on a percentage of ownership, under the definition of “owned or controlled and owns or controls.”

Surface mining activities—Activities whereby coal is extracted from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between the coal or otherwise exposing and retrieving the coal from the surface, including, but not limited to, strip, auger mining, dredging, quarrying and leaching, and surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, slope, shaft, drift and borehole drilling and construction and activities related thereto. The term does not include portions of mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. The term includes activities in which the land surface has been or is disturbed as a result of, or incidental to, surface mining operations of the operator, including, but not limited to, private ways and roads appurtenant to a surface mining operation, land excavations, workings, refuse banks, spoil banks, culm banks, tailings, repair areas, storage areas, processing areas, shipping areas and areas in which facilities, equipment, machines, tools or other materials or property which result from, or are used in, surface mining activities are situated. The term includes the construction of a road or similar disturbance for any purpose related to a surface mining activity, including that of moving or “walking” a dragline or other equipment, or for the assembly or disassembly or staging of equipment.

Underground mining activities—Includes the following:

- (i) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance and reclamation of roads, aboveground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities, including hoist and ventilating ducts, area used for the disposal and storage of waste and areas on which materials incident to underground mining operations are placed.
- (ii) Underground operations such as underground construction, operation and reclamation of shafts, adits, support facilities located underground, in situ processing and underground mining, hauling, storage and blasting.
- (iii) Operation of a mine, including preparatory work in connection with the opening and reopening of a mine, backfilling, sealing and other closing procedures, postclosure mine pool maintenance and any other work done on land or water in connection with a mine.

Valid existing rights—Rights which exist under the definition of “valid existing rights” in 30 CFR 761.5 (relating to definitions).

Violation notice—A written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading or other written communication.

Waters of the Commonwealth—Rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and other bodies or channels of conveyance of surface water and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

Willful violation—An act or omission which violates the acts, this chapter, Chapter 87, 88, 89 or 90, or a permit condition required by the acts, this chapter or Chapter 87, 88, 89 or 90, committed by a person who intends the result which actually occurs.

Authority

The provisions of this § 86.1 amended under section 7 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7); section 5 of The Clean Streams Law (35 P. S. § 691.5); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); sections 4(a), (d) and (d.2) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a), (d) and (d.2) and 1396.4b); PA. CONST. ART. 1, § 27; and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.1 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended November 18, 1988, 18 Pa.B. 5155, effective August 25, 1989, 19 Pa.B. 3674; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended April 9, 1993, effective April 10, 1993, 23 Pa.B. 1711; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289; corrected January 12, 2001, effective October 9, 1999, 31 Pa.B. 145; corrected July 25, 2003, effective November 15, 1997, 33 Pa.B. 3608; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775; amended August 29, 2008, effective August 30, 2008; 38 Pa.B. 4742; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084; amended November 9, 2012, effective November 10, 2012, 42 Pa.B. 7013; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (367502), (357447) to (357448), (364367) to (364370) and (367503).

Notes of Decisions

This chapter is not preempted by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) since the act allows for State regulations providing for more stringent land use and environmental control. *Budinsky v. Department of Environmental Resources*, 819 F.2d 418 (3rd Cir. 1987); cert. denied 484 U. S. 926; reh'g denied 484 U. S. 1083 (U. S. 1988).

For purposes of determining bond forfeiture for failure to reclaim, the definition of surface mining activities set forth in this section is interpreted to include nonpermitted areas only when the permitted area is adjacent or contingent to the nonpermitted area or when the ecological harm can be traced directly to the permitted area. *Department of Environmental Resources v. Ogden*, 501 A.2d 311 (Pa. Cmwlth. 1985).

Cross References

This section cited in 25 Pa. Code § 86.36 (relating to review of permit applications); 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.43 (relating to improvidently issued permits); 25 Pa. Code § 86.62 (relating to identification of interests); 25 Pa. Code § 86.63 (relating to compliance information); 25 Pa. Code § 86.102 (relating to areas where mining is prohibited or limited); 25 Pa. Code § 86.353 (relating to identification of ownership); 25 Pa. Code § 90.305 (relating to approval or denial); 25 Pa. Code § 95.10 (relating to treatment requirements for

new and expanding mass loadings of Total Dissolved Solids (TDS)); and 25 Pa. Code § 290.104 (relating to beneficial use at coal mining activity sites).

§ 86.2. Scope.

This chapter specifies certain general procedures and rules for those persons who engage in coal mining activities. This chapter together with Chapters 87—90 specifies the procedures and rules for those who engage in coal mining activities.

Source

The provisions of this § 86.2 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial pages (238925) to (238926).

§ 86.3. Use of Coal Refuse Disposal Control Fund.

(a) Moneys, including permit application fees, fines, bond forfeitures and civil penalties deposited in the Coal Refuse Disposal Control Fund may be used by the Department for the elimination of pollution, the abatement of health and safety hazards and nuisances, reclamation and other related uses including conducting scientific studies and research as authorized under the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66).

(b) Permit application fees required under this chapter for permit applications submitted under the Coal Refuse Disposal Control Act will be used by the Department to cover its costs to review applications.

Authority

The provisions of this § 86.3 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.3 adopted June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 9, 2012, effective November 10, 2012, 42 Pa.B. 7013. Immediately preceding text appears at serial page (357454).

§ 86.5. Extraction of coal incidental to noncoal surface mining.

(a) A person who intends to extract coal incidental to the extraction of other minerals shall do so under the provisions of a noncoal surface mining permit issued under Chapter 77 (relating to noncoal mining) and subject to the conditions described in this section. Incidental coal extraction which has been approved by the Department subject to the conditions in this section shall be exempt from the other requirements of this chapter and the requirements of Chapter 87 and Chapter 88, Subchapters A—C.

(b) Subject to Department approval, for purposes of determining the beginning of the cumulative measurement period, the operator shall select and consistently use one of the following:

(1) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, whichever is earlier.

(2) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area.

(c) A person who plans to commence extraction of coal incidental to noncoal surface mining shall file with the Department a complete request for exemption

from the requirements identified in subsection (a). The request shall be submitted as part of an application for a permit, or for a permit revision, to conduct noncoal surface mining activities.

(d) A person who has commenced incidental extraction of coal under a non-coal mining activity permit prior to December 16, 1995, may continue the extraction until February 14, 1996, after which no further incidental coal extraction may occur unless that person files an administratively complete request for exemption as described in subsection (g). Incidental coal extraction may then continue until the Department has made its final decision and written determination on the request for exemption.

(e) Sections 77.121 and 77.122 (relating to public notices of filing of permit applications; and opportunity for submission of written comments or objections on the permit application) shall be followed by the applicant and by the Department.

(f) Information relative to incidental coal extraction will be made available to the public as follows:

(1) Except as provided in paragraph (2), the information submitted to the Department under this section shall immediately be made available for public inspection and copying at the local offices of the Department having jurisdiction over the mining operations claiming exemption until at least 3 years after expiration of the period during which the subject mining area is active.

(2) The Department may keep information submitted to the Department under this section confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this section.

(3) Information requested to be held as confidential under paragraph (2) will not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

(g) A request for exemption shall include at a minimum:

(1) The name and address of the applicant.

(2) A list of the minerals sought to be extracted.

(3) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation.

(4) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area.

(5) The estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area, where coal or the other minerals are to be used rather than sold.

(6) The basis for annual production, revenue and fair market value estimates.

- (7) A description, including county, municipality and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas.
- (8) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation.
- (9) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that a request for exemption has been filed with the Department. The public notice shall identify the persons claiming the exemption and contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.
- (10) Representative stratigraphic cross-sections based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of material, not classified as other minerals, that will also be extracted during the conduct of mining activities.
- (11) A map to a scale of not less than 1:25,000 which clearly identifies the mining area.
- (12) A general description of mining and mineral processing activities for the mining area.
- (13) A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for the minerals.
- (14) A description specifying the use, if the other minerals are to be commercially used by the applicant.
- (15) For permitted noncoal surface mining activities which have been in operation prior to requesting an exemption, the following additional information:
- (i) Relevant documents the operator has received from the Department documenting its exemption from the act.
 - (ii) The cumulative production of the coal and other minerals from the mining area.
 - (iii) Estimated tonnages of stockpiled coal and other minerals.
- (16) Other information pertinent to the qualification of the operation as exempt.
- (h) The Department will notify the applicant if the request for exemption is incomplete and may at any time require submittal of additional information. The Department will approve a request for exemption only if the following are satisfied:
- (1) The cumulative production of coal extracted from the mining area determined annually, as described in subsection (j)(4), does not exceed 16 2/3% of the total cumulative production of coal and other minerals removed during the period for purposes of bona fide sale or reasonable commercial use.

(2) Coal is produced from a geological stratum lying above the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

(3) The cumulative revenue derived from the coal extracted from the mining area determined annually does not exceed 50% of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(4) Each other mineral upon which an exemption under this section is based shall be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed 12 months from the end of the current period for which cumulative production is calculated, as evidenced by a legally binding agreement or other commitment for the future sale of other minerals, or other evidence that will establish to the Department's satisfaction that a bona fide market exists for the other minerals.

(5) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction shall be made for legitimate business purposes.

(i) Exemption determination will be as follows:

(1) Within 90 days after filing of an administratively complete application, the Department will make a written determination whether, and under what conditions, an exemption can be granted under this section, and will notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and other information available to the Department at that time.

(3) A person who is adversely affected by the determination may file an appeal as provided for under Chapter 1021 (relating to Environmental Hearing Board).

(j) A person whose request for exemption has been approved by the Department shall:

(1) Maintain onsite or at other locations available to authorized representatives of both the Department and the United States Department of the Interior information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the Department.

(2) Notify the Department upon the completion of the mining operation or permanent cessation of coal extraction activities.

- (3) Conduct operations in accordance with the approved request for exemption.
- (4) File a written annual report beginning no later than 30 days after the end of the calendar quarter during which coal extraction commenced and each succeeding year no later than the anniversary of the initial report, for each mining area covered by an exemption. The report shall cover the preceding 12-month cumulative measurement period and shall contain the following information:
- (i) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period.
 - (ii) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.
 - (iii) The number of tons of extracted coal sold in bona fide sales and total revenue derived from the sales.
 - (iv) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of the coal.
 - (v) The number of tons of coal stockpiled.
 - (vi) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from the sales.
 - (vii) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of the minerals.
 - (viii) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.
- (k) Stockpiling of coal and other minerals for calculating and reporting of cumulative production will be considered as follows:
- (1) Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use under one of the following:
 - (i) Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the 2 preceding years.
 - (ii) Up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month for a mining area where coal has been extracted for a period of less than 2 years.
 - (2) The Department will disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this section if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(3) The Department may allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this section only if the following apply:

(i) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices.

(ii) Except as provided in paragraph (4), the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the Department on the basis of the exemption application.

(4) The Department may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in paragraph (3) if the operator can demonstrate to the Department's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement or other commitment or legitimate evidence of the need for future delivery of the minerals.

(5) The Department may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by paragraphs (3) and (4) based on additional information available to the Department.

(l) The Department will conduct an annual compliance review of the mining area, utilizing the annual report submitted under subsection (j)(4), an onsite inspection and other information available to the Department.

(m) If the Department has reason to believe that a specific mining area was not exempt under this section at the end of the previous reporting period, is not exempt or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Department will notify the operator that the exemption may be revoked and the reasons therefore. The exemption will be revoked unless the operator demonstrates to the Department within 30 days that the mining area in question should continue to be exempt. The operator and interested parties will be immediately notified of the revocation or of the decision not to revoke the exemption.

(n) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the Department with regard to conditions, areas and activities existing at the time of revocation or denial.

(o) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know the activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the Department's regulations which occur during the period of the activities.

Authority

The provisions of this § 86.5 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); sections 4 and 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3304 and 3311(a)); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.5 adopted February 17, 1984, 14 Pa.B. 524, effective August 4, 1984, 14 Pa.B. 2860; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial pages (354284), (336551) to (336552), (206635) to (206638) and (310149).

Cross References

This section cited in 25 Pa. Code § 86.1 (relating to definitions).

§ 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—1396.19b) 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:

(1) During the project site selection process and prior to development of final construction plans or reclamation plans for projects located within coal bearing regions, the government entity financing the construction or reclamation has provided the Department with an opportunity to provide comments on the potential environmental impacts of the project.

(2) The extraction of coal is necessary to enable the construction or reclamation to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other similar construction, or within the boundaries of the area directly affected by other types of government-financed construction or government-financed reclamation, may be considered incidental to that construction or reclamation.

(3) The construction or reclamation is funded by a Federal, Commonwealth, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit which, directly or through another unit of government, finances the construction or reclamation.

(4) The construction or reclamation is funded 50% or more by funds appropriated from the government unit's budget or obtained from general revenue bonds. Funding at less than 50% may qualify if the construction is undertaken as a Department-approved reclamation contract or project.

(5) The construction or reclamation is performed under a bond, contract and specifications that substantially provide for and require protection of the environment, reclamation of the affected area, and handling of excavated materials in a manner consistent with the acts and regulations implementing the acts.

(6) The Department has approved the standards and specifications for protection of the environment that will apply to the project when potential adverse environmental impacts have been identified.

(b) Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent or in-kind payments do not qualify as government-financed construction.

(c) A person extracting coal incidental to government-financed construction or government-financed reclamation who extracts more than 250 tons of coal or affects more than 2 acres shall maintain on the site of the extraction operation and make available for inspection the following documents:

(1) A written description of the construction or reclamation project.

(2) A map showing the exact location of the construction or reclamation, right-of-way or the boundaries of the area which will be directly affected by the construction or reclamation.

(3) A statement identifying the government agency that is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

(4) When the area delineated in paragraph (2) is wholly or partially within an area designated unsuitable for mining by the EQB under § 86.130 (relating to areas designated as unsuitable for mining), a copy of the detailed report required by § 86.124(e) (relating to procedures: initial processing, recordkeeping and notification requirements).

(d) Government-financed construction projects and government-financed reclamation must comply with Chapters 91—96, 102 and 105.

Authority

The provisions of this § 86.6 issued under section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b) and section 1920-A of The Administrative Code of 1929 (71 P. S. 510-20); amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b).

Source

The provisions of this § 86.6 adopted March 11, 2005, effective March 12, 2005, 35 Pa.B. 1663; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (357460) to (357461).

Subchapter B. PERMITS

GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

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Cross References

This subchapter cited in 25 Pa. Code § 86.167 (relating to transfer of permits).

**GENERAL REQUIREMENTS FOR PERMITS AND
PERMIT APPLICATIONS**

§ 86.11. General requirements for permits.

(a) No person may operate a mine or allow a discharge from a mine into the waters of the Commonwealth unless the person has obtained a permit from the Department.

(b) Permits will be issued only to an operator.

(c) Except as provided in § 86.12 (relating to continued operation under interim permits) and Subchapter E (relating to coal exploration), on and after 8 months from the effective date of this chapter, no person may engage in or carry out coal mining activities within this Commonwealth unless that person has obtained a valid permit and authorization issued by the Department.

Source

The provisions of this § 86.11 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial page (148466).

Notes of Decisions

It was proper for the Department of Environmental Resources to refuse to exempt small mines from its permit requirements and this section was not preempted by Federal law. *Budinsky v. Department of Environmental Resources*, 819 F.2d 418, 420 (3rd Cir. 1987); cert. denied 484 U. S. 926; reh'g denied 484 U. S. 1083 (U. S. 1988).

Cross References

This section cited in 25 Pa. Code § 86.12 (relating to continued operation under interim permits); and 25 Pa. Code § 88.381 (relating to general requirements).

§ 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—1396.19b), the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66), 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).

(b) A person conducting coal preparation activities which were not subject to the requirements of this chapter and Chapters 87—90 prior to August 25, 1989 may continue operating the facility if the following requirements are met:

(1) An initial permit application is submitted by October 24, 1989.

(2) A complete application as defined under § 86.16 (relating to application contents) is submitted to the Department in accordance with a schedule established by the Department.

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

(4) The operations are conducted in compliance with the requirements of the acts and the performance standards in this chapter and Chapters 87—90.

Authority

The provisions of this § 86.12 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.12 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended November 18, 1988, 18 Pa.B. 5155; corrected March 17, 1989, 19 Pa.B. 1169, effective August 25, 1989, 19 Pa.B. 3674; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (336553) to (336554).

Cross References

This section cited in 25 Pa. Code § 86.11 (relating to general requirements for permits); 25 Pa. Code § 86.31 (relating to public notices of filing of permit applications); 25 Pa. Code § 87.203 (relating to applicability); 25 Pa. Code § 88.381 (relating to general requirements); 25 Pa. Code § 88.503 (relating to applicability); and 25 Pa. Code § 90.303 (relating to applicability).

§ 86.13. Compliance with permits.

A person may not conduct coal mining activities except under permits issued under this chapter and in compliance with the terms and conditions of the permit and the requirements of this chapter and Chapters 87—90 and the statutes under which they were promulgated.

Source

The provisions of this § 86.13 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Notes of Decisions*Permit Required*

When read together, section 315(a) of The Clean Streams Law (35 P. S. § 691.315(a)) and this section clearly express a legislative and regulatory interest to require all ongoing and future coal mining activities to be conducted only under permits issued under the primacy regulations. *Bloom v. Department of Environmental Resources*, 515 A.2d 361 (Pa. Cmwlth. 1986).

Cross References

This section cited in 25 Pa. Code § 88.381 (relating to general requirements).

§ 86.14. Permit application filing deadlines.

(a) Each person who possesses a permit for coal mining activities issued by the Department prior to the effective date of this chapter and who expects to conduct the permitted activities after the expiration of 8 months from the effective date of this chapter shall reapply for a permit for those activities within 2 months of the effective date of this chapter.

(b) Each person who conducts or expects to conduct new coal mining activities shall file a complete application for a permit for coal mining activities a minimum of 180 days prior to the anticipated starting date of the activities or a shorter period of time as determined by the Department.

Source

The provisions of this § 86.14 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.12 (relating to continued operation under interim permits); 25 Pa. Code § 86.16 (relating to application contents); 25 Pa. Code § 86.31 (relating to public notices of filing of permit applications); 25 Pa. Code § 86.39 (relating to final permit action); 25 Pa. Code § 87.203 (relating to applicability); 25 Pa. Code § 88.381 (relating to general requirements); 25 Pa. Code § 88.503 (relating to applicability); and 25 Pa. Code § 90.303 (relating to applicability).

§ 86.15. Permit application—general requirements.

(a) Application for a permit under this chapter shall be submitted to the Department in writing, upon forms furnished by the Department.

(b) Each application for a permit shall be accompanied by information, maps, plans, specifications, design analyses, test reports and other data required by the Department to determine compliance with the standards, requirements or purposes of this chapter.

(c) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the Department.

(d) Technical data submitted in the application shall include:

(1) Names of persons or organizations which collected and analyzed the data.

- (2) Dates of the collection and analyses.
- (3) Descriptions of methodology used to collect and analyze the data.

Source

The provisions of this § 86.15 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 88.381 (relating to general requirements).

§ 86.16. Application contents.

Persons submitting permit applications under § 86.14(a) (relating to permit application filing deadlines), shall reapply for a permit within 2 months by submitting an initial application on forms available from the Department and shall thereafter submit a complete application, including proof of publication, in accordance with a schedule determined by the Department. Other applications submitted under § 86.14(b) shall be complete and include, at a minimum, the applicable information required under this chapter and:

- (1) Chapter 87 (relating to surface mining of coal) for surface mining activities.
- (2) Chapter 88 (relating to anthracite coal) for anthracite coal mining activities.
- (3) Chapter 89 (relating to underground mining of coal and coal preparation facilities) for underground mining activities and coal preparation activities.
- (4) Chapter 90 (relating to coal refuse disposal) for coal refuse disposal activities.

Source

The provisions of this § 86.16 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Notes of Decisions

As the Department of Environmental Resources refused to process Petitioner's application for a mining permit, petitioners subsequently commenced an action to compel the Department to process their application, and based on a prior Superior Court decision, requested the production of two memoranda for discovery which the Court determined to be protected from discovery under the work product doctrine as to one memorandum and immune on the basis of the attorney-client privilege as to the other. *Sedat, Inc., v. Department of Environmental Resources*, 641 A.2d 1243 (Pa. Cmwlth. 1994).

Cross References

This section cited in 25 Pa. Code § 86.12 (relating to continued operation under interim permits); 25 Pa. Code § 88.381 (relating to general requirements).

§ 86.17. Permit and reclamation fees.

(a) A permit application for coal mining activities shall be accompanied by a payment to the “Commonwealth of Pennsylvania” for the amount of the permit application fee provided in the fee schedule in subsection (b) which corresponds to the type of application being submitted. For purposes of this subsection, permit applications include the applications in subsection (b).

(b) The permit application fee schedule is as follows:

(1) <i>New Permits</i>	<i>Fee</i>
Surface Mining Permit	\$3,250
Coal Refuse Reprocessing Permit	\$1,900
Coal Refuse Disposal Permit	\$3,250
Coal Preparation Plant Permit	\$1,650
Anthracite Underground Mining Permit	\$1,650
Bituminous Underground Mining Permit	\$5,750
Post Mining Activity Permit	\$300
Incidental Extraction Permit	\$1,650
(2) <i>Major Permit Revisions</i>	<i>Fee</i>
Surface Mining Permit	\$300
Coal Refuse Reprocessing Permit	\$300
Anthracite Coal Refuse Disposal Permit	\$300
Bituminous Coal Refuse Disposal Permit	\$1,250
Anthracite Coal Preparation Plant Permit	\$300
Bituminous Coal Preparation Plant Permit	\$1,250
Anthracite Coal Underground Mining Permit	\$300
Bituminous Coal Underground Mining Permit	\$1,250
(3) <i>Permit Transfer</i>	<i>Fee</i>
All	\$250
(4) <i>Permit Renewal</i>	<i>Fee</i>
All	\$250
(5) <i>Other Actions</i>	<i>Fee</i>
Auger Safety Permit	\$200
Bond Liability Revision	\$100

(c) For surface coal mine facilities, coal refuse reprocessing facilities and coal mining activity facilities, except for bituminous underground mines, permit application fees collected will be deposited in the Surface Mining Conservation and Reclamation Fund. Permit application fees collected for bituminous underground mines will be deposited in the Bituminous Mine Subsidence and Land Reclamation Fund. For coal refuse disposal facilities, permit application fees col-

lected will be deposited in the Coal Refuse Disposal Control Fund. Permit application fees required under this section will be used by the Department to cover its costs to review permit applications.

(d) The Department will review the adequacy of the permit application fees in this section at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs and contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program 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. The report will include the Department's calculation of the required amount of the reclamation fee, 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, including an estimate of the reclamation fee for the calendar year immediately following the current fiscal year. The need to supplement the funding of the Reclamation Fee O&M Trust Account will be based on 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.

(3) The amount of the reclamation fee shall be \$100 per acre until December 31, 2009. Commencing January 1, 2010, and continuing until either a permanent alternative funding source is established or the ABS Legacy Sites Trust Account is actuarially sound, the reclamation fee will be adjusted as necessary to ensure that there are sufficient revenues to maintain a balance in the Reclamation Fee O&M Trust Account of at least \$3,000,000.

(i) The reclamation fee will be used until the ABS Legacy Sites Trust Account is actuarially sound unless an alternative permanent funding source in lieu of the reclamation fee is used to fund the Reclamation Fee O&M Trust Account.

(ii) Until the ABS Legacy Sites Trust Account is actuarially sound, the alternative permanent funding source must provide sufficient revenues to maintain a balance in the Reclamation Fee O&M Trust Account of at least \$3,000,000 and to pay the annual operation and maintenance costs for treating postmining pollutional discharges at the ABS Legacy Sites. Funds that are not needed for annual operation and maintenance or to maintain the \$3,000,000 balance may be deposited into the ABS Legacy Sites Trust Account.

(4) Commencing January 1, 2010, and continuing until the ABS Legacy Sites Trust Account is actuarially sound, the amount of the reclamation fee will be annually calculated and, if necessary, will be adjusted in multiples of \$50 based on the following factors:

(i) The current balance in the Reclamation Fee O&M Trust Account.

(ii) The total amount of revenue into the trust account during the previous fiscal year from collection of the reclamation fee, the interest accrued by the Reclamation Fee O&M Trust Account, the deposits of civil penalties into the trust account and deposits from other sources of moneys into the trust account.

(iii) The amount of ongoing operation and maintenance costs incurred by the Reclamation Fee O&M Trust Account during previous fiscal years.

(iv) The projected number of acres subject to the reclamation fee during the current fiscal year.

(v) The projected amount of revenue into the Reclamation Fee O&M Trust Account during the current fiscal year from projected interest accrued by the trust account, projected deposits of civil penalties and projected deposits of moneys from other sources.

(vi) The projected expenditures of the Reclamation Fee O&M Trust Account for operation and maintenance costs for the current fiscal year.

(5) Following the Department's review of its calculation of the required reclamation fee amount at a public meeting of the Mining and Reclamation Advisory Board under paragraph (2), the Department will publish the adjustment in the required amount of the reclamation fee in the *Pennsylvania Bulletin*. Adjustments to the amount of the reclamation fee will become effective upon publication in the *Pennsylvania Bulletin*. The Department's determination of the required amount of the reclamation fee under paragraphs (3) and (4) will be a final action of the Department appealable to the EHB.

(6) The Department will cease to assess and collect the reclamation fee when the ABS Legacy Sites Trust Account established under § 86.187(a) (relating to use of money) becomes actuarially sound. The ABS Legacy Sites Trust Account will become actuarially sound when the following conditions are met:

(i) Financial guarantees sufficient to cover reclamation costs, including the costs to treat each discharge in perpetuity, have been approved by the Department for all mine sites permitted under the primacy alternate bonding system.

(ii) Construction of the necessary discharge treatment facilities has been completed at the ABS Legacy Sites.

(iii) The ABS Legacy Sites Trust Account, combined with the Reclamation Fee O&M Trust Account, contains funds which generate interest at a rate and in an amount sufficient to pay the annual operation and maintenance costs for treating postmining pollutional discharges at the ABS Legacy Sites.

Authority

The provisions of this § 86.17 amended under sections 4(a), (d) and (d.2) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a), (d) and (d.2) and 1396.4b); section 7 of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7); section 5 of The Clean Streams Law (35 P. S. § 691.5); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and PA. CONST. ART. 1, § 27.

Source

The provisions of this § 86.17 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383; effective July 27, 1991, 21 Pa.B. 3316; amended August 6, 1993, effective August 7, 1993, 23 Pa.B. 3685; amended August 29, 2008, effective August 30, 2008, 38 Pa.B. 4742; amended November 9, 2012, effective November 10, 2012, 42 Pa.B. 7013; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (364373) to (364376).

Cross References

This section cited in 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.187 (relating to use of money); 25 Pa. Code § 86.283 (relating to procedures); and 25 Pa. Code § 88.381 (relating to general requirements).

86-22.2

§ 86.18. Verification of application.

Applications for permits shall be verified by a responsible official of the applicant with a statement that the information contained in the application is true and correct to the best of the official's information and belief, and attested by a notary public or district justice.

Source

The provisions of this § 86.18 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 88.381 (relating to general requirements).

**REVIEW, PUBLIC PARTICIPATION AND APPROVAL,
DISAPPROVAL OF PERMIT APPLICATIONS AND PERMIT
TERMS AND CONDITIONS**

§ 86.31. Public notices of filing of permit applications.

(a) An applicant for a permit, transfer or renewal, or for revision as required by § 86.54 (relating to public notice of permit revision) shall place at the time of filing an application with the Department, an advertisement in a local newspaper of general circulation in the locality of the proposed coal mining activities at least once a week for 4 consecutive weeks. The advertisement shall contain, at a minimum, the following information:

(1) The name and business address of the applicant.

(2) A map or description which shall:

(i) Clearly show or describe towns, rivers, streams or other bodies of water, local landmarks and other information, including routes, streets or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area.

(ii) Clearly show or describe the exact location and boundaries of the proposed permit area, and the receiving stream.

(iii) State the name of the United States Geological Survey 7.5 minute quadrangle map which contains the area shown or described.

(iv) Indicate the north point, if a map is used.

(3) The location where a copy of the application is available for public inspection under subsection (b).

(4) The name and address of the Department's appropriate district or regional office to which written comments, objections or requests for informal conferences on the application may be submitted under §§ 86.32 and 86.34 (relating to opportunity for submission of written comments or objections on the permit application; and informal conferences).

86-22.3

(5) A concise statement describing the public road, the particular part to be relocated, where the relocation is to occur and the duration of the relocation, if an applicant seeks a permit to mine within 100 feet (30.48 meters) of the outside right-of-way of a public road or to relocate a public road.

(6) If an applicant seeks a variance to conduct coal mining activities within 100 feet (30.48 meters) of a stream, a description of the activities and the name of the stream.

(b) No later than the first date of the newspaper advertisement under subsection (a), the applicant for a new permit, except as provided in § 86.35(a) (relating to public availability of information in permit applications), shall file a complete copy of the application for the public to copy and inspect at a public office approved by the Department in the county where the coal mining activities are to occur. The applicant shall file a subsequent revision of the application for a new permit with that office at the same time the revision is submitted to the Depart-

ment. In the case of repermitting under §§ 86.12 and 86.14 (relating to continued operation under interim permits; and permit application filing deadlines), permit renewals under § 86.55 (relating to permit renewals: general requirements), permit revisions under § 86.52 (relating to permit revisions) and permit transfers under § 86.56 (relating to transfer of permit), the permittee shall indicate in the public notice that a copy of the permit and accompanying documents is available for inspection and copying at the appropriate district or regional office.

(c) Upon receipt of a complete application, the Department will publish notice of the proposed activities in the *Pennsylvania Bulletin* and send notice to the following:

- (1) By registered mail, the city, borough, incorporated town or township in which the activities are located.
- (2) Sewage and water treatment authorities and water companies that may be affected by the activities.
- (3) Governmental planning agencies with jurisdiction to act with regard to land use, air or water quality planning in the area of the proposed activities.
- (4) Federal, State and local government agencies with jurisdiction over or an interest in the area of the proposed activities, including, but not limited to, general governmental entities and fish and wildlife and historic preservation agencies.

(d) The content of the notice shall include:

- (1) The application number.
- (2) The name and address of the applicant.
- (3) The township and county in which the operation is located.
- (4) The receiving stream.
- (5) A brief description of the operation and the location.
- (6) The location where a copy of the application may be inspected.
- (7) The location where comments on the application may be submitted.
- (8) A statement that the application is for a new permit, a renewal of an existing permit or the transfer of an existing permit to a new operator.

(e) The applicant for a permit, transfer or renewal or revision for surface mining activities who proposes to conduct surface mining activities within 125 feet (38.1 meters) of a permitted or registered oil or gas well shall send to each permittee or to any owner or agent of any owner of a permitted or registered oil or gas well a notice, by certified mail, return receipt requested, that the applicant intends to conduct surface mining activities within 125 feet (38.1 meters) of the well. The notice shall include the information required by subsection (a)(1)—(4). The notice shall be sent by certified mail prior to the filing of the surface mining activities permit application with the Department. If the applicant demonstrates that it has made a good faith effort to comply with this requirement by mailing the required notice to the address of record or last known address of the registered well owner or permittee, and the notice has been returned as undeliverable

or refused, notice may be deemed made by publication in compliance with subsection (a). Where a permittee under an approved surface mining permit proposes to conduct surface mining activities within 125 feet (38.1 meters) of a permitted or registered oil or gas well, and if publication of the proposed activities is not required, the surface mining permittee shall send the notice required by this subsection by certified mail, return receipt requested, to the owner, agent of an owner or permittee of a permitted or registered oil or gas well within 125 feet (38.1 meters) of the activities at least than 60 days prior to conducting the activities.

Source

The provisions of this § 86.31 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial pages (219158) and (206647).

Cross References

This section cited in 25 Pa. Code § 86.32 (relating to opportunity for submission of written comments or objections on the permit application); 25 Pa. Code § 86.34 (relating to informal conferences); 25 Pa. Code § 86.52 (relating to permit revisions); 25 Pa. Code § 86.54 (relating to public notice of permit revision); 25 Pa. Code § 86.55 (relating to permit renewals: general requirements); 25 Pa. Code § 86.56 (relating to transfer of permit); 25 Pa. Code § 86.70 (relating to proof of publication); 25 Pa. Code § 86.129 (relating to coal exploration on areas designated as unsuitable for surface mining operations); 25 Pa. Code § 87.62 (relating to operational information); 25 Pa. Code § 88.42 (relating to operational plan: general information); 25 Pa. Code § 90.31 (relating to general requirements); and 25 Pa. Code § 290.104 (relating to beneficial use at coal mining activity sites).

§ 86.32. Opportunity for submission of written comments or objections on the permit application.

(a) Written comments or objections on the permit application or application for permit revision may be submitted to the Department within 30 days after the last publication of the newspaper advertisement placed by the applicant under § 86.31(a) (relating to public notices of filing of permit applications) by a person or an officer or head of a Federal, State or local government agency or authority. In addition to submitting comments, the permittee, owner or agent of an owner of an oil or gas well who receives a notice required by § 86.31(e) may provide the Department, within 30 days after the last publication of the newspaper advertisement placed by the applicant, or if publication of the advertisement is not required, within 45 days after receipt of the notice required by § 86.31(e), a description of the measures the well permittee, owner or agent believes are necessary to minimize damage, destruction or disruption of services provided by the oil or gas well which may be caused by the proposed surface mining activities. The Department will also publish notice of permit applications in the *Pennsylvania Bulletin*.

(b) The Department will immediately transmit comments or objections received under this section to the applicant and the office where the applicant filed a copy of the application for public inspection under § 86.31(b).

Source

The provisions of this § 86.32 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial page (206648).

Cross References

This section cited in 25 Pa. Code § 86.31 (relating to public notices of filing of permit applications); 25 Pa. Code § 86.36 (relating to review of permit applications); and 25 Pa. Code § 86.129 (relating to coal exploration on areas designated as unsuitable for surface mining operations).

§ 86.33. [Reserved].**Source**

The provisions of this § 86.33 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.34. Informal conferences.

(a) A person or the officer or head of a Federal, State or local government agency or authority or the owner or operator of an oil and gas well who receives a notice required by § 86.31(e) (relating to public notices of filing of permit applications) may, in writing, request that the Department hold an informal conference on an application for a permit. The request shall:

- (1) Briefly summarize the issues or objections to be raised by the requestor at the conference.
- (2) State whether the requestor desires to have the conference conducted in the locality of the proposed coal mining activities.
- (3) Be filed with the Department within 30 days after the last publication of the newspaper advertisement placed by the applicant under § 86.31(a) or within 30 days of receipt of notice by the public entities to whom notification is provided under § 86.31(c).

(b) Except as provided in subsection (c), if an informal conference is requested in accordance with subsection (a), the Department will hold an informal conference within 60 days of the close of the public comment period. The informal conference will be conducted according to the following:

- (1) The conference will be held in the locality of the proposed mining, if requested under subsection (a)(2).
- (2) The date, time and location of the informal conference will be advertised by the Department in a newspaper of general circulation in the locality of the proposed mine at least 2 weeks prior to the scheduled conference.
- (3) If requested, in writing, by a conference requestor in a reasonable time prior to the conference, the Department may arrange with the applicant to grant parties to the conference access to the permit area for the purpose of gathering information relevant to the conference.

- (4) The conference will be conducted by a representative of the Department who may accept oral or written statements and other relevant information from a party to the conference. An electronic or stenographic record will be made of the conference proceeding, unless waived by all parties. The record will be maintained and will be accessible to the parties of the conference until final release of the applicant's performance bond under Subchapter F (relating to bonding and insurance requirements).
- (c) If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their request, the informal conference need not be held.
- (d) Informal conferences held in accordance with § 86.103(c) (relating to procedures) may be used by the Department as the public hearing required under proposed uses or relocation of public roads.
- (e) The Department will give its findings of the conference to the permit applicant and to each person who is a party to the conference within 60 days of the conference.
- (f) Within 60 days of the informal conference, the Department will notify the applicant of its decision to approve, disapprove or of its intent to disapprove the application subject to the submission of additional information to resolve deficiencies.

Source

The provisions of this § 86.34 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial pages (206648) and (234493).

Cross References

This section cited in 25 Pa. Code § 86.31 (relating to public notices of filing of permit applications); 25 Pa. Code § 86.36 (relating to review of permit applications); 25 Pa. Code § 86.39 (relating to final permit action); and 25 Pa. Code § 90.166 (relating to postdisposal land use).

§ 86.35. Public availability of information in permit applications.

- (a) Information contained in permit applications on file with the Department shall be open, upon request, for public inspection and copying at reasonable times; however, information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined—excepting information regarding mineral or elemental contents of the coal, which are potentially toxic in the environment—shall be kept confidential and not made a matter of public record.
- (b) Confidential information shall be clearly identified by the applicant and submitted under separate cover but concurrently with all other portions of the application.

Source

The provisions of this § 86.35 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.31 (relating to public notices of filing of permit applications).

§ 86.36. Review of permit applications.

(a) The Department will review the complete application, written comments, written objections and records of a public hearing or informal conference held under §§ 86.32 and 86.34 (relating to opportunity for submission of written comments or objections on the permit application; and informal conferences).

(b) If the Department decides to approve the application, it will require that the applicant file the bond in accordance with Subchapter F (relating to bonding and insurance requirements) before the permit is issued.

(c) The Department will verify from the schedule submitted under § 86.63 (relating to compliance information) or other information available to the Department that coal mining activities owned or controlled by the applicant, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1 (relating to definitions) are not currently in violation of the acts or the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328), or that the violation is in the process of being corrected to the satisfaction of the regulatory authority, department or agency which has jurisdiction over the violation of the acts or the Surface Mining Control and Reclamation Act of 1977 and a law, rule or regulation of a department or agency of the United States or of a state in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a coal mining activity.

Source

The provisions of this § 86.36 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial page (313491).

§ 86.37. Criteria for permit approval or denial.

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

- (1) The permit application is accurate and complete and that the requirements of the acts and this chapter have been complied with.
- (2) The applicant has demonstrated that the coal mining activities can be feasibly accomplished as required by the act and this chapter under the operation and reclamation plan contained in the application.
- (3) The applicant has demonstrated that there is no presumptive evidence of potential pollution of the waters of this Commonwealth.
- (4) The assessment of the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance as described in § 87.69, § 88.49, § 89.36 or § 90.35 has been made by the Department, and the activities proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.
- (5) The area covered by the operator's bond and upon which the operator proposes to conduct surface mining activities within the boundary of the proposed surface or coal mining activities permit is not one of the following:
 - (i) Included within an area designated unsuitable for mining under Subchapter D (relating to areas unsuitable for mining).
 - (ii) Within an area which has been included in a petition for designation under § 86.124(a)(6) (relating to procedures: initial processing, recordkeeping and notification requirements).
 - (iii) On lands subject to the prohibitions or limitations of Subchapter D.
 - (iv) Within 100 feet (30.48 meters) of the outside right-of-way line of any public road, except as provided for in Subchapter D.
 - (v) Within 300 feet (91.44 meters) from any occupied dwelling, except as provided for in Subchapter D.
 - (vi) Within 100 feet (30.48 meters) of a stream, except as provided for in § 86.102 (relating to areas where mining is prohibited or limited).
- (6) The proposed activities will not adversely affect any publicly owned parks or places included on the National Register of Historic Places, except as provided for in Subchapter D. The effect of the proposed coal mining activities on properties listed on or eligible for listing on the National Register of Historic Places has been taken into account by the Department. This finding may be supported in part by inclusion of appropriate permit conditions or operational plan changes to protect historic resources, or a documented decision that no additional protective measures are necessary.

(7) Prior to approval of the bond under Subchapter F (relating to bonding and insurance requirements), a right of entry has been obtained from the landowner for each parcel of land to be affected by the coal mining activities in accordance with § 86.64 (relating to right of entry).

(8) The applicant has submitted proof that a violation related to the mining of coal by the applicant, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1 (relating to definitions) or by a related party of the acts, a rule, regulation, permit or license of the Department has been corrected or is in the process of being corrected to the satisfaction of the Department, whether or not the violation relates to an adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. For the purpose of this section, the term “violation” includes the types of violations listed in the definition of “violation” in 30 CFR 701.5 (relating to definitions). A permit issued under this paragraph on the basis that a violation is in the process of being corrected or pending the outcome of an appeal, and the appropriate regulatory authority program having jurisdiction over the violation provides for a stay of execution of the abatement procedure or a court of competent jurisdiction has issued a supersedeas providing that relief, will be issued conditionally.

(9) A statement from the applicant that all reclamation fees required by 30 CFR Part 870 (relating to abandoned mine reclamation fees) have been paid.

(10) There are no past or continuing violations which show the applicant’s, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1, lack of ability or intention to comply with the acts or the regulations promulgated thereunder, whether or not the violation relates to an adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. If the Department makes a finding that the applicant or the operator specified in the application or a person who owns or controls the applicant or operator or a person owned or controlled by the applicant or operator, has demonstrated a pattern of willful violations of the acts of a nature and duration and with resulting irreparable damage to the environment as to indicate an intent not to comply with the acts, a permit will not be issued.

(11) The applicant has submitted proof that a violation by the applicant or by a person owned or controlled by the applicant or by a person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1, of a law, rule or regulation of the United States or a state—other than the law of the Commonwealth—law, rule or regulation pertaining to air or water environmental protection enacted under Federal law, has been corrected or is in the process of being satisfactorily corrected. A permit issued under this paragraph on the basis that a violation is in the process of being corrected or pending the outcome of an appeal, and the appropriate regulatory authority program having jurisdiction over the violation provides for a

stay of execution of the abatement procedure or a court of competent jurisdiction has issued a supersedeas providing that relief, will be issued conditionally.

(12) The applicant shall submit the bond required under Subchapter F prior to the issuance of the permit.

(13) The applicant has satisfied the requirements of § 87.53, § 88.32, § 88.491(k), § 89.121 or § 90.22.

(14) The proposed postmining land use of the permit area meets the requirements of § 87.159, § 88.89, § 88.183, § 88.289, § 88.493, § 89.88 or § 90.166.

(15) The proposed activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544).

(16) A statement from the applicant that State and Federal final civil penalty assessments have been paid. Final civil penalty assessments are civil penalty assessments which have not been appealed within 30 days of assessment or appealed civil penalty assessments which have been adjudicated by the EHB or other applicable judicial forum. For purposes of this subsection, civil penalty assessments include State and Federal civil penalty assessments related to coal mining activities which are assessed by one of the following:

(i) The Department under the authority of the acts.

(ii) The Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) under the authority of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328).

(iii) A State regulatory authority which has been granted primary jurisdiction by OSMRE to implement the Federal coal mining regulatory program within its boundaries.

(b) An incremental phase approval of the permit will not be granted to conduct mining or reclamation operations or to expand mining or reclamation operations within a permit area if the Department has already issued an incremental phase approval for the area to another permittee, except for an area used for access or haul roads. An incremental phase approval of the permit will not be granted to conduct mining or reclamation operations, or permission to expand mining or reclamation operations within a permit area which has been limited to a portion or phase of the entire area until the applicant:

(1) Has filed with the Department a bond in accordance with § 86.143 (relating to requirements to file a bond).

(2) Meets the requirements of subsection (a)(7)—(9).

(c) After an application is approved, but before the permit is issued, the Department will reconsider its decision to approve the application, based on the compliance review required by subsection (a)(8), (10) and (11) in light of new information submitted under §§ 86.62(d) and 86.63(c) (relating to identification of interests; and compliance information).

Authority

The provisions of this § 86.37 amended under section 4.2 the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.37 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended January 4, 1985, effective upon the granting of primary jurisdiction to the Commonwealth of Pennsylvania by the Secretary of the United States Department of Interior, 15 Pa.B. 13; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227; amended May 31, 2002, effective June 1, 2002, 32 Pa.B. 2686; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial pages (313491) to (313492), (288885) to (288886) and (313493).

Notes of Decisions*Written Findings*

Although the language used in the written findings does not mirror that contained in § 86.37(a)(3) (relating to criteria for permit approval or denial), the record indicates that the Department utilized the appropriate standards. It was therefore not error for the Environmental Hearing Board to determine that the Department correctly concluded that there was no presumptive evidence of potential pollution to the waters of this Commonwealth. *People United To Save Homes v. Department of Environmental Protection*, 789 A.2d 319 (Pa. Cmwlth. 2001).

Cross References

This section cited in 25 Pa. Code § 86.43 (relating to improvidently issued permits); 25 Pa. Code § 86.129 (relating to coal exploration on areas designated as unsuitable for surface mining operations); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.189 (relating to reclamation of bond forfeiture sites); 25 Pa. Code § 86.253 (relating to operator and project qualifications); 25 Pa. Code § 87.108 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 87.203 (relating to applicability); 25 Pa. Code § 87.205 (relating to approval or denial); 25 Pa. Code § 88.503 (relating to applicability); and 25 Pa. Code § 88.505 (relating to approval or denial); 25 Pa. Code § 90.303 (relating to applicability); and 25 Pa. Code § 90.305 (relating to application approval or denial).

§ 86.38. Criteria for approval or denial: existing structures.

(a) An application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed activities will not be approved unless the applicant demonstrates and the Department finds, in writing, on the basis of the information set forth in the complete application that:

(1) The structure meets the standards of Chapter 87 Subchapter E; Chapter 88 Subchapters B—F; Chapter 89; or Chapter 90 Subchapter D.

(2) If the existing structure meets the performance standards of Chapter 87 Subchapter E; Chapter 88 Subchapters B—F; Chapter 89; or Chapter 90 Subchapter D, but does not meet the design requirements of Chapter 87 Subchapter E; Chapter 88 Subchapters B—F; Chapter 89; or Chapter 90 Subchapter D, no presumptive evidence of pollution to the environment or risk to public health or safety will result from use of the structure.

(b) Noncomplying existing structures shall be modified or reconstructed within 6 months after issuance of the permit; however, the Department may approve a longer period if the applicant demonstrates that:

- (1) A longer period of time is necessary to modify or reconstruct the existing structure.
- (2) The risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Source

The provisions of this § 86.38 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, effective upon the granting of primary jurisdiction to the Commonwealth of Pennsylvania by the Secretary of the United States Department of Interior, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended February 17, 1984, 14 Pa.B. 524, effective August 4, 1984, 14 Pa.B. 2860. Immediately preceding text appears at serial pages (72002) to (72003).

§ 86.39. Final permit action.

(a) The Department will approve or deny an application within the following time limits:

- (1) A complete application submitted under § 86.14(a) (relating to permit application filing deadlines) will be approved or denied within 8 months of the effective date of this chapter or within 60 days of an informal conference, if held.
- (2) A complete application submitted under § 86.14(b) will be approved or denied within one of the following time limits:
 - (i) If an informal conference or public hearing has been held under § 86.34 (relating to informal conferences), within 60 days of the close of the conference or hearing unless deficiencies in the application continue to exist and the Department has allowed additional time for the applicant to submit additional information to resolve the deficiencies.
 - (ii) If no informal conference or public hearing has been held under § 86.34, then within a reasonable time not to exceed 60 days after the close of the public comment period, unless deficiencies in the application continue to exist and the Department has allowed additional time for the applicant to submit additional information to resolve the deficiencies.

(b) Simultaneously with the final action on a permit application, the Department will:

- (1) Issue notice of its decision to the applicant and each person and governmental official who filed a written objection or comment on the application. The Office of Surface Mining Reclamation and Enforcement will be given notice of the decision and provided a copy of a permit issued when requested.

(2) Publish a summary of its decision in the *Pennsylvania Bulletin*; and within 10 days after the granting of a permit, issue notice to the local government officials of each township or municipality in which the activities are located.

Source

The provisions of this § 86.39 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148480) to (148481).

Cross References

This section cited in 25 Pa. Code § 86.129 (relating to coal exploration on areas designated as unsuitable for surface mining operations).

§ 86.40. Permit terms.

(a) Each permit shall be issued for a fixed term not to exceed 5 years. A longer fixed permit term may be granted, if:

(1) The application is full and complete for the specified longer term.

(2) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary internal or external financing of equipment, facilities or structures for the opening or continuance of the operation, and this need is confirmed in writing by the applicant's source for the financing.

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

(c) With respect to coal to be mined for use only in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced coal mining activities at the time that the construction of the synthetic fuel or generating facility is initiated.

Source

The provisions of this § 86.40 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial page (234499).

§ 86.41. Conditions of permits: general and right of entry.

A permit issued by the Department is subject to the following conditions:

(1) The permittee shall conduct coal mining activities as described in the approved application, except to the extent that the Department otherwise directs in the permit that specific actions be taken.

(2) The permittee shall allow the authorized representatives of the Commonwealth, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have access to the areas in which coal mining activities will or are being conducted.

(3) The permittee shall affect by coal mining activities only those lands specifically approved in the permit for which a bond has been filed with the Department in accordance with Subchapter F (relating to bonding and insurance requirements).

(4) The permittee shall pay all reclamation fees in accordance with 30 CFR Part 870 (relating to abandoned mine reclamation fees) for coal produced under the permit.

Source

The provisions of this § 86.41 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075. Immediately preceding text appears at serial page (158702).

§ 86.42. Conditions of permits: environment, public health and safety.

Each permit issued by the Department will ensure and contain specific conditions requiring that the:

(1) Permittee shall take all possible steps to prevent an adverse impact to the environment or public health and safety resulting from noncompliance with terms or conditions of the permit, including:

(i) An accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance.

(ii) Providing warning, as soon as possible after learning of the noncompliance, to a person whose health and safety is in imminent danger due to the noncompliance.

(2) Permittee shall conduct the activities in accordance with measures specified in the permit as necessary to prevent environmental harm or harm to the health or safety of the public.

Source

The provisions of this § 86.42 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.43. Improvidently issued permits.

(a) For the purpose of this section and § 86.44 (relating to rescission of improvidently issued permits) “other person responsible” means a person owned or controlled by the permittee or a person who owns or controls the permittee under the definition of “owned or controlled” or “owns or controls” in § 86.1 (relating to definitions).

(b) A coal mining activity permit is improvidently issued if the following apply:

(1) Under the violation review criteria of § 86.37(a)(8), (9) and (11) (relating to criteria for permit approval or denial) in effect at the time of permit issuance one of the following applies:

(i) The Department should not have issued the permit because of an unabated violation or a delinquent penalty or fee of the permittee or other person responsible.

(ii) The permit was issued on the presumption that a violation by the permittee or other person responsible at the time of permit issuance was in the process of being corrected to the satisfaction of the Department, but a cessation order for that violation was subsequently issued.

(2) The violation, penalty or fee of the permittee or other person responsible:

(i) Remains unabated or delinquent.

(ii) Is not the subject of an agreement, abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the Department.

(3) At the time of permit issuance the violation, penalty or fee was to the other person responsible and the link between the permittee and that other person responsible still exists, or if the link to the other person responsible was severed, the permittee continues to be responsible for the violation, penalty or fee.

(c) If the Department has found that it improvidently issued a coal mining activity permit according to subsection (b), the Department will take one or a combination of the following actions:

(1) Enter into an agreement with the permittee or other person responsible for the abatement of the violation or a schedule of payment of the penalty or fee.

(2) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee.

(3) Suspend the permit until the violation is abated or the penalty or fee is paid.

(4) Rescind the permit under § 86.44.

Source

The provisions of this § 86.43 adopted June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075.

Cross References

This section cited in 25 Pa. Code § 86.44 (relating to rescission of improvidently issued permits).

§ 86.44. Rescission of improvidently issued permits.

(a) To rescind an improvidently issued permit the Department will issue a notice of proposed suspension and rescission. The notice will:

(1) Describe the conditions under which the Department found the permit to have been improvidently issued.

(2) Suspend the permit after a period of time not to exceed 90 days from the date of the notice and no more than 90 days thereafter rescind the permit unless within those periods the permittee demonstrates and the Department finds that:

(i) The findings of the Department under § 86.43(b) (relating to improvidently issued permits) were erroneous.

(ii) The permittee or other person responsible has abated the violation on which the finding was based or paid the penalty or fee to the satisfaction of the responsible agency.

(iii) The violation, penalty or fee is the subject of a good faith appeal or of an agreement, abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency.

(iv) The permittee does not continue to be responsible for the violation, penalty or fee and has severed an ownership or control link with the other person responsible for the violation, penalty or fee.

(b) Upon suspension or rescission of the permit, the permittee shall cease coal mining activities under the permit except for violation abatement, reclamation and other environmental protection measures as required by the Department.

Source

The provisions of this § 86.44 adopted June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075.

Cross References

This section cited in 25 Pa. Code § 86.43 (relating to improvidently issued permits).

PERMIT REVIEWS, RENEWALS, REVISIONS AND TRANSFERS**§ 86.51. Reviews of active permits.**

(a) The Department will review each permit issued and outstanding during the term of the permit. This review shall occur at the discretion of the Department during the permit term except as required by § 87.175 (relating to variance

to contouring). For permits of longer than 5-year terms, a review of the permit shall be no less frequent than the permit midterm of every 5 years, whichever is more frequent.

(b) After this review, the Department may require revision or modification of the permit provision to ensure compliance with the act and the regulations.

Source

The provisions of this § 86.51 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.52. Permit revisions.

(a) A revision to a permit shall be obtained for one or more of the following reasons:

- (1) For a change to the coal mining activities set forth in the application upon which the permit is issued.
- (2) When required by the Department.
- (3) To continue operation after the cancellation or material reduction of the liability insurance policy.

(b) The permittee shall submit the application for a permit revision to the Department at least 180 days before undertaking the change. In emergency situations, the Department may waive the 180-day requirement.

(c) Applications for revisions shall be complete and contain the following information:

- (1) The permittee's name and address and permit number.
- (2) A description of the proposed revisions, including appropriate maps, plans and application to demonstrate the proposed revision complies with the acts and this chapter.
- (3) The original notarized proof of publication demonstrating compliance with § 86.31 (relating to public notices of filing of permit applications).
- (4) An update of the information required under §§ 86.62 and 86.63 (relating to identification of interests; and compliance information). If there are no changes, updates or corrections to the information required under §§ 86.62 and 86.63, the operator need only submit a statement indicating that no change has occurred in the information previously submitted.

(d) The addition of acreage for mining of coal shall be considered as an application for a new permit, except for insignificant boundary correction.

Source

The provisions of this § 86.52 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075. Immediately preceding text appears at serial pages (158703) to (158704).

Cross References

This section cited in 25 Pa. Code § 86.31 (relating to public notices of filing of permit applications); 25 Pa. Code § 86.53 (relating to reporting of new information); 25 Pa. Code § 87.203 (relating to applicability); 25 Pa. Code § 88.503 (relating to applicability); 25 Pa. Code § 89.112 (relating to impoundments); and 25 Pa. Code § 90.303 (relating to applicability).

§ 86.53. Reporting of new information.

In addition to the requirements of § 86.52 (relating to permit revisions), the permittee shall notify the Department of changes in ownership and control and in facts or information presented in the application except for compliance histories within 45 days of the occurrence of the changes. Changes in the ownership of, or a land use of properties adjacent to the permit area may be reported on a yearly basis. The permittee shall also provide annually, on forms provided by the Department, information required by § 86.62(b) and (c) (relating to identification of interests). Based on that notice, the Department may require permit revision or take other appropriate action.

Source

The provisions of this § 86.53 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075. Immediately preceding text appears at serial page (158704).

§ 86.54. Public notice of permit revision.

A permit revision request shall be subject to the notice requirements of § 86.31 (relating to public notices of filing of permit applications) under the following circumstances:

- (1) For surface mining activities:
 - (i) Discharging to a different watershed not previously receiving a discharge from the operation or a change in water handling procedure. Water handling includes, but is not limited to, treatment facility design or use of other treatment techniques not identified by the EPA as Best Available Technology Economically Achievable (BAT) in 40 CFR Part 434 (relating to coal mining point source Category BPT, BAT, BCT limitations and new source performance standards) and additional discharge points.
 - (ii) The addition of auger mining to the operation.
 - (iii) The addition of coal refuse disposal, fly ash disposal or sewage sludge for land reclamation to the operation.
 - (iv) The change of postmining land use.
 - (v) A physical change in the mine configuration is proposed. Physical changes include, but are not limited to, stream diversion structures, new or expanded road systems and elimination of public roads.
 - (vi) The addition of blasting to the operation.
- (2) For underground mining activities:

- (i) Discharging to a different watershed not previously receiving a discharge from the operation or a change in the water handling procedure. Water handling includes, but is not limited to, treatment facility design, or use of

other treatment technologies not identified by the EPA as BAT in 40 CFR Part 434 and additional discharge points.

(ii) A physical change in the mine configuration is proposed. Physical changes include, but are not limited to, stream diversion structures, new or expanded road systems, elimination of public roads, new mine openings excluding boreholes and acreage modifications.

(iii) A change to the postmining land use or subsidence control plan is proposed.

(3) For coal refuse disposal activities:

(i) Discharging to a different watershed not previously receiving a discharge from the operation or a change in the water handling procedure. Water handling includes, but is not limited to, treatment facility design, or use of other treatment technologies not identified by the EPA as BAT in 40 CFR Part 434 and additional discharge points.

(ii) A physical change in the coal refuse disposal configuration which is proposed. Physical changes include, but are not limited to, stream diversion structures, new or expanded road systems—except roads on the fill—elimination of public roads, new disposal areas and acreage modifications.

(iii) A change in the postmining land use.

Source

The provisions of this § 86.54 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148484) to (148486).

Cross References

This section cited in 25 Pa. Code § 86.31 (relating to public notices of filing of permit applications); and 25 Pa. Code § 290.104 (relating to beneficial use at coal mining activity sites).

§ 86.55. Permit renewals: general requirements.

(a) A valid, existing permit issued by the Department will carry with it the presumption of successive renewals upon expiration of the term of the permit. Successive renewals will be available only for areas which were specifically approved by the Department on the application for the existing permit.

(b) Permit renewal will not be available for extending the acreage of the operation beyond the boundaries of the permit area approved under the existing permit. Addition of acreage to the operation will be considered a new application. A request for permit revision may accompany a request for renewal and shall be supported with the information required for application as described in this chapter.

(c) Complete applications for renewal of a permit as established in this chapter shall be filed with the Department at least 180 days before the expiration date of the particular permit in question. Renewal applications shall be filed in the

format required by the Department. If the permittee provides a written notice to the Department under subsection (i), the notice shall be filed with the Department at least 180 days before the expiration date of the permit.

(d) Applications for renewal shall be subject to the requirements of public notification and participation of § 86.31 (relating to public notices of filing of permit applications), the ownership and control information of § 86.62 (relating to identification of interests) and submission of a compliance history under § 86.63 (relating to compliance information). If there are no changes, updates or corrections to the information required under §§ 86.62 and 86.63, the operator need only submit a statement indicating that no change has occurred in the information previously submitted.

(e) Permit renewal shall be for a term not to exceed the period of the original permit.

(f) Unless the Department finds that the permit should not be renewed under subsection (g), it will issue a permit renewal after finding that the requirements of this chapter and that requirements of public participation and notification are satisfied.

(g) A permit will not be renewed if the Department finds one of the following:

(1) The terms and conditions of the existing permit are not being satisfactorily met.

(2) The present mining activities are not in compliance with the environmental protection standards of the Department.

(3) The requested renewal substantially jeopardizes the operator's continuing ability to comply with the acts, this title and the regulatory program on existing permit areas.

(4) The operator has failed to provide evidence that a bond required to be in effect for the activities will continue in full force and effect for the proposed period of renewal, as well as an additional bond the Department might require.

(5) Revised or updated information required by the Department has not been provided by the applicant.

(6) The permittee has failed to provide evidence of having liability insurance as required by § 86.168 (relating to terms and conditions for liability insurance).

(h) The Department will send copies of its decision to the applicant, persons who filed objections or comments to the renewal and to persons who were parties to an informal conference held on the permit renewal.

(i) If coal extraction, coal preparation and coal refuse disposal will not be conducted, and treatment facilities are not required after the permit expiration date, and if the remaining surface mining activities will consist solely of reclamation, including topsoil replacement and revegetation, the permittee may provide written notice to the Department of the reclamation in lieu of submitting a complete application for renewal and providing the public notice as required by

this section. In these circumstances, the Department may renew the permit conditioned upon only reclamation activities occurring and no further coal extraction, coal preparation and coal refuse disposal occurring. Once the permit has been renewed and conditioned upon only reclamation activities occurring, if the permittee wishes to resume coal extraction, coal preparation or coal refuse disposal, a new permit shall be obtained.

(j) If a permittee who has submitted a written notice in accordance with subsection (i) determines prior to the permit expiration date that coal extraction, coal preparation or coal refuse disposal will occur or treatment facilities will be required after the permit expiration date, a renewal application shall be submitted to and approved by the Department prior to coal extraction, coal preparation or coal refuse disposal or land excavation for purposes of coal extraction, coal preparation or coal refuse disposal after the permit expiration date.

Authority

The provisions of this § 86.55 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.55 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821. Immediately preceding text appears at serial pages (198803) to (198804).

Cross References

This section cited in 25 Pa. Code § 86.31 (relating to public notices of filing of permit applications); 25 Pa. Code § 87.203 (relating to applicability); and 25 Pa. Code § 88.503 (relating to applicability); 25 Pa. Code § 90.303 (relating to applicability).

§ 86.56. Transfer of permit.

(a) A transfer, assignment or sale of the rights granted under a permit may not be made except as provided in this section.

(b) Permits may be reissued in a new name provided that no change of ownership is involved.

(c) The Department may allow a permittee to transfer a permit to another operator if the successor operator:

(1) Is not in violation of the acts, the regulations adopted thereunder or the terms and conditions of permits issued thereunder.

(2) Assumes the liability for reclamation, water pollution, planting and other responsibilities under the law, the rules and regulations and the terms and conditions of the permits from the date of original issuance of the permits.

(3) Has submitted an entirely new application, supporting documentation and complied with public notice requirements of this chapter; or if the successor operator does not wish to submit an entirely new application, the Department will accept an application which incorporates the original application submittals. In such a case the successor operator shall expressly agree to abide

by permit conditions, comply with the public participation requirements of this chapter, assume the responsibility for violations which may occur on the area previously affected, and shall furnish the Department with the following:

- (i) The identity of the applicant as required in § 86.62 (relating to identification of interests), and the compliance information as required in § 86.63 (relating to compliance information).
- (ii) A property map showing the extent to which the mining has been completed under the existing permit.
- (iii) The name and address of the existing permittee.
- (iv) Appropriate bond in the amount specified by the Department in accordance with Subchapter F (relating to bonding and insurance requirements).
- (v) Proof of public notice as required by § 86.31 (relating to public notices of filing of permit applications).
- (vi) Additional information that will enable the Department to determine that the applicant is able to operate the mine in such a manner as to prevent pollution to waters of this Commonwealth.

Source

The provisions of this § 86.56 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.31 (relating to public notices of filing of permit applications); 25 Pa. Code § 87.203 (relating to applicability); 25 Pa. Code § 88.503 (relating to applicability); and 25 Pa. Code § 90.303 (relating to applicability).

§ 86.57. Reservation of rights.

Department approval of transfer under this chapter, including, but not limited to, permit transfer may not be deemed to limit the original permittee's responsibility, liability, duty or obligation under law.

Source

The provisions of this § 86.57 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial page (148488).

**MINIMUM REQUIREMENTS FOR LEGAL FINANCIAL
COMPLIANCE AND RELATED INFORMATION**

§ 86.61. Responsibilities.

As part of each application for a permit, the applicant shall provide relevant information on the ownership of persons who conduct coal mining activities, the compliance status and history of these persons, the ownership and control of the property to be affected by the operations and other information related to the coal mining activities. At a minimum, the information required by this section and §§ 86.62—86.65, 86.67 and 86.70 shall be included.

Source

The provisions of this § 86.61 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.62. Identification of interests.

(a) *Application information.* An application shall contain the following information, except that the submission of a social security number is voluntary:

(1) The name, address, telephone number and, as applicable, social security number and employer identification number of the following:

- (i) The permit applicant.
- (ii) The resident agent of the applicant who will accept service of process.

(iii) The person who will pay the abandoned mine land reclamation fee.

(2) The names and addresses of the owners of record of the following:

(i) Surface and subsurface areas contiguous to any part of the proposed permit area.

(ii) Every legal or equitable owner of record of the coal to be mined and areas to be affected by surface operations and facilities, including legal and equitable owners of the surface area within the proposed permit area.

(iii) The holders of record of a leasehold interest in the coal to be mined and areas to be affected by surface operations and facilities.

(iv) A purchaser of record under a real estate contract of the coal to be mined and the areas to be affected by surface operations and facilities.

(3) The name of the proposed mine and the Mine Safety and Health Administration (MSHA) Identification Number, with the date of issuance, for the mine and all mine-associated structures that require MSHA approval.

(4) A listing of lands contiguous to the proposed permit area for which it is anticipated that individual permits for mining will be sought as a result of interest in lands, options or pending bids on interest held or made by the applicant.

(b) *Statement.* An application shall contain a statement of whether the applicant is a corporation, partnership, single 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 director of the applicant.
 - (vii) Contractor and subcontractor.
 - (viii) Person having the ability to commit the financial or real property assets or working resources of an entity.
 - (ix) Person owning or controlling the coal to be mined under the proposed permit under a lease, sublease or other contract, and having the right to receive the coal after mining or having authority to determine the manner in which the proposed coal mining activity is to be conducted.
 - (x) Person who has another relationship with the permit applicant which gives the person authority directly or indirectly to determine the manner in which the proposed coal mining activity is to be conducted.
 - (xi) Person who owns or controls the persons specified in subparagraphs (i)—(x), either directly or indirectly through intermediary entities.
- (2) For each person listed in paragraph (1), list the following:
- (i) The title of the person's position.
 - (ii) The date the position or stock ownership was assumed, and when submitted under § 86.212(c) (relating to Federal minimum enforcement action), the date of departure from the position.
 - (iii) The percentage of ownership.
 - (iv) The location in the organizational structure.
 - (v) The relationship to the applicant.
- (c) *Related entity information.* Include the following:
- (1) List the names of entities 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:
- (i) Identifying numbers, including employer identification number, Federal or State permit numbers, permittee name and address and the MSHA numbers with date of issuance for each permit.
 - (ii) The application number or other identifier of and the regulatory authority for other issued or pending mining operation permit applications filed by the entity in any State in the United States.
 - (iii) 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 entity, including the title of the person's position and the date the position was assumed.
- (2) For each person listed in subsection (b)(1), who is, or has been, associated with another entity as an owner or controller, under the definition of "owned or controlled" or "owns or controls" in § 86.1, within the 5-year period preceding the date of application, provide the following information:
- (i) The name of each entity they are, or were, associated with.

(ii) Identifying numbers, including employer identification number, Federal or State permit number and the MSHA number with date of issuance for each permit.

(iii) The application number or other identifier of and the regulatory authority for other issued or pending mining operation permit applications filed by the entity with which the person is affiliated in any state in the United States.

(d) After an applicant is notified that the application is approved, but before the permit is issued, the applicant shall either update, correct or submit a statement that no change has occurred in the information previously submitted under this section.

Source

The provisions of this § 86.62 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial pages (313505) to (313507).

Cross References

This section cited in 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.52 (relating to permit revisions); 25 Pa. Code § 86.53 (relating to reporting of new information); 25 Pa. Code § 86.55 (relating to permit renewals: general requirements); 25 Pa. Code § 86.56 (relating to transfer of permit); 25 Pa. Code § 86.61 (relating to responsibilities); 25 Pa. Code § 86.195 (relating to penalties against corporate officers); 25 Pa. Code § 86.212 (relating to Federal minimum enforcement action); 25 Pa. Code § 86.264 (relating to applications for assistance); and 25 Pa. Code § 88.381 (relating to general requirements).

§ 86.63. Compliance information.

(a) An application shall contain the following information:

(1) A statement of whether the applicant, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1 (relating to definitions), or a related party, in the 5-year period prior to the date of submission of the application, had a Federal or State mining permit suspended or revoked, or forfeited a mining bond or similar security deposited in lieu of bond.

(2) If a suspension, revocation or forfeiture has occurred, a statement of the facts involved, including:

(i) The identification number and date of the issuance of the permit, date and amount of bond or similar security and the Mine Safety and Health Administration (MSHA) number with date of issuance.

(ii) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reason for that action.

(iii) The current status of the permit, bond or similar security involved.

(iv) The date, location and type of administrative or judicial proceedings initiated concerning the suspension, revocation or forfeiture including the name of the person to whom the action was issued.

(v) The current status of these proceedings.

(3) For a violation of a provision of the acts, or law, rule or regulation of the United States, or of State law, rule or regulation enacted under Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with a coal mining activity, a list of the violation notices received by the applicant during the 3-year period preceding the application date and a list of the unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by a coal mining activity owned or controlled by either the applicant or by a person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1. The application shall also contain a statement regarding each violation notice including the following:

(i) The identification number of the permit or operation and the MSHA number including the date of issuance of the MSHA number.

(ii) The date of issuance of the violation notice with the Federal or State identification number.

(iii) The name of the issuing regulatory authority, department or agency.

(iv) The name of the person to whom the violation notice was issued.

(v) A brief description of the particular violation.

(vi) The date, location and type of administrative or judicial proceedings initiated concerning the violation.

(vii) The current status of the violation.

(viii) The actions taken by the applicant to abate the violation, and proof which is satisfactory to the regulatory authority, department or agency which has jurisdiction over the violation that the violation has been corrected, or is in the process of being corrected.

(b) This section does not limit the Department’s power and authority to require the applicant to provide additional information relating to compliance history which the Department deems relevant to the permit application, whether or not the violations relate to adjudicated proceedings, agreements, consent orders or decrees, or which resulted in a cease order or civil penalty assessment.

(c) After an applicant is notified that the application is approved, but before the permit is issued, the applicant shall update, correct or submit a statement that no change has occurred in the information previously submitted under this section.

Source

The provisions of this § 86.63 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075. Immediately preceding text appears at serial page (158710).

Cross References

This section cited in 25 Pa. Code § 86.36 (relating to review of permit applications); 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.52 (relating to permit revisions); 25 Pa. Code § 86.55 (relating to permit renewals: general requirements); 25 Pa. Code § 86.56 (relating to transfer of permit); 25 Pa. Code § 86.61 (relating to responsibilities); 25 Pa. Code § 87.205 (relating to approval or denial); 25 Pa. Code § 88.381 (relating to general requirements); and 25 Pa. Code § 88.505 (relating to approval or denial).

§ 86.64. Right of entry.

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

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

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

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

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

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

(d) Except for permit applications based upon leases in existence on January 1, 1964, for bituminous coal surface mines, or leases in existence on January 1, 1972, for anthracite coal surface mining operations or permit applications for coal refuse disposal areas, coal preparation facilities which are not situated on a surface mining permit area and the surface activities of underground mines, the application for a permit shall include, upon a form prepared and furnished by the Department, the written consent of the landowner to enter upon land to be affected by the activities by the operator and by the Commonwealth and of its authorized agents prior to the initiation of surface mining activities, during surface mining activities, and for 5 years after the activities are completed or abandoned for the purpose of reclamation, planting and inspection or for the construc-

tion of pollution abatement facilities as deemed necessary by the Department for the purpose of the acts. The forms shall be deemed to be recordable documents and, prior to the initiation of coal mining activities under the permit, the forms shall be recorded by the applicant at the office of the recorder of deeds in the county in which the area to be affected under the permit is situated.

(1) In the case of a lease in existence on January 1, 1964, for bituminous coal surface mines, or leases in existence on January 1, 1972, for anthracite coal surface mining operations, the application for permit shall include, upon a form prescribed and furnished by the Department, a notice of the existence of the lease and a description of the chain of title.

(i) The forms shall be deemed to be recordable documents, and, prior to the initiation of coal mining activities under the permit, the forms shall be recorded by the applicant at the office of the recorder of deeds in the county in which the area to be affected under the permit is situated.

(ii) The forms shall require the information and execution necessary to provide entry upon land to be affected by the operation without constraints pertaining to the assignability, transferability or duration of the consent, except as provided for in the acts. This form may not alter or constrain the contractual agreements and rights of the parties thereto.

(2) In the case of permits for coal refuse disposal areas, coal preparation facilities which are not situated on a surface mining permit area, and underground mines, the applicant shall describe the documents upon which the applicant bases the right to enter upon the land and conduct coal mining activities. The Department will have access to the permitted surface facilities and lands during the mining activities and for 5 years after completion or abandonment of the mining and reclamation activities for the purpose of reclamation, planting and inspection or for the construction of pollution-abatement facilities deemed necessary by the Department. The Department may issue orders to require access. If a landowner fails or refuses to comply with an order to require access, the landowner shall be liable for reasonable legal expenses incurred by the Department in enforcing the order. For purposes of issuing orders and imposing liability for reasonable legal expenses under this subsection, a landowner includes a person holding title to, or having a proprietary interest in, surface or subsurface rights.

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

(e) For the purpose of this section the term "lease" means an agreement in which the surface landowner is the lessor and the applicant is the lessee or the assignee of the lessee. A deed of severance is not a lease.

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

Source

The provisions of this § 86.64 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial pages (219163) to (219164) and (228225).

Notes of Decisions

Application Denied

The phrase “the right to mine and remove said coal” in a deed does not “expressly” grant a right to strip mine—any such grant must be inferred. Because the company failed to submit any document meeting this minimum requirement for the grant of a surface mining permit, the Environmental Hearing Board correctly concluded that the Department of Environmental Resources had no choice but to deny the application. *Empire Coal Mining and Development, Inc., v. Department of Environmental Resources*, 678 A.2d 1218 (Pa. Cmwlth. 1996).

Because the owner of subsurface mineral rights was not required to obtain the surface owner’s consent of entry as part of an application to conduct surface mining operations, the trial court’s failure to order such consent was not an error. A reservation in the deed excepting stripping and coal rights provides implied consent. *Sedat, Inc. v. Fisher*, 617 A.2d 1, 4 (Pa. Super. 1992); affirmed 701 A.2d 223 (Pa. 1997).

Discovery

Because the Department of Environmental Resources (DER) refused to process petitioner’s application for a mining permit, petitioners subsequently commenced an action to compel the DER to process their application, based on a prior Superior Court decision, and requested the production of two Department memoranda for discovery. The Commonwealth Court determined one memorandum was protected from discovery under the work product doctrine and the other memorandum was immune from discovery on the basis of the attorney-client privilege. *Sedat, Inc., v. Department of Environmental Resources*, 641 A.2d 1243 (Pa. Cmwlth. 1994).

Cross References

This section cited in 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.61 (relating to responsibilities); 25 Pa. Code § 86.264 (relating to applications for assistance); and 25 Pa. Code § 86.84 (relating to applications for assistance).

§ 86.65. Relationships to areas designated unsuitable for mining.

(a) The application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for mining or under study for designation in an administrative proceeding under Subchapter D (relating to areas unsuitable for mining).

(b) If the proposed permit area is within an area under study for designation as unsuitable for mining in an administrative proceeding, the applicant shall provide a demonstration that he has made substantial legal and financial commitments in relation to the operation before January 4, 1977.

Source

The provisions of this § 86.65 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.61 (relating to responsibilities).

§ 86.66. [Reserved].**Source**

The provisions of this § 86.66 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.67. Personal injury and property damage insurance information.

Each application for coal mining activities shall contain proof of liability insurance in accordance with the requirements of § 86.168 (relating to terms and conditions for liability insurance).

Source

The provisions of this § 86.67 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.61 (relating to responsibilities).

§ 86.68. [Reserved].**Source**

The provisions of this § 86.68 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.69. [Reserved].**Source**

The provisions of this § 86.69 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.70. Proof of publication.

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

Source

The provisions of this § 86.70 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial pages (228226) and (239617).

Cross References

This section cited in 25 Pa. Code § 86.61 (relating to responsibilities).

Subchapter C. SMALL OPERATOR ASSISTANCE PROGRAM

Sec.	
86.80.	Definitions.
86.81.	Program services.
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86.83.	Eligibility for assistance.
86.84.	Applications for assistance.
86.85.	Application approval and notice.
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86.89.	[Reserved].
86.90.	Public records; evidence.
86.91.	[Reserved].

- 86.92. Basic qualifications.
- 86.93. Assistance funding.
- 86.94. Applicant liability.
- 86.95. [Reserved].

Cross References

This subchapter cited in 25 Pa. Code § 88.31 (relating to maps and plans).

§ 86.80. Definitions.

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

Qualified consultant and qualified laboratory—A designated public agency, private consulting firm, institution or analytical laboratory which can provide the required services under this program in accordance with § 86.92 (relating to basic qualifications).

Source

The provisions of this § 86.80 adopted January 2, 1998, effective January 3, 1998, 28 Pa.B. 15.

§ 86.81. Program services.

(a) To the extent that funds are available in the Small Operators' Assistance Fund, the Department will:

- (1) Review requests for assistance.
- (2) Select and pay a qualified consultant to:
 - (i) Determine for the applicant the probable hydrologic consequences of the coal mining activities both on and off the proposed permit area in accordance with either § 87.69, § 88.49 or § 89.36 (relating to protection of the hydrologic balance).
 - (ii) Provide drilling services and prepare a statement of the results of test borings or core samplings in accordance with either § 87.44, § 88.24 or § 89.33 (relating to geology description; and geology).
 - (iii) Provide a description of the existing resources within and adjacent to the proposed permit area in accordance with either one of the following:
 - (A) Sections 87.41—87.47, 87.50 and 87.54.
 - (B) Sections 88.21—88.27 and 88.31.
 - (C) Sections 89.33—89.36, 89.38 and 89.74.
 - (iv) Provide a detailed description, to include maps, plans and cross sections, of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed in accordance with one of the following:
 - (A) Sections 87.69, 87.77 and 87.84 (relating to protection of hydrologic balance; protection of public parks and historic places; and, fish and wildlife protection and enhancement plan).

(B) Sections 88.49, 88.56 and 88.62 (relating to protection of hydrologic balance; protection of public parks and historic places; and fish and wildlife protection and enhancement plan).

(C) Sections 89.33—89.36, 89.38 and 89.74.

(v) Provide preblast surveys and a statement of the results of preblast surveys required in accordance with § 87.125 (relating to use of explosives: preblasting survey).

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

(b) If funds allocated by the Department for the payment of services provided to the applicant are less than those required to pay for the services, the applicant is responsible for costs exceeding the amount of funds allocated for the services provided to the applicant.

Source

The provisions of this § 86.81 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124; amended January 2, 1998, effective January 3, 1998, 28 Pa.B. 15. Immediately preceding text appears at serial pages (206675) and (198815).

Cross References

This section cited in 25 Pa. Code § 86.85 (relating to application approval).

§ 86.82. Responsibilities.

(a) The Department will:

(1) Develop and maintain a list of qualified consultants and qualified laboratories, and select and pay consultants for services rendered.

(2) Conduct periodic onsite evaluations of the program activities with the appropriate small operator.

(3) Participate with the Office of Surface Mining Reclamation and Enforcement in data coordination activities with the United States Geological Survey, the EPA and other appropriate agencies or institutions.

(4) Participate with the Office of Surface Mining Reclamation and Enforcement in auditing the applicant's statement of eligibility.

(b) The Department and the Office of Surface Mining Reclamation and Enforcement will insure that applicable equal opportunity in employment provisions are included within contracts or other procurement documents.

Source

The provisions of this § 86.82 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124; amended January 2, 1998, effective January 3, 1998, 28 Pa.B. 15. Immediately preceding text appears at serial page (198815).

Cross References

This section cited in 25 Pa. Code § 86.92 (relating to basic qualifications).

§ 86.83. Eligibility for assistance.

(a) An applicant is eligible for assistance if the applicant:

(1) Intends to apply for a permit under this chapter.

(2) Establishes that the probable total attributed annual production from all locations on which the applicant is issued the mining activities permit will not exceed 300,000 tons.

(3) Is not restricted from receiving a permit.

(b) Production attributed to the applicant shall include the following:

(1) Coal produced by operations beneficially owned entirely by the applicant or controlled, by reason of ownership, direction of the management or in another manner, by the applicant.

(2) The pro rata share, based upon the percentage of beneficial ownership of coal produced by operations in which the applicant owns a 10% interest or more.

- (3) Coal produced by persons who own 10% or more of the applicant or who directly or indirectly control the applicant by reason of stock ownership, direction of the management or in another manner.
- (4) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the applicant.
- (5) Coal produced by operations owned by members of the applicant's family and relatives unless the applicant demonstrates that there is no direct or indirect business relationship among them.
- (c) For the purpose of this subchapter, measurement of coal production will be based on the production reported to the office of surface mining reclamation and enforcement for the purpose of the reclamation fee payment.

Source

The provisions of this § 86.83 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended April 23, 1993, effective April 24, 1993, 23 Pa.B. 1946; amended September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124; amended January 2, 1998, effective January 3, 1998, 28 Pa.B. 15. Immediately preceding text appears at serial page (198816).

§ 86.84. Applications for assistance.

- (a) An application for assistance shall contain the following information:
- (1) A statement of intent to file a permit application under this chapter.
 - (2) The names and addresses of:
 - (i) The intended permit applicant.
 - (ii) The intended operator, if different from the applicant.
 - (3) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under this section. For each location, the schedule shall include:
 - (i) The name under which coal is or will be mined.
 - (ii) The permit number and Mining Enforcement and Safety Administration identification number, if available.
 - (iii) The actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant.
 - (iv) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant.
 - (4) A description of:
 - (i) The method of coal mining activities proposed.
 - (ii) The anticipated starting and termination dates of mining operations.
 - (iii) The number of acres of land to be affected by the proposed mining.
 - (iv) A general statement on the probable depth and thickness of the coal resource.
 - (5) A United States Geological Survey topographic map of 1:24,000 scale or larger which clearly shows:

- (i) The area of land to be affected and the natural drainage above and below the affected area.
- (ii) The names of property owners within the area to be affected and of adjacent lands.
- (iii) The location of existing structures and developed water sources within the area to be affected and of adjacent lands.
- (iv) The location of existing and proposed test boring or core samples and the location and extent of known working of any underground mines.
- (6) Copies of documents which show that the legal right of entry necessary to meet the provisions of § 86.64 (relating to right of entry) have been obtained by the applicant.
- (7) The mine operator's license number.
- (b) The application shall be attested by a notary public or district justice.

Source

The provisions of this § 86.84 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124; amended January 2, 1998, effective January 3, 1998, 28 Pa.B. 15. Immediately preceding text appears at serial pages (198816) to (198817).

§ 86.85. Application approval and notice.

- (a) If the Department finds the applicant eligible for assistance and does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it will:
 - (1) Determine the minimum data requirements necessary to meet the provisions of § 86.81 (relating to program services).
 - (2) Select the services of one or more qualified consultants to perform the required work.
 - (3) Provide the applicant a copy of the contract or other appropriate work order for the qualified consultants' services and the consultants' report within 15 days of the Department's final approval.
- (b) The granting of assistance under this program does not imply that the Department will approve a subsequent permit application.
- (c) Within 45 days of receipt of a complete application for assistance, the Department will inform the applicant in writing if the application is denied and will state the reason for denial.

Source

The provisions of this § 86.85 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124; amended January 2, 1998, effective January 3, 1998, 28 Pa.B. 15. Immediately preceding text appears at serial pages (198817) to (198818).

§ 86.86. [Reserved].**Source**

The provisions of this § 86.86 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124; reserved January 2, 1998, effective January 3, 1998, 28 Pa.B. 15. Immediately preceding text appears at serial page (158719).

§ 86.87. Determination of data requirements.

(a) The Department will determine the data collection requirements to meet the objectives of the program for each applicant or group of applicants. Development of information on environmental resources, operation plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities if specifically authorized by the Department in an approved work order.

(b) The data requirements will be based on:

(1) The extent of currently available hydrologic and core analysis data for the applicable area provided by the Department.

(2) The data collection and analysis guidelines developed and provided by the Department.

Source

The provisions of this § 86.87 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124; amended January 2, 1998, effective January 3, 1998, 28 Pa.B. 15. Immediately preceding text appears at serial page (198818).

§ 86.88. [Reserved].**Source**

The provisions of this § 86.88 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; reserved September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124. Immediately preceding text appears at serial page (158720).

§ 86.89. [Reserved].**Source**

The provisions of this § 86.89 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; reserved September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124. Immediately preceding text appears at serial pages (158720) to (158721).

§ 86.90. Public records; evidence.

Data collected under this program shall be made available to all interested persons, except that information which pertains only to the analysis of the chemical and physical properties of the coal—excepting information regarding such mineral or elemental content which is potentially toxic in the environment—shall be kept confidential and not made a matter of public record.

Source

The provisions of this § 86.90 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.91. [Reserved].**Source**

The provisions of this § 86.91 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124; reserved January 2, 1998, effective January 3, 1998, 28 Pa.B. 15. Immediately preceding text appears at serial page (198819).

§ 86.92. Basic qualifications.

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

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

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

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

(4) Meets the requirements of the Occupational Safety and Health Act of 1970, the act of December 29, 1970 (Pub.L. No. 91-596) (84 Stat. 1590).

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

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

(i) The current edition of *Standard Methods of the Examination of Water and Waste Water*.

(ii) *Methods of Chemical Analysis of Water and Wastes*, as amended. The standards contained therein are incorporated by reference. Available from ORD Publications, CERTI, EPA, Cincinnati, Ohio 45278 March 1983 (EPA-600/4-79-020).

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

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

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

(b) The qualified consultant shall be capable of performing the services under § 86.81 (relating to program services). Subcontractors may be used to provide the services required if the use is defined in the application for designation and approved by the Department.

(c) Persons who desire to be included in the list of qualified consultants or qualified laboratories established by the Department under § 86.82 (relating to responsibilities) shall apply to the Department and provide the information necessary to establish the qualifications required by this section.

Source

The provisions of this § 86.92 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124; amended January 2, 1998, effective January 3, 1998, 28 Pa.B. 15. Immediately preceding text appears at serial page (198820).

Cross References

This section cited in 25 Pa. Code § 86.80 (relating to definitions).

§ 86.93. Assistance funding.

(a) Funds authorized by the Office of Surface Mining Reclamation and Enforcement for this program may not be used to cover administrative costs of the Department.

(b) The Department will, to the extent practicable, establish a formula for allocating funds among eligible small operators if available funds are less than those required to provide the services under the program. This formula shall include factors such as the applicant's:

- (1) Anticipated date of filing a permit application.
- (2) Anticipated date for commencing mining.
- (3) Performance history.

Source

The provisions of this § 86.93 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124. Immediately preceding text appears at serial page (178885).

§ 86.94. Applicant liability.

(a) The applicant shall reimburse the Department for the cost of the consultant and laboratory services performed under this subchapter, including interest from the date the Department requests reimbursement, if the applicant does one of the following:

(1) Submits false information.

(2) Fails to submit a complete permit application within 1 year from the date of receipt of the approved consultant report, unless the report indicates that the application is not approvable for technical reasons beyond the applicant's control.

(3) Fails to commence mining within 3 years after obtaining a permit.

(4) The applicant's actual and attributed annual production of coal exceeds 300,000 tons during the 12-month period immediately following the date on which the applicant is issued the mining activities permit.

(5) Sells, transfers or assigns the permit to another person and the transferee's total actual and attributed production exceeds the 300,000-ton annual production limit during the 12-month period immediately following the date on which the applicant is issued the mining activities permit. Under this paragraph, the applicant and its successor are jointly and severally obligated to reimburse the Department.

(6) Fails to provide the services required to complete the application.

(b) If the applicant violates this section, licenses and permits may be suspended or revoked by the Department.

(c) The Department may waive the reimbursement liability requirements of subsection (a)(2) or (3) if the applicant has demonstrated a good faith effort to comply with these provisions. For the purpose of this determination, "good faith" means that the applicant has promptly notified the Department of the conditions and circumstances which have precluded the completion of the Small Operator Assistance Program Project, the submission of a mine permit application or the initiation of mining within the prescribed time period and the circumstances which preclude compliance with the liability requirements include one of the following:

(1) The consultant report indicated that mining could have potentially adverse environmental impacts.

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

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

Source

The provisions of this § 86.94 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended April 23, 1993, effective April 24, 1993, 23 Pa.B. 1946; amended September 29, 1995, effective September 30,

1995, 25 Pa.B. 4124; amended January 2, 1998, effective January 3, 1998, 28 Pa.B. 15. Immediately preceding text appears at serial pages (198821) to (198822).

§ 86.95. [Reserved].

Source

The provisions of this § 86.95 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended September 29, 1995, effective September 30, 1995, 25 Pa.B. 4124; reserved January 2, 1998, effective January 3, 1998, 28 Pa.B. 15. Immediately preceding text appears at serial page (198822).

Subchapter D. AREAS UNSUITABLE FOR MINING

GENERAL PROVISIONS

Sec.

- 86.101. Definitions.
- 86.102. Areas where mining is prohibited or limited.
- 86.103. Procedures.

CRITERIA AND PROCEDURES FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE MINING

- 86.121. Areas exempt from designation as unsuitable for surface mining operations.
- 86.122. Criteria for designating lands as unsuitable.
- 86.123. Procedures: petitions.
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- 86.127. Data base and inventory system requirements.
- 86.128. Public information.
- 86.129. Coal exploration or areas designated unsuitable for surface mining operations.
- 86.130. Areas designated as unsuitable for mining.

Cross References

This subchapter cited in 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.65 (relating to relationships to areas designated unsuitable for mining); 25 Pa. Code § 87.54 (relating to maps, cross sections and related information); 25 Pa. Code § 87.77 (relating to protection of public parks and historic places); 25 Pa. Code § 88.56 (relating to protection of public parks and historic places); 25 Pa. Code § 88.492 (relating to minimum requirements for reclamation and operation plan); 25 Pa. Code § 89.38 (relating to archaeological and historical resources and public parks); and 25 Pa. Code § 90.40 (relating to protection of public parks and historic places).

GENERAL PROVISIONS

§ 86.101. Definitions.

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

Cemetery—An area of land where human bodies are interred.

Community or institutional building—A structure other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

Fragile lands—Geographic areas containing natural, ecologic, scientific or esthetic resources that could be significantly damaged or destroyed by surface mining operations. Examples include, but are not limited to, valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features and areas of recreational value due to high environmental quality.

Historic lands—Areas containing historic, cultural or scientific resources. Examples of historic lands include archaeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National historic landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

Natural hazard lands—Geographic areas in which natural conditions exist which pose, or as a result of surface mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

Public building—A structure that is owned or leased and principally used by a government agency for public business or meetings.

Public park—An area or portion of an area dedicated or designated by a Federal, State or local agency primarily for public recreational use, whether or not the use is limited to certain times or days, including land leased, reserved or held open to the public because of that use.

Publicly owned park—A public park owned by a Federal, State or local governmental agency.

Renewable resource lands—Areas which contribute significantly to the long-range productivity of water supply or of food or fiber products. These lands include aquifers and aquifer recharge areas.

Significant recreational, timber, economic or other values incompatible with surface mining operations—Significant values which could be damaged by, and are not capable of existing together with, surface mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas which could be affected by mining. Values to be evaluated for their importance include:

- (i) Nature recreation, including hiking, boating, camping, skiing, fishing, hunting or other related outdoor activities.
- (ii) Timber management and silviculture.
- (iii) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce.
- (iv) Scenic, historic, archaeological, esthetic, fish, wildlife, plants or cultural interests.

Substantial legal and financial commitments in a surface mining operation—Significant investments that have been made prior to January 4, 1977, on the basis of a long-term contract in power plants, railroads, mineral handling, preparation, extraction or storage facilities and other capital-intensive activities. Costs of acquiring the mineral in place or of the right to mine it without an existing mine are not sufficient commitments, standing alone, to constitute substantial legal and financial commitments.

Surface mining operations—The extraction of coal from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip and auger mining, dredging, quarrying and leaching and surface activity connected with surface or underground coal mining, including, but not limited to, exploration, site preparation, entry, tunnel, slope, drift, shaft and borehole drilling and construction and activities related thereto, coal refuse disposal, coal processing and preparation facilities.

Authority

The provisions of this § 86.101 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); sections 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.101 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289. Immediately preceding text appears at serial pages (239627) to (239628) and (245121).

Notes of Decisions

The Clean Streams Law (35 P. S. §§ 691.1—691.1001) authorizes the Department to regulate any type of mining that has a detrimental affect on the waters of the Commonwealth. *Plumstead Township Civic Association v. Department of Environmental Resources*, 597 A.2d 734 (Pa. Cmwlth. 1991).

Cross References

This section cited in 25 Pa. Code § 89.5 (relating to definitions).

§ 86.102. Areas where mining is prohibited or limited.

Subject to valid existing rights as defined in § 86.1 (relating to definitions), surface mining operations except those which existed on August 3, 1977, are not permitted:

(1) On lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C.A. § 1276(a)) or study rivers or study river corridors as established in guidelines under that act and National Recreation Areas designated by act of Congress.

(2) On Federal lands within the boundaries of a National forest. Surface mining operations may be permitted on the lands, if the Secretary of the United States Department of Interior and the Secretary find that there are no significant recreational, timber, economic or other values incompatible with surface mining operations and the surface mining operations and impacts are incident to an underground coal mine.

(3) Which will adversely affect a publicly-owned park or a place included on the National Register of Historic Places, unless approved jointly by the Department and the Federal, State or local governmental agency with jurisdiction over the park or places.

(4) On lands within the State park system. Surface mining activities may be permitted if the Department of Conservation and Natural Resources and the Department find that significant land and water conservation benefits will result when remining of previously mined land is proposed.

(5) On lands within State forest picnic areas, State forest natural areas and State forest wild areas. Surface mining operations may be permitted on State forest lands other than picnic areas, natural areas and wild areas, if the Department of Conservation and Natural Resources and the Department find that one or more of the following apply:

(i) There will be no significant adverse impact to natural resources, including timber, water, wildlife, recreational and aesthetic values.

(ii) Significant land and water conservation benefits will result when remining of previously mined lands is proposed.

(6) On lands within the game land system of this Commonwealth. Surface mining operations may be permitted by the Department if the Game Commission consents and finds that one or more of the following apply:

(i) There will be no significant long-term adverse impacts to aquatic or terrestrial wildlife populations and their habitats.

(ii) Significant wildlife habitat and land and water conservation benefits will result when remining of previously mined lands is proposed.

(7) On lands within the authorized boundaries of Pennsylvania Scenic River Systems which have been legislatively designated as such under the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21—820.29). Surface mining operations may be permitted if the Department of Conservation and Natural Resources and the Department find that significant land and water conservation benefits will result when remining of previously mined lands is proposed, and that the surface mining operation is consistent with the Scenic Rivers System designation and will not adversely affect the values which the designation is designed to protect.

(8) Within 100 feet (30.48 meters) measured horizontally of the outside right-of-way line of a public road, except:

(i) For mine access roads or haulage at the point where they join the right-of-way lines.

(ii) When the Department, with concurrence of the agency with jurisdiction over the road, allows the public road to be relocated or the area affected to be within 100 feet (30.48 meters) of the road, after the following:

(A) Public notice and opportunity for a public hearing in accordance with § 86.103(c) (relating to procedures).

(B) Making a written finding that the interests of the affected public and landowners will be protected.

(9) Within 300 feet (91.44 meters) measured horizontally from an occupied dwelling, unless one or more of the following exist:

(i) The only part of the surface mining operations which is within 300 feet (91.44 meters) of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling.

(ii) The owner thereof has provided a written waiver by lease, deed or other conveyance clarifying that the owner and signatory had the legal right to deny surface mining operations and knowingly waived that right and consented to surface mining operations closer than 300 feet (91.44 meters) of the dwelling as specified.

(A) A valid waiver shall remain in effect against subsequent owners who had actual or constructive knowledge of the existing waiver at the time of purchase.

(B) Subsequent owners shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records or if the surface mining operations have proceeded to within the 300 foot (91.44 meters) limit prior to the date of purchase.

(iii) A new waiver is not required if the applicant for a permit had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet (91.44 meters) of the dwelling.

(10) Within 300 feet (91.44 meters) measured horizontally of a public building, school, church, community or institutional building or public park.

(11) Within 100 feet (30.48 meters) measured horizontally of a cemetery. Cemeteries may be relocated under the act of April 18, 1877 (P. L. 54, No. 54) (9 P. S. §§ 41—52)).

(12) Within 100 feet (30.48 meters) measured horizontally of the bank of a perennial or intermittent stream. The Department may grant a variance from this distance requirement if the operator demonstrates beyond a reasonable doubt that there will be no adverse hydrologic impacts, water quality impacts or other environmental resources impacts as a result of the variance. The variance will be issued as a written order specifying the methods and techniques that shall be employed to prevent adverse impacts. Prior to granting a variance, the operator is required to give public notice of application thereof in two newspapers of general circulation in the area once a week for 2 successive weeks. If a person files an exception to the proposed variance within 20 days of the last publication thereof, the Department will conduct a public hearing with respect thereto. The Department will also consider information or comments submitted by the Fish and Boat Commission prior to taking action on a variance request.

Authority

The provisions of this § 86.102 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); sections 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.102 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended September 5, 1986, effective September 6, 1986, 16 Pa.B. 3288; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289. Immediately preceding text appears at serial pages (245122) to (245123) and (223533) to (223534).

Cross References

This section cited in 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.103 (relating to procedures); 25 Pa. Code § 86.129 (relating to coal exploration on areas designated as unsuitable for surface mining operations); 25 Pa. Code § 86.193 (relating to assessment of penalty); 25 Pa. Code § 87.92 (relating to signs and markers); 25 Pa. Code § 87.108 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 87.160 (relating to haul roads and access roads); 25 Pa. Code § 88.138 (relating to haul roads and access roads: general); 25 Pa. Code § 88.231 (relating to haul roads and access roads: general); 25 Pa. Code § 88.335 (relating to haul roads and access roads: general); 25 Pa. Code § 90.49 (relating to stream buffer zone variance); 25 Pa. Code § 90.92 (relating to signs and markers); and 25 Pa. Code § 90.134 (relating to haul roads and access roads: general).

§ 86.103. Procedures.

(a) Upon receipt of a complete permit application for surface mining operations, the Department will review the application to determine whether the sur-

face mining operations are limited or prohibited under § 86.102 (relating to areas where mining is prohibited or limited) on the lands which would be disturbed by the proposed operation.

(b) If the proposed surface mining operations would include Federal lands within the boundaries of a National forest, and the applicant seeks a determination that mining is permissible under § 86.102(2), the applicant shall submit a permit application to the Regional Director of the Office of Surface Mining Reclamation and Enforcement and the Department for processing under 30 CFR Chapter VII, Subchapter D (relating to Federal lands program). Approval from the Director is required before a permit may be issued by the Department.

(c) If the proposed surface mining operations are to be conducted within 100 feet (30.48 meters) measured horizontally of the outside right-of-way line of a public road—except where mine access road or haulage roads join the right-of-way line—or if the applicant proposes to relocate a public road, the Department will:

(1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road.

(2) Provide notice in a newspaper of general circulation in the affected locale of a public hearing, if one has been requested, at least 2 weeks before the hearing.

(3) Insure that an opportunity for a public hearing has been afforded in the locality of the proposed surface mining operations, at which members of the public may participate, for the purpose of determining whether the interests of the public and affected landowners will be protected.

(4) Review the information received at the public hearing, if one has been held, and the findings of applicable State and local agencies as to whether the interests of the public and affected landowners will be protected from the proposed surface mining operations.

(d) When the proposed surface mining operations would be conducted within 300 feet (91.44 meters) measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver as specified in § 86.102(9).

(e) When the proposed surface mining operations will adversely affect a publicly owned park or a place included on the National Register of Historic Places, the Department will transmit to the Federal, State or local agencies with jurisdiction over, or a statutory or regulatory responsibility for, the park or place, a copy of the completed permit application containing the following:

(1) A request for that agency's approval or disapproval of the surface mining operations.

(2) A notice to the appropriate agency that it shall respond within 30 days from receipt of the request.

(i) Upon request by the appropriate agency, a 30-day extension may be granted.

(ii) Failure to object within the comment period constitutes an approval of the proposed permit by that agency.

(f) If the Department determines that the proposed surface mining operations are not prohibited under § 86.102, it may nevertheless, pursuant to appropriate petitions, designate the lands as unsuitable for all or certain types of surface mining operations under §§ 86.121—86.129.

(g) An application that includes an assertion of valid existing rights must meet the requirements and follow the procedures established in 30 CFR 761.16 (relating to submission and processing of requests for valid existing rights determinations).

Authority

The provisions of this § 86.103 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); sections 1920-A and 1930-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.103 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial pages (281191) to (281192) and (260505).

Cross References

This section cited in 25 Pa. Code § 86.34 (relating to informal conferences); and 25 Pa. Code § 86.102 (relating to areas where mining is prohibited or limited).

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 Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—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.

Authority

The provisions of this § 86.121 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and sections 1920-A and 1930-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.121 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (357483) to (357484).

Cross References

This section cited in 25 Pa. Code § 86.103 (relating to procedures); and 25 Pa. Code § 86.130 (relating to areas designated as unsuitable for mining).

§ 86.122. Criteria for designating lands as unsuitable.

(a) Upon petition, an area shall be designated as unsuitable for all or certain types of surface mining operations if the Department determines that reclamation is not technologically and economically feasible.

(b) Upon petition, an area may be designated as unsuitable for all or certain types of surface mining operations if the surface mining operations will:

(1) Be incompatible with existing Commonwealth or local land use plans or programs.

(2) Affect fragile or historic lands in which the surface mining operations could result in significant damage to important historic, cultural, scientific or esthetic values or natural systems.

(3) Affect renewable resource lands in which the surface mining operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products.

(4) Affect natural hazard lands in which the surface mining operations could substantially endanger life and property, the lands to include areas subject to frequent flooding and areas of unstable geology.

Source

The provisions of this § 86.122 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962. Immediately preceding text appears at serial page (198830).

Cross References

This section cited in 25 Pa. Code § 86.103 (relating to procedures); 25 Pa. Code § 86.121 (relating to areas designated unsuitable for mining); 25 Pa. Code § 86.123 (relating to procedures: petitions); 25 Pa. Code § 86.124 (relating to procedures: initial processing, recordkeeping and notification requirements); 25 Pa. Code § 86.127 (relating to data base and inventory system requirements); and 25 Pa. Code § 86.130 (relating to areas designated as unsuitable for mining).

§ 86.123. Procedures: petitions.

(a) A person who has an interest which is, or may be, adversely affected has the right to petition the Department to have an area designated as unsuitable for surface mining operations or to have an existing designation terminated.

(b) Under the procedures in this section, the Department may initiate proceedings seeking to have an area designated as unsuitable for surface mining operations or to have the designation terminated.

(c) The petitioner shall provide the following information on forms developed by the Department:

(1) The location and approximate size of the area covered by the petition, utilizing property or boundary lines or landmarks, and including a 7 1/2-minute

topographic map published by the United States Geological Survey with the perimeter of the area shown thereon.

(2) Allegations of facts and supporting evidence which would tend to establish that the areas are unsuitable for all or certain types of surface mining operations assuming that contemporary mining practices required under applicable regulatory practices would be followed if the area were to be mined.

(3) A description of how mining of the area has affected or may adversely affect people, land, air, water or other resources.

(4) The petitioner's name, address, telephone number and notarized signature.

(5) Identification of the petitioner's interest which is or may be adversely affected. A person having an interest which is or may be adversely affected shall demonstrate an "injury in fact" by describing the injury to the specific affected interest and demonstrating how they are among the injured.

(d) A person who has an interest which is or may be adversely affected may petition to terminate a designation. The petition shall contain:

(1) The location and size of the area covered by the petition, including a 7 1/2-minute topographic map published by the United States Geologic Survey with the perimeters of the area shown thereon.

(2) Allegations of newly discovered facts, with newly discovered supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, and which were unavailable at that time, which evidence would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on one or more of the following:

(i) The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in § 86.122(b) (relating to criteria for designating lands as unsuitable).

(ii) Reclamation now being technologically and economically feasible, if the designation was based on the criteria found in § 86.122(a)

(iii) The resources or condition not being affected by surface mining operations, or in the case of land use plans, not being incompatible with surface mining operations during and after mining, if the designation was based on the criteria found in § 86.122(b).

(3) The petitioner's name, address and telephone number.

(4) Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation.

Authority

The provisions of this § 86.123 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); sections 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.123 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289. Immediately preceding text appears at serial pages (238929) to (238930).

Cross References

This section cited in 25 Pa. Code § 86.103 (relating to procedures); 25 Pa. Code § 86.121 (relating to areas designated unsuitable for mining); 25 Pa. Code § 86.124 (relating to procedures: initial processing, recordkeeping and notification requirements); and 25 Pa. Code § 86.130 (relating to areas designated as unsuitable for mining).

§ 86.124. Procedures: initial processing, recordkeeping and notification requirements.

(a) Within 30 days of receipt of a petition, the Department will notify the petitioner by certified mail whether or not the petition is complete as required by § 86.123 (relating to procedures: petitions). If the 30-day requirement of this subsection cannot be met due to the staff limitations of the Department, the Department may process the petitions in accordance with the priority system authorized by subsection (b)(2). Within this 30-day period, the Department will also notify an applicant with pending surface mining operation permit applications in the area covered by the petition.

(1) The Department will determine whether identified coal resources exist in the area covered by the petition. If the Department finds there are not identified coal resources in that area, it may return the petition to the petitioner with a statement of the findings.

(2) The Department may reject petitions for designations or terminations of designations which are frivolous. A frivolous petition is one in which the allegations of harm lack serious merit. Once the requirements of § 86.123 are met, each accepted petition will be considered and acted upon by the Department under the procedures of this part.

(3) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the Department will determine if the new petition presents new allegations of fact. If the petition does not contain new allegations of fact, the Department will refuse to consider the petition and may return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings when the facts were considered.

(4) If the Department determines that the petition is frivolous, it will return the petition to the petitioner, with a written statement of the reasons for the determination. If the petition is incomplete, the Department will indicate the categories of information needed to make the petition complete. The Department will hold the incomplete petition until the petitioner has been given 30 days to make the application complete.

(5) The Department will notify the person who submits a petition of an application for a permit received which proposes to include an area covered by the petition.

(6) The Department may determine not to process any petition for a designation under § 86.122 (relating to criteria for designating lands as unsuitable) insofar as it pertains to an area for which an administratively complete surface mining operation permit application has been filed and the first newspaper notice has been published. The Department will provide written notice to the petitioner with a statement of its findings. Once a petition has been returned to the petitioner under this section, the Department may proceed to issue a decision on a permit application received for mining in the area included within the petition.

(b) Within 3 weeks after the determination that a petition is complete, the Department will send notice of receipt of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors and other persons known to the Department to own or have an interest in the property.

(1) Within 3 weeks after the determination that a petition is complete, the Department will notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for 2 consecutive weeks in the locale of the area covered by the petition, in the newspaper of largest circulation in the region, and in the *Pennsylvania Bulletin*.

(2) The Department may establish a priority system to decide the order in which petitions or classes of petitions submitted under this section will be processed. A high priority will be given to petitions which include areas where surface mining operation permit applications are pending.

(c) Until 3 days before the Department holds a hearing under § 86.125 (relating to procedures: hearing requirements), a person may become an intervenor in the proceeding by filing allegations of facts describing how the designation determination directly affects the intervenor, supporting evidence, a short statement identifying the petition to which the allegations pertain, a request for intervenor status and the name, address and telephone number.

(d) Beginning immediately after a complete petition is filed, the Department will compile and maintain a record consisting of documents relating to the petition filed with or prepared by the Department. The Department will make the record available for public inspection free of charge, and copying at reasonable cost, during normal business hours at the Department's district mining office in the county or multicounty area in which the land petitioned is located, and at the main office of the Department.

(e) Prior to designating land areas unsuitable for surface mining operations, the Department will prepare a detailed statement, using existing and available

information on the potential resources of the area, the demand for resources, and the impact of the designation on the environment, the economy and the supply of coal.

(f) The Department will prepare a recommendation on each complete petition received under this section and submit it to the EQB within 12 months of receipt of the complete petition.

Authority

The provisions of this § 86.124 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); sections 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.124 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289. Immediately preceding text appears at serial pages (238930) to (238932).

Cross References

This section cited in 25 Pa. Code § 86.6 (relating to extraction of coal incidental to government-financed construction or government-financed reclamation projects); 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.103 (relating to procedures); 25 Pa. Code § 86.121 (relating to areas designated unsuitable for mining); 25 Pa. Code § 86.126 (relating to procedures: decision); 25 Pa. Code § 86.127 (relating to data base and inventory system requirements); and 25 Pa. Code § 86.130 (relating to areas designated as unsuitable for mining).

§ 86.125. Procedures: hearing requirements.

(a) Within 10 months of the receipt of a complete petition, the Department will hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held.

(b) The hearing shall be legislative and fact-finding in nature, without cross examination of witnesses.

(c) No person will bear the burden of proof or persuasion.

(d) A verbatim transcript of the hearing will be made and included in the public record.

(e) The Department will give notice of the date, time and location of the hearing by first class mail postmarked not less than 30 days before this scheduled hearing to:

(1) Local, State and Federal agencies which may have an interest in the decision on the petition.

(2) Persons known to the Department to have an ownership or other interest in the area covered by the petition.

(f) The Department will give notice of the date, time and location of the hearing by certified mail postmarked not less than 30 days before the scheduled hearing to the petitioner and to the intervenors.

(g) The Department will notify the general public of the date, time and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement will begin between 4 and 5 weeks before the scheduled date of the public hearing.

(h) The Department may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(i) Written comments on the petition will be received and considered 15 days after the conclusion of the public hearing. If a hearing will not be held on a petition, the comments may be received and considered for 45 days following publication of a notice that there will be no public hearing.

(j) Within 60 days of the close of the public comment period, the Department will prepare a recommendation to the EQB, including a statement of the reasons for the recommendation and provide written notice of its recommendation to the petitioner and intervenors.

(k) If all petitioners and intervenors so stipulate, the petition may be withdrawn from consideration prior to the hearing.

Authority

The provisions of this § 86.125 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); sections 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.125 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289. Immediately preceding text appears at serial pages (238932) and (223541).

Cross References

This section cited in 25 Pa. Code § 86.103 (relating to procedures); 25 Pa. Code § 86.121 (relating to areas designated unsuitable for mining); 25 Pa. Code § 86.124 (relating to procedures: initial processing, recordkeeping and notification requirements); and 25 Pa. Code § 86.130 (relating to areas designated as unsuitable for mining).

§ 86.126. Procedures: decision.

(a) In deciding whether to designate an area as unsuitable for surface mining operations, the EQB will consider:

- (1) The information contained in the database and inventory system.
- (2) Information provided by other governmental agencies.
- (3) The detailed statement prepared under § 86.124(e) (relating to procedures: initial processing, recordkeeping and notification requirements).
- (4) Oral and written testimony received during and written testimony received subsequent to public hearing.
- (5) The recommendations of the Department.

(b) The EQB will promptly send the decision by certified mail to the petitioner, intervenors and to the Office of Surface Mining Reclamation and Enforcement.

(1) If the decision is to designate an area as unsuitable for surface mining operations, the EQB will deposit and publish its decision as a regulation in the manner required by the Regulatory Review Act (71 P. S. §§ 745.1—745.15); the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1102, 1201—1208 and 1602) known as the Commonwealth Documents Law and 45 Pa.C.S. Part I (relating to publication and effectiveness of Commonwealth documents).

(2) If the decision is not to designate an area as unsuitable for surface mining operations, the EQB will publish its decision in the *Pennsylvania Bulletin* within 30 days.

Authority

The provisions of this § 86.126 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); sections 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.126 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289. Immediately preceding text appears at serial pages (223541) to (223542).

Cross References

This section cited in 25 Pa. Code § 86.103 (relating to procedures); 25 Pa. Code § 86.121 (relating to areas designated unsuitable for mining); and 25 Pa. Code § 86.130 (relating to areas designated as unsuitable for mining).

§ 86.127. Database and inventory system requirements.

(a) The Department will expeditiously develop a database and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The Department will include in the system information relevant to the criteria in § 86.122 (relating to criteria for designating lands as unsuitable), including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Office, the Fish and Boat Commission, the Department of Conservation and Natural Resources' Scenic Rivers Program, the Game Commission, private conservancies and the agency administering section 127 of the Clean Air Act (42 U.S.C.A. § 7470).

(c) The Department will review and update the database and inventory system as information becomes available:

(1) On potential mineral resources of this Commonwealth, demand of the resources, the environment, the economy and the supply of minerals sufficient

to enable the Department to prepare the statements required by § 86.124(e) (relating to procedures: initial processing, recordkeeping and notification requirements).

(2) From petitions, publications, experiments, permit applications, mining and reclamation operations and other sources.

Authority

The provisions of this § 86.127 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and sections 1920-A and 1930-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.127 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289. Immediately preceding text appears at serial pages (223542) to (223543).

Cross References

This section cited in 25 Pa. Code § 86.103 (relating to procedures); 25 Pa. Code § 86.121 (relating to areas designated unsuitable for mining); 25 Pa. Code § 86.128 (relating to public information); and 25 Pa. Code § 86.130 (relating to areas designated as unsuitable for mining).

§ 86.128. Public information.

The Department will:

(1) Make the information and database system developed under § 86.127 (relating to database and inventory system requirements) available to the public for inspection free of charge and for copying at reasonable cost during established office hours.

(2) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface mining operations or to have designations terminated and describe how the inventory and database system can be used.

(3) Maintain a map of areas designated as unsuitable for all or certain types of surface mining operations.

(4) Make available to persons information within its control regarding designation or terminations, including mineral or elemental content which is potentially toxic in the environment. Other information which is properly classified as proprietary or confidential will be protected by the Department as may be required by law.

Authority

The provisions of this § 86.128 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and sections 1920-A and 1930-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.128 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289. Immediately preceding text appears at serial page (223543).

Cross References

This section cited in 25 Pa. Code § 86.102 (relating to areas where mining is prohibited or limited); 25 Pa. Code § 86.103 (relating to procedures); 25 Pa. Code § 86.121 (relating to areas exempt from designation as unsuitable for surface mining operations); and 25 Pa. Code § 86.130 (relating to areas designated as unsuitable for mining).

§ 86.129. Coal exploration on areas designated as unsuitable for surface mining operations.

(a) Designation of an area as unsuitable for all or certain types of surface mining operations under this chapter does not prohibit coal exploration operations in the area.

(b) Coal exploration may be conducted on an area designated as unsuitable for surface mining operations in accordance with this chapter if the following apply:

(1) The person conducting coal exploration obtains an exploration permit from the Department under this section which meets the following conditions:

(i) The permit application demonstrates that the requirements of this section and § 86.134 (relating to coal exploration performance and design standards) will be met.

(ii) Public notice of the application and opportunity to comment is provided in accordance with §§ 86.31 and 86.32 (relating to public notices of filing of permit applications; and opportunity for submission of written comments or objections on the permit application).

(2) The permit application must contain the following information:

(i) The name, address and telephone number of the applicant.

(ii) The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities.

(iii) A narrative describing the proposed exploration area.

(iv) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.

(v) An estimated timetable for conducting and completing each phase of the exploration and reclamation.

(vi) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.

(vii) A description of the following:

(A) Cultural or historical resources listed on the National Register of Historic Places.

(B) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places.

- (C) Known archeological resources located within the proposed exploration area.
 - (D) Other information which the regulatory authority may require regarding known or unknown historic or archeological resources.
 - (viii) A description of any endangered or threatened species listed under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544) identified within the proposed exploration area.
 - (ix) A description of the measures to be used to comply with the applicable requirements of § 86.134.
 - (x) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.
 - (xi) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map must specifically show the following:
 - (A) Existing roads, occupied dwellings, topographic and drainage features, bodies of surface water and pipelines.
 - (B) Proposed locations of trenches, roads and other access routes and structures to be constructed.
 - (C) The location of proposed land excavations.
 - (D) The location of exploration holes or other drill holes or underground openings.
 - (E) The location of excavated earth or waste-material disposal areas.
 - (F) The location of critical habitats of any endangered or threatened species listed under the Endangered Species Act of 1973.
 - (xii) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.
 - (xiii) For any lands listed in § 86.102 (relating to areas where mining is prohibited or limited), a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of § 86.102, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of § 86.102.
- (3) The exploration is consistent with the designation.
 - (4) The exploration will be conducted to preserve and protect the applicable values and uses of the area under Subchapter E (relating to coal exploration).
 - (5) The permit term may not exceed 2 years and the permit may not be renewed or transferred.

(6) The amount of coal removed shall be limited to the quantity needed for testing and analysis and may not exceed 250 tons.

(7) The application shall be subject to the criteria for permit approval or denial in § 86.37 (relating to criteria for permit approval or denial) and 30 CFR 772.12(d) (relating to permit requirements for exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations) and the requirements for final permit action in § 86.39 (relating to final permit action).

Authority

The provisions of this § 86.129 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); sections 1920-A and 1930-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.129 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial page (260514).

Cross References

This section cited in 25 Pa. Code § 86.103 (relating to procedures); 25 Pa. Code § 86.121 (relating to areas designated unsuitable for mining); 25 Pa. Code § 86.130 (relating to areas designated as unsuitable for mining); and 25 Pa. Code § 86.133 (relating to general requirements).

§ 86.130. Areas designated as unsuitable for mining.

(a) Under the criteria and procedures in §§ 86.121—86.129, the EQB has designated the areas described in subsection (b) as unsuitable for all or certain types of surface mining operations.

(b) The following is a list of descriptions of areas which are unsuitable for all or certain types of surface mining operations and where all or certain types of surface mining operations will not be permitted:

(1) The tract of approximately 233 acres (approximately 94.29 hectares) in Blacklick Township, Cambria County, described as follows:

Beginning at the northwest corner of the land owned by the Griffithtown Water Association and proceeding to the southwest corner, then easterly towards the southeast corner of the property and continuing in the same easterly direction to a point located 100 feet (30.48 meters) horizontal distance west of the Lower Freeport outcrop; then continuing in a southerly direction, remaining 100 feet (30.48 meters) from and paralleling the Lower Freeport outcrop as the outcrop proceeds easterly to intersect the 2,040 foot (621.79 meter) elevation contour; then along a straight line extending in a northeasterly direction intersecting the 2,282-foot (695.55 meter) elevation point and continuing to US 422; then west along US 422 to an intersection formed by a road, driveway or farmlane approaching US 422 from the north and located approximately 1.86 miles east (approximately 2.99 kilometers) of the junction of US 422 and Pa. Route 271 in Bel-sano; then continuing southwesterly in a straight line to the northwest corner of the Griffithtown Water Association property.

(2) The surface area overlying surface mineable coal reserves in a tract of approximately 11,200 acres (approximately 4,532 hectares) in Rush Township, Centre County, which tract is described as follows:

The surface water drainage basin of Cold Stream upstream from the mouth of Tomtit Run, including the surface water drainage basins of all tributaries to Cold Stream upstream from and including Tomtit Run except for the surface water drainage of a tributary known locally as Big Spring Run that enters Cold Stream from the west approximately 500 feet (approximately 152.4 meters) upstream from the Stony Point Road (Township Road 600) bridge over Cold Stream.

(3) The tract of approximately 119 acres (approximately 48.16 hectares) in Logan Township, Blair County and Gallitzin Township, Cambria County within the Mill Run watershed, that is underlain by surface mineable coal reserves, and that has not been previously disturbed by surface or deep mining. The tract is more particularly described as follows:

Beginning at the summit of a hill in the northwest corner of the Mill Run-Little Laurel Run watershed divide, southwest of the village of Buckhorn on or near the Cambria-Blair County line, and being at the eastern edge of the previously surface mined area; then along the watershed divide in a northeasterly direction for a distance of approximately 2,500 feet (approximately 762 meters) to the point of intersection of the watershed divide with the Mercer coal seam outcrop; then proceeding in a southeasterly and southerly direction along the Mercer coal outcrop, and running roughly parallel to and 100 to 200 feet (30.48 to 60.96 meters) easterly of the old Louden deep mine railroad grade, for a distance of approximately 5,500 feet (approx-

mately 1.68 kilometers) to the northern terminus of the Loudon deep mine, then proceeding westerly and northwesterly along the edge of the Loudon deep mine, exclusive of an approximately 2-acre (approximately 0.81 hectares) ungraded surface mine, to its intersection with the toe of spoil of the previously surface mined area; then in a northwesterly direction along the spoil banks remaining from previous surface mining activity a distance of approximately 3,800 feet (approximately 1.16 kilometers) to the summit of the hill, being the place of beginning.

(4) The surface mineable coal reserves in a tract of approximately 5,600 acres (approximately 2,266.32 hectares) in Rush, Centre County, which tract is the surface water drainage basin of Black Bear Run.

(5) The surface mineable coal reserves in the surface water drainage basin of Powell Run that are situated east of Pa. Route 865, which tract is located in Reade Township, Cambria County and Antis Township, Blair County.

(6) The surface mineable coal reserve in the surface water drainage basin of Byrnes Run, which tract is located in Jay and Fox Townships, Elk County.

(7) The surface mineable coal reserves of the Lower Kittanning, Clarion No. 1, Clarion No. 2 and Mercer coal seams in the surface water drainage basin of the upper portion of Little Muddy Run located above the Janesville Dam, which tract is located in Gulich Township, Clearfield County and Reade Township, Cambria County; except that the surface mineable coal reserves of the four designated seams, located in the recharge area for identified preexisting pollutional discharges to Little Muddy Run are not designated unsuitable for surface mining operations authorized under Chapter 87, Subchapter F (relating to surface coal mines: minimum requirements for remaining areas with pollutional discharges) which governs the remaining of areas having preexisting pollutional discharges.

(8) The surface mineable coal reserves in the surface water drainage basin of Rogues Harbor Run, which tract is in Chest Township, Clearfield County, and Chest Township, Cambria County, except Upper Freeport coal within that tract.

(9) The tract of approximately 525 acres (approximately 212.46 hectares) in Elder Township, Cambria County, described as follows:

Beginning at the northern edge of a raw water storage tank located approximately 2,000 feet (approximately 609.60 meters) south of Township Route 551 and 2,150 feet (655.32 meters) west of State Route 36; then proceeding in a northeasterly direction, intersecting the Borough of Hastings Water Authority access road at a point approximately 1,450 feet (approximately 441.96 meters) from the access road's junction with Township Route 551; then continuing due north, intersecting Township Route 551 at a property, fence or tree line located approximately 1,250 feet (approximately 381 meters) west of the junction of Township Route 551 and State Route 36; then

north along the property, fence or tree line to a point located on Legislative Route 221 approximately 1,100 feet (approximately 335.28 meters) west of State Route 36 in St. Boniface; then continuing in a southeasterly direction to the junction of State Route 36 and Legislative Route 11056; then along Legislative Route 11056 to a point approximately 1,300 feet (approximately 396.24 meters) east of State Route 36; then continuing south along a property, fence or tree line to another property, fence or tree line that is approximately 475 feet (approximately 144.78 meters) south of Legislative Route 11056; then 575 feet (175.26 meters) due west along this property, fence or tree line to a point located approximately 350 feet (approximately 106.68 meters) east of State Route 36; then due south to meet State Route 36 at its junction with a private road, driveway or farm lane approaching State Route 36 from the east, located approximately 950 feet (approximately 289.56 meters) south of the junction of Township Route 551 and State Route 36; then south along State Route 36 for approximately 900 feet (approximately 274.32 meters) to a tree, fence or property line; then along the line, intersecting the Laurel Hill anticline axis at a point approximately 1,575 feet (approximately 480.06 meters) due east of State Route 36; then south along the anticlinal axis (which trends approximately N 40° E) intersecting State Route 36 approximately 625 feet (approximately 190.5 meters) north of the junction of Legislative Routes 221 and 11077 and intersecting Legislative Route 11076 approximately 600 feet (approximately 182.88 meters) north of its junction with Legislative Routes 221 and 11067 for 6,800 feet (2,072.64 meters) to a point approximating the edge of an Upper Kittanning underground coal mine complex known as the Pardee No. 29; then continuing in the same southwesterly direction to a point located 200 feet (60.96 meters) horizontal distance southwest of the Pardee No. 29 Mine complex; then proceeding in a northerly direction remaining 200 feet (60.96 meters) from and paralleling the edge of the Pardee No. 29 Mine complex for approximately 4,250 feet (approximately 1,295.4 meters) to a point that is approximately 200 feet (approximately 61.96 meters) horizontal distance west of the Upper Kittanning coal outcrop (intersecting an unnamed tributary to a farm pond located approximately 3,300 feet (approximately 1,005.84 meters) due south of Township Route 551 and 3,300 feet (1,005.84 meters) due west of State Route 36); then continuing north, remaining 200 feet (60.96 meters) from and parallel to the coal outcrop to a property, fence or tree line located approximately 1,820 feet (approximately 554.74 meters) south of Township Route 551; then due east along the line to the northwest corner of the land owned by the Borough of Hastings; then returning to the point of origin.

(10) The tract of 527 acres (213.28 hectares) of surface mineable coal reserves in the southern surface water drainage basin of North Fork Tangascootack Creek watershed. The 527 acres (213.28 hectares) encompass the Mercer coal crop line to the southern watershed divide of the North Fork Tangascootack Creek watershed, which tract is located in Bald Eagle, Grugan and Beech Creek Townships, Clinton County.

(11) The surface mineable coals within the Montgomery Creek and Moose Creek watersheds upstream of the Clearfield Municipal Authority's public water supply reservoir dams. The two tracts are located in parts of Lawrence, Pike and Pine Townships, Clearfield County.

(12) The surface mineable coal reserves in the surface water drainage basins of Rankin Hollow Run and the East Fork Brewster Hollow Run, tributaries of Sixmile Run, upstream of the water supplies for the Coaldale Borough-Six Mile Run Area Water Corporation. The two tracts, totaling approximately 525 acres (approximately 212.47 hectares), are located in Broad Top Township, Bedford County.

(13) The surface mineable coal reserves of the Lower Kittanning, Clarion and Mercer coals in the surface water drainage basin of Bells Gap Run, which tract is located in Antis and Logan Townships, Blair County and Dean and Reade Townships, Cambria County; except that the surface mineable coal reserves of the three designated seams are not designated unsuitable for surface mining operations in the following areas:

(i) A tract of approximately 41 acres (approximately 16.59 hectares) of abandoned mine lands located northwest of the town of Highland Fling, said tract being described as follows:

Beginning at the point where Township Route 502 intersects the surface water drainage divide between Tubb Run and Brubaker Run approximately 750 feet (approximately 228.6 meters) northwest of the intersection of Township Route 502 and State Route 1016; then proceeding due east, to a point on State Route 1016 approximately 475 feet (approximately 144.78 meters) north-northeast of the intersection of State Route 1016 and Township Route 502; then continuing to a point approximately 2,250 feet (approximately 685.8 meters) north along State Route 1016; then due west to a point on the surface water drainage divide between Tubb Run and Brubaker Run approximately 2,800 feet (approximately 853.44 meters) north-northwest of the intersection of Township Route 502 and State Route 1016; then in a southerly direction along the said surface water drainage divide to the point of origin.

(ii) The permit areas of Cambria Coal Company SMP #11783035, Cambria Coal Company SMP #11823006, Swistock Associates Coal Corp. MDP #4278BC10, E. P. Bender Coal Co. SMP #11793025, and Benjamin Coal Company MDP #4278SM2, in accordance with § 86.121 (relating to areas exempt from designation as unsuitable for surface mining operations).

(14) The surface mineable coal reserves within the Goss Run watershed upstream of the Brisbin Dam, including a small tract of land within the watershed of the West Tributary to Goss Run, a total of approximately 555 acres (approximately 224.61 hectares), are designated unsuitable for all types of surface mining operations. This includes a land area beginning at the breast of the Brisbin Dam, thence due southwest to Pa. Route 153, thence north along the centerline of Pa. Route 153 to the intersection of Pa. Route 153 with township route T-657, thence north along the watershed divide between the Brisbin Dam drainage and the West Tributary drainage to a point at the intersection of the Goss Run and Little Beaver Run watershed divide, thence southwest along the Goss Run and Little Beaver Run watershed divide to a point at the intersection of the Brisbin Dam drainage divide, thence southwest along the Brisbin Dam drainage divide to the point of beginning; except that the surface mineable coal reserves are not designated unsuitable for surface mining operations in the following areas:

The permit areas of the James I. Cowfer Contracting, Inc. SMP 17663037 and James I. Cowfer Contracting, Inc. SMP 17820152, in accordance with § 86.121.

(15) The surface mineable coal reserves within the entire Paddy Run watershed, all surface mineable coal reserves within the Drury Run watershed occurring upstream of the Drury Run reservoir, and all surface mineable coals within the Drury Run watershed which occur within the Woodley Draft sub-basin and within the Slab Hollow drainage of the Stony Run sub-basin. These areas are located in Chapman, Leidy and Noyes Townships, Clinton County.

(16) The surface mineable coal reserves of the Lower Kittanning, Clarion and Brookville coals in the surface water drainage basin of Laurel Run, which tract is located in Jackson, West Taylor and Middle Taylor Townships, Cambria County.

(17) All types of surface mining operations within a tract of 450 acres (182.12 hectares) located in Slippery Rock and Wayne Townships, Lawrence County described as follows:

Beginning at the intersection of Township Road T-347 and Township Road 5-472; then in a northerly direction following Township Road T-472 for a distance of approximately 4,800 feet (approximately 1,643.04 meters) to the Wayne Township and Slippery Rock Township boundary line; then in a westerly direction following the township line for a distance of approximately 800 feet (approximately 243.84 meters) to the southwest corner of a land parcel owned, or formerly owned, by Edris Ann Thalgott; then in a northerly direction following the Edris Ann Thalgott property line for a distance of approximately 2,050 feet (approximately 624.84 meters) to the southwest corner of a land parcel owned, or formerly owned, by Lois Mackey; then following the Lois Mackey property line in a northerly direction for a distance of approximately 950 feet (approximately

289.56 meters) to the intersection of the Lois Mackey property line with State Road SR2024; then in an easterly direction following State Road SR 2024 for a distance of approximately 2,100 feet (approximately 640.08 meters) to the intersection with the southwest corner of a land parcel owned, or formerly owned, by Dale Mackey; then in a northerly direction following the Dale Mackey property line for a distance of approximately 1,650 feet (approximately 502.92 meters) to the northwest corner of the Dale Mackey property; then in an easterly direction following the Dale Mackey property line for a distance of approximately 600 feet (approximately 182.88 meters) to the northeast corner of the Dale Mackey property; then following the Dale Mackey property line in a southerly direction for a distance of approximately 1,250 feet (approximately 381.00 meters) to the Dale Mackey property line intersection with the northeast corner of a land parcel owned, or formerly owned, by Richard E. Michaels; then following the Richard E. Michaels property line in a southerly direction for a distance of approximately 250 feet (approximately 76.20 meters) to the Richard E. Michaels property line intersection with State Road SR 2024; then following Township Road T-478 in a southerly direction for a distance of approximately 7,200 feet (approximately 2,194.56 meters) to the intersection of Township Road T-478 with Township Road T-347; then in a westerly direction following Township Road T-347 for a distance of approximately 2,000 feet (approximately 609.60 meters) to the point of origin.

(18) The surface mineable coal reserves of the Lower Kittanning, Clarion, Brookville and Mercer coals in the Muddy Run watershed, Cambria County, located south of State Route 253, including Muddy Run and its eastern tributary, Curtis Run.

Authority

The provisions of this § 86.130 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); sections 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

Source

The provisions of this § 86.130 adopted September 30, 1983, effective October 1, 1983, 13 Pa.B. 2968; amended February 10, 1984, effective February 11, 1984, 14 Pa.B. 446; amended July 20, 1984, effective July 21, 1984, 14 Pa.B. 2667; amended July 20, 1984, effective July 21, 1984, 14 Pa.B. 2670; amended April 11, 1986, effective April 12, 1986, 16 Pa.B. 1274; amended May 23, 1986, effective May 24, 1986, 16 Pa.B. 1810; amended February 19, 1988, effective February 20, 1988, 18 Pa.B. 761; amended May 6, 1988, effective May 7, 1988, 18 Pa.B. 2094; amended August 19, 1988, effective August 20, 1988, 18 Pa.B. 3695; amended September 30, 1988, effective October 1, 1988, 18 Pa.B. 4411; amended September 30, 1988, effective October 1, 1988, 18 Pa.B. 4413; amended June 23, 1989, effective June 24, 1989, 19 Pa.B. 2642; amended August 24, 1990, effective August 25, 1990, 20 Pa.B. 4483; amended May 22, 1992, effective May 23, 1992, 22 Pa. B. 2715; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5024; amended October 16, 1992, effective October 17, 1992, 22 Pa.B. 5159; amended December 13, 1996, effective December 14, 1996, 26

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Pa.B. 5960; amended December 13, 1996, effective December 14, 1996, 26 Pa.B. 5962; amended October 8, 1999, effective October 9, 1999, 29 Pa.B. 5289; amended August 26, 2011, effective August 27, 2011, 41 Pa.B. 4624. Immediately preceding text appears at serial pages (260514) to (260518) and (293099) to (293100).

Notes of Decisions

Nuisance

If the Commonwealth can demonstrate that proposed use of stream would unreasonably interfere with the public right to unpolluted water, the use is a nuisance and may be prohibited by the Commonwealth without compensation. *Machipongo Land and Coal Co., Inc. v. Commonwealth*, 799 A.2d 751 (Pa. 2002).

Taking

The regulation which designated a defined tract as unsuitable for mining was not a taking with respect to surface mining, as evidence confirmed that surface mining there was economically unfeasible. The Pennsylvania Supreme Court established a regulatory takings test, upheld a regulation with respect to one property and remanded the matter for further determination. The matter was remanded for a determination of the horizontal extent of the property of other property owners, to perform a takings analysis under *Lucas* and *Penn Central*, and, if necessary, to determine if the proposed use of the property would constitute a nuisance or otherwise violate state property law. *Machipongo Land and Coal Co., Inc. v. Commonwealth*, 799 A.2d 751 (Pa. 2002).

Cross References

This section cited in 25 Pa. Code § 86.6 (relating to extraction of coal incidental to government-financed construction or government-financed reclamation projects).

Subchapter E. COAL EXPLORATION

Sec.

- 86.131. Scope.
- 86.132. Definitions.
- 86.133. General requirements.
- 86.134. Coal exploration performance and design standards.
- 86.135. [Reserved].
- 86.136. Coal exploration compliance duties.
- 86.137. Public availability of information.

Cross References

This subchapter cited in 25 Pa. Code § 86.11 (relating to general requirements for permits); 25 Pa. Code § 86.129 (relating to coal exploration on areas designated as unsuitable for surface mining operations); 25 Pa. Code § 86.143 (relating to requirement to file a bond); 25 Pa. Code § 88.133 (relating to postmining land use); 25 Pa. Code § 90.45 (relating to prime farmland); and 25 Pa. Code § 90.165 (relating to prime farmland: revegetation).

§ 86.131. Scope.

This subchapter applies to persons who conduct or seek to conduct coal exploration outside of the permit area. Coal exploration which substantially disturbs the natural land surface shall comply with the minimum performance standards and design requirements of this subchapter. The Department may, if it deems necessary, require compliance with other applicable performance and design requirements of Chapters 87—90.

Source

The provisions of this § 86.131 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.132. Definitions.

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

Coal exploration—The field gathering of surface or subsurface geologic, physical or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality of overburden and coal of an area, or the gathering of environmental data, to establish the conditions of an area.

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

Source

The provisions of this § 86.132 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial page (206677).

§ 86.133. General requirements.

(a) A person who intends to conduct coal exploration shall, prior to conducting the exploration, file with the Department one copy of a written notice of intention to explore for each exploration area at least 10 days prior to the exploration on forms provided by the Department.

(b) The notice shall include:

(1) The name, address and telephone number of the person seeking to explore.

(2) The name, address and telephone number of the representative who will be present at and responsible for conducting the exploration activities.

(3) A map, at a scale of 1:24,000, of the exploration area showing the extent of the exploration, location of drill holes and exploration trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of water and pipelines.

(4) A statement of the period of intended exploration.

(5) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.

(c) A person who conducts coal exploration which substantially disturbs the natural land surface shall comply with § 86.134 (relating to coal exploration performance and design standards).

(d) The Department will, except as otherwise provided in § 86.137(b) (relating to public availability of information), place the notices and the exploration permit documents, as required under subsection (f) for exploration on areas designated as unsuitable for mining, on public file and make them available for public inspection and copying during regular office hours at the established fee. For the purpose of this section, the exploration permit documents include the application and documents relating to the decision to approve or deny the application.

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

(f) Coal exploration on lands where a petition to declare an area unsuitable for mining has been received by the Department or on lands designated unsuitable for mining shall be conducted only after a permit has been obtained from the Department. This permit requirement may not be waived. The Department may prescribe conditions and requirements necessary to preserve the values sought to be protected in the petition before approving coal exploration in these areas. The

exploration activities shall be conducted in accordance with § 86.129 (relating to coal exploration) to insure that the exploration activity does not interfere with a value for which the area has been designated unsuitable for mining.

(g) A person who conducts coal exploration by means of boreholes or core-holes shall case, line, seal or otherwise manage the hole to prevent degradation of the quality of groundwater and surface water, minimize disturbance to the prevailing hydrologic balance and ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area, and meet the requirements of §§ 89.54 and 89.83 (relating to preventing discharges from underground mines; and closing of underground mine openings).

Authority

The provisions of this § 86.133 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.133 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial pages (304397) to (304398).

Cross References

This section cited in 25 Pa. Code § 86.129 (relating to coal exploration).

§ 86.134. Coal exploration performance and design standards.

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

- (1) Habitats of unique value for fish, wildlife and other related environmental values may not be disturbed during coal exploration.
- (2) Roads used for coal exploration shall comply with the following:
 - (i) A new road in the exploration area shall comply with §§ 87.160 and 87.166 (relating to haul roads and access roads; and haul roads and access roads: restoration).
 - (ii) Existing roads may be used for exploration in accordance with the following:
 - (A) Applicable Federal, State and local requirements shall be met.
 - (B) If the road is significantly altered for exploration, including, but not limited to, change of grade, widening or change of route, or if the use of the road for exploration contributes additional suspended solids to streamflow or runoff, paragraph (6) applies to the areas of the road which are altered or which result in the additional contributions.
 - (C) If the road is significantly altered for exploration activities or will remain as a permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of

§§ 87.160 and 87.166, as appropriate, are met for the design, construction, alteration and maintenance of the road.

(iii) Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed to one or more of the following:

(A) A condition equal to or better than their preexploration condition.

(B) The condition required for permanent roads under §§ 87.160 and 87.166, as appropriate.

(3) If excavations, artificial flat areas or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after the features are no longer needed for coal exploration.

(4) Topsoil shall be removed, stored and redistributed on disturbed areas as necessary to assure successful revegetation.

(5) All areas disturbed by coal exploration activities shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective and permanent vegetative cover.

(6) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads and support facilities, ephemeral, intermittent or perennial streams may not be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that:

(i) Prevents erosion.

(ii) Prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area, to the extent possible using the best technology currently available.

(iii) Complies with other applicable State or Federal requirements.

(7) Each exploration hole, borehole, well or other underground opening created or encountered by exploration shall meet the requirements of §§ 87.93, 89.54 and 89.83 (relating to casing and sealing of drilled holes; preventing discharges from underground mines; and closing of underground mine openings).

(8) Facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for facilities and equipment that the Department determines may remain to do one of the following:

(i) Provide additional environmental quality data.

(ii) Reduce or control the onsite and offsite effects of the exploration activities.

(iii) Facilitate future surface mining and reclamation operations by the person conducting the exploration, under an approved permit.

(9) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures, or sedimentation ponds which comply with Chapter 89, Subchapter A (relating to erosion and sedimentation control).

(10) Toxic- or acid-forming materials shall be handled and disposed of in accordance with §§ 87.110 and 87.145 (relating to hydrologic balance: acid-

forming and toxic-forming spoil; and backfilling and grading: covering coal and acid-forming and toxic-forming materials.)

(11) Coal exploration and related reclamation activities shall be conducted to avoid damage to, or destruction of, known historic resources.

Authority

The provisions of this § 86.134 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.134 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended February 17, 1984, 14 Pa.B. 524, effective August 4, 1984, 14 Pa.B. 2860; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial pages (206679) to (206681).

Cross References

This section cited in 25 Pa. Code § 86.129 (relating to coal exploration on areas designated as unsuitable for surface mining operations); and 25 Pa. Code § 86.133 (relating to general requirements).

§ 86.135. [Reserved].

Source

The provisions of this § 86.135 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.136. Coal exploration compliance duties.

(a) Coal exploration and reclamation activities shall be conducted in accordance with the coal exploration requirements of applicable State and Federal laws and rules and regulations, this chapter and conditions on approval for exploration and reclamation imposed by the Department.

(b) A person who conducts coal exploration in violation of this subchapter shall be subject to the applicable inspection and enforcement provisions of the Department, and Subchapters G and H (relating to civil penalties for coal mining activities; and enforcement and inspection).

Source

The provisions of this § 86.136 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075. Immediately preceding text appears at serial pages (158750) to (158751).

§ 86.137. Public availability of information.

(a) Except as provided in subsection (b), information submitted to the Department under this subchapter shall be made available for public inspection and copying at the appropriate district or regional office of the Department.

(b) The Department will not make information available for public inspection if the person submitting the notification lists the reasons why it is confidential and requests, in writing, at the time of submission, that it not be public information. The Department will determine if the notice is confidential after reviewing the reasons submitted.

(1) Information shall be considered confidential by the Department only if it concerns trade secrets or contains privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(2) Information requested to be held as confidential under this section will not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

Source

The provisions of this § 86.137 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.133 (relating to general requirements).

Subchapter F. BONDING AND INSURANCE REQUIREMENTS**GENERAL PROVISIONS**

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- 86.141. Scope.
- 86.142. Definitions.
- 86.143. Requirement to file a bond.
- 86.144. Requirement to file a certification of liability insurance.
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AMOUNT AND DURATION OF LIABILITY

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- 86.159. Self-bonding.
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- 86.163. [Reserved].
- 86.164. [Reserved].
- 86.165. Failure to maintain proper bond.
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- 86.170. Scope.
- 86.171. Procedures for seeking release of bond.
- 86.172. Criteria for release of bond.
- 86.173. [Reserved].
- 86.174. Standards for release of bonds.
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BOND FORFEITURE

- 86.180. Scope.
- 86.181. General.
- 86.182. Procedures.
- 86.183. [Reserved].
- 86.184. [Reserved].
- 86.185. Preservation of remedies.
- 86.186. Scope.
- 86.187. Use of money.
- 86.188. Evaluation of bond forfeiture sites.
- 86.189. Reclamation of bond forfeiture sites.
- 86.190. Sites where reclamation is unreasonable, unnecessary or impossible; excess funds.

Cross References

This subchapter cited in 25 Pa. Code § 86.34 (relating to informal conferences); 25 Pa. Code § 86.36 (relating to review of permit applications); 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.41 (relating to conditions of permits: general and right of entry); 25 Pa. Code § 86.56 (relating to transfer of permit); 25 Pa. Code § 86.64 (relating to right of entry); 25 Pa. Code § 87.1 (relating to definitions); 25 Pa. Code § 87.65 (relating to maps and plans);

25 Pa. Code § 87.68 (relating to reclamation information); 25 Pa. Code § 87.83 (relating to prime farmlands); 25 Pa. Code § 87.159 (relating to postmining land use); 25 Pa. Code § 87.181 (relating to prime farmland: revegetation); 25 Pa. Code § 88.1 (relating to definitions); 25 Pa. Code § 88.129 (relating to revegetation: standards for successful revegetation); 25 Pa. Code § 88.217 (relating to vegetation: standards for successful vegetation); 25 Pa. Code § 88.221 (relating to postmining land use); 25 Pa. Code § 88.330 (relating to revegetation: standards for successful revegetation); 25 Pa. Code § 88.334 (relating to postdisposal land use); 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); 25 Pa. Code § 89.88 (relating to postmining land use); 25 Pa. Code § 89.122 (relating to prime farmlands); 25 Pa. Code § 89.134 (relating to revegetation); 25 Pa. Code § 90.1 (relating to definitions); 25 Pa. Code § 90.33 (relating to reclamation plan); and 25 Pa. Code § 90.166 (relating to postdisposal land use).

GENERAL PROVISIONS

§ 86.141. Scope.

This subchapter sets forth the minimum requirements for bonding and insuring mining and reclamation operations.

Source

The provisions of this § 86.141 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.142. Definitions.

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

Adverse opinion—A statement by an independent certified public accountant that the financial statements of the applicant do not present fairly the financial condition of the applicant in conformity with generally accepted accounting principles.

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

Applicant—A permittee or an applicant for a permit who is applying to self-bond under this subchapter.

Collateral bond—An indemnity agreement in a sum certain payable to the Department executed by the permittee and which is supported by the deposit with the Department of cash, negotiable bonds of the United States of America, the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any Commonwealth municipality, negotiable certifications of deposit, or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States.

Continuous business operations—Operations in which the applicant has been in business and operating for at least 10 years prior to the filing of its self-bonding application unless the applicant's existence results from a reorganization, consolidation or merger involving a company with this longevity. If the applicant is a majority owned subsidiary of a corporation, it may rely upon its parent corporation's business history, which has a 10-year business history.

Current asset—Cash or other assets which are reasonably expected to be converted to cash or sold or consumed within 1 year or within the normal operating cycle of the business.

Current liability—An obligation which is reasonably expected to be paid or liquidated within 1 year or within the normal operating cycle of the business.

Disclaimer of opinion—A statement by an independent certified public accountant that he does not express an opinion on the financial statements of the applicant.

Financial statement—A formal report of the applicant's status of accounts at a particular time, prepared to show the operating results and financial condition of the applicant's business. The term includes, but is not limited to, the balance sheet, income statement and statement of change in financial position prepared in accordance with generally accepted accounting principles.

Fixed asset—The term includes plants and equipment, but does not include land or coal in place.

Independent certified public accountant—A certified public accountant not dependent on or subject to the direct control of the applicant.

Liability—An obligation to transfer assets or provide services to other entities in the future as a result of past transactions.

Liquidity ratio—The relation of cash to current liabilities.

Long-term facilities—A processing plant, mine drainage facility, refuse area or other structure and facility associated with surface or underground mining which will be continuously operated or used for at least 10 years.

Long-term mines—An underground mine which will be continuously mined for at least 10 years, or any surface mines in which the mineral to be removed exceeds the amount of overburden by a ratio of at least four to one and which will be continuously mined for at least 10 years.

Net worth—Total assets minus total liabilities and is equivalent to owner's equity.

Parent corporation—The corporation which directly owns or controls the corporation which is the applicant.

Quick assets—Cash and current assets that can be quickly turned into cash.

Retained earnings—Stockholder's equity that has arisen from retained assets from earnings in the business. The term includes only earnings from normal operations and not gains from the transaction, such as the sale of plant assets or investments.

Self-bond—An indemnity agreement in a sum certain payable to the Department, executed by the permittee and by each individual and business organization capable of influencing or controlling the investment or financial practices of the permittee by virtue of his authority as an officer or ownership of all or a significant part of the permittee, and supported by agreements granting the Department a security interest in real or personal property pledged to secure performance by the permittee.

Surety bond—An indemnity agreement in a sum certain payable to the Department executed by a permittee which is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

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

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.

Source

The provisions of this § 86.142 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended May 11, 1990, effective upon publication of notice in the *Pennsylvania Bulletin* that the amendments have been approved by the OSM; amended June 15, 1990, 20 Pa.B. 2517, effective July 27, 1991, 21 Pa.B. 3316; amended August 19, 1994, effective August 20, 1994, 24 Pa.B. 4195; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (206684) to (206686).

Cross References

This section cited in 25 Pa. Code § 86.159 (relating to self-bonding).

§ 86.143. Requirement to file a bond.

(a) No new, revised or renewed permit to conduct mining or reclamation operations will be issued by the Department before the applicant for the permit has filed with the Department a bond upon a form provided by the Department payable to the Department, and the bond has been approved by the Department. The bond shall be conditioned upon the faithful performance of the requirements of the acts and regulations thereunder, the reclamation plan and the conditions of the permit—including amendments, revisions and changes to the acts, the regulations, the reclamation plan and the conditions of the permit—as may hereinafter be lawfully made. The amount, duration, form, conditions and terms of the bond shall conform to the requirements in this subchapter.

(b) An operator may not disturb surface acreage or extend or develop underground shafts, tunnels or operations, except for coal exploration permitted under Subchapter E (relating to coal exploration), prior to receipt of approval from the Department of a bond and issuance of a permit covering the surface acreage to be affected.

(c) Liability on the bond shall cover mining and reclamation operations and other activities conducted within the permit area, and effects resulting from the mining of the permit area, including amendments thereof, during the course of mining activities and continuing for a period of time as provided in this subchap-

ter. If more than one bond instrument is filed with the Department to satisfy the requirements of this subchapter for a given permit, then all bond instruments, no matter when the instruments were filed, apply to the entire permit area. Liability upon each bond applies to the entire permit area.

Source

The provisions of this § 86.143 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148536) to (148537).

Cross References

This section cited in 25 Pa. Code § 86.17 (relating to permit and reclamation fees); 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); and 25 Pa. Code § 86.294 (relating to uses and limitations).

§ 86.144. Requirement to file a certification of liability insurance.

Each applicant for a permit shall submit proof to the Department of liability insurance coverage for its mining and reclamation operations issued by an insurance company authorized to do business in this Commonwealth. The amount, duration, form, conditions, terms and method of proof of this insurance coverage shall conform to § 86.168 (relating to terms and conditions for liability insurance).

Source

The provisions of this § 86.144 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.145. Department responsibilities.

- (a) The Department will prescribe and furnish the forms for filing bonds.
- (b) The Department will prescribe terms and conditions for bonds and insurance.
- (c) The Department will establish bonding amount rate guidelines based on the estimated cost to the Department for completing the reclamation requirements of the permittee under the law, the regulations and the conditions of the permit considering the factors listed in § 86.149(b) (relating to determination of bond amount). The guidelines shall be reviewed and, if necessary, revised by the Department annually to reflect the current cost of reclamation to the Department. The Department may consider fees, fines or other sources of money paid by the permittee and dedicated for reclamation of defaulted permit areas in determining bonding guidelines.
- (d) The Department will determine the amount of the bond required for the permit areas, including adjustments to the initial amount from time to time as land acreages in the permit area are revised, costs to the Department of reclamation change or when other relevant conditions change according to the minimum requirements of § 86.149.

(e) Bonds shall be reviewed for legality and form according to established procedures.

(f) The Department will release the permittee from his bond and insurance requirements as provided in §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond).

(g) The Department will cause a bond to be forfeited as provided in §§ 86.180—86.182 and 86.185—86.190.

Source

The provisions of this § 86.145 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148537) to (148538).

Cross References

This section cited in 25 Pa. Code § 86.17 (relating to permit and reclamation fees); and 25 Pa. Code § 86.149 (relating to determination of bond amount).

AMOUNT AND DURATION OF LIABILITY

§ 86.148. Scope.

This section and §§ 86.149—86.152 set forth the minimum requirements for determining the amounts and time periods of liability for bonds for mining and reclamation operations.

Source

The provisions of this § 86.148 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.161 (relating to phased deposits of collateral).

§ 86.149. Determination of bond amount.

(a) The standard applied by the Department in determining the amount of bond will be the estimated cost to the Department if it had to complete the reclamation, restoration and abatement work required under the acts, regulations thereunder and the conditions of the permit. The Department may establish bonding rate guidelines which utilize the factors in § 86.145(c) (relating to Department responsibilities).

(b) This amount will be based on, but not limited to, the following:

(1) The estimated costs submitted by the permittee in accordance with § 87.68, § 88.96, § 88.492, § 89.71 or § 90.33.

(2) Reclamation costs for surface mines related to the specific size and geometry of the proposed mining operation, the topography and geology of the permit area, the potential for water pollution or hydrologic disturbances, the availability of topsoil and the proposed land use.

(3) The costs related to distinct differences in mining methods and reclamation standards for bituminous surface mines, anthracite surface mines and underground mines.

(4) The cost of relocating or reconstructing roads or streams within the permit area.

(5) The cost of sealing shafts or other mine openings, removal of buildings, facilities or other equipment, constructing, operating and maintaining treatment facilities and correcting surface subsidence.

(6) The additional estimated costs to the Department which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration and abatement work.

(7) The amount of fees, fines or other payments made to the Department and dedicated by the Department for reclamation, restoration and abatement of defaulted permit areas.

(8) Additional estimated costs necessary, expedient and incident to the satisfactory completion of the requirements of the acts, regulations thereunder and the conditions of the permit.

(9) An additional amount based on factors of cost changes during the preceding 5 years for the types of activities associated with the reclamation to be performed.

(10) Other cost information as required from the permittee or otherwise available to the Department.

Source

The provisions of this § 86.149 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148538) to (148540).

Notes of Decisions

Uniform Bond

It is clear that determinations of the amounts of bonds are to be made on a case-by-case basis, with consideration of the relevant factors contained within the Department's regulations. The use of a uniform bond of \$10,000, therefore, is not appropriate. *People United To Save Homes v. Department of Environmental Protection*, 789 A.2d 319 (Pa. Cmwlth. 2001).

Cross References

This section cited in 25 Pa. Code § 86.17 (relating to permit and reclamation fees); 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.148 (relating to scope); and 25 Pa. Code § 86.161 (relating to phased deposits of collateral).

§ 86.150. Minimum amount.

(a) The minimum amount of bond for bituminous coal mining activities and anthracite and bituminous coal refuse disposal operations shall be \$10,000 for the entire permit area, including additional acreage permit revisions thereto.

(b) The minimum amount of bond for anthracite coal mining activities—except anthracite coal refuse disposal operations—is \$5,000 for the entire permit area, including additional acreage permit revisions.

Source

The provisions of this § 86.150 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial page (148540).

Cross References

This section cited in 25 Pa. Code § 86.17 (relating to permit and reclamation fees); 25 Pa. Code § 86.148 (relating to scope); and 25 Pa. Code § 86.161 (relating to phased deposits of collateral).

§ 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 underground mining operations.

(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.

Authority

The provisions of this § 86.151 amended under section 7 of The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. § 1406.7); section 5 of The Clean Streams Law (35 P.S. § 691.5); section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.4b); section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

Source

The provisions of this § 86.151 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775. Immediately preceding text appears at serial pages (313518) and (238935) to (238936).

Cross References

This section cited in 25 Pa. Code § 86.148 (relating to scope); 25 Pa. Code § 86.159 (relating to self-bonding); 25 Pa. Code § 86.161 (relating to phased deposits of collateral); 25 Pa. Code

§ 86.162c (relating to Bioenergy Crop Bonding); 25 Pa. Code § 86.174 (relating to standards for release of bonds); 25 Pa. Code § 86.175 (relating to schedule for release of bond); 25 Pa. Code § 87.155 (relating to revegetation: standards for successful revegetation); 25 Pa. Code § 87.156 (relating to revegetation: techniques and frequency of measurement); 25 Pa. Code § 87.209 (relating to criteria and schedule for release of bonds on pollution abatement areas); 25 Pa. Code § 88.129 (relating to revegetation: standards for successful revegetation); 25 Pa. Code § 88.217 (relating to vegetation: standards for successful vegetation); 25 Pa. Code § 88.330 (relating to revegetation: standards for successful revegetation); 25 Pa. Code § 88.509 (relating to criteria and schedule for release of bonds on pollution abatement areas); 25 Pa. Code § 89.86 (relating to revegetation); and 25 Pa. Code § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas).

§ 86.152. Bond adjustments.

(a) The amount of bond required and the terms of the acceptance of the applicant's bond will be adjusted by the Department from time to time as the area requiring bond coverage is increased or decreased, or when the cost of future reclamation changes, or when the projected subsidence damage repair liability changes. The Department may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement. This requirement shall only be binding upon the permittee and does not compel a third party, including surety companies, to provide additional bond coverage and does not extend the coverage of a subsidence bond beyond the requirements imposed by sections 5, 5.4, 5.5 and 5.6 of the Bituminous Mine Subsidence and Land Conservation Act.

(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).

(d) The Department will notify the permittee, the surety and any person with a property interest in collateral who has requested the notification, of any proposed adjustment to the bond amount. The Department will also provide the permittee an opportunity for an informal conference on the adjustment.

Authority

The provisions of this § 86.152 amended under the authority of section 7 of The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. § 1406.7); section 5 of The Clean Streams Law (35 P.S. § 691.5); section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.4b); section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

Source

The provisions of this § 86.152 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775. Immediately preceding text appears at serial pages (238936) to (238937).

Cross References

This section cited in 25 Pa. Code § 86.148 (relating to scope); 25 Pa. Code § 86.151 (relating to period of liability); 25 Pa. Code § 86.161 (relating to phased deposits of collateral); and 25 Pa. Code § 86.165 (relating to failure to maintain proper bond).

FORM, TERMS AND CONDITIONS OF BONDS AND INSURANCE**§ 86.155. Scope.**

This section and §§ 86.156—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.

Authority

The provisions of this § 86.155 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.155 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial page (315395).

§ 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 self bond.
- (4) A combination of bonding instruments as provided in § 86.160 (relating to combination of bonding instruments), for coal surface mining activities.
- (5) 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.
- (6) 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.

Authority

The provisions of this § 86.156 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.156 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186. Immediately preceding text appears at serial pages (237095) to (237096).

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope); and 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund).

§ 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.

Source

The provisions of this § 86.157 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (206693) to (206694).

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope).

§ 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.

Source

The provisions of this § 86.158 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (206695) to (206697).

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope).

§ 86.159. Self-bonding.

(a) 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 as required by section 315 of The Clean Streams Law (35 P. S. § 691.315), §§ 87.102, 87.207, 88.92, 88.187, 88.507 and 89.52 or restoration of soil productivity of prime farmland as required by §§ 87.177—87.181, 88.129, 88.217, 88.330, 88.381, 88.493 and 90.161—90.165. The applicant for a self-bond shall demonstrate to the satisfaction of the Department a history of continuous efforts to achieve compliance with Federal and State environmental laws, that it meets financial eligibility criteria established in this section and enters into indemnity and security agreements required by this section. An applicant which is a subsidiary corporation may satisfy the requirements for eligibility to self-bond by relying on its parent corporation. In this case, the parent corporation shall meet the eligibility and reporting requirements required by this section.

(b) The Department, in determining an applicant's eligibility to self-bond, will be satisfied by the applicant that it meets the following requirements:

(1) The applicant is incorporated in or authorized to do business in this Commonwealth. If a subsidiary corporation is a permittee or an applicant for a permit, the parent corporation of the subsidiary corporation is not required to be incorporated in or authorized to do business in this Commonwealth.

(2) The applicant has designated suitable agents in this Commonwealth to receive service of suits, claims, demands and other services of process.

(3) The applicant has a history of continuous business operation. This requirement may be deemed to be met if one of the following applies:

(i) The applicant's existence is the result of a reorganization, consolidation or merger involving a company with a history of continuous business operation.

(ii) The applicant is a majority-owned subsidiary of a corporation with a history of continuous business operation.

(4) The applicant, during the last 36 calendar months, has not defaulted in the payment of one or more of the following:

- (i) Dividend or sinking fund installment, preferred stock or installment of indebtedness for borrowed money.
 - (ii) Payment of rentals under long-term leases.
 - (iii) A reclamation fee payment due under section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. § 1232) for coal produced in this Commonwealth.
- (5) The applicant, during the last 36 calendar months, has honored its obligations under other self-bonding programs established by another state or the Federal government.
- (6) The applicant has not had commercial surety bonds cancelled for non-payment of premiums or fraud or failure to comply with conditions established by the surety company as conditions of maintaining surety bonds in force and effect.
- (c) The applicant, as part of the application for self-bonding, shall submit to the Department the following items:
- (1) Financial statements for its most recent 3 fiscal years, prepared in accordance with generally accepted accounting principles, and in sufficient detail to determine if the applicant can meet the financial solvency tests contained in this section.
 - (2) Financial statements for the completed quarters of the fiscal year in which application is made.
 - (3) A report, prepared by an independent certified public accountant in conformity with generally accepted accounting principles, containing the accountant's audit opinion or review opinion of the financial statements for the applicant's most recent 3 fiscal years.
 - (4) Certification that the applicant intends to maintain its existing corporate status for a period in excess of 5 years.
 - (5) Certification that forfeiture of the aggregate amount of the applicant's self-bonds approved and furnished for operations included under this section will not materially affect its ability to remain in business or endanger its cash flow to the extent it could not meet its current obligations.
 - (6) Other information regarding its financial solvency, continuous business operation and compliance with environmental laws as the Department may require.
- (d) After initial submission of the information in the application for self-bonding, the applicant shall submit updated information as specified in subsections (b) and (c) within 90 days of the close of each of the applicant's fiscal years. The applicant shall meet the requirements of this section relating to eligibility to self-bond for each succeeding fiscal year. The Department may require reports of financial condition from the applicant and these reports shall be in addition to those specified in this subsection. Failure of the applicant to provide reports requested by the Department shall render the applicant ineligible to self-bond.

(e) If the applicant or the independent certified public accountant submits false information or representations in the application or reports required by this section, the application will be disallowed and render the applicant ineligible to self-bond. The applicant and the independent certified public accountant shall be subject to 18 Pa.C.S. §§ 4903 and 4904 (relating to false swearing; and unsworn falsification to authorities).

(f) The applicant shall satisfy one of the following financial tests in paragraph (1), (2) or (3):

(1) The applicant satisfies the following requirements:

(i) A current rating for its most recent bond issuance of either: AAA, AA or A as issued by Standard and Poor's Corporation; or Aaa, Aa or A as issued by Moody's Investor Services. The ratings may not have been assigned as a result of the bond issue being independently insured.

(ii) Tangible net worth at least six times the total amount of outstanding and proposed self-bonds for coal mining activities in this Commonwealth.

(iii) Assets in the United States amounting to at least 90% of total assets.

(2) The applicant satisfies the following requirements:

(i) Tangible net worth of at least \$10 million.

(ii) A ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater.

(iii) Tangible net worth at least six times the total amount of outstanding and proposed self-bonds for coal mining activities in this Commonwealth.

(iv) Assets in the United States amounting to at least 90% of total assets.

(3) The applicant satisfies the following requirements:

(i) Possesses fixed assets in the United States of at least \$20 million.

(ii) Has a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater.

(iii) Has tangible net worth at least six times the total amount of outstanding and proposed self-bonds for coal mining activities in this Commonwealth.

(iv) Has assets in the United States amounting to at least 90% of total assets.

(g) An adverse opinion or a disclaimer of opinion expressed by the independent certified public accountant in its report on examination of the applicant's financial statements renders the applicant ineligible to self-bond. The Department may determine an applicant ineligible to self-bond on the basis of other qualifications in the opinion expressed by the independent certified public accountant in its report on the examination of the applicant's financial statements.

(h) The total value of outstanding plus proposed self-bonds for coal mining activities may not exceed 25% of the applicant's tangible net worth in the United States.

(i) The period of liability under an approved self-bond shall be determined in accordance with § 86.151 (relating to period of liability). The release of a

self-bond shall be made under §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond). Liability under a self-bond is terminated upon the Department's approval of alternative bonding, as provided for in this subchapter, submitted by the applicant.

(j) As part of the application for self-bonding, the applicant shall submit to the Department a self-bond as defined in § 86.142 (relating to definitions). The self-bond shall be perfected under the applicable statutes of the Commonwealth and the United States at the time of execution. The security interests supporting the self-bond shall be in accordance with the following schedule:

(1) For tangible net worth from 6 to 6.99 times the total amount of outstanding and proposed self-bonds for coal mining activities in this Commonwealth, the security interest shall be in an amount equal to the amount of liability to be covered by the self-bond.

(2) For tangible net worth from 7 to 7.99 times the total amount of outstanding and proposed self-bonds for coal mining in this Commonwealth, the security interest shall be in an amount equal to 80% of the amount of liability to be covered by the self-bond.

(3) For tangible net worth from 8 to 8.99 times the total amount of outstanding and proposed self-bonds for coal mining in this Commonwealth, the security interest shall be in an amount equal to 60% of the amount of liability to be covered by the self-bond.

(4) For tangible net worth from 9 to 9.99 times the total amount of outstanding and proposed self-bonds for coal mining in this Commonwealth, the security interest shall be in an amount equal to 40% of the amount of liability to be covered by the self-bond.

(5) For tangible net worth equal to or in excess of 10 times the total amount of outstanding and proposed self-bonds for coal mining in this Commonwealth, the security interest shall be in an amount equal to 25% of the amount of liability to be covered by the self-bond.

(6) Notwithstanding a provision in this chapter to the contrary, the Department may require the applicant, either initially or during the period of liability under a self-bond, to provide additional security interests as the Department may, in its sole discretion, determine it necessary to assure the applicant's obligations under the self-bond are met. The determination that an applicant may be unwilling or unable to meet its obligations under the self-bond includes, but is not limited to, a review of individual factors such as the applicant demonstrating a pattern of delay, resistance to or avoidance of timely compliance with the conditions of the self-bond, the applicant's permit, or both, and Department orders relating thereto.

(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—1396.19b).
 - (B) The Clean Streams Law (35 P. S. §§ 691.1—691.1001).
 - (C) The Air Pollution Control Act (35 P. S. §§ 4001—4015).
 - (D) The Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66).
 - (E) The Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).
 - (F) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).
 - (G) The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21).
 - (H) Regulations adopted by the EQB under the acts set forth in clauses (A)—(G).
 - (ii) The applicant immediately notifying the Department of a significant change in the management control or organization of the applicant.
 - (iii) The applicant immediately notifying the Department of a material adverse change to the financial condition of the applicant, that may affect eligibility to self-bond or diminish the value of the security interests pledged to secure the self-bond.
 - (iv) The applicant, during the period of the self-bond, applying for or consenting to the appointment of a receiver, conservator, trustee or liquidator of itself or its property, admitting in writing its inability to pay its debts as the debts mature or making a general assignment for the benefit of its creditors.
 - (v) During the period of the self-bond, a creditor of the applicant attaching or executing a judgment against the applicant so that the Department would have reasonable belief the prospect of the applicant having sufficient

assets to cover the full amount of the self-bond or to be able to perform under the self-bond is impaired.

(3) The self-bond shall become immediately due and payable upon default of one or more of the terms and conditions or the dissolution of a party to the self-bond. The self-bond shall provide for confession of judgment and confession of execution upon default of one or more of the terms and conditions or dissolution.

(1) The self-bond shall be executed by:

(1) The applicant, except as provided in paragraphs (2) and (3).

(2) If the applicant is a subsidiary corporation, the applicant's parent corporation shall be a party to the self-bond which shall establish the applicant and its parent corporation as co-indemnitors under the self-bond. Corporations applying for a self-bond, and parent and nonparent corporations guaranteeing an applicant's self-bond, shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of the authorization shall be submitted to the Department along with an affidavit certifying that the agreement is valid under all applicable Federal and State laws. In addition, the corporate guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the guarantee agreement. The parent corporation may cancel its obligations under the self-bond upon 120 days written notice to the Department, but the cancellation will not be effective until the self-bond is replaced with an alternate form of bonding authorized by this subchapter and approved by the Department.

(3) If the applicant is a partnership, joint venture or syndicate, each person with a beneficial interest in the same shall be a party to the self-bond and shall be established as a co-indemnitor under the self-bond.

(m) Each indemnitor under the self-bond shall be jointly and severally liable.

(n) Only security interests acceptable to the Department shall be used to secure the self-bond and include, but are not limited to, account security agreements, mortgages, industrial plant mortgages, pledges of stock and personal property liens. In accepting security interests, the Department will exercise the degree of judgment, skill, diligence and care under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with these matters, would use in the conduct of an enterprise of like character and with like aims. If the applicant is unable or fails to provide security interests acceptable to the Department, the applicant shall be ineligible to self-bond. The Department may accept a security interest in an applicant's parent corporation's assets.

(o) During the period of the self-bond and until released in writing by the Department, the parties to the self-bond who are indemnitors may not take action which would adversely affect the Commonwealth's rights, title or interest in the security interests pledged to secure the self-bond. The parties who are indemnitors shall immediately notify the Department of a sale, merger, acquisition, reor-

ganization, consolidation or other action which may so affect the pledged security interests. The self-bond shall contain provisions so that if the parties who are indemnitors take action which adversely affects the pledged security interests, the action shall constitute an event of default.

(p) In addition to the indemnification and security required in subsection (j), the Department may require a third-party guarantee of an applicant's self-bond. Third-party guarantors shall enter into a guaranty and suretyship agreement with the Department whereby the third-party guarantor guarantees and becomes surety for the performance of the parties who are indemnitors under the self-bond required by subsection (j).

(1) The guaranty and suretyship agreement shall be perfected under the applicable statutes of the Commonwealth and the United States at the time of execution with security interests so that the Commonwealth's interests as indemnitee are fully protected.

(2) Only security interests approved by the Department shall be used to satisfy the requirements of this subsection. The security instruments include, but are not limited to, surety mortgages, industrial plant mortgage and security agreements and security liens on personal property.

(q) When the Department determines that an event of default or forfeiture under the self-bond has occurred, the determination shall also constitute a determination of the applicant's inability to self-bond.

(r) The Department will upon request of the applicant, maintain the confidentiality of the applicant's financial information and the terms and conditions of the security interests unless the same are otherwise disclosed to governmental agencies or the public.

(s) Applications for a self-bond and each annual update of a self-bond shall be accompanied by a nonrefundable check in the amount of \$900 made payable to the "Commonwealth of Pennsylvania."

(t) Remedies provided or authorized by laws for violation of statutes, including the acts, this chapter, the terms and conditions of the permits and orders of the Department, are expressly preserved. Nothing in this subchapter may be construed as an exclusive remedy. No action taken under this subchapter waives or impairs another remedy provided by law.

Authority

The provisions of this § 86.159 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.159 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended May 11, 1990, effective upon publication of notice in the *Pennsylvania Bulletin* that the amendments have been approved by the OSM, 20 Pa.B. 2517; amended August 19, 1994, effective

August 20, 1994, 24 Pa.B. 4195; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (237101) to (237104) and (357493) to (357495).

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope); and 25 Pa. Code § 86.282 (relating to participation requirements).

§ 86.160. Combination of bonding instruments.

A permittee for a coal mining activities permit may post a combination of surety, collateral and self-bonds for the permit. A bond instrument shall be construed as part of the bond for the entire permit.

Source

The provisions of this § 86.160 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186. Immediately preceding text appears at serial pages (237107) to (237108).

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope); and 25 Pa. Code § 86.156 (relating to form of the bond).

§ 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.

Source

The provisions of this § 86.161 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (219170) and (206705).

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope); 25 Pa. Code § 86.156 (relating to form of the bond); 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund); 25 Pa. Code § 86.165 (relating to failure to maintain proper bond); and 25 Pa. Code § 86.166 (relating to replacement of bonds).

§ 86.162. Subsidence insurance in lieu of bond.

A permittee for a bituminous underground mine, may, in lieu of bond coverage for the risk of subsidence, purchase and maintain in force subsidence insurance as provided by the act of August 23, 1961 (P. L. 1068, No. 484) (52 P. S. §§ 3201—3226), entitled, “An Act to provide for the creation and administration of a Coal and Clay Subsidence Insurance Fund within the Department of Environmental Resources for the insurance of compensation for damages to subscribers thereto...”, for the benefit of all affected surface property owners.

Source

The provisions of this § 86.162 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope); 25 Pa. Code § 86.156 (relating to form of the bond); and 25 Pa. Code § 86.165 (relating to failure to maintain proper bond).

§ 86.162a. Anthracite Deep Mine Operators Emergency Bond Fund.

(a) For permitted anthracite deep mine operators required to post a bond under § 86.143 (relating to requirements to file a bond), and who can demonstrate to the Department that they are unable to post a conventional surety or collateral bond as described in § 86.156 (relating to the form of the bond), and do not meet the requirements of § 86.161 (relating to phased deposits of collateral), may apply to the Department for an Anthracite Deep Mine Emergency Bond Loan. The purpose of this loan is to guarantee a collateral bond posted by the operator.

(b) Permitted anthracite deep mine operators who wish to use the anthracite deep mine emergency bond loan program shall demonstrate one of the following:

(1) The operator has been rejected by three separate bond companies licensed to do business in this Commonwealth and the grounds for rejection.

(2) The operator has had bonds canceled due to the insolvency or bankruptcy of an insurance company or surety company licensed to do business in this Commonwealth.

(c) The Department and the qualified operator shall enter into a written loan agreement, on forms provided by the Department, which shall contain at a minimum, the following provisions:

(1) The operator will be required to make a downpayment of at least \$1,000.

(2) The operator shall be responsible for submitting to the Department a payment of 25¢ for each ton of coal sold within 45 days following the sale of that coal.

(3) The operator shall continue to make payments to the Department until the loan has been paid in full or the operator submits to the Department an adequate replacement bond, or the operator has satisfied the reclamation obligation of the permit.

(4) Failure to comply with the applicable statutes, rules and regulations or conditions of the permit may be grounds for the Department to require acceleration of the payments from the operator.

(d) The Department will deposit appropriations and moneys collected under this section into the Anthracite Deep Mine Emergency Bond Loan Fund.

(e) The Department may make loans as money becomes available in the fund.

(f) The fees paid by an operator may be used only to secure the reclamation obligation of that operator.

(g) When the operator has satisfied the reclamation obligation, the Department will release to the operator the fees collected, in whole or in part, according to the bond release schedule provided for by §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond).

(h) The Department may require the operator throughout the life of the permit to demonstrate that the operator has made attempts to obtain a conventional bond.

Source

The provisions of this § 86.162a adopted June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075.

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope); and 25 Pa. Code § 86.165 (relating to failure to maintain proper bond).

§ 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 reasonable margin of safety to protect the account from risk of forfeiture as 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 Recla-

mation 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 remining 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 made timely payments for the remining financial guarantee program or for Land Reclamation Financial Guarantees, an operator will be eligible under this subsection if it has not been cited through a notice of violation under § 86.165(a) (relating to failure to maintain proper bond) within the previous 3 years prior to the request for a land reclamation financial guarantee.

(4) For operators that have not previously obtained a remining 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 provided by the Department in writing.
 - (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 remaining 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 polluttional 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).

Authority

The provisions of this § 86.162b issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.162b adopted August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904.

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope); 25 Pa. Code § 86.165 (relating to failure to maintain proper bond); and 25 Pa. Code § 86.187 (relating to use of money).

§ 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 activities 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.

Authority

The provisions of this § 86.162c issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.162c adopted August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904.

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope); and 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees).

§ 86.163. [Reserved].

Source

The provisions of this § 86.163 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.164. [Reserved].**Source**

The provisions of this § 86.164 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.165. Failure to maintain proper bond.

(a) If a permittee fails to promptly post additional bond required under § 86.152 (relating to bond adjustments), or fails to make timely deposits of bond according to the schedule submitted under § 86.161 (relating to phased deposits of collateral), or fails to make payments under § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund) or fails to maintain subsidence insurance provided in § 86.162 (relating to subsidence insurance in lieu of bond), or fails to make annual payments for financial guarantees as required under § 86.283(a) (relating to procedures), or fails to make annual payments for Land Reclamation Financial Guarantees as required under § 86.162b (relating to Land Reclamation Financial Guarantees), the Department will issue a notice of violation to the permittee, and if the permittee fails to correct the violation within 15 days of the notice, the Department will issue a cessation order for the permittee's permit areas and thereafter take actions that may be appropriate.

(b) The permittee shall maintain bonds in an amount and with sufficient guarantee as required by this chapter. If a surety company who had provided surety bonds, or a bank who had provided letters of credit or certificates of deposit for a permittee, enters into bankruptcy or liquidation, or has its license suspended or revoked or for another reason indicates an inability or unwillingness to provide an adequate financial guarantee of the obligations under the bond or instrument, the Department will issue a notice of violation to the permittee requiring that affected permits be rebonded according to the requirements of this subchapter and, if the permittee fails to correct the violation within 90 days of the notice, the Department will issue a cessation order for the permittee's permit areas and thereafter take appropriate action.

Authority

The provisions of this § 86.165 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.165 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (357499) to (357500).

Notes of Decisions

When the Department of Environmental Resources notifies a permittee to rebond based on a liquidation of the original surety company, the permittee must exhaust their administrative remedies under 71 P. S. § 510-21 before the Environmental Hearing Board. *Benjamin Coal Co. v. Department of Environmental Resources*, 513 A.2d 1120 (Pa. Cmwlth. 1986).

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope).

§ 86.166. Replacement of bonds.

(a) The Department may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability which has accrued against the permittee on the permit area is transferred to the replacement bonds and the replacement bonds are equivalent.

(b) The Department will not release existing bonds until the permittee has submitted and the Department has approved acceptable replacement bonds. A replacement of bonds pursuant to this section does not constitute a release of bond under §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond).

(c) The Department will not allow permittees to replace existing surety or collateral bonds with phased deposits of collateral bonds unless the first payment is equal to the bond being replaced and meets the requirements of § 86.161 (relating to phased deposits of collateral).

Source

The provisions of this § 86.166 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended May 11, 1990, effective upon publication of notice in the *Pennsylvania Bulletin* that the amendments have been approved by the OSM, 20 Pa.B. 2517; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial page (148559).

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope).

§ 86.167. Transfer of permits.

Before a permit is transferred as provided in Subchapter B (relating to permits), the successor operator shall post a new bond in an appropriate amount determined by the Department under this subchapter but in no case less than the amount of bond on deposit with the Department, in the successor operator's name, assuming all accrued liability for the permit area. The successor operator may use negotiable securities of the former permittee as the bond guarantee if they obtain an assignment of residual right, title and interest to the negotiable securities from the former permittee and provide the Department with proof of the assignment.

Source

The provisions of this § 86.167 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope).

§ 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.

Source

The provisions of this § 86.168 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (219171) to (219172).

Notes of Decisions*Effect of Regulation*

The Department's regulations impose a duty upon a permittee to obtain liability insurance that complies with the regulations. Although the regulations require all policies to contain a rider requiring the insurer to provide the Department with prior notice of intended termination of coverage, in the absence of a rider, there is no notice of requirement imposed upon the insurer. This is consistent with the legislature's objective of ensuring that mining operations are conducted with the type of insurance coverage deemed necessary. If a policy does not contain the requisite notice rider, the permit should not issue. *Acceptance Ins. Co. v. Sloan*, 263 F.3d 278 (3rd Cir. 2001).

Cross References

This section cited in 25 Pa. Code § 86.55 (relating to permit renewals; general requirements); 25 Pa. Code § 86.67 (relating to personal injury and property damage insurance information); 25 Pa. Code § 86.144 (relating to requirement to file a certification of liability insurance); and 25 Pa. Code § 86.155 (relating to scope).

RELEASE OF BONDS**§ 86.170. Scope.**

This section and §§ 86.171 and 86.172 (relating to procedures for seeking release of bond; and criteria for release of bond) set forth the procedures and criteria for release of bonds for mining and reclamation operations.

Source

The provisions of this § 86.170 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.152 (relating to adjustments); 25 Pa. Code § 86.159 (relating to self-bonding); 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.166 (relating to replacement of bonds); 25 Pa. Code § 86.182 (relating to procedures); 25 Pa. Code § 86.283 (relating to procedures); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.294 (relating to uses and limitations); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

§ 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:

(1) Applications may only be reviewed at times or seasons that allow the Department to properly evaluate the reclamation operations alleged to have been completed.

(2) The application shall include copies of letters sent to surface owners, adjoining property owners, local government bodies, planning agencies, and sewage and water treatment facilities or water authorities or companies in the locality of the permit area, notifying them of the permittee's intention to seek release of bond. These letters shall be sent before the permittee files the application for release.

- (3) Within 60 days after filing the application for release, the permittee shall submit proof of publication of the advertisement required by subsection (b). The proof of publication shall be considered part of the bond release application. If the proof of publication is not received within 60 days after filing the application for release of bond, it will be considered incomplete and the Department may return the application with no further action.
- (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:
- (1) Be placed in the newspaper at least once a week for 4 consecutive weeks.
 - (2) Show the name of the permittee, including the number and date of issuance or renewal of the permit.
 - (3) Show the precise location and the number of acres of the lands subject to the application.
 - (4) Show the total amount of bond in effect for the permit area and the amount for which release is sought.
 - (5) Summarize the reclamation, restoration or abatement work done, including, but not limited to, backstowing or mine sealing, if applicable, and give the dates of completion of the work.
 - (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.
- (c) Written objections to the proposed bond release and requests for an informal conference may be filed with the Department by an affected person within 30 days following the last advertisement of the filing of the application. For the purpose of this section, an affected person is one or more of the following:
- (1) A person with a valid legal interest which might be adversely affected by bond release.
 - (2) The responsible officer or head of a Federal, State or local government agency which meets one or more of the following:
 - (i) Has jurisdiction by law or special expertise with respect to an environmental, social or economic impact involved.
 - (ii) Is authorized to develop and enforce environmental standards with respect to mining activities.
 - (d) The Department will inspect and evaluate the reclamation work involved within 30 days after receiving a completed application for bond release, or as soon thereafter as weather conditions permit. The surface owner, agent or lessee shall be given notice of the inspection and may participate with the Department in making the bond release inspection.
 - (e) The Department will schedule a conference if written objections are filed and a conference is requested. The conference shall be held in the locality of the permit area for which bond release is sought.

(1) Notice of an informal conference shall be published in a newspaper of general circulation in the locality of the conference, at least 2 weeks before the date of the conference.

(2) The informal conference shall be held within 30 days from the date of request for conference, except that requests for an informal conference that are filed prior to the 10th day following the final newspaper advertisement shall have a constructive date of filing as the 10th day following the final newspaper advertisement.

(3) An electronic or stenographic record may be made of the conference and the record maintained for access by the parties, until final release of the bond, if requested in advance by one or more of the parties of the conference.

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

(1) The Department will consider during inspection, evaluation, hearing and decision:

(i) Whether the permittee has met the criteria for release of the bond under § 86.172.

(ii) Whether the permittee has satisfactorily completed the requirements of the reclamation plan, or relevant portion thereof, and complied with the requirements of the acts, regulations thereunder and the conditions of the permit, and the degree of difficulty in completing remaining reclamation, restoration or abatement work.

(iii) Whether pollution of surface and subsurface water is occurring, the probability of future pollution or the continuance of present pollution, and the estimated cost of abating pollution.

(2) If no informal conference has been held under subsection (e), the Department will notify the permittee and other interested parties, and the municipality in which the mining activity is located, in writing of its decision to release or not to release all or part of the bond within 60 days of the date of filing of the application.

(3) If there has been an informal conference held under subsection (e), the notification of the decision shall be made to the permittee, and other interested parties, and the municipality in which the mining activity is located or the nearest town, city or other municipality, within 30 days after conclusion of the conference.

(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).

Source

The provisions of this § 86.171 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended January 4, 1985, effective immediately upon the approval by the Secretary of the United States Department of the Interior and publication thereof in the *Pennsylvania Bulletin*, 15 Pa.B. 13; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186. Immediately preceding text appears at serial pages (237114) to (237118).

Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.152 (relating to adjustments); 25 Pa. Code § 86.159 (relating to self-bonding); 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.166 (relating to replacement of bonds); 25 Pa. Code § 86.170 (relating to scope); 25 Pa. Code § 86.175 (relating to schedule for release of bond); 25 Pa. Code § 86.182 (relating to procedures); 25 Pa. Code § 86.283 (relating to procedures); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.294 (relating to uses and limitations); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

§ 86.172. Criteria for release of bond.

(a) The Department may release all or part of a bond under § 86.175 (relating to schedule for release of bond) if it is satisfied that the entire permit area or portion of a permit area has been reclaimed to the standards in § 86.174 (relating to standards for release of bonds).

(b) The release or adjustment of a bond or portion of a bond does not relieve the operator of further reclamation liability on the permit area.

(c) The Department will not release or adjust bonds if the release or adjustment would reduce the amount of bond to less than that necessary for the Department to complete the approved reclamation plan; achieve compliance with requirements of the acts, regulations thereunder and the conditions of the permits; and abate significant environmental harm to air, water or land resources or danger to the public health and safety which may occur prior to the release of bonds from the permit area. When the permit includes an alternative postmining land use plan approval under § 87.159, § 88.133, § 88.221, § 88.334, § 88.492, § 89.88 or § 90.166, the Department will retain sufficient bond amounts for the Department to complete additional work which would be required to achieve compliance with the general standards for revegetation in § 87.155, § 88.129, § 88.217, § 88.330, § 88.492, § 89.86 or § 90.159, if the permittee fails to implement the approved alternative postmining land use plan.

Source

The provisions of this § 86.172 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended January 4, 1985, effective immediately upon the approval by the Secretary of the United States Department of the Interior and publication thereof in the *Pennsylvania Bulletin*, 15 Pa.B. 13;

amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148564) to (148565).

Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.152 (relating to adjustments); 25 Pa. Code § 86.159 (relating to self-bonding); 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.166 (relating to replacement of bonds); 25 Pa. Code § 86.170 (relating to scope); 25 Pa. Code § 86.171 (relating to procedures for seeking release of bond); 25 Pa. Code § 86.175 (relating to schedule for release of bond); 25 Pa. Code § 86.182 (relating to procedures); 25 Pa. Code § 86.283 (relating to procedures); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.294 (relating to uses and limitations); 25 Pa. Code § 87.208 (relating to request for bond release); 25 Pa. Code § 88.508 (relating to request for bond release); 25 Pa. Code § 90.308 (relating to request for bond release); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

§ 86.173. [Reserved].

Source

The provisions of this § 86.173 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; reserved June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial page (148565).

§ 86.174. Standards for release of bonds.

(a) When the entire permit area or a portion of a permit area has been back-filled 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 successfully established in accordance with the approved reclamation plan.

(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 post-mining 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, State 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.

Source

The provisions of this § 86.174 adopted June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227; corrected January 16, 2004, effective May 9, 1998, 34 Pa.B. 388. Immediately preceding text appears at serial pages (281193) to (281194).

Cross References

This section cited in 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.162c (relating to Bioenergy Crop Bonding); 25 Pa. Code § 86.172 (relating to criteria for release of bond); 25 Pa. Code § 86.175 (relating to schedule for release of bond); 25 Pa. Code § 86.264 (relating to forfeiture); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.294 (relating to uses and limitations); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

§ 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.

Authority

The provisions of this § 86.175 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.175 adopted June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (228232) to (228233).

Cross References

This section cited in 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.172 (relating to criteria for release of bond); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.294 (relating to uses and limitations); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

BOND FORFEITURE**§ 86.180. Scope.**

This section and §§ 86.181, 86.182 and 86.185 (relating to general; procedures; and preservation of remedies) set forth the procedures and criteria for the forfeiture of bond as a result of the permittee's failure to meet the conditions upon the bond.

Source

The provisions of this § 86.180 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); and 25 Pa. Code § 86.188 (relating to evaluation of bond forfeiture sites).

§ 86.181. General.

(a) The Department will forfeit the bonds for a permit when it determines that:

- (1) The permittee has violated and continues to violate any of the terms or conditions of the bond.
- (2) The permittee has failed and continues to fail to conduct the mining or reclamation operations in accordance with the law, the regulations adopted thereunder or the conditions of the permit.
- (3) The permittee has abandoned the permit area.
- (4) The permits for the area under the bond have been revoked, and the permittee has failed to complete the reclamation, abatement and revegetation required by the law, the regulations adopted thereunder and the conditions of the permit.
- (5) The permittee has failed to comply with a compliance schedule in an adjudicated proceeding, consent order or agreement approved by the Department.

(6) The permittee has become insolvent, failed in business, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by the court; or a creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials or facilities at the permit area, or on the collateral pledged to the Department; and the permittee cannot demonstrate or prove the ability to continue to operate in compliance with the acts, the regulations adopted thereunder and the conditions of the permit.

Source

The provisions of this § 86.181 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.180 (relating to scope); 25 Pa. Code § 86.188 (relating to evaluation of bond forfeiture sites); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); 25 Pa. Code § 86.284 (relating to forfeiture); and 25 Pa. Code § 86.295 (relating to forfeiture).

§ 86.182. Procedures.

(a) The Department will send written notification by mail to the permittee, and the surety on the bond of the Department's intent to forfeit the bond and the reasons for the forfeiture.

(b) 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.

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

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(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 Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.18(a)).

Authority

The provisions of this § 86.182 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.182 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 641; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (313523) to (313524) and (336565).

Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.180 (relating to scope); and 25 Pa. Code § 86.188 (relating to evaluation of bond facilities sites).

§ 86.183. [Reserved].**Source**

The provisions of this § 86.183 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.184. [Reserved].**Source**

The provisions of this § 86.184 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 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—1396.19b), 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 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.

Authority

The provisions of this § 86.185 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.185 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (336565) to (336566).

Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.180 (relating to scope); and 25 Pa. Code § 86.188 (relating to evaluation of bond forfeiture sites).

§ 86.186. Scope.

Sections 86.187—86.190 set forth the procedures and criteria for the use of money in the Surface Mining Conservation and Reclamation Fund. For the purposes of these sections, the term “Fund” means the Surface Mining Conservation and Reclamation Fund, as defined in section 18(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.18(a)).

Authority

The provisions of this § 86.186 issued under section 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b(a)).

Source

The provisions of this § 86.186 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 641.

Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); and 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds).

§ 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—1396.19b), 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 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 the fees collected for Land Reclamation Financial Guarantees implemented by § 86.162b (relating to Land Reclamation Financial Guarantees) needed to facilitate full-cost bonding in accordance with applicable law.

(iv) The moneys deposited in the Reclamation Fee O&M Trust Account will be used to pay 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. For purposes of this section, operation and maintenance includes recapitalization costs. Moneys in the Reclamation Fee O&M Trust Account will be held by the Commonwealth in trust for the benefit of all the people to protect their right to pure water and the preservation of the values of the environment. The State Treasurer will manage the investment of the funds in the Reclamation Fee O&M Trust Account with the advice of the Department.

(2) Moneys received from the forfeiture of bonds will be used only to reclaim land and restore water supplies affected by the surface mining operations upon which liability was charged on the bond, except as otherwise provided in this section and in § 86.190 (relating to sites where reclamation is unreasonable, unnecessary or impossible; excess funds). Interest accrued on these moneys will be used only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds, as a supplement to bond forfeiture funds.

(i) Moneys received from bonds forfeited on ABS Legacy Sites, and the interest accrued on the moneys, will be deposited into a separate subaccount in the Fund called the ABS Legacy Sites Trust Account. The Department may, upon review and recommendation of the Mining and Reclamation Advisory Board, transfer excess moneys from the Reclamation Fee O&M Trust Account into the ABS Legacy Sites Trust Account. The Department may deposit other moneys into the ABS Legacy Sites Trust Account, including appropriations, donations, or interest earned on other moneys in the fund.

(ii) Moneys in the ABS Legacy Sites Trust Account, including the interest accrued by the trust account, will be used to pay the 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. Moneys in the ABS Legacy Sites Trust Account will be held by the Commonwealth in trust for the benefit of all the people to protect their right to pure water and the preservation of the values of the environment. The State Treasurer will manage the investment of the funds in the ABS Legacy Sites Trust Account with the advice of the Department.

(iii) The Department may not make disbursements from the ABS Legacy Sites Trust Account until that trust account becomes actuarially sound. The ABS Legacy Sites Trust Account will become actuarially sound when the following conditions are met:

(A) Financial guarantees sufficient to cover reclamation costs, including the costs to treat each discharge in perpetuity, have been approved by the Department for all mine sites permitted under the Primacy Alternate Bonding System.

(B) Construction of the necessary discharge treatment facilities has been completed at the ABS Legacy Sites.

(C) The ABS Legacy Sites Trust Account, combined with the Reclamation Fee O&M Trust Account, contains funds which generate interest at a rate and in an amount sufficient to pay the annual operation and maintenance costs for treating postmining pollutional discharges at the ABS Legacy Sites.

(iv) When the ABS Legacy Sites Trust Account becomes actuarially sound the Department will transfer the moneys in the Reclamation Fee O&M Trust Account into the ABS Legacy Sites Trust Account and the Reclamation Fee O&M Trust Account will terminate. At that time, the reclamation fee or the alternative permanent funding source, whichever is in place, will cease and the deposit of civil penalty moneys under paragraph (1)(i) will also cease.

(3) Other moneys deposited in the Fund may be used to reclaim land affected by surface mining operations and for other conservation purposes consistent with the purposes of the Fund, including restoration of water supplies affected by surface mining operations. The Department may also use the money in the Fund, other than the monies described in paragraphs (1) and (2), for necessary administrative expenses, including the purchase, lease or rental of vehicles, equipment, office space, laboratory supplies or other supplies, materials or services and personnel and overhead expenses.

(b) The Department, after notifying and consulting with the landowner, will expend the funds to reclaim the land affected by the operation in a manner which completes the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site or an alternative reclamation plan completed under subsection (c). The Department will expend the funds to reclaim the land affected by the operation in a manner which completes an alternative reclamation plan in compliance with subsection (c) if either of the following apply:

(1) After considering the engineering cost estimate for completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site, the Department determines that the plan may be amended to decrease the cost of reclaiming the bond forfeiture site.

(2) The Department determines that completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site is unreasonable, unnecessary or physically impossible.

(c) If the Department determines under subsection (b) that an alternative to the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site should be implemented, the Department will prepare and implement a plan that complies with the applicable performance standards in accordance with § 86.189(c)(2), (3) or (4) (relating to reclamation of bond forfeiture sites), whichever is appropriate, and that ensures that all disturbed areas are restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses.

Authority

The provisions of this § 86.187 issued under section 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b(a)); amended under sections 4(a), (d) and (d.2) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a), (d) and (d.2) and 1396.4b); section 7 of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7); section 5 of The Clean Streams Law (35 P. S. § 691.5); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and PA. CONST. ART. 1, § 27.

Source

The provisions of this § 86.187 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 641; amended August 29, 2008, effective August 30, 2008, 38 Pa.B. 4742; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (336566) to (336569).

Cross References

This section cited in 25 Pa. Code § 86.17 (relating to permit and reclamation fees); 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.186 (relating to scope); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.291 (relating to financial assurance for bond credit—general); and 25 Pa. Code § 86.295 (relating to forfeiture).

§ 86.188. Evaluation of bond forfeiture sites.

(a) After forfeiture of bond under §§ 86.180—86.182 and 86.185 (relating to scope; general; procedures; and preservation of remedies) has become final and the bond proceeds have been collected, the Department will evaluate the bond forfeiture site for reclamation purposes. The evaluation will consist of an onsite inspection by the Department and solicitation of information regarding the site and reclamation intention of the landowner and others determined by the Department to have information on, or an interest in, the site. The Department will provide to the landowner of the site, upon request, a copy of the completed site evaluation report.

(b) The Department will prioritize a bond forfeiture site according to the following categories, which are listed in decreasing order of severity of condition:

- (1) Sites which present a significant and continuing hazard to human life by either their proximity to or impact on human populations.
- (2) Sites which present a significant threat to health or safety, including actual or threatened loss of public or private water supplies.
- (3) Sites which present a significant risk of damage to public or private property.
- (4) Sites which are causing environmental degradation or pollution affecting the productive use of public or private land, or the reclamation of which would create significant environmental benefits.

(c) The Department, in selecting sites for reclamation under § 86.189(b)(1) (relating to reclamation of bond forfeiture sites), will consider the following factors:

- (1) The severity of the conditions at the site.
- (2) The potential for conditions at the site to deteriorate, including environmental quality, thus increasing the hazard to life, health, safety or property.

- (3) The willingness of the landowner, or other person, to undertake the reclamation of the site under § 86.189(b)(2), (3) or (4), as evidenced by previous reclamation activity performed on the site or other indications of willingness to reclaim by the landowner or other person.
 - (4) The ability of the Department to gain adequate access to the site.
 - (5) The potential for remining of all or a portion of the site.
 - (6) The lack of participation of the landowner in the surface mining activities which created the conditions at the site.
 - (7) The potential for agricultural use or reforestation of the site.
- (d) The Department will compile a list of sites for which forfeiture of bonds under §§ 86.180—86.182 and 86.185 has become final and bond proceeds have been collected. The list will be updated quarterly and will be available for review in the Department's district and central offices. The Department will publish quarterly in the *Pennsylvania Bulletin* notice of the availability of this list for review.

Authority

The provisions of this § 86.188 issued under section 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b(a)); amended under sections 4(d) and (d.2) and 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(d) and (d.2) and 1396.4b(a)); section 7 of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7); section 5 of The Clean Streams Law (35 P. S. § 691.5); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and PA. CONST. ART. 1, § 27.

Source

The provisions of this § 86.188 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 641; amended August 29, 2008, effective August 30, 2008, 38 Pa.B. 4742. Immediately preceding text appears at serial pages (313528) to (313529).

Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.186 (relating to scope); 25 Pa. Code § 86.189 (relating to reclamation of bond forfeiture sites); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.291 (relating to financial assurance for bond credit—general); and 25 Pa. Code § 86.295 (relating to forfeiture).

§ 86.189. Reclamation of bond forfeiture sites.

(a) The Department will first provide for the reclamation of bond forfeiture sites where permits were issued under the Federally-approved coal surface mining regulatory program which took effect July 31, 1982, and where bonds under the permits were subsequently forfeited by the Department. After the Department provides for reclamation of these sites, the Department will provide for the reclamation of other bond forfeiture sites.

(b) The Department will provide for reclamation of bond forfeiture sites through one of the following:

- (1) The Department may provide for reclamation to be conducted under the public bidding and contracting requirements of the Commonwealth under the site evaluation procedure in § 86.188 (relating to evaluation of bond forfeiture

sites). Under this approach, the Department will advertise for bids for reclamation of the bond forfeiture site in a newspaper of general circulation in the locality in which the work is to take place. The advertisement will appear once a week for a minimum of 2-consecutive weeks. In advertising for bids, the Department may consider various construction methods for bidding, including the rental of equipment with equipment operators to be supervised by the Department during completion of the reclamation plan.

(2) Based on an engineering cost estimate for completing the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site, the Department may negotiate and enter into a contract with the landowner of a bond forfeiture site or another licensed mine operator to complete the reclamation of a bond forfeiture site advertised for bids under paragraph (1). The Department will give public notice of the intent to reclaim sites selected by the Department to be advertised for public bids under paragraph (1) in a newspaper of general circulation in the locality in which the work is to take place. The public notice will appear once a week for a minimum of 2 consecutive weeks and may be combined with the notice in paragraph (1). Payments to a person to whom the Department has granted a contract under this paragraph will be made to the extent of the appropriate compensation provisions according to a payment schedule to be established by the Department. The final payment will be made when the Department is satisfied that the person has completed reclamation of the site in accordance with the approved reclamation plan and as specified in the contract.

(i) The Department will compensate landowners of bond forfeiture sites at a rate equal to the lesser of one of the following:

(A) The Department's engineering cost estimate for the site.

(B) The prevailing bond rate.

(ii) The Department will compensate licensed mine operators at a rate equal to the lesser of one of the following:

(A) The Department's engineering cost estimate for the site.

(B) The prevailing bond rate.

(3) When a licensed mine operator is granted a permit or has filed a permit application on property contiguous to a property on which the Department has forfeited bonds for failure to complete the reclamation plan, the permittee shall be provided the opportunity to make a proposal to complete the reclamation plan of the bond forfeiture site developed under § 86.187 (relating to use of money).

(i) The proposal shall contain estimated costs and the necessary information upon which the Department can determine the cost effectiveness of the proposal. Upon receipt of the proposal, the Department may negotiate and enter into a contract with the permittee to complete the reclamation plan. A determination whether to negotiate will be made by the Department within 30 days of receipt of a complete proposal. Contract negotiations will begin within 30 days of the determination to negotiate.

(ii) Payments to a person with whom the Department has entered into a contract under this paragraph will be made to the extent of the appropriate

compensation provisions according to a payment schedule to be established by the Department, and the final payment will be made when the Department is satisfied that the person has completed reclamation of the site in accordance with the approved reclamation plan and as specified in the contract. The Department will compensate licensed mine operators at a rate equal to the lesser of one of the following:

- (A) The Department's engineering cost estimate for the site.
- (B) The prevailing bond rate.

(4) Under cooperative agreements among the Department, the State Conservation Commission and the County Soil Conservation District in which the bond forfeiture site is located, the District may enter into a contract with the landowner of the bond forfeiture site to reclaim the site.

(i) The landowners of bond forfeiture sites will be compensated at a rate equal to the lesser of one of the following:

- (A) The Department's engineering cost estimate for the site.
- (B) The amount of the forfeited and collected bond.

(ii) The District may also compensate landowners for the reasonable cost of insurance required for landowner reclamation and the design and engineering costs incurred by the landowner in the incidental modification of the reclamation plan, subject to approval by the Department.

(c) The Department will not enter into a reclamation contract under this section with a person unless the person demonstrates the following to the satisfaction of the Department:

(1) Neither the person nor a related party has been convicted of a misdemeanor within the last 3 years for violating The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66), the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) or the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).

(2) For bond forfeiture sites for which permits were issued under the Federally-approved surface coal mining regulatory program which took effect July 31, 1982, the proposed reclamation plan will result in reclamation of the site in a manner consistent with The Clean Streams Law and the regulations promulgated thereunder for active surface coal mining operations, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations promulgated thereunder for active surface coal mining operations.

(3) For bond forfeiture sites for which the bonds were declared forfeit on or after May 3, 1978, and for which permits were not issued under the Federally-approved surface coal mining regulatory program which took effect July 31, 1982, the proposed reclamation plan will result in reclamation of the site in a manner that is consistent with the interim Federal program regulations first published at 42 FR 62639 (December 13, 1977), as well as The Clean Streams Law and the regulations promulgated thereunder in effect at the time

the bonds were declared forfeit, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations promulgated thereunder in effect at the time the bonds were declared forfeit. If the Department's permit files for the site clearly show that surface mining activities on the site occurred before August 3, 1977, the proposed reclamation plan may be consistent with paragraph (4).

(4) For bond forfeiture sites for which the bonds were declared forfeit before May 3, 1978, the proposed reclamation plan will result in reclamation of the site in a manner that is consistent with The Clean Streams Law and the regulations promulgated thereunder that were applicable to active surface coal mining operations at the time the bonds were declared forfeit, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations that were promulgated thereunder at the time the bonds were declared forfeit.

(5) Except in the case of a landowner of a bond forfeiture site under subsection (b)(2) and (4), the person shall demonstrate the following:

(6) Except in the case of a landowner of a bond forfeiture site under subsection (b)(2) and (4) the person shall demonstrate the following:

(i) Neither the person nor a related party has a legal obligation to correct the present conditions at the site.

(ii) The person meets the requirements of § 86.37(a)(8)—(11) (relating to criteria for permit approval or denial).

(d) Prior to advertising a project for bids under subsection (b)(1) or to entering into negotiations with the landowner or licensed mine operator under subsection (b)(2), or upon receipt of an unsolicited proposed contract from a licensed mine operator under subsection (b)(3), the Department will publish notice in the *Pennsylvania Bulletin*, and notify the landowners of the bond forfeiture site proposed for reclamation, of the location of the project and a brief summary of work to be done.

(e) Upon awarding a reclamation contract under this section, the Department will notify the landowners of the bond forfeiture site proposed for reclamation of the name of the contract recipient, the location of the project, a summary of work to be done and the cost of the work and will publish a notice in the *Pennsylvania Bulletin* annually of reclamation contracts awarded under this section.

Authority

The provisions of this § 86.189 issued under section 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b(a)); amended under sections 4(d) and (d.2) and 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(d) and (d.2) and 1396.4b(a)); section 7 of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7); section 5 of The Clean Streams Law (35 P. S. § 691.5); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and PA. CONST. ART. 1, § 27.

Source

The provisions of this § 86.189 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 641; amended August 29, 2008, effective August 30, 2008, 38 Pa.B. 4742. Immediately preceding text appears at serial pages (313529) to (313533).

Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.186 (relating to scope); 25 Pa. Code § 86.187 (relating to use of money); 25 Pa. Code § 86.188 (relating to evaluation of bond forfeiture sites); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.291 (relating to financial assurance for bond credit—general); and 25 Pa. Code § 86.295 (relating to forfeiture).

§ 86.190. Sites where reclamation is unreasonable, unnecessary or impossible; excess funds.

(a) If the Department determines in the evaluation of a bond forfeiture site that completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site or an alternative reclamation plan is unreasonable, unnecessary or physically impossible, the bond amount will be made available for expenditure from the Fund only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds. The reasons justifying this determination include the following:

(1) The site has been repermited and rebonded for mining, and reclamation of the site is a condition of the permit.

(2) The site has been otherwise reclaimed.

(b) Before a final determination under subsection (a), the Department will send written notice to the landowner of the Department's intention to remove restrictions on the expenditure of the forfeited bond amount.

(c) If the Department determines that the funds received from bonds covering the bond forfeiture site exceed the amount which is required to reclaim the bond forfeiture site, the excess funds will be made available for expenditure from the fund only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds.

Authority

The provisions of this § 86.190 issued under section 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b(a)); amended under sections 4(d) and (d.2) and 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(d) and (d.2) and 1396.4b(a)); section 7 of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7); section 5 of The Clean Streams Law (35 P. S. § 691.5); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and PA. CONST. ART. 1, § 27.

Source

The provisions of this § 86.190 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 641; amended August 29, 2008, effective August 30, 2008, 38 Pa.B. 4742. Immediately preceding text appears at serial page (313533).

Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.186 (relating to scope); 25 Pa. Code § 86.187 (relating to use of money); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); 25 Pa. Code § 86.284 (relating to forfeiture); and 25 Pa. Code § 86.295 (relating to forfeiture).

Subchapter G. CIVIL PENALTIES FOR COAL MINING ACTIVITIES**GENERAL PROVISIONS**

- Sec.
86.191. Applicability.
86.192. Determination of assessments.
86.193. Assessment of penalty.
86.194. System for assessment of penalties.
86.195. Penalties against corporate officers.

PROCEDURES

- 86.201. Procedures for assessment of civil penalties.
86.202. Final action.
86.203. Final assessment and payment of penalty.

Cross References

This subchapter cited in 25 Pa. Code § 86.136 (relating to coal exploration compliance duties).

GENERAL PROVISIONS**§ 86.191. Applicability.**

This subchapter is applicable to assessments of civil penalties under:

- (1) Section 11 of the Coal Refuse Disposal Control Act (52 P. S. § 30.61).
- (2) Section 605(b) of The Clean Streams Law (35 P. S. § 691.605).
- (3) Section 18.4 of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.18d).
- (4) Section 17(f) and (g) of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.17(f) and (g)).

Source

The provisions of this § 86.191 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075. Immediately preceding text appears at serial page (158799).

Cross References

This section cited in 25 Pa. Code § 86.192 (relating to determination of assessments).

§ 86.192. Determination of assessments.

The Department will review each violation which is or may be subject to imposition of a civil penalty under the applicable provisions of law in § 86.191 (relating to applicability). The purpose of this review will be to determine whether a civil penalty will be assessed, the amount of the penalty, and whether

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a separate penalty will be assessed for each day of a continuing violation. The Department may review violations to determine whether assessment of penalties against individual corporate officers or officials of other entities is appropriate.

Source

The provisions of this § 86.192 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial page (148580).

§ 86.193. Assessment of penalty.

(a) The Department will assess a civil penalty for each violation which is included as a basis for a cessation order.

(b) The Department will assess a civil penalty for each violation if the violation is assessable in an amount of \$1,100 or more under the system for assessment described in § 86.194 (relating to system for assessment of penalties).

(c) The Department may assess a penalty for each violation which is assessable in an amount less than \$1,100 under the system for assessment described in § 86.194.

Authority

The provisions of this § 86.193 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.193 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186. Immediately preceding text appears at serial pages (237134) to (237135).

Notes of Decisions

Although the provisions dealing with penalties for mining activities on an unpermitted area had not been enacted at the time this case arose, the Board found that a \$5000 penalty, using internal guidelines, for mining three acres of unpermitted land was reasonable. *Western Hickory Coal Co. v. Department of Environmental Resources*, 485 A.2d 877 (Pa. Cmwlth. 1984).

Cross References

This section cited in 25 Pa. Code § 86.194 (relating to system for assessment of penalties).

§ 86.194. System for assessment of penalties.

(a) The Department and, in event of appeal, the EHB, will use the system described in this section to determine the amount of the penalty and whether a mandatory penalty will be assessed as provided in § 86.193(b) (relating to assessment of penalty). Unless otherwise indicated in this section, the penalty may be set at any amount from zero through the maximum amount specified in this section.

(b) Civil penalties will be assessed as follows:

(1) *Seriousness.* Up to \$3,000 will be assessed based on the seriousness of the violation, including:

- (i) Damage or injury to the lands or to the waters of the Commonwealth or their uses.
- (ii) The cost of restoration.
- (iii) A hazard to the health or safety of the public.
- (iv) Property damage.
- (v) The interference with a person's right to the comfortable enjoyment of life or property.
- (vi) An additional amount up to the statutory maximum may be assessed in extraordinary circumstances.

(2) *Culpability.* If the violation was caused, contributed to or allowed to continue due to negligence on the part of persons working on the exploration or surface mining site, a penalty of up to \$1,200 will be assessed depending on the degree of negligence of the persons. If the violation was willful or the result of reckless conduct on the part of the person working on the exploration or surface mining site, a penalty of up to the statutory maximum but at least \$260, will be assessed.

(3) *Speed of compliance.* A credit will be given of up to \$1,000 based on the person's attempt to achieve rapid compliance after the person knew or should have known of the violation. If the violation is abated within the time period in an abatement order, a credit will not be given under this paragraph unless the violation is abated in the shortest possible time, in which case a credit of up to \$1,000 will be given. The credit will be available to offset only civil penalties assessed for the specific violation at issue.

(4) *Cost to the Commonwealth.* A penalty of up to the statutory maximum may be assessed based on the costs expended by the Commonwealth as a result of the violation. The costs may include:

- (i) Administrative costs.
- (ii) Costs of inspection.
- (iii) Costs of the collection, transportation and analysis of samples.
- (iv) Costs of preventive or restorative measures taken to prevent or lessen the threat of damage to a property or environmental value, or to prevent or reduce injury to a person.

(5) *Savings to the violator.* If the person who commits the violation gains economic benefit as a result of the violation, a penalty may be assessed in an amount equal to the savings up to the statutory maximum for each violation.

(6) *History of previous violations.* In determining a penalty for a violation, the Department will consider previous violations of the applicable laws for which the same person or municipality has been found to have been responsible in a prior adjudicated proceeding, agreement, consent order or decree which became final within the previous 1-year period on the permit where the violation has occurred. The penalty otherwise assessable for each violation shall be

increased by a factor of 5% for each previous violation. The total increase in assessment based on history of previous violation will not exceed \$1,000.

(i) A previous violation will not be counted if it is the subject of pending administrative or judicial review, or if the time to request the review or to appeal the administrative or judicial decision determining the previous violation has not expired.

(ii) Each previous violation will be counted without regard to whether it led to a civil penalty assessment.

(c) Whenever a violation is included as a basis for an administrative order requiring the cessation of a mining operation, or for another abatement order, and if the violation has not been abated within the abatement period set in the order, a civil penalty of at least \$750 per violation per day shall be assessed for each day during which the failure to abate continues. If the person to whom the order was issued files an appeal with respect to the violation, the abatement period will be extended if suspension of the abatement requirement is ordered in a supersedeas order issued by the EHB under §§ 1021.61—1021.64 (relating to supersedeas). In this case, the period permitted for abatement will not end until the date on which the EHB issues a final adjudication with respect to the violation in question or otherwise revokes the supersedeas order.

(d) Each day of a continuing violation will be considered a separate violation for purposes of this chapter. The cumulative effect of a continuing violation will be considered in assessing the penalty for each day of the violation.

(e) If the system described in this section would yield a penalty in excess of the statutory maximum for a violation, the maximum penalty will be imposed for that violation. It is the intent of this chapter that separate violations occurring on the same day may each be assessed a penalty of up to the statutory maximum. When violations may be attributed to two or more persons, a penalty of up to the statutory maximum may be assessed against each person.

(f) *Revision of civil penalty.*

(1) The Department, upon its own initiative or upon written request received within 15 days of issuance of an order or cessation order, may revise a civil penalty calculated in accordance with the dollar limits in subsection (b), if the Department determines that, taking into account exceptional factors present in the particular case, the civil penalty is demonstrably unjust. The Department will not reduce the civil penalty on the basis of an argument that a reduction in civil penalty could be used to abate violations of the acts, this chapter, Chapter 87, 88, 89 or 90, or a condition of a permit or exploration approval. The basis for every revision of a civil penalty shall be fully explained and documented in the records of the case.

(2) If the Department revises the civil penalty, the Department will use the general criteria in subsection (b) to determine the appropriate civil penalty. When the Department has elected to revise a civil penalty, the Department will

give a written explanation of the basis for the revised civil penalty to the person to whom the order was issued.

Source

The provisions of this § 86.194 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186; corrected September 22, 2000, effective November 29, 1997, 30 Pa.B. 4898. Immediately preceding text appears at serial pages (238951) to (238953).

Notes of Decisions

Mootness

Inasmuch as an abatement order could be used by DER to seek escalation of penalties for a future violation under subsection (b)(6), an appeal from an abatement order should not be dismissed as moot, even though the abatement order has already been complied with in full, where petitioner has shown that the penalty escalation provision constitutes a stake in the outcome which overcomes the position of the appeal being moot. *Al Hamilton Contracting Co. v. Department of Environmental Resources*, 494 A.2d 516 (Pa. Cmwlth. 1985).

Cross References

This section cited in 25 Pa. Code § 86.193 (relating to assessment of penalty).

§ 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's 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.

(c) When the Department and the permittee or corporate officer have agreed in writing on a plan for the abatement of or compliance with the failure to abate order, the corporate officer may postpone payment until receiving a decision under § 86.203 (relating to final assessment and payment of penalty), or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

Source

The provisions of this § 86.195 adopted June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial pages (313538) and (336577).

Notes of Decisions*Amendments*

The Secretary of the Interior did not act arbitrarily and capriciously in approving state amendments to the Surface Mining Control and Reclamation Act, 30 U.S.C.A. § 1201 et seq., that eliminated the “willfully and knowingly” scienter requirement for imposition of civil penalties on corporate officers and that changed the appeal procedures by requiring alleged violators to perfect an appeal from a compliance order at the risk of having their challenge to the fact of violation deemed waived. *Pennsylvania Coal Ass’n v. Babbitt*, 63 F.3d 231 (3d Cir. 1995).

Intent

Arguably, this regulation makes the scienter requirement as to corporate officers one of general intent rather than specific intent. *Pennsylvania Coal Ass’n v. Babbitt*, 63 F.3d 231 (3d Cir. 1995).

PROCEDURES**§ 86.201. Procedures for assessment of civil penalties.**

(a) Within 15 days of service of a notice of violation or order, the person to whom it was issued may submit written information about the violation to the Department and to the inspector who issued the order. The Department will consider any information so submitted in determining the facts surrounding the violation and amount of the penalty.

(b) The Department will serve a copy of the civil penalty assessment on the person responsible for a violation. This assessment will be served within the time set forth in the applicable statute of limitations. Service will be by registered or certified mail, or by personal service. If the mail is tendered at the address of that person in the sign required under Chapter 87, 88, 89 or 90, or at an address at which that person is in fact located, and the person refuses to accept delivery or for to collect mail, the requirements of this subsection shall be deemed to have been complied with upon the tender.

(c) The Department may, upon its own motion, or will, upon written request of the person to whom the assessment was issued, arrange for a conference to review the assessment.

(d) Requirements for assessment conferences are as follows:

(1) The Department will assign a representative to hold the assessment conference. The assessment conference will not be governed by requirements for formal adjudicatory hearings, and may be held at any time at the convenience of the parties.

(2) The Department will post notice of the time and place of the conference at the regional or district office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The Department will consider all relevant information on the violation. After the conference is held the Department may do one of the following:

- (i) Settle the issues, in which case a settlement agreement shall be prepared and signed by appropriate representatives of the Department and the person assessed.
- (ii) Affirm, raise, lower or vacate the penalty.
- (e) The Department representative may terminate the conference when the representative determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.
- (f) At formal review proceedings under § 86.202 (relating to final action) no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.
- (g) The time for appeal from an assessment will not be stayed by the request for or convening of an assessment conference.

Source

The provisions of this § 86.201 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186. Immediately preceding text appears at serial pages (237138) to (237139).

Notes of Decisions

This section which requires prepayment of assessments prior to an appeal are not violative of due process. *Twelve Vein Coal Co. v. Environmental Hearing Board*, 561 A.2d 1317 (Pa. Cmwlth. 1989); appeal denied 578 A.2d 416 (Pa. 1990).

The purpose of subsection (b) that DER may, upon its own motion, or upon written request of the person to whom the assessment was issued, arrange for a conference to review the assessment, is to prevent an arbitrary or capricious action by DER. *Boyle Land and Fuel Co. v. Environmental Hearing Board*, 475 A.2d 928 (Pa. Cmwlth. 1984).

§ 86.202. Final action.

- (a) The person charged with the violation may contest the penalty assessment by filing an appeal with the EHB, including with the appeal an amount equal to the assessed penalty—to be held in escrow as provided in subsection (b)—within 30 days from receipt of the assessment or reassessment. Payment under this section shall be cash in the form of certified check, treasurer's check, bank check or cashier's check. In the alternative, a person may file with the appeal an appeal bond in the amount of the assessed civil penalty. The bond shall be executed by a surety who is licensed to do business in this Commonwealth and who is otherwise satisfactory to the Department.
- (b) The EHB will transfer the funds submitted under subsection (a) to the Office of the Comptroller of the Department which will hold them in escrow pending completion of the administrative and judicial review process, at which time it will disburse them as provided in § 86.203 (relating to final assessment and payment of penalty).
- (c) An appeal from a penalty assessment will not be deemed to be perfected unless a properly executed appeal bond or cash equal to the full amount of the

assessed penalty is received by the EHB within 30 days of the appellant's receipt of the assessment or reassessment.

(d) A person may challenge either the fact of the violation or the amount of the penalty once an appeal of that issue has been perfected. In either challenge, the appellant will be bound as to actions of the Department which have become final under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514). A final action includes a compliance order which has become final, even though the order addresses the same violation for which a civil penalty is assessed.

Source

The provisions of this § 86.202 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186. Immediately preceding text appears at serial pages (237139) to (237140).

Notes of Decisions

Amendments

The Secretary of the Interior did not act arbitrarily and capriciously in approving state amendments to the Surface Mining Control and Reclamation Act, 30 U.S.C.A. § 1201 et seq., that eliminated the "willfully and knowingly" scienter requirement for imposition of civil penalties on corporate officers and that changed the appeal procedures by requiring alleged violators to perfect an appeal from a compliance order at the risk of having their challenge to the fact of violation deemed waived. *Pennsylvania Coal Ass'n v. Babbitt*, 63 F.3d 231 (3d Cir. 1995).

A compliance order and a fine, which is a civil penalty assessed at a later time based on the same action, constituted a single "order" against a coal mining operator charged with a violation of the air blast calibration requirements. *Kent Coal Mining Co. v. Department of Environmental Resources*, 550 A.2d 279, 281 (Pa. Commw. 1988).

Cross References

This section cited in 25 Pa. Code § 86.203 (relating to final assessment and payment of penalty).

§ 86.203. Final assessment and payment of penalty.

(a) If the person to whom an assessment is issued fails to file an appeal as provided in § 86.202 (relating to appeal procedures), the assessment shall become final and the penalty assessed shall become due and payable upon expiration of the time allowed to file the appeal.

(b) If a party requests judicial review of an adjudication of the EHB, the initial penalty assessed shall continue to be held in escrow until completion of the review. Otherwise, subject to subsection (c) the escrowed funds shall be transferred to the Department in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review process results in an order reducing or eliminating the proposed penalty assessed under this chapter, the Department will, within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with any interest accumulated by the escrow deposit.

(d) If the final decision in the administrative and judicial review process results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Department within 30 days after the order is mailed to such person.

Source

The provisions of this § 86.203 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 86.195 (relating to penalties against corporate officers); 25 Pa. Code § 86.202 (relating to appeal procedures).

Subchapter H. ENFORCEMENT AND INSPECTION

GENERAL PROVISIONS

Sec.

- 86.211. Enforcement—general.
- 86.212. Federal minimum enforcement action.
- 86.213. Other Departmental orders.

INSPECTION

- 86.214. Inspection—general.
- 86.215. Citizen inspection.

Cross References

This subchapter cited in 25 Pa. Code § 86.136 (relating to coal exploration compliance duties).

GENERAL PROVISIONS

§ 86.211. Enforcement—general.

(a) Violations, once identified by a State Inspector or other appropriate State official, shall be cited and shall be corrected in a reasonable time, prescribed by the Department, not to exceed 90 calendar days, except upon a showing by the operator that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances described in subsection (b). An extended abatement date under this section will not be granted when the operator's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the operator in completing the remedial action requested, nor will an extension be granted for financial or economic reasons.

(b) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are limited to the following:

- (1) If the Department has required the operator of an existing operation to apply to the Department for a permit renewal or other necessary approval of designs or plans, and if the operator has submitted necessary materials to the Department in an expeditious manner, but the Department is unable, through no

fault of the operator to issue the permit or approval 90 days from the date of submission of required documentation.

(2) If climatic conditions preclude abatement within 90 days, or if, due to climatic conditions, abatement within 90 days clearly does one or more of the following:

(i) Causes more environmental harm than it would prevent.

(ii) Requires action that would violate Federal or State mine health or safety laws.

(3) If there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued rights of appeal and as to which the permittee has no other effective legal remedy.

(4) If the permittee cannot abate within 90 days due to a labor strike, except for a violation that is causing or has the potential to cause off permit impacts such as environmental harm to air, water or land resources or danger to the public health or safety.

(c) When an abatement in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(d) If one or more of the conditions in subsection (b) exist, the operator may request the Department to grant an abatement period exceeding 90 days. The abatement period granted will not exceed the shortest possible time necessary to abate the violation. The operator has the burden of establishing by clear and convincing proof that he is entitled to an extension under this section. In determining whether or not to grant an abatement period exceeding 90 days, the Department may consider relevant written information from the operator or other sources.

Source

The provisions of this § 86.211 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended February 17, 1984, 14 Pa.B. 524, effective August 4, 1984, 14 Pa.B. 2860; corrected March 30, 1984, 14 Pa.B. 1084, effective August 4, 1984, 14 Pa.B. 2860; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial pages (206736) to (206737).

Cross References

This section cited in 25 Pa. Code § 86.159 (relating to self-bonding).

§ 86.212. Federal minimum enforcement action.

(a) As required by section 521 of the Surface Mining Control and Reclamation Act (30 U.S.C.A. § 1271) and 30 CFR 840.13 and 843.11 (relating to enforcement authority; and cessation orders), the Department will issue a cessation order, or take other appropriate enforcement action to accomplish cessation, if the Department determines that a condition, practice or violation exists which meets one or more of the following:

(1) Creates an imminent danger to the health of the public.

(2) Is causing, or in the opinion of the Department can reasonably be expected to cause, significant, imminent harm to land, air or water resources.

(3) Will not be abated within an abatement period specified in a Department order.

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(b) The requirements that the Department issue cessation orders in those circumstances specified in subsection (a) does not limit the Department's discretionary authority to issue cessation orders, or to modify the Commonwealth's criteria for the issuance of cessation orders in other cases. The requirement placed on the Department to issue cessation orders under this section does not limit the availability of other remedies at law or in equity. When cessation of the operator does not in itself abate the violation, the cessation order shall impose affirmative obligations to abate the violation condition or practice.

(c) Within 30 days after a cessation order is issued under this subsection, or under the Federal regulations, except when a stay of the cessation order is granted and remains in effect, the permittee shall submit one of the following concurrent to the date of issuance of the cessation order:

(1) New information needed to correct or update the information previously submitted under § 86.62 (relating to identification of interests).

(2) If there are no changes, updates or corrections to the information required under § 86.62, only a statement indicating that no change has occurred in the information previously submitted.

(3) If not previously submitted, the information required from a permit applicant by § 86.62.

(d) Within 60 days after issuing a cessation order, the Department will notify, in writing, a person who has been identified under § 86.62 and subsection (c) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller responsible for the correction of the violation.

Source

The provisions of this § 86.212 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075. Immediately preceding text appears at serial page (158808).

Cross References

This section cited in 25 Pa. Code § 86.62 (relating to identification of interests).

§ 86.213. Other Departmental orders.

The Department may issue other orders as are necessary to aid in the enforcement of the acts or the regulations promulgated pursuant thereto. The orders include, but are not limited to, orders modifying, suspending or revoking permits and licenses.

Source

The provisions of this § 86.213 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

INSPECTION

§ 86.214. Inspection—general.

Whenever a Department inspection determines that there is a violation of the acts, the regulations promulgated pursuant thereto, permit or Departmental approval, the Department will notify the alleged violator either by copy of the

inspection report, notice of violation or through Department order or other enforcement document. The failure, however, of the Department to issue a notice of a violation may not be interpreted to be evidence of the absence of a violation. The notices, documents or records shall be available for public inspection at the appropriate Department district office.

Source

The provisions of this § 86.214 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.215. Citizen inspection.

(a) A citizen may request an inspection of a coal mining activity by submitting to the Department a signed, written statement—or an oral report followed by a signed, written statement—giving the Department reason to believe that a violation of the acts or regulations promulgated thereunder exists. This written statement shall include a phone number and address where the citizen can be contacted.

(b) The identity of a person supplying information to the Department relating to a possible violation shall remain confidential, if requested by that person, unless the person elects to accompany the inspector on the inspection, or unless disclosure is otherwise required by law.

(c) When an inspection is conducted as a result of information provided to the Department, the citizen shall be notified as far in advance as practicable when the inspection is to occur and the citizen shall be allowed to accompany the Department inspector during the inspection.

(d) As soon as practicable after an inspection is made under this section, or, if there is no inspection, as soon as practicable after making the decision not to inspect, the Department will send the citizen the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of a copy of the inspection report, or an explanation of why no enforcement action was taken.

(2) If no inspection was conducted, an explanation of the citizen's rights, if any, to review the Department's action.

(e) The Department will give copies of all materials sent to the citizen under subsection (d) to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is otherwise permitted by this section.

Source

The provisions of this § 86.215 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Subchapter I. EMPLOYEE CONFLICT OF INTEREST

Sec.	
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§ 86.231. Purpose.

This subchapter sets forth the restrictions on each employe of the Department who performs a function or duty under the coal mining laws to prevent direct or indirect financial interest in an underground or surface coal mining operation or facility, or Federally-funded abandoned mine lands reclamation project.

Source

The provisions of this § 86.231 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 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—1396.19b), 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 Bituminous 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 sections 401—415 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1231—1244).

Coal mining operation—The business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite or lignite, or of reclaiming the areas upon which the mining activity occurs.

Department—The Department of Environmental Resources.

Direct financial interest—Ownership or part ownership by an employe of lands, stocks, bonds, debentures, warrants, partnership shares or other holdings and also means another arrangement where the employe may benefit from his holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

Employe—A person employed by the Department who performs a function or duty under the coal mining laws.

Indirect financial interest—The same financial relationships as for direct ownership, where the employe reaps the benefits of the interests held by his spouse, minor child and other relatives, including in-laws, residing in the employe's home. The employe will not be deemed to have an indirect financial interest if there is no relationship between the employe's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

Performing any function or duty under the coal mining laws—Those decisions or actions, which if performed or not performed by an employe, affect the programs conducted under the coal mining laws.

Prohibited financial interest—A direct or indirect financial interest in a coal mining operation.

Authority

The provisions of this § 86.232 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.232 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (206740) to (206741).

§ 86.233. General requirements.

(a) The Department employes performing a function or duty under the coal mining laws shall:

- (1) Have no direct or indirect financial interest in a coal mining operation.
- (2) File a fully completed statement of employment and financial interest, on a form provided by the Department, upon beginning or continuing employment with the Department and annually thereafter on a specified filing date.
- (3) Take action promptly to remedy any and all prohibited financial interests determined as provided in this subchapter.

(b) Compliance with this subchapter is a condition upon the employment of all employes who perform any function or duty under the coal mining laws.

(c) The Department will:

- (1) Provide advice, assistance and guidance to employes required to file a statement of employment and financial interest.

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employe, to determine if the employe has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation.

(3) Resolve prohibited financial interest situations by ordering or initiating remedial action.

(4) Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement.

(5) Submit to the Director of the Office of Surface Mining, United States Department of Interior, such statistics and information as he may request to enable preparation of an annual report to Congress on implementation of these conflict of interest requirements, maintaining, however, appropriate confidentiality.

(6) Submit to the Director of the Office of Surface Mining, United States Department of Interior, the initial listing and the subsequent annual listings of positions within the Department for which employes perform functions or duties under the coal mining laws.

(7) Furnish a blank statement of employment and financial interests 45 days in advance of the filing date established by the Department to each employe required to file a statement.

(8) Inform annually each employe required to file a statement with the Department of the name, address and telephone number of the person whom they may contact for advice and counseling.

Source

The provisions of this § 86.233 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.234. Penalties.

(a) An employe who fails or refuses to file a statement of employment and financial interests by the prescribed filing date, or who fails or refuses to remedy a prohibited financial interest determined as provided in this subchapter, shall be subject to disciplinary action including but not limited to reassignment, transfer or termination of employment.

(b) An employe who fails or refuses to remedy a prohibited financial interest determined as provided in this subchapter shall be subject to:

(1) Criminal penalties as provided in section 1928-A of The Administrative Code of 1929 (71 P. S. § 510-28), which provides:

“No employe of the Department of Environmental Resources performing any function or duty within the scope of activities covered by the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87 (95th Congress) shall have a direct or indirect financial interest in any underground or surface coal mining operating as defined by this act. Whoever knowingly

violates the provisions of this section shall, upon conviction, be punished by a fine of not more than two thousand five hundred dollars (\$2,500) or by imprisonment of not more than one (1) year, or both.”

(2) Criminal penalties as provided in section 517(g) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. § 1267(g)), which provides:

“No employe of the State regulatory authority performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both.”

Source

The provisions of this § 86.234 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.235. Who shall file.

(a) An employe who performs a function or duty under the coal mining laws is required to file a statement of employment and financial interests. An employe who is no longer employed by the Department at the time a filing is due is not required to file a statement.

(b) The Secretary will prepare a list of those positions within the Department that do not involve performance of any functions or duties under the coal mining laws. Only those employes who are employed in a listed organizational unit or who occupy a listed position will be exempted from the requirement to file a statement of employment and financial interests.

(c) The Secretary of the Department may revise the listing by the addition or deletion of positions if the Secretary determines the revisions are required to carry out the purpose of this subchapter. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

Source

The provisions of this § 86.235 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.236. When to file.

(a) Employes performing functions or duties under the coal mining laws shall file a completed statement of employment and financial interests annually, on such date as specified by the Secretary.

(b) New employes hired, appointed or transferred to perform functions or duties under the coal mining laws shall file a completed statement of employment and financial interests at the time of entrance to duty.

Source

The provisions of this § 86.236 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.237. Where to file.

Completed statements of employment and financial interests shall be filed with a three-person review committee established by the Secretary, except that the Secretary shall file a statement with the Director of the Office of Surface Mining, United States Department of Interior. The review committee shall have the responsibility and authority to review the completed statements, to require employes to take remedial action to eliminate prohibited financial interests and to recommend to the Secretary penalties for violations of this subchapter.

Source

The provisions of this § 86.237 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.238. What to report.

(a) Each employe shall report information required on the statement of employment and financial interests of the employe, the employe's spouse, minor children or other relatives who are full-time residents of the employe's home. The report shall be on OSM Form 705-1 as provided by the Department. The statement consists of three major parts:

(1) A listing of financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year.

(2) A certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employe as part of the certificate.

(3) A certification by the chairperson of the review committee that the form was reviewed, that prohibited interests have been resolved and that no other prohibited interests have been identified from the statement.

(b) The statement will set forth the following information regarding financial interest:

(1) *Employment.* A continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employe, the employe's spouse or other resident relative is not required to report a retirement plan from which that person will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Department.

(2) *Securities*. A financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements, including trusts. An employe is not required to report mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) *Real property*. Ownership, lease, royalty or other interests or rights in lands or minerals. Employes are not required to report lands developed and occupied for personal residence.

(4) *Creditors*. Debts owed to business entities and nonprofit organizations. Employes are not required to report debts owed to financial institutions—banks, savings and loan associations, credit unions, and the like—which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short-term debts for current and ordinary household and living expenses.

(c) The statement will provide for a signed certification by the employe that to the best of his knowledge:

(1) None of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employe as part of the certificate.

(2) The information shown on the statement is true, correct and complete.

(d) The exceptions shown in the employe certification of the form shall provide enough information for the review committee to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(1) List the financial interests.

(2) Show the number of shares, estimated value or annual income of the financial interests.

(3) Include other information which the employe believes should be considered in determining whether or not the interest represents a prohibited interest.

(e) An employe shall be expected to:

(1) Have complete knowledge of personal involvements in business enterprises such as a sole proprietorship and partnership, outside employment and the outside employment of the spouse and other covered relatives.

(2) Be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

Source

The provisions of this § 86.238 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa.Code § 86.17 (relating to permit and reclamation fees).

§ 86.239. Gifts and gratuities.

(a) Except as provided in subsection (c), employes may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from a company which:

(1) Conducts or is seeking to conduct coal mining operations or activities that are regulated by the Department.

(2) Has interests, operations or activities that may be substantially affected by the performance or nonperformance of the employe's official duty.

(b) Except as provided in subsection (c), gifts and gratuities shall be immediately reported to both the employe's supervisor and the review committee. Failure to report such gifts and gratuities shall constitute a major violation of this subchapter.

(c) The prohibitions in subsection (a) do not apply in the context of obvious family or personal relationships, such as those between the parents, children or spouse of the employe and the employe, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employe may accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

Source

The provisions of this § 86.239 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.240. Resolving prohibited interests.

(a) The review committee will review statements of employment and financial interests to determine if an employe has a prohibited financial interest.

(b) If the review committee finds that an employe has a prohibited financial interest, it shall notify the employe in writing and require that the prohibited financial interest be remedied within a period of time not to exceed 90 days.

(c) Remedial action may include any one of the following:

(1) Reassignment or transfer of the employe to a position which includes no function or duty under the coal mining laws.

(2) Divestiture of the prohibited financial interest.

(3) Termination of employment.

(4) Other action which eliminates the prohibited financial interest or eliminates the situation which creates the conflict.

(d) If an employe fails to remedy a prohibited financial interest or fails to file a completed statement of employment and financial interests, the review committee shall notify the Secretary of the Department and the Director of the Office of Surface Mining, United States Department of Interior. The Secretary, the Director, or both, will apply the penalties provided in this subchapter.

Source

The provisions of this § 86.240 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.241. Confidentiality.

The statements of employment and financial interests will be held in strict confidence. The statements will only be available for examination by the Secretary of the Department, the review committee, an arbitrator appointed as provided in § 86.242 (relating to appeal procedure), the Director of the Office of Surface Mining, United States Department of Interior, Federal auditors and legal counsel for the Department and the Department of Interior. If a penalty is imposed under this subchapter, the statement of employment and financial interests may be used as evidence.

Source

The provisions of this § 86.241 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

§ 86.242. Appeal procedure.

(a) If an employe disputes a decision of the review committee, the employe may request an informal meeting with the review committee to resolve the dispute.

(b) If, after meeting with the review committee, the employe still disputes the decision of the review committee, the employe may request the Department to obtain an independent arbitrator to hear the employe's appeal of the decision. The employe's appeal must be made within 30 days of receipt of the decision of the review committee. The decision of the arbitrator shall be final.

Source

The provisions of this § 86.242 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Notes of Decisions

This chapter is not preempted by the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) since the act allows for State regulations providing for more stringent land use and environmental control. *Budinsky v. Department of Environmental Resources*, 819 F.2d 418 (3rd Cir. 1987); cert. denied 484 U. S. 926; reh'g denied 484 U. S. 1083 (U. S. 1988).

Cross References

This section cited in 25 Pa. Code § 86.241 (relating to confidentiality).

**Subchapter J. REMINING AND
RECLAMATION INCENTIVES****GENERAL PROVISIONS**

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86.252. Definitions.
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ROAP

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BONDING INCENTIVES

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Authority

The provisions of this Subchapter J issued under section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

Source

The provisions of this Subchapter J adopted August 23, 1996, effective August 24, 1996, 26 Pa.B. 4181, unless otherwise noted.

GENERAL PROVISIONS**§ 86.251. Purpose.**

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

§ 86.252. Definitions.

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

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

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

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

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

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

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

ROAP—Remining Operator's Assistance Program.

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

- (i) Highwalls, spoil piles, abandoned buildings and structures, unsealed deep mine openings, subsidence features or safety hazards.
- (ii) Exposed or unvegetated coal refuse.
- (iii) A source of excess settleable solids to stream flow.
- (iv) A source of mine drainage pollution to surface or groundwaters.
- (v) Pollution abatement areas as that term is defined in §§ 87.202 and 88.502 (relating to definitions).

Remining area—An area of land on which remining will take place, including that amount of previously undisturbed area up to 300 feet from the edge of the unreclaimed area which must be affected to achieve a final grade compatible with adjacent areas. Additional undisturbed land may be within a remining

area if the permittee demonstrates that a larger area is needed to accomplish backfilling and grading of the unreclaimed area or is needed for support activities for the remining activity.

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

Authority

The provisions of this § 86.252 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.252 amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (354289) to (354290).

Cross References

This section cited in 25 Pa. Code § 86.162c (relating to Bioenergy Crop Bonding); 25 Pa. Code § 86.261 (relating to program services); and 25 Pa. Code § 290.105 (relating to beneficial use at abandoned mine lands).

§ 86.253. Operator and project qualification.

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

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

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

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

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

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

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

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

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

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

Cross References

This section cited in 25 Pa. Code § 86.263 (relating to eligibility for assistance); 25 Pa. Code § 86.270 (relating to operator liability); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); 25 Pa. Code § 86.282 (relating to participation requirements); and 25 Pa. Code § 86.292 (relating to procedures and requirements).

ROAP**§ 86.261. Program services.**

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

- (1) Select and pay a qualified consultant to:
 - (i) Provide, in accordance with Chapter 87, Subchapter C and §§ 88.21—88.27 and 88.29—88.33, a description of the existing resources within and adjacent to the proposed remining area that may be affected by the proposed surface coal mining activities.
 - (ii) Determine the probable hydrologic consequences of the proposed surface coal mining activities on the proposed remining area and adjacent area as remining areas are defined in § 86.252 (relating to definitions), in accordance with §§ 87.69 and 88.49 (relating to protection of hydrologic balance).
 - (iii) Prepare a statement of the results of test borings or core samplings in accordance with §§ 87.44 and 88.24 (relating to geology description; and geology).
 - (iv) Prepare a detailed description of the proposed surface coal mining activities showing the manner in which the proposed remining area will be mined and reclaimed in accordance with §§ 87.54, 87.61—87.63, 87.65—87.84, or 88.41—88.44 and 88.46—88.62.

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

Cross References

This section cited in 25 Pa. Code § 86.265 (relating to application approval); and 25 Pa. Code § 86.269 (relating to basic qualifications for consultants and laboratories).

§ 86.262. Department responsibilities.

The Department will:

- (1) Review requests for assistance and determine eligibility for assistance.
- (2) Develop and maintain a list of qualified consultants and laboratories in accordance with § 86.269 (relating to basic qualifications for consultants and

laboratories), select consultants and laboratories to perform program services and pay for services rendered.

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

§ 86.263. Eligibility for assistance.

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

- (1) Has a legal right to enter and commence mining within the proposed remining area.
- (2) Intends to apply for a permit and to conduct surface coal mining activities and reclamation within the proposed remining area.
- (3) Proposes to remine an area which contains abandoned mine lands.

§ 86.264. Applications for assistance.

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

(b) The application shall contain the following information:

- (1) A statement of intent to file a permit application under this chapter and to conduct the proposed surface coal mining and reclamation activities on the proposed remining area.
- (2) The names and addresses of:
 - (i) The intended permit applicant.
 - (ii) The intended contract operator, if different from the applicant.
 - (iii) Controlling interests in accordance with § 86.62 (relating to identification of interests).
- (3) The mining license number of the applicant and contract operator identification number, if applicable.
- (4) A description of:
 - (i) The coal to be mined and the method of coal mining activities proposed.
 - (ii) The number of acres of remining area and the number of acres of abandoned mine land in the proposed remining area.
 - (iii) A general statement of the probable depth and thickness of the coal resource or a general statement of the percentage and quality of recoverable coal contained in the coal refuse.
- (5) A United States Geological Survey topographic map or facsimile thereof of 1:24000 scale or larger which clearly shows:
 - (i) The area of abandoned mine land to be affected and the natural drainage area above and below the proposed remining area.
 - (ii) The names of property owners within the proposed remining area and of adjacent lands.

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

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

(6) Copies of documents which show:

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

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

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

§ 86.265. Application approval.

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

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

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

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

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

§ 86.266. Notice.

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

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

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

§ 86.267. Determination of data requirements.

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

(b) The data requirements will be based on:

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

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

Cross References

This section cited in 25 Pa. Code § 86.265 (relating to application approval).

§ 86.268. Public records; evidence.

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

§ 86.269. Basic qualifications for consultants and laboratories.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 86.270. Operator liability.

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

(1) Submits false information.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) For each approved permit of an eligible operator for a remining area, the Department will designate a specified amount of the financial guarantees special account in the Remining Financial Assurance Fund to financially assure reclamation obligations on the permit with an approved remining area. The specific amount designated will be the estimated cost for the Department to reclaim the remining area.

(d) The Department may not issue financial guarantees on a permit in excess of 10% of the then current amount in the special account in the Remining Financial Assurance Fund. The Department will not issue financial guarantees to a mine operator if the aggregate amount of financial guarantees on permits issued to the operator will exceed 30% of the then current amount in the special account in the Remining Financial Assurance Fund. The Department will not issue additional financial guarantees when the aggregate amount of outstanding financial guarantees exceeds that amount resulting from dividing the current amount in the special account in the Remining Financial Assurance Fund by the historical rate of bond forfeiture under § 86.181 (relating to general) with a margin of safety determined by the Department.

(e) Upon declaration of forfeiture, the specified amount of the financial guarantee from the financial guarantee special account will be used with other bonds forfeited on the permit by the Department to complete reclamation of the mine site in accordance with the procedures and criteria in §§ 86.187—86.190. If the actual cost of reclamation by the Department exceeds the specified amount of the financial guarantee, additional funds from the Remining Financial Assurance Fund may be used to complete reclamation.

Source

The provisions of this § 86.281 amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial page (219202).

Cross References

This section cited in 25 Pa. Code § 86.282 (relating to participation requirements).

§ 86.282. Participation requirements.

(a) Upon completion of the technical review of a permit application and receipt of a request for bond, an operator may apply to participate in the financial guarantees program for a remaining area if the requirements of § 86.253 (relating to operator and project qualification) are met. To participate in this program, an operator shall demonstrate to the Department's satisfaction one of the following:

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

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

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

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

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

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

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

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

(4) The operator has previously participated in the remaining financial guarantee program and met its reclamation obligations and made timely payments.

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

(c) If an operator, CPA or other person submits false information in the financial test or falsifies other information required by this section, the operator shall be ineligible to participate in the financial guarantees program. In addition, the operator, the CPA or other person are subject to 18 Pa.C.S. §§ 4903 and 4904 (relating to false swearing; and unsworn falsification to authorities).

Source

The provisions of this § 86.282 amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial pages (219202) to (219204).

Cross References

This section cited in 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general).

§ 86.283. Procedures.

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

(1) Annual payments will be 1% of the total amount of the remaining financial guarantee.

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

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

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

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

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

(d) The Department will issue a letter to the operator specifying the amount of money in the financial guarantees special account in the Remaining Financial Assurance Fund allocated as financial assurance for the operator's reclamation obligations on the remaining area. A copy of the letter will be kept in the operator's permit application file.

(e) The obligation covered by the financial guarantees program bond will be reduced or released prior to any other bond submitted by the operator to cover the reclamation obligations of that permit.

(f) If a discharge not meeting the effluent criteria in § 87.102, § 88.92, § 88.187, § 88.292, § 89.52 or § 90.102 develops on a permit on which a financial guarantee is being used, the operator shall within 90 days of receipt of written notice by the Department replace the financial guarantee with other types of financial assurance mechanisms authorized for the purpose of covering the costs of treating the discharge. If an acceptable bond has not been received and approved by the Department within the specified time limit, the Department will issue a cessation order for mining activities except for reclamation and other activities required to maintain the permit area.

Source

The provisions of this § 86.283 amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial page (219204).

Cross References

This section cited in 25 Pa. Code § 86.17 (relating to permit and reclamation fees); and 25 Pa. Code § 86.165 (relating to failure to maintain proper bond).

§ 86.284. Forfeiture.

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

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

(c) Upon declaration of forfeiture, the Department will use the bond money posted by the operator and the specified amount of the financial guarantee to complete the reclamation of the mine site in accordance with the procedures and criteria in §§ 86.187—86.190.

(d) The financial guarantees program will be discontinued immediately and notice published in the *Pennsylvania Bulletin*, if 25% or greater of the total outstanding financial guarantees are declared forfeit. If the financial guarantees program is discontinued, no additional financial guarantees may be approved. Outstanding financial guarantees will remain in effect until released under §§ 86.170—86.175.

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

Source

The provisions of this § 86.284 amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084. Immediately preceding text appears at serial pages (219204) to (219205).

§ 86.291. Financial assurance for bond credit—general.

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

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

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

§ 86.292. Procedures and requirements.

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

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

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

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

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

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

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

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

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

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

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

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

Cross References

This section cited in 25 Pa. Code § 86.293 (relating to issuance).

§ 86.293. Issuance.

Upon a finding by the Department that the operator has met the terms of the agreement established by § 86.292(c) (relating to procedures and requirements) and section 4.13 of the act (52 P. S. § 1396.4m), the Department will issue a

bond credit letter to the operator in the amount specified in the agreement. This amount is the amount of money in the bond credit special account in the Remining Financial Assurance Fund which has been reserved as collateral for the operator's reclamation obligation.

Cross References

This section cited in 25 Pa. Code § 86.291 (relating to financial assurance for bond credit—general); and 25 Pa. Code § 86.294 (relating to uses and limitations).

§ 86.294. Uses and limitations.

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

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

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

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

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

(f) If a discharge not meeting the effluent criteria of § 87.102, § 88.92, § 88.187, § 88.292, § 89.52 or § 90.102 develops on a permit on which a bond credit is being used, the operator shall within 90 days of receipt of written notice by the Department replace the bond credit with other types of bonds authorized by the act for that purpose. If an acceptable bond has not been received and approved by the Department within the specified time limit, the Department will issue a cessation order for mining activities except for reclamation and other activities required to maintain the permit area.

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

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

§ 86.295. Forfeiture.

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

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

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

Subchapter K. MINE OPERATOR'S LICENSE

Sec.

- 86.351. License requirement.
- 86.352. Mine operator's license application.
- 86.353. Identification of ownership.
- 86.354. Public liability insurance.
- 86.355. Criteria for approval of application.
- 86.356. License renewal requirements.
- 86.357. Informal conference.
- 86.358. Suspension and revocation.
- 86.359. Fees.

Source

The provisions of this Subchapter K adopted November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041, unless otherwise noted.

§ 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.

Cross References

This section cited in 25 Pa. Code § 86.195 (relating to penalties against corporate officers).

§ 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.

Cross References

This section cited in 25 Pa. Code § 86.357 (relating to informal conference).

§ 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 super-sedeas 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—1396.19b) 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.

Authority

The provisions of this § 86.358 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 86.358 amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (237145) to (237146).

§ 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.

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