

**PROPOSED RULEMAKING  
ENVIRONMENTAL QUALITY BOARD  
[25 PA CODE CHAPTERS 77, 86, 87, 88, 89, 90, 211]**

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code Chapter 86 by adding sections 86.162b (Land Reclamation Financial Guarantees) and 86.162c (Bioenergy Crop Bonding) to read as set forth in Annex A. The additions to Chapter 86 proposed by this rulemaking will implement Acts 95 and 157 of 2012. Act 95 provides a financial incentive to surface mining operators reclaiming remaining sites with bioenergy crops. Act 157 establishes Land Reclamation Financial Guarantees (LRFGs) to satisfy the bonding obligations of qualifying surface mining operators. A proposed amendment to section 86.187(a)(1)(iii) will reflect the establishment of LRFGs. The financial guarantees established by Acts 95 and 157 are voluntary and intended to assist surface mining operators to satisfy their statutory bonding obligations.

As part of this rulemaking, the Board also proposes to amend Chapters 77, 86, 87, 88, 89, 90 and 211 to correct citations to the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P.S. §§ 1396.1- 1396.19b), the Dam Safety and Encroachments Act (32 P.S. § § 693.1-693.27), and the Solid Waste Management Act (35 P.S. § § 6018.101-6018.1003). These corrections are necessary to account for the addition of section 19.2 at the end of SMCRA, which was added by Act 157, and to correct existing citation errors in Chapters 77, 86, 87, 88, 89, 90 and 211.

This proposed rulemaking was adopted by the Board at its meeting of \_\_\_\_\_, 2014.

*A. Effective Date*

This rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

*B. Contact Persons*

For further information, contact Thomas Callaghan, P.G., Director, Bureau of Mining Programs, Rachel Carson State Office Building, 5<sup>th</sup> Floor, 400 Market Street, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5015; or A. J. Jenkins, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available electronically on the Department of Environmental Protection's (Department) web site at [www.dep.state.pa.us](http://www.dep.state.pa.us) (DEP Search/Keyword: Public Participation).

*C. Statutory Authority*

This proposed rulemaking is authorized under the authority of Section 5 of The Clean Streams Law (52 P.S. § 691.5); Sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.4(a) and 1396.4b); and Section 1920-A of the Administrative Code of 1929 (71 P.S. 510-20).

#### *D. Background and Purpose*

This proposed rulemaking will accomplish three things. First, it will correct citations to statutes as they appear in Chapters 77, 86, 87, 88, 89, 90 and 211. Second, it proposes regulations to implement Act 95. Third, it proposes regulations to implement Act 157.

The amendments to Chapters 77, 86, 87, 88, 89, 90, and 211 correct citations to SMCRA, the Dam Safety and Encroachments Act (32 P.S. §§ 693.1-693.27), and the Solid Waste Management Act (35 P.S. §§ 6018.101-6018.1003). This is strictly a housekeeping matter.

Act 95 amended SMCRA by adding section 4.14 (52 P.S. § 1396.4n) and allows surface coal mining operators to seek reclamation bond coverage at no cost when reclaiming a remaining site with bioenergy crops. This rulemaking will provide the framework for implementing Act 95's bioenergy crop reclamation incentive. Seeking Bioenergy Crop Bonding established by Act 95 is voluntary.

Act 157 is a statutory amendment that makes LRFGs available to operators. LRFGs offer financial guarantees to assure the bonding obligations of qualifying surface mining operators, and this rulemaking proposes the framework for providing LRFGs to surface mining operators. Seeking LRFGs established by Act 157 is voluntary.

#### *Citation Updates*

Amendments to Chapters 77, 86, 87, 88, 89, 90 and 211 are necessary to correct certain citations to SMCRA (52 P.S. §§ 1396.1- 1396.19b), the Dam Safety and Encroachments Act (32 P.S. § 693.1-693.27), and the Solid Waste Management Act (35 P.S. § § 6018.101-6018.1003). These corrections account for the appending of section 19.2 at the end of SMCRA, which was added by Act 157, and correct existing citation errors in Chapters 77, 86, 87, 88, 89, 90 and 211.

#### *Acts 95 and 157*

Both Act 95 and Act 157 establish financial guarantees that are intended to assist surface mining operators in meeting their SMCRA bonding obligations. Accordingly, the proposed regulations implementing Acts 95 and 157 have been included in the same rulemaking package.

By way of background, SMCRA bonding obligations ensure that surface mining sites are reclaimed which eliminates environmental and safety hazards. Prior to 2001, the Department implemented an alternate bonding system (ABS). Under the ABS, the bond amount for a surface mining site was determined by a per-acre flat rate that was supplemented by a non-refundable per-acre "Reclamation Fee." The ABS ultimately failed to ensure adequate bonding, leaving some mine sites in an unreclaimed state. These unreclaimed sites are known as ABS legacy sites, and the Department is responsible for reclaiming the ABS legacy sites and treating post-mining pollutional discharges emanating therefrom.

Due to funding deficiencies, which ultimately resulted in ABS legacy sites, the ABS was discontinued and replaced with the full-cost bonding program. Full-cost bonding guarantees that

all surface mining sites will be sufficiently bonded to meet reclamation obligations. The transition from the ABS to the full-cost bonding program was facilitated through the use of financial guarantees known as Conversion Assistance. As part of Conversion Assistance, the General Assembly appropriated \$7 million to the Department through Section 213 of the Act of June 22, 2001 (P.L. 979, No. 6A), known as the “General Appropriation Act of 2001.” Consistent with SMCRA, this appropriation allowed for the use of sum-certain financial guarantees to satisfy the bonding obligations for a surface mining site. *See*, 52 P.S. § 1396.4(d.2). Acts 95 and 157 establish programs that offer such financial guarantees.

Financial guarantees, such as those established in Acts 95 and 157, help surface mining operators meet their statutory bonding obligations by reducing capital costs. A reduction in capital costs means more cash is available to surface mining operators for their operations. Financial guarantees thus reduce the financial impact of statutory bonding requirements on surface mining operators.

#### *Act 95—Bioenergy Crop Bonding*

As a surface mining site is reclaimed, the bond posted to financially guarantee reclamation is released. Pursuant to Chapter 86, bond release occurs in three stages. After a surface mining site has been regraded and planted with permanent vegetation, thus satisfying stage 2 reclamation obligations, a portion of the bond posted will be held for a period of at least five years. This is the stage 3 reclamation liability period.

Act 95 offers a sum-certain financial guarantee at no cost to a permittee to cover stage 3 reclamation liability where the permittee reclaims a remaining site with bioenergy crops such as switchgrass, camelina, or canola. In the event of bond forfeiture, the financial guarantee established by Act 95 finances reclamation of the forfeited site in an amount not to exceed the sum-certain guarantee. Participation in the Bioenergy Crop Bonding program established by Act 95 is voluntary.

Act 95 permits funding of this program only to the extent funds are available from the appropriation to the Department under section 213 of the Act of June 22, 2001 (P.L. 979, No. 6A), known as the “General Appropriation Act of 2001,” or to the extent funds are otherwise appropriated.

The regulations proposed in Section 86.162c of Annex A will implement the requirements of Act 95.

#### *Act 157—Land Reclamation Financial Guarantees*

Act 157 established the LRFG Account, authorized a one-time transfer of \$500,000 from Conversion Assistance monies to the Remining Financial Assurance Fund, and authorized the transfer of the remaining Conversion Assistance monies to the LRFG Account. The transfers were executed in 2013. The funds in the LRFG Account are to be used, in part, to underwrite LRFGs established by Act 157. At this time, more than \$12 million are available to support the LRFG program as it is structured in Act 157 and for other uses authorized by Act 157.

LRFGs are offered to assist surface mining operators achieve full-cost bonding as required by SMCRA by making available to applicants sum-certain financial guarantees to cover reclamation obligations. This proposed rulemaking provides the framework for offering LRFGs.

Act 157 establishes eligibility guidelines to determine which surface mining operators may receive LRFGs. In determining eligibility, the Department is to consider a number of factors including the operator's long-term financial stability, compliance history, time in business, and prior denial of coverage for a surety bond, if any. The Department may also consider other factors that are indicative of an operator's ability to complete reclamation and make payments under the program. Beyond these eligibility requirements, the Department is to consider the environmental and safety hazards and coal reserves available at the site.

Act 157 establishes LRFGs and the LRFG fee. This fee, along with interest earned on the funds in the LRFG Account, may be transferred into the Reclamation Fee Operation and Maintenance (O&M) Trust Account established pursuant to 25 Pa. Code §§ 86.17 (relating to permit and reclamation fees) and 86.187 (relating to use of money) so long as the financial stability of the LRFG program is not threatened. The transfer of funds from the LRFG Account to the Reclamation Fee O&M Trust Account is intended to supplement the Reclamation Fee O&M Trust Account which is used to pay for the operation and maintenance of treatment systems at ABS legacy sites.

Furthermore, Act 157 requires the total amount of LRFGs that can be supported by the LRFG Account to be calculated. This is based on loss reserves and calculated by applying the historical rate of mine operator bond forfeiture plus a reasonable margin of safety to protect the account from the risk of forfeiture. Additionally, regulation underwriting methods adequate to ensure the account against the risk of forfeiture of the guarantees must be established. According to Act 157, the LRFG Account is to be the sole source of funds used to underwrite LRFGs, and the Commonwealth is not obligated to expend any funds beyond the amount in the LRFG Account.

Act 157 also includes a provision for the annual appropriation of up to two million dollars collected from the Gross Receipts Tax by the General Assembly to the Department for transfer into the Reclamation Fee O & M Trust Account established in 25 Pa. Code § 86.17.

Finally, Act 157 permits the discontinuance of LRFGs if 25% or more of the total outstanding bond obligation for all issued LRFGs is subject to forfeiture.

The LRFGs established by Act 157 share many concepts with the remaining financial guarantee (RFG) program. The experience gained from implementing the RFG program since 1996 has been useful in establishing the proposed requirements for implementing LRFGs.

#### *Mining and Reclamation Advisory Board Collaboration*

The Department collaborated with the Mining and Reclamation Advisory Board's (MRAB) Regulation, Technical and Legislative committee to develop this proposed rulemaking. The MRAB voted for the proposed rulemaking to proceed at its October 24, 2013 and provided

one recommendation to the portion of the rulemaking implementing Act 157. The MRAB specifically recommended the following language be added to the regulation relating to the appropriation of money from the Gross Receipts Tax as described in section 19.2b(b)(7) of SMCRA and Act 157:

No later than the date of the Department's annual budget request to the Governor's Budget Office, the Department shall report to the MRAB as to when a transfer from the Gross Receipts Tax to the Reclamation Fee O & M Trust Account is necessary to supplement the funding of the Reclamation Fee O & M Trust Account in order to offset an increase in the reclamation fee in the subsequent fiscal year.

Though not adopting this language verbatim, the Department has incorporated the substance of this recommendation in a proposed amendment to 25 Pa. Code § 86.17(e) which is also part of this proposed rulemaking. Section 86.17(e) requires the Department to provide information to the MRAB on the status of the operation and maintenance of treatment facilities at ABS legacy sites and the funding status of the Reclamation Fee O & M Trust Account. In the course of fulfilling this existing obligation under section 86.17(e), the Department, as recommended by the MRAB and proposed in this rulemaking, will provide information on the appropriation from the Gross Receipts Tax by the time the Department's budget request is provided to the Governor's Budget Office. This proposed amendment to section 86.17(e) will satisfy the provision in Act 157 and the MRAB's recommendation.

#### *E. Summary of Proposed Regulatory Requirements*

##### *SMCRA Citation Updates*

The following sections are being amended to make minor non-substantive technical corrections to the regulations because Act 157 amended section 19.2 in SMCRA: § 77.1 (relating to Definitions); § 77.126 (relating to Criteria for permit approval or denial); § 77.254 (relating to Preservation of remedies); § 86.1 (relating to Definitions); § 86.6 (relating to Extraction of coal incidental to government-financed construction or government financed reclamation projects); § 86.12 (relating to Continued operation under interim permits); § 86.121 (relating to Areas exempt from designation as unsuitable for surface mining operations); § 86.159 (relating to Self-bonding); § 86.185 (relating to Preservation of remedies); § 86.187 (relating to Use of money); § 86.232 (relating to Definitions); § 86.252 (relating to Definitions); § 86.358 (relating to Suspension and revocation); § 87.1 (relating to Definitions); § 87.205 (relating to Approval or denial); § 88.482 (relating to Definitions); § 88.505 (relating to Approval or denial); § 89.5 (relating to Definitions); § 90.305 (relating to Application approval or denial); and § 211.121 (relating to General requirements).

This rulemaking also corrects a typographical error in the citation to SMCRA in § 86.182(h)(2).

This rulemaking also includes another correction to citations of the Dam Safety and Encroachments Act (32 P.S. § § 693.1-693.27) and the Solid Waste Management Act (35 P.S. § 6018.101-6018.1003) in the following section: § 77.254 (relating to Preservation of Remedies).

Finally, this rulemaking includes a correction to the citation of the Dam Safety and Encroachments Act (32 P. S. § § 693.1-693.27) in the following section: § 86.232 (relating to Definitions).

#### *Act 95—Bioenergy Crop Bonding*

Proposed section 86.162c(a) describes conditions of eligibility to obtain Bioenergy Crop Bonding. Bioenergy Crop Bonding may be obtained where crops, including switchgrass, canola, or camelina, or those grown to produce feedstock for biofuels, including biodiesel and ethanol, and biomass for electricity generation, are grown to reclaim remaining sites. To obtain Bioenergy Crop Bonding, stage 2 bond release needs to have been achieved and water treatment liability must not have been triggered under Chapter 87, Subchapter F; Chapter 88, Subchapter G; or Chapter 90, Subchapter F.

Proposed section 86.162c(b) describes the application requirements of Bioenergy Crop Bonding. An application shall provide: verification that the entire permitted area has achieved Stage 2 bond release consistent with section 86.174(b); a demonstration that the crops grown are bioenergy crops; crop yield data that demonstrates that the bioenergy crops are achieving acceptable crop production; a demonstration that all temporary structures have been reclaimed; a demonstration that there are no post-mining pollutional discharges or that all liability associated with post-mining pollutional discharges is fully covered with a full-cost bond or a fully funded post-mining treatment trust; acknowledgement that the permittee intends to apply for final release of the Bioenergy Crop Bonding in a timely manner.

Proposed section 86.162c(c) provides that upon approval of the Bioenergy Crop Bonding application, the Department will release the existing bond held for Stage 3 liability.

Proposed section 86.162c(d) establishes that the liability period under the Bioenergy Crop Bonding cannot exceed five years. Moreover, permits with a bond liability period greater than five years are not eligible because of the risk of water pollution (25 Pa. Code §§ 86.151(b)(1); 86.151(c)).

Proposed section 86.162c(e) provides that the Bioenergy Crop Bonding for a permit will expire no later than 120 days after the expiration of the five-year liability period. In the case where the final bond release cannot be accomplished upon expiration of the Bioenergy Crop Bonding, then the Bioenergy Crop Bonding must be replaced.

Proposed section 86.162c(f) requires Bioenergy Crop Bonding to be replaced if the final bond release is not achieved upon the expiration of Bioenergy Crop Bonding.

#### *Act 157—Land Reclamation Financial Guarantees*

This rulemaking, in part, addresses Act 157's provision on the annual appropriation of funds from the Gross Receipts Tax to the Reclamation Fee O&M Trust Account. In response to that provision, the MRAB suggested language to be included in this proposed rulemaking requiring the Department to issue a report to the MRAB on the Reclamation Fee O&M Trust Account. Section 86.17 currently requires such an annual report from the Department which includes an update on the Reclamation Fee O & M Trust Account, a financial analysis of the revenue and

expenses from the account, and establishes a process for presenting the report to the MRAB for its review and comments. The information made available through this process is the same information necessary for the Department to determine when additional funds are needed to supplement the Reclamation Fee O & M Trust Account in order to offset an increase in the Reclamation Fee. Offsetting an increase in the Reclamation Fee is important to operators because the Reclamation Fee impacts operating expenses.

While the exact language of the MRAB's recommendation was not used, proposed language has been added to section 86.17(e)(2) as part of this rulemaking that incorporates the substance of the MRAB's recommendation. This proposed addition to section 86.17 is the most effective way to assure that the MRAB is provided with the information necessary to fully implement Act 157.

Proposed section 86.17(e)(2) will incorporate the MRAB's recommendation by requiring the Department's annual report on the Reclamation Fee O&M Trust Account to include information necessary for determining the need to supplement the funding of the Reclamation Fee O&M Trust Account. The proposed amendment to the regulation also provides that the need to supplement the funding of the Reclamation Fee O&M Trust Account will be based on the need to offset an increase in the reclamation fee and the need to provide for long term operations at ABS Legacy sites.

Proposed section 86.162b(a) establishes that the Department will designate funds in the LRFG Account to underwrite LRFGs.

Proposed section 86.162b(b) provides that funds in the LRFG Account will be used to cover obligations for all existing sum-certain financial guarantees needed to facilitate the implementation of full-cost bonding previously issued by the Department.

Proposed section 86.162b(c) establishes that LRFGs may be used to financially assure the bonding obligations of qualified surface coal mining operators engaged in surface mining activities under § 86.143 which relates to the requirement to file a bond.

Proposed section 86.162b(d) provides that the Department will hold in reserve in the LRFG Account funds that are not designated to underwrite LRFGs. Proposed sections 86.162b(d) and (e) implement the distinction drawn in Act 157 between funds in the LRFG Account designated to underwrite LRFGs (subsection (d)) and funds in the LRFG Account held in reserve (subsection (e)) for purposes such as assuring the availability of funding to cover reclamation liabilities.

Proposed section 86.162b(e) identifies the purposes for which funds held in reserve in the LRFG Account may be used. Such funds may be used to: assure the availability of funds to cover reclamation liabilities in the event of forfeiture; underwrite sum-certain guarantees made available by Bioenergy Crop Bonding; and provide for transfers of available funds to the Reclamation Fee O&M Trust Account.

Proposed section 86.162b(f) places three restrictions on the amount of LRFGs the Department may issue. First, the Department may not issue LRFGs for a permit in excess of 50% of the

required bond amount for that permit, which is the Permit Limit. Second, the Department may not issue LRFGs to a mine operator in excess of the Operator Limit, which is exceeded if the aggregate amount of LRFGs on permits issued to the operator exceeds 30% of the designated amount in the LRFG Account. Third, the Department may not issue additional LRFGs in excess of the Program Limit which is when the aggregate amount of outstanding LRFGs is greater than the current designated amount in the LRFG Account divided by the historical rate of mine operator bond forfeiture under § 86.181 (relating to general), plus a margin of safety determined by the Department.

Proposed section 86.162b(g) establishes that any existing sum-certain financial guarantee needed to facilitate the implementation of full-cost bonding previously issued by the Department shall be converted into a LRFG. However, if the conversion results in the LRFG exceeding the Permit Limit established at subsection (f)(1), the LRFG amount does not need to be reduced, but the permit will be ineligible for additional LRFGs until the total for the permit is under the Permit Limit. Furthermore, if the conversion results in the LRFG for an operator exceeding the Operator Limit established at subsection (f)(2), the LRFG does not need to be reduced, but the operator will be ineligible for additional LRFGs until the total for the operator is under the Operator Limit.

Proposed section 86.162b(h) provides for the Department to prepare an evaluative report containing a financial analysis of the revenue and expenditures for the LRFG Account. The report may be prepared at the request of the MRAB and is to be provided no less than every five years irrespective of a request by the MRAB. During the initial implementation of this program, it is likely that more frequent evaluations will be completed.

The subsection further provides that: the report will evaluate the annual payment percentage rate referenced in subsection (m)(1), the Permit Limit, the Operator Limit, and the Program Limit for the LRFG program; the report will be submitted to the members of the MRAB for their review and advice and will be published on the Department's website; notice of the report's availability will be published in the *Pennsylvania Bulletin*; the Department will review the report at a public meeting of the MRAB; if the Department's review of the report at a public meeting of the MRAB results in a change to the Permit Limit, Operator Limit, Program Limit, or the annual payment percentage rate, the Department will publish a notice of the changes in the *Pennsylvania Bulletin*; changes to the Permit Limit, Operator Limit, Program Limit, or the annual payment percentage rate will become effective upon publication in the *Pennsylvania Bulletin*.

Proposed section 86.162b(i) establishes that interest earned and payments collected and deposited in the LRFG Account may be transferred by the Department into the Reclamation Fee O&M Trust Account, established pursuant to sections 86.17 and 86.187, to be used to supplement the funding of the Reclamation Fee O&M Trust Account consistent with sections 19.2 (b)(5) and 19.2 (b)(6) of the act (52 P.S. § 1396.19b(b)(5) and 52 P.S. § 1396.19b(b)(6)).

Proposed section 86.162b(j) states that the Department will provide to the MRAB information about any proposed transfer of funds to the Reclamation Fee O&M Trust Account. The Department may solicit advice from the MRAB prior to such transfer.



Proposed section 86.162b(k) establishes the eligibility requirements for participation in the LRFG program. These requirements include being a licensed mine operator, having a good compliance record, and having a good record of making timely payments and completing reclamation obligations. The section further proposes requirements for new participants including having been licensed for at least five years and being eligible for surety bond coverage.

Proposed section 86.162b(l) provides that an application for a LRFG shall include a description of the environmental and safety hazards of the site for which a guarantee is proposed, a description of the availability of coal reserves at the site, and any prior denials of surety coverage.

Proposed section 86.162b(m) places certain restrictions on obtaining a LRFG including: a participating operator shall make annual payments to the Department in the amount of 1.5% of the total amount of the LRFG; the first annual payment shall be due upon the operator's receipt of notice of the Department's approval of the operator's application to participate in the program and payments shall be made annually thereafter concurrent with the permit anniversary date or in accordance with a schedule determined by the Department; the operator shall be responsible for making the annual payment as calculated by the Department until the amount of the bond is reduced or released in accordance with sections 86.170 through 86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond); payments are not refundable and will be deposited into the LRFG Account to be used in the event of mine operator forfeiture and excess payments may be transferred by the Department to the Reclamation Fee O & M Trust Account consistent with section 19.2 (b)(6) of the act (52 P.S. 1396.19b(b)(6)); the operator shall not substitute LRFGs for existing collateral or surety bonds.

Proposed section 86.162b(n) provides that the Department may adjust the annual payment percentage rate in order to assure financial stability of the LRFGs and to cover the Department's costs to administer the guarantees, after consultation with the MRAB and publication in the *Pennsylvania Bulletin* for public comment.

Proposed section 86.162b(o) establishes that the Department will reduce or release an obligation covered by the LRFGs prior to any other bond submitted by the operator to cover the reclamation obligations of a permit, except that remaining financial guarantees issued pursuant to section 4.12 of the act (52 P. S. § 1396.41) will be released before LRFGs.

Proposed section 86.162b(p) provides that if a post-mining pollutional discharge develops on a permit for which the LRFG has been obtained, the operator shall, within 90 days of receipt of written notice by the Department, provide to the Department a separate bond or alternative financial assurance mechanism to cover the long-term treatment costs associated with the discharge or replace the LRFG with other types of financial assurance mechanisms authorized for the purpose of covering the costs of treating the discharge.

Proposed section 86.162b(q) provides that upon forfeiture under section 86.181 the Department will declare forfeit the specified amount of the LRFG for the permit in the LRFG account in addition to other bonds posted by the operator to cover the reclamation obligation on the permit.

Proposed section 86.162b(r) provides that the Department's declaration of forfeiture under this section does not discharge the operator's obligation to meet the requirements of this chapter or other requirements under the act.

Proposed section 86.162b(s) establishes that upon declaration of forfeiture, the Department will use the bond money posted by the operator and the specified amount of the LRFG and any other alternative financial assurance mechanisms to complete the reclamation of the mine site in accordance with the procedures and criteria in sections 86.187 through 86.190.

Proposed section 86.162b(t) provides that the Department may suspend the issuance of LRFGs upon notice in the *Pennsylvania Bulletin* when the number of participating permits declared forfeit equals the number of participating permits multiplied by the historical rate of bond forfeiture plus a margin of safety. Issuance of LRFGs may resume after the Department conducts an evaluation, taking into account advice from the MRAB, which demonstrates that adequate funding is available.

Proposed section 86.162b(u) establishes that the Department will discontinue the LRFGs and notice will be published in the *Pennsylvania Bulletin* if 25% or greater of the outstanding bond obligation for the LRFGs is declared forfeit. If the LRFGs are discontinued, no additional LRFGs may be approved. Outstanding LRFGs will remain in effect until released under sections 86.170 through 86.175.

Proposed section 86.162b(v) provides that the Department will not approve additional LRFGs if LRFGs are discontinued. Outstanding LRFGs will remain in effect until released under sections 86.170 through 86.175.

The proposed amendment to section 86.187 will account for the implementation of LRFGs under Act 157 by providing that the Department may deposit other moneys into the Reclamation Fee O&M Trust Account, including the fees collected for LRFGs implemented by 86.162b (relating to Land Reclamation Financial Guarantees) needed to facilitate full-cost bonding in accordance with applicable law.

## *F. Benefits, Costs and Compliance*

### *Benefits*

This proposed rulemaking will improve clarity and accuracy in existing regulations by correcting statutory citations.

This proposed rulemaking also promotes the use of bioenergy crops for mine reclamation by providing a no-cost incentive to operators choosing to reclaim sites with bioenergy crops. Such an incentive has the potential to restore the environment and alleviate some of the financial burden on surface mining operators since bonding costs have a substantial impact on a mine operator's financial status.

Likewise, the portion of this proposed rulemaking implementing Act 157 will reduce costs to surface mining operators by providing them with a means of covering part of their bond liability at a low cost. The proposed rules implementing Act 157 also provide a discretionary source of funding for ABS legacy sites by allowing an optional transfer of interest and premiums from the LRFG Account to the Reclamation Fee O&M Trust Account. This has the potential to offset an increase in the Reclamation Fee, which is welcomed by the industry, and may help fund projects aimed at eliminating the environmental and safety hazards associated with ABS legacy sites.

More generally, bonding assistance in the form of financial guarantees is quite helpful to surface mining operators because it reduces capital costs. Unlike traditional surety and collateral bonds, which require cash or property as a security, financial guarantees provide reclamation liability coverage to surface mining operators without the need for posting a security. Securing a bond encumbers cash flow, and since financial guarantees do not require securities, more capital is available to surface mining operators for their operations. As such, financial guarantees, including those offered by Act 95 and Act 157, reduce the financial impact of statutory bonding obligations on surface mining operators.

#### *Compliance Costs*

The citation corrections will not result in any compliance costs.

Obtaining Bioenergy Crop Bonding and LRFGs is optional for coal mine operators. Bioenergy Crop Bonding is offered at no-cost, and there is only a minimal fee required to obtain a LRFG. As such, compliance costs will be minimal.

#### *Compliance Assistance Plan*

Compliance assistance for this rulemaking will be provided through routine interaction with trade groups and individual applicants. There are about 500 licensed surface coal mining operators in Pennsylvania, most of which are small businesses that will be subject to this regulation. It is not anticipated that the rulemaking will increase costs since the proposed rulemakings provide no-cost and low-cost financial incentives to surface coal mining operators.

#### *Paperwork Requirements*

Since Bioenergy Crop Bonding and LRFGs are voluntary, surface coal mining operators will experience a marginal increase in paperwork only if they choose to obtain these financial guarantees. The additional paperwork requirements associated with this proposed rulemaking for both Bioenergy Crop Bonding and LRFGs include submitting additional documents with the permit application relating to the programs.

#### *G. Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a national policy that promotes pollution prevention as the preferred means for achieving state

environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

#### *H. Sunset Review*

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

#### *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on \_\_\_\_\_, 2014, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), the Commission may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *J. Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board. Comments, suggestions or objections must be received by the Board by \_\_\_\_\_. In addition to the submission of comments, interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by \_\_\_\_\_. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by email, by mail or express mail as follows. Please note, if an acknowledgement of comments submitted online or by email is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

**Online:** Comments may be submitted to the Board by accessing the Board's online comment system at <http://www.ahs.dep.pa.gov/RegComments> .

**Email:** Comments may be submitted to the Board by email at [RegComments@pa.gov](mailto:RegComments@pa.gov) . A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

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