

# Subchapter F. BONDING AND INSURANCE REQUIREMENTS

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## Cross References

This subchapter cited in 25 Pa. Code § 86.34 (relating to informal conferences); 25 Pa. Code § 86.36 (relating to review of permit applications); 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.41 (relating to conditions of permits: general and right of entry); 25 Pa. Code § 86.56 (relating to transfer of permit); 25 Pa. Code § 86.64 (relating to right of entry); 25 Pa. Code § 87.1 (relating to definitions); 25 Pa. Code § 87.65 (relating to maps and plans); 25 Pa. Code § 87.68 (relating to reclamation information); 25 Pa. Code § 87.83 (relating to prime farmlands); 25 Pa. Code § 87.159 (relating to postmining land use); 25 Pa. Code § 87.181 (relating to prime farmland: revegetation); 25 Pa. Code § 88.1 (relating to definitions); 25 Pa. Code § 88.129 (relating to revegetation: standards for successful revegetation); 25 Pa. Code § 88.217 (relating to vegetation: standards for successful vegetation); 25 Pa. Code § 88.221 (relating to postmining land use); 25 Pa. Code § 88.330 (relating to revegetation: standards for successful revegetation); 25 Pa. Code § 88.334 (relating to postdisposal land use); 25 Pa. Code § 88.493 (relating to minimum environmental protection performance standards); 25 Pa. Code § 89.88 (relating to postmining land use); 25 Pa. Code § 89.122 (relating to prime farmlands); 25 Pa. Code § 89.134 (relating to revegetation); 25 Pa. Code § 90.1 (relating to definitions); 25 Pa. Code § 90.33 (relating to reclamation plan); and 25 Pa. Code § 90.166 (relating to postdisposal land use).

## GENERAL PROVISIONS

### § 86.141. Scope.

This subchapter sets forth the minimum requirements for bonding and insuring mining and reclamation operations.

## Source

The provisions of this § 86.141 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

### § 86.142. Definitions.

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

*Adverse opinion*—A statement by an independent certified public accountant that the financial statements of the applicant do not present fairly the financial condition of the applicant in conformity with generally accepted accounting principles.

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

*Applicant*—A permittee or an applicant for a permit who is applying to self-bond under this subchapter.

*Collateral bond*—An indemnity agreement in a sum certain payable to the Department executed by the permittee and which is supported by the deposit with the Department of cash, negotiable bonds of the United States of America, the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any Commonwealth municipality, negotiable certifications of deposit, or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States.

*Continuous business operations*—Operations in which the applicant has been in business and operating for at least 10 years prior to the filing of its self-bonding application unless the applicant's existence results from a reorganization, consolidation or merger involving a company with this longevity. If the applicant is a majority owned subsidiary of a corporation, it may rely upon its parent corporation's business history, which has a 10-year business history.

*Current asset*—Cash or other assets which are reasonably expected to be converted to cash or sold or consumed within 1 year or within the normal operating cycle of the business.

*Current liability*—An obligation which is reasonably expected to be paid or liquidated within 1 year or within the normal operating cycle of the business.

*Disclaimer of opinion*—A statement by an independent certified public accountant that he does not express an opinion on the financial statements of the applicant.

*Financial statement*—A formal report of the applicant's status of accounts at a particular time, prepared to show the operating results and financial condition of the applicant's business. The term includes, but is not limited to, the balance sheet, income statement and statement of change in financial position prepared in accordance with generally accepted accounting principles.

*Fixed asset*—The term includes plants and equipment, but does not include land or coal in place.

*Independent certified public accountant*—A certified public accountant not dependent on or subject to the direct control of the applicant.

*Liability*—An obligation to transfer assets or provide services to other entities in the future as a result of past transactions.

*Liquidity ratio*—The relation of cash to current liabilities.

*Long-term facilities*—A processing plant, mine drainage facility, refuse area or other structure and facility associated with surface or underground mining which will be continuously operated or used for at least 10 years.

*Long-term mines*—An underground mine which will be continuously mined for at least 10 years, or any surface mines in which the mineral to be removed exceeds the amount of overburden by a ratio of at least four to one and which will be continuously mined for at least 10 years.

*Net worth*—Total assets minus total liabilities and is equivalent to owner's equity.

*Parent corporation*—The corporation which directly owns or controls the corporation which is the applicant.

*Quick assets*—Cash and current assets that can be quickly turned into cash.

*Retained earnings*—Stockholder's equity that has arisen from retained assets from earnings in the business. The term includes only earnings from normal operations and not gains from the transaction, such as the sale of plant assets or investments.

*Self-bond*—An indemnity agreement in a sum certain payable to the Department, executed by the permittee and by each individual and business organization capable of influencing or controlling the investment or financial practices of the permittee by virtue of his authority as an officer or ownership of all or a significant part of the permittee, and supported by

agreements granting the Department a security interest in real or personal property pledged to secure performance by the permittee.

*Surety bond*—An indemnity agreement in a sum certain payable to the Department executed by a permittee which is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

*Tangible net worth*—Net worth minus intangibles such as goodwill and rights to patents or royalties.

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

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

### Source

The provisions of this § 86.142 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended May 11, 1990, effective upon publication of notice in the *Pennsylvania Bulletin* that the amendments have been approved by the OSM; amended June 15, 1990, 20 Pa.B. 2517, effective July 27, 1991, 21 Pa.B. 3316; amended August 19, 1994, effective August 20, 1994, 24 Pa.B. 4195; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (206684) to (206686).

### Cross References

This section cited in 25 Pa. Code § 86.159 (relating to self-bonding).



## § 86.143. Requirement to file a bond.

(a) No new, revised or renewed permit to conduct mining or reclamation operations will be issued by the Department before the applicant for the permit has filed with the Department a bond upon a form provided by the Department payable to the Department, and the bond has been approved by the Department. The bond shall be conditioned upon the faithful performance of the requirements of the acts and regulations thereunder, the reclamation plan and the conditions of the permit—including amendments, revisions and changes to the acts, the regulations, the reclamation plan and the conditions of the permit—as may hereinafter be lawfully made. The amount, duration, form, conditions and terms of the bond shall conform to the requirements in this subchapter.

(b) An operator may not disturb surface acreage or extend or develop underground shafts, tunnels or operations, except for coal exploration permitted under Subchapter E (relating to coal exploration), prior to receipt of approval from the Department of a bond and issuance of a permit covering the surface acreage to be affected.

(c) Liability on the bond shall cover mining and reclamation operations and other activities conducted within the permit area, and effects resulting from the mining of the permit area, including amendments thereof, during the course of mining activities and continuing for a period of time as provided in this subchapter. If more than one bond instrument is filed with the Department to satisfy the requirements of this subchapter for a given permit, then all bond instruments, no matter when the instruments were filed, apply to the entire permit area. Liability upon each bond applies to the entire permit area.

### Source

The provisions of this § 86.143 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12

Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148536) to (148537).

### **Cross References**

This section cited in 25 Pa. Code § 86.17 (relating to permit and reclamation fees); 25 Pa. Code § 86.37 (relating to criteria for permit approval or denial); 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); and 25 Pa. Code § 86.294 (relating to uses and limitations).

### **§ 86.144. Requirement to file a certification of liability insurance.**

Each applicant for a permit shall submit proof to the Department of liability insurance coverage for its mining and reclamation operations issued by an insurance company authorized to do business in this Commonwealth. The amount, duration, form, conditions, terms and method of proof of this insurance coverage shall conform to § 86.168 (relating to terms and conditions for liability insurance).

### **Source**

The provisions of this § 86.144 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

### **§ 86.145. Department responsibilities.**

- (a) The Department will prescribe and furnish the forms for filing bonds.
- (b) The Department will prescribe terms and conditions for bonds and insurance.
- (c) The Department will establish bonding amount rate guidelines based on the estimated cost to the Department for completing the reclamation requirements of the permittee under the law, the regulations and the conditions of the permit considering the factors listed in § 86.149(b) (relating to determination of bond amount). The guidelines shall be reviewed and, if necessary, revised by the Department annually to reflect the current cost of reclamation to the Department. The Department may consider fees, fines or other sources of money paid by the permittee and dedicated for reclamation of defaulted permit areas in determining bonding guidelines.
- (d) The Department will determine the amount of the bond required for the permit areas, including adjustments to the initial amount from time to time as land acreages in the permit area are revised, costs to the Department of reclamation change or when other relevant conditions change according to the minimum requirements of § 86.149.
- (e) Bonds shall be reviewed for legality and form according to established procedures.
- (f) The Department will release the permittee from his bond and insurance requirements as provided in §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond).
- (g) The Department will cause a bond to be forfeited as provided in §§ 86.180—86.182 and 86.185—86.190.

### Source

The provisions of this § 86.145 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148537) to (148538).

### **Cross References**

This section cited in 25 Pa. Code § 86.17 (relating to permit and reclamation fees); and 25 Pa. Code § 86.149 (relating to determination of bond amount).

## **AMOUNT AND DURATION OF LIABILITY**

### **§ 86.148. Scope.**

This section and §§ 86.149—86.152 set forth the minimum requirements for determining the amounts and time periods of liability for bonds for mining and reclamation operations.

### **Source**

The provisions of this § 86.148 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

### **Cross References**

This section cited in 25 Pa. Code § 86.161 (relating to phased deposits of collateral).

## § 86.149. Determination of bond amount.

(a) The standard applied by the Department in determining the amount of bond will be the estimated cost to the Department if it had to complete the reclamation, restoration and abatement work required under the acts, regulations thereunder and the conditions of the permit. The Department may establish bonding rate guidelines which utilize the factors in § 86.145(c) (relating to Department responsibilities).

(b) This amount will be based on, but not limited to, the following:

(1) The estimated costs submitted by the permittee in accordance with § 87.68, § 88.96, § 88.492, § 89.71 or § 90.33.

(2) Reclamation costs for surface mines related to the specific size and geometry of the proposed mining operation, the topography and geology of the permit area, the potential for water pollution or hydrologic disturbances, the availability of topsoil and the proposed land use.

(3) The costs related to distinct differences in mining methods and reclamation standards for bituminous surface mines, anthracite surface mines and underground mines.

(4) The cost of relocating or reconstructing roads or streams within the permit area.

(5) The cost of sealing shafts or other mine openings, removal of buildings, facilities or other equipment, constructing, operating and maintaining treatment facilities and correcting surface subsidence.

(6) The additional estimated costs to the Department which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit

area after its abandonment by the permittee to perform reclamation, restoration and abatement work.

(7) The amount of fees, fines or other payments made to the Department and dedicated by the Department for reclamation, restoration and abatement of defaulted permit areas.

(8) Additional estimated costs necessary, expedient and incident to the satisfactory completion of the requirements of the acts, regulations thereunder and the conditions of the permit.

(9) An additional amount based on factors of cost changes during the preceding 5 years for the types of activities associated with the reclamation to be performed.

(10) Other cost information as required from the permittee or otherwise available to the Department.

### **Source**

The provisions of this § 86.149 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148538) to (148540).

### **Notes of Decisions**

#### *Uniform Bond*

It is clear that determinations of the amounts of bonds are to be made on a case-by-case basis, with consideration of the relevant factors contained within the Department's regulations. The use of a uniform bond of \$10,000, therefore, is not appropriate. *People*

*United To Save Homes v. Department of Environmental Protection*, 789 A.2d 319 (Pa. Cmwlth. 2001).

### **Cross References**

This section cited in 25 Pa. Code § 86.17 (relating to permit and reclamation fees); 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.148 (relating to scope); and 25 Pa. Code § 86.161 (relating to phased deposits of collateral).

### **§ 86.150. Minimum amount.**

(a) The minimum amount of bond for bituminous coal mining activities and anthracite and bituminous coal refuse disposal operations shall be \$10,000 for the entire permit area, including additional acreage permit revisions thereto.

(b) The minimum amount of bond for anthracite coal mining activities—except anthracite coal refuse disposal operations—is \$5,000 for the entire permit area, including additional acreage permit revisions.

### **Source**

The provisions of this § 86.150 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial page (148540).

### **Cross References**

This section cited in 25 Pa. Code § 86.17 (relating to permit and reclamation fees); 25 Pa. Code § 86.148 (relating to scope); and 25 Pa. Code § 86.161 (relating to phased deposits of collateral).

### **§ 86.151. Period of liability.**

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

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

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

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

(c) Liability under bonds posted for coal refuse disposal activities shall continue for the duration of the activities and for 5 years after the last year of augmented seeding and fertilizing and other work to complete reclamation to meet the requirements of the acts, regulations adopted thereunder, the conditions of the permit and to otherwise protect the environment. Liability under the bond related to the risk of water pollution from activities



shall continue for a period of time after completion of the coal refuse disposal activities. This period of time will be determined by the Department on a case-by-case basis.

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

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

- (1) Not significant in extent in relation to the entire area under bond.
- (2) Limited to a distinguishable contiguous portion of the permit area.

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

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

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

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

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

### **Authority**

The provisions of this § 86.151 amended under section 7 of The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. § 1406.7); section 5 of The Clean Streams Law (35 P.S. § 691.5); section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.4b); section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

## Source

The provisions of this § 86.151 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775. Immediately preceding text appears at serial pages (313518) and (238935) to (238936).

## Cross References

This section cited in 25 Pa. Code § 86.148 (relating to scope); 25 Pa. Code § 86.159 (relating to self-bonding); 25 Pa. Code § 86.161 (relating to phased deposits of collateral); 25 Pa. Code § 86.162c (relating to Bioenergy Crop Bonding); 25 Pa. Code § 86.174 (relating to standards for release of bonds); 25 Pa. Code § 86.175 (relating to schedule for release of bond); 25 Pa. Code § 87.155 (relating to revegetation: standards for successful revegetation); 25 Pa. Code § 87.156 (relating to revegetation: techniques and frequency of measurement); 25 Pa. Code § 87.209 (relating to criteria and schedule for release of bonds on pollution abatement areas); 25 Pa. Code § 88.129 (relating to revegetation: standards for successful revegetation); 25 Pa. Code § 88.217 (relating to vegetation: standards for successful vegetation); 25 Pa. Code § 88.330 (relating to revegetation: standards for successful revegetation); 25 Pa. Code § 88.509 (relating to criteria and schedule for release of bonds on pollution abatement areas); 25 Pa. Code § 89.86 (relating to revegetation); and 25 Pa. Code § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas).

### **§ 86.152. Bond adjustments.**

(a) The amount of bond required and the terms of the acceptance of the applicant's bond will be adjusted by the Department from time to time as the area requiring bond coverage is

increased or decreased, or when the cost of future reclamation changes, or when the projected subsidence damage repair liability changes. The Department may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement. This requirement shall only be binding upon the permittee and does not compel a third party, including surety companies, to provide additional bond coverage and does not extend the coverage of a subsidence bond beyond the requirements imposed by sections 5, 5.4, 5.5 and 5.6 of the Bituminous Mine Subsidence and Land Conservation Act.

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

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

(d) The Department will notify the permittee, the surety and any person with a property interest in collateral who has requested the notification, of any proposed adjustment to the bond amount. The Department will also provide the permittee an opportunity for an informal conference on the adjustment.

### **Authority**

The provisions of this § 86.152 amended under the authority of section 7 of The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. § 1406.7); section 5 of

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

### **Source**

The provisions of this § 86.152 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5775. Immediately preceding text appears at serial pages (238936) to (238937).

### **Cross References**

This section cited in 25 Pa. Code § 86.148 (relating to scope); 25 Pa. Code § 86.151 (relating to period of liability); 25 Pa. Code § 86.161 (relating to phased deposits of collateral); and 25 Pa. Code § 86.165 (relating to failure to maintain proper bond).

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

### **§ 86.155. Scope.**

This section and §§ 86.156—86.162c and 86.165—86.168 establish the minimum standards for the form of the bond for mining and reclamation activities, and the terms and conditions applicable to bonds and liability insurance.

### **Authority**

The provisions of this § 86.155 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

### **Source**

The provisions of this § 86.155 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial page (315395).

## **§ 86.156. Form of the bond.**

- (a) The Department will accept the following types of bonds:
- (1) A surety bond.
  - (2) A collateral bond.
  - (3) A self bond.

(4) A combination of bonding instruments as provided in § 86.160 (relating to combination of bonding instruments), for coal surface mining activities.

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

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

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

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

### **Authority**

The provisions of this § 86.156 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.19a); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § § 1406.1—1406.21); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

### **Source**

The provisions of this § 86.156 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186. Immediately preceding text appears at serial pages (237095) to (237096).

### **Cross References**

This section cited in 25 Pa. Code § 86.155 (relating to scope); and 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund).

### **§ 86.157. Special terms and conditions for surety bonds.**

Surety bonds are subject to the following conditions:

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

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

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



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

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

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

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

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

### **Source**

The provisions of this § 86.157 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12

Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (206693) to (206694).

### **Cross References**

This section cited in 25 Pa. Code § 86.155 (relating to scope).

### **§ 86.158. Special terms and conditions for collateral bonds.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Trust funds and annuities, as described in this subsection, are established under government authority for the public purpose to guarantee that moneys are available for the Department to pay for treatment of postmining pollutional discharges or reclamation of the mine site or both. Trust funds and annuities constitute property of the Commonwealth and, as such, any earnings, profits and distributions shall have the same tax status accorded the Commonwealth.

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

### **Source**

The provisions of this § 86.158 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316;

amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (206695) to (206697).

### **Cross References**

This section cited in 25 Pa. Code § 86.155 (relating to scope).

### **§ 86.159. Self-bonding.**

(a) The Department may accept a self-bond to cover all or part of the permittee's liabilities arising from coal mining activities. The Department will not accept a self-bond covering long-term indeterminate liabilities. These liabilities include, but are not limited to, obligations to treat discharges from mining activities which exist after completion of mining and reclamation activities as required by section 315 of The Clean Streams Law (35 P. S. § 691.315), § § 87.102, 87.207, 88.92, 88.187, 88.507 and 89.52 or restoration of soil productivity of prime farmland as required by § § 87.177—87.181, 88.129, 88.217, 88.330, 88.381, 88.493 and 90.161—90.165. The applicant for a self-bond shall demonstrate to the satisfaction of the Department a history of continuous efforts to achieve compliance with Federal and State environmental laws, that it meets financial eligibility criteria established in this section and enters into indemnity and security agreements required by this section. An applicant which is a subsidiary corporation may satisfy the requirements for eligibility to self-bond by relying on its parent corporation. In this case, the parent corporation shall meet the eligibility and reporting requirements required by this section.

(b) The Department, in determining an applicant's eligibility to self-bond, will be satisfied by the applicant that it meets the following requirements:

(1) The applicant is incorporated in or authorized to do business in this Commonwealth. If a subsidiary corporation is a permittee or an applicant for a permit, the parent corporation of



the subsidiary corporation is not required to be incorporated in or authorized to do business in this Commonwealth.

(2) The applicant has designated suitable agents in this Commonwealth to receive service of suits, claims, demands and other services of process.

(3) The applicant has a history of continuous business operation. This requirement may be deemed to be met if one of the following applies:

(i) The applicant's existence is the result of a reorganization, consolidation or merger involving a company with a history of continuous business operation.

(ii) The applicant is a majority-owned subsidiary of a corporation with a history of continuous business operation.

(4) The applicant, during the last 36 calendar months, has not defaulted in the payment of one or more of the following:

(i) Dividend or sinking fund installment, preferred stock or installment of indebtedness for borrowed money.

(ii) Payment of rentals under long-term leases.

(iii) A reclamation fee payment due under section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. § 1232) for coal produced in this Commonwealth.

(5) The applicant, during the last 36 calendar months, has honored its obligations under other self-bonding programs established by another state or the Federal government.

(6) The applicant has not had commercial surety bonds cancelled for nonpayment of premiums or fraud or failure to comply with conditions established by the surety company as conditions of maintaining surety bonds in force and effect.

(c) The applicant, as part of the application for self-bonding, shall submit to the Department the following items:

(1) Financial statements for its most recent 3 fiscal years, prepared in accordance with generally accepted accounting principles, and in sufficient detail to determine if the applicant can meet the financial solvency tests contained in this section.

(2) Financial statements for the completed quarters of the fiscal year in which application is made.

(3) A report, prepared by an independent certified public accountant in conformity with generally accepted accounting principles, containing the accountant's audit opinion or review opinion of the financial statements for the applicant's most recent 3 fiscal years.

(4) Certification that the applicant intends to maintain its existing corporate status for a period in excess of 5 years.

(5) Certification that forfeiture of the aggregate amount of the applicant's self-bonds approved and furnished for operations included under this section will not materially affect its ability to remain in business or endanger its cash flow to the extent it could not meet its current obligations.

(6) Other information regarding its financial solvency, continuous business operation and compliance with environmental laws as the Department may require.

(d) After initial submission of the information in the application for self-bonding, the applicant shall submit updated information as specified in subsections (b) and (c) within 90 days of the close of each of the applicant's fiscal years. The applicant shall meet the requirements of this section relating to eligibility to self-bond for each succeeding fiscal year. The Department may require reports of financial condition from the applicant and these reports shall be in addition to those specified in this subsection. Failure of the applicant to provide reports requested by the Department shall render the applicant ineligible to self-bond.

(e) If the applicant or the independent certified public accountant submits false information or representations in the application or reports required by this section, the application will be disallowed and render the applicant ineligible to self-bond. The applicant and the independent certified public accountant shall be subject to 18 Pa.C.S. § § 4903 and 4904 (relating to false swearing; and unsworn falsification to authorities).

(f) The applicant shall satisfy one of the following financial tests in paragraph (1), (2) or (3):

(1) The applicant satisfies the following requirements:

(i) A current rating for its most recent bond issuance of either: AAA, AA or A as issued by Standard and Poor's Corporation; or Aaa, Aa or A as issued by Moody's Investor Services. The ratings may not have been assigned as a result of the bond issue being independently insured.

(ii) Tangible net worth at least six times the total amount of outstanding and proposed self-bonds for coal mining activities in this Commonwealth.

(iii) Assets in the United States amounting to at least 90% of total assets.

(2) The applicant satisfies the following requirements:

- (i) Tangible net worth of at least \$10 million.
  - (ii) A ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater.
  - (iii) Tangible net worth at least six times the total amount of outstanding and proposed self-bonds for coal mining activities in this Commonwealth.
  - (iv) Assets in the United States amounting to at least 90% of total assets.
- (3) The applicant satisfies the following requirements:
- (i) Possesses fixed assets in the United States of at least \$20 million.
  - (ii) Has a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater.
  - (iii) Has tangible net worth at least six times the total amount of outstanding and proposed self-bonds for coal mining activities in this Commonwealth.
  - (iv) Has assets in the United States amounting to at least 90% of total assets.
- (g) An adverse opinion or a disclaimer of opinion expressed by the independent certified public accountant in its report on examination of the applicant's financial statements renders the applicant ineligible to self-bond. The Department may determine an applicant ineligible to self-bond on the basis of other qualifications in the opinion expressed by the independent certified public accountant in its report on the examination of the applicant's financial statements.

(h) The total value of outstanding plus proposed self-bonds for coal mining activities may not exceed 25% of the applicant's tangible net worth in the United States.

(i) The period of liability under an approved self-bond shall be determined in accordance with § 86.151 (relating to period of liability). The release of a self-bond shall be made under §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond). Liability under a self-bond is terminated upon the Department's approval of alternative bonding, as provided for in this subchapter, submitted by the applicant.

(j) As part of the application for self-bonding, the applicant shall submit to the Department a self-bond as defined in § 86.142 (relating to definitions). The self-bond shall be perfected under the applicable statutes of the Commonwealth and the United States at the time of execution. The security interests supporting the self-bond shall be in accordance with the following schedule:

(1) For tangible net worth from 6 to 6.99 times the total amount of outstanding and proposed self-bonds for coal mining activities in this Commonwealth, the security interest shall be in an amount equal to the amount of liability to be covered by the self-bond.

(2) For tangible net worth from 7 to 7.99 times the total amount of outstanding and proposed self-bonds for coal mining in this Commonwealth, the security interest shall be in an amount equal to 80% of the amount of liability to be covered by the self-bond.

(3) For tangible net worth from 8 to 8.99 times the total amount of outstanding and proposed self-bonds for coal mining in this Commonwealth, the security interest shall be in an amount equal to 60% of the amount of liability to be covered by the self-bond.

(4) For tangible net worth from 9 to 9.99 times the total amount of outstanding and proposed self-bonds for coal mining in this Commonwealth, the security interest shall be in an amount equal to 40% of the amount of liability to be covered by the self-bond.

(5) For tangible net worth equal to or in excess of 10 times the total amount of outstanding and proposed self-bonds for coal mining in this Commonwealth, the security interest shall be in an amount equal to 25% of the amount of liability to be covered by the self-bond.

(6) Notwithstanding a provision in this chapter to the contrary, the Department may require the applicant, either initially or during the period of liability under a self-bond, to provide additional security interests as the Department may, in its sole discretion, determine it necessary to assure the applicant's obligations under the self-bond are met. The determination that an applicant may be unwilling or unable to meet its obligations under the self-bond includes, but is not limited to, a review of individual factors such as the applicant demonstrating a pattern of delay, resistance to or avoidance of timely compliance with the conditions of the self-bond, the applicant's permit, or both, and Department orders relating thereto.

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

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

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

(ii) Within 90 days of the issuance of an order to abate conditions at a site covered by a self-bond which constitutes either an actual or potential risk of harm to the environment, the

applicant fails to, except as provided for in § 86.211 (relating to enforcement—general), comply with the order or fails to submit to the Department acceptable security as provided for in this subchapter in an amount equal to the self-bonded liability.

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

(i) The applicant faithfully performing the following requirements:

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

(B) The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

(C) The Air Pollution Control Act (35 P. S. §§ 4001—4015).

(D) The Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66).

(E) The Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

(F) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).

(G) The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21).

(H) Regulations adopted by the EQB under the acts set forth in clauses (A)—(G).

(ii) The applicant immediately notifying the Department of a significant change in the management control or organization of the applicant.

(iii) The applicant immediately notifying the Department of a material adverse change to the financial condition of the applicant, that may affect eligibility to self-bond or diminish the value of the security interests pledged to secure the self-bond.

(iv) The applicant, during the period of the self-bond, applying for or consenting to the appointment of a receiver, conservator, trustee or liquidator of itself or its property, admitting in writing its inability to pay its debts as the debts mature or making a general assignment for the benefit of its creditors.

(v) During the period of the self-bond, a creditor of the applicant attaching or executing a judgment against the applicant so that the Department would have reasonable belief the prospect of the applicant having sufficient assets to cover the full amount of the self-bond or to be able to perform under the self-bond is impaired.

(3) The self-bond shall become immediately due and payable upon default of one or more of the terms and conditions or the dissolution of a party to the self-bond. The self-bond shall provide for confession of judgment and confession of execution upon default of one or more of the terms and conditions or dissolution.

(l) The self-bond shall be executed by:

(1) The applicant, except as provided in paragraphs (2) and (3).

(2) If the applicant is a subsidiary corporation, the applicant's parent corporation shall be a party to the self-bond which shall establish the applicant and its parent corporation as co-indemnitors under the self-bond. Corporations applying for a self-bond, and parent and nonparent corporations guaranteeing an applicant's self-bond, shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of the authorization shall be submitted to the Department along with an affidavit certifying that the agreement is valid under all applicable Federal and State laws. In addition,



the corporate guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the guarantee agreement. The parent corporation may cancel its obligations under the self-bond upon 120 days written notice to the Department, but the cancellation will not be effective until the self-bond is replaced with an alternate form of bonding authorized by this subchapter and approved by the Department.

(3) If the applicant is a partnership, joint venture or syndicate, each person with a beneficial interest in the same shall be a party to the self-bond and shall be established as a co-indemnitor under the self-bond.

(m) Each indemnitor under the self-bond shall be jointly and severally liable.

(n) Only security interests acceptable to the Department shall be used to secure the self-bond and include, but are not limited to, account security agreements, mortgages, industrial plant mortgages, pledges of stock and personal property liens. In accepting security interests, the Department will exercise the degree of judgment, skill, diligence and care under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with these matters, would use in the conduct of an enterprise of like character and with like aims. If the applicant is unable or fails to provide security interests acceptable to the Department, the applicant shall be ineligible to self-bond. The Department may accept a security interest in an applicant's parent corporation's assets.

(o) During the period of the self-bond and until released in writing by the Department, the parties to the self-bond who are indemnitors may not take action which would adversely affect the Commonwealth's rights, title or interest in the security interests pledged to secure the self-bond. The parties who are indemnitors shall immediately notify the Department of a sale, merger, acquisition, reorganization, consolidation or other action which may so affect the pledged security interests. The self-bond shall contain provisions so that if the parties who are

indemnitors take action which adversely affects the pledged security interests, the action shall constitute an event of default.

(p) In addition to the indemnification and security required in subsection (j), the Department may require a third-party guarantee of an applicant's self-bond. Third-party guarantors shall enter into a guaranty and suretyship agreement with the Department whereby the third-party guarantor guarantees and becomes surety for the performance of the parties who are indemnitors under the self-bond required by subsection (j).

(1) The guaranty and suretyship agreement shall be perfected under the applicable statutes of the Commonwealth and the United States at the time of execution with security interests so that the Commonwealth's interests as indemnitee are fully protected.

(2) Only security interests approved by the Department shall be used to satisfy the requirements of this subsection. The security instruments include, but are not limited to, surety mortgages, industrial plant mortgage and security agreements and security liens on personal property.

(q) When the Department determines that an event of default or forfeiture under the self-bond has occurred, the determination shall also constitute a determination of the applicant's inability to self-bond.

(r) The Department will upon request of the applicant, maintain the confidentiality of the applicant's financial information and the terms and conditions of the security interests unless the same are otherwise disclosed to governmental agencies or the public.

(s) Applications for a self-bond and each annual update of a self-bond shall be accompanied by a nonrefundable check in the amount of \$900 made payable to the "Commonwealth of Pennsylvania."

(t) Remedies provided or authorized by laws for violation of statutes, including the acts, this chapter, the terms and conditions of the permits and orders of the Department, are expressly preserved. Nothing in this subchapter may be construed as an exclusive remedy. No action taken under this subchapter waives or impairs another remedy provided by law.

### **Authority**

The provisions of this § 86.159 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

### **Source**

The provisions of this § 86.159 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended May 11, 1990, effective upon publication of notice in the *Pennsylvania Bulletin* that the amendments have been approved by the OSM, 20 Pa.B. 2517; amended August 19, 1994, effective August 20, 1994, 24 Pa.B. 4195; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (237101) to (237104) and (357493) to (357495).

### **Cross References**

This section cited in 25 Pa. Code § 86.155 (relating to scope); and 25 Pa. Code § 86.282 (relating to participation requirements).

## **§ 86.160. Combination of bonding instruments.**

A permittee for a coal mining activities permit may post a combination of surety, collateral and self-bonds for the permit. A bond instrument shall be construed as part of the bond for the entire permit.

### Source

The provisions of this § 86.160 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186. Immediately preceding text appears at serial pages (237107) to (237108).

### Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope); and 25 Pa. Code § 86.156 (relating to form of the bond).

## § 86.161. Phased deposits of collateral.

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

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

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

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

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

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

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

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

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

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

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

### **Source**

The provisions of this § 86.161 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (219170) and (206705).

### **Cross References**

This section cited in 25 Pa. Code § 86.155 (relating to scope); 25 Pa. Code § 86.156 (relating to form of the bond); 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund); 25 Pa. Code § 86.165 (relating to failure to maintain proper bond); and 25 Pa. Code § 86.166 (relating to replacement of bonds).

## **§ 86.162. Subsidence insurance in lieu of bond.**

A permittee for a bituminous underground mine, may, in lieu of bond coverage for the risk of subsidence, purchase and maintain in force subsidence insurance as provided by the act of August 23, 1961 (P. L. 1068, No. 484) (52 P. S. § § 3201—3226), entitled, “An Act to provide for the creation and administration of a Coal and Clay Subsidence Insurance Fund within the Department of Environmental Resources for the insurance of compensation for damages to subscribers thereto...”, for the benefit of all affected surface property owners.

### **Source**

The provisions of this § 86.162 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

### **Cross References**

This section cited in 25 Pa. Code § 86.155 (relating to scope); 25 Pa. Code § 86.156 (relating to form of the bond); and 25 Pa. Code § 86.165 (relating to failure to maintain proper bond).

## **§ 86.162a. Anthracite Deep Mine Operators Emergency Bond Fund.**

(a) For permitted anthracite deep mine operators required to post a bond under § 86.143 (relating to requirements to file a bond), and who can demonstrate to the Department that they are unable to post a conventional surety or collateral bond as described in § 86.156 (relating to the form of the bond), and do not meet the requirements of § 86.161 (relating to phased

deposits of collateral), may apply to the Department for an Anthracite Deep Mine Emergency Bond Loan. The purpose of this loan is to guarantee a collateral bond posted by the operator.

(b) Permitted anthracite deep mine operators who wish to use the anthracite deep mine emergency bond loan program shall demonstrate one of the following:

(1) The operator has been rejected by three separate bond companies licensed to do business in this Commonwealth and the grounds for rejection.

(2) The operator has had bonds canceled due to the insolvency or bankruptcy of an insurance company or surety company licensed to do business in this Commonwealth.

(c) The Department and the qualified operator shall enter into a written loan agreement, on forms provided by the Department, which shall contain at a minimum, the following provisions:

(1) The operator will be required to make a downpayment of at least \$1,000.

(2) The operator shall be responsible for submitting to the Department a payment of 25¢ for each ton of coal sold within 45 days following the sale of that coal.

(3) The operator shall continue to make payments to the Department until the loan has been paid in full or the operator submits to the Department an adequate replacement bond, or the operator has satisfied the reclamation obligation of the permit.

(4) Failure to comply with the applicable statutes, rules and regulations or conditions of the permit may be grounds for the Department to require acceleration of the payments from the operator.



(d) The Department will deposit appropriations and moneys collected under this section into the Anthracite Deep Mine Emergency Bond Loan Fund.

(e) The Department may make loans as money becomes available in the fund.

(f) The fees paid by an operator may be used only to secure the reclamation obligation of that operator.

(g) When the operator has satisfied the reclamation obligation, the Department will release to the operator the fees collected, in whole or in part, according to the bond release schedule provided for by §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond).

(h) The Department may require the operator throughout the life of the permit to demonstrate that the operator has made attempts to obtain a conventional bond.

### Source

The provisions of this § 86.162a adopted June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075.

### Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope); and 25 Pa. Code § 86.165 (relating to failure to maintain proper bond).

## § 86.162b. Land Reclamation Financial Guarantees.

- (a) The Department will designate funds in the Land Reclamation Financial Guarantee Account to underwrite Land Reclamation Financial Guarantees.
- (b) The funds in the Land Reclamation Financial Guarantee Account will be used to cover obligations for all existing sum-certain financial guarantees needed to facilitate the implementation of full-cost bonding previously issued by the Department.
- (c) The Department may issue Land Reclamation Financial Guarantees to financially assure the bonding obligations of qualified surface coal mining operators engaged in surface mining activities under § 86.143 (relating to requirement to file a bond).
- (d) The Department will hold in reserve in the Land Reclamation Financial Guarantee Account funds that are not designated to underwrite Land Reclamation Financial Guarantees.
- (e) The Department will use funds held in reserve in the Land Reclamation Financial Guarantee Account to:
- (1) Assure the availability of funds to cover reclamation liabilities when there is a mine operator bond forfeiture under § 86.181 (relating to general).
  - (2) Underwrite sum-certain financial guarantees available under Bioenergy Crop Bonding implemented by § 86.162c (relating to Bioenergy Crop Bonding).
  - (3) Transfer funds available in the Land Reclamation Financial Guarantee Account to the Reclamation Fee O&M Trust Account.
- (f) In administering the Land Reclamation Financial Guarantee Account, the Department will not issue:

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

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

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

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

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

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

Land Reclamation Financial Guarantees until the total amount of the Land Reclamation Financial Guarantees for the operator is under the Operator Limit.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) For a mine operator that has previously obtained a remining financial guarantee under section 4.12 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4l) or a Land Reclamation Financial Guarantee that has made timely payments for the remining financial guarantee program or for Land Reclamation Financial Guarantees, an operator will be eligible under this subsection if it has not been cited through a notice of violation under § 86.165(a) (relating to failure to maintain proper bond) within the previous 3 years prior to the request for a land reclamation financial guarantee.

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

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

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

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

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

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

(3) Any prior denials of surety coverage.

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

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

(2) The first annual payment is due upon the operator's receipt of notice of the Department's approval of the operator's application to obtain a Land Reclamation Financial

Guarantee. Payments shall be made annually thereafter concurrent with the permit anniversary date or in accordance with a schedule provided by the Department in writing.

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

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

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

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

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

(p) If a post-mining pollutional discharge develops on a permit for which a Land Reclamation Financial Guarantee has been obtained, the operator shall, within 90 days of receipt of written notice by the Department, provide to the Department a separate bond or

alternative financial assurance mechanism to cover the long-term treatment costs associated with the discharge or replace the Land Reclamation Financial Guarantee with other types of financial assurance mechanisms authorized for the purpose of covering the costs of treating the discharge.

(q) Upon mine operator bond forfeiture under § 86.181, the Department will declare forfeit the specified amount of the Land Reclamation Financial Guarantee for the permit in the Land Reclamation Financial Guarantee Account in addition to other bonds posted by the operator to cover the reclamation obligation on the permit.

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

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

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



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

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

### **Authority**

The provisions of this § 86.162b issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

### **Source**

The provisions of this § 86.162b adopted August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904.

### **Cross References**

This section cited in 25 Pa. Code § 86.155 (relating to scope); 25 Pa. Code § 86.165 (relating to failure to maintain proper bond); and 25 Pa. Code § 86.187 (relating to use of money).

## § 86.162c. Bioenergy Crop Bonding.

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

- (1) The site is a remining site as defined in § 86.252 (relating to definitions).
- (2) Stage 2 bond release has been achieved at the remining site.
- (3) The bioenergy crops listed in subparagraph (i) or (ii) have been grown at the remining site:
  - (i) Switchgrass, camelina or canola.
  - (ii) Other bioenergy crops grown to produce feedstock for biofuels, including biodiesel and ethanol, and biomass for electricity generation.
- (4) Water treatment liability has not been triggered under Chapter 87, Subchapter F, Chapter 88, Subchapter G or Chapter 90, Subchapter F (relating to surface coal mines: minimum requirements for remining areas with pollutional discharges; anthracite surface mining activities and anthracite bank removal and reclamation activities: minimum requirements for remining areas with pollutional discharges; and coal refuse disposal activities on areas with preexisting pollutional discharges).

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

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

- (2) A demonstration that the crops grown are bioenergy crops.
  - (3) Crop yield data that demonstrates that the bioenergy crops are achieving acceptable crop production.
  - (4) A demonstration that all temporary structures have been reclaimed.
  - (5) A demonstration that there are no post-mining pollutional discharges or that all liability associated with post-mining pollutional discharges is fully covered with a full-cost bond or a fully-funded post-mining treatment trust.
  - (6) Acknowledgement that the permittee intends to apply for final release of the Bioenergy Crop Bonding in a timely manner.
- (c) Upon approval of a Bioenergy Crop Bonding application, the Department will release the existing bond held for Stage 3 liability.
- (d) The liability period under Bioenergy Crop Bonding may not exceed 5 years. Permits with a liability period greater than 5 years because of the risk of water pollution under § 86.151(b)(1) and (c) (relating to period of liability) are not eligible for Bioenergy Crop Bonding.
- (e) Bioenergy Crop Bonding for a permit will expire no later than 120 days after the expiration of the 5-year liability period.
- (f) Bioenergy Crop Bonding will be replaced if the final bond release is not achieved upon the expiration of Bioenergy Crop Bonding.

### **Authority**

The provisions of this § 86.162c issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

### Source

The provisions of this § 86.162c adopted August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904.

### Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope); and 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees).

**§ 86.163. [Reserved].**

### Source

The provisions of this § 86.163 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

**§ 86.164. [Reserved].**

## Source

The provisions of this § 86.164 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

### **§ 86.165. Failure to maintain proper bond.**

(a) If a permittee fails to promptly post additional bond required under § 86.152 (relating to bond adjustments), or fails to make timely deposits of bond according to the schedule submitted under § 86.161 (relating to phased deposits of collateral), or fails to make payments under § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund) or fails to maintain subsidence insurance provided in § 86.162 (relating to subsidence insurance in lieu of bond), or fails to make annual payments for financial guarantees as required under § 86.283(a) (relating to procedures), or fails to make annual payments for Land Reclamation Financial Guarantees as required under § 86.162b (relating to Land Reclamation Financial Guarantees), the Department will issue a notice of violation to the permittee, and if the permittee fails to correct the violation within 15 days of the notice, the Department will issue a cessation order for the permittee's permit areas and thereafter take actions that may be appropriate.

(b) The permittee shall maintain bonds in an amount and with sufficient guarantee as required by this chapter. If a surety company who had provided surety bonds, or a bank who had provided letters of credit or certificates of deposit for a permittee, enters into bankruptcy or liquidation, or has its license suspended or revoked or for another reason indicates an inability or unwillingness to provide an adequate financial guarantee of the obligations under the bond or instrument, the Department will issue a notice of violation to the permittee requiring that affected permits be rebonded according to the requirements of this subchapter and, if the permittee fails to correct the violation within 90 days of the notice, the Department

will issue a cessation order for the permittee's permit areas and thereafter take appropriate action.

### **Authority**

The provisions of this § 86.165 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

### **Source**

The provisions of this § 86.165 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended June 25, 1993, effective June 26, 1993, 23 Pa.B. 3075; amended June 17, 2011, effective June 18, 2011, 41 Pa.B. 3084; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (357499) to (357500).

### **Notes of Decisions**

When the Department of Environmental Resources notifies a permittee to rebond based on a liquidation of the original surety company, the permittee must exhaust their administrative remedies under 71 P. S. § 510-21 before the Environmental Hearing Board. *Benjamin Coal Co. v. Department of Environmental Resources*, 513 A.2d 1120 (Pa. Cmwlth. 1986).

### **Cross References**

This section cited in 25 Pa. Code § 86.155 (relating to scope).

## § 86.166. Replacement of bonds.

(a) The Department may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability which has accrued against the permittee on the permit area is transferred to the replacement bonds and the replacement bonds are equivalent.

(b) The Department will not release existing bonds until the permittee has submitted and the Department has approved acceptable replacement bonds. A replacement of bonds pursuant to this section does not constitute a release of bond under §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond).

(c) The Department will not allow permittees to replace existing surety or collateral bonds with phased deposits of collateral bonds unless the first payment is equal to the bond being replaced and meets the requirements of § 86.161 (relating to phased deposits of collateral).

### Source

The provisions of this § 86.166 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended May 11, 1990, effective upon publication of notice in the *Pennsylvania Bulletin* that the amendments have been approved by the OSM, 20 Pa.B. 2517; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial page (148559).

### Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope).

## § 86.167. Transfer of permits.

Before a permit is transferred as provided in Subchapter B (relating to permits), the successor operator shall post a new bond in an appropriate amount determined by the Department under this subchapter but in no case less than the amount of bond on deposit with the Department, in the successor operator's name, assuming all accrued liability for the permit area. The successor operator may use negotiable securities of the former permittee as the bond guarantee if they obtain an assignment of residual right, title and interest to the negotiable securities from the former permittee and provide the Department with proof of the assignment.

### Source

The provisions of this § 86.167 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

### Cross References

This section cited in 25 Pa. Code § 86.155 (relating to scope).

## **§ 86.168. Terms and conditions for liability insurance.**

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

(b) The insurance shall be written on an occurrence basis and shall provide for bodily injury and property damage protection in a total amount determined by the Department on a case by



case basis, and adequate to compensate persons injured or property damaged as a result of the permittee's mining and reclamation operation and entitled to compensation under Pennsylvania law.

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

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

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

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

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

### Source

The provisions of this § 86.168 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (219171) to (219172).

## Notes of Decisions

### *Effect of Regulation*

The Department's regulations impose a duty upon a permittee to obtain liability insurance that complies with the regulations. Although the regulations require all policies to contain a rider requiring the insurer to provide the Department with prior notice of intended termination of coverage, in the absence of a rider, there is no notice of requirement imposed upon the insurer. This is consistent with the legislature's objective of ensuring that mining operations are conducted with the type of insurance coverage deemed necessary. If a policy does not contain the requisite notice rider, the permit should not issue. *Acceptance Ins. Co. v. Sloan*, 263 F.3d 278 (3rd Cir. 2001).

## Cross References

This section cited in 25 Pa. Code § 86.55 (relating to permit renewals; general requirements); 25 Pa. Code § 86.67 (relating to personal injury and property damage insurance information); 25 Pa. Code § 86.144 (relating to requirement to file a certification of liability insurance); and 25 Pa. Code § 86.155 (relating to scope).

## RELEASE OF BONDS

## **§ 86.170. Scope.**

This section and § § 86.171 and 86.172 (relating to procedures for seeking release of bond; and criteria for release of bond) set forth the procedures and criteria for release of bonds for mining and reclamation operations.

### **Source**

The provisions of this § 86.170 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

### **Cross References**

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.152 (relating to adjustments); 25 Pa. Code § 86.159 (relating to self-bonding); 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.166 (relating to replacement of bonds); 25 Pa. Code § 86.182 (relating to procedures); 25 Pa. Code § 86.283 (relating to procedures); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.294 (relating to uses and limitations); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

## **§ 86.171. Procedures for seeking release of bond.**

(a) The permittee, or another person having an interest in the bond, may file an application with the Department to release all or part of the bond liability applicable to a permit or designated phase of permit area after reclamation, restoration and abatement work in a

reclamation stage, as defined in § 86.172 (relating to criteria for release of bond) has been completed on the permit area or designated phase of a permit area subject to the following conditions:

(1) Applications may only be reviewed at times or seasons that allow the Department to properly evaluate the reclamation operations alleged to have been completed.

(2) The application shall include copies of letters sent to surface owners, adjoining property owners, local government bodies, planning agencies, and sewage and water treatment facilities or water authorities or companies in the locality of the permit area, notifying them of the permittee's intention to seek release of bond. These letters shall be sent before the permittee files the application for release.

(3) Within 60 days after filing the application for release, the permittee shall submit proof of publication of the advertisement required by subsection (b). The proof of publication shall be considered part of the bond release application. If the proof of publication is not received within 60 days after filing the application for release of bond, it will be considered incomplete and the Department may return the application with no further action.

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

(1) Be placed in the newspaper at least once a week for 4 consecutive weeks.

(2) Show the name of the permittee, including the number and date of issuance or renewal of the permit.

(3) Show the precise location and the number of acres of the lands subject to the application.

(4) Show the total amount of bond in effect for the permit area and the amount for which release is sought.

(5) Summarize the reclamation, restoration or abatement work done, including, but not limited to, backstowing or mine sealing, if applicable, and give the dates of completion of the work.

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

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

(c) Written objections to the proposed bond release and requests for an informal conference may be filed with the Department by an affected person within 30 days following the last advertisement of the filing of the application. For the purpose of this section, an affected person is one or more of the following:

(1) A person with a valid legal interest which might be adversely affected by bond release.

(2) The responsible officer or head of a Federal, State or local government agency which meets one or more of the following:

(i) Has jurisdiction by law or special expertise with respect to an environmental, social or economic impact involved.

(ii) Is authorized to develop and enforce environmental standards with respect to mining activities.

(d) The Department will inspect and evaluate the reclamation work involved within 30 days after receiving a completed application for bond release, or as soon thereafter as weather conditions permit. The surface owner, agent or lessee shall be given notice of the inspection and may participate with the Department in making the bond release inspection.

(e) The Department will schedule a conference if written objections are filed and a conference is requested. The conference shall be held in the locality of the permit area for which bond release is sought.

(1) Notice of an informal conference shall be published in a newspaper of general circulation in the locality of the conference, at least 2 weeks before the date of the conference.

(2) The informal conference shall be held within 30 days from the date of request for conference, except that requests for an informal conference that are filed prior to the 10th day following the final newspaper advertisement shall have a constructive date of filing as the 10th day following the final newspaper advertisement.

(3) An electronic or stenographic record may be made of the conference and the record maintained for access by the parties, until final release of the bond, if requested in advance by one or more of the parties of the conference.

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

(1) The Department will consider during inspection, evaluation, hearing and decision:

(i) Whether the permittee has met the criteria for release of the bond under § 86.172.

(ii) Whether the permittee has satisfactorily completed the requirements of the reclamation plan, or relevant portion thereof, and complied with the requirements of the acts,

regulations thereunder and the conditions of the permit, and the degree of difficulty in completing remaining reclamation, restoration or abatement work.

(iii) Whether pollution of surface and subsurface water is occurring, the probability of future pollution or the continuance of present pollution, and the estimated cost of abating pollution.

(2) If no informal conference has been held under subsection (e), the Department will notify the permittee and other interested parties, and the municipality in which the mining activity is located, in writing of its decision to release or not to release all or part of the bond within 60 days of the date of filing of the application.

(3) If there has been an informal conference held under subsection (e), the notification of the decision shall be made to the permittee, and other interested parties, and the municipality in which the mining activity is located or the nearest town, city or other municipality, within 30 days after conclusion of the conference.

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

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

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

## Source

The provisions of this § 86.171 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended January 4, 1985, effective immediately upon the approval by the Secretary of the United States Department of the Interior and publication thereof in the *Pennsylvania Bulletin*, 15 Pa.B. 13; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186. Immediately preceding text appears at serial pages (237114) to (237118).

## Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.152 (relating to adjustments); 25 Pa. Code § 86.159 (relating to self-bonding); 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.166 (relating to replacement of bonds); 25 Pa. Code § 86.170 (relating to scope); 25 Pa. Code § 86.175 (relating to schedule for release of bond); 25 Pa. Code § 86.182 (relating to procedures); 25 Pa. Code § 86.283 (relating to procedures); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.294 (relating to uses and limitations); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

### **§ 86.172. Criteria for release of bond.**

(a) The Department may release all or part of a bond under § 86.175 (relating to schedule for release of bond) if it is satisfied that the entire permit area or portion of a permit area has been reclaimed to the standards in § 86.174 (relating to standards for release of bonds).



(b) The release or adjustment of a bond or portion of a bond does not relieve the operator of further reclamation liability on the permit area.

(c) The Department will not release or adjust bonds if the release or adjustment would reduce the amount of bond to less than that necessary for the Department to complete the approved reclamation plan; achieve compliance with requirements of the acts, regulations thereunder and the conditions of the permits; and abate significant environmental harm to air, water or land resources or danger to the public health and safety which may occur prior to the release of bonds from the permit area. When the permit includes an alternative postmining land use plan approval under § 87.159, § 88.133, § 88.221, § 88.334, § 88.492, § 89.88 or § 90.166, the Department will retain sufficient bond amounts for the Department to complete additional work which would be required to achieve compliance with the general standards for revegetation in § 87.155, § 88.129, § 88.217, § 88.330, § 88.492, § 89.86 or § 90.159, if the permittee fails to implement the approved alternative postmining land use plan.

### Source

The provisions of this § 86.172 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended January 4, 1985, effective immediately upon the approval by the Secretary of the United States Department of the Interior and publication thereof in the *Pennsylvania Bulletin*, 15 Pa.B. 13; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial pages (148564) to (148565).

### Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.152 (relating to adjustments); 25 Pa. Code § 86.159 (relating to self-bonding); 25

Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.166 (relating to replacement of bonds); 25 Pa. Code § 86.170 (relating to scope); 25 Pa. Code § 86.171 (relating to procedures for seeking release of bond); 25 Pa. Code § 86.175 (relating to schedule for release of bond); 25 Pa. Code § 86.182 (relating to procedures); 25 Pa. Code § 86.283 (relating to procedures); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.294 (relating to uses and limitations); 25 Pa. Code § 87.208 (relating to request for bond release); 25 Pa. Code § 88.508 (relating to request for bond release); 25 Pa. Code § 90.308 (relating to request for bond release); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

### **§ 86.173. [Reserved].**

#### **Source**

The provisions of this § 86.173 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; reserved June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316. Immediately preceding text appears at serial page (148565).

### **§ 86.174. Standards for release of bonds.**

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

(b) When the entire permit area or a portion of the permit area meets the following standards, Stage 2 reclamation has been achieved:

(1) Topsoil has been replaced and revegetation has been successfully established in accordance with the approved reclamation plan.

(2) The reclaimed lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of the acts, regulations thereunder or the permit.

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

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

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

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

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

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

### Source

The provisions of this § 86.174 adopted June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended May 8, 1998, effective May 9, 1998, 28 Pa.B. 2227; corrected January 16, 2004, effective May 9, 1998, 34 Pa.B. 388. Immediately preceding text appears at serial pages (281193) to (281194).

### Cross References

This section cited in 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.162c (relating to Bioenergy Crop Bonding); 25 Pa. Code § 86.172 (relating to criteria for release of bond); 25 Pa. Code § 86.175 (relating to schedule for release of bond); 25 Pa. Code § 86.264 (relating to forfeiture); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.294 (relating to uses and limitations); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

### § 86.175. Schedule for release of bond.

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

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

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

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

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

### **Authority**

The provisions of this § 86.175 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.19a); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § § 1406.1—1406.21); The Clean Streams Law (35 P. S. § § 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

### **Source**

The provisions of this § 86.175 adopted June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041. Immediately preceding text appears at serial pages (228232) to (228233).

## **Cross References**

This section cited in 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.172 (relating to criteria for release of bond); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.294 (relating to uses and limitations); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

## **BOND FORFEITURE**

### **§ 86.180. Scope.**

This section and § § 86.181, 86.182 and 86.185 (relating to general; procedures; and preservation of remedies) set forth the procedures and criteria for the forfeiture of bond as a result of the permittee's failure to meet the conditions upon the bond.

### **Source**

The provisions of this § 86.180 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

## **Cross References**

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); and 25 Pa. Code § 86.188 (relating to evaluation of bond forfeiture sites).

## § 86.181. General.

(a) The Department will forfeit the bonds for a permit when it determines that:

(1) The permittee has violated and continues to violate any of the terms or conditions of the bond.

(2) The permittee has failed and continues to fail to conduct the mining or reclamation operations in accordance with the law, the regulations adopted thereunder or the conditions of the permit.

(3) The permittee has abandoned the permit area.

(4) The permits for the area under the bond have been revoked, and the permittee has failed to complete the reclamation, abatement and revegetation required by the law, the regulations adopted thereunder and the conditions of the permit.

(5) The permittee has failed to comply with a compliance schedule in an adjudicated proceeding, consent order or agreement approved by the Department.

(6) The permittee has become insolvent, failed in business, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by the court; or a creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials or facilities at the permit area, or on the collateral pledged to the Department; and the permittee cannot demonstrate or prove the ability to continue to operate in compliance with the acts, the regulations adopted thereunder and the conditions of the permit.

### Source

The provisions of this § 86.181 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

### **Cross References**

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.180 (relating to scope); 25 Pa. Code § 86.188 (relating to evaluation of bond forfeiture sites); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); 25 Pa. Code § 86.284 (relating to forfeiture); and 25 Pa. Code § 86.295 (relating to forfeiture).

### **§ 86.182. Procedures.**

(a) The Department will send written notification by mail to the permittee, and the surety on the bond of the Department's intent to forfeit the bond and the reasons for the forfeiture.

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

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

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

(3) Notify the surety of the requirement to pay the amount of the forfeited bond over to the Department within 30 days after notice by certified mail from the Department. The money shall be held in escrow with any interest accruing to the Department pending the resolution of



any appeals. If it is determined, by a court of competent jurisdiction, after exhaustion of appeals, that the Commonwealth was not entitled to all or a portion of the amount forfeited, the interest shall accrue proportionately to the surety in the amount determined to be improperly forfeited by the Department.

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

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

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

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

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

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

(h) If the amount forfeited is:

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

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

### **Authority**

The provisions of this § 86.182 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

## Source

The provisions of this § 86.182 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 641; amended June 15, 1990, 20 Pa.B. 3383, effective July 27, 1991, 21 Pa.B. 3316; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821; amended November 14, 1997, effective November 15, 1997, 27 Pa.B. 6041; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6186; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (313523) to (313524) and (336565).

## Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.180 (relating to scope); and 25 Pa. Code § 86.188 (relating to evaluation of bond facilities sites).

## § 86.183. [Reserved].

## Source

The provisions of this § 86.183 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

## § 86.184. [Reserved].

## Source

The provisions of this § 86.184 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; reserved July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382.

### **§ 86.185. Preservation of remedies.**

Remedies provided in law for violation of but not limited to the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.19b), The Clean Streams Law (35 P. S. § § 691.1—691.1001), the Air Pollution Control Act (35 P. S. § § 4001—4015), the Dam Safety and Encroachments Act (32 P. S. § § 693.1—693.27), the Coal Refuse Disposal Control Act (52 P. S. § § 30.51—30.66), the Solid Waste Management Act (35 P. S. § § 6018.101—6018.1003) and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § § 1406.1—1406.21), the regulations adopted thereunder, or the conditions of the permits, are expressly preserved. Nothing in this subchapter may be construed as an exclusive penalty or remedy for the violations of law. No action taken under this subchapter may waive or impair another remedy or penalty provided in law.

## Authority

The provisions of this § 86.185 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

## Source

The provisions of this § 86.185 adopted December 19, 1980, 10 Pa.B. 4789, effective July 31, 1982, 12 Pa.B. 2382; amended July 30, 1982, 12 Pa.B. 2473, effective July 31, 1982, 12 Pa.B. 2382; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (336565) to (336566).

### **Cross References**

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.180 (relating to scope); and 25 Pa. Code § 86.188 (relating to evaluation of bond forfeiture sites).

### **§ 86.186. Scope.**

Sections 86.187—86.190 set forth the procedures and criteria for the use of money in the Surface Mining Conservation and Reclamation Fund. For the purposes of these sections, the term “Fund” means the Surface Mining Conservation and Reclamation Fund, as defined in section 18(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.18(a)).

### **Authority**

The provisions of this § 86.186 issued under section 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b(a)).

### **Source**

The provisions of this § 86.186 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 641.

## Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); and 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds).

### § 86.187. Use of money.

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

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

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

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

(iii) The Department may deposit other moneys into the Reclamation Fee O&M Trust Account, including appropriations, donations or the fees collected for Land Reclamation

Financial Guarantees implemented by § 86.162b (relating to Land Reclamation Financial Guarantees) needed to facilitate full-cost bonding in accordance with applicable law.

(iv) The moneys deposited in the Reclamation Fee O&M Trust Account will be used to pay construction costs and operation and maintenance costs associated with treating postmining pollutional discharges at ABS Legacy Sites, and the moneys may not be used for any other purpose. For purposes of this section, operation and maintenance includes recapitalization costs. Moneys in the Reclamation Fee O&M Trust Account will be held by the Commonwealth in trust for the benefit of all the people to protect their right to pure water and the preservation of the values of the environment. The State Treasurer will manage the investment of the funds in the Reclamation Fee O&M Trust Account with the advice of the Department.

(2) Moneys received from the forfeiture of bonds will be used only to reclaim land and restore water supplies affected by the surface mining operations upon which liability was charged on the bond, except as otherwise provided in this section and in § 86.190 (relating to sites where reclamation is unreasonable, unnecessary or impossible; excess funds). Interest accrued on these moneys will be used only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds, as a supplement to bond forfeiture funds.

(i) Moneys received from bonds forfeited on ABS Legacy Sites, and the interest accrued on the moneys, will be deposited into a separate subaccount in the Fund called the ABS Legacy Sites Trust Account. The Department may, upon review and recommendation of the Mining and Reclamation Advisory Board, transfer excess moneys from the Reclamation Fee O&M Trust Account into the ABS Legacy Sites Trust Account. The Department may deposit other moneys into the ABS Legacy Sites Trust Account, including appropriations, donations, or interest earned on other moneys in the fund.

(ii) Moneys in the ABS Legacy Sites Trust Account, including the interest accrued by the trust account, will be used to pay the operation and maintenance costs associated with treating postmining pollutional discharges at ABS Legacy Sites, and the moneys may not be used for any other purpose. Moneys in the ABS Legacy Sites Trust Account will be held by the Commonwealth in trust for the benefit of all the people to protect their right to pure water and the preservation of the values of the environment. The State Treasurer will manage the investment of the funds in the ABS Legacy Sites Trust Account with the advice of the Department.

(iii) The Department may not make disbursements from the ABS Legacy Sites Trust Account until that trust account becomes actuarially sound. The ABS Legacy Sites Trust Account will become actuarially sound when the following conditions are met:

(A) Financial guarantees sufficient to cover reclamation costs, including the costs to treat each discharge in perpetuity, have been approved by the Department for all mine sites permitted under the Primacy Alternate Bonding System.

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

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

(iv) When the ABS Legacy Sites Trust Account becomes actuarially sound the Department will transfer the moneys in the Reclamation Fee O&M Trust Account into the ABS Legacy Sites Trust Account and the Reclamation Fee O&M Trust Account will terminate. At that time, the reclamation fee or the alternative permanent funding source,



whichever is in place, will cease and the deposit of civil penalty moneys under paragraph (l) (i) will also cease.

(3) Other moneys deposited in the Fund may be used to reclaim land affected by surface mining operations and for other conservation purposes consistent with the purposes of the Fund, including restoration of water supplies affected by surface mining operations. The Department may also use the money in the Fund, other than the monies described in paragraphs (1) and (2), for necessary administrative expenses, including the purchase, lease or rental of vehicles, equipment, office space, laboratory supplies or other supplies, materials or services and personnel and overhead expenses.

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

(1) After considering the engineering cost estimate for completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site, the Department determines that the plan may be amended to decrease the cost of reclaiming the bond forfeiture site.

(2) The Department determines that completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site is unreasonable, unnecessary or physically impossible.

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

### **Authority**

The provisions of this § 86.187 issued under section 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b(a)); amended under sections 4(a), (d) and (d.2) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.4(a), (d) and (d.2) and 1396.4b); section 7 of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7); section 5 of The Clean Streams Law (35 P. S. § 691.5); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and PA. CONST. ART. 1, § 27.

### **Source**

The provisions of this § 86.187 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 641; amended August 29, 2008, effective August 30, 2008, 38 Pa.B. 4742; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (336566) to (336569).

### **Cross References**

This section cited in 25 Pa. Code § 86.17 (relating to permit and reclamation fees); 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.162b (relating to Land

Reclamation Financial Guarantees); 25 Pa. Code § 86.186 (relating to scope); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.291 (relating to financial assurance for bond credit—general); and 25 Pa. Code § 86.295 (relating to forfeiture).

### **§ 86.188. Evaluation of bond forfeiture sites.**

(a) After forfeiture of bond under §§ 86.180—86.182 and 86.185 (relating to scope; general; procedures; and preservation of remedies) has become final and the bond proceeds have been collected, the Department will evaluate the bond forfeiture site for reclamation purposes. The evaluation will consist of an onsite inspection by the Department and solicitation of information regarding the site and reclamation intention of the landowner and others determined by the Department to have information on, or an interest in, the site. The Department will provide to the landowner of the site, upon request, a copy of the completed site evaluation report.

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

(1) Sites which present a significant and continuing hazard to human life by either their proximity to or impact on human populations.

(2) Sites which present a significant threat to health or safety, including actual or threatened loss of public or private water supplies.

(3) Sites which present a significant risk of damage to public or private property.

(4) Sites which are causing environmental degradation or pollution affecting the productive use of public or private land, or the reclamation of which would create significant

environmental benefits.

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

- (1) The severity of the conditions at the site.
- (2) The potential for conditions at the site to deteriorate, including environmental quality, thus increasing the hazard to life, health, safety or property.
- (3) The willingness of the landowner, or other person, to undertake the reclamation of the site under § 86.189(b)(2), (3) or (4), as evidenced by previous reclamation activity performed on the site or other indications of willingness to reclaim by the landowner or other person.
- (4) The ability of the Department to gain adequate access to the site.
- (5) The potential for remining of all or a portion of the site.
- (6) The lack of participation of the landowner in the surface mining activities which created the conditions at the site.
- (7) The potential for agricultural use or reforestation of the site.

(d) The Department will compile a list of sites for which forfeiture of bonds under § § 86.180—86.182 and 86.185 has become final and bond proceeds have been collected. The list will be updated quarterly and will be available for review in the Department's district and central offices. The Department will publish quarterly in the *Pennsylvania Bulletin* notice of the availability of this list for review.

### **Authority**

The provisions of this § 86.188 issued under section 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b(a)); amended under sections 4(d) and (d.2) and 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.4(d) and (d.2) and 1396.4b(a)); section 7 of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7); section 5 of The Clean Streams Law (35 P. S. § 691.5); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and PA. CONST. ART. 1, § 27.

### Source

The provisions of this § 86.188 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 641; amended August 29, 2008, effective August 30, 2008, 38 Pa.B. 4742. Immediately preceding text appears at serial pages (313528) to (313529).

### Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.186 (relating to scope); 25 Pa. Code § 86.189 (relating to reclamation of bond forfeiture sites); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.291 (relating to financial assurance for bond credit—general); and 25 Pa. Code § 86.295 (relating to forfeiture).

### **§ 86.189. Reclamation of bond forfeiture sites.**

(a) The Department will first provide for the reclamation of bond forfeiture sites where permits were issued under the Federally-approved coal surface mining regulatory program which took effect July 31, 1982, and where bonds under the permits were subsequently

forfeited by the Department. After the Department provides for reclamation of these sites, the Department will provide for the reclamation of other bond forfeiture sites.

(b) The Department will provide for reclamation of bond forfeiture sites through one of the following:

(1) The Department may provide for reclamation to be conducted under the public bidding and contracting requirements of the Commonwealth under the site evaluation procedure in § 86.188 (relating to evaluation of bond forfeiture sites). Under this approach, the Department will advertise for bids for reclamation of the bond forfeiture site in a newspaper of general circulation in the locality in which the work is to take place. The advertisement will appear once a week for a minimum of 2-consecutive weeks. In advertising for bids, the Department may consider various construction methods for bidding, including the rental of equipment with equipment operators to be supervised by the Department during completion of the reclamation plan.

(2) Based on an engineering cost estimate for completing the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site, the Department may negotiate and enter into a contract with the landowner of a bond forfeiture site or another licensed mine operator to complete the reclamation of a bond forfeiture site advertised for bids under paragraph (1). The Department will give public notice of the intent to reclaim sites selected by the Department to be advertised for public bids under paragraph (1) in a newspaper of general circulation in the locality in which the work is to take place. The public notice will appear once a week for a minimum of 2 consecutive weeks and may be combined with the notice in paragraph (1). Payments to a person to whom the Department has granted a contract under this paragraph will be made to the extent of the appropriate compensation provisions according to a payment schedule to be established by the Department. The final payment will be made when the Department is satisfied that the person

has completed reclamation of the site in accordance with the approved reclamation plan and as specified in the contract.

(i) The Department will compensate landowners of bond forfeiture sites at a rate equal to the lesser of one of the following:

(A) The Department's engineering cost estimate for the site.

(B) The prevailing bond rate.

(ii) The Department will compensate licensed mine operators at a rate equal to the lesser of one of the following:

(A) The Department's engineering cost estimate for the site.

(B) The prevailing bond rate.

(3) When a licensed mine operator is granted a permit or has filed a permit application on property contiguous to a property on which the Department has forfeited bonds for failure to complete the reclamation plan, the permittee shall be provided the opportunity to make a proposal to complete the reclamation plan of the bond forfeiture site developed under § 86.187 (relating to use of money).

(i) The proposal shall contain estimated costs and the necessary information upon which the Department can determine the cost effectiveness of the proposal. Upon receipt of the proposal, the Department may negotiate and enter into a contract with the permittee to complete the reclamation plan. A determination whether to negotiate will be made by the Department within 30 days of receipt of a complete proposal. Contract negotiations will begin within 30 days of the determination to negotiate.

(ii) Payments to a person with whom the Department has entered into a contract under this paragraph will be made to the extent of the appropriate compensation provisions according to a payment schedule to be established by the Department, and the final payment will be made when the Department is satisfied that the person has completed reclamation of the site in accordance with the approved reclamation plan and as specified in the contract. The Department will compensate licensed mine operators at a rate equal to the lesser of one of the following:

(A) The Department's engineering cost estimate for the site.

(B) The prevailing bond rate.

(4) Under cooperative agreements among the Department, the State Conservation Commission and the County Soil Conservation District in which the bond forfeiture site is located, the District may enter into a contract with the landowner of the bond forfeiture site to reclaim the site.

(i) The landowners of bond forfeiture sites will be compensated at a rate equal to the lesser of one of the following:

(A) The Department's engineering cost estimate for the site.

(B) The amount of the forfeited and collected bond.

(ii) The District may also compensate landowners for the reasonable cost of insurance required for landowner reclamation and the design and engineering costs incurred by the landowner in the incidental modification of the reclamation plan, subject to approval by the Department.



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

(1) Neither the person nor a related party has been convicted of a misdemeanor within the last 3 years for violating The Clean Streams Law (35 P. S. § § 691.1—691.1001), the Coal Refuse Disposal Control Act (52 P. S. § § 30.51—30.66), the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § § 1406.1—1406.21), the Air Pollution Control Act (35 P. S. § § 4001—4015), the Solid Waste Management Act (35 P. S. § § 6018.101—6018.1003) or the Dam Safety and Encroachments Act (32 P. S. § § 693.1—693.27).

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

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

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

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

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

(i) Neither the person nor a related party has a legal obligation to correct the present conditions at the site.

(ii) The person meets the requirements of § 86.37(a)(8)—(11) (relating to criteria for permit approval or denial).

(d) Prior to advertising a project for bids under subsection (b)(1) or to entering into negotiations with the landowner or licensed mine operator under subsection (b)(2), or upon receipt of an unsolicited proposed contract from a licensed mine operator under subsection (b)(3), the Department will publish notice in the *Pennsylvania Bulletin*, and notify the landowners of the bond forfeiture site proposed for reclamation, of the location of the project and a brief summary of work to be done.

(e) Upon awarding a reclamation contract under this section, the Department will notify the landowners of the bond forfeiture site proposed for reclamation of the name of the contract recipient, the location of the project, a summary of work to be done and the cost of the work

and will publish a notice in the *Pennsylvania Bulletin* annually of reclamation contracts awarded under this section.

### **Authority**

The provisions of this § 86.189 issued under section 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b(a)); amended under sections 4(d) and (d.2) and 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4(d) and (d.2) and 1396.4b(a)); section 7 of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7); section 5 of The Clean Streams Law (35 P. S. § 691.5); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and PA. CONST. ART. 1, § 27.

### **Source**

The provisions of this § 86.189 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 641; amended August 29, 2008, effective August 30, 2008, 38 Pa.B. 4742. Immediately preceding text appears at serial pages (313529) to (313533).

### **Cross References**

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.186 (relating to scope); 25 Pa. Code § 86.187 (relating to use of money); 25 Pa. Code § 86.188 (relating to evaluation of bond forfeiture sites); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); 25 Pa. Code § 86.284 (relating to forfeiture); 25 Pa. Code § 86.291 (relating to financial assurance for bond credit—general); and 25 Pa. Code § 86.295 (relating to forfeiture).

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

(a) If the Department determines in the evaluation of a bond forfeiture site that completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site or an alternative reclamation plan is unreasonable, unnecessary or physically impossible, the bond amount will be made available for expenditure from the Fund only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds. The reasons justifying this determination include the following:

(1) The site has been repermited and rebonded for mining, and reclamation of the site is a condition of the permit.

(2) The site has been otherwise reclaimed.

(b) Before a final determination under subsection (a), the Department will send written notice to the landowner of the Department's intention to remove restrictions on the expenditure of the forfeited bond amount.

(c) If the Department determines that the funds received from bonds covering the bond forfeiture site exceed the amount which is required to reclaim the bond forfeiture site, the excess funds will be made available for expenditure from the fund only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds.

**Authority**

The provisions of this § 86.190 issued under section 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b(a)); amended under sections 4(d) and (d.2) and 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.4(d) and (d.2) and 1396.4b(a)); section 7 of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7); section 5 of The Clean Streams Law (35 P. S. § 691.5); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and PA. CONST. ART. 1, § 27.

### Source

The provisions of this § 86.190 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 641; amended August 29, 2008, effective August 30, 2008, 38 Pa.B. 4742. Immediately preceding text appears at serial page (313533).

### Cross References

This section cited in 25 Pa. Code § 86.145 (relating to Department responsibilities); 25 Pa. Code § 86.158 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 86.162b (relating to Land Reclamation Financial Guarantees); 25 Pa. Code § 86.186 (relating to scope); 25 Pa. Code § 86.187 (relating to use of money); 25 Pa. Code § 86.281 (relating to financial guarantees to insure reclamation—general); 25 Pa. Code § 86.284 (relating to forfeiture); and 25 Pa. Code § 86.295 (relating to forfeiture).

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