

Coal Mining Program Amendments Proposed Rulemaking

J. Scott Roberts

Deputy Secretary

Mineral Resources Management

Areas of Amendment

- Office of Surface Mining (OSM) Minor Program Deficiencies
- Remining Financial Guarantees
- Correcting Regulatory Drafting Errors

Office of Surface Mining (OSM) Minor Program Deficiencies

PA Coal Mining Regulations don't meet
Federal (OSM) requirements

- Changes needed to maintain Primacy
- Amendments are one of several steps being taken unify our program with OSM's program

Examples of Rule Changes

- Valid existing rights
- Seismic Safety Factor
- Exploration on UFM Land
- Federal Definition of a violation
- Self Bonding

Definitions

- Noncoal Act
 - Added to definition of Acts since the original regulations were in place before 1984 when the Noncoal Act was enacted
- Owned or controlled
 - Revise to correct the federal regulation reference

-
- § 86.5 Incidental Extraction (i.e. mining coal under a noncoal permit)
 - Notification of final decision on an exemption request
 - § 86.36 Review of Permit Applications
 - Delete the “3-year period” reference to outstanding violations

-
- § 86.37 (a)(8) Criteria for Permit Approval or Denial
 - Add the reference to the federal definition of a violation
 - § 86.62 Identification of Interests
 - Correct the reference to the section relating to the Federal Minimum Enforcement Action
 - Requires updated O & C information when a cessation order is issued (or confirmation of no change)
 - Adds the name and address of permittee for the Permit history of an applicant
 - Includes issued permits (not just pending applications).

-
- § 86.103 (Valid existing rights)
 - Adopts federal procedures by reference
 - § 86.129 (Exploration on UFM)
 - Creates permitting framework to allow exploration on areas designated as Unsuitable for Mining
 - DEP will need to develop application form
 - Covers the minimum requirements for a permit

- § 86.133 (Exploration on UFM)

- Changes written approval to permit has been obtained

- § 86.159 Self-bonding

- Adds requirement for an indemnity agreement binding corporations
- Requires additional documentation of the authority to indemnify

- §§ 88.321 & 90.133 Disposal of Noncoal Wastes

- Deletes the low ignition point concept from what a noncoal waste is
- Adds impounding structure to the prohibited locations

- § 89.111 Large Impoundments

- Adds language about being a hazard to miners or the public
- Adds seismic safety factor (1.2)

- § 90.112 Large Impoundments

- Adds language about being a hazard to miners or the public
- Changes capacity requirement from 100-year storm to probable maximum precipitation from a 6-hour event

Federal Regulations listing of Program Deficiencies

- 30 CFR 938.16 lists the PA coal mining program deficiencies identified by OSM
- The proposed rulemaking addresses those listed at 938.16 rr, tt, vv, ww, xx, zz, aaa, ccc, iii, jjj, nnn, ppp and ttt. (13)

Remining Financial Guarantees

- Transition program from alternate bonding to a conventional bonding program
 - Change from acres to reclamation cost
 - Remove requirement to spend more than the bond amount
 - RFG applies to permit rather than remining area
- Removes Letter of Credit (LOC) as demonstration of eligibility
- RFG must be replaced if there is a discharge

- §86.281 (RFG-general)

- Adds the concept that the RFG applies is to the permit area (rather than just the remaining area)
- The amount is based on total reclamation costs (rather than a cost per acre)

-
- §86.282 Participation Requirements
 - Deletes the LOC as a demonstration that the applicant is financially eligible
 - Demonstration of eligibility proposed is either:
 - Submitting an acceptance letter from a surety or,
 - Posting a surety bond for an equal portion of the remaining (i.e. beyond the remaining area) reclamation liability for the permitted site

-
- §86.283 (RFG procedures)
 - (a)(1) Deletes the acres reference in
 - (d) Clarifies the allocation of reserve funds
 - (e) Deletes restriction of where the RFG can be applied on a permit
 - (f) Requires the replacement of the RFG if discharge liability is incurred

- §86.284 Forfeiture

- Clarifies that the amount of RFG forfeited is the balance of the RFG-rather than additional funds beyond the RFG amount

- § 86.165 Failure to maintain a proper bond

- Adds failure to make a RFG payment to the list of things that result in an NOV.

Regulatory Drafting Errors

- General Drafting
- Removed Attorney and expert witness fees from the list of cost that may be recovered under the Surface Mining Conservation and Reclamation Act

-
- § 87.119 (Water supply replacement)
 - Deletes attorney fees and expert witness fees from the list of costs that can be recovered
 - Reflects revision to SMCRA