

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

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Authority

The provisions of this Chapter 89 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.

Cross References

This chapter cited in 25 Pa. Code § 77.534 (relating to discharge of water into an underground mine); 25 Pa. Code § 86.1 (relating to definitions); 25 Pa. Code § 86.2 (relating to scope); 25 Pa. Code § 86.12 (relating to continued operation under interim permits); 25 Pa. Code § 86.13 (relating to compliance with permits); 25 Pa. Code § 86.16 (relating to application contents); 25 Pa. Code § 86.38 (relating to criteria for approval or denial: existing structures); 25 Pa. Code § 86.131 (relating to scope); 25 Pa. Code § 86.174 (relating to standards for release of bonds); 25 Pa. Code § 86.194 (relating to system for assessment of penalties); 25 Pa. Code § 86.201 (relating to procedures for assessment of civil penalties); 25 Pa. Code § 87.120 (relating to hydrologic balance: discharge of water into an underground mine); 25 Pa. Code § 87.131 (relating to disposal of excess spoil); 25 Pa. Code § 90.3 (relating to general requirements: permit); 25 Pa. Code § 90.91 (relating to requirements); 25 Pa. Code § 90.93 (relating to casing and sealing of drilled holes and underground workings); 25 Pa. Code § 90.104 (relating to hydrologic balance: diversions); 25 Pa. Code § 90.119 (relating to hydrologic balance: discharge of water into an underground mine); 25 Pa. Code § 90.127 (relating to coal refuse disposal: disposal in underground coal mines); 25 Pa. Code § 92a.11 (relating to other chapters applicable); 25 Pa. Code § 92a.12 (relating to treatment requirements); 25 Pa. Code § 102.8 (relating to PCSM requirements); 25 Pa. Code § 102.14 (relating to riparian buffer requirements); 25 Pa. Code Chapter 105 Appendix J (relating to abandoned mine reclamation; general permit BDWW-GP-10); 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. EROSION AND SEDIMENTATION CONTROL

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Cross References

This subchapter cited in 25 Pa. Code § 86.134 (relating to coal exploration performance and design standards); 25 Pa. Code § 89.154 (relating to maps); 25 Pa. Code § 89.171 (relating to general requirements); and 25 Pa. Code § 89.172 (relating to informational requirements).

GENERAL PROVISIONS**§ 89.2. Scope.**

This chapter specifies procedures and rules for those who engage in underground coal mining activities, coal preparation activities and in situ processing of coal. General rules and procedures for those who engage in coal mining activities, including the activities regulated under this chapter, are in Chapter 86 (relating to surface and underground coal mining: general).

Source

The provisions of this § 89.2 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 10, 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 (148900).

§ 89.5. Definitions.

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

Adjacent area—Land located outside the permit area, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by this chapter may be adversely impacted by mining and reclamation operations.

Affected area—Land or water upon or in which underground mining activities are conducted or located. The term includes land in which the natural land surface has been disturbed as a result of or incidental to the surface activities of the operators including, but not limited to, private ways and roads appurtenant to this area, land excavations, workings, refuse banks, spoil banks, culm banks, 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, underground mining operations are situated. The term also includes lands affected by the construction of new roads or the improvement or substantial use of an existing road to gain access to the site or for hauling from the site.

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

Aquifer—A zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use.

Best technology currently available—Equipment, devices, systems, methods or techniques which will:

(i) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws.

(ii) Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources when practicable. The term includes equipment, devices, systems, methods or techniques which are currently available anywhere as determined by the Secretary, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, scheduling of activities and design of sedimentation ponds in accordance with this chapter.

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.

Cropland—Land used for the production of adapted crops for harvest, along or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops.

Disturbed area—An area where vegetation, topsoil or overburden is removed or upon which topsoil, spoil, coal processing wastes, underground development wastes or noncoal waste is placed by coal mining operations.

Diversion—A channel, embankment or other manmade structure constructed at a controlled slope to divert water from one area to another.

Dry weather flow—The base flow or surface discharge from an area or treatment facility which occurs immediately prior to a precipitation event and which resumes 24 hours after the precipitation event ends.

Dwelling—A building or other structure that, at the time subsidence occurs, is used either temporarily, occasionally, seasonally or permanently for human habitation.

EPACT structures—

(i) Structures that are subject to repair and compensation requirements under section 720(a) of the Surface Mining Control and Reclamation Act (30 U.S.C.A. § 1309a).

(ii) The term includes:

(A) Noncommercial buildings.

(B) Dwellings.

(C) Structures adjunct to or used in conjunction with dwellings, including, but not limited to:

(I) Garages.

(II) Storage sheds and barns.

(III) Greenhouses and related buildings.

(IV) Customer-owned utilities and cables.

(V) Fences and other enclosures.

(VI) Retaining walls.

(VII) Paved or improved patios.

(VIII) Walks and driveways.

(IX) Septic sewage treatment facilities.

(X) Inground swimming pools.

(XI) Lot drainage and lawn and garden irrigation systems.

EPACT water supplies—

(i) Water supplies that are subject to replacement under section 720(a) of the Surface Mining Control and Reclamation Act, including drinking, domestic or residential water supplies in existence prior to the date of permit application.

(ii) The term includes water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use.

(iii) The term does not include wells and springs that serve only agricultural, commercial or industrial enterprises except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

Embankment—An artificial deposit of material that is raised above the natural surface of the land and used to contain, divert or store water, support roads or railways, or for other similar purposes.

Ephemeral stream—A water conveyance which lacks substrates associated with flowing waters and flows only in direct response to precipitation in the immediate watershed or in response to melting snowpack and which is always above the local water table.

Fair market value—The amount at which property would exchange hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

Ground cover—The area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

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 surface 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 from 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 such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

Hydrologic balance—The relationship between the quality and quantity of water inflow to, water outflow from and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake or reservoir. It encompasses the

dynamic relationships among precipitation, runoff, evaporation and changes in groundwater and surface water storage.

Impoundment—A closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment or waste.

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).

Intermittent stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

Irreparable damage—Damage to a structure resulting from subsidence which is in one of the following categories. The term includes:

- (i) Damage for which the total cost of repair, including improvements required by Federal, State and local law to meet current standards, would exceed the cost of replacement.
- (ii) Damage of such magnitude that Federal, State or local law would prohibit repair of the structure.
- (iii) Damage that weakens the strength of a structure's foundation, load bearing walls or other load bearing structural components in a manner which would make it impossible or impractical to restore the structure to its previous strength.
- (iv) For structures recognized as historically or architecturally significant:
 - (A) Damage which would adversely affect the structure's historical or architectural value.
 - (B) Damage for which the cost of repair to restore the historical and architectural value of the structure with the same craftsmanship and historically and architecturally equivalent components would exceed the cost of replacement.
 - (C) Damage which would be impossible to repair to restore the historical and architectural value of the structure with the same craftsmanship and historically and architecturally equivalent components.

Material damage—Damage that results in one of the following:

- (i) Functional impairment of surface lands, structures, features or facilities.
- (ii) Physical change that has a significant adverse impact on the affected land's capability to support current or reasonably foreseeable uses or causes significant loss in production or income.
- (iii) Significant change in the condition, appearance or utility of a structure or facility from its presubsidence condition.

Mine—Underground areas contained within a continuous barrier of undisturbed coal and openings to the surface from those areas.

Mine opening blasting—Blasting conducted for the purpose of constructing a shaft, slope, drift or tunnel mine opening for an underground mine, either operating or under development from the surface down to the point where the mine opening connects with the coal seam to be or being extracted.

Noncommercial building—A building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in § 86.101 (relating to definitions). The term does not include a building used only for commercial agricultural, industrial, retail or commercial enterprises.

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

Overburden—The strata or material overlying a coal deposit or in between coal deposits in its natural state and shall mean such material before or after its removal by surface mining.

Perennial stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and is capable, in the absence of pollution or other manmade stream disturbances, of supporting a benthic macroinvertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by a United States Standard No. 30 sieve (28 meshes per inch, 0.595 millimeter openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.

Permanent diversion—A diversion which is to remain after underground mining activities are completed and which has been approved for retention by the Department.

Permit area—The mine and surface areas where underground mining activities occur.

Pollution-forming materials—Earth materials or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce pollution as defined by The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the regulations promulgated under The Clean Streams Law, or are likely to produce toxic pollutants as defined in section 101 of the Federal Water Pollu-

tion Control Act (33 U.S.C.A. § 1251), or are likely to produce chemical or physical conditions that are detrimental to biota.

Precipitation event—A quantity of water resulting from drizzle, rain, snow, sleet or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in this chapter, the term also includes that quantity of water emanating from snow cover as snow melt in a limited period of time.

Prime farmland—Those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (relating to prime and unique farmlands) and which have historically been used for cropland as that phrase is defined in this section.

Property to be mined—Both the surface and mineral estates on and underneath lands which are within the permit area.

Public buildings and facilities—Structures that are owned or leased and principally used by a government agency for public business or meetings and anything built, installed, assembled or used by a government agency to provide a public service. Examples include, but are not limited to, the following:

- (i) Government office buildings.
- (ii) Police stations.
- (iii) Prison complexes.
- (iv) Municipal swimming pools.
- (v) Municipal utilities.
- (vi) Municipal airports.
- (vii) Public park pavilions and maintenance facilities.

Public water supply system—A water delivery system which does one of the following:

- (i) Serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.
- (ii) Provides water to a public building, church, school, hospital or nursing home.

Rebuttable presumption area—As used in the context of water supply replacement, the area in which an operator is presumed responsible for diminishing, contaminating or interrupting a water supply. The area is defined by projecting a 35° angle from the vertical from the outside of any area where the operator has extracted coal from an underground mine.

Reclamation—Those actions taken to restore the area affected by underground mining activities as required by this chapter.

Secretary—The Secretary of the Department of Environmental Resources of the Commonwealth of Pennsylvania.

Sedimentation pond—A primary sediment control structure designed, constructed and maintained in accordance with this subchapter and Subchapter D (relating to structural requirements for impoundments), and including but not limited to a barrier, dam or excavated depression which detains water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams,

mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

Soil survey—A field classification and laboratory analysis resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies and interprets the soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

Stratum (strata)—A section of geologic formation that consists throughout of approximately the same kind of rock material; a stratum may consist of an indefinite number of beds.

Substrates—Inorganic sediments which are .05 millimeter in diameter or larger, and includes sands, granules, pebbles, cobbles or boulders, based on Wentworth's Classification.

Temporary diversion—A diversion of a stream or overland flow which is used during surface coal mining activities and not approved by the Department to remain after reclamation as part of the approved postmining land use.

Underground development waste—Waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone or related materials that are excavated, moved and disposed of as part of the construction activities in preparing the mine for coal production.

Underground mining—The extraction of coal in an underground mine.

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, areas 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.

Underground mining operations—Underground construction, operation and reclamation of shafts, adits, support facilities located underground, in situ processing and underground mining, hauling, storage and blasting.

Water supply—An existing source of water used for domestic, commercial, industrial or recreational purposes or for agricultural uses, including use or consumption of water to maintain the health and productivity of animals used or to be used in agricultural production and the watering of lands on a periodic or permanent basis by a constructed or manufactured system in place on August

21, 1994, to provide irrigation for agricultural production of plants and crops at levels of productivity or yield historically experienced by the plants or crops within a particular geographic area, or which serves a public building or a non-commercial structure customarily used by the public including churches, schools and hospitals.

Water table—The upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(b) When a term not defined in this chapter is used in this chapter, but is defined in Chapters 86—88 and 90 the definition in that chapter is applicable to this chapter.

Authority

The provisions of this § 89.5 amended under section 7 of The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) (52 P. S. § 1406.7); 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); section 11 of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3311); and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20).

(Editor's Note: Certain parts of the rulemaking at 35 Pa.B. 5775 are authorized under a Federal action that superseded sections 5.1(b), 5.2(g)—(h), 5.4(a)(3) and (c) and 5.5(b) of the BMSLCA (52 P. S. §§ 1406.5a(b), 1406.5b(g)—(h), 1406.5d(a)(3) and (c) and 1406.5e(b)) to the extent these statutory provisions conflicted with the Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) (30 U.S.C.A. §§ 1201—1328). The Federal action effecting these changes was published at 69 FR 71551 (December 9, 2004).)

Source

The provisions of this § 89.5 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 June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775; amended August 8, 2008, effective August 9, 2008, 38 Pa.B. 4355; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (354300), (315399) to (315402) and (335847) to (335850).

§ 89.7. Applicability.

(a) This chapter sets forth requirements for conducting underground mining activities and coal preparation activities.

(b) As part of the application required by Chapter 86 (relating to surface and underground coal mining: general), the operator shall describe the coal preparation activities or underground mining activities by means of specific plans identified in this chapter. These plans shall be developed using, at a minimum, the information specified in this chapter and designed to meet the performance standards of this chapter and the requirements of the acts. Plans and information

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required by this chapter may be developed using modeling techniques, but the Department may require verification of a model. The plans shall be incorporated in the permit and implemented in accordance with the permit.

(c) The application and the supporting plans required by this section shall be submitted in a format specified by the Department including, but not limited to, forms, maps, cross sections and narrative descriptions.

(d) The development, design, implementation and approval of these plans does not relieve the operator of the responsibility to meet the performance standards of this chapter and the requirements of the acts.

Source

The provisions of this § 89.7 adopted 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 (148905) to (148906).

INFORMATION REQUIREMENTS

§ 89.11. General requirements.

As required by Chapter 102 (relating to erosion and sediment control), the operator shall prepare and submit, as part of the application, an erosion and sedimentation control plan for all areas disturbed by earthmoving activities. The erosion and sedimentation control plan shall include, at a minimum, the information required by this subchapter, and shall be designed and implemented to achieve the performance standards set forth in this subchapter.

Source

The provisions of this § 89.11 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.

Cross References

This section cited in 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards).

§ 89.12. Climatological information.

(a) When requested by the Department, the erosion and sedimentation control plan shall contain a statement of the climatological factors that are representative of the proposed permit area, including the following:

- (1) The average seasonal precipitation.
- (2) The average direction and velocity of prevailing winds.
- (3) Seasonal temperature ranges.

(b) The Department may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Source

The provisions of this § 89.12 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.

§ 89.13. Air pollution control plan.

The erosion and sedimentation control plan shall include an air pollution control plan which includes the following:

(1) A plan demonstrating compliance with fugitive dust control practices, as required under § 89.64 (relating to air resources protection), and, if applicable, how the requirements of Chapters 123 and 127 (relating to standards for contaminants; and construction, modification, reactivation and operation of sources) will be met.

(2) If required by the Department, air quality control monitoring to provide sufficient data to evaluate the effectiveness of the air pollution control plan.

Source

The provisions of this § 89.13 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.

§ 89.14. Transportation facilities.

The erosion and sedimentation control plan shall address the construction, use and maintenance of roads, conveyors, rail systems and other transportation facilities within the proposed permit area.

Source

The provisions of this § 89.14 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.

§ 89.15. [Reserved].

Source

The provisions of this § 89.15 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.

§ 89.16. [Reserved].

Source

The provisions of this § 89.16 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.

§ 89.17. [Reserved].

Source

The provisions of this § 89.17 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.

§ 89.19. [Reserved].

Source

The provisions of this § 89.19 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.

§ 89.20. [Reserved].**Source**

The provisions of this § 89.20 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.

PERFORMANCE STANDARDS**§ 89.21. Erosion and sedimentation control.**

(a) The standards of Chapter 102 (relating to erosion and sediment control) for designing erosion and sedimentation control measures and facilities apply, except when made more stringent by this chapter. If sedimentation ponds are not sized in accordance with § 102.13(d) (Reserved), then the calculated detention time and all supporting documentation and drawings used to establish the detention time shall be included in the permit application.

(b) All areas disturbed by earthmoving activities shall be permanently stabilized as soon as practicable after planned grade is achieved.

Source

The provisions of this § 89.21 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 § 88.493 (relating to minimum environmental protection performance standards); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.22. Topsoil removal and storage.

(a) Before disturbance of areas affected by surface operations, topsoil and subsoils shall be separately removed and segregated from other material, unless use of substitute or supplemental materials for reclamation is approved by the Department.

(b) After removal, topsoil shall be stockpiled pending redistribution, provided that an alternative procedure may be approved by the Department on a case-by-case basis if the procedure provides equal or more protection for the topsoil.

(c) Topsoil shall, if possible, be removed from the areas to be affected by surface operations or major structures after the vegetative cover that would interfere with the use of the topsoil is cleared from portions of those areas that will be disturbed, but before any drilling for blasting, mining or other surface disturbance of surface lands.

(d) Selected overburden materials may be substituted for or used as a supplement to topsoil if the resulting soil medium is suitable for sustaining vegetation. Substituted or supplemented material shall be placed in compliance with the requirements for topsoil under § 89.85 (relating to topsoil use).

(e) Stockpiled materials shall be selectively placed and protected from wind and water erosion by an effective cover of quick-growing annual and perennial plants, or by other methods demonstrated to provide equal protection. Unless approved by the Department, stockpiled topsoil and other materials may not be moved until ready for use.

Source

The provisions of this § 89.22 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 § 89.132 (relating to soil stockpiling); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.23. Diversion and conveyance of overland flow.

Overland flow, shallow groundwater flow from undisturbed areas and flow in ephemeral streams shall, unless otherwise approved by the Department, be diverted away from disturbed areas by means of temporary or permanent diversions to minimize accelerated erosion, to reduce the volume of water to be treated, and to prevent contact with pollution-forming materials. The following requirements shall be met for all diversions:

- (1) Temporary diversions shall be constructed to safely pass the peak runoff from a precipitation event with a 2-year recurrence interval, or a larger event as specified by the Department.
- (2) Permanent diversions shall be constructed to safely pass the peak runoff from a precipitation event with a 10-year recurrence interval, or a larger event as specified by the Department. Permanent diversions shall be constructed with gently sloping banks that are stabilized.
- (3) Using the best technology currently available, diversions shall be designed, constructed and maintained in a manner which prevents additional contributions of suspended solids to streamflow and runoff outside the disturbed area.
- (4) A diversion may not be located in a way which will increase the potential for landslides.
- (5) When no longer needed, each temporary diversion shall be removed and the affected land shall be regraded, have topsoil applied and be revegetated in accordance with §§ 89.84—89.86 (relating to backfilling and grading; topsoil use; and revegetation).
- (6) Diversion design shall incorporate the following:
 - (i) Channel linings to safely pass the design velocities.
 - (ii) Adequate freeboard.
 - (iii) Energy dissipators when necessary.

Source

The provisions of this § 89.23 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 § 89.173 (relating to performance standards).

§ 89.24. Sedimentation ponds.

(a) Sedimentation ponds, when required, shall be constructed in accordance with this section and Subchapter D (relating to structural requirements for impoundments) before disturbing the contributory drainage area. The ponds shall be located as near as possible to the area to be disturbed and out of perennial and intermittent stream channels, unless approved by the Department.

(b) A nonclogging dewatering device shall be installed to remove storm water. This device shall have a discharge rate to achieve and maintain the required detention time.

(c) Sedimentation ponds shall be operated and maintained until the disturbed area has been stabilized and revegetated and removal is approved by the Department. The ponds may not be removed sooner than 2 years after the last augmented seeding unless the Department finds that the disturbed area has been sufficiently revegetated and stabilized.

Authority

The provisions of this § 89.24 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); 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 § 89.24 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 15, 1995, effective December 16, 1995, 25 Pa.B. 5821. Immediately preceding text appears at serial page (199208).

Cross References

This section cited in 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.25. Discharge structures.

Discharges from erosion and sedimentation control structures shall be controlled by energy dissipators, riprap channels or other devices, when necessary, to prevent accelerated erosion, to prevent deepening or enlargement of stream channels and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Source

The provisions of this § 89.25 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.26. Roads.

(a) As used in this section, “road” means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or underground mining activities. A road consists of the entire area within the right-of-way, including the road-bed, shoulders, parking and side area, approaches, structures, ditches, surface and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved or maintained for use in coal exploration or underground mining activities, including use by coal-hauling vehicles leading to transfer, processing or storage areas. The term includes pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road located in the identical right-of-way as the pioneer or construction roadway.

(b) The operator shall design, construct or reconstruct, utilize and maintain roads and restore the area to meet the requirements of this section and to control or minimize erosion and sedimentation, air and water pollution, and damage to public or private property. Haul roads shall be surfaced with material sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. Acid or toxic-forming material may not be used for surfacing or construction of a road.

(c) Using the best technology currently available, roads shall be designed, constructed and maintained so that they do not cause damage to fish, wildlife and related environmental values and do not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. The contributions may not be in excess of limitations of State or Federal law.

(d) Roads shall be removed and the affected land regraded and revegetated in accordance with § 89.90 (relating to restoration of roads) unless:

- (1) Retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately.
- (2) The necessary maintenance is assured.
- (3) Drainage is controlled according to this subchapter.

(e) The design and construction or reconstruction of roads shall:

- (1) Incorporate recognized engineering standards for environmental protection, mobility, safety and travel efficiency, based on geometric criteria appropriate for the planned duration of use, the anticipated volume of traffic and the weight and speed of vehicles to be used. To ensure environmental protection appropriate for their planned duration and use, including consideration of the

type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, in accordance with current, prudent engineering practices and necessary design criteria established by the Department.

(2) Include a drainage system that is compatible with the natural drainage system, structurally stable and will pass safely the peak flow from a 10-year, 24-hour precipitation event, or larger event if required by the Department. The drainage system shall include sloped or crowned road surface, cross drains or culverts, stabilized ditches, erosion-resistant surfacing, sediment traps, and other appropriate sediment control measures.

(3) Be prepared by or under the direction of, and certified by a qualified registered professional engineer or qualified registered professional land surveyor that the roads have been constructed or reconstructed as designed in accordance with the approved plan.

(f) Location of roads shall be as follows:

(1) Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(2) No part of any road shall be located in the channel of an intermittent or perennial stream except in accordance with § 86.102 (relating to areas where mining is prohibited or limited).

(3) Stream fords are prohibited unless they are specifically approved by the Department as temporary routes during periods of construction. The fords may not adversely affect stream sedimentation or fish, wildlife or related environmental values. Other stream crossings shall be made using bridges, culverts or other structures designed, constructed and maintained in accordance with recognized engineering standards and Chapter 105 (relating to dam safety and waterway management).

(4) Roads shall be located to prevent downstream sedimentation and flooding.

(g) Maintenance of roads shall be as follows:

(1) Roads shall be maintained so that the required or approved design criteria are met throughout the life of the facility, including surface and shoulders, parking, side areas, approach structures, erosion control devices, cut-and-fill sections and traffic control devices necessary for safe and efficient utilization.

(2) Road maintenance shall include basic custodial care as required to protect the road investment and to prevent damage to adjacent resources. This includes maintenance to control dust, erosion, repair of structures and drainage systems, removal of rocks and debris, replacement of surface and restoration of the road.

(3) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired or reclaimed as soon as practicable after the damage has occurred.

Source

The provisions of this § 89.26 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 (158995) to (158997).

Cross References

This section cited in 25 Pa. Code § 89.173 (relating to performance standards).

Subchapter B. OPERATIONS**INFORMATION REQUIREMENTS**

- Sec.
- 89.31. General requirements.
 - 89.32. General description of the underground mining activities.
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 - 89.38. Archaeological and historic resources and public parks.
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 - 89.41. [Reserved].
 - 89.42. [Reserved].
 - 89.43. [Reserved].
 - 89.44. [Reserved].
 - 89.45. [Reserved].
 - 89.46. [Reserved].
 - 89.47. [Reserved].
 - 89.48. [Reserved].
 - 89.49. [Reserved].

PERFORMANCE STANDARDS

- 89.51. Signs and markers.
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- 89.66. Slides and other damage.
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- 89.68. Cessation of operations: temporary.
- 89.69. Other transportation facilities.

Cross References

This subchapter cited in 25 Pa. Code § 89.154 (relating to maps).

INFORMATION REQUIREMENTS

§ 89.31. General requirements.

An application shall include an operation plan which describes the operation of the mine and related surface areas. The operation plan shall include, at a minimum, the information required in this subchapter and shall, at a minimum, be designed and implemented to achieve the performance standards set forth in this subchapter.

Source

The provisions of this § 89.31 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (97540).

§ 89.32. General description of the underground mining activities.

The operation plan shall include a general narrative statement which succinctly describes:

- (1) The type and method of coal mining used in existing areas of the mine and to be used in unmined areas of the mine.
- (2) The major equipment to be used during mining operations.
- (3) The coal seams to be mined, the anticipated annual tonnage and acres of coal to be mined.
- (4) The existing and anticipated surface facilities which support the mining operation including airways, manways, boreholes, treatment plants, storage areas, disposal areas, preparation plants, tipples and transportation facilities.
- (5) The estimated life of the mine.
- (6) The history of existing areas of the mine including the year the mine was opened, and water problems encountered during mining.
- (7) The extent, type and seam or mineral of adjacent abandoned or active mines.

Source

The provisions of this § 89.32 adopted 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 (148915).

§ 89.33. Geology.

(a) The operation plan shall include a description of the areal and structural geology in the permit and adjacent area, including the lithology of the strata that influence the occurrence, availability, movement and quality of groundwater that may be affected by the underground mining activities.

(1) For lands within the proposed permit and adjacent areas and over the coal seam to be mined, the description shall include the results of test borings, coal samplings and the stratum immediately beneath the coal seam to be mined, and overlying strata. When an aquifer or existing deep mine below the lowest coal to be mined may be affected, the description shall also include the aquifer or existing deep mine and overlying strata. For mines not underlain by existing deep mines and greater than 200 feet (60.96 meters) below surface drainage, the description need only include the strata down to and including the stratum immediately below the coal seam to be mined. At a minimum, the description shall include:

- (i) The location and quality of groundwater.
- (ii) The depth, lithology and structure of overburden strata.
- (iii) Coal seam thickness.
- (iv) Chemical analysis for pollution-forming materials of the stratum immediately above and the stratum immediately below the coal seam to be mined.
- (v) Chemical analyses for pollution-forming materials of the coal seam including the sulfur content.

(2) Additionally, for portions of a permit area in which the strata down to the coal seam to be mined will be removed, as in the face up area, test borings or core samples shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined. For the purposes of this section, boreholes, drill holes, slopes and shafts do not constitute removal of overburden. The following data shall be provided:

- (i) Logs of drill holes that show the lithologic characteristics, including physical characteristics and thickness of each stratum, and location and quality of groundwater.
- (ii) Chemical analyses of each stratum within the overburden and the stratum immediately below the coal seam to be mined to identify those strata that contain pollution-forming or alkalinity-producing materials.
- (iii) Chemical analyses for pollution-forming materials of the coal seam, including the total sulfur content.

(b) An applicant may request that the requirements of subsection (a)(2) be waived in part or in its entirety by the Department. The waiver can be granted only if the Department makes a written determination that the information required by subsection (a)(2) is unnecessary because other information having equal value or effect is available to the Department in a satisfactory form.

Source

The provisions of this § 89.33 adopted 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 12, 1998, effective June 13, 1998, 28 Pa.B. 2761. Immediately preceding text appears at serial pages (239665) to (239666).

Cross References

This section cited in 25 Pa. Code § 86.81 (relating to program services); and 25 Pa. Code § 89.141 (relating to application requirements).

§ 89.34. Hydrology.

(a) The operation plan shall contain premining or baseline hydrologic information representative of the proposed permit, adjacent and general areas.

(1) Groundwater information shall include:

(i) The results of a groundwater inventory of existing wells, springs and other groundwater resources, providing information on location, ownership, quality, quantity, depth to water and usage for the proposed permit area and adjacent area. Information on water availability, occurrence and alternative water supplies shall be emphasized and water-quality information relating to suitability for existing premining uses shall be provided. At a minimum, water quality descriptions shall include total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, alkalinity, acidity and sulfates.

(ii) Other information on the baseline hydraulic and hydrogeologic properties of the groundwater system shall be included with the application. Information on indicator parameters, such as pumping test, lithologic and piezometer data or other appropriate information shall be provided in the application.

(iii) A groundwater monitoring plan under § 89.59 (relating to surface water and groundwater monitoring). The plan shall logically relate to the analysis of the baseline information and the prediction of the probable hydrologic consequences of mining and reclamation required by § 89.35 (relating to prediction of the hydrologic consequences). The plan shall identify monitoring locations and sampling frequency. Water availability, including water levels and yields, and approximate overall recharge protection shall be emphasized. The plan shall provide for monitoring the minimum group of parameters in § 89.59, plus additional parameters that relate to the suitability of the groundwater for current and approved postmining land uses, the protection of the hydrologic balance and locally potential problem causing conditions at or near the mine site.

(2) Surface water information shall include:

(i) A description of streams, valuable impoundments and alternative water supplies. The information shall include the name, location and qualitative and quantitative seasonal flow conditions. Water-quality descriptions, at a minimum, shall include base-line information on total suspended solids, total dissolved solids or specific conductance corrected to 25°C, pH, acidity, alkalinity, sulfates, total iron, total manganese and other locally significant water-quality characteristics. Base-line acidity information shall be provided if acid neutralization is anticipated for the proposed operation. The location of point source discharge and the name and location of the surface stream into which the point source will be discharged shall be provided. The Depart-

ment may require additional hydrologic information if the predictive evaluation required by § 89.35 indicates that adverse, offsite impacts are likely to occur or, if the data are necessary to properly plan for remedial and reclamation activities.

(ii) A surface water monitoring plan under § 89.59. The plan shall logically relate to the analysis of baseline information and the prediction of the probable hydrologic consequences of mining and reclamation required by § 89.35. The plan shall identify monitoring locations and monitoring frequency. The plan shall emphasize low flows and high flows and their variable quality. The plan shall provide for monitoring the minimum group of parameters in § 89.59, plus additional parameters that relate to the suitability of the surface water for current and approved postmining land uses, the protection of the hydrologic balance and locally potential problem-causing conditions at or near the mine site. Special emphasis shall be given to accurately measuring and documenting the quality and quantity of water discharging from the permit area so that onsite damages can be minimized and offsite damages are prevented to the greatest extent possible.

(b) The Department may require hydrologic tests, including, but not limited to, drilling, infiltration, other aquifer tests and stream flow measurements. The results shall be submitted to the Department.

Authority

The provisions of this § 89.34 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 § 89.34 adopted 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 June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761. Immediately preceding text appears at serial pages (239665) to (239668).

Cross References

This section cited in 25 Pa. Code § 86.81 (relating to program services); and 25 Pa. Code § 89.59 (relating to surface water and groundwater monitoring).

§ 89.35. Prediction of the hydrologic consequences.

The operation plan shall include a prediction of the probable hydrologic consequences of the proposed underground mining activities upon the quantity and quality of groundwater and surface water within the proposed permit, adjacent and general areas under seasonal flow conditions, and whether underground mining activities may result in contamination, diminution or interruption of any water supplies within the permit or adjacent area. The prediction shall be prepared by a qualified hydrologist or engineer. The probable hydrologic consequences determination shall emphasize the anticipated responses of groundwater and surface water flow, its rate, direction and quality and quantity to the proposed under-

ground mining activities. The prediction shall be based on baseline data collected at the proposed mine site or data statistically representative of the site or a combination of both. The prediction required by this section may be developed using modeling techniques, but the Department may require verification of any models.

Source

The provisions of this § 89.35 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761. Immediately preceding text appears at serial page (239668).

Cross References

This section cited in 25 Pa. Code § 86.81 (relating to program services); and 25 Pa. Code § 89.34 (relating to hydrology).

§ 89.36. Protection of the hydrologic balance.

(a) The operation plan shall describe, with appropriate maps and cross sections, the measures to be taken to ensure the protection of the hydrologic balance and to prevent adverse hydrologic consequences. The measures shall address:

- (1) The quality and quantity of surface and groundwater within the proposed permit and adjacent areas.
- (2) The rights of present users to surface and groundwater.
- (3) The control of surface and groundwater drainage into, through and out of the permit area.
- (4) The treatment, when required, of surface and groundwater drainage from the permit area, and proposed quantitative limits on pollutants in discharges as provided in § 89.52 (relating to water quality standards, effluent limitations and best management practices).

(b) The operation plan shall also describe how the proposed mine development plan will prevent or minimize adverse hydrologic consequences. The plan shall consider:

- (1) The location of mine openings to prevent postmining discharges as required by § 89.54 (relating to preventing discharges from underground mines).
- (2) Possible alterations in the mine development plan or method of mining in response to adverse impacts on the hydrologic balance as indicated by the groundwater monitoring system.

(c) The operation plan shall include a description of the measures which will be taken to replace water supplies which are contaminated, diminished or interrupted by underground mining activities. An operator is not required to provide a replacement water supply prior to mining as a condition for securing a permit.

Source

The provisions of this § 89.36 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 12, 1998, effective June 13, 1998, 28 Pa.B. 2761. Immediately preceding text appears at serial pages (239668) and (244247).

Cross References

This section cited in 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.81 (relating to program services); and 25 Pa. Code § 89.59 (relating to surface water and groundwater monitoring).

§ 89.37. Existing structures.

(a) The operation plan shall contain a description of each existing structure proposed to be used in connection with or to facilitate the mining operation. The description shall include the following:

- (1) Location.
- (2) Current condition.
- (3) A demonstration that the structure is in compliance with the performance standards of this chapter.

(b) The operation plan shall describe how each noncomplying existing structure will be modified or reconstructed to comply with the design and performance standards of this chapter. The description shall include the following:

- (1) Design specifications for the modification or reconstruction of the structure.
- (2) A construction schedule.
- (3) Provisions for monitoring the structure during and after modification or reconstruction.
- (4) A showing that 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 § 89.37 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.

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

(a) The operation plan shall describe and identify the nature of archaeological, cultural and historic resources listed on or eligible for listing on the National Register of Historic Places and known significant archaeological or cultural sites and public parks within the proposed permit area and adjacent area. The description shall be based on available information, including, but not limited to, data of State and local archaeological, historical and cultural preservation agencies. The Department may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through one or more of the following:

- (1) The collection of additional information.
- (2) The conducting of field investigations.
- (3) Other appropriate analysis.

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

- (1) The prevention of adverse impacts and meet the requirements of Chapter 86, Subchapter D (relating to areas unsuitable for mining).
- (2) The minimization of adverse impacts if valid existing rights exist or joint agency approval is to be obtained under Chapter 86, Subchapter D.
- (c) The Department may require the applicant to protect historic or archaeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance if the required measures are completed before the properties are affected by underground mining activity or coal preparation activity.

Source

The provisions of this § 89.38 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 pages (239670) and (234527).

Cross References

This section cited in 25 Pa. Code § 86.81 (relating to program services).

§ 89.39. Underground development wastes and excess excavated material.

Disposal of underground development wastes and excess excavated material shall be disposed of in accordance with Chapter 90 (relating to coal refuse disposal).

Source

The provisions of this § 89.39 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.

§ 89.40. Return of coal processing and underground development waste to abandoned underground workings.

(a) The operation plan shall describe the design, operation and maintenance of any proposed facility for return of coal processing or underground development waste to an underground mine. The description shall include:

- (1) Flow diagrams and any other necessary drawings and maps, for the approval of the Department and the Mine Safety and Health Administration.
- (2) The source and quality of waste to be stowed, area to be backstowed, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill and the anticipated occurrence of surface effects following backfilling.
- (3) The source of the hydraulic transport medium, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams and the effect on the hydrologic regime.
- (4) The stratum underlying the mined coal and gradient from the backfilled area.

(b) The requirements of this section shall also apply to pneumatic backfilling operations, except when the operations are exempted by the Department from requirements specifying hydrologic monitoring.

Source

The provisions of this § 89.40 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.

§ 89.41. [Reserved].

Source

The provisions of this § 89.41 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.

§ 89.42. [Reserved].

Source

The provisions of this § 89.42 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.

§ 89.43. [Reserved].

Source

The provisions of this § 89.43 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.

§ 89.44. [Reserved].

Source

The provisions of this § 89.44 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.

§ 89.45. [Reserved].

Source

The provisions of this § 89.45 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.

§ 89.46. [Reserved].

Source

The provisions of this § 89.46 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.

§ 89.47. [Reserved].

Source

The provisions of this § 89.47 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.

§ 89.48. [Reserved].**Source**

The provisions of this § 89.48 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.

§ 89.49. [Reserved].**Source**

The provisions of this § 89.49 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.

PERFORMANCE STANDARDS**§ 89.51. Signs and markers.**

- (a) Signs and markers shall:
 - (1) Be posted, maintained and removed by the operator.
 - (2) Be of a uniform design that can be easily seen and read.
 - (3) Be made of durable material.
 - (4) Conform to local laws and regulations.
- (b) Signs and markers shall be maintained during all activities to which they pertain.
- (c) Mine and permit identification signs shall be as follows:
 - (1) Identification signs shall be displayed at each point of access from public roads to areas of surface operations and facilities on permit areas for underground mining activities.
 - (2) Signs shall show the name, business address and telephone number of the operator and the identification number of the current permit authorizing underground mining activities.
 - (3) Signs shall be retained and maintained until after the release of all bonds for the permit area.
 - (d) The operator shall clearly mark the perimeter of all areas affected by surface operations or facilities before beginning mining activities.
 - (e) Stream buffer zones shall be clearly marked to prevent disturbance by surface operations and facilities.
 - (f) Persons who conduct surface blasting incidental to underground mining activities shall:
 - (1) Conspicuously flag or post the area in the immediate vicinity of blasting activities.
 - (2) Place at all entrances to areas of surface operations and facilities in the permit area, from public roads or highways, conspicuous signs which state "Warning: Explosives in Use."
 - (g) When topsoil or other vegetation-supporting material is segregated and stockpiled, the stockpiled material shall be clearly marked.
 - (h) Groundwater and surface water monitoring locations and sampling points used to obtain background information shall be clearly marked and identified. The identification of monitoring locations and sampling points shall correspond

with the identification used in the permit application. Markers used to identify monitoring locations shall be made of durable material. The Department may waive marking requirements in cases where the monitoring location or sampling point is obvious or where marking would be objectionable for aesthetic reasons.

Authority

The provisions of this § 89.51 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 § 89.51 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; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5281. Immediately preceding text appears at serial pages (199220) to (199221).

Cross References

This section cited in 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); and 25 Pa. Code § 89.173 (relating to performance standards).

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

(a) *Prevailing hydrologic balance.* Underground mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit and adjacent areas.

(b) *Minimum requirements.* At a minimum, water which is discharged or is permitted to flow from areas disturbed by underground mining activities, including areas disturbed by mineral preparation, processing or handling facilities, shall be passed through a sedimentation pond or treatment facility before discharging, except as provided in subsection (j).

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

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

¹ The parameter is applicable at all times.

Group B

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

Group C

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

(d) *Limitations.* The effluent limitations and precipitation exemptions are as follows:

(1) The discharges specified in this subsection shall comply with the effluent limitation in this subsection:

<i>Type Discharge</i>	<i>Precipitation Event</i>	<i>Effluent Limitations</i>
Drainage from underground mine workings	all	Group A
Surface runoff from active area	dry weather	Group A
	less than or equal to 10yr-24hr	Group B
	greater than 10yr-24hr	Group C
Surface runoff from area where Stage 2 standards achieved	dry weather	Group A
	less than or equal to 10yr-24hr	Group B
	achieved greater than 10yr-24hr	Group C
All other discharges	dry weather	Group A
	less than or equal to 10yr-24hr	Group B
	greater than 10yr-24hr	Group C

(2) To be entitled to the effluent limitations in Group B or Group C, the permittee shall comply with § 89.53 (relating to precipitation event exemption).

(e) *Exceptions to effluent limitations.* Exceptions to effluent limitations are as follows:

(1) The pH of water being discharged shall be maintained between 6.0 and 9.0 except in the following circumstances:

(i) The operator demonstrates that the wastes are discharged to an acid stream in which cases the pH may be greater than 9.0.

(ii) The operator affirmatively demonstrates, in writing, to the Department that biological respiration in the wastewater treatment system will cause the discharge to exceed the limits in this section and that exceeding these limits will not result in a violation of applicable water quality standards in Chapter 93 (relating to water quality standards) or of the applicable treatment requirements and effluent limitations to which a discharge is subject under the Clean Water Act (33 U.S.C.A. §§ 1251—1376), in which case the Department may grant a variance in writing from the limitation in this section.

(iii) The operator affirmatively demonstrates to the Department that the wastewater treatment process being used by the operator requires the pH to be raised above 9.0, that the elevated pH will not cause a safety hazard at the outfall and that the elevated pH will not result in a violation of applicable water quality standards in Chapter 93 or of the applicable treatment requirements and effluent limitations to which a discharge is subject under the Clean Water Act, in which case the Department may grant a variance from this limitation.

(2) When a discharge without chemical or biological treatment has a pH greater than 6.0 and a total iron concentration of less than 10.0 mg/l, the manganese limitation does not apply.

(f) *Postmining polluttional discharges.*

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

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

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

(ii) Discharges with an acidity which is always less than 100 milligrams per liter, an iron content which is always less than 10 milligrams per liter, a

manganese content which is always less than 18 milligrams per liter and a flow rate which is always less than 3 gallons per minute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Sedimentation ponds or treatment facilities are not needed to achieve the effluent limitations in subsections (c)—(f) and the water quality standards in Chapter 93.
- (2) There is no mixture of surface runoff with drainage from underground mine workings.
- (3) The disturbed area is small for drainage from areas affected by surface facilities.

Authority

The provisions of this § 89.52 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 § 89.52 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 December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial pages (237202) to (237206).

Cross References

This section cited in 25 Pa. Code § 86.1 (relating to definitions); 25 Pa. Code § 86.159 (relating to self-bonding); 25 Pa. Code § 86.283 (relating to procedures); 25 Pa. Code § 86.294 (relating to uses and limitations); 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); 25 Pa. Code § 89.36 (relating to protection of the hydrologic balance); 25 Pa. Code § 89.53 (relating to precipitation event exemption); 25 Pa. Code § 89.58 (relating to pollution-forming materials); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.53. Precipitation event exemption.

(a) To establish the alternative effluent limitations of Group B or C in § 89.52(c) (relating to water quality standards, effluent limitations and best management practices), a permittee shall demonstrate to the Department's satisfaction that a precipitation event has occurred, under the procedures in this section.

(1) The occurrence of a precipitation event greater than a 10-year, 24-hour precipitation event may be demonstrated by meeting the requirements of subsections (b)—(d) for each discharge that exceeds the effluent limits specified in § 89.52, unless the permit specifies a more stringent water quality based effluent limitation, in which case no exemption is available under this section. If the permittee demonstrates to the Department's satisfaction that a greater than 10-year, 24-hour precipitation event has occurred, the permittee shall meet the effluent limitation of Group C in § 89.52(c).

(2) The occurrence of a precipitation event equal to or less than a 10-year, 24-hour precipitation event may be demonstrated by meeting the requirements of subsections (c) and (d) for each discharge that exceeds the effluent limits

specified in § 89.52, unless the permit specifies a more stringent water quality based effluent limitation, in which case no exemption is available under this section. If the permittee demonstrates to the Department's satisfaction that a precipitation event equal to or less than a 10-year, 24-hour precipitation event has occurred, the permittee shall meet the effluent limitations of Group B in § 89.52(c).

(b) The 10-year, 24-hour rainfall events for specific areas in this Commonwealth are as follows, in inches:

<i>County</i>	<i>Inches 10 yr</i>
Allegheny	3.9
Armstrong	3.9
Beaver	3.8
Bedford	4.5
Blair	4.7
Bradford	4.2
Butler	3.8
Cambria	4.21
Cameron	4.0
Centre	4.3
Clarion	3.7
Clearfield	4.0
Clinton	4.2
Crawford	3.6
Elk	3.9
Fayette	4.1
Forest	3.8
Franklin	4.8
Fulton	4.6
Greene	3.9
Huntingdon	4.6
Indiana	4.0
Jefferson	3.9
Lawrence	3.7
Lycoming	4.3
McKean	3.9
Mercer	3.7
Potter	4.0
Somerset	4.3
Tioga	4.2
Venango	3.7

<i>County</i>	<i>Inches 10 yr</i>
Warren	3.8
Washington	3.9
Westmoreland	4.0
Bradford	4.2
Carbon	4.8
Columbia	4.6
Dauphin	4.8
Lackawanna	4.7
Lebanon	4.8
Luzerne	4.7

<i>County</i>	<i>Inches 10 yr</i>
Northumberland	4.6
Schuylkill	4.7
Sullivan	4.2

(c) For the permittee to demonstrate that the event listed in subsection (b) has for his mine area been exceeded, or that dry weather flow conditions did not exist, the permittee shall comply with one of the following:

(1) The permittee shall comply with subparagraphs (i) and (ii).

(i) Collect 24-hour rainfall information from official United States Weather Bureau Stations within a 25-mile distance—radius—of the site.

(ii) By appropriate interpolation of the data collected under subparagraph (i), calculate the estimated rainfall event for the site. Appropriate interpolation shall be accomplished by:

(A) Construction of an isohyetal map in accordance with the guidelines established by the Department.

(B) Linear interpolation between the isohyets.

(2) The permittee shall comply with the following:

(i) Prepare a verified copy of the chart or readout from a Department-approved flow measuring device which continuously records the influent to the permitted treatment facility. The device shall be approved by the Department in writing prior to the rainfall event for which the exemption is sought and shall be secured to prevent tampering and acts of third parties.

(ii) Prepare an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 10-year, 24-hour rainfall event specified for the mine area in subsection (b).

(3) Develop alternative documentation or data concerning the rainfall event. The method or system for developing the documentation or data shall be approved in writing prior to the occurrence of the rainfall event for which the exemption is being sought, and shall guarantee the integrity of the information collected.

(d) When the discharge from the site exceeds an effluent limit in the permit, the permittee shall notify the Department within 5 days of the occurrence of the event that he is applying for an exemption from that limit, and shall within 30 days thereafter provide to the Department:

(1) The data required by subsection (c).

(2) A showing that the facility from which the discharge occurred was designed, maintained and operated during and prior to the event to accommodate or treat a 10-year, 24-hour rainfall.

(e) The permittee is not entitled to claim a greater than 10-year, 24-hour precipitation event storm exemption unless the permittee has fully complied with subsections (c) and (d).

(f) Nothing in this section authorizes the Department to grant an exemption for a discharge which the Department finds may have caused or contributed to a violation of general or specific water quality criteria in Chapter 93 (relating to water quality standards).

Source

The provisions of this § 89.53 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 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148927) to (148930).

Cross References

This section cited in 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); 25 Pa. Code § 89.52 (relating to water quality standards, effluent limitations and best management practices); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.54. Preventing discharges from underground mines.

(a) Surface entries and accesses to the mine, including drifts, adits, slopes and shafts, shall be located, designed, constructed and utilized to prevent gravity discharge of water from the mine.

(b) Barriers of coal left around an underground mine shall be located and designed to prevent gravity discharge from the mine and assist in returning the water table to near its premining condition.

(c) Each exploration hole, drill hole or borehole, shaft, well or other opening to an underground mine shall be cased, lined, sealed or otherwise managed to prevent degradation of the quality of groundwaters and surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife and machinery in the permit and adjacent area. Each exploration hole, drill hole, borehole or well that is uncovered or exposed by mining activities within the permit area shall be permanently closed in a water-tight manner, unless approved for water monitoring or otherwise managed in a manner approved by the Department. This section does not apply to holes drilled and used for blasting in the area affected by surface operations.

(d) Gas and oil wells that are uncovered or exposed by mining activities within the permit area shall be sealed in accordance with the Oil and Gas Act (58 P. S. §§ 601.101—601.605).

Authority

The provisions of this § 89.54 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 § 89.54 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 December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821. Immediately preceding text appears at serial page (199227).

Cross References

This section cited in 25 Pa. Code § 86.133 (relating to general requirements); 25 Pa. Code § 86.134 (relating to coal exploration performance and design standards); 25 Pa. Code § 88.492 (relating to minimum requirements for reclamation and operation plan); 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); and 25 Pa. Code § 89.36 (relating to protection of the hydrologic balance).

§ 89.55. Collection channels.

(a) A channel or ditch that is used to collect or transport waters, or both, into wastewater treatment facilities shall be constructed to safely pass the peak runoff from a precipitation event with a 10-year recurrence interval, or a larger event as specified by the Department.

(b) Channel design shall incorporate:

- (1) Channel linings to safely pass the design velocities.
- (2) Adequate freeboard.
- (3) Energy dissipators when necessary.

Source

The provisions of this § 89.55 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.

Cross References

This section cited in 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.56. Stream channel diversions.

(a) Flow from perennial and intermittent streams within the permit area may be diverted if the diversions:

- (1) Will not adversely affect, during and after mining, the water quantity and quality of the stream.
- (2) Comply with other requirements of this chapter and Chapter 105 (relating to dam safety and waterway management).
- (3) Comply with local, State and Federal statutes and regulations.

(b) When streamflow diversion is approved, the stream channel diversion shall be designed, constructed and removed, as follows:

- (1) The longitudinal profile of the stream, the channel and the flood plain shall be designed and constructed to remain stable and to prevent, using the best technology currently available, additional contributions of suspended sol-

ids to streamflow or to runoff outside the permit area. These contributions may not be in excess of requirements of State or Federal law. Erosion control structures, such as channel lining structures, retention basins and artificial channel roughness structures shall be approved for permanent diversions only when they are stable and will require infrequent maintenance.

(2) The combination of channel, bank and flood plain configurations shall be adequate to prevent a flooding potential greater than that created by the natural conditions of the natural channel. However, the capacity of the channel itself shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The design and construction of stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this part.

(c) When no longer needed to achieve the purpose for which they are authorized, temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with §§ 89.84—89.86 (relating to backfilling and grading; topsoil use; and revegetation). At the time diversions are removed, facilities previously protected by the diversion shall be modified or moved to prevent overtopping or failure of the facilities. These requirements do not relieve the operator from maintenance of a water treatment facility otherwise required under this chapter, and the erosion and sedimentation control requirements of Chapter 102 (relating to erosion and sediment control).

(d) When permanent diversions are constructed or stream channels are restored after temporary diversion, the operator shall establish or restore:

- (1) The natural riparian vegetation on the banks of the stream.
- (2) The stream to a natural meandering shape.
- (3) The stream to a longitudinal profile and cross section, including aquatic habitats, that approximate premining stream channel characteristics.

Source

The provisions of this § 89.56 adopted 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 (148931) to (148932).

Cross References

This section cited in 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.57. Treatment facility design.

(a) Facilities and measures for treating discharges from disturbed areas shall be designed for the runoff from a 10-year, 24-hour rainfall event.

(b) Facilities and measures for treating any discharges shall be based on good engineering design and shall include failure warning devices and backup systems as necessary to insure compliance with subsection (a).

(c) The design, construction and maintenance of a treatment facility shall not relieve an operator of his responsibility for complying with the applicable treatment requirements and effluent limitations established under § 95.1(a) (relating to general requirements).

Source

The provisions of this § 89.57 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.58. Pollution-forming materials.

Drainage from pollution-forming underground development waste and spoil, if any, into groundwater and surface water shall be avoided by:

(1) Identifying, burying and treating, when necessary, waste and spoil which, in the judgment of the Department, may be detrimental to vegetation or may adversely affect water quality if not treated or buried.

(2) Preventing water from coming into contact with pollution-forming materials in accordance with measures required by the Department.

(3) Disposing of the pollution-forming underground development wastes in accordance with Chapter 90 (relating to coal refuse disposal). Temporary storage of the materials may be approved by the Department upon a finding that storage will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Pollution-forming underground development waste and spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water. Any discharge shall conform with § 89.52 (relating to water quality standards, effluent limitations and best management practices).

Source

The provisions of this § 89.58 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.59. Surface water and groundwater monitoring.

(a) Surface water and groundwater monitoring shall be conducted under § 89.34 (relating to hydrology) and with the monitoring plan contained in the permit. At a minimum, surface water and groundwater monitoring shall include the following conditions:

(1) Groundwater levels, subsurface flow and storage characteristics and the quality of groundwater shall be monitored in a manner approved by the Department to determine the effects of underground mining activities on the quantity and quality of groundwater in the permit and adjacent areas.

(2) Groundwater levels and groundwater quality shall be monitored, when underground mining activities may affect the groundwater systems which serve as aquifers which significantly ensure the hydrologic balance of water use on or off the permit area. Monitoring shall include measurements from a sufficient number of wells, and chemical analyses of water from aquifers which adequately reflect changes in groundwater quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of underground mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, acidity, alkalinity, total iron, total manganese, sulfates and water levels shall be monitored and reported to the Department at least every 3 months for each monitoring location.

(3) In addition to the monitoring and reporting requirements in Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored accurately to measure and record the water quantity and quality of discharges from the permit area and the effect of the discharges on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 89.36 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, total iron, total manganese, acidity, alkalinity, pH, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

(b) The Department may require the operator to perform additional hydrologic tests, including, but not limited to, drilling, infiltration tests, aquifer tests and stream flow measurements. The results shall be submitted to the Department to demonstrate compliance with this section. The Department may also require the operator to conduct monitoring and reporting more frequently than every 3 months and to monitor additional parameters beyond the minimum specified in this section.

Authority

The provisions of this § 89.59 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 § 89.59 adopted 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. Immediately preceding text appears at serial pages (199230) to (199231).

Cross References

This section cited in 25 Pa. Code § 89.34 (relating to hydrology); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.60. Discharges to underground mines.

Water from the surface or from an underground mine may not be diverted or discharged into other underground mine workings, unless the operator demonstrates to the Department that the discharge will:

- (1) Abate water pollution or otherwise eliminate public hazards resulting from underground mining activities.
- (2) Be discharged as a controlled flow.
- (3) Be limited to:
 - (i) Coal processing wastes.
 - (ii) Underground mine development wastes.
 - (iii) Fly ash from a coal-fired facility.
 - (iv) Sludge from a mine drainage treatment facility.
 - (v) Flue gas desulfurization sludge.
 - (vi) Inert materials used for stabilizing underground mines.
 - (vii) Other wastes as may be approved by the Department.
- (4) Continue as a controlled and identifiable flow and is ultimately treated by an existing treatment facility, or will otherwise meet all State and Federal water quality standards and effluent limitations.
- (5) In any event, the discharge from underground mines to surface waters will not cause, result in or contribute to a violation of applicable water quality standards or effluent limitations.
- (6) Minimize disturbance to the hydrologic balance.
- (7) Meet with the approval of the Mine Safety and Health Administration and the Office of Deep Mine Safety of the Department.

Source

The provisions of this § 89.60 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.61. Coal recovery.

Underground mining activities shall be conducted to maximize the utilization and conservation of the coal, so that reffecting the land in the future can be minimized. Provided, however, the resource, utility and conservation may not excuse the operator from complying in full with environmental protection and health and safety standards.

Source

The provisions of this § 89.61 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 88.492 (relating to minimum requirements for reclamation and operation plan); and 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards).

§ 89.62. Use of explosives.

Each person who conducts surface blasting activities incident to underground mining activities, including, but not limited to, mine opening blasting, shall conduct the activities in compliance with Chapter 87 (relating to surface mining of coal).

Authority

The provisions of this § 89.62 amended under section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b); section 11 of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3311); and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20).

Source

The provisions of this § 89.62 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended August 8, 2008, effective August 9, 2008, 38 Pa.B. 4355. Immediately preceding text appears at serial page (207608).

§ 89.63. Disposal of noncoal wastes.

Noncoal wastes, including, but not limited to, grease, lubricants, paints, flammable liquids, garbage and other hazardous wastes, shall be disposed of or stored in accordance with the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the regulations promulgated thereunder. Storage shall be such that fires are prevented and that the area remains stable and suitable for reclamation and revegetation.

Authority

The provisions of this § 89.63 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 § 89.63 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821. Immediately preceding text appears at serial page (199232).

Cross References

This section cited in 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); 25 Pa. Code § 89.90 (relating to restoration of roads); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.64. Air resources protection.

Air pollution control measures shall be planned and employed as an integral part of the underground mining activities and shall meet the following requirements:

(1) If processing facilities are to be used at the mining site, the facilities shall meet the requirements of Chapters 123 and 127 (relating to standards for contaminants; and construction, modification, reactivation and operation of sources).

(2) Fugitive dust control measures shall demonstrate compliance with Chapters 121, 123, 127 and 129.

Source

The provisions of this § 89.64 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); and 25 Pa. Code § 89.13 (relating to air pollution control plan).

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

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

(b) The operator shall promptly report to the Department the presence in the permit area of any threatened or endangered species under State or Federal law of which that person becomes aware and which was not previously reported to the Department by that person.

(c) The operator shall ensure that the design and construction of any new electric power lines and other transmission facilities to be used for or incidental to the underground mining activities on the permit area shall be designed and constructed in accordance with the guidelines in Environmental Criteria for Electric Transmission Systems (USDI, ISDA (1970)), or in alternative guidance manuals approved by the Department. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10 Powerline Contact by Eagles and Other Large Birds or in alternative guidance manuals approved by the Department. For information purposes, these two documents are available at the Office of Surface Mining Office, United States Department of the Interior, South

Interior Building, Washington, D.C., 20240, and at each Office of Surface Mining Regional Office, District Office and Field Office.

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

- (1) Locate and operate haul and access roads to avoid or minimize impacts to fish and wildlife species or other species protected by State or Federal law.
- (2) Avoid disturbances to, enhance where practicable, or restore habitats of unusually high value for fish and wildlife.
- (3) When practicable, maintain natural riparian vegetation on the banks of streams, lakes and other wetland areas.
- (4) Not use restricted pesticides or herbicides on the area during underground mining and reclamation activities unless approved by the Department of Agriculture.

Source

The provisions of this § 89.65 adopted 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 (207609) to (207610).

Cross References

This section cited in 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.66. Slides and other damage.

If a slide occurs which may have a potentially adverse effect on public property, health, safety or the environment, the operator shall promptly notify the Department and implement necessary remedial measures approved by the Department.

Source

The provisions of this § 89.66 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards).

§ 89.67. Support facilities.

(a) Support facilities required for, or used incidentally to, the operation of the underground mine, including, but not limited to, mine buildings, coal loading facilities at or near the mine site, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops and other buildings, shall be located, maintained and used in a manner that does the following:

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

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

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

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

(b) Surface mining activities associated with an underground mine shall be conducted in a manner which minimizes damage, destruction or disruption of services provided by oil, gas and water wells; oil, gas and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under or through a permit area, unless otherwise approved by the owner of those surface facilities and the Department.

Source

The provisions of this § 89.67 adopted 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; amended June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761; corrected October 15, 1999, effective August 1, 1998, 29 Pa.B. 5389; amended July 7, 2000, effective October 16, 1999, 30 Pa.B. 3439. Immediately preceding text appears at serial pages (260524) to (260525).

Cross References

This section cited in 25 Pa. Code § 88.492 (relating to minimum requirements for reclamation and operation plan); 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.68. Cessation of operations: temporary.

(a) The operator shall support and maintain surface access openings to underground operations until they are closed as required by § 89.83 (relating to closing of underground mine openings). In areas in which there are no current operations, but in which operations are to be resumed under an approved permit, surface facilities shall be secured and maintained to ensure safety to people, livestock and wildlife. Temporary abandonment, may not relieve a person of his obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, the operator shall submit to the Department a notice of intention to cease operations. This notice shall include a statement of the exact number of surface areas and the horizontal and vertical extent of subsurface strata which have been affected prior to cessation, the extent and kind of reclamation of the surface area which will have been accomplished prior to cessation, and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures and water treatment activities that will continue during the temporary cessation.

Source

The provisions of this § 89.68 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); 25 Pa. Code § 89.83 (relating to closing of underground mine openings); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.69. Other transportation facilities.

Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways or other transportation facilities within the permit area shall be designed, constructed or reconstructed and maintained to:

- (1) Prevent, using the best technology currently available:
 - (i) Damage to fish, wildlife and related environmental values.
 - (ii) Additional contributions of suspended solids to streamflow or runoff outside the disturbed area. Contributions may not be in excess of limitations of State or Federal law.
- (2) Control and minimize diminution or degradation of water quality and quantity.
- (3) Control and minimize erosion and sedimentation.
- (4) Control and minimize air pollution.
- (5) Prevent damage to public or private property.

Source

The provisions of this § 89.69 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards).

Subchapter C. RECLAMATION INFORMATION REQUIREMENTS

- Sec.
- 89.71. General requirements.
- 89.72. Land use information.
- 89.73. Vegetation information.
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- 89.75. [Reserved].

PERFORMANCE STANDARDS

- 89.81. Cessation of operations: permanent.
- 89.82. Protection of fish, wildlife and related environmental values.
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- 89.89. Permanent impoundments.
- 89.90. Restoration of roads.
- 89.91. [Reserved].
- 89.92. [Reserved].
- 89.94. [Reserved].

§ 89.71. General requirements.

(a) The application shall contain a reclamation plan for lands which have been or will be disturbed in support of the underground mining activities. The reclamation plan shall include, at a minimum, the information required in this subchapter, and shall be designed and implemented to achieve the performance standards in this subchapter.

(b) The reclamation plan shall contain the following information:

(1) A timetable for the completion of each major step in the reclamation plan.

(2) An estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under this title, with supporting calculations for the estimates.

(3) A plan for mine closure. The plan shall describe how mine closure shall achieve compliance with the performance standards of this chapter and the requirements of the acts. The description shall include a discussion of the hydrologic effects of closure based on conditions at the time of closure. The plan shall also contain a detailed description of each opening into the mine, including drifts, slopes, shafts and boreholes. The description of each opening shall include:

- (i) The location on a USGS topographic map.
- (ii) The elevation of the opening at the surface and at the coal seam.
- (iii) A drawing which shows the details of the actual construction features.
- (iv) Whether the opening is open, temporarily closed or permanently sealed at the time of submittal of the reclamation plan.
- (v) A discussion and drawing of the proposed or existing seals.
- (vi) An engineering and hydrologic justification for the proposed seal design.

(4) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed disturbed area in accordance with the performance standards of this chapter.

(5) A plan for redistribution of topsoil, subsoil and other material to meet the performance standards of this chapter.

- (6) A plan for revegetation as required in § 89.86 (relating to revegetation).
- (7) A plan for controlling erosion and sedimentation during reclamation.
- (c) The plan shall contain a description of the proposed use, following reclamation, of the lands to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain the following:
 - (1) The necessary support activities which may be needed to achieve the proposed land use, including the location and use of facilities that will remain after the completion of mining.
 - (2) When a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under § 89.88 (relating to postmining land use).
 - (3) The consideration given to making all the proposed underground mining activities consistent with surface owner plans and applicable State and local land use plans and programs.
 - (d) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area, and from the State and local government agencies which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation.

Source

The provisions of this § 89.71 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 (148940) to (148942).

Cross References

This section cited in 25 Pa. Code § 86.149 (relating to determination of bond amount).

§ 89.72. Land use information.

- (a) The reclamation plan shall contain a statement of the condition, capability and productivity of lands greater than 5 acres which will be affected by surface operations and facilities within the proposed permit area, including the following:
 - (1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.

(2) A narrative of land capability and productivity, which analyzes the land use description under this subsection in conjunction with other environmental resources information required under this chapter. The narrative shall provide analysis of the following:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the area proposed to be affected by surface operations or facilities.

(ii) When applicable, the productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data, estimates for similar sites or predictions based on current data from the United States Department of Agriculture or the Pennsylvania Department of Agriculture.

(b) The plan shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit and adjacent areas.

Source

The provisions of this § 89.72 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.

§ 89.73. Vegetation information.

(a) The reclamation plan shall, if required by the Department, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(b) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Source

The provisions of this § 89.73 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.

§ 89.74. Fish and wildlife resource information.

(a) An application shall include fish and wildlife resource information for the proposed permit area and adjacent area.

(1) The scope and level of detail for the information shall be determined by the Department in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under subsection (b).

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the proposed permit area or adjacent area is likely to include one or more of the following:

(i) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the United States Secretary of the Interior under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544), or those species or habitats protected by State law or regulations, including species listed as threatened or endangered by the Game Commission and the Fish Commission.

(ii) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas.

(iii) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

(b) An application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act of 1973, during the underground mining activities and how enhancement of these resources will be achieved where practicable. This description shall:

(1) Be consistent with the requirements of § 89.82 (relating to protection of fish, wildlife and related environmental values).

(2) Apply, at a minimum, to species and habitats identified under subsection (a).

(3) Include the following:

(i) Protective measures that will be used during the active mining phase of operation. These measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines and the monitoring of surface water quality and quantity.

(ii) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. These measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover and the replacement of perches and nest boxes. If the plan

does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(c) The Department will provide the resource information required under subsection (a) and the protection and enhancement plan required under subsection (b) to the Game Commission and the Fish Commission for their review. Upon request during the comment period, the Department will furnish the resource information to the United States Department of the Interior, Fish and Wildlife Service Regional or Field Office. This information will be provided within 10 days of receipt of the request from the Service.

Source

The provisions of this § 89.74 adopted June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148943) to (148944).

Cross References

This section cited in 25 Pa. Code § 86.81 (relating to program services).

§ 89.75. [Reserved].

Source

The provisions of this § 89.75 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.

PERFORMANCE STANDARDS

§ 89.81. Cessation of operations: permanent.

(a) The operator shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this chapter and according to the permit approved by the Department.

(b) All surface equipment, structures or other facilities not required for monitoring shall be removed and the affected lands reclaimed unless an alternative postmining land use has been approved by the Department.

(c) Changes in the water quality and quantity, depth to groundwater and location of surface water drainage channels shall be minimized so that the approved postmining land use is not adversely affected.

Source

The provisions of this § 89.81 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.

Cross References

This section cited in 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); and 25 Pa. Code § 89.173 (relating to performance standards).

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

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

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

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

(1) Restore, and enhance when practicable, natural riparian vegetation on the banks of streams, lakes and other wetland areas.

(2) Select plant species for their proven nutritional value and their ability to support and enhance fish and wildlife habitat, when the postmining land use is to be fish and wildlife habitat. Plants should be grouped and distributed in a manner which optimizes edge effect, cover and other benefits for fish and wildlife.

(3) Intersperse reclaimed lands with green belts, utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals, when the postmining land use is to be residential, public service or industrial land use.

(4) Design fences, overland conveyors and other potential barriers to permit passage for large mammals, except where the Department determines that these requirements are unnecessary.

(5) Fence, cover or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(d) Underground mining activities may not be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest or its eggs. The operator shall promptly report to the Department a golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification the Department will consult with the United States Fish and Wildlife Service and the Game Commission and, after consultation, will identify whether, and under what conditions, the operator may proceed.

(e) Underground mining activities may not be conducted which are likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the Interior, the Game Commission or the Fish and Boat Commission or which are likely to result in the destruction or adverse modification of designated critical habitats of these species in violation of the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544).

Authority

The provisions of this § 89.82 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 § 89.82 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 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 May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial pages (207618) to (207619).

Cross References

This section cited in 25 Pa. Code § 89.74 (relating to fish and wildlife resource information); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.83. Closing of underground mine openings.

(a) Upon completion of mining, openings, except those approved for water monitoring or otherwise managed in a manner approved by the Department, shall be closed to prevent degradation of surface and groundwaters; to assist in returning the groundwater as near to its premining level as possible; to assist in returning the hydrologic balance as near to its premining condition as possible; to prevent underground mine fires; to prevent access to underground workings; and to ensure the safety of people, livestock, fish and wildlife. Prior to closing an opening, the plan for the closing shall be approved by the Department.

(b) During operation of a mine, openings that become inactive and have no further use shall be immediately closed in accordance with subsection (a).

(c) Temporarily inactive openings shall be closed to ensure the safety of people, livestock, fish and wildlife in accordance with § 89.68 (relating to cessation of operations: temporary).

(d) If water from a coal mining activity is discharged into an underground mine for treatment with the drainage from the mine, that underground mine may not be closed or sealed until the permittee of the coal mining activity applies for and receives approval from the Department for an alternate water handling procedure.

Source

The provisions of this § 89.83 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. Immediately preceding text appears at serial page (148947).

Cross References

This section cited in 25 Pa. Code § 86.133 (relating to general requirements); 25 Pa. Code § 86.134 (relating to coal exploration performance and design standards); 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); 25 Pa. Code § 89.68 (relating to cessation of operations: temporary); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.84. Backfilling and grading.

(a) A surface area disturbed incidental to underground mining activities shall be backfilled and graded in accordance with the time schedule in the reclamation plan and §§ 87.141, 87.142, 87.144 and 87.145.

(b) Backfilled material shall be placed to prevent adverse effects on groundwater, prevent offsite effects and support the approved postmining land use.

Source

The provisions of this § 89.84 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 June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148947) to (148948).

Cross References

This section cited in 25 Pa. Code § 89.23 (relating to diversion and conveyance of overland flow); 25 Pa. Code § 89.56 (relating to stream channel diversions); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.85. Topsoil use.

(a) After final grading, and prior to placing of topsoil or other material, regraded land shall be scarified or otherwise treated as required to eliminate slippage-surfaces and to promote root penetration. If no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoil is applied.

(b) Topsoil and other materials shall be placed in a manner that:

(1) Achieves an approximate uniform, stable thickness consistent with the postmining land uses, slopes and surface drainage system.

(2) Prevents excess compaction of the topsoil and other materials.

(3) Protects the topsoil and other materials from wind and water erosion before and after it is seeded and planted.

(c) Nutrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface soil layer so that it supports the approved postmining land use and meets the revegetation requirements of § 89.86 (relating to revegetation). Soil tests shall be performed by a qualified laboratory using standard methods approved by the Department.

Source

The provisions of this § 89.85 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.

Cross References

This section cited in 25 Pa. Code § 89.22 (relating to topsoil removal and storage); 25 Pa. Code § 89.23 (relating to diversion and conveyance of overland flow); 25 Pa. Code § 89.56 (relating to stream channel diversions); 25 Pa. Code § 89.90 (relating to restoration of roads); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.86. Revegetation.

(a) General requirements for revegetation are as follows:

(1) The operator shall establish, on areas disturbed by surface operations and facilities, effective, diverse and permanent vegetative cover. For areas designated as prime farmland, the requirements of Subchapter E (relating to prime farmlands) apply.

(2) Revegetation shall comply with the reclamation plan submitted under this subchapter and approved by the Department in the permit, and shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(i) Disturbed lands, except water areas and surface areas of roads that are approved as part of the postmining land use, shall be seeded or planted to achieve a permanent vegetative cover.

(ii) The vegetative cover shall be of the same seasonal characteristics of growth as the original vegetation and be capable of self-regeneration and plant succession.

(iii) Vegetative cover shall be at least equal in extent of cover to the natural vegetation of the area.

(iv) If the postmining land use is cropland, planting of the crops normally grown shall meet the requirements of subparagraph (i).

(b) If approved by the Department, introduced species may be used to achieve a quick, temporary cover that will stabilize the area, or when necessary and desirable to achieve the approved postmining land use. The following requirements shall be met:

(1) The species used for temporary cover are replaced by permanent vegetation that supports the approved postmining land use.

(2) The species are compatible with the plant and animal species of the region.

(3) The species meet the requirements of applicable State and Federal seed or introduced species statutes, and are not poisonous or noxious.

(c) Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, a disturbed area shall be seeded, as contemporaneously as practicable, with a temporary cover of small grains, grasses or legumes until a permanent cover is established.

(d) Mulching and other soil stabilizing practices shall be as follows:

(1) Suitable mulch or other soil stabilizing practices shall be used on regraded and topsoiled areas to control erosion, to promote germination of seeds or to increase the moisture retention of the soil. The Department may, on a case-by-case basis, suspend the requirement for mulch if the operator can demonstrate that alternative procedures do not cause or contribute to pollution.

(2) Mulches shall be anchored to the soil surface to assure effective protection of the soil and vegetation when required by the Department.

(3) Annual grasses and grains may be used alone or in conjunction with another mulch if the Department determines they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.

(4) Chemical soil stabilizers, alone or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.

(e) Standards for successful revegetation shall be as follows:

(1) When the approved postmining land use is cropland:

(i) The standards for successful revegetation shall be based upon crop productivity, yield or soil tests.

(ii) The approved standard shall be the average yield per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture Soil Conservation Service.

(iii) The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last 2 consecutive growing seasons of the 5-year responsibility period established in this section. Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

(2) When the approved postmining land use is other than cropland:

(i) The standards for successful revegetation shall be determined by ground cover.

(ii) The approved standard shall be the percent ground cover of the vegetation which exists on the proposed area to be affected by mining activities. The Department will not approve less than a minimum of 70% ground cover of permanent plant species with not more than 1.0% of the area having less than 30% ground cover with no single or contiguous area having less than 30% ground cover exceeding 3,000 square feet. When woody species are planted in mixture with herbaceous species, the standards in this paragraph shall be met and 400 woody plants shall be planted per acre except:

(A) On slopes greater than 20 degrees, the minimum number of woody plants shall be 600 per acre.

(B) When the approved postmining land use is commercial forest land, the minimum number of woody plants shall be 450 trees per acre with at least 75% commercial tree species.

(C) When the approved postmining land use is wildlife habitat, a minimum of 75% of the land affected shall be planted with a mixture and minimum of 400 woody plants per acre. The configuration and species composition of the cover types shall be established in accordance with guidelines established by the Fish and Boat Commission and the Game Commission.

(iii) For purposes of measuring the stocking standards for woody species, the following shall apply:

(A) Root crown or root sprouts over 1 foot in height shall count as one toward meeting the stocking requirements. When multiple stems occur, only the tallest stem will be counted.

(B) A tree or shrub shall count as one toward meeting the stocking requirements if the tree or shrub has been in place at least 2 growing seasons and is alive and healthy with at least 1/3 of its length in live crown.

(iv) The percent ground cover of the reclaimed area shall meet the standards of this paragraph for a minimum of the last 2 consecutive years of the 5-year period of responsibility, and the 5-year period of responsibility shall commence after the last year of augmented seeding and fertilizing.

(v) For purposes of this section, herbaceous species means grasses, legumes and nonleguminous forbs; woody plants means woody shrubs, trees and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as percentage of the total area of measurement.

(3) When the approved postmining land use is pastureland, the crop productivity standards of paragraph (1) and the ground cover standards of paragraph (2) shall be met.

(f) Exceptions to the standards contained in this section may be authorized by the Department under the following conditions:

(1) For previously mined areas that were not reclaimed to the requirements of this subchapter, as a minimum, the ground cover of living plants may not be less than that which can be supported by the best available topsoil or other suitable material in the reaffected area, may not be less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(2) For areas to be developed for industrial or residential use less than 2 years after regrading is completed, the ground cover of living plants may not be less than that required to control erosion.

(g) The operator shall:

(1) Maintain necessary fences and proper management practices.

(2) Conduct periodic measurements of vegetation, soils and water prescribed or approved by the Department, to identify conditions during the applicable period of liability specified in subsection (e) and § 86.151 (relating to period of liability).

Source

The provisions of this § 89.86 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 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. Immediately preceding text appears at serial pages (159026) to (159030).

Cross References

This section cited in 25 Pa. Code § 86.151 (relating to period of liability); 25 Pa. Code § 86.172 (relating to criteria for release of bond); 25 Pa. Code § 89.23 (relating to diversion and conveyance of overland flow); 25 Pa. Code § 89.56 (relating to stream channel diversions); 25 Pa. Code § 89.71 (relating to general requirements); 25 Pa. Code § 89.85 (relating to topsoil use); 25 Pa. Code § 89.90 (relating to restoration of roads); 25 Pa. Code § 89.112 (relating to impoundments); 25 Pa. Code § 89.134 (relating to revegetation); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.87. Regrading or stabilizing rills and gullies.

- (a) Exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.
- (b) Rills and gullies, which form in areas that have been regraded and topsoiled and which do one of the following shall be filled, regraded or otherwise stabilized:
 - (1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover.
 - (2) Cause or contribute to a violation of water quality standards for receiving streams.
- (c) For areas listed in subsection (b), the topsoil shall be replaced, and the areas shall be reseeded or replanted.

Source

The provisions of this § 89.87 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 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 (207624).

Cross References

This section cited in 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.88. Postmining land use.

- (a) Surface land areas affected by underground mining activities shall be restored, in a timely manner, to conditions that are capable of supporting the use which the areas were capable of supporting before any mining, or to higher or better uses achievable under the criteria and procedures of subsection (c).

(b) The premining use of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land had not been previously mined and had been properly managed.

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

(1) The proposed alternative land use is compatible with adjacent land use and, when applicable, with existing local, State or Federal land use policies and plans. When an alternative land use is proposed, the Department will notify authorities with statutory responsibility for land use policies and plans. These authorities shall have 60 days to submit written statements on the proposed alternative land use. Any required approval of local, State or Federal land management agencies, including any necessary zoning or other changes required for the land use, is obtained and remains valid throughout the mining activities.

(2) The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by the following or other similar criteria: Specific plans are prepared and submitted to the Department which show the feasibility of the alternative land use as related to projected land use trends and markets, which include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining, and which show how the use will be sustained. The Department may require appropriate demonstrations to show how the use will be sustained. The Department may require appropriate demonstrations to show that the planned procedures are feasible, reasonable and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) The proposed uses will neither present actual nor probable hazard to public health, safety or water flow diminution or pollution.

(4) The proposed uses will not involve unreasonable delays in reclamation.

(5) Necessary approval of measures to prevent adverse effects on fish, wildlife and related environmental values and threatened or endangered plants are obtained from the Department and appropriate State and Federal fish and wildlife management agencies.

(6) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland or pasture to a postmining cropland use, when the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization or other similar practices to be practicable or to comply with applicable Federal, State and local laws, have been reviewed by the Department to ensure that:

(i) There is a firm written commitment by the operator or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds under Chapter 86, Subchapter F (relating to bonding and insurance requirements) to assure that the proposed postmining cropland use remains practical and reasonable.

- (ii) There is sufficient water available and committed to maintain crop production.
- (iii) Topsoil quality and depth are sufficient to support the proposed use.

Source

The provisions of this § 89.88 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; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227. Immediately preceding text appears at serial pages (207624) to (207626).

Cross References

This section cited in 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.151 (relating to period of liability); 25 Pa. Code § 86.172 (relating to criteria for release of bond); 25 Pa. Code § 86.174 (relating to standards for release of bonds); 25 Pa. Code § 88.492 (relating to minimum requirements for reclamation and operation plan); 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); 25 Pa. Code § 89.71 (relating to general requirements); 25 Pa. Code § 89.142a (relating to subsidence control: performance standards); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.89. Permanent impoundments.

Permanent impoundments are prohibited unless authorized by the Department, upon the basis of the following demonstration:

- (1) The quality of the impounded water shall be suitable, on a permanent basis, for its intended use, and discharge or water from the impoundment shall not degrade the quality of receiving waters of the Commonwealth to less than the water quality standards established under applicable State and Federal laws.
- (2) The level of water shall be sufficiently stable to support the intended use.
- (3) Adequate safety and access to the impounded water shall be provided for proposed water users.
- (4) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses.
- (5) The design, construction and maintenance of structures shall achieve the minimum design requirements of § 89.111 or § 89.112 (relating to performance standards) as appropriate.
- (6) The size of the impoundment is adequate for its intended purposes.
- (7) The impoundment will be suitable for the approved postmining land use.

Source

The provisions of this § 89.89 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.

Cross References

This section cited in 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.90. Restoration of roads.

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

- (1) The road shall be closed to vehicular traffic.
- (2) The natural drainage patterns shall be restored.
- (3) Bridges and culverts shall be removed.
- (4) Roadbeds shall be ripped or scarified.
- (5) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural drainage restoration standards.
- (6) Cut slopes shall be shaped to blend with the natural contour.
- (7) Cross drains, dikes and water bars shall be constructed to minimize erosion.
- (8) Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill-slopes.
- (9) Road surfaces shall be covered with topsoil in accordance with § 89.85(b) (relating to topsoil use) and revegetated in accordance with § 89.86 (relating to revegetation).

(b) Road-surfacing materials shall be removed, hauled or conveyed, and disposed of in accordance with § 89.63 (relating to disposal of noncoal wastes).

Source

The provisions of this § 89.90 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; 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 pages (207627) to (207628).

Cross References

This section cited in 25 Pa. Code § 89.26 (relating to roads); and 25 Pa. Code § 89.173 (relating to performance standards).

§ 89.91. [Reserved].**Source**

The provisions of this § 89.91 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.

§ 89.92. [Reserved].**Source**

The provisions of this § 89.92 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.

§ 89.94. [Reserved].

Source

The provisions of this § 89.94 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.

**Subchapter D. STRUCTURAL REQUIREMENTS FOR
IMPOUNDMENTS**

GENERAL

Sec.

- 89.101. General requirements.
- 89.102. Information requirements.
- 89.103. [Reserved].
- 89.104. [Reserved].
- 89.105. [Reserved].
- 89.106. [Reserved].
- 89.107. [Reserved].
- 89.109. [Reserved].
- 89.110. [Reserved].

PERFORMANCE STANDARDS

- 89.111. Large impoundments.
- 89.112. Impoundments.

Cross References

This subchapter cited in 25 Pa. Code § 89.5 (relating to definitions); 25 Pa. Code § 89.24 (relating to sedimentation ponds); and 25 Pa. Code § 89.173 (relating to performance standards).

GENERAL**§ 89.101. General requirements.**

(a) Impoundments shall meet the structural design, construction and other requirements of this subchapter. The detailed design plan for large impoundments as described in § 89.111(a) (relating to large impoundments) or when impoundments meet or exceed the MSHA size classification or other criteria of 30 CFR 77.216(a) (relating to water sediment or slurry impoundment and impounding structures; general) shall be prepared by or under the direction of, and certified by, a qualified registered professional engineer with assistance, as necessary, from experts in related fields such as geology, land surveying and landscape architecture. The detailed design plan for other impoundments shall be prepared by or under the direction of, and certified by, a qualified registered professional engineer or qualified registered professional land surveyor.

(b) An impoundment as described in § 89.111(a) or when impoundments meet or exceed the MSHA size classification or other criteria of 30 CFR 77.216(a) shall be inspected during construction and certified after construction and annually thereafter by a qualified registered professional engineer until removal of the structure or release of the performance bond. Impoundments other than those described in § 89.111(a) or impoundments which do not meet or exceed the MSHA size classification or other criteria of 30 CFR 77.216(a) shall be inspected during construction and certified after construction and annually thereafter, by a qualified registered professional engineer or qualified registered professional land surveyor until removal of the structure or release of the performance bond. The professional engineer or professional land surveyor making the inspections or certifications shall be experienced in the construction of impoundments. A certification report shall include monitoring and instrumentation results and a statement regarding the condition of the impoundment. The impoundment shall be certified that it has been constructed and is being maintained as designed and in accordance with the approved plan and applicable performance standards.

(c) An impoundment shall be examined by a qualified person designated by the operator at intervals not exceeding 7 days for structural weakness, erosion and other hazardous conditions. Impoundments less than 20 feet in height or 20 acre feet of storage shall be inspected once every 3 months unless otherwise required by the Department. If an examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and provide a remedial action plan to protect the public. If adequate procedures cannot be formulated or implemented the Department will then notify the appropriate agencies that other emergency procedures are required to protect the public. The permittee shall make and retain a record of the inspection, including record of actions taken to correct deficiencies found in the inspection. A copy of the record shall be provided to the Department on request.

(d) Impoundments subject to 30 CFR 77.216-1 and 77.216-2 (relating to water, sediment or slurry impoundments and impounding structures; identification; and water, sediment, or slurry impoundments and impounding structures; minimum plan requirements; changes or modifications; certification) shall have duplicate plans submitted to the District Manager of MSHA and to the Department. The Department may consider MSHA's review for impoundments. However, the Department will review impoundments under the requirement of § 89.111(b).

Authority

The provisions of this § 89.101 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 § 89.101 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 December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821. Immediately preceding text appears at serial pages (199252) to (199253).

§ 89.102. Information requirements.

Each application shall include a plan for each proposed impoundment within the permit area. Each plan shall:

- (1) Contain a description, map and cross section of the structure and its location.
- (2) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.
- (3) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations.
- (4) Include a geotechnical investigation, design and construction requirements for the structure, including a stability analysis if the structure is more than 20-feet high or impounds more than 20 acre-feet.
- (5) Describe the operation and maintenance requirements for each structure.

Source

The provisions of this § 89.102 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.

§ 89.103. [Reserved].**Source**

The provisions of this § 89.103 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.

§ 89.104. [Reserved].**Source**

The provisions of this § 89.104 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.

§ 89.105. [Reserved].**Source**

The provisions of this § 89.105 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.

§ 89.106. [Reserved].**Source**

The provisions of this § 89.106 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.

§ 89.107. [Reserved].**Source**

The provisions of this § 89.107 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.

§ 89.109. [Reserved].**Source**

The provisions of this § 89.109 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.

§ 89.110. [Reserved].**Source**

The provisions of this § 89.110 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.

PERFORMANCE STANDARDS**§ 89.111. Large impoundments.**

- (a) Large impoundments are those where:

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- (1) The structures are located on a water course, and one of the following applies:
 - (i) The contributory drainage area exceeds 100 acres.
 - (ii) The greatest depth of water at maximum storage elevation exceeds 15 feet.
 - (iii) The impounding capacity at maximum storage elevation exceeds 50 acre-feet.
 - (2) The structures are not located on a watercourse and have no contributory drainage, but the greatest depth of water at maximum storage elevation exceeds 15 feet and the impounding capacity at maximum storage elevation exceeds 50 acre feet.
- (b) Large impoundments shall be designed, constructed and maintained in accordance with the Dam Safety and Encroachment Act (32 P. S. §§ 693.1—693.27) and Chapter 105 (relating to dam safety and waterway management).
- (c) If the embankment is more than 20 feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre feet or more, is located where failure could cause loss of life or serious property damage or otherwise poses a hazard to miners or the public, it must:
- (1) Be stable under all probable conditions of operation and be designed and constructed to achieve a static safety factor of 1.5, or higher if required by the Department and a seismic safety factor of at least 1.2.
 - (2) Have an appropriate combination of principal and emergency spillway to discharge safely the runoff from a 100-year, 24-hour precipitation event, or larger if required by the Department.
 - (3) Have a foundation investigation, as well as any necessary laboratory testing of foundation material to determine the design requirements for foundation stability.

Source

The provisions of this § 89.111 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 (207631) to (207632).

Cross References

This section cited in 25 Pa. Code § 89.89 (relating to permanent impoundments); and 25 Pa. Code § 89.101 (relating to general requirements).

§ 89.112. Impoundments.

An impoundment shall be designed in accordance with the United States Soil Conservation Service's Pennsylvania Field Office Technical Guide, Section IV, Standards 350, "Sediment Basin," and 378, "Pond," or United States Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs," whichever is applicable. The standards are incorporated by reference. In addition

to the requirements in “Sediment Basin,” a minimum static safety factor of 1.3 is required. Each impoundment shall be certified that it has been constructed and is being maintained as designed and in accordance with the approved plan and all applicable performance standards. These structures shall also meet the following requirements:

(1) The entire embankment, including the surrounding areas disturbed by construction, shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water is being impounded may be ripped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with § 89.86 (relating to revegetation).

(2) Ponds shall be examined annually by the operator for structural weakness, erosion and other hazardous conditions. If structural weakness, erosion or other hazardous conditions exist, the operator shall immediately notify the Department.

(3) Plans for enlargement, reduction in size, reconstruction or other modification of dams or impoundments shall be submitted to the Department and shall comply with the requirements of § 86.52 (relating to permit revisions). Except when a modification is required to eliminate an emergency condition constituting a hazard to public health, safety or the environment, the plans shall be approved by the Department before modification begins.

(4) Emergency spillways may not discharge unless precipitation exceeds a 10-year, 24-hour rainfall event. Precipitation includes:

- (i) Snow melt, or a combination snow melt and rainfall event.
- (ii) Multiple rainfall events occurring within the design drawdown period of the pond.

Authority

The provisions of this § 89.112 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 § 89.112 adopted 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. Immediately preceding text appears at serial pages (199256) to (199257).

Cross References

This section cited in 25 Pa. Code § 89.89 (relating to permanent impoundments).

Subchapter E. PRIME FARMLANDS**INFORMATION REQUIREMENTS**

- Sec.
89.121. Prime farmland investigation.
89.122. Prime farmlands.
89.123. [Reserved].
89.124. [Reserved].
89.125. [Reserved].
89.126. [Reserved].

PERFORMANCE STANDARDS

- 89.131. Soil removal.
89.132. Soil stockpiling.
89.133. Soil replacement.
89.134. Revegetation.

Cross References

This subchapter cited in 25 Pa. Code § 89.86 (relating to revegetation); 25 Pa. Code § 89.172 (relating to informational requirements); and 25 Pa. Code § 89.173 (relating to performance standards).

INFORMATION REQUIREMENTS**§ 89.121. Prime farmland investigation.**

(a) The applicant shall contact the county office of the Soil Conservation Service to determine whether lands within the area may be prime farmland.

(b) Land shall not be considered prime farmland when the applicant can demonstrate one or more of the following:

- (1) The land has not been historically used as cropland;
- (2) The slope of the land is 10% or greater;
- (3) The land is not irrigated or naturally subirrigated;
- (4) Other factors exist, such as a very rocky surface, or the land is flooded during the growing season more than once in 2 years and the flooding has reduced the crop yields;

(5) On the basis of a soil survey of the lands proposed to be affected by surface operations or facilities, there are no soil map units that have been designated prime farmland by the United States Soil Conservation Service; or

(6) The area disturbed is minimal in size (less than 5 acres) and has been or will be in use for an extended period of time (more than 10 years).

(c) Lands containing soils which are not excluded under the criteria of subsection (b) shall be considered prime farmland.

(d) The applicant shall submit the results of the investigation along with certification by the Soil Conservation Service that the conclusions are correct.

(e) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities are prime farmlands, the applicant shall submit a plan, in accordance with § 89.122(b) (relating to prime farmlands) for the designated land.

Source

The provisions of this § 89.121 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.

Cross References

This section cited in 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); and 25 Pa. Code § 86.81 (relating to program services).

§ 89.122. Prime farmlands.

(a) This section applies to a person who conducts or intends to conduct underground mining activities on prime farmlands historically used for cropland except for the following:

(1) A permit issued prior to August 3, 1977.

(2) A renewal or revision of a permit issued prior to August 3, 1977. For the purposes of this paragraph, “renewal” of a permit means a decision by the Department to extend the time by which the permittee may complete mining within the boundaries of the original permit, and “revision” of the permit means a decision by the Department to allow changes in the method of mining operations within the original permit area, or a decision of the Department to allow incidental boundary changes to the original permit.

(b) A person who conducts or intends to conduct underground mining activities on prime farmlands historically used for cropland, except those persons exempted under subsection (a), shall submit a plan as part of the permit application for the mining and restoration of the land. A plan shall contain, at a minimum, the following:

(1) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures in *United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951)*. The soil survey shall include a map unit and representative soil profile description as determined by the United States Soil Conservation Service for each prime farmland soil within the permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey, are available and their use is approved by the State Conservationist, United States Soil Conservation Service. The soil profile description shall include, but not be limited to, soil horizon depths, pH and range of soil densities for each prime farmland soil unit within the proposed permit area. The Department may require the applicant to

provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of §§ 89.131—89.133 (relating to soil removal; soil stockpiling; and soil replacement).

(2) The proposed method and type of equipment to be used for removal, storage and replacement of the soil in accordance with §§ 89.131—89.133.

(3) The proposed measures to be taken during soil reconstruction to prevent excessive compaction and achieve soil bulk densities which will result in the restored area returned to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management.

(4) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution.

(5) Documentation, if applicable, such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable material, instead of A, B or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as nonmined prime farmlands in the surrounding area under equivalent levels of management.

(6) Plans for seeding or cropping the final graded disturbed land, and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime during the period from completion of regrading until release of the performance bond or equivalent guarantee under Chapter 86 Subchapter F (relating to bonding and insurance requirements). Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(7) Available agricultural school studies or other scientific data for areas with comparable soils, climate and management—including water management—that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.

(8) Standards for determining success of revegetation on prime farmland soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture Soil Conservation Service. The current estimated yields under equivalent levels of management for each soil map unit and for each crop shall be used by the Department as the predetermined target level for determining success of revegetation. The target yields may be adjusted by the Department in consultation with the Secretary of Agriculture before approval of the permit application.

(c) Before a permit is issued for areas that include prime farmlands, the Department will consult the Soil Conservation Service. The Soil Conservation Service shall have the opportunity for review and comment of the proposed method of soil reconstruction in the plan submitted under subsection (b).

(d) When the underground mining activities are being conducted on prime farmland, a permit for the mining and reclamation operation may be granted by the Department, if it first finds, in writing, that:

(1) The approved postmining land use of these prime farmlands will be cropland.

(2) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in surrounding areas under equivalent levels of management.

(3) The proposed operations will be conducted in compliance with the requirements of §§ 89.131—89.134 (relating to performance standards).

(4) The permit incorporates as specific conditions the contents of the plan submitted under subsection (b), after consideration of any revisions to the plan suggested by the Soil Conservation Service under subsection (c).

(e) Soil productivity for prime farmlands shall be returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey performed under subsection (b).

Source

The provisions of this § 89.122 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 June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148963) to (148966).

Cross References

This section cited in 25 Pa. Code § 89.121 (relating to prime farmland investigation); 25 Pa. Code § 89.133 (relating to soil replacement); and 25 Pa. Code § 89.134 (relating to revegetation).

§ 89.123. [Reserved].

Source

The provisions of this § 89.123 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.

§ 89.124. [Reserved].

Source

The provisions of this § 89.124 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.

§ 89.125. [Reserved].**Source**

The provisions of this § 89.125 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.

§ 89.126. [Reserved].**Source**

The provisions of this § 89.126 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.

PERFORMANCE STANDARDS**§ 89.131. Soil removal.**

(a) Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting or mining, in accordance with this section and in a manner that prevents mixing or contaminating these materials with undesirable material. Soil materials shall be removed in a manner that erosion is controlled and does not result in air and water pollution.

(b) The entire A horizon shall be separately removed from other soil and overburden materials.

(c) The B horizon, a combination of the B horizon and the underlying C horizon, or other suitable soil material that will create a reconstructed soil of equal or greater productive capacity than that which existed before mining, shall be separately removed from other topsoil and overburden materials.

(d) The underlying C horizons, other strata, or a combination of horizons or other strata, to be used instead of the B horizon, shall be separately removed from other topsoil and overburden materials. When replaced, these combinations shall be equal to or more favorable for plant growth than the B horizon.

(e) The minimum depth of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of § 89.133(a) (relating to soil replacement).

Source

The provisions of this § 89.131 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.

Cross References

This section cited in 25 Pa. Code § 89.122 (relating to prime farmlands); 25 Pa. Code § 89.132 (relating to soil stockpiling); and 25 Pa. Code § 89.133 (relating to soil replacement).

§ 89.132. Soil stockpiling.

If not utilized immediately, the A horizon specified in § 89.131(b) (relating to soil removal) and the B horizon or other suitable soil materials specified in

§ 89.131(c) and (d) shall be stored separately from each other and from spoil. These stockpiles shall be placed within the permit area where they are not disturbed or exposed to excessive water or wind erosion before the stockpiled horizons can be redistributed. Stockpiles in place for more than 30 days shall meet the requirements of § 89.22(e) (relating to topsoil removal and storage).

Source

The provisions of this § 89.132 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.

Cross References

This section cited in 25 Pa. Code § 89.122 (relating to prime farmlands).

§ 89.133. Soil replacement.

(a) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be 48 inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The Department shall specify a depth greater than 48 inches whenever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties or water-supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity.

(b) Soil material shall be replaced only on land which has been first returned to final grade and scarified unless site-specific evidence is provided to and approved by the Department showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield.

(c) The soil horizons or other suitable soil material shall be replaced in a manner that avoids excessive compaction and creates a reconstructed soil of equal or greater productive capacity than that which existed before mining.

(d) The B horizon or other suitable material specified in § 89.131(c) and (d) (relating to soil removal) shall be replaced to the thickness needed to meet the requirements of subsection (a).

(e) The A horizon specified in § 89.131(b) shall be replaced as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil, as determined by § 89.122(b) (relating to prime farmlands) and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted.

(f) Nutrients and soil amendments shall be applied as needed to quickly establish vegetative growth.

Source

The provisions of this § 89.133 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.

Cross References

This section cited in 25 Pa. Code § 89.122 (relating to prime farmlands); and 25 Pa. Code § 89.131 (relating to soil removal).

§ 89.134. Revegetation.

(a) A vegetative cover capable of stabilizing the soil surface with respect to erosion shall be established following soil replacement. All vegetation shall be in compliance with the plan approved by the Department under § 89.122 (relating to prime farmlands) and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of § 89.86(c) and (d) (relating to revegetation) shall be met.

(b) Within a time period specified in the permit, but not to exceed 10 years after completion of backfilling and rough grading, any portion of the permit area which is prime farmland shall be restored to a condition capable of equivalent or higher levels of yield as nonmined prime farmland in surrounding areas under equivalent levels of management. When used for cropland, crops may be grown in rotation with hay or pasture crops as defined for cropland. The Department may approve a crop use of perennial plants for hay, when this is a common long term use of prime farmland soils in the surrounding area. The level of management shall be equivalent to that on which the target yields are based.

(c) Standards for determining success of restoration on prime farmlands soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture Soil Conservation Service.

(1) If crops are grown, standards for determining success of restoration shall be used on crop yields. The current estimated yields under equivalent levels of management for each soil map unit and for each crop shall be used by the Department as the predetermined target level for determining success of revegetation. The target yields may be adjusted by the Department in consultation with the Secretary of the Department of Agriculture before approval of the permit application. The crop productivity or yield of the mined area shall be compared to the predetermined target level. As a minimum, the following standards shall be met:

(i) Average annual crop production shall be determined based upon a minimum of three years data. Crop production shall be measured for the 3 years immediately prior to release of bonding according to Chapter 86 Subchapter F (relating to bonding and insurance requirements).

(ii) Adjustment for weather-induced variability in the annual crop production may be permitted by the Department.

(iii) Restoration on prime farmland shall be considered a success when the adjusted 3-year average annual crop production is equivalent to, or higher than, the predetermined target level of crop production.

(2) If crops are not grown, standards for determining success of restoration shall be based on a soil survey, in addition to meeting the standards of § 87.155(b) (relating to revegetation: standards for successful revegetation). The permittee shall demonstrate to the Department that the prime farmland soil has been restored to a capability of equivalent or higher levels of yield as non-mined prime farmland of the same soil type in the surrounding area. The demonstration shall consider erodability, moisture-holding capacity, permeability, depth, texture, pH and any other factors deemed relevant by the Department for determining quality of the restored soils as prime farmland.

(d) In all cases, soil productivity for prime farmlands shall be returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed under § 89.122.

Source

The provisions of this § 89.134 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

Cross References

This section cited in 25 Pa. Code § 89.122 (relating to prime farmlands).

Subchapter F. SUBSIDENCE CONTROL AND WATER SUPPLY REPLACEMENT

Sec.	
89.141.	Subsidence control: application requirements.
89.142.	[Reserved].
89.142a.	Subsidence control: performance standards.
89.143.	[Reserved].
89.143a.	Subsidence control: procedure for resolution of subsidence damage claims.
89.144.	[Reserved].
89.144a.	Subsidence control: relief from responsibility.
89.145.	[Reserved].
89.145a.	Water supply replacement: performance standards.
89.146.	[Reserved].
89.146a.	Water supply requirement: procedure for resolution of water supply damage claims.
89.147—89.151.	[Reserved].
89.152.	Water supply replacement: special provisions.
89.153.	Water supply replacement: rebuttable presumption.
89.154.	Maps.
89.155.	Public notice.

§ 89.141. Subsidence control: application requirements.

(a) *Geology.* The application shall include a description of the geology overlying the proposed permit area, from the surface down to the first stratum below the coal seam to be mined. The description shall include geologic conditions which are relevant to the likelihood or extent of subsidence or subsidence related damage. For the same strata, a detailed description and cross-section shall be provided from available test borings and core samples. A copy of the information developed for § 89.33 (relating to geology) may be used as appropriate to meet the requirements of this section.

(b) *Surface water.* The application shall include a description of the surface waters overlying the permit area and adjacent area, including:

- (1) The size and depth of lakes, ponds and impoundments.
- (2) The average annual flow of perennial streams. For the purposes of this subchapter, perennial stream is a stream or part of a stream that flows continuously throughout the calendar year as a result of groundwater discharge or surface runoff. The term does not include intermittent or ephemeral streams.
- (3) The height, width and composition of embankments.

(c) *Prior mining.* The application shall provide the following information relating to prior mining within, above or below the permit area:

- (1) The type of mining, surface or underground.
- (2) Mine name, permit numbers or other identification.
- (3) The coal seams or other mineral strata mined.
- (4) The extent of the coal or other minerals removed.
- (5) The location and elevation of impounded water in the mine workings either overlying, below or within the permit area. If this information is not available the applicant shall outline the efforts undertaken to obtain it.

(d) *Subsidence control plan.* The permit application must include a subsidence control plan which describes the measures to be taken to control subsidence effects from the proposed underground mining operations. The plan must address the area in which structures, facilities or features may be materially damaged by mine subsidence. At a minimum, the plan must address all areas within a 30° angle of draw of underground mining operations which will occur during the 5-year term of the permit. The subsidence control plan must include the following information:

- (1) A description of the method of coal removal, such as longwall mining, room and pillar mining, hydraulic mining or other extraction methods, including the size, sequence and timing for the development of underground workings.
- (2) A narrative describing whether subsidence, if it is likely to occur, could cause material damage to or diminish the value or reasonably foreseeable use of any structures or could contaminate, diminish or interrupt water supplies.

(3) For each structure and feature, or class of structures and features, described in § 89.142a(c) (relating to subsidence control: performance standards), a detailed description of the measures to be taken to ensure that subsidence will not cause material damage to, or reduce the reasonably foreseeable uses of the structures or features.

(4) A description of the anticipated effects of planned subsidence, if any.

(5) A description of the measures to be taken to correct any subsidence-related material damage to the surface land.

(6) A description of the measures to be taken to prevent irreparable damage to the structures enumerated in § 89.142a(f)(1)(iii)—(v), if the structure owner does not consent to the damage.

(7) A description of the monitoring, if any, the operator will perform to determine the occurrence and extent of subsidence so that, when appropriate, other measures can be taken to prevent or reduce or correct damage in accordance with § 89.142a(e) and (f).

(8) A description of the measures to be taken to maximize mine stability and maintain the value and reasonably foreseeable use of the surface land.

(9) For EPACT structures other than noncommercial buildings protected under § 89.142a(c), a description of the methods to be employed in areas of planned subsidence to minimize damage or otherwise comply with § 89.142a(d)(1)(i).

(10) For EPACT structures other than noncommercial buildings protected under § 89.142a(c), a description of the subsidence control measures to be taken under § 89.142a(d)(1)(ii) to prevent subsidence and subsidence-related damage in areas where underground mining operations are not projected to result in planned subsidence.

(11) A description of the measures which will be taken to maintain the value and foreseeable uses of perennial streams which may be impacted by underground mining operations. The description shall include a discussion of the effectiveness of the proposed measures as related to prior underground mining operations under similar conditions.

(12) A description of the measures to be taken to prevent material damage to perennial streams and aquifers which serve as a significant source to a public water supply system.

(13) A description of utilities including type, nature of use, composition and approximate age of pipelines, and a description of the measures to be taken to minimize damage, destruction or disruption in utility service in accordance with § 89.142a(g).

(14) A description of applicable measures to be taken to control subsidence under other statutes, including:

(i) The act of December 22, 1959 (P. L. 1994, No. 729) (52 P. S. §§ 3101—3109).

(ii) The Oil and Gas Act (58 P. S. §§ 601.101—601.605).

- (iii) Section 419 of the State Highway Law (36 P. S. § 670-419).
- (iv) Section 1 of the act of June 1, 1933 (P. L. 1409, No. 296) (52 P. S. § 1501).
- (15) Other information requested in accordance with the policies and procedures of the Department.

Authority

The provisions of this § 89.141 amended under section 7 of The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) (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).

Editor's Note: Certain parts of the rulemaking at 35 Pa.B. 5775 are authorized under a Federal action that superseded sections 5.1(b), 5.2(g)—(h), 5.4(a)(3) and (c) and 5.5(b) of the BMSLCA (52 P. S. §§ 1406.5a(b), 1406.5b(g)—(h), 1406.5d(a)(3) and (c) and 1406.5e(b)) to the extent these statutory provisions conflicted with the Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) (30 U.S.C.A. §§ 1201—1328). The Federal action effecting these changes was published at 69 FR 71551 (December 9, 2004).

Source

The provisions of this § 89.141 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; amended March 29, 1985, 15 Pa.B. 1169, effective December 28, 1985, 15 Pa.B. 4581; corrected January 24, 1986, effective December 28, 1985, 16 Pa.B. 249; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775. Immediately preceding text appears at serial pages (245154) and (313577) to (313578).

Cross References

This section cited in 25 Pa. Code § 89.142a (relating to subsidence control: performance standards); and 25 Pa. Code § 89.154 (relating to maps).

§ 89.142. [Reserved].

Source

The provisions of this § 89.142 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 March 29, 1985, 15 Pa.B. 1169, effective December 28, 1985, 15 Pa.B. 4581; corrected January 24, 1986, effective December 28, 1985, 16 Pa.B. 249; 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 May 9, 1997, effective May 10, 1997, 27 Pa.B. 2371; amended June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761. Immediately preceding text appears at serial pages (239680) to (239682).

Notes of Decisions

Development of Land

Although there is no specific requirement that a coal company, desirous of mining coal under underdeveloped land owned by another, indicate its manner of support of the undeveloped land on

the registered map under the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act, such a requirement is within the scope of the Act and may be established through the Department of Environmental Resources prior to a request that the coal company include in its map certain other information. *Burns v. Consol Pa. Coal Company*, 636 A.2d 642 (Pa. Super. 1994).

Cross References

This section cited in 25 Pa. Code § 89.144a (relating to subsidence control: relief from responsibility).

§ 89.142a. Subsidence control: performance standards.

(a) *General requirements.* Underground mining operations shall be planned and conducted in accordance with the following:

(1) The subsidence control plan required by § 89.141(d) (relating to subsidence control: application requirements) and the postmining land use requirements in § 89.88 (relating to postmining land use).

(2) The performance standards in subsections (b)—(j).

(3) Underground mining will not be authorized beneath structures where the depth of overburden is less than 100 feet (30.48 meters), unless the subsidence control plan demonstrates to the Department's satisfaction that the mine workings will be stable and that overlying structures will not suffer irreparable damage.

(4) The mine operator shall adopt measures to maximize mine stability. This subsection does not prohibit planned subsidence in a predictable and controlled manner or the standard method of room and pillar mining.

(b) *Structure surveys.*

(1) The operator shall conduct premining surveys of all structures listed under subsection (f)(1). The operator is relieved of the duty to conduct a premining survey if the operator has complied with the notice procedure in paragraph (2) and the landowner denies the operator access to conduct a premining survey or the structure was constructed less than 15 days before mining will enter the area described in subparagraph (ii).

(i) The premining survey shall document the existing condition of each structure and for structures that are recognized as historically or architecturally significant, the presence of any architectural characteristics that will require special craftsmanship to replace.

(ii) The premining survey shall be completed prior to the time that a structure falls within a 30° angle of draw of underground mining, or a larger area as required by the Department.

(iii) The results of a premining survey shall be submitted to the landowner within 30 days of completion and to the Department upon Department request.

(iv) The operator may not provide the results of a premining survey to persons other than the structure owner and the Department without the consent of the structure owner.

- (v) The operator shall store survey results in a secure location and shall limit access to the results to authorized personnel.
- (2) The operator will be relieved of the duty to conduct a premining survey if the operator submits evidence to the Department that:
 - (i) The operator notified the owner by certified mail or personal service of the landowner's rights as set forth in sections 5.4—5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.5d—1406.5f).
 - (ii) The operator attempted to conduct a survey.
 - (iii) The landowner failed to provide the operator with access to the site to conduct a survey within 10 days of receipt of the operator's notice of intent to conduct the survey.
- (3) A landowner, who is notified of an operator's intent to conduct a premining or postmining survey in accordance with the notification procedures described in paragraph (2), should provide the operator access to the site for the purpose of conducting the survey within the time frame specified in paragraph (2) so the operator can do the following:
 - (i) Document the premining condition of the structure, assess the potential for material damage and plan appropriate damage minimization measures.
 - (ii) Determine the extent of subsidence damage and the scope of necessary repairs.
- (c) *Restrictions on underground mining.*
 - (1) Unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of the structures and features listed in subparagraphs (i)—(v), no underground mining may be conducted beneath or adjacent to:
 - (i) Public buildings and facilities.
 - (ii) Churches, schools and hospitals.
 - (iii) Impoundments with a storage capacity of 20 acre-feet (2.47 hectare-meters) or more.
 - (iv) Bodies of water with a volume of 20 acre-feet (2.47 hectare-meters) or more.
 - (v) Bodies of water or aquifers which serve as significant sources to public water supply systems.
 - (2) The measures adopted by the operator to comply with paragraph (1) shall consist of one of the following:
 - (i) Providing a support area beneath the structure or surface feature to be protected where coal extraction is limited to 50%, and the following:
 - (A) The support area shall consist of pillars of coal of a size and in a pattern which maximizes bearing strength, and which is approved by the Department.

(B) For purposes of this section, the support area shall be rectangular in shape and determined by projecting a 15° angle of draw from the surface to the coal seam beginning 15 feet (4.57 meters) from the sides of the structure. For a structure on a slope of 5% or greater, the support area on the downslope side of the structure shall be extended an additional distance determined by multiplying the thickness of the overburden by the percentage expressed as a decimal of the surface slope. A pillar lying partially within the support area shall be considered part of the support area and shall be consistent with the other support pillars in size and pattern.

(C) The area lying between two support areas shall be treated as a support area, when the distance between the two support areas is less than the depth of the overburden.

(D) If the Department determines there is a potential for material damage or reducing the reasonably foreseeable use of a structure or feature listed in paragraph (1), the Department may limit the percentage of coal extracted under or adjacent to the structure or feature as necessary to minimize the potential for material damage or reduction in reasonably foreseeable use.

(ii) Backfilling or backstowing of voids.

(iii) Leaving areas in which no coal extraction will occur.

(iv) Taking measures on the surface to prevent material damage or reduction in the reasonably foreseeable use of the structure or feature.

(v) Demonstrating that the structure or feature will not be materially damaged through an engineering report or a report of the effects of mining under similar conditions.

(vi) Initiating a monitoring program within a specified area to detect surface movement resulting from the underground mining. The program shall entail placing monitors sufficiently in advance of the underground mining so that if excessive subsidence occurs the underground mining can be stopped before the protected structures or features are damaged. In calculating the area to be monitored, a 30° angle of draw shall be used.

(3) If the measures implemented by the operator cause material damage or reduce the reasonably foreseeable use of the structures or features listed in paragraph (1), the Department may suspend mining under or adjacent to these structures or features until the subsidence control plan is modified to ensure prevention of further material damage to these structures or features.

(d) *Protection of certain EPACT structures and agricultural structures.*

(1) For EPACT structures other than noncommercial buildings protected under subsection (c):

(i) If an operator employs mining technology that provides for planned subsidence in a predictable and controlled manner, the operator shall take necessary and prudent measures, consistent with the mining method

employed, to minimize material damage to the extent technologically and economically feasible to the structure, except when one of the following applies:

(A) The structure owner has consented, in writing, to allow material damage.

(B) The costs of these measures would exceed the anticipated cost of repairs and the anticipated damage will not constitute a threat to health or safety.

(ii) If an operator employs mining technology that does not result in planned subsidence in a predictable and controlled manner, the operator shall adopt measures consistent with known technology to prevent subsidence and subsidence-related damage to the extent technologically and economically feasible to the structure. Measures may include, but are not limited to:

(A) Backstowing or backfilling of voids.

(B) Leaving support pillars of coal.

(C) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place.

(D) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(E) Other measures approved by the Department.

(2) If the Department determines and so notifies a mine operator that a proposed mining technique or extraction ratio will result in irreparable damage to a structure enumerated in subsection (f)(1)(iii)—(v), the operator may not use the technique or extraction ratio unless the building owner, prior to mining, consents to the mining or the operator, prior to mining, takes measures approved by the Department to minimize or reduce impacts resulting from subsidence to these structures.

(3) Nothing in paragraph (1) or (2) prohibits planned subsidence in a predictable and controlled manner or the standard method of room and pillar mining.

(e) *Repair of damage to surface lands.* To the extent technologically and economically feasible, the operator shall correct material damage to surface lands resulting from subsidence caused by the operator's underground mining operations.

(f) *Repair of damage to structures.*

(1) *Repair or compensation for damage to certain structures.* Whenever underground mining operations conducted on or after August 21, 1994, cause damage to any of the structures listed in subparagraphs (i)—(v), the operator responsible for extracting the coal shall promptly and fully rehabilitate, restore, replace or compensate the owner for material damage to the structures resulting from the subsidence unless the operator demonstrates to the Department's satisfaction that one of the provisions of § 89.144a (relating to subsidence control: relief from responsibility) relieves the operator of responsibility.

(i) Buildings that are accessible to the public including, but not limited to, commercial, industrial and recreational buildings and all structures that are securely attached to the land surface and adjunct to or used in conjunction with these buildings, including:

- (A) Garages.
- (B) Storage sheds and barns.
- (C) Greenhouses and related buildings.
- (D) Customer-owned utilities and cables.
- (E) Fences and other enclosures.
- (F) Retaining walls.
- (G) Paved or improved patios.
- (H) Walks and driveways.
- (I) Septic sewage treatment facilities.
- (J) Inground swimming pools.
- (K) Lot drainage and lawn and garden irrigation systems.

(ii) Noncommercial buildings customarily used by the public, including, but not limited to, schools, churches and hospitals.

(iii) Dwellings which are used for human habitation and permanently affixed appurtenant structures or improvements. In the context of this paragraph, the phrase “permanently affixed appurtenant structures or improvements” includes, but is not limited to, structures adjunct to or used in conjunction with dwellings, such as:

- (A) Garages.
- (B) Storage sheds and barns.
- (C) Greenhouses and related buildings.
- (D) Customer-owned utilities and cables.
- (E) Fences and other enclosures.
- (F) Retaining walls.
- (G) Paved or improved patios.
- (H) Walks and driveways.
- (I) Septic sewage treatment facilities.
- (J) Inground swimming pools.
- (K) Lot drainage and lawn and garden irrigation systems.

(iv) Barns and silos.

(v) Permanently affixed structures of 500 or more square feet (46.45 square meters) in area that are used for raising livestock, poultry or agricultural products, for storage of animal waste or for the processing or retail marketing of agricultural products produced on the farm on which the structures are located.

(2) *Amount of compensation.*

(i) If, rather than repair the damage, the operator compensates the structure owner for damage caused by the operator’s underground mining operations, the operator shall provide compensation equal to the reasonable

cost of repairing the structure or, if the structure is determined to be irreparably damaged, the compensation shall be equal to the reasonable cost of its replacement except for an irreparably damaged agricultural structure identified in paragraph (1)(iv) or (v) which at the time of damage was being used for a different purpose than the purpose for which the structure was originally constructed. For such an irreparably damaged agricultural structure, the operator may provide for the reasonable cost to replace the damaged structure with a structure satisfying the functions and purposes served by the damaged structure before the damage occurred if the operator can affirmatively prove that the structure was being used for a different purpose than the purpose for which the structure was originally constructed.

(ii) The operator shall compensate the occupants with an additional payment for reasonable, actual expenses incurred during their temporary relocation, if the occupants of a damaged structure are required to relocate. The operator shall also compensate the occupants for other actual, reasonable incidental costs agreed to by the parties or approved by the Department.

(g) *Protection of utilities.*

(1) Underground mining operations shall be planned and conducted in a manner which minimizes damage, destruction or disruption in services provided by oil, gas and water wells; oil, gas and coal slurry pipelines; rail lines; electric and telephone lines; and water and sewerage lines which pass under, over, or through the permit area, unless otherwise approved by the owner of the facilities and the Department.

(2) The measures an operator may take to minimize damage, destruction or disruption in services protected by this subsection may include, but are not limited to, one or more of the following:

(i) A program for detecting subsidence damage and minimizing disruption in services.

(ii) A notification to the owner of the facility which specifies when underground mining beneath or adjacent to the utility will occur.

(iii) Providing support in accordance with the utility owner's support rights.

(iv) Providing temporary or alternate service to customers.

(v) Demonstrating to the Department that subsidence will not materially damage the utility.

(3) A mine operator shall take measures to minimize damage to customer-owned gas and water service connections, unless the customer does not consent to the measures.

(4) The Department will suspend or restrict underground mining if it determines that mining beneath or adjacent to a utility will present an imminent hazard to human safety.

(h) *Perennial streams.*

(1) Underground mining operations shall be planned and conducted in a manner which maintains the value and reasonably foreseeable uses of perennial streams, such as aquatic life; water supply; and recreation, as they existed prior to coal extraction beneath streams.

(2) If the Department finds that the underground mining operations have adversely affected a perennial stream, the operator shall mitigate the adverse effects to the extent technologically and economically feasible, and, if necessary, file revised plans or other data to demonstrate that future underground mining operations will meet the requirements of paragraph (1).

(i) *Prevention of hazards to human safety.*

(1) The Department will suspend underground mining operations beneath urbanized areas; cities; towns; and communities and adjacent to or beneath industrial or commercial buildings; lined solid and hazardous waste disposal areas; major impoundments of 20 acre-feet (2.47 hectare-meters) or more; or perennial streams, if the operations present an imminent danger to the public.

(2) If the Department determines and so notifies the operator that a mining technique or extraction ratio will result in subsidence which creates an imminent hazard to human safety, the operator may not use the technique or extraction ratio unless the operator, prior to mining, takes measures approved by the Department to eliminate the imminent hazard to human safety.

(j) *Prohibition.* Underground mining is prohibited under an area which is not included within a subsidence control plan that has been submitted under § 89.141(d) and approved by the Department.

(k) *Report of claim.* Within 10 days of being advised of a claim of subsidence damage to a structure or surface feature, the operator shall provide the Department with a report of the claim which shall include the following information:

(1) The date of the claim.

(2) The name, address and telephone number of the owner of the structure, surface feature or surface land claimed to be damaged.

(3) The number assigned to the structure or feature under § 89.154(a) (relating to maps).

(l) *Property rights.* This section does not authorize the Department to adjudicate property rights disputes between mine operators and other parties.

Authority

The provisions of this § 89.142a 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).

Editor's Note: Certain parts of the rulemaking at 35 Pa.B. 5775 are authorized under a Federal action that superseded sections 5.1(b), 5.2(g)—(h), 5.4(a)(3) and (c) and 5.5(b) of the BMSLCA (52 P. S. §§ 1406.5a(b), 1406.5b(g)—(h), 1406.5d(a)(3) and (c) and 1406.5e(b)) to the extent these statutory provisions conflicted with the Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) (30 U.S.C.A. §§ 1201—1328). The Federal action effecting these changes was published at 69 FR 71551 (December 9, 2004).

Source

The provisions of this § 89.142a adopted June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775. Immediately preceding text appears at serial pages (313578) to (313584).

Notes of Decisions

All Perennial Streams Protected

EHB correctly interpreted the plain language of mine subsidence control regulation that the Department has authority to regulate mining activity in order to protect the values and reasonably foreseeable uses of perennial streams, regardless of their size, including small perennial stream that had no name. *UMCO v. Department of Environmental Protection*, 938 A.2d 530, 537 (Pa. Cmwlth. 2007)

Construction

Preambles may be used to resolve an ambiguity in a regulation; however, preambles may not be used to create ambiguity where none exists, and in any case where a preamble is used as a tool to resolve an ambiguous law, the preamble is not controlling. The language in the preamble was not controlling because the regulatory language was clear. *UMCO v. Department of Environmental Protection*, 938 A.2d 530, 537 (Pa. Cmwlth. 2007)

Cross References

This section cited in 25 Pa. Code § 89.5 (relating to definitions); 25 Pa. Code § 89.141 (relating to subsidence control: application requirements); 25 Pa. Code § 89.143a (relating to subsidence control: procedure for resolution of subsidence damage claims); 25 Pa. Code § 89.144a (relating to subsidence: relief from responsibility); and 25 Pa. Code § 89.154 (relating to maps).

§ 89.143. [Reserved].

Source

The provisions of this § 89.143 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; paragraphs (2)(iii)(A)—(D) and (4) are suspended July 1, 1983, effective July 2, 1983, 13 Pa.B. 2057; amended March 29, 1985, 15 Pa.B. 1169, effective December 28, 1985, 15 Pa.B. 4581; corrected January 24, 1986, effective December 28, 1985, 16 Pa.B. 249; 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 May 9, 1997, effective May 10, 1997, 27 Pa.B. 2371; reserved June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761. Immediately preceding text appears at serial pages (239683) to (239684) and (234539) to (234540).

Notes of Decisions*Subsurface Rights*

DER has no duty under Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21) to consider effects of subsidence on underlying coal seam as the act does not apply to subsurface rights. *George v. Department of Environmental Resources*, 517 A.2d 578 (Pa. Cmwlt. 1986).

DER must consider effects of subsidence on significant sources of public water under the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21) and a landowner's failure to allege his stream as a significant source of public water is a de minimis error. *George v. Department of Environmental Resources*, 517 A.2d 578 (Pa. Cmwlt. 1986).

§ 89.143a. Subsidence control: procedure for resolution of subsidence damage claims.

(a) The owner of a structure enumerated in § 89.142a(f)(1) (relating to subsidence control: performance standards) who believes that underground mining operations caused mine subsidence resulting in damage to the structure and who wishes to secure repair of the structure or compensation for the damage shall

provide the operator responsible for the underground mining operations with notification of the damage to the structure.

(b) If the operator agrees that mine subsidence damaged the structure, the operator shall fully repair the damage or compensate the owner for the damage in accordance with either § 89.142a(f) or a voluntary agreement between the parties authorized by section 5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.5f).

(c) If the parties are unable to agree as to the cause of the damage or the reasonable cost of repair or compensation for the structure, the owner of the structure may file a claim in writing with the Department. The owner of a structure that is not an EPACT structure shall file the claim within 2 years of the date the structure was damaged.

(d) Upon receipt of the claim, the Department will send a copy of the claim to the operator and conduct an investigation in accordance with the following procedure:

(1) Within 30 days of receipt of the claim, the Department will conduct an investigation to determine whether underground mining operations caused the subsidence damage to the structure and provide the results of its investigation to the property owner and mine operator within 10 days of completing the investigation.

(2) Within 60 days of completion of the investigation, the Department will determine, and set forth in writing, whether the damage is attributable to subsidence caused by the operator's underground mining operations and, if so, the reasonable cost of repairing or replacing the damaged structure.

(3) If the Department finds that the operator's underground mining operations caused the damage to the structure, the Department will either issue a written order directing the operator to promptly compensate the structure owner or issue an order directing the operator to promptly repair the damaged structure. The Department may extend the time for compliance with the order if the Department finds that further damage may occur to the same structure as a result of additional subsidence.

Authority

The provisions of this § 89.143a amended under section 7 of The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) (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).

Editor's Note: Certain parts of the rulemaking at 35 Pa.B. 5775 are authorized under a Federal action that superseded sections 5.1(b), 5.2(g)—(h), 5.4(a)(3) and (c) and 5.5(b) of the BMSLCA (52 P. S. §§ 1406.5a(b), 1406.5b(g)—(h), 1406.5d(a)(3) and (c) and 1406.5e(b)) to the extent these statutory provisions conflicted with the Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) (30 U.S.C.A. §§ 1201—1328). The Federal action effecting these changes was published at 69 FR 71551 (December 9, 2004).

Source

The provisions of this § 89.143a adopted June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775. Immediately preceding text appears at serial page (313584) to (313585).

§ 89.144. [Reserved].**Source**

The provisions of this § 89.144 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; subsection (b)(3) is suspended July 1, 1983, effective July 2, 1983, 13 Pa.B. 2057; amended March 29, 1985, 15 Pa.B. 1169, effective December 28, 1985, 15 Pa.B. 4581; corrected January 24, 1986, effective December 28, 1985, 16 Pa.B. 249; 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 May 9, 1997, effective May 10, 1997, 27 Pa.B. 2371; reserved June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761. Immediately preceding text appears at serial pages (234540) to (234541).

§ 89.144a. Subsidence control: relief from responsibility.

(a) Except as provided in subsection (b), the operator will not be required to repair a structure or compensate a structure owner for damage to structures identified in § 89.142a(f)(1) (relating to subsidence control: performance standards) if the operator demonstrates to the Department's satisfaction one or more of the following apply:

(1) The landowner denied the operator access to the property upon which the structure is located to conduct a premining survey or a postmining survey of the structure and surrounding property, and thereafter the operator served notice upon the landowner by certified mail or personal service. The operator shall demonstrate the following:

(i) The notice identified the rights established by sections 5.4—5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.5d—1406.5f).

(ii) The landowner denied the operator access to the site to conduct the survey within 10 days after the landowner's receipt of the notice.

(2) The operator's underground mining did not cause the damage.

(3) The operator and the landowner entered into a voluntary agreement that satisfies the requirements of section 5.6 of The Bituminous Mine Subsidence and Land Conservation Act.

(b) The relief in subsection (a)(1) will not apply in the case of an EPACT structure if the landowner or the Department can show, by a preponderance of evidence, that the damage resulted from the operator's underground mining operations.

(c) The operator is not responsible for the portion of structure damages which the operator can show, by a preponderance of evidence, could have been pre-

vented had the structure owner provided the operator access to conduct a premining survey under § 89.142a and implement necessary and prudent damage minimization measures.

Authority

The provisions of this § 89.144a amended under section 7 of The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) (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).

Editor's Note: Certain parts of the rulemaking at 35 Pa.B. 5775 are authorized under a Federal action that superseded sections 5.1(b), 5.2(g)—(h), 5.4(a)(3) and (c) and 5.5(b) of the BMSLCA (52 P. S. §§ 1406.5a(b), 1406.5b(g)—(h), 1406.5d(a)(3) and (c) and 1406.5e(b)) to the extent these statutory provisions conflicted with the Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) (30 U.S.C.A. §§ 1201—1328). The Federal action effecting these changes was published at 69 FR 71551 (December 9, 2004).

Source

The provisions of this § 89.144a adopted June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775. Immediately preceding text appears at serial page (313585) to (313586).

Cross References

This section cited in 25 Pa. Code § 89.142a (relating to subsidence control: performance standards).

§ 89.145. [Reserved].

Source

The provisions of this § 89.145 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; subsections (a)(4), (b) and (d) are suspended July 1, 1983, effective July 2, 1983, 13 Pa.B. 2057; suspension of subsections (a)(4) and (b) modified September 28, 1984, effective September 29, 1984, 14 Pa.B. 3518; amended March 29, 1985, 15 Pa.B. 1169, effective December 28, 1985, 15 Pa.B. 4581; corrected January 24, 1986, effective December 28, 1985, 16 Pa.B. 249; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended May 9, 1997, effective May 10, 1997, 27 Pa.B. 2371; reserved June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761. Immediately preceding text appears at serial pages (234542) to (234543).

§ 89.145a. Water supply replacement: performance standards.

(a) *Water supply surveys.*

(1) The operator shall conduct a premining survey and may conduct a postmining survey of the quantity and quality of all water supplies within the permit and adjacent areas, except when the landowner denies the operator access to the site to conduct a survey and the operator has complied with the notice procedure in this section. Premining surveys shall be conducted prior to the time a water supply is susceptible to mining-related effects. Survey infor-

mation must include the following information to the extent that it can be collected without excessive inconvenience to the landowner:

- (i) The location and type of water supply.
 - (ii) The existing and reasonably foreseeable uses of the water supply.
 - (iii) The chemical and physical characteristics of the water, including, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, hardness, total coliform, acidity, alkalinity and sulfates. An operator who obtains water samples in a premining or postmining survey shall utilize a certified laboratory to analyze the samples.
 - (iv) The quantity of the water.
 - (v) The physical description of the water supply, including the depth and diameter of the well, length of casing and description of the treatment and distribution systems.
 - (vi) Hydrogeologic data such as the static water level and yield determination.
- (2) The operator shall submit copies of the results of the analyses, as well as the results of any quantitative analysis, to the Department and to the landowner within 30 days of their receipt by the operator.
- (3) If the operator cannot make a premining or postmining survey because the owner will not allow access to the site, the operator shall submit evidence to the Department of the following:
- (i) The operator notified the landowner by certified mail or personal service of the landowner's rights in sections 5.1—5.3 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.5a—1406.5c), and the effect on the landowner of the landowner's denial to the operator of access to the site as described in section 5.2(d) of The Bituminous Mine Subsidence and Land Conservation Act.
 - (ii) The operator's attempt to conduct a survey.
 - (iii) The landowner failed to authorize access to the operator to conduct a survey within 10 days of receipt of the operator's notice of intent to conduct a survey.

(b) *Restoration or replacement of water supplies.* When underground mining activities conducted on or after August 21, 1994, affect a public or private water supply by contamination, diminution or interruption, the operator shall promptly restore or replace the affected water supply with a permanent alternate source which adequately serves the premining uses of the water supply and any reasonably foreseeable uses of the water supply. The operator shall be relieved of any responsibility under The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21) to restore or replace a water supply if the operator demonstrates that one of the provisions of § 89.152 (relating to water supply replacement: special provisions) relieves the operator of further responsi-

bility. This subsection does not apply to water supplies affected by underground mining activities which are covered by Chapter 87 (relating to surface mining of coal).

(c) Within 24 hours of an operator's receipt of a claim of water supply contamination, diminution or interruption, the operator shall notify the Department of the claim.

(d) *Investigation and reporting of water supply damage complaints.* Upon receipt of notification that a water supply has been contaminated, diminished or interrupted and that the operator's underground mining activities may have caused the contamination, diminution or interruption, the operator shall diligently investigate the complaint and notify the Department in a timely manner of the results of the operator's investigation. This subsection does not apply to water supplies affected by underground mining activities which are governed by Chapter 87.

(e) *Temporary water supplies.*

(1) If the affected water supply is within the rebuttable presumption area and the rebuttable presumption applies and the landowner or water user is without a readily available alternate source, the operator shall provide a temporary water supply within 24 hours of being contacted by the landowner or water supply user or the Department, whichever occurs first.

(2) An operator shall promptly provide a temporary water supply if the operator or the Department finds that the operator's underground mining activities have caused contamination, diminution or interruption of an EPACT water supply, and the landowner or water user is without a readily available alternate source of water. This requirement applies regardless of whether the water supply is located within, or outside of, the rebuttable presumption area.

(3) The temporary water supply provided under this subsection must meet the requirements of subsection (f)(2) and provide a sufficient amount of water to meet the water supply user's needs.

(f) *Adequacy of permanently restored or replaced water supply.* A permanently restored or replaced water supply shall include any well, spring, municipal water supply system or other supply approved by the Department, which meets the criteria for adequacy as follows:

(1) *Reliability, maintenance and control.* A restored or replaced water supply, at a minimum, must:

(i) Be as reliable as the previous water supply.

(ii) Be as permanent as the previous water supply.

(iii) Not require excessive maintenance.

(iv) Provide the owner and the user with as much control and accessibility as exercised over the previous water supply.

(2) *Quality.* A restored or replaced water supply will be deemed adequate when it differs in quality from the premining water supply, if it meets the

Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), or is comparable to the premining water supply when that water supply did not meet these standards.

(3) *Adequate quantity.* A restored or replaced water supply will be deemed adequate in quantity if it meets one of the following:

(i) It delivers the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(ii) It is established through a connection to a public water supply system which is capable of delivering the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(iii) For purposes of this paragraph and with respect to agricultural water supplies, the term reasonably foreseeable uses includes the reasonable expansion of use where the water supply available prior to mining exceeded the farmer's actual use.

(4) *Water source serviceability.* A replacement of a water supply must include the installation of any piping, pumping equipment and treatment equipment necessary to put the replaced water source into service.

(5) *Cost to landowner or water user.* A restored or replacement water supply must meet the following costs criteria:

(i) The restored or replacement water supply may not cost the landowner or water user more to operate and maintain than the previous water supply.

(ii) If the operation and maintenance costs of the restored or replacement water supply are more than the operation and maintenance costs of the previous water supply, the operator shall provide for the permanent payment of the increased operating and maintenance cost of the restored or replacement water supply.

(iii) Upon agreement by the operator and the landowner or water user, the obligation to pay the increased operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the operator and the landowner or water user.

Authority

The provisions of this § 89.145a amended under section 7 of The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) (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).

Editor's Note: Certain parts of the rulemaking at 35 Pa.B. 5775 are authorized under a Federal action that superseded sections 5.1(b), 5.2(g)—(h), 5.4(a)(3) and (c) and 5.5(b) of the BMSLCA (52 P. S. §§ 1406.5A(b), 1406.5b(g)—(h), 1406.5d(a)(3) and (c) and 1406.5e(b)) to the extent these statutory provisions conflicted with the Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) (30 U.S.C.A. §§ 1201—1328). The Federal action effecting these changes was published at 69 FR 71551 (December 9, 2004).

Source

The provisions of this § 89.145a adopted June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775. Immediately preceding text appears at serial pages (313586) to (313589).

Cross References

This section cited in 25 Pa. Code § 89.5 (relating to definitions); 25 Pa. Code § 89.152 (relating to water supply replacement: special provisions); and 25 Pa. Code § 89.153 (relating to water supply replacement: rebuttable presumption).

§ 89.146. [Reserved].**Source**

The provisions of this § 89.146 adopted July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; subsection (e) is suspended July 1, 1983, effective July 2, 1983, 13 Pa.B. 2057; amended March 29, 1985, 15 Pa.B. 1169, effective December 28, 1985, 15 Pa.B. 4581; corrected January 24, 1986, effective December 28, 1985, 16 Pa.B. 249; reserved May 9, 1997, effective May 10, 1997, 27 Pa.B. 2371. Immediately preceding text appears at serial page (207652).

§ 89.146a. Water supply replacement: procedure for resolution of water supply damage claims.

(a) Whenever a landowner or water supply user experiences contamination, diminution or interruption of a water supply which is believed to have occurred as a result of underground mining activities, the landowner or water user shall notify the operator. The operator shall diligently investigate the water loss. This subsection does not apply to water supplies affected by underground mining activities which are governed by Chapter 87 (relating to surface mining of coal).

(b) The Department will order the operator to provide temporary water to the landowner or water supply user within 24 hours of issuance of the order if the following apply:

- (1) No alternate temporary water supply is available to the landowner or water user.
- (2) The water supply is contaminated, diminished or interrupted.
- (3) The water supply is located within the rebuttable presumption area.
- (4) The landowner notified the operator of the water supply problem.

(c) If the affected water supply has not been restored or an alternate water supply has not been provided by the operator or if the operator provides and later discontinues an alternate source, the landowner or water supply user may so notify the Department and request that the Department conduct an investigation in accordance with the following procedure:

- (1) Within 10 days of notification, the Department will commence an investigation of landowner's or water supply user's claim.
- (2) Within 45 days of notification, the Department will make a determination of whether the contamination, diminution or interruption was caused by

the operator's underground mining activities. The Department will notify the affected parties of its determination within 10 days of completing the investigation.

(3) If the Department determines that the operator's underground mining activities caused the water supply to be contaminated, diminished or interrupted, the Department will issue any orders that are necessary to assure compliance with The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21) and this chapter.

Authority

The provisions of this § 89.146a amended under section 7 of The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) (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).

Editor's Note: Certain parts of the rulemaking at 35 Pa.B. 5775 are authorized under a Federal action that superseded sections 5.1(b), 5.2(g)—(h), 5.4(a)(3) and (c) and 5.5(b) of the BMSLCA (52 P. S. §§ 1406.5a(b), 1406.5b(g)—(h), 1406.5d(a)(3) and (c) and 1406.5e(b)) to the extent these statutory provisions conflicted with the Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) (30 U.S.C.A. §§ 1201—1328). The Federal action effecting these changes was published at 69 FR 71551 (December 9, 2004).

Source

The provisions of this § 89.146a adopted June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775. Immediately preceding text appears at serial pages (313589) to (313590).

§ 89.147. [Reserved].

Source

The provisions of this § 89.147 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; subsection (a) is suspended July 1, 1983, effective July 2, 1983, 13 Pa.B. 2057; reserved March 29, 1985, 15 Pa.B. 1169, effective December 28, 1985, 15 Pa.B. 4581; corrected January 24, 1986, effective December 28, 1985, 16 Pa.B. 249. Immediately preceding text appears at serial pages (92742) to (92743).

§ 89.148. [Reserved].

Source

The provisions of this § 89.148 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; reserved March 29, 1985, 15 Pa.B. 1169, effective December 28, 1985, 15 Pa.B. 4581; corrected January 24, 1986, effective December 28, 1985, 16 Pa.B. 249. Immediately preceding text appears at serial pages (92743) to (92744).

§ 89.149. [Reserved].**Source**

The provisions of this § 89.149 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; reserved March 29, 1985, 15 Pa.B. 1169, effective December 28, 1985, 15 Pa.B. 4581; corrected January 24, 1986, effective December 28, 1985, 16 Pa.B. 249. Immediately preceding text appears at serial page (92744).

§ 89.150. [Reserved].**Source**

The provisions of this § 89.150 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.

§ 89.151. [Reserved].**Source**

The provisions of this § 89.151 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.

§ 89.152. Water supply replacement: special provisions.

(a) In the case of an EPACT water supply, an operator may not be required to restore or replace the water supply if one of the following has occurred:

(1) The Department has determined that a replacement water supply meeting the criteria in § 89.145a(f) (relating to water supply replacement: performance standards) cannot be developed and the operator has purchased the property for a sum equal to the property's fair market value immediately prior to the time the water supply was affected or has made a one-time payment equal to the difference between the property's fair market value determined immediately prior to the time the water supply was affected and the fair market value determined at the time payment is made.

(2) The landowner and operator have entered into a valid voluntary agreement under section 5.3(a)(5) of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.5c(a)(5)) which does not require restoration or replacement of the water supply and the Department has determined that an adequate replacement water supply could feasibly be developed.

(3) The operator can demonstrate one of the following:

(i) The contamination, diminution or interruption existed prior to the underground mining activities as determined by a premining survey, and the operator's underground mining activities did not worsen the preexisting contamination, diminution or interruption.

(ii) The contamination, diminution or interruption occurred more than 3 years after underground mining activities occurred.

(iii) The contamination, diminution or interruption occurred as the result of some cause other than the underground mining activities.

(b) In the case of a water supply other than an EPACT water supply, an operator will not be required to restore or replace a water supply if the operator can demonstrate one of the following:

(1) The contamination, diminution or interruption existed prior to the underground mining activities as determined by a premining survey, and the operator's underground mining activities did not worsen the preexisting contamination, diminution or interruption.

(2) The contamination, diminution or interruption is due to underground mining activities which occurred more than 3 years prior to the onset of water supply contamination, diminution or interruption.

(3) The contamination, diminution or interruption occurred as the result of some cause other than the underground mining activities.

(4) The claim for contamination, diminution or interruption of the water supply was made more than 2 years after the water supply was adversely affected by the underground mining activities.

(5) That the operator has done one of the following:

(i) Has purchased the property for a sum equal to the property's fair market value immediately prior to the time the water supply was affected or has made a one-time payment equal to the difference between the property's fair market value determined immediately prior to the time the water supply was affected and the fair market value determined at the time payment is made.

(ii) The landowner and operator have entered into a valid voluntary agreement under section 5.3 of The Bituminous Mine Subsidence and Land Conservation Act which does not require restoration or replacement of the water supply or authorizes a lesser amount of compensation to the landowner than provided by section 5.3(a)(5) of The Bituminous Mine Subsidence and Land Conservation Act.

(c) This section does not apply to underground mining activities which are governed by Chapter 87 (relating to surface mining of coal).

Authority

The provisions of this § 89.152 amended under section 7 of The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) (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).

Editor's Note: Certain parts of the rulemaking at 35 Pa.B. 5775 are authorized under a Federal action that superseded sections 5.1(b), 5.2(g)—(h), 5.4(a)(3) and (c) and 5.5(b) of the BMSLCA (52 P. S. §§ 1406.5a(b), 1406.5b(g)—(h), 1406.5d(a)(3) and (c) and 1406.5e(b)) to the extent these statutory provisions conflicted with the Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) (30 U.S.C.A. §§ 1201—1328). The Federal action effecting these changes was published at 69 FR 71551 (December 9, 2004).

Source

The provisions of this § 89.152 adopted June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775. Immediately preceding text appears at serial pages (313591) to (313592).

Cross References

This section cited in 25 Pa. Code § 89.145a (relating to water supply replacement: performance standards).

§ 89.153. Water supply replacement: rebuttable presumption.

(a) In a determination or proceeding under section 5.2 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.5b), it is presumed that the operator is responsible for the contamination, diminution or interruption of a water supply that is within the rebuttable presumption area.

(b) The operator may successfully rebut the presumption by affirmatively proving that the landowner denied the operator access to the property on which the water supply is located to conduct a premining survey or a postmining survey of the quality and quantity of the water supply and that the operator complied with the notification procedure in § 89.145a(a)(3) (relating to water supply replacement: performance standards).

(c) Affirmatively proving that an operator was denied access to conduct a premining or postmining survey of a water supply does not relieve the operator of liability for the contamination, diminution or interruption when the landowner, affected water use or the Department proves the operator's underground mining activities caused the contamination, diminution or interruption.

Source

The provisions of this § 89.153 adopted June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761.

§ 89.154. Maps.

(a) *General mine map.* The application shall include maps prepared under the supervision of and certified by a qualified registered professional engineer or qualified registered professional land surveyor drawn to a scale of 1 inch = 500 feet in a manner satisfactory to the Department, updated as requested by the Department, showing the items identified in this subsection. The map shall cover all areas where structures may be damaged and surface lands may suffer material damage as a result of mine subsidence. At a minimum, the map shall cover the entire area above the mine, and all areas within a 30° angle of draw of the limits of the mine. The requirements of paragraphs (2)—(7) may be satisfied by referencing the maps required by Subchapter B (relating to operations). The map, at a minimum, shall show the following:

(1) The boundaries of areas proposed to be affected over the estimated total life of the underground mining activity, with a description of the size, sequence and the schedule for mining subareas of the mine.

- (2) The location of test borings and core samplings, and surface and coal elevations at these locations.
- (3) Coal crop lines and the contours of the coal seam to be mined within the permit and adjacent areas.
- (4) The location and extent of known workings of active, inactive or abandoned, underground or surface mines, including identification of the coal seams mined and location of mine openings to the surface within, above and below the proposed permit and adjacent areas.
- (5) The portrayal of major aquifers on cross-sections.
- (6) The area covered by the subsidence control plan submitted under § 89.141(d) (relating to subsidence control: application requirements) with the following information identified:
 - (i) The boundaries of lands and names of current surface and subsurface owners of record.
 - (ii) Dwellings, public buildings and facilities, churches, schools, hospitals and impoundments with a storage capacity of 20 acre-feet (2.47 hectare-meters), identified by numerical reference.
 - (iii) Structures or classes of structures listed in § 89.142a(f)(1)(i)—(v) (relating to subsidence control: performance standards), identified by numerical reference.
 - (iv) Urbanized areas, cities, towns, communities and industrial or commercial buildings.
 - (v) Public parks and historic structures.
 - (vi) Other structures which are entitled to support, identified by numerical reference.
 - (vii) Water supplies.
 - (viii) Major electric transmission lines, including identification by name or numerical reference.
 - (ix) Public roads and railroads.
 - (x) Oil, gas and coal slurry pipelines larger than 4 inches (10.16 centimeters) in diameter, including identification by name or numerical reference.
 - (xi) Water and sewer mains and transmission lines, including identification by name or numerical reference.
 - (xii) Surface water bodies, including perennial streams, lakes, ponds, dams and impoundments with a volume of 20 acre-feet (2.47 hectare meters) or more, indicating by numerical reference those perennial streams and other bodies of water which are a significant source for a public water supply system.
 - (xiii) Coal refuse disposal areas, solid and hazardous waste disposal areas, and other air and water pollution control facilities, all identified by numerical reference.
 - (xiv) Gas, oil and water wells, identified by numerical reference.
 - (xv) Surface sites and facilities associated with the underground permit application.

(xvi) Aquifers which serve as a significant source for a public water supply system, identified by numerical reference.

(xvii) Political subdivisions.

(xviii) Landslide prone areas.

(xix) Proposed underground workings including a description of the location and extent of the areas in which planned subsidence mining methods will be used and the identification of all areas where the measures described in § 89.141(d)(3), (5) and (7) will be taken to prevent or minimize subsidence and subsidence-related damage; and when applicable, to repair subsidence-related damage.

(7) Areas over the proposed mine where the overburden is 100 feet (30.48 meters) or less.

(b) *Six-month maps.* The operator shall submit mine maps to the Department every 6 months. The maps shall:

(1) Be drawn to a scale of 1 inch = 100 feet or 1 inch = 200 feet.

(2) Be prepared under the supervision of and certified by a qualified registered professional engineer or qualified registered professional land surveyor.

(3) Show the area in which mining is projected to occur in the next 6 months.

(4) Show the area where underground mining occurred over the last 6 months, including pillar locations, and the areas abandoned or completed within the last 6 months.

(5) Provide the following information:

(i) The location and identifying number for structures and surface features required to be identified by number in subsection (a)(6)(i)—(xviii).

(ii) The location and identifying number of structures and surface features required to be identified by number in subsection (a)(6)(i)—(xviii), which have appeared since the permit application.

(iii) The location of surface boundaries and identification of surface owners of record and the owners of record of the coal seam being mined.

(iv) The boundaries of the projected mining area and within that area designated coal areas to be mined and coal areas to be left unmined, including:

(A) A description of the areas to be supported by the pillar plan required by § 89.142a(c)(2).

(B) Coal left in place in compliance with other statutes including those listed in § 89.141(d)(12).

(C) Identification of other areas of planned and controlled subsidence.

(v) Existing mine working adjacent to the area to be mined in the next 6 months, including a designation of any survey stations, elevations of the bottom of the coal seam and areas of geologic faults.

(vi) Other information requested by the Department.

(c) *Map to be filed with recorder of deeds.* After the Department has determined that the 6-month map is in accordance with the subsidence control plan,

the operator shall file a copy of the map with the recorder of deeds for each county in which underground mining is projected, and submit to the Department proof of this filing.

(d) *Restriction of activity.* No underground mining may occur until it is shown as projected underground mining on the maps required by subsection (b) and the maps have been on file with the recorder of deeds' office for 10 days.

Source

The provisions of this § 89.154 adopted June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761.

Cross References

This section cited in 25 Pa. Code § 89.155 (relating to public notice).

§ 89.155. Public notice.

(a) The operator shall send a notice by certified mail, return receipt requested, to the owner of record of each property and each utility, and each political subdivision overlying its underground mining operations. A notice shall be sent to the resident and owner of each structure overlying the mining operation. The notice shall be sent at least 6 months, but not more than 5 years, prior to mining beneath that property or structure or within that political subdivision. The operator shall provide the Department with a copy of each notice and return receipt, or, if the certified mail is not accepted, a copy of the returned envelope documenting that the notice was not accepted or not deliverable.

(b) The notice shall identify:

(1) The area in which underground mining will take place.

(2) The approximate time frame, within the permit term, when the underground mining that may cause subsidence and affect specific structures is expected to occur.

(3) The location of the offices where the applications and maps submitted under this chapter are available for inspection and a schedule of dates for the submission of the 6-month maps under § 89.154(b) (relating to maps).

(4) The location of the offices of both the operator and the Department where a surface owner can submit written complaints alleging subsidence damage or water supply contamination, diminution or interruption.

(c) The operator shall establish and implement a procedure to notify Federal, State or local government agencies responsible for administering public facilities, such as roads, when the underground mining beneath or adjacent to the public facility will occur. The notification shall be given 6 months prior to underground mining beneath the public facility or shall be timed to enable the agency to take appropriate measures to protect the facility and to prevent conditions which may endanger the health, safety or welfare of the public.

Source

The provisions of this § 89.155 adopted June 12, 1998, effective June 13, 1998, 28 Pa.B. 2761.

Subchapter G. IN SITU PROCESSING

Sec.

- 89.161. General requirements.
- 89.162. Information requirements.
- 89.163. Performance standards.

§ 89.161. General requirements.

(a) In situ processing means those activities on the surface or underground which involve in-place processing and removal of coal or coal by-products. For the purpose of this subchapter, in situ processing does not include the collection of methane and natural gas by means of boreholes and wells or the drilling, stimulation or construction of boreholes or wells for the collection of methane and natural gas. Such activities shall meet the requirements of the Gas Operations Well-Drilling Petroleum and Coal Mining Act (52 P. S. §§ 2120—2602).

(b) A person who conducts or intends to conduct in situ processing shall obtain a permit from the Department in accordance with this chapter and Chapter 86 (relating to surface and underground coal mining: general).

Source

The provisions of this § 89.161 adopted February 17, 1984, 14 Pa.B. 524, effective August 4, 1984, 14 Pa.B. 2860.

§ 89.162. Information requirements.

(a) Each application for in situ processing shall meet the information requirements of this chapter.

(b) Each application for in situ processing shall include a plan that ensures that all pollution-forming and radioactive gases, solids or liquids constituting a fire, health, safety or environmental hazard and caused by, or used in, the mining and recovery process are used, stored, treated, confined or disposed of in accordance with this title.

(c) The information required in this subchapter shall be designed and implemented to achieve the performance standards set forth in this subchapter.

Source

The provisions of this § 89.162 adopted February 17, 1984, 14 Pa.B. 524, effective August 4, 1984, 14 Pa.B. 2860.

§ 89.163. Performance standards.

(a) In situ processing shall be conducted in accordance with the performance standards and design criteria of this chapter.

(b) In addition, in situ processing shall be conducted to prevent flow of the process recovery fluid:

- (1) Horizontally beyond the affected area identified in the permit.
- (2) Vertically into overlying or underlying aquifers.

(c) The operator shall restore the quality of affected groundwater above and below the production zone, to the approximate premining levels or better, to ensure that the potential use is not diminished.

Source

The provisions of this § 89.163 adopted February 17, 1984, 14 Pa.B. 524, effective August 4, 1984, 14 Pa.B. 2860.

Subchapter H. COAL PREPARATION ACTIVITIES

Sec.

- 89.171. General requirements.
- 89.172. Informational requirements.
- 89.173. Performance standards.

§ 89.171. General requirements.

(a) This subchapter applies to a person who intends to conduct coal preparation activities outside the permit area of a surface or underground coal mine or coal refuse disposal area, other than the activities which are located at the site of ultimate coal use.

(b) A person who conducts coal preparation activities shall obtain a permit from the Department under Chapter 86 and Subchapter A (relating to surface and underground coal mining: general; and erosion and sedimentation control).

Source

The provisions of this § 89.171 adopted 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. Immediately preceding text appears at serial page (159061).

§ 89.172. Informational requirements.

(a) An application for a coal preparation activity shall contain:

- (1) An erosion and sedimentation control plan under Subchapter A (relating to erosion and sedimentation control).
- (2) An operation plan which specifies plans for the construction, operation and maintenance of the preparation plant.
- (3) A reclamation plan which specifies plans for the removal of the preparation activities and reclamation of the affected area.
- (4) The information requirements of Subchapter E (relating to prime farmlands), if applicable.

(b) An application shall demonstrate that the coal preparation activities will be conducted in compliance with the performance standards of this subchapter. A permit will not be issued unless the Department finds, in writing, that the activity will be conducted in compliance with the performance standards of § 89.173 (relating to performance standards).

Authority

The provisions of this § 89.172 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 § 89.172 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. Immediately preceding text appears at serial page (199277).

§ 89.173. Performance standards.

Construction, operation, maintenance, modification, removal and reclamation of coal preparation activities shall comply with the following:

- (1) Signs and markers shall comply with § 89.51 (relating to signs and markers).
- (2) Erosion and sedimentation shall be controlled under §§ 89.21—89.26 (relating to performance standards).
- (3) The hydrologic balance shall be protected under §§ 87.102(b), 87.106, 87.107, 87.119, 89.52, 89.53, 89.55 and 89.57—89.60.
- (4) If water from a coal preparation activity is discharged into a mine for treatment with the drainage from the mine, that mine may not be closed or sealed until the Department approves an alternate water handling procedure, including the necessary permit applications which shall be submitted to the Department within 18 months prior to the anticipated closure date of the mine to assure that necessary facilities and measures will be implemented prior to the mine closure or sealing.
- (5) Stream channel diversions shall comply with § 89.56 (relating to stream channel diversions).
- (6) Disposal of noncoal wastes shall comply with § 89.63 (relating to disposal of noncoal wastes).
- (7) Fish, wildlife and related environmental values shall be protected under § 89.65 (relating to protection of fish, wildlife and related environmental values).
- (8) Support facilities required for, or used incidental to, the operation of the coal preparation plant shall comply with § 89.67 (relating to support facilities).
- (9) Temporary cessation of operations shall comply with § 89.68 (relating to cessation of operations: temporary).
- (10) Impoundments shall meet the requirements of Subchapter D (relating to structural requirements for impoundments), except that dams constructed of, or impounding, coal processing wastes shall meet the requirements of Chapter 90 (relating to coal refuse disposal).
- (11) Excess spoil, coal mine and coal processing wastes shall be disposed of under Chapter 90.
- (12) Reclamation shall comply with §§ 89.81—89.90 (relating to performance standards).
- (13) Prime farmlands shall be handled in accordance with the performance standards of Subchapter E (relating to prime farmlands).

Source

The provisions of this § 89.173 adopted June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148984) to (148985).

Cross References

This section cited in 25 Pa. Code § 89.172 (relating to informational requirements).

[Next page is 90-1.]