

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 86]

Coal Mine Reclamation Fees and Reclamation of Bond Forfeiture Sites

The Environmental Quality Board (Board) proposes to amend Chapter 86 (relating to surface and underground coal mining: general) to read as set forth in Annex A. This proposed rulemaking addresses the coal mine reclamation fees paid by surface coal mine operators and the requirements for reclamation of coal mine sites when the mine operator's bonds were forfeited by the Department of Environmental Protection (Department).

This proposal was adopted by the Board at its meeting of May 17, 2006.

A. *Effective Date*

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Joseph G. Pizarchik, Director, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103; or Richard Morrison, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's website at www.dep.state.pa.us.

C. *Statutory Authority*

The amendments are proposed under section 4.2(a) of the Surface Mining Conservation and Reclamation Act (act) (52 P. S. § 1396.4b(a)) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. *Background and Purpose*

Under Pennsylvania and pertinent Federal law, the Department has the authority to establish one of two basic types of bonding programs to provide financial assurance that surface coal mining operations are properly reclaimed. See section 4.2(d) of the act and section 509(a) and (c) of the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C.A. § 1259(a) and (c)). The two types are known as conventional and alternative bonding. The conventional bonding system (CBS) requires that the mine operator post a bond sufficient in amount to assure completion of the mine site's reclamation plan if the work has to be performed by the Department in the event of a forfeiture. An alternative bonding system (ABS) has no specific requirements for individual bond amounts but it must achieve the objectives of the bond program. From about 1982 until 2001, the Commonwealth maintained an ABS for surface coal mines in which a central pool of money to be used for reclamation was funded in part by a per-acre reclamation fee paid by operators of permitted sites. Operators were also required to post bonds for the site but they were not required to post a bond sufficient in amount to cover the full cost of performing reclamation of the mine site.

The amendment regarding the reclamation fees is proposed as a result of changes the Department made in the coal bonding program. The Department's ABS was intended to enable the Department to complete reclamation of forfeited mine sites notwithstanding that the actual cost of reclamation exceeded the amount of the individual bonds posted by the operator for a specific site. The reclamation fee was paid on a per acre basis for each acre to be affected by the surface mine operator. The fee was assessed at \$50 per acre. The fees were deposited in the Surface Mining Conservation and Reclamation Act Fund and were used to supplement a mine operator's bond to cover the Department's costs to reclaim the mine site when the mine operator defaulted on the reclamation obligations.

In 1991, the Federal Office of Surface Mining (OSM) notified the Department under the authority in 30 CFR 732.17 (relating to state program amendments) that, to maintain primacy of the Commonwealth's regulatory program under the SMCRA, the Department had to adopt changes to its bonding system to address program deficiencies and outstanding reclamation on forfeited bond sites. One amendment the Department made was to increase the \$50 per acre reclamation fee to \$100 per acre.

In the mid 1990s, it became apparent that the doubling of the per acre reclamation fee would not generate sufficient funds to eliminate the ABS deficit. In fact, the Department concluded that if changes were not made the deficit would only get worse. The situation would worsen because of a decline in the number of acres being permitted with a corresponding reduction in income from the per acre reclamation fee. Furthermore, there were a number of old permits with post mining discharges that were under bonded that were potential bond forfeitures

Recognizing that the ABS would never address the situation, the Department began efforts to require full cost bonding for post mining discharges. The Department also began to plan for and started down the long process of converting to full cost bonding. In 1999, a citizen's suit was filed in Federal district court against the Department and the OSM alleging the ABS did not meet the objectives and purposes of the SMCRA. The Department continued with its efforts, phased out the ABS and converted to a CBS. In 2001, the Department began converting active surface coal mining permits issued under the ABS to the CBS. Under the CBS, a permittee shall post bonds in an amount sufficient to cover the Department's estimated cost to complete reclamation in the event of bond forfeiture. As part of the effort to address the ABS inadequacies through conversion to the CBS, the Department made a commitment with the industry for elimination of the per acre reclamation fee upon completion of the conversion. The Department has essentially completed the conversion from the ABS to the CBS, and termination of the reclamation fee is now appropriate.

The amendments to the bond forfeiture regulations in §§ 86.187—86.190 are proposed to make these sections consistent with Federal regulations. These amendments are necessary to satisfy conditions for maintaining the primacy of the Commonwealth's regulatory program. The OSM disapproved certain aspects of these regulations and required amendments to make those regulations as effective as, and consistent with, Federal law. See 56 FR

55080 (October 24, 1991) and 30 CFR 938.16(mm)—(qq) (relating to required regulatory program amendments). These proposed amendments will satisfy the required changes in 30 CFR 938.16(mm)—(qq).

This proposed rulemaking was reviewed and discussed with the Mining and Reclamation Advisory Board (MRAB), which is the Department's advisory body for regulations pertaining to the surface mining of coal. A draft of this proposed rulemaking was reviewed and discussed with the MRAB at its meeting on April 28, 2005. The MRAB endorsed the proposed rulemaking.

E. Summary of Regulatory Requirements

The following sections are included in this proposed rulemaking.

§ 86.17(e) (regarding reclamation fees)

This subsection is being amended to discontinue collection of the \$100 per acre reclamation fee, which was part of the prior ABS, because the Department has changed to a CBS.

§ 86.187(a)(1) (regarding money received from the fees)

Subsection (a)(1) is being amended to correct a typographical error. Reference was improperly made to § 86.17(b) (relating to permit and reclamation fees). The correct reference is to § 86.17(e).

§ 86.187(b) (regarding reclamation of bond forfeiture sites)

Subsection (b) is being amended to make clear that an alternative reclamation plan must meet applicable performance standards in § 86.189(c) (relating to reclamation of bond forfeiture sites) and to reflect that the Department will notify and consult with the landowner prior to expending funds for reclamation of a bond forfeiture site in all cases and not just when an alternative reclamation plan is being considered. This amendment is incorporated to satisfy 30 CFR 938.16(mm).

§§ 86.187(c) and 86.189(c)(2)—(5) (regarding alternate reclamation plans for bond forfeiture sites)

These subsections are being amended to delete language regarding alternate reclamation plans for bond forfeiture sites allowing the sites to be made suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation. Section 86.187(c) (relating to use of money) is amended further by adding language requiring the alternate reclamation plans provide for restoration of the disturbed land to conditions that are capable of supporting either the uses they were capable of supporting before mining, or higher or better uses. Subsection (c)(2)—(4) is being amended to delete the reference to subsection (c)(5), which is being deleted because 30 CFR 816.133(a) and 817.133(a) (relating to postmining land use) require that all disturbed areas be restored to uses they were capable of supporting before mining or to higher or better uses. These amendments are designed to satisfy 30 CFR 938.16(mm), (nn) and (oo).

§ 86.188(b) and (c). Evaluation of bond forfeiture sites.

Subsection (b)(5) is proposed to be deleted to make clear that bond forfeiture funds posted for and still needed to complete reclamation of the specific site for which the bonds were forfeited will not be used for reclamation of other sites until reclamation of the forfeited site has been completed. Subsection (c)(3) is proposed to be deleted to remove any doubt that the Department fully intends to maintain adequate bonding to have funds available for completion of reclamation should the bonds be forfeited. These amendments are proposed to address concerns expressed by the OSM in

the final rule disapproving certain aspects of these regulations. See 56 FR 55080 (section III (3)(e)) (October 24, 1991).

§ 86.190(a). (regarding bond forfeiture sites where reclamation is unreasonable, unnecessary or impossible)

Subsection (a) is being amended to delete language that allows for additional reasons to justify determinations that reclamation of bond forfeiture sites is unreasonable, unnecessary or physically impossible beyond those reasons specifically listed in subsection (a). Subsection (a)(3) is proposed to be deleted because it allows the landowner of a bond forfeiture site to prevent reclamation. These amendments are incorporated to satisfy 30 CFR 938.16(pp) and (qq).

§ 86.283(c) (regarding reclamation fees for remining areas)

The proposed amendment to this subsection removes a requirement regarding the per acre reclamation fees for remining areas for mine operators approved to participate in the financial guarantees program. This amendment is proposed for consistency with the proposed amendment to § 86.17(e).

F. Benefits, Costs and Compliance

Compliance costs

The proposed rulemaking will reduce compliance costs on the regulated community by eliminating the \$100 per acre reclamation fee.

Compliance assistance plan

The Department will provide written notification of the changes to the coal mining industry.

G. Pollution Prevention

The proposed rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multimedia pollution prevention approach of existing requirements in Chapter 86.

H. Sunset Review

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

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 19, 2006, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

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

J. Public Comments

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the

proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by September 5, 2006. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by September 5, 2006. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by September 5, 2006. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-401. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter B. PERMITS

GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

§ 86.17. Permit and reclamation fees.

* * * * *

(e) In addition to the bond established under §§ 86.145, 86.149 and 86.150 (relating to Department responsibilities; determination of bond amount; and minimum amount), there is a \$100 per acre reclamation fee for surface mining activities except for the surface effects of underground mining. This reclamation fee may be paid as acreage within an approved surface mining permit is authorized for mining. The reclamation fee will be deposited in the Surface Mining Conservation and Reclamation Fund as a supplement to forfeited bonds. The reclamation fee shall only be used for reclaiming mining operations which have defaulted on their obligation to reclaim. **The fee required by this subsection is not required after _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.)**

Subchapter F. BONDING AND INSURANCE REQUIREMENTS

BOND FORFEITURE

§ 86.187. Use of money.

(a) Moneys received from fees, fines, penalties, bond forfeitures and other monies received under authority of the Surface Mining Conservation and Reclamation Act (52

P. S. §§ 1396.1—1396.31), and interest earned on the moneys, will be deposited in the Fund.

* * * * *

(b) The Department, **after notifying and consulting with the landowner**, will expend the funds to reclaim the land affected by the operation in [**such**] a manner [**as to complete**] which completes the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site **or an alternative reclamation plan completed under subsection (c)**. The Department [**, after notifying and consulting with the landowner,**] will expend the funds to reclaim the land affected by the operation in [**such**] a manner [**as to complete a**] which completes an alternative reclamation plan in compliance with subsection (c) if either of the following apply:

* * * * *

(c) If the Department determines under subsection (b) that an alternative to the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site should be implemented, the Department will prepare and implement a plan [**that makes the bond forfeiture site suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation**] that complies with the applicable performance standards in accordance with § 86.189(c)(2), (3) or (4), whichever is appropriate, and that ensures that all disturbed areas are restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses.

§ 86.188. Evaluation of bond forfeiture sites.

* * * * *

(b) The Department will prioritize a bond forfeiture site according to the following categories, which are listed in decreasing order of severity of condition:

* * * * *

[**(5) Other sites which need reclamation.**]

(c) The Department, in selecting sites for reclamation under § 86.189(b)(1) (relating to reclamation of bond forfeiture sites), will consider the following factors:

* * * * *

(3) [**The availability of funds to accomplish the required reclamation of the site, or that portion of the site which is threatening life, health, safety, other property or the environment.**

(4) [**The willingness of the landowner, or other person, to undertake the reclamation of the site under § 86.189(b)(2), (3) or (4), as evidenced by previous reclamation activity performed on the site or other indications of willingness to reclaim by the landowner or other person.**

[**(5)**] (4) * * *

[**(6)**] (5) * * *

[**(7)**] (6) * * *

[**(8)**] (7) * * *

* * * * *

§ 86.189. Reclamation of bond forfeiture sites.

* * * * *

(c) The Department will not enter into a reclamation contract under this section with a person unless the person demonstrates the following to the satisfaction of the Department:

* * * * *

(2) For bond forfeiture sites for which permits were issued under the Federally-approved surface coal mining regulatory program which took effect July 31, 1982, the proposed reclamation plan will result in reclamation of the site in a manner consistent with The Clean Streams Law and the regulations promulgated thereunder for active surface coal mining operations, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations promulgated thereunder for active surface coal mining operations[, **except as provided in paragraph (5)]**.

(3) For bond forfeiture sites for which the bonds were declared forfeit on or after May 3, 1978, and for which permits were not issued under the Federally-approved surface coal mining regulatory program which took effect July 31, 1982, the proposed reclamation plan will result in reclamation of the site in a manner that is consistent with the interim Federal program regulations first published at 42 FR 62639 (December 13, 1977), as well as The Clean Streams Law and the regulations promulgated thereunder in effect at the time the bonds were declared forfeit, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations promulgated thereunder in effect at the time the bonds were declared forfeit. If the Department's permit files for the site clearly show that surface mining activities on the site occurred before August 3, 1977, the proposed reclamation plan may be consistent with paragraph (4)[, **except as provided in paragraph (5)]**.

(4) For bond forfeiture sites for which the bonds were declared forfeit before May 3, 1978, the proposed reclamation plan will result in reclamation of the site in a manner that is consistent with The Clean Streams Law and the regulations promulgated thereunder that were applicable to active surface coal mining operations at the time the bonds were declared forfeit, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations that were promulgated thereunder at the time the bonds were declared forfeit [, **except as provided in paragraph (5)]**.

(5) [**In lieu of relevant statutes and regulations that are specifically applicable to post mining land use, the plan for a bond forfeiture site may propose to make the site suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation under § 86.187(c)**.

(6)] Except in the case of a landowner of a bond forfeiture site under subsection (b)(2) and (4), the person shall demonstrate the following:

* * * * *

§ 86.190. Sites where reclamation is unreasonable, unnecessary or impossible; excess funds.

(a) If the Department determines in the evaluation of a bond forfeiture site that completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site or an alternative reclamation plan is unreasonable, unnecessary or physically impossible, the bond amount will be made available for expenditure from the Fund only to reclaim land and restore water supplies affected by

surface mining operations for which the Department has forfeited bonds. The reasons justifying this determination include [, **but are not limited to,]** the following:

* * * * *

[(3) **The landowner refuses to allow the site to be reclaimed, and the site is not a hazard to public health, safety and welfare or adjacent property.**]

* * * * *

Subchapter J. REMINING AND RECLAMATION INCENTIVES
BONDING INCENTIVES

§ 86.283. Procedures.

* * * * *

(c) [**An operator approved to participate in the financial guarantees program is not required to pay the per acre reclamation fee required by § 86.17(e) (relating to permit and reclamation fees) for the remining area.**

(d)] The Department will issue a letter to the operator specifying the amount of money in the financial guarantees special account in the Remining Financial Assurance Fund which has been reserved as collateral for the operator's reclamation obligations on the remining area. A copy of the letter will be kept in the operator's permit application file.

[(e)] (d) * * *

[Pa.B. Doc. No. 06-1494. Filed for public inspection August 4, 2006, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 131]
Preliminary Provisions

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 18, 2006, meeting, proposed to amend § 131.6 (relating to administration of police powers by wildlife conservation officers).

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the January 24, 2006, meeting of the Commission. Comments can be sent until September 29, 2006, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

On September 30, 2003, this Commonwealth's Driving Under the Influence (DUI) statutes were substantially modified and relocated from 75 Pa.C.S. § 3731 to 75 Pa.C.S. §§ 3801—3817. Despite the Commission's awareness of the amendment, § 131.6 has yet to be formally amended to reflect the significant changes to the DUI statutes. Therefore, the Commission is proposing to amend § 131.6 to finally correct and update the inaccurate DUI citation to reflect current, amended DUI citations.

Section 901(a)(17) of the code (relating to powers and duties of enforcement officers) states in relevant part "All powers as provided for in this paragraph [relating to enforcement of police powers] will be limited by such administrative procedure as the director, with the approval of the commission, shall prescribe." Section 322(c)(12) of the code (relating to powers and duties of commission) specifically empowers the Commission to "Take any necessary action to accomplish and assure the purposes of this title." The amendment to § 131.6 is proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking amends § 131.6 to correct and update the existing DUI citation to reflect the current, amended DUI citations.

3. *Persons Affected*

Persons subject to the current DUI statutes of the Commonwealth may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in any additional cost or paperwork.

5. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-232. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 131. PRELIMINARY PROVISIONS

§ 131.6. Administration of police powers by wildlife conservation officers.

* * * * *

(c) *Violations.* A wildlife conservation officer may, subject to the limitations in subsections (a) and (b), act only in cases of violations of the following provisions:

* * * * *

(3) Title 75 of the *Pennsylvania Consolidated Statutes* §§ [3731,] 3732, 3735 [and], 3742 and 3801—3817.

* * * * *

[Pa.B. Doc. No. 06-1495. Filed for public inspection August 4, 2006, 9:00 a.m.]
