

## Annex A

### TITLE 25. ENVIRONMENTAL PROTECTION

#### PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

##### Subpart C. PROTECTION OF NATURAL RESOURCES

#### ARTICLE I. LAND RESOURCES

#### CHAPTER 87. SURFACE MINING OF COAL

##### Subchapter F. SURFACE COAL MINES: MINIMUM REQUIREMENTS FOR REMINING AREAS WITH POLLUTIONAL DISCHARGES

#### § 87.202. Definitions.

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

**[*Abatement plan*—An individual technique or combination of techniques, the implementation of which will result in reduction of the baseline pollution load. Abatement techniques include but are not limited to: Addition of alkaline material, special plans for managing toxic and acid forming material, regrading, revegetation and daylighting.]**

*Actual improvement*—The reduction of the baseline pollution load resulting from the implementation of the approved **pollution** abatement plan; except that a reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement.

*Baseline pollution load*—The characterization of the pollution material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter, including seasonal variations and variations in response to precipitation events. The Department will establish in each authorization the specific parameters, including, at a minimum, iron and acid loadings, it deems relevant for the baseline pollution load.

*Best professional judgment*—The highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the Department under sections 301 and 402 of the Federal **[Water Pollution Control Act, act of June 30, 1948 (Ch. 758, 62 Stat. 1155)] Clean Water Act (33 U.S.C.A. §§ 1311 and 1342).**

*Best technology*—Measures and practices which will abate or ameliorate to the maximum extent possible pollutional discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

***Coal remining operation***—A coal mining operation at a site on which coal mining was previously conducted and where the site has been abandoned or the performance bond has been forfeited.

***Encountered discharge***—

(i) A pre-existing discharge intercepted in the course of active surface mining activities, including, but not limited to, overburden removal, coal extraction and backfilling, or that occurs in the pit, any mining-related conveyance, sedimentation pond or treatment pond.

(ii) The term does not include diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the pollution abatement plan which would otherwise drain into the affected area so long as they are designed, operated and maintained in accordance with § 87.105(b)—(g) (relating to hydrologic balance: diversions).

***Pollution abatement area***—The part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load, and which may include the immediate location of the discharges.

***Pollution abatement plan***—Best management practices (BMPs), including, but not limited to, the addition of alkaline material, special handling plans for managing toxic and acid forming material, regrading, revegetation and daylighting, that when implemented will result in reduction of the baseline pollution load.

***Pre-existing discharge***—

(i) Any discharge resulting from mining activities that have been abandoned prior to the time of a remining permit application.

(ii) The term includes a pre-existing discharge that is relocated as a result of the implementation BMPs in the pollution abatement plan.

***Steep slope***—

(i) Any slope, including abandoned mine land features, above 20 degrees or a lesser slope as may be defined by the Department after consideration of soil, climate and other characteristics of a region.

(ii) The term does not apply to situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered and through which the mining operation is to proceed, leaving a plain or predominantly flat area.

**§ 87.203. Applicability.**

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(b) Notwithstanding subsection (a), no authorization may be granted under this subchapter for repermitting under §§ 86.12 and 86.14 (relating to continued operation under interim permits; and permit application filing deadlines), permit renewals under § 86.55 (relating to permit renewals: general requirements) or permit transfers under § 86.56 (relating to transfer of permit).

**(c) This subchapter applies to pre-existing discharges that are located within or are hydrologically connected to pollution abatement areas of a coal remining operation.**

**(d) When a coal remining operation seeks reissuance of an existing remining permit with best professional judgment limitations and the Department determines that it is not feasible for a remining operator to re-establish baseline pollutant levels in accordance with the statistical procedures in this subchapter, pre-existing discharge limitations at the existing remining operation remain subject to baseline pollutant levels established during the original permit application.**

**§ 87.204. Application for authorization.**

(a) An operator who requests authorization under this subchapter shall comply with the permit application requirements of Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A and C—E, except as specifically modified by this subchapter. The operator shall also:

(1) Delineate on a map the proposed pollution abatement area, including the location of the pre-existing discharges.

(2) Provide a description of the hydrologic balance for the proposed pollution abatement area that includes:

(i) Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events and modeled baseline pollution loads using this monitoring program.

(ii) Monitoring for **flow**, pH, alkalinity, acidity, total iron, total manganese, **total** aluminum, sulfates, total suspended solids and other water quality parameters the Department deems relevant.

(3) Provide a **[description of the abatement plan that represents best technology and includes] pollution abatement plan which must:**

**(i) Describe the pollution abatement area.**

**(ii) Be designed to reduce the pollution load from pre-existing discharges and identify the selected best management practices (BMPs) to be used.**

**(iii) Describe the design specifications, construction specifications, maintenance schedules, criteria for monitoring and inspection, and expected performance of the BMPs.**

**(iv) Represent best technology and include:**

**[(i)] (A)** Plans, cross-sections and schematic drawings describing the **pollution** abatement plan proposed to be implemented.

**[(ii)] (B)** A description and explanation of the range of abatement level that probably can be achieved, costs and each step in the proposed **pollution** abatement plan.

**[(iii)] (C)** A description of the standard of success for revegetation necessary to insure success of the **pollution** abatement plan.

**(v) Provide a description of and information on the pre-existing discharges hydrogeologically connected to the remaining area.**

**(4) Determine the baseline pollution load.**

**(5) Provide the background data that are the bases for the baseline pollution load. The baseline pollution load shall be reported in pounds per day.**

(b) The operator seeking this authorization **[shall] may** continue the water quality and quantity monitoring program required by subsection (a)(2) after making the authorization request. The operator **[shall] may** submit the results of this continuing monitoring program to the Department on a monthly basis until a decision on the authorization request is made.

### **§ 87.205. Approval or denial.**

(a) Authorization may not be granted under this subchapter unless the operator seeking the authorization affirmatively demonstrates to the satisfaction of the Department on the basis of information set forth in the application that:

(1) Neither the operator, nor an officer, principal shareholder, agent, partner, associate, parent corporation, contractor or subcontractor, or a related party as defined in **[§ 86.63(1)] § 86.63(a)(1)** (relating to compliance information) has either of the following:

(i) Legal responsibility or liability as an operator for treating the water pollution discharges from or on the proposed pollution abatement area.

(ii) Statutory responsibility or liability for reclaiming the proposed pollution abatement area.

(2) The proposed **pollution** abatement plan will result in significant reduction of the baseline pollution load and represents best technology.

(3) The land within the proposed pollution abatement area can be reclaimed.

(4) The surface mining operation on the proposed pollution abatement area will not cause additional ground water degradation.

(5) The standard of success for revegetation will be achieved. The standard of success for revegetation shall be at a minimum:

(i) A ground cover of living plants not less than can be supported by the best available topsoil or other suitable material in the reaffected area.

(ii) A ground cover no less than that existing before disturbance of the area by mining activities.

(iii) Adequate vegetation to control erosion. Vegetation may be no less than that necessary to insure the success of the **pollution** abatement plan.

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### § 87.206. Operational requirements.

An operator who receives an authorization under this subchapter shall comply with the requirements of Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A and C—E except as specifically modified by this subchapter. The operator shall also:

(1) Implement the approved water quality and quantity monitoring program for the pollution abatement area until the requirements of § 87.209 (relating to criteria and schedule for release of bonds on pollution abatement areas) are met. **The monitoring program must conform to the following:**

**(i) Sampling shall be conducted on a monthly basis for the pre-existing discharges and should adequately represent the seasonal range in loading rates as well as the median loading rate from each pre-existing discharge or combination of discharges.**

**(ii) Results shall be submitted on a quarterly basis.**

**(iii) Data must include the flow measurements and loading calculations.**

(2) Implement the approved **pollution** abatement plan.

**[(3) Notify the Department immediately prior to the completion of each step of the abatement plan.**

(4) Provide progress reports to the Department within 30 days after the completion of each step of the abatement program that include a notarized statement signed by the operator, and if required by the Department, a statement signed by the supervising engineer, that all work has been performed in accordance with the terms and conditions of the pollution abatement authorization, the approved maps, plans, profiles and specifications.]

(3) Notify the Department when more frequent sampling is required.

(i) Weekly sampling of the pre-existing discharges shall begin if any two consecutive monthly samples of pollution load at any of the monitoring points or hydrologic units exceed one or more of the triggers established by the baseline data.

(ii) Weekly sampling requirements shall continue until two consecutive weekly sample analyses indicate that all parameters which triggered weekly sampling have dropped below the trigger established by the baseline data.

### § 87.207. Treatment of discharges.

(a) Except for **[preexisting] pre-existing** discharges which are not encountered during mining or the implementation of the **pollution** abatement plan, the operator shall comply with § 87.102 (relating to hydrologic balance: effluent standards).

(b) **[The] Except as provided in § 87.210(d) (relating to effluent limitations), the** operator shall treat the **[preexisting] pre-existing** discharges which are not encountered during mining or implementation of the **pollution** abatement plan to comply with the effluent limitations established by best professional judgment. The effluent limitations established by best professional judgment may not be less than the baseline pollution load. If the baseline pollution load, when expressed as a concentration for a specific parameter, satisfies the effluent limitations at § 87.102 for that parameter, the operator shall treat the **[preexisting] pre-existing** discharge for that parameter to comply with either effluent limitations established by best professional judgment or the effluent limitations at § 87.102.

(c) For purposes of subsections (a) and (b), the term encountered may not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the **pollution** abatement plan which would otherwise drain into the affected area, so long as the diversions are designed, operated and maintained under § 87.105(b)—(g) (relating to hydrologic balance: diversions).

(d) An operator required to treat **[preexisting] pre-existing** discharges will be allowed to discontinue treating the discharges under subsection (b) when the operator affirmatively demonstrates to the Department's satisfaction that:

(1) The **[preexisting] pre-existing** discharges are meeting the effluent limitations established by subsection (b) as shown by groundwater and surface water monitoring conducted by the operator or the Department.

(2) Surface coal mining activities under the permit—including the pollution abatement area—are being or were conducted under the requirements of the permit and the authorization, and Chapter 86 (relating to surface and underground coal mining: general) and this chapter except as specifically modified by this subchapter.

(3) The operator has implemented each step of the **pollution** abatement plan as approved in the authorization.

(4) The operator did not cause or allow additional groundwater degradation by re-affecting the pollution abatement area.

(e) If after discontinuance of treatment of discharges under subsection (d) the discharges fail to meet the effluent limitations established by subsection (b), the operator shall reinstitute treatment of the discharges under subsection (b). An operator who reinstates treatment under this subsection will be allowed to discontinue treatment if the requirements of subsection (d) are met.

(f) Discontinuance of treatment under subsection (d) may not be deemed or construed to be or to authorize a release of bond under § 87.209 (relating to criteria and schedule for release of bonds on pollution abatement areas).

**(g) If four consecutive weekly determinations of pollution load, as required under § 87.206(3)(i) (relating to operational requirements), exceed one or more triggers, the permittee shall notify the Department and begin treatment within 30 days of the fourth sample in accordance with the treatment limits established in the permit.**

**(h) If the Department determines, through analysis of any data submitted pursuant to the monitoring requirements or any data collected by the Department, that there has been pollution loading degradation at any of the monitoring points or hydrologic units, the Department will notify the permittee accordingly. The permittee shall begin treatment within 30 days in accordance with the treatment limits established in the permit.**

**(i) Any pre-existing pollutorial discharge which is an encountered discharge shall be treated to the effluent limitations in the permit until the discharge is no longer encountered.**

**(j) For the purposes of determining applicable effluent limitations, a discharge will continue to be deemed to be an encountered discharge until the surface mining area which has been disturbed and which contributes to the discharge has been backfilled and regraded, and revegetation work has started.**

**§ 87.209. Criteria and schedule for release of bonds on pollution abatement areas.**

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(b) The Department will release an additional amount of bond for the authorized pollution abatement area but retain an amount sufficient to cover the cost to the Department of reestablishing vegetation if completed by a third party if the operator demonstrates and the Department finds that:

(1) The operator has replaced the topsoil or material conserved under § 87.97(d) (relating to topsoil: removal), completed final grading, planting and established revegetation under the approved reclamation plan and achieved the standards of success for revegetation in § 87.205(a)(5) (relating to approval or denial).

(2) The operator has not caused or contributed to surface water pollution or groundwater degradation by reaffected or mining the pollution abatement area.

(3) The operator has complied with one of the following:

(i) Achieved the actual improvement of the baseline **pollution** load described in the approved **pollution** abatement plan and shown by ground and surface water monitoring conducted by the permittee for the time provided in the pollution abatement plan after completion of backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 87.205(a)(5).

(ii) Achieved the following:

(A) At a minimum has not caused degradation of the baseline pollution load as shown by ground and surface water monitoring conducted by the operator or the Department for one of the following:

(I) For the 12 months prior to the date of application for bond release and until the bond release is approved under subsection (b), if backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 87.205(a)(5) have been completed.

(II) If treatment has been initiated at any time after initial bond release under subsection (a) and § 87.207(e) (relating to treatment of discharges), for 12 months from the discontinuance of treatment under § 87.207(d), if backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 87.205(a)(5) have been completed.

(B) Conducted the measures provided in the approved **pollution** abatement plan and additional measures specified by the Department in writing at the time of initial bond release under subsection (a) for the area requested for bond release.

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(Editor's Note: Sections 87.210—87.213 are new and printed in regular type to enhance readability.)

**§ 87.210. Effluent limitations.**

(a) *Approval and incorporation into permit.* The pollution abatement plan for the pollution abatement area must be approved by the Department and incorporated into the permit as an effluent limitation.

(b) *Implementation of best management practices.* The best management practices (BMPs) in the pollution abatement plan shall be implemented as specified in the plan.

(c) *Pre-existing discharges.*

(1) Except as provided in subsection (d), the following effluent limits apply to pre-existing discharges:

<b>Parameter</b>	<b>Effluent Limit</b>
Total Iron	May not exceed baseline loadings (as determined by this subchapter).
Total Manganese	May not exceed baseline loadings (as determined by this subchapter).
Acidity, Net	May not exceed baseline loadings (as determined by this subchapter).
Suspended Solids	During remining and reclamation, may not exceed baseline loadings (as determined by this subchapter). Prior to bond release, the pre-existing discharge must meet the applicable standards for suspended solids or settleable solids in § 87.102 (relating to hydrologic balance: effluent standards).

(2) A pre-existing discharge is exempt from meeting standards in § 87.102 for suspended solids and settleable solids when the Department determines that the standards are infeasible or impractical based on the site-specific conditions of soil, climate, topography, steep slopes or other baseline conditions provided that the operator demonstrates that significant reductions of suspended solids and settleable solids will be achieved through the incorporation of sediment control BMPs into the pollution abatement plan as required under subsection (a).

(d) *In-stream requirements.*

(1) If the Department determines that it is infeasible to collect samples for establishing the baseline pollutant levels under **[this]** subsection **(d)(4)**, and that remining will result in significant improvement that would not otherwise occur, the permit applicant **[may]** **SHALL** establish an in-stream baseline concentration at a suitable point downstream from the remining operation, **UNLESS THE DEPARTMENT WAIVES THE SAMPLING REQUIREMENT UNDER SUBSECTION (d)(5)** and the numeric effluent limitations in subsection (c)(1) do not apply.

(2) The in-stream baseline period must include, at a minimum, twice monthly monitoring for a minimum of a 1-year period and must adequately represent the seasonal range and median pollutant concentrations.

(3) Upon issuance of a surface mining permit, the operator shall continue, at a minimum, monthly monitoring of pollutant concentrations at the in-stream monitoring point referenced in paragraph (1), and make a determination as to whether or not there has been degradation of in-stream water quality.

(i) This determination shall be made on a quarterly basis and for each year defined as each consecutive 12-month period.

(ii) The operator is not required to treat individual pre-existing sources of pollution except as may be needed to maintain the in-stream baseline concentration.

(iii) Unless the operator can demonstrate to the satisfaction of the Department that the degradation was the result of factors that are not related to the remining, the operator shall treat one or more pre-existing pollutional discharges or undertake other pollution abatement measures to restore or improve the in-stream pollutant concentration to its baseline conditions.

(4) Pre-existing discharges for which it is infeasible to collect samples for determination of baseline pollutant levels include, but are not limited to:

(i) Discharges that exist as a diffuse groundwater flow that cannot be assessed by the collection of samples.

(ii) A base flow to a receiving stream that cannot be monitored separate from the receiving stream.

(iii) A discharge on a steep or hazardous slope that is inaccessible for sample collection.

(iv) A number of pre-existing discharges so extensive that monitoring of individual discharges is infeasible.

(5) When in-stream monitoring is not indicative of the impact of remining, the in-stream monitoring requirement may be waived by the Department. In-stream monitoring is not indicative of the impact of remining in circumstances including, but not limited to, the following:

(i) Remining sites in drainage areas exceeding 10 square miles.

(ii) Remining sites in watersheds where there are other influences on the in-stream water quality that make it impossible to establish the cause of water quality changes.

(iii) Remining sites where the  $Q_{7-10}$  stream flow is zero.

(e) *Limits.* Pollutants for which there are not effluent limitations established in § 87.102 may be eligible for limits established under this subchapter.

(f) *Applicability of standards.* Section 87.102 applies to a pre-existing discharge that is:

(1) Intercepted by surface mining activities.

(2) Commingled with waste streams from operational areas for the purposes of water treatment.

(g) *Cessation of applicability of standards.* Section 87.102 does not apply to a pre-existing discharge described in subsection (f) when the pre-existing discharge is no longer intercepted by surface mining activities or is no longer commingled with waste streams from operational areas for the purposes of water treatment.

(h) *Bond release.* The effluent limitations in this subchapter apply to pre-existing discharges until bond release under the procedures in Chapter 86 (relating to surface and underground coal mining: general).

### **§ 87.211. Baseline determination and compliance monitoring for pre-existing discharges at remining operations.**

(a) The procedures in this section shall be used for determining site-specific baseline pollutant loadings, and for determining whether discharge loadings during coal remining operations have exceeded the baseline loading. A monthly (single-observation) procedure and an annual procedure shall be applied.

(b) At least one sample result per month shall be obtained for 12 months to characterize pollutant loadings for:

(1) Baseline determination.

(2) Each annual monitoring period. It is required that at least one sample be obtained per month for 12 months.

(c) Calculations described in this subchapter shall be applied to pollutant loadings.

(d) Each loading value shall be calculated as the product of a flow measurement and pollutant concentration taken on the same date at the same discharge sampling point using standard units of flow and concentration.

(e) If the baseline concentration in a baseline sample is below the daily maximum effluent limits established in § 87.102 (relating to hydrologic balance: effluent standards), the baseline sample concentration may be replaced with daily maximum effluent limit for the purposes of some of the statistical calculations in this subchapter.

(f) The substituted values should be used for all methods in this subchapter except for:

(1) The calculation of the interquartile range (R) in Method 1 for the annual trigger (Step 3).

(2) Method 2 for the single observation trigger (Step 3).

(g) The interquartile range (R) is calculated as the difference between the quartiles  $M_{.1}$  and  $M_1$ ; the values for quartiles  $M_{.1}$  and  $M_1$  should be calculated using actual loadings (based on measured concentrations) when they are used to calculate the interquartile range (R).

### **§ 87.212. Procedure for calculating and applying a single-observation (monthly) trigger.**

(a) This section contains two alternative methods for calculating a single-observation trigger. One method must be proposed by the applicant to be approved and applied by the Department for a reming permit.

(b) Method 1 for calculating a single observation trigger (L) is accomplished by completing the following steps:

(1) Count the number of baseline observations taken for the pollutant of interest. Label this number n. To sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for 12 months.

(2) Order all baseline loading observations from lowest to highest. Let the lowest number (minimum) be  $x_{(1)}$ , the next lowest be  $x_{(2)}$ , and so forth until the highest number (maximum) is  $x_{(n)}$ .

(3) If fewer than 17 baseline observations were obtained, the single observation trigger (L) will equal the maximum of the baseline observations ( $x_{(n)}$ ).

(4) If at least 17 baseline observations were obtained, calculate the median (M) of all baseline observations. If n is odd, then M equals  $x_{(n/2+1/2)}$ . If n is even, then M equals  $0.5 * (x_{(n/2)} + x_{(n/2+1)})$ .

(5) Next, calculate  $M_1$  as the median of the subset of observations that range from the calculated M to the maximum  $x_{(n)}$ ; that is, calculate the median of all x larger than or equal to M.

(6) Next, calculate  $M_2$  as the median of the subset of observations that range from the calculated  $M_1$  to  $x_{(n)}$ ; that is, calculate the median of all x larger than or equal to  $M_1$ .

(7) Next, calculate  $M_3$  as the median of the subset of observations that range from the calculated  $M_2$  to  $x_{(n)}$ ; that is, calculate the median of all x larger than or equal to  $M_2$ .

(8) Finally, calculate the single observation trigger (L) as the median of the subset of observations that range from the calculated  $M_3$  to  $x_{(n)}$ .

(9) When subsetting the data for each of the steps in paragraphs (5)—(8), the subset should include all observations greater than or equal to the median calculated in the previous step. If the median calculated in the previous step is not an actual observation, it is not included in the new subset of observations. The new median value will then be calculated using the median procedure, based on whether the number of points in the subset is odd or even.

(c) The method for applying the single observation trigger (L) to determine when the baseline level has been exceeded is as follows:

(1) If two successive monthly monitoring observations both exceed L, immediately begin weekly monitoring for 4 weeks (four weekly samples).

(2) If three or fewer of the weekly observations exceed L, resume monthly monitoring.

(3) If all four weekly observations exceed L, the baseline pollution loading has been exceeded.

(d) Method 2 for calculating a single observation trigger (L) is accomplished by completing the following steps:

(1) Follow Method 1 in subsection (b) to obtain  $M_1$  (the third quartile, that is, the 75th percentile).

(2) Calculate  $M_{.1}$  as the median of the baseline data which are less than or equal to the sample median M.

(3) Calculate interquartile range,  $R = (M_1 - M_{.1})$ .

(4) Calculate the single observation trigger L as  $L = M_1 + 3 * R$ .

(5) If two successive monthly monitoring observations both exceed L, immediately begin weekly monitoring for 4 weeks (four weekly samples).

(6) If three or fewer of the weekly observations exceed L, resume monthly monitoring.

(7) If all four weekly observations exceed L, the baseline pollution loading has been exceeded.

### **§ 87.213. Procedure for calculating and applying an annual trigger.**

(a) This section contains two alternative methods for calculating the annual trigger. One method shall be proposed by the applicant to be approved and applied by the Department for a remining permit.

(b) Method 1 for calculating and applying an annual trigger (T) is accomplished by completing the following steps:

(1) Calculate  $M$  and  $M_1$  of the baseline loading data as described under Method 1 for the single observation trigger in § 87.212(b) (relating to procedure for calculating and applying a single-observation (monthly) trigger).

(2) Calculate  $M_{-1}$  as the median of the baseline data which are less than or equal to the sample median  $M$ .

(3) Calculate the interquartile range,  $R = (M_1 - M_{-1})$ .

(4) The annual trigger for baseline ( $T_b$ ) is calculated as

$$T_b = M + (1.815 * R) / \text{SQRT}(n)$$

where  $n$  is the number of baseline loading observations.

(5) To compare baseline loading data to observations from the annual monitoring period, repeat the steps in paragraphs (1)—(3) for the set of monitoring observations. Label the results of the calculations  $M^{\wedge}$  and  $R^{\wedge}$ . Let  $m$  be the number of monitoring observations.

(6) The subtle trigger ( $T_m$ ) of the monitoring data is calculated as

$$T_m = M^{\wedge} - (1.815 * R^{\wedge}) / \text{SQRT}(m)$$

(7) If  $T_m > T_b$ , the median loading of the monitoring observations has exceeded the baseline loading.

(c) Method 2 for calculating and applying an annual trigger ( $T$ ) is accomplished by completing the following steps:

(1) Let  $n$  be the number of baseline loading observations taken, and let  $m$  be the number of monitoring loading observations taken. To sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for a period of 12 months.

(2) Order the combined baseline and monitoring observations from smallest to largest.

(3) Assign a rank to each observation based on the assigned order: the smallest observation will have rank 1, the next smallest will have rank 2 and so forth, up to the highest observation, which will have rank  $n + m$ . If two or more observations are tied (have the same value), then the average rank for those observations should be used.

(4) Sum all the assigned ranks of the  $n$  baseline observations, and let this sum be  $S_n$ .

(5) Obtain the critical value ( $C$ ) from Table 1.

(6) Compare  $C$  to  $S_n$ . If  $S_n$  is less than  $C$ , then the monitoring loadings have exceeded the baseline loadings.

(7) Critical values for the Wilcoxon-Mann-Whitney test are as follows:

(i) When  $n$  and  $m$  are less than 21, use Table 1. To find the appropriate critical value, match column with correct  $n$  (number of baseline observations) to row with correct  $m$  (number of monitoring observations).

*Table 1—Critical Values (C) of the Wilcoxon-Mann-Whitney Test (for a one-sided test at the 0.001 significance level)*

m	10	11	12	13	14	15	16	17	18	19	20
n											
10	66	79	93	109	125	142	160	179	199	220	243
11	68	82	96	112	128	145	164	183	204	225	248
12	70	84	99	115	131	149	168	188	209	231	253
13	73	87	102	118	135	153	172	192	214	236	259
14	75	89	104	121	138	157	176	197	218	241	265
15	77	91	107	124	142	161	180	201	223	246	270
16	79	94	110	127	145	164	185	206	228	251	276
17	81	96	113	130	149	168	189	211	233	257	281
18	83	99	116	134	152	172	193	215	238	262	287
19	85	101	119	137	156	176	197	220	243	268	293
20	88	104	121	140	160	180	202	224	248	273	299

(ii) When  $n$  or  $m$  is greater than 20 and there are few ties, calculate an approximate critical value using the following formula and round the result to the next larger integer. Let  $N = n + m$ .

$$\text{Critical Value} = 0.5 * n * (N + 1) - 3.0902 * \text{SQRT}(n * \frac{m}{N} * (N + 1) / 12)$$

(iii) When  $n$  or  $m$  is greater than 20 and there are many ties, calculate an approximate critical value using the following formula and round the result to the next larger integer. Let  $S$  be the sum of the squares of the ranks or average ranks of all  $N$  observations. Let  $N = n + m$ .

$$\text{Critical Value} = 0.5 * n * (N + 1) - 3.0902 * \text{SQRT}(V)$$

In the preceding formula, calculate  $V$  using:

$$V = (n * m * S) / (N * (N - 1) - (n * m * (N + 1))^2 / (4 * (N - 1)))$$

## CHAPTER 88. ANTHRACITE COAL

### Subchapter G. ANTHRACITE SURFACE MINING ACTIVITIES AND ANTHRACITE BANK REMOVAL AND RECLAMATION ACTIVITIES: MINIMUM REQUIREMENTS FOR REMINING AREAS WITH POLLUTIONAL DISCHARGES

#### § 88.502. Definitions.

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

**[*Abatement plan*—An individual technique or combination of techniques, the implementation of which will result in reduction of baseline pollution load. Abatement techniques may include, but are not limited to: Addition of alkaline material, special plans for managing toxic and acid forming material, regrading, revegetation and daylighting.]**

*Actual improvement*—The reduction of the baseline pollution load resulting from the implementation of the approved **pollution** abatement plan, except that a reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement.

*Baseline pollution load*—The characterization of the pollutional material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter, including seasonal variations and variations in response to precipitation events. The Department will establish in each authorization the specific parameters, including, at a minimum, iron and acid loadings, it deems relevant for the baseline pollution load.

*Best professional judgment*—The highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of reasonably available and pertinent data. The treatment levels shall be established by the Department in accordance with the requirements of sections 301 and 402 of the Federal [**Clean Water Act of 1977, act of December 27, 1977 (Pub. L. No. 95-217, 91 Stat. 1566—1609)**] **Clean Water Act (33 U.S.C.A. §§ 1311 and 1342)**.

*Best technology*—Measures and practices which will abate or ameliorate to the maximum extent possible pollutional discharges from or on the pollution abatement area. These measures include engineering, geochemical or applicable practices.

*Coal remining operation*—A coal mining operation at a site on which coal mining was previously conducted and where the site has been abandoned or the performance bond has been forfeited.

*Encountered discharge—*

(i) A pre-existing discharge intercepted in the course of active surface mining activities, including, but not limited to, overburden removal, coal extraction and backfilling, or that occurs in the pit, any mining-related conveyance, sedimentation pond or treatment pond.

(ii) The term does not include diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the pollution abatement plan which would otherwise drain into the affected area so long as they are designed, operated and maintained in accordance with § 88.95(b)—(g), § 88.190(b)—(g) or § 88.295(b)—(g) (relating to hydrologic balance: diversions; hydrologic balance: diversions; and hydrologic balance: diversions and conveyances), as applicable.

*Pollution abatement area—*The part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load, and which may include the immediate location of the discharges.

*Pollution abatement plan—*Best management practices (BMPs), including, but not limited to, the addition of alkaline material, special handling plans for managing toxic and acid forming material, regrading, revegetation and daylighting, that when implemented will result in reduction of the baseline pollution load.

*Pre-existing discharge—*

(i) Any discharge resulting from mining activities that have been abandoned prior to the time of a remining permit application.

(ii) The term includes a pre-existing discharge that is relocated as a result of the implementation BMPs in the pollution abatement plan.

*Steep slope—*

(i) Any slope, including abandoned mine land features, above 20 degrees or a lesser slope as may be defined by the Department after consideration of soil, climate and other characteristics of a region.

(ii) The term does not apply to situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered and through which the mining operation is to proceed, leaving a plain or predominantly flat area.

**§ 88.503. Applicability.**

(a) This subchapter is applicable only to surface mining activities and bank removal and reclamation activities as defined in § 88.1 (relating to definitions) **and coal refuse disposal**

**activities subject to Subchapter D (relating to anthracite refuse disposal: minimum environmental protection performance standards).**

\* \* \* \* \*

(c) Notwithstanding subsection (a), no authorization may be granted under this subchapter for repermitting under §§ 86.12 and 86.14 (relating to continued operation under interim permits; and permit application filing deadlines), permit renewals under § 86.55 (relating to permit renewals: general requirements), or permit transfers under § 86.56 (relating to transfer of permit).

**(d) This subchapter applies to pre-existing discharges that are located within or are hydrologically connected to pollution abatement areas of a coal remining operation.**

**(e) When a coal remining operation seeks reissuance of an existing remining permit with best professional judgment limitations and the Department determines that it is not feasible for a remining operator to re-establish baseline pollutant levels in accordance with the statistical procedures in this subchapter, pre-existing discharge limitations at the existing remining operation remain subject to baseline pollutant levels established during the original permit application.**

#### **§ 88.504. Application for authorization.**

(a) An operator who requests authorization under this subchapter shall comply with the permit application requirements of Chapter 86 (relating to surface and underground coal mining: general) and **[Chapter 87, Subchapter B (Reserved), and Subchapter A and either Subchapters B or C—whichever is applicable—of this chapter] Subchapter A (relating to general provisions) and either Subchapter B, C or D (relating to surface anthracite coal mines: minimum environmental protection performance standards; anthracite bank removal and reclamation: minimum environmental protection performance standards; and anthracite refuse disposal: minimum environmental protection performance standards), whichever is applicable**, except as specifically modified by this subchapter. The operator shall also comply with all of the following:

(1) Delineate on a map the proposed pollution abatement area, including the location of the **[preexisting] pre-existing** discharges.

(2) Provide a description of the hydrologic balance for the proposed pollution abatement area that includes:

(i) Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events, and modeled baseline pollution loads using this monitoring program.

(ii) Monitoring for **flow**, pH, alkalinity, acidity, total iron, total manganese, **total** aluminum, sulfates, total suspended solids and other water quality parameters the Department deems relevant.

(3) Provide a **[description of the abatement plan that includes] pollution abatement plan which must:**

(i) **Describe the pollution abatement area.**

(ii) **Be designed to reduce the pollution load from pre-existing discharges and must identify the selected best management practices (BMPs) to be used.**

(iii) **Describe the design specifications, construction specifications, maintenance schedules, criteria for monitoring and inspection, and expected performance of the BMPs.**

(iv) **Represent the best technology and include:**

**[(i)] (A)** Plans, cross sections and schematic drawings describing the **pollution** abatement plan proposed to be implemented.

**[(ii)] (B)** A description and explanation of the range of abatement that probably can be achieved, costs and each step in the proposed **pollution** abatement plan.

**[(iii)] (C)** A description of the standard of success for revegetation necessary to insure success of the **pollution** abatement plan.

(v) **Provide a description of and information on the pre-existing discharges hydrologically connected to the remaining area.**

(4) **Determine the baseline pollution load.**

(5) **Provide the background data that are the bases for the baseline pollution load. The baseline pollution load shall be reported in pounds per day.**

(b) The operator seeking this authorization **[shall] may** continue the water quality and quantity monitoring program required by subsection (a)(2) after making the authorization request. The operator **[shall] may** submit the results of this continuing monitoring program to the Department on a monthly basis until a decision on the authorization request is made.

### **§ 88.505. Approval or denial.**

(a) No authorization may be granted under this subchapter unless the operator seeking the authorization affirmatively demonstrates to the satisfaction of the Department on the basis of information set forth in the application that:

(1) Neither the operator, nor an officer, principal shareholder, agent, partner, associate, parent corporation, contractor or subcontractor, or a related party as defined in [§ 86.63(1)] § 86.63(a)(1) (relating to compliance information) has either of the following:

(i) Legal responsibility or liability as an operator for treating the water pollution discharges from or on the proposed pollution abatement area.

(ii) Legal responsibility or liability for reclaiming the proposed pollution abatement area.

(2) The proposed **pollution** abatement plan will result in significant reduction of the baseline pollution load and represents best technology.

(3) The land within the proposed pollution abatement area can be reclaimed.

(4) The surface mining operation on the proposed pollution abatement area will not cause additional groundwater degradation.

(5) The standard of success for revegetation will be achieved. The standard of success for revegetation shall be at a minimum:

(i) A ground cover of living plants not less than can be supported by the best available topsoil or other suitable material in the reaffected area.

(ii) A ground cover no less than that existing before disturbance of the area by mining activities.

(iii) Adequate vegetation to control erosion. Vegetation may not be less than that necessary to insure the success of the **pollution** abatement plan.

\* \* \* \* \*

### § 88.506. Operational requirements.

An operator who receives an authorization under this subchapter shall comply with the requirements of [Chapter 87, Subchapter B (Reserved), and Subchapter A and either Subchapters B or C—whichever is applicable—of this chapter] Subchapter A (relating to general provisions) and either Subchapter B, C or D (relating to surface anthracite coal mines: minimum environmental protection performance standards; anthracite bank removal and reclamation: minimum environmental protection performance standards; and anthracite refuse disposal: minimum environmental protection performance standards), whichever is applicable, except as specifically modified by this subchapter. The operator shall also:

(1) Implement the approved water quality and quantity monitoring program for the pollution abatement area until the requirements of § 88.509 (relating to criteria and schedule for release of

bonds on pollution abatement areas) are met. **The monitoring program must conform to the following:**

(i) **Sampling shall be conducted on a monthly basis for the pre-existing discharges and should adequately represent the seasonal range in loading rates as well as the median loading rate from each pre-existing discharge or combination of discharges.**

(ii) **Results shall be submitted on a quarterly basis.**

(iii) **Data must include the flow measurements and loading calculations.**

(2) Implement the approved **pollution** abatement plan.

**[(3) Notify the Department immediately prior to the completion of each step of the abatement plan.**

**(4) Provide progress reports to the Department within 30 days after the completion of each step of the abatement program that include a notarized statement signed by the operator, and if required by the Department, a statement signed by the supervising engineer, that all work has been performed in accordance with the terms and conditions of the pollution abatement authorization, the approved maps, plans, profiles and specifications.]**

**(3) Notify the Department when more frequent sampling is required.**

(i) **Weekly sampling of the pre-existing discharges shall begin if any two consecutive monthly samples of pollution load at any of the monitoring points or hydrologic units exceed one or more of the triggers established by the baseline data.**

(ii) **Weekly sampling requirements shall continue until two consecutive weekly sample analyses indicate that all parameters which triggered weekly sampling have dropped below the trigger established by the baseline data.**

### **§ 88.507. Treatment of discharges.**

(a) Except for **[preexisting] pre-existing** discharges which are not encountered during mining or the implementation of the **pollution** abatement plan, the operator shall comply with §§ 88.92 **[and]**, 88.187 **and 88.292** (relating to hydrologic balance: effluent standards**;** **and hydrologic balance: effluent standards**).

(b) **[The] Except as provided in § 88.510(d) (relating to effluent limitations), the operator shall treat the [preexisting] pre-existing** discharges which are not encountered during mining or implementation of the **pollution** abatement plan to comply with the effluent limitations established by best professional judgment. The effluent limitations established by best professional judgment may not be less than baseline pollution load. If the baseline pollution load

when expressed as a concentration for a specific parameter satisfies the effluent limitations at §§ 88.92 **[and]**, 88.187 **and 88.292** for that parameter, the operator shall treat the **[preexisting] pre-existing** discharge for that parameter to comply with effluent limitations established by best professional judgment or the effluent limitations at §§ 88.92 **[and]**, 88.187 **and 88.292**.

(c) For purposes of subsections (a) and (b), the term "encountered" may not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the **pollution** abatement plan which would otherwise drain into the affected area, so long as the diversions are designed, operated and maintained under §§ 88.95(b) **[and]**, 88.190(b) **and 88.295(b)** (relating to hydrologic balance: diversions; **hydrologic balance: diversions; and hydrologic balance: diversions and conveyances**).

(d) An operator required to treat **[preexisting] pre-existing** discharges will be allowed to discontinue treating the discharges under this section when the operator affirmatively demonstrates to the Department's satisfaction that:

(1) The **[preexisting] pre-existing** discharges are meeting the effluent limitations established by subsection (b) as shown by groundwater and surface water monitoring conducted by the operator or the Department.

(2) Surface coal mining activities under the permit—including the pollution abatement area—are being or were conducted in accordance with the requirements of the permit and the authorization, Chapter 86 (relating to surface and underground coal mining: general) and this chapter, except as specifically modified by this subchapter.

(3) The operator has implemented each step of the **pollution** abatement plan as approved in the authorization.

(4) The operator did not cause or allow additional groundwater degradation by re-affecting the pollution abatement area.

(e) If after discontinuance of treatment of discharges under subsection (d) the discharges fail to meet the effluent limitations established by subsection (b), the operator shall reinstitute treatment of the discharges in accordance with subsection (b). An operator who reinstates treatment under this subsection will be allowed to discontinue treatment if the requirements of subsection (d) are met.

(f) Discontinuance of treatment under subsection (d) may not be deemed or construed to be or to authorize a release of bond under § 88.509 (relating to criteria and schedule for release of **[bond] bonds** on pollution abatement areas).

**(g) If four consecutive weekly determinations of pollution load, as required under § 88.506(3)(i) (relating to operational requirements), exceed one or more triggers, the permittee shall notify the Department and begin treatment within 30 days of the fourth sample in accordance with the treatment limits established in the permit.**

(h) If the Department determines, through analysis of any data submitted pursuant to the monitoring requirements or any data collected by the Department, that there has been pollution loading degradation at any of the monitoring points or hydrologic units, the Department will notify the permittee accordingly. The permittee shall begin treatment within 30 days in accordance with the treatment limits established in the permit.

(i) Any pre-existing polluttional discharge which is an encountered discharge shall be treated to the effluent limitations in the permit until the discharge is no longer encountered.

(j) For the purposes of determining applicable effluent limitations, a discharge will continue to be deemed to be an encountered discharge until the surface mining area which has been disturbed and which contributes to the discharge has been backfilled and regraded, and revegetation work has started.

**§ 88.509. Criteria and schedule for release of bonds on pollution abatement areas.**

\* \* \* \* \*

(b) The Department will release an additional amount of bond for the authorized pollution abatement area but retaining an amount sufficient to cover the cost to the Department of reestablishing vegetation if completed by a third party if the operator demonstrates and the Department finds that:

(1) The operator has replaced the topsoil or material conserved under §§ 88.87 **[and]**, 88.183 **and 88.287** (relating to vegetation-supporting material: available soil removal; **[and]** vegetation-supporting material: soil; **and vegetative-supporting material: available soil removal**), completed final grading, planting and established revegetation in accordance with the approved reclamation plan and achieved the standard of success for revegetation in § 88.505(a)(5) (relating to approval or denial).

(2) The operator has not caused or contributed to surface water pollution or groundwater degradation by reaffected or mining the pollution abatement area.

(3) The operator has complied with one of the following:

(i) Achieved the actual improvement of the baseline pollution load described in the approved **pollution** abatement plan and shown by all ground and surface water monitoring conducted by the permittee for the period of time provided in the **pollution** abatement plan after completion of backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 88.505(a)(5).

(ii) Achieved all of the following:

(A) At a minimum has not caused degradation of the baseline pollution load as shown by all ground and surface water monitoring conducted by the operator or the Department:

(I) For 12 months prior to the date of application for bond release and until the bond release is approved under subsection (b), if backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 88.505(a)(5) have been completed.

(II) If treatment has been initiated at any time after initial bond release under subsection (a) and in accordance with § 88.507(e) (relating to treatment of discharges), for 12 months from the discontinuance of treatment under § 88.507(d), if backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 88.505(a)(5) have been completed.

(B) Conducted all measures provided in the approved **pollution** abatement plan and additional measures specified by the Department in writing at the time of initial bond release under subsection (a) for the area requested for bond release.

(C) Caused aesthetic or other environmental improvements or elimination of public health and safety problems by remining and reaffected the pollution abatement area.

(D) Stabilized the pollution abatement area.

(c) The Department will release the remaining portion of the amount of bond on the authorized pollution abatement area if the applicant demonstrates and the Department finds that:

(1) The operator has successfully completed all the approved abatement and reclamation plans and the pollution abatement area is capable of supporting the postmining land use approved under §§ **88.133**, 88.221 and 88.334 (relating to **postmining land use**; postmining land use; and postdisposal land use).

(2) The operator has complied with the permit and the authorization, Chapter 86 and this chapter, except as specifically modified by this subchapter.

(3) The operator has not caused degradation of the baseline pollution load from the time of bond release under subsection (b) or, if treatment has been initiated after bond release under subsection (b) in accordance with § 88.507(e) for 5 years from the discontinuance of treatment under § 88.507(d).

(4) The applicable liability period has expired under § 86.151 (relating to period of liability).

*(Editor's Note: Sections 88.510—88.513 are new and printed in regular type to enhance readability.)*

**§ 88.510. Effluent limitations.**

(a) *Approval and incorporation into permit.* The pollution abatement plan for the pollution abatement area must be approved by the Department and incorporated into the permit as an effluent limitation.

(b) *Implementation of best management practices.* The best management practices (BMPs) in the pollution abatement plan shall be implemented as specified in the plan.

(c) *Pre-existing discharges.*

(1) Except as provided in subsection (d), the following effluent limits apply to pre-existing discharges:

<b>Parameter</b>	<b>Effluent Limit</b>
Total Iron	May not exceed baseline loadings (as determined by this subchapter).
Total Manganese	May not exceed baseline loadings (as determined by this subchapter).
Acidity, Net	May not exceed baseline loadings (as determined by this subchapter).
Suspended Solids	During remining and reclamation, may not exceed baseline loadings (as determined by this subchapter). Prior to bond release, the pre-existing discharge must meet the applicable standards for suspended solids or settleable solids in § 88.92, § 88.187 or § 88.292 (relating to hydrologic balance: effluent standards).

(2) A pre-existing discharge is exempt from meeting standards in § 88.92, § 88.187 or § 88.292 for suspended solids and settleable solids when the Department determines that the standards are infeasible or impractical based on the site-specific conditions of soil, climate, topography, steep slopes or other baseline conditions provided that the operator demonstrates that significant reductions of suspended solids and settleable solids will be achieved through the incorporation of sediment control BMPs into the pollution abatement plan as required under subsection (a).

(d) *In-stream requirements.*

(1) If the Department determines that it is infeasible to collect samples for establishing the baseline pollutant levels under **[this]** subsection **(d)(4)**, and that remining will result in significant improvement that would not otherwise occur, the permit applicant **[may] SHALL** establish an in-stream baseline concentration at a suitable point downstream from the remining operation, **UNLESS THE DEPARTMENT WAIVES THE SAMPLING REQUIREMENT UNDER SUBSECTION (d)(5)** and the numeric effluent limitations in subsection (c)(1) do not apply.

(2) The in-stream baseline period must include, at a minimum, twice monthly monitoring for a minimum of a 1-year period and must adequately represent the seasonal range and median pollutant concentrations.

(3) Upon issuance of a surface mining permit, the operator shall continue, at a minimum, monthly monitoring of pollutant concentrations at the in-stream monitoring point referenced in paragraph (1), and make a determination as to whether or not there has been degradation of in-stream water quality.

(i) This determination shall be made on a quarterly basis and for each year defined as each consecutive 12-month period.

(ii) The operator is not required to treat individual pre-existing sources of pollution except as may be needed to maintain the in-stream baseline concentration.

(iii) Unless the operator can demonstrate to the satisfaction of the Department that the degradation was the result of factors that are not related to the remining, the operator shall treat one or more pre-existing polluttional discharges or undertake other pollution abatement measures to restore or improve the in-stream pollutant concentration to its baseline conditions.

(4) Pre-existing discharges for which it is infeasible to collect samples for determination of baseline pollutant levels include, but are not limited to:

(i) Discharges that exist as a diffuse groundwater flow that cannot be assessed by the collection of samples.

(ii) A base flow to a receiving stream that cannot be monitored separate from the receiving stream.

(iii) A discharge on a steep or hazardous slope that is inaccessible for sample collection.

(iv) A number of pre-existing discharges so extensive that monitoring of individual discharges is infeasible.

(5) When in-stream monitoring is not indicative of the impact of remining, the in-stream monitoring requirement may be waived by the Department. In-stream monitoring is not indicative of the impact of remining in circumstances including, but not limited to, the following:

(i) Remining sites in drainage areas exceeding 10 square miles.

(ii) Remining sites in watersheds where there are other influences on the in-stream water quality that make it impossible to establish the cause of water quality changes.

(iii) Remining sites where the  $Q_{7-10}$  stream flow is zero.

(e) *Limits.* Pollutants for which there are not effluent limitations established in § 88.92, § 88.187 or § 88.292 may be eligible for limits established under this subchapter.

(f) *Applicability of standards.* Section 88.92, § 88.187 or § 88.292 applies to a pre-existing discharge that is:

(1) Intercepted by surface mining activities.

(2) Commingled with waste streams from operational areas for the purposes of water treatment.

(g) *Cessation of applicability of standards.* Section 88.92, § 88.187 or § 88.292 does not apply to a pre-existing discharge described in subsection (f) when the pre-existing discharge is no longer intercepted by surface mining activities or is no longer commingled with waste streams from operational areas for the purposes of water treatment.

(h) *Bond release.* The effluent limitations in this subchapter apply to pre-existing discharges until bond release under the procedures in Chapter 86 (relating to surface and underground coal mining: general).

### **§ 88.511. Baseline determination and compliance monitoring for pre-existing discharges at remining operations.**

(a) The procedures in this section shall be used for determining site-specific baseline pollutant loadings, and for determining whether discharge loadings during coal remining operations have exceeded the baseline loading. A monthly (single-observation) procedure and an annual procedure shall be applied.

(b) At least one sample result per month shall be obtained for 12 months to characterize pollutant loadings for:

(1) Baseline determination.

(2) Each annual monitoring period. It is required that at least one sample be obtained per month for 12 months.

(c) Calculations described in this subchapter shall be applied to pollutant loadings.

(d) Each loading value shall be calculated as the product of a flow measurement and pollutant concentration taken on the same date at the same discharge sampling point using standard units of flow and concentration.

(e) If the baseline concentration in a baseline sample is below the daily maximum effluent limits established in § 88.92, § 88.187 or § 88.292 (relating to hydrologic balance: effluent standards), the baseline sample concentration may be replaced with daily maximum effluent limit for the purposes of some of the statistical calculations in this subchapter.

(f) The substituted values should be used for all methods in this subchapter except for:

(1) The calculation of the interquartile range (R) in Method 1 for the annual trigger (Step 3).

(2) Method 2 for the single observation trigger (Step 3).

(g) The interquartile range (R) is calculated as the difference between the quartiles  $M_{.1}$  and  $M_1$ ; the values for quartiles  $M_{.1}$  and  $M_1$  should be calculated using actual loadings (based on measured concentrations) when they are used to calculate the interquartile range (R).

**§ 88.512. Procedure for calculating and applying a single-observation (monthly) trigger.**

(a) This section contains two alternative methods for calculating a single-observation trigger. One method must be proposed by the applicant to be approved and applied by the Department for a reming permit.

(b) Method 1 for calculating a single observation trigger (L) is accomplished by completing the following steps:

(1) Count the number of baseline observations taken for the pollutant of interest. Label this number n. To sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for 12 months.

(2) Order all baseline loading observations from lowest to highest. Let the lowest number (minimum) be  $x_{(1)}$ , the next lowest be  $x_{(2)}$ , and so forth until the highest number (maximum) is  $x_{(n)}$ .

(3) If fewer than 17 baseline observations were obtained, the single observation trigger (L) will equal the maximum of the baseline observations ( $x_{(n)}$ ).

(4) If at least 17 baseline observations were obtained, calculate the median (M) of all baseline observations. If n is odd, then M equals  $x_{(n/2+1/2)}$ . If n is even, then M equals  $0.5 * (x_{(n/2)} + x_{(n/2+1)})$ .

(5) Next, calculate  $M_1$  as the median of the subset of observations that range from the calculated M to the maximum  $x_{(n)}$ ; that is, calculate the median of all x larger than or equal to M.

(6) Next, calculate  $M_2$  as the median of the subset of observations that range from the calculated  $M_1$  to  $x_{(n)}$ ; that is, calculate the median of all x larger than or equal to  $M_1$ .

(7) Next, calculate  $M_3$  as the median of the subset of observations that range from the calculated  $M_2$  to  $x_{(n)}$ ; that is, calculate the median of all x larger than or equal to  $M_2$ .

(8) Finally, calculate the single observation trigger (L) as the median of the subset of observations that range from the calculated  $M_3$  to  $x_{(n)}$ .

(9) When subsetting the data for each of the steps in paragraphs (5)—(8), the subset should include all observations greater than or equal to the median calculated in the previous step. If the median calculated in the previous step is not an actual observation, it is not included in the new subset of observations. The new median value will then be calculated using the median procedure, based on whether the number of points in the subset is odd or even.

(c) The method for applying the single observation trigger (L) to determine when the baseline level has been exceeded is as follows:

(1) If two successive monthly monitoring observations both exceed L, immediately begin weekly monitoring for 4 weeks (four weekly samples).

(2) If three or fewer of the weekly observations exceed L, resume monthly monitoring.

(3) If all four weekly observations exceed L, the baseline pollution loading has been exceeded.

(d) Method 2 for calculating a single observation trigger (L) is accomplished by completing the following steps:

(1) Follow Method 1 in subsection (b) to obtain  $M_1$  (the third quartile, that is, the 75th percentile).

(2) Calculate  $M_{.1}$  as the median of the baseline data which are less than or equal to the sample median M.

(3) Calculate interquartile range,  $R = (M_1 - M_{.1})$ .

(4) Calculate the single observation trigger L as  $L = M_1 + 3 * R$ .

(5) If two successive monthly monitoring observations both exceed L, immediately begin weekly monitoring for 4 weeks (four weekly samples).

(6) If three or fewer of the weekly observations exceed L, resume monthly monitoring.

(7) If all four weekly observations exceed L, the baseline pollution loading has been exceeded.

### **§ 88.513. Procedure for calculating and applying an annual trigger.**

(a) This section contains two alternative methods for calculating the annual trigger. One method shall be proposed by the applicant to be approved and applied by the Department for a reming permit.

(b) Method 1 for calculating and applying an annual trigger (T) is accomplished by completing the following steps:

(1) Calculate M and  $M_1$  of the baseline loading data as described under Method 1 for the single observation trigger in § 88.512(b) (relating to procedure for calculating and applying a single-observation (monthly) trigger).

(2) Calculate  $M_{.1}$  as the median of the baseline data which are less than or equal to the sample median  $M$ .

(3) Calculate the interquartile range,  $R = (M_1 - M_{.1})$ .

(4) The annual trigger for baseline ( $T_b$ ) is calculated as

$$T_b = M + (1.815 * R) / \text{SQRT}(n)$$

where  $n$  is the number of baseline loading observations.

(5) To compare baseline loading data to observations from the annual monitoring period, repeat the steps in paragraphs (1)—(3) for the set of monitoring observations. Label the results of the calculations  $M^{\wedge}$  and  $R^{\wedge}$ . Let  $m$  be the number of monitoring observations.

(6) The subtle trigger ( $T_m$ ) of the monitoring data is calculated as

$$T_m = M^{\wedge} - (1.815 * R^{\wedge}) / \text{SQRT}(m)$$

(7) If  $T_m > T_b$ , the median loading of the monitoring observations has exceeded the baseline loading.

(c) Method 2 for calculating and applying an annual trigger ( $T$ ) is accomplished by completing the following steps:

(1) Let  $n$  be the number of baseline loading observations taken, and let  $m$  be the number of monitoring loading observations taken. To sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for a period of 12 months.

(2) Order the combined baseline and monitoring observations from smallest to largest.

(3) Assign a rank to each observation based on the assigned order: the smallest observation will have rank 1, the next smallest will have rank 2 and so forth, up to the highest observation, which will have rank  $n + m$ . If two or more observations are tied (have the same value), then the average rank for those observations should be used.

(4) Sum all the assigned ranks of the  $n$  baseline observations, and let this sum be  $S_n$ .

(5) Obtain the critical value ( $C$ ) from Table 1.

(6) Compare  $C$  to  $S_n$ . If  $S_n$  is less than  $C$ , then the monitoring loadings have exceeded the baseline loadings.

(7) Critical values for the Wilcoxon-Mann-Whitney test are as follows:

(i) When n and m are less than 21, use Table 1. To find the appropriate critical value, match column with correct n (number of baseline observations) to row with correct m (number of monitoring observations).

*Table 1—Critical Values (C) of the Wilcoxon-Mann-Whitney Test (for a one-sided test at the 0.001 significance level)*

m \ n	10	11	12	13	14	15	16	17	18	19	20
10	66	79	93	109	125	142	160	179	199	220	243
11	68	82	96	112	128	145	164	183	204	225	248
12	70	84	99	115	131	149	168	188	209	231	253
13	73	87	102	118	135	153	172	192	214	236	259
14	75	89	104	121	138	157	176	197	218	241	265
15	77	91	107	124	142	161	180	201	223	246	270
16	79	94	110	127	145	164	185	206	228	251	276
17	81	96	113	130	149	168	189	211	233	257	281
18	83	99	116	134	152	172	193	215	238	262	287
19	85	101	119	137	156	176	197	220	243	268	293
20	88	104	121	140	160	180	202	224	248	273	299

(ii) When n or m is greater than 20 and there are few ties, calculate an approximate critical value using the following formula and round the result to the next larger integer. Let N = n + m.

$$\text{Critical Value} = 0.5 * n * (N + 1) - 3.0902 * \text{SQRT}(n * \frac{m}{N} * (N + 1) / 12)$$

(iii) When n or m is greater than 20 and there are many ties, calculate an approximate critical value using the following formula and round the result to the next larger integer. Let S be the sum of the squares of the ranks or average ranks of all N observations. Let N = n + m.

$$\text{Critical Value} = 0.5 * n * (N + 1) - 3.0902 * \text{SQRT}(V)$$

In the preceding formula, calculate V using:

$$V = (n * m * S) / (N * (N - 1) - (n * m * (N + 1)^2 / (4 * (N - 1)))$$

## **CHAPTER 90. COAL REFUSE DISPOSAL**

### **Subchapter F. COAL REFUSE DISPOSAL ACTIVITIES ON AREAS WITH [PREEXISTING] PRE-EXISTING POLLUTIONAL DISCHARGES**

## § 90.302. Definitions.

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

**[Abatement plan—Any individual technique or combination of techniques, the implementation of which will result in reduction of the base line pollution load. Abatement techniques include, but are not limited to: Addition of alkaline material, special plans for managing toxic and acid-forming material, regrading, revegetation and relocating coal refuse to a coal refuse disposal area that includes systems to prevent adverse impacts to surface and groundwater and to prevent precipitation from contacting the coal refuse. ]**

*Actual improvement*—The reduction of the baseline pollution load resulting from the implementation of the approved **pollution** abatement plan; except that any reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement provided that treatment approved by the Department of the coal refuse before, during or after placement in the coal refuse disposal area will not be considered to be water treatment.

*Baseline pollution load*—The characterization of the pollutorial material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by the Department, including seasonal variations and variations in response to precipitation events. The Department will establish in each authorization the specific parameters it deems relevant for the baseline pollution load, including, at a minimum, iron and acid loadings.

*Best professional judgment*—The highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the Department under sections 301 and 402 of the Federal **Clean Water [Pollution Control]** Act (33 U.S.C.A. §§ 1311 and 1342).

*Best technology*—Measures and practices which will abate or ameliorate, to the maximum extent possible, discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

*Coal refuse disposal activities*—

(i) The storage, dumping or disposal of any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, underground development wastes, coal processing wastes, excess soil and related materials, associated with or near a coal seam, that are either brought above ground or otherwise removed from a coal mine in the process of mining coal or are separated from coal during the cleaning or preparation operations.

(ii) The term does not include the removal or storage of overburden from surface mining activities.

***Coal remining operation***—A coal mining operation at a site on which coal mining was previously conducted and where the site has been abandoned or the performance bond has been forfeited.

***Encountered discharge***—

(i) A pre-existing discharge intercepted in the course of active surface mining activities, including, but not limited to, overburden removal, coal extraction and backfilling, or that occurs in the pit, any mining-related conveyance, sedimentation pond or treatment pond.

(ii) The term does not include diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the pollution abatement plan which would otherwise drain into the affected area so long as they are designed, operated and maintained in accordance with § 90.104(b)—(g) (relating to hydrologic balance: diversions).

***Excess soil and related material***—

(i) Rock, clay or other material located immediately above or below a coal seam and which are extracted from a coal mine during the process of mining coal.

(ii) The term does not include topsoil or subsoil.

***Pollution abatement area***—

(i) The part of the permit area that is causing or contributing to the baseline pollution load.

(ii) The term includes adjacent and nearby areas that must be affected to bring about significant improvements of the baseline pollution load and may include the immediate locations of the discharges.

***Pollution abatement plan***—Best management practices (BMPs), including, but not limited to, the addition of alkaline material, special handling plans for managing toxic and acid forming material, regrading, revegetation and daylighting, that when implemented will result in reduction of the baseline pollution load.

***Pre-existing discharge***—

(i) Any discharge resulting from mining activities that have been abandoned prior to the time of a remining permit application.

(ii) The term includes a pre-existing discharge that is relocated as a result of the implementation BMPs in the pollution abatement plan.

*Steep slope—*

(i) Any slope, including abandoned mine land features, above 20 degrees or a lesser slope as may be defined by the Department after consideration of soil, climate and other characteristics of a region.

(ii) The term does not apply to situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered and through which the mining operation is to proceed, leaving a plain or predominantly flat area.

**§ 90.303. Applicability.**

\* \* \* \* \*

(b) Notwithstanding subsection (a), authorization will not be granted under this subchapter for repermitting under §§ 86.12 and 86.14 (relating to continued operation under interim permits; and permit application filing deadlines), permit renewals under § 86.55 (relating to permit renewals: general requirements) or permit transfers under § 86.56 (relating to transfer of permit).

(c) This subchapter applies to pre-existing discharges that are located within or are hydrologically connected to pollution abatement areas of a coal remining operation.

(d) When a coal remining operation seeks reissuance of an existing remining permit with best professional judgment limitations and the Department determines that it is not feasible for a remining operator to re-establish baseline pollutant levels in accordance with the statistical procedures in this subchapter, pre-existing discharge limitations at the existing remining operation remain subject to baseline pollutant levels established during the original permit application.

**§ 90.304. Application for authorization.**

(a) An operator who requests authorization under this subchapter shall comply with the permit application requirements of Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A—D, except as specifically modified by this subchapter. The operator shall also:

(1) Delineate on a map the proposed pollution abatement area, including the location of the [preexisting] pre-existing discharges.

(2) Provide a description of the hydrologic balance for the proposed pollution abatement area that includes:

(i) Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events and modeled baseline pollution loads using this monitoring program.

(ii) Monitoring for **flow**, pH, alkalinity, acidity, total iron, total manganese, **total** aluminum, sulfates, total suspended solids and other water quality parameters the Department deems relevant.

(3) Provide a **[description of the abatement plan that represents best technology and includes the following] pollution abatement plan which must:**

**(i) Describe the pollution abatement area.**

**(ii) Be designed to reduce the pollution load from pre-existing discharges and must identify the selected best management practices (BMPs) to be used.**

**(iii) Describe the design specifications, construction specifications, maintenance schedules, criteria for monitoring and inspection, and expected performance of the BMPs.**

**(iv) Represent best technology and include:**

**[(i)] (A)** Plans, cross-sections and schematic drawings describing the **pollution** abatement plan proposed to be implemented.

**[(ii)] (B)** A description and explanation of the range of abatement level that is anticipated to be achieved, costs and each step in the proposed **pollution** abatement plan.

**[(iii)] (C)** A description of the standard of success for revegetation necessary to ensure success of the **pollution** abatement plan.

**(v) Provide a description of an information on the pre-existing discharges hydrogeologically connected to the remaining area.**

**(4) Determine the baseline pollution load.**

**(5) Provide background data that are the bases for the baseline pollution load. The baseline pollution load shall be reported in pounds per day.**

(b) The operator seeking this authorization **[shall] may** continue the water quality and quantity monitoring program required by subsection (a)(2) after making the authorization request. The operator **[shall] may** submit the results of this continuing monitoring program to the Department on a monthly basis until a decision on the authorization request is made.

### **§ 90.305. Application approval or denial.**

(a) Authorization may not be granted under this subchapter unless the operator seeking the authorization affirmatively demonstrates the following to the satisfaction of the Department on the basis of information in the application:

(1) Neither the operator, nor an officer, principal shareholder, agent, partner, associate, parent corporation, subsidiary or affiliate, sister corporation, contractor or subcontractor, or a related party as defined in § 86.1 (relating to definitions) has either of the following:

(i) Legal responsibility or liability as an operator for treating the water pollution discharges from or on the proposed pollution abatement area.

(ii) Statutory responsibility or liability for reclaiming the proposed pollution abatement area.

(2) The proposed **pollution** abatement plan will result in significant reduction of the baseline pollution load and represents best technology.

(3) The land within the proposed pollution abatement area can be reclaimed.

(4) The coal refuse disposal activities on the proposed pollution abatement area will not cause additional surface water pollution or groundwater degradation.

(5) The standard of success for revegetation will be achieved. The standard of success for revegetation for sites previously reclaimed to the standards of this chapter and Chapters 87 and 88 (**relating to surface mining of coal; and anthracite coal**) shall be the standards set forth in § 90.159 (relating to revegetation: standards for successful revegetation). The standard of success for revegetation for sites not previously reclaimed to the standards of this chapter and Chapters 87 and 88 shall be, at a minimum, the following, provided the site is not a bond forfeiture site where the forfeited money paid into the fund is sufficient to reclaim the forfeited site to the applicable standards:

(i) A ground cover of living plants not less than can be supported by the best available topsoil or other suitable material in the reaffected area.

(ii) A ground cover no less than that existing before disturbance of the area by coal refuse disposal activities.

(iii) Adequate vegetation to control erosion. Vegetation may be no less than that necessary to ensure the success of the **pollution** abatement plan.

\* \* \* \* \*

### § 90.306. Operational requirements.

[(a)] An operator who receives an authorization under this subchapter shall comply with Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A—D except as specifically modified by this subchapter. The operator shall also:

(1) Implement the approved water quality and quantity monitoring program for the pollution abatement area until the requirements of § 90.309 (relating to criteria and schedule for release of

bonds on pollution abatement areas) are met. **The monitoring program must conform to the following:**

(i) **Sampling shall be conducted on a monthly basis for the pre-existing discharges and should adequately represent the seasonal range in loading rates as well as the median loading rate from each pre-existing discharge or combination of discharges.**

(ii) **Results shall be submitted on a quarterly basis.**

(iii) **Data must include the flow measurements and loading calculations.**

(2) Implement the approved **pollution** abatement plan.

**[(3) Notify the Department immediately prior to the completion of each step of the abatement plan.**

**(4) Provide a progress report to the Department within 30 days after the completion of each step of the abatement program that includes a statement signed by the operator, and if required by the Department, a statement signed by the supervising engineer, that all work has been performed in accordance with the terms and conditions of the pollution abatement authorization, the approved maps, plans, profiles and specifications.]**

**(3) Notify the Department when more frequent sampling is required.**

(i) **Weekly sampling of the pre-existing discharges shall begin if any two consecutive monthly samples of pollution load at any of the monitoring points or hydrologic units exceed one or more of the triggers established by the baseline data.**

(ii) **Weekly sampling requirements shall continue until two consecutive weekly sample analyses indicate that all parameters which triggered weekly sampling have dropped below the trigger established by the baseline data.**

### **§ 90.307. Treatment of discharges.**

(a) Except for **[preexisting] pre-existing** discharges that are not encountered during coal refuse disposal activities or the implementation of the **pollution** abatement plan, the operator shall comply with § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices). **[281279]**

(b) **[The] Except as provided in § 90.310(d) (relating to effluent limitations), the operator shall treat the [preexisting] pre-existing** discharges that are not encountered during coal refuse disposal activities or implementation of the **pollution** abatement plan to comply with the effluent limitations established by best professional judgment. The effluent limitations established by best professional judgment may not be less than the baseline pollution load. If the baseline pollution load, when expressed as a concentration for a specific parameter, satisfies the effluent limitation

in § 90.102 for that parameter, the operator shall treat the **[preexisting] pre-existing** discharge for that parameter to comply with either effluent limitations established by best professional judgment or the effluent limitations in § 90.102.

(c) For purposes of subsections (a) and (b), the term encountered may not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the **pollution** abatement plan that would otherwise drain into the affected area, as long as the diversions are designed, operated and maintained under § 90.104(b)—(h) (relating to hydrologic balance: diversions).

(d) An operator required to treat **[preexisting] pre-existing** discharges will be allowed to discontinue treating the discharges under subsection (b) when the operator affirmatively demonstrates the following to the Department's satisfaction:

(1) The **[preexisting] pre-existing** discharges are meeting the effluent limitations established by subsection (b) as shown by groundwater and surface water monitoring conducted by the operator or the Department.

(2) Coal refuse disposal activities under the permit—including the pollution abatement area—are being or were conducted under the requirements of the permit and the authorization, and Chapter 86 (relating to surface and underground mining: general) and this chapter except as specifically modified by this subchapter.

(3) The operator has implemented each step of the **pollution** abatement plan as approved in the authorization.

(4) The operator did not cause or allow additional surface water pollution or groundwater degradation by re-affecting the pollution abatement area.

(e) If after discontinuance of treatment of discharges under subsection (d) the discharges fail to meet the effluent limitations established by subsection (b), the operator shall reinstitute treatment of the discharges under subsection (b). An operator who reinstates treatment under this subsection will be allowed to discontinue treatment if the requirements of subsection (d) are met.

(f) Discontinuance of treatment under subsection (d) may not be deemed or construed to be or to authorize a release of bond under § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas).

**(g) If four consecutive weekly determinations of pollution load, as required under § 90.306(3)(i) (relating to operational requirements), exceed one or more triggers, the permittee shall notify the Department and begin treatment within 30 days of the fourth sample in accordance with the treatment limits established in the permit.**

**(h) If the Department determines, through analysis of any data submitted pursuant to the monitoring requirements or any data collected by the Department, that there has been**

**pollution loading degradation at any of the monitoring points or hydrologic units, the Department will notify the permittee accordingly. The permittee shall begin treatment within 30 days in accordance with the treatment limits established in the permit.**

**(i) Any pre-existing polluttional discharge which is an encountered discharge shall be treated to the effluent limitations in the permit until the discharge is no longer encountered.**

**(j) For the purposes of determining applicable effluent limitations, a discharge will continue to be deemed to be an encountered discharge until the surface mining area which has been disturbed and which contributes to the discharge has been backfilled and regraded, and revegetation work has started.**

**§ 90.309. Criteria and schedule for release of bonds on pollution abatement areas.**

\* \* \* \* \*

(b) The Department will release up to an additional 35% of the amount of bond for the authorized pollution abatement area but retain an amount sufficient to cover the cost to the Department of reestablishing vegetation if completed by a third party if the operator demonstrates and the Department finds the following:

(1) The operator has replaced the topsoil or material conserved under § 90.97 (relating to topsoil: removal), completed final grading, planting and established revegetation under the approved reclamation plan and achieved the standards of success for revegetation in § 90.305(a)(5) (relating to application approval or denial).

(2) The operator has not caused or contributed to groundwater or surface water pollution by reaffected the pollution abatement area.

(3) The operator has achieved the following standards:

(i) Achieved the actual improvement of the baseline pollution load described in the approved **pollution** abatement plan as shown by groundwater and surface water monitoring conducted by the permittee for the time provided in the **pollution** abatement plan after completion of backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard for success in § 90.305(a)(5).

(ii) Achieved the following:

(A) At a minimum has not caused degradation of the baseline pollution load as shown by groundwater and surface water monitoring conducted by the operator or the Department for one of the following:

(I) For 12 months from the date of initial bond release under subsection (a), if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 90.305(a)(5) have been completed.

(II) If treatment has been initiated at any time after initial bond release under subsection (a) and § 90.307(e) (relating to treatment of discharges), for 12 months from the date of discontinuance of treatment under § 90.307(d), if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 90.305(a)(5) have been completed.

(B) Conducted all the measures provided in the approved **pollution** abatement plan and additional measures specified by the Department in writing at the time of initial bond release under subsection (a) for the area requested for bond release.

\* \* \* \* \*

(*Editor's Note:* Sections 90.310—90.313 are new and printed in regular type to enhance readability.)

**§ 90.310. Effluent limitations.**

(a) *Approval and incorporation into permit.* The pollution abatement plan for the pollution abatement area must be approved by the Department and incorporated into the permit as an effluent limitation.

(b) *Implementation of best management practices.* The best management practices (BMPs) in the pollution abatement plan shall be implemented as specified in the plan.

(c) *Pre-existing discharges.*

(1) Except as provided in subsection (d), the following effluent limits apply to pre-existing discharges:

<b>Parameter</b>	<b>Effluent Limit</b>
Total Iron	May not exceed baseline loadings (as determined by this subchapter).
Total Manganese	May not exceed baseline loadings (as determined by this subchapter).
Acidity, Net	May not exceed baseline loadings (as determined by this subchapter).
Suspended Solids	During remining and reclamation, may not exceed baseline loadings (as determined by this subchapter). Prior to bond release, the pre-existing discharge must meet the applicable standards for suspended solids or settleable solids in § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices).

(2) A pre-existing discharge is exempt from meeting standards in § 90.102 for suspended solids and settleable solids when the Department determines that the standards are infeasible or impractical based on the site-specific conditions of soil, climate, topography, steep slopes or other baseline conditions provided that the operator demonstrates that significant reductions of suspended solids and settleable solids will be achieved through the incorporation of sediment control BMPs into the pollution abatement plan as required under subsection (a).

(d) *In-stream requirements.*

(1) If the Department determines that it is infeasible to collect samples for establishing the baseline pollutant levels under this subsection, and that remining will result in significant improvement that would not otherwise occur, the permit applicant **[may] SHALL** establish an in-stream baseline concentration at a suitable point downstream from the remining operation, **UNLESS THE DEPARTMENT WAIVES THE SAMPLING REQUIREMENT UNDER SUBSECTION (d)(5)** and the numeric effluent limitations in subsection (c)(1) do not apply.

(2) The in-stream baseline period must include, at a minimum, twice monthly monitoring for a minimum of a 1-year period and must adequately represent the seasonal range and median pollutant concentrations.

(3) Upon issuance of a surface mining permit, the operator shall continue, at a minimum, monthly monitoring of pollutant concentrations at the in-stream monitoring point referenced in paragraph (1), and make a determination as to whether or not there has been degradation of in-stream water quality.

(i) This determination shall be made on a quarterly basis and for each year defined as each consecutive 12-month period.

(ii) The operator is not required to treat individual pre-existing sources of pollution except as may be needed to maintain the in-stream baseline concentration.

(iii) Unless the operator can demonstrate to the satisfaction of the Department that the degradation was the result of factors that are not related to the remining, the operator shall treat one or more pre-existing pollutional discharges or undertake other pollution abatement measures to restore or improve the in-stream pollutant concentration to its baseline conditions.

(4) Pre-existing discharges for which it is infeasible to collect samples for determination of baseline pollutant levels include, but are not limited to:

(i) Discharges that exist as a diffuse groundwater flow that cannot be assessed by the collection of samples.

(ii) A base flow to a receiving stream that cannot be monitored separate from the receiving stream.

(iii) A discharge on a steep or hazardous slope that is inaccessible for sample collection.

(iv) A number of pre-existing discharges so extensive that monitoring of individual discharges is infeasible.

(5) When in-stream monitoring is not indicative of the impact of remining, the in-stream monitoring requirement may be waived by the Department. In-stream monitoring is not indicative of the impact of remining in circumstances including, but not limited to, the following:

(i) Remining sites in drainage areas exceeding 10 square miles.

(ii) Remining sites in watersheds where there are other influences on the in-stream water quality that make it impossible to establish the cause of water quality changes.

(iii) Remining sites where the  $Q_{7-10}$  stream flow is zero.

(e) *Limits.* Pollutants for which there are not effluent limitations established in § 90.102 may be eligible for limits established under this subchapter.

(f) *Applicability of standards.* Section 90.102 applies to a pre-existing discharge that is:

(1) Intercepted by surface mining activities.

(2) Commingled with waste streams from operational areas for the purposes of water treatment.

(g) *Cessation of applicability of standards.* Section 90.102 does not apply to a pre-existing discharge described in subsection (f) when the pre-existing discharge is no longer intercepted by surface mining activities or is no longer commingled with waste streams from operational areas for the purposes of water treatment.

(h) *Bond release.* The effluent limitations in this subchapter apply to pre-existing discharges until bond release under the procedures in Chapter 86 (relating to surface and underground coal mining: general).

### **§ 90.311. Baseline determination and compliance monitoring for pre-existing discharges at remining operations.**

(a) The procedures in this section shall be used for determining site-specific baseline pollutant loadings, and for determining whether discharge loadings during coal remining operations have exceeded the baseline loading. A monthly (single-observation) procedure and an annual procedure shall be applied.

(b) At least one sample result per month shall be obtained for 12 months to characterize pollutant loadings for:

(1) Baseline determination.

(2) Each annual monitoring period. It is required that at least one sample be obtained per month for 12 months.

(c) Calculations described in this subchapter shall be applied to pollutant loadings.

(d) Each loading value shall be calculated as the product of a flow measurement and pollutant concentration taken on the same date at the same discharge sampling point using standard units of flow and concentration.

(e) If the baseline concentration in a baseline sample is below the daily maximum effluent limits established in § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices), the baseline sample concentration may be replaced with daily maximum effluent limit for the purposes of some of the statistical calculations in this subchapter.

(f) The substituted values should be used for all methods in this subchapter except for:

(1) The calculation of the interquartile range (R) in Method 1 for the annual trigger (Step 3).

(2) Method 2 for the single observation trigger (Step 3).

(g) The interquartile range (R) is calculated as the difference between the quartiles  $M_{-1}$  and  $M_1$ ; the values for quartiles  $M_{-1}$  and  $M_1$  should be calculated using actual loadings (based on measured concentrations) when they are used to calculate the interquartile range (R).

**§ 90.312. Procedure for calculating and applying a single-observation (monthly) trigger.**

(a) This section contains two alternative methods for calculating a single-observation trigger. One method must be proposed by the applicant to be approved and applied by the Department for a reming permit.

(b) Method 1 for calculating a single observation trigger (L) is accomplished by completing the following steps:

(1) Count the number of baseline observations taken for the pollutant of interest. Label this number  $n$ . To sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for 12 months.

(2) Order all baseline loading observations from lowest to highest. Let the lowest number (minimum) be  $x_{(1)}$ , the next lowest be  $x_{(2)}$ , and so forth until the highest number (maximum) is  $x_{(n)}$ .

(3) If fewer than 17 baseline observations were obtained, the single observation trigger (L) will equal the maximum of the baseline observations ( $x_{(n)}$ ).

(4) If at least 17 baseline observations were obtained, calculate the median (M) of all baseline observations. If n is odd, then M equals  $x_{(n/2+1/2)}$ . If n is even, then M equals  $0.5 * (x_{(n/2)} + x_{(n/2+1)})$ .

(5) Next, calculate  $M_1$  as the median of the subset of observations that range from the calculated M to the maximum  $x_{(n)}$ ; that is, calculate the median of all x larger than or equal to M.

(6) Next, calculate  $M_2$  as the median of the subset of observations that range from the calculated  $M_1$  to  $x_{(n)}$ ; that is, calculate the median of all x larger than or equal to  $M_1$ .

(7) Next, calculate  $M_3$  as the median of the subset of observations that range from the calculated  $M_2$  to  $x_{(n)}$ ; that is, calculate the median of all x larger than or equal to  $M_2$ .

(8) Finally, calculate the single observation trigger (L) as the median of the subset of observations that range from the calculated  $M_3$  to  $x_{(n)}$ .

(9) When subsetting the data for each of the steps in paragraphs (5)—(8), the subset should include all observations greater than or equal to the median calculated in the previous step. If the median calculated in the previous step is not an actual observation, it is not included in the new subset of observations. The new median value will then be calculated using the median procedure, based on whether the number of points in the subset is odd or even.

(c) The method for applying the single observation trigger (L) to determine when the baseline level has been exceeded is as follows:

(1) If two successive monthly monitoring observations both exceed L, immediately begin weekly monitoring for 4 weeks (four weekly samples).

(2) If three or fewer of the weekly observations exceed L, resume monthly monitoring.

(3) If all four weekly observations exceed L, the baseline pollution loading has been exceeded.

(d) Method 2 for calculating a single observation trigger (L) is accomplished by completing the following steps:

(1) Follow Method 1 in subsection (b) to obtain  $M_1$  (the third quartile, that is, the 75th percentile).

(2) Calculate  $M_{.1}$  as the median of the baseline data which are less than or equal to the sample median M.

(3) Calculate interquartile range,  $R = (M_1 - M_{.1})$ .

(4) Calculate the single observation trigger L as  $L = M_1 + 3 * R$ .

(5) If two successive monthly monitoring observations both exceed L, immediately begin weekly monitoring for 4 weeks (four weekly samples).

(6) If three or fewer of the weekly observations exceed L, resume monthly monitoring.

(7) If all four weekly observations exceed L, the baseline pollution loading has been exceeded.

### **§ 90.313. Procedure for calculating and applying an annual trigger.**

(a) This section contains two alternative methods for calculating the annual trigger. One method shall be proposed by the applicant to be approved and applied by the Department for a reminting permit.

(b) Method 1 for calculating and applying an annual trigger (T) is accomplished by completing the following steps:

(1) Calculate M and  $M_1$  of the baseline loading data as described under Method 1 for the single observation trigger in § 90.312(b) (relating to procedure for calculating and applying a single-observation (monthly) trigger).

(2) Calculate  $M_{.1}$  as the median of the baseline data which are less than or equal to the sample median M.

(3) Calculate the interquartile range,  $R = (M_1 - M_{.1})$ .

(4) The annual trigger for baseline (Tb) is calculated as

$$Tb = M + (1.815 * R) / \text{SQRT}(n)$$

where n is the number of baseline loading observations.

(5) To compare baseline loading data to observations from the annual monitoring period, repeat the steps in paragraphs (1)—(3) for the set of monitoring observations. Label the results of the calculations  $M^{\wedge}$  and  $R^{\wedge}$ . Let m be the number of monitoring observations.

(6) The subtle trigger (Tm) of the monitoring data is calculated as

$$Tm = M^{\wedge} - (1.815 * R^{\wedge}) / \text{SQRT}(m)$$

(7) If  $Tm > Tb$ , the median loading of the monitoring observations has exceeded the baseline loading.

(c) Method 2 for calculating and applying an annual trigger (T) is accomplished by completing the following steps:

(1) Let  $n$  be the number of baseline loading observations taken, and let  $m$  be the number of monitoring loading observations taken. To sufficiently characterize pollutant loadings during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for a period of 12 months.

(2) Order the combined baseline and monitoring observations from smallest to largest.

(3) Assign a rank to each observation based on the assigned order: the smallest observation will have rank 1, the next smallest will have rank 2 and so forth, up to the highest observation, which will have rank  $n + m$ . If two or more observations are tied (have the same value), then the average rank for those observations should be used.

(4) Sum all the assigned ranks of the  $n$  baseline observations, and let this sum be  $S_n$ .

(5) Obtain the critical value (C) from Table 1.

(6) Compare  $C$  to  $S_n$ . If  $S_n$  is less than  $C$ , then the monitoring loadings have exceeded the baseline loadings.

(7) Critical values for the Wilcoxon-Mann-Whitney test are as follows:

(i) When  $n$  and  $m$  are less than 21, use Table 1. To find the appropriate critical value, match column with correct  $n$  (number of baseline observations) to row with correct  $m$  (number of monitoring observations).

*Table 1—Critical Values (C) of the Wilcoxon-Mann-Whitney Test (for a one-sided test at the 0.001 significance level)*

m \ n	10	11	12	13	14	15	16	17	18	19	20
10	66	79	93	109	125	142	160	179	199	220	243
11	68	82	96	112	128	145	164	183	204	225	248
12	70	84	99	115	131	149	168	188	209	231	253
13	73	87	102	118	135	153	172	192	214	236	259
14	75	89	104	121	138	157	176	197	218	241	265
15	77	91	107	124	142	161	180	201	223	246	270
16	79	94	110	127	145	164	185	206	228	251	276
17	81	96	113	130	149	168	189	211	233	257	281
18	83	99	116	134	152	172	193	215	238	262	287
19	85	101	119	137	156	176	197	220	243	268	293
20	88	104	121	140	160	180	202	224	248	273	299

(ii) When n or m is greater than 20 and there are few ties, calculate an approximate critical value using the following formula and round the result to the next larger integer. Let  $N = n + m$ .

$$\text{Critical Value} = 0.5 * n * (N+1) - 3.0902 * \text{SQRT}(n * \frac{m}{N+1} * (N+1) / 12)$$

(iii) When n or m is greater than 20 and there are many ties, calculate an approximate critical value using the following formula and round the result to the next larger integer. Let S be the sum of the squares of the ranks or average ranks of all N observations. Let  $N = n + m$ .

$$\text{Critical Value} = 0.5 * n * (N+1) - 3.0902 * \text{SQRT}(V)$$

In the preceding formula, calculate V using:

$$V = (n * m * S) / (N * (N-1)) - (n * m * (N+1)^2) / (4 * (N-1))$$