

## Annex A

### § 86.1. Definitions.

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

*Acts*—Include the following:

- (i) The Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.31).
- (ii) The Air Pollution Control Act (35 P. S. § § 4001—4015).
- (iii) The Clean Streams Law (35 P. S. § § 691.1—691.1001).
- (iv) The Coal Refuse Disposal Control Act (52 P. S. § § 30.51—30.66).
- (v) Article XIX-A of The Administrative Code of 1929 (71 P. S. § § 510-1—510-1081).
- (vi) The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § § 1406.1—1406.21).
- (vii) The Dam Safety and Encroachments Act (32 P. S. § § 693.1—693.27).
- (viii) The Solid Waste Management Act (35 P. S. § § 6018.101—6018.1003).
- (ix) The Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § § 3301—3326).**

\*\*\*\*\*

**Major Permit Revision—a revision to a permit that requires public notice.**

**Minor Permit Revision--a revision to a permit that does not require public notice.**

\*\*\*\*\*

**Permit Application Fee--A non-refundable fee due at the time of submission of an application. The permit application fee is required in order for an application to be considered complete.**

\*\*\*\*\*

Draft

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

- (i) Being a permittee of a coal mining activity.
- (ii) Based on instruments of ownership or voting securities, owning of record in excess of 50% of an entity.
  - (iii) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant coal mining activity is conducted:
    - (A) Being an officer or director of an entity.
    - (B) Being the operator or contractor of a coal mining activity.
    - (C) Having the ability to commit the financial or real property assets or working resources of an entity.
    - (D) Being a general partner in a partnership.
    - (E) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record a percentage of the entity as established in the definition of “owned or controlled and owns or controls” in 30 CFR [~~773.5~~] 701.5 (relating to definitions).
    - (F) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a coal mining activity.
- (iv) Having another relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator or other entity conducts coal mining activities.

\*\*\*\*\*

### **§ 86.3. Use of Coal Refuse Disposal Control Fund.**

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

Draft

**(b) Permit Application Fees required by this Chapter for permit applications submitted pursuant to the Coal Refuse Disposal Control Act will be used by the Department to cover its costs to review such applications.**

\*\*\*\*\*

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

\*\*\*\*\*

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

\*\*\*\*\*

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

(a) A permit application for coal mining activities shall be accompanied by a [check for \$250] payable to the “Commonwealth of Pennsylvania.” **For purposes of this subsection, permit applications include all of the applications listed in section b.**

(b) [A permit application for a coal preparation plant shall be accompanied by a check for \$250 payable to the “Commonwealth of Pennsylvania.”] **The Permit Application Fee schedule shall be as follows:**

<u>(1) New Permits</u>	<u>Fee</u>
<u>Surface Mining Permit</u>	<u>\$11,675.00</u>
<u>Coal Refuse Reprocessing Permit</u>	<u>\$6,725.00</u>
<u>Coal Refuse Disposal Permit</u>	<u>\$11,675.00</u>
<u>Coal Preparation Plant Permit</u>	<u>\$5,850.00</u>
<u>Anthracite Underground Mining Permit</u>	<u>\$5,850.00</u>
<u>Bituminous Underground Mining Permit</u>	<u>\$20,450.00</u>
<u>Post Mining Activity Permit</u>	<u>\$1,150.00</u>
<u>Incidental Extraction Permit</u>	<u>\$5,825.00</u>

<u>(2) Major Permit Revisions</u>	<u>Fee</u>
<u>Surface Mining Permit</u>	<u>\$1,025.00</u>
<u>Coal Refuse Reprocessing Permit</u>	<u>\$1,025.00</u>

Draft

<u>Anthracite Coal Refuse Disposal Permit</u>	<u>\$1,050.00</u>
<u>Bituminous Coal Refuse Disposal Permit</u>	<u>\$4,350.00</u>
<u>Anthracite Coal Preparation Plant Permit</u>	<u>\$1,050.00</u>
<u>Bituminous Coal Preparation Plant Permit</u>	<u>\$4,350.00</u>
<u>Anthracite Coal Underground Mining Permit</u>	<u>\$1,200.00</u>
<u>Bituminous Coal Underground Mining Permit</u>	<u>\$4,950.00</u>

<u>(3) Minor Permit Revisions</u>	<u>Fee</u>
<u>Surface Mining Permit</u>	<u>\$500.00</u>
<u>Refuse Reprocessing Permit</u>	<u>\$500.00</u>
<u>Refuse Disposal Permit</u>	<u>\$350.00</u>
<u>Preparation Plant Permit</u>	<u>\$350.00</u>
<u>Underground Mining Permit</u>	<u>\$400.00</u>

<u>(4) Transfer</u>	<u>Fee</u>
<u>Surface Mining Permit</u>	<u>\$775.00</u>
<u>Coal Refuse Reprocessing Permit</u>	<u>\$775.00</u>
<u>Anthracite Refuse Disposal Permit</u>	<u>\$775.00</u>
<u>Bituminous Refuse Disposal Permit</u>	<u>\$1,520.00</u>
<u>Anthracite Preparation Plant Permit</u>	<u>\$775.00</u>
<u>Bituminous Preparation Plant Permit</u>	<u>\$1,525.00</u>
<u>Anthracite Underground Mining Permit</u>	<u>\$775.00</u>
<u>Bituminous Underground Mining Permit</u>	<u>\$1,520.00</u>

<u>(5) Renewal</u>	<u>Fee</u>
<u>Surface Mining Permit</u>	<u>\$375.00</u>
<u>Refuse Reprocessing Permit</u>	<u>\$325.00</u>
<u>Anthracite Refuse Disposal Permit</u>	<u>\$325.00</u>
<u>Bituminous Refuse Disposal Permit</u>	<u>\$925.00</u>
<u>Preparation Plant Permit</u>	<u>\$925.00</u>
<u>Bituminous Underground Mining Permit</u>	<u>\$925.00</u>
<u>Anthracite Underground Mining Permit</u>	<u>\$325.00</u>

<u>(6) Other Actions</u>	<u>Fee</u>
<u>Auger Safety Permit</u>	<u>\$700.00</u>
<u>Bond Liability Revision</u>	<u>\$375.00</u>

(c) [A renewal application, whether the site has not yet been activated or where coal is being extracted, shall be accompanied by a check for \$250 payable to the “Commonwealth of Pennsylvania.” A renewal application for reclamation activities requires no application fee.] For surface coal mine facilities, coal refuse reprocessing facilities, and coal mining activity facilities, except for bituminous underground mines, all Permit Application Fees collected shall be deposited in the Surface Mining

**Conservation and Reclamation Fund. Permit Application Fees collected for bituminous underground mines shall be deposited in the Bituminous Mine Subsidence and Land Reclamation Fund. For coal refuse disposal facilities, all Permit Application Fees collected shall be deposited in the Coal Refuse Disposal Control Fund.**

(d) [A permit application for coal refuse disposal activities shall be accompanied by a check for \$500 plus \$10 per acre for acreage in excess of 50 acres payable to the “Commonwealth of Pennsylvania.”] **The Department will review the adequacy of the Permit Application Fees established in this section at least once every three years and shall provide a written report to the Environmental Quality Board. The report shall identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it shall contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.**

\*\*\*\*\*

### **§ 86.36. Review of permit applications.**

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

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

(c) The Department will verify from the schedule submitted under § 86.63 (relating to compliance information) or other information available to the Department that coal mining activities owned or controlled by the applicant, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1 (relating to definitions) are not currently in violation of the acts or the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. § § 1201—1328), or that the violation is in the process of being corrected to the satisfaction of the regulatory authority, department or agency which has jurisdiction over the violation of the acts or the Surface Mining Control and Reclamation Act of 1977 and a law, rule or regulation of a department or agency of the United States or of a state in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a coal mining activity [**during the 3-year period prior to the date of application**].

### **§ 86.37. Criteria for permit approval or denial.**

Draft

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

\*\*\*\*\*

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

\*\*\*\*\*

#### **§ 86.62. Identification of interests.**

\*\*\*\*\*

(b) *Statement.* An application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For all entities, the application shall contain the following information, as applicable, for each person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1 (relating to definitions) except that the submission of a social security number is voluntary:

(1) The name, address, social security number and employer identification number of every:

- (i) Officer.
- (ii) Partner.
- (iii) Associate.
- (iv) Shareholder of at least 10% of the voting stock.

Draft

- (v) Director.
  - (vi) Other person performing a function similar to director of the applicant.
  - (vii) Contractor and subcontractor.
  - (viii) Person having the ability to commit the financial or real property assets or working resources of an entity.
  - (ix) Person owning or controlling the coal to be mined under the proposed permit under a lease, sublease or other contract, and having the right to receive the coal after mining or having authority to determine the manner in which the proposed coal mining activity is to be conducted.
  - (x) Person who has another relationship with the permit applicant which gives the person authority directly or indirectly to determine the manner in which the proposed coal mining activity is to be conducted.
  - (xi) Person who owns or controls the persons specified in subparagraphs (i)—(x), either directly or indirectly through intermediary entities.
- (2) For each person listed in paragraph (1), list the following:
- (i) The title of the person's position.
  - (ii) The date the position or stock ownership was assumed, and when submitted under § **[86.63 (relating to compliance information)] 86.212 (c) (relating to Federal minimum enforcement action)**, the date of departure from the position.
  - (iii) The percentage of ownership.
  - (iv) The location in the organizational structure.
  - (v) The relationship to the applicant.
- (c) *Related entity information.* Include the following:
- (1) List the names of entities who, under the definition of “owned or controlled” or “owns or controls” in § 86.1, own or control the applicant or who are owned or controlled by the applicant and provide the following information for each entity:
    - (i) Identifying numbers, including employer identification number, Federal or State permit numbers, **permittee name and address** and the MSHA numbers with date of issuance for each permit.

Draft

(ii) The application number or other identifier of and the regulatory authority for other **issued or** pending mining operation permit applications filed by the entity in any State in the United States.

(iii) The name, address, social security number and employer identification number of every officer, partner, associate, principal shareholder, director or other person performing a function similar to director of the entity, including the title of the person's position and the date the position was assumed.

(2) For each person listed in subsection (b)(1), who is, or has been, associated with another entity as an owner or controller, under the definition of "owned or controlled" or "owns or controls" in § 86.1, within the 5-year period preceding the date of application, provide the following information:

(i) The name of each entity they are, or were, associated with.

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

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

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

\*\*\*\*\*

### **§ 86.103. Procedures.**

\*\*\*\*\*

**(g) An application that includes an assertion of valid existing rights shall meet the requirements and follow the procedures established in 30 CFR § 761.16.**

\*\*\*\*\*

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

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



Draft

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

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

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

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

**(2) The permit application shall contain the following information:**

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

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

**(iii) A narrative describing the proposed exploration area.**

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

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

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

**(vii) A description of the following:**

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

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

**(C) Known archeological resources located within the proposed exploration area,**

**(D) Any other information which the regulatory authority may require regarding known or unknown historic or archeological resources.**

**(viii) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) identified within the proposed exploration area.**

**(ix) A description of the measures to be used to comply with the applicable requirements of § 86.134 of this chapter.**

**(x) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.**

**(xi) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).**

**(xii) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.**

**(xiii) For any lands listed in § 86.102 of this chapter, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of § 86.102 of this chapter, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of § 86.102 of this chapter.**

([1]3) The exploration is consistent with the designation.

([2]4) The exploration will be conducted to preserve and protect the applicable values and uses of the area under Subchapter E (relating to coal exploration) [and the Department has issued written approval for the exploration].

**(5) The permit term may not exceed two years and the permit may not be renewed or transferred.**

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

**(7) The application shall be subject to the criteria for permit approval or denial in § 86.37 (relating to the criteria for permit approval or denial) and 30 CFR § 772.12 (d), and the requirements for final permit action in § 86.39 (relating to final permit action).**

\*\*\*\*\*

### **§ 86.133. General requirements.**

\*\*\*\*\*

(f) Coal exploration on lands where a petition to declare an area unsuitable for mining has been received by the Department or on lands designated unsuitable for mining shall **[by] be conducted only after [written-approval is granted by] a permit has been obtained from** the Department. **This permit requirement may not be waived.** The Department may prescribe conditions and requirements necessary to preserve the values sought to be protected in the petition before approving coal exploration in these areas. The exploration activities shall be conducted in accordance with § 86.129 (relating to coal exploration) to insure that the exploration activity does not interfere with a value for which the area has been designated unsuitable for mining.

\*\*\*\*\*

### **§ 86.159. Self-bonding.**

\*\*\*\*\*

(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 non-parent 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 such authorization shall be submitted to the Department along with an affidavit certifying that such an 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

Draft

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.

\*\*\*\*\*

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

(a) If a permittee fails to promptly post additional bond required under § 86.152 (relating to 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 Loan 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)**, 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.

\*\*\*\*\*

### **§ 86.195. Penalties against corporate officers.**

\*\*\*\*\*

(b) Whenever the Department issues an order to an operator for failing to abate violations contained in a previous order, it will send by certified mail to each corporate officer listed in the surface mining operator's license application under § 86.353 (relating to identification of ownership), or to each corporate officer listed in a coal mining activities application under § 86.62 (relating to identification of interests), a copy of the failure to abate order and a notice of the **[officer'] officer's** liability under this section. If the violations are not abated within 30 days of issuance of the failure to abate order, the Department may assess a civil penalty against each officer receiving the notice provided by this subsection.

\*\*\*\*\*

### **§ 86.211. Enforcement—general.**

\*\*\*\*\*

Draft

(d) If one or more of the conditions in subsection (b) exist, the operator may request the Department to grant an abatement period exceeding 90 days. The abatement period granted will not exceed the shortest possible time necessary to abate the violation. The operator has the burden of establishing by **[clean] clear** and convincing proof that he is entitled to an extension under this section. In determining whether or not to grant an abatement period exceeding 90 days, the Department may consider relevant written information from the operator or other sources.

\*\*\*\*\*

**§ 86.281. Financial guarantees to insure reclamation—general.**

a) In the Remining Financial Assurance Fund there is a special account providing financial guarantees for qualified operators who conduct remining. Funds in this special account may be used to financially assure bonding obligations under § 86.143 (relating to requirement to file a bond) of a qualified operator engaged in remining.

(b) The financial guarantee applies to **a permit with** remining areas approved by the Department. Operators who wish to participate in this program shall demonstrate, for each permit, their eligibility under § § 86.253 and 86.282 (relating to operator and project qualification; and participation requirements).

(c) For each approved permit of an eligible operator for a remining area, the Department will **[reserve a portion] designate a specified amount** of the financial guarantees special account in the Remining Financial Assurance Fund **[as collateral for] to financially assure** reclamation obligations on the **permit with an approved** remining area. **[The amount of the reserve will be the average cost per acre for the Department to reclaim a mine site multiplied by the number of acres in the remining area.] The specific amount designated will be the estimated cost for the Department to reclaim the remining area.**

(d) **The** Department may not issue financial guarantees on a permit in excess of 10% of the then current amount in the special account in the Remining Financial **[Assurance] Assurance** Fund. The Department will not issue financial guarantees **[to] to** a mine operator if the aggregate amount of financial guarantees on permits issued to the operator will exceed 30% of the then current amount in the special account in the Remining Financial Assurance Fund. The Department will not issue additional financial guarantees when the aggregate amount of outstanding financial guarantees exceeds that amount resulting from dividing the current amount in the special account in the Remining Financial Assurance Fund by the historical rate of bond forfeiture under § 86.181 (relating to bond forfeiture-general) with a margin of safety determined by the Department.

Draft

(e) Upon declaration of forfeiture, the [reserved funds] specified amount of the financial guarantee from the financial guarantee special account will be used with other bonds forfeited on the permit by the Department to complete reclamation of the [remining area] mine site in accordance with the procedures and criteria in § § 86.187—86.190. If the actual cost of reclamation by the Department exceeds the [amount reserved]specified amount of the financial guarantee, additional funds from the Remining Financial Assurance Fund [will]may be used to complete reclamation.

### **§ 86.282. Participation requirements.**

(a) Upon completion of the technical review of a permit application and receipt of a request for bond, an operator may apply to participate in the financial guarantees program for a remining area if the requirements of § 86.253 (relating to operator and project qualification) are met. To participate in this program, an operator shall demonstrate to the Department's satisfaction one of the following:

(1) The operator would be able to post a collateral bond otherwise required by this chapter and demonstrate appropriate experience in coal mining and reclamation.

(i) The operator shall demonstrate ability to post a collateral bond by meeting the following conditions for the operator's most recently completed fiscal year and the 2 preceding fiscal years:

(A) A ratio of current assets to current liabilities of 1.5 or greater.

(B) A ratio of total liabilities to tangible net worth of 3 or less.

(ii) The operator shall submit a notarized statement signed by the operator and an independent certified public accountant (CPA), an officer of a financial institution with which the operator conducts business or other person or entity responsible for the accounts of the operator. The statement shall list the operator's ratio of current assets to current liabilities and the operator's ratio of total liabilities to tangible net worth for the most recently completed fiscal year and the 2 preceding fiscal years.

(iii) The operator shall demonstrate appropriate experience in coal mining and reclamation by showing that he has had a coal mining license under section 3.1 of the act (52 P. S. § 1396.3a) for 5 years or the person designated by the operator to manage the operation has a minimum of 5 years of experience in coal mining and reclamation.

(2) The operator would be able to obtain a surety bond **[or letter of credit collateral bond]** otherwise required under this chapter. The operator will demonstrate this by submitting a letter of acceptance from a surety company

Draft

licensed to do business in this Commonwealth and which writes bonds for reclamation of mine sites located in this Commonwealth or by submitting a surety bond **[or letter of credit collateral bond ]for an equal portion of the remaining reclamation liability for the permitted remining site [permit area]**. The acceptance letter shall indicate the complete name and address of the surety company and state that the surety company would write the bond.

\*\*\*\*\*

### **§ 86.283. Procedures.**

(a) An operator's participation in the financial guarantees program is subject to the following:

(1) Annual payments will be 1% of the total amount of the **remining financial guarantee****[number of acres of remining area to be affected multiplied by the Department's current applicable bond rates]**.

(2) The first payment is due upon receipt of notice of the Department's approval of the operator's application to participate in the program. Payments shall be made annually thereafter concurrent with the license renewal or in accordance with a schedule determined by the Department.

(3) Payments are not refundable and will be deposited into the financial guarantees special account in the Remining Financial Assurance Fund to be used in case of operator forfeiture. When the special account becomes actuarially sound, excess payments may be used under section 18(a.1) and (a.2) of the act (52 P. S. § 1396.18(a.1) and (a.2)).

(4) The operator may not substitute financial guarantees for existing collateral or surety bonds.

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

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

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

(e) The obligation covered by the financial guarantees program bond will be reduced or released prior to any other bond submitted by the operator to cover the reclamation obligations of that permit. **[This portion of the bond may not be used to cover the reclamation obligation on another section of the permit area.]**

**(f) If a discharge not meeting the effluent criteria of § 87.102, § 88.92, § 88.187, § 88.292, § 89.52 or § 90.102 develops on a permit on which a financial guarantee is being used, the operator shall within 90 days of receipt of written notice by the Department replace the financial guarantee with other types of financial assurance mechanisms authorized for the purpose of covering the costs of treating the discharge. If an acceptable bond has not been received and approved by the Department within the specified time limit, the Department will issue a cessation order for mining activities except for reclamation and other activities required to maintain the permit area.**

#### **§ 86.284. Forfeiture.**

(a) Upon forfeiture under § 86.181 (relating to general), the Department will declare forfeit the **specified** amount **[reserved for the operator] of the financial guarantee for the permit** in the financial guarantees special account in the Remining Financial Assurance Fund in addition to other bonds posted by the operator to cover the reclamation obligation on the permit.

(b) The Department's declaration of forfeiture under this section does not excuse the operator from meeting the requirements of this chapter or other requirements under the act.

(c) Upon declaration of forfeiture, the Department will use the bond money **posted by the operator** and **[reserved funds ] the specified amount of the financial guarantee** to complete the reclamation of the mine site in accordance with the procedures and criteria in § § 86.187—86.190.

(d) The financial guarantees program will be discontinued immediately and notice published in the *Pennsylvania Bulletin*, if 25% or greater of the total outstanding financial guarantees are declared forfeit. If the financial guarantees program is discontinued, no additional financial guarantees may be approved. Outstanding financial guarantees will remain in effect until released under § § 86.170—86.175.

(e) The financial guarantees program may be suspended upon notice in the *Pennsylvania Bulletin* when the number of participating permits declared forfeit is equal to that number of permits calculated by multiplying the historical rate of forfeiture plus a margin of safety times the number of permits participating in the program. No additional financial guarantees will be approved until the total amount of financial guarantees declared forfeit has been replaced through the accumulation of annual payments or by other means.



\*\*\*\*\*

**§ 87.112. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.**

\*\*\*\*\*

(c) If the embankment is more than 20 feet in height as measured from the upstream toe of embankment to the crest of the emergency spillway or has a storage volume of 20 acre-feet or more, [or] is located where failure could cause loss of life or serious property damage **or otherwise poses a hazard to miners or the public**, it shall:

(1) Be stable under all probable conditions of operation and be designed and constructed to achieve a static safety factor of 1.5 or other higher static safety factor required by the Department **and a seismic safety factor of at least 1.2**.

\*\*\*\*\*

**§ 87.119. Hydrologic balance: water rights and replacement.**

\*\*\*\*\*

(g) *Operator cost recovery.* A surface mine operator or mine owner who appeals a Department order, provides a successful defense during the appeal to the presumptions of liability and is not otherwise held responsible for the pollution or diminution is entitled to recovery of reasonable costs incurred, including, but not limited to, the costs of temporary water supply, design, construction, **and** restoration or replacement costs[, **attorney fees and expert witness fees**] from the Department.

(k) *Exception.* A surface mining operation conducted under a surface mining permit issued by the Department before February 16, 1993, is not subject to subsections (b)—(i), but is subject to subsections (a) and (j).

\*\*\*\*\*

**§ 88.321. Disposal of noncoal wastes.**

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

Draft

and garbage may not be deposited on or near a coal refuse disposal pile **or impounding structure.**

\*\*\*\*\*

### **89.111. Large impoundments.**

\*\*\*\*\*

(c) If the embankment is more than 20 feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre feet or more, [or] is located where failure could cause loss of life or serious property damage **or otherwise poses a hazard to miners or the public,** it shall:

(1) Be stable under all probable conditions of operation and be designed and constructed to achieve a static safety factor of 1.5, or higher if required by the Department **and a seismic safety factor of at least 1.2.**

\*\*\*\*\*

### **§ 90.112. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.**

\*\*\*\*\*

(c) If the embankment is more than 20 feet in height as measured from the upstream toe of embankment to the crest of the emergency spillway, or has a storage volume of 20 acre feet or more, [or] is located where failure, could cause loss of life or serious property damage **or otherwise poses a hazard to miners or the public,** it shall:

(1) Be stable under probable conditions of operation and be designed and constructed to achieve a static safety factor of 1.5 or a higher static safety factor required by the Department.

(2) Have an appropriate combination of principal and emergency spillways to **[discharge safely the runoff from a 100-year, 24-hour precipitation event or a larger event specified and required by the Department] safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event.**

(3) Have a foundation investigation, as well as necessary laboratory testing of foundation material to determine the design requirements for foundation stability.

\*\*\*\*\*

**§ 90.133. Disposal of noncoal wastes.**

Noncoal wastes, including, but not limited to, grease, lubricants, paints, flammable liquids, garbage and other hazardous wastes, shall be disposed of or stored temporarily in accordance with the Solid Waste Management Act and the regulations promulgated thereunder. Storage shall be of a type that fires are prevented and that the area remains stable and suitable for reclamation and revegetation. **Noncoal waste**[Waste] materials [**with low ignition points**] including, but not limited to, wood, cloth, waste paper, oil, grease and garbage may not be deposited on or near a coal refuse disposal pile **or impounding structure**.