



**pennsylvania**  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

# **COMMENT AND RESPONSE DOCUMENT**

## **LAND RECLAMATION FINANCIAL GUARANTEES AND BIOENERGY CROP BONDING**

*25 Pa. Code* Chapters 77, 86, 87, 88, 89, 90 and 211

44 Pa.B. 6781 (October 25, 2014)

Environmental Quality Board Regulation #7-489

(Independent Regulatory Review Commission #3074)

## **List of Commentators on the Proposed Rulemaking**

1. Duane Feagley, Executive Director  
Pennsylvania Anthracite Council  
P.O. Box 138  
Pottsville, PA 17901
2. Rachel Hursh  
Pennsylvania Coal Alliance  
212 North Third Street, Suite 102  
Harrisburg, PA 17101
3. Kurt J. Weist, Senior Attorney  
PennFuture  
610 North Third Street  
Harrisburg, PA 17101
4. David Sumner  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17101

## Comments and Responses

1. **Comment:** The swift passage and implementation of these regulations are important to our industry and we urge the EQB to move forward with these regulations as quickly as the law and the regulatory process permits. (1), (2)

**Response:** The rulemaking has a high priority and the process will be undertaken as expeditiously as possible.

2. **Comment:** We ask the Board to consider revising § 86.162b(o) to allow the Department the discretion, on a case-by-case basis, to release the operator's bond prior to release of the LRFG as it is permitted to do for Remining Financial Guarantee bonds. This option would be limited exclusively to sites that are reclaimed, grass has been planted and risk of forfeiture is negligible. (2)

**Response:** The comment is based upon a mistaken premise. The regulation at 25 Pa. Code § 86.283 (e) requires that a remining financial guarantee bond "will be reduced or released prior to any other bond submitted by the operator to cover the reclamation obligations of that permit." The purpose of the requirement that the financial guarantees be released prior to other bonds is to limit the liability to the financial guarantees programs and to make the funds available to provide bond coverage for other mine sites. However, the Department has another program, the Land Maintenance Financial Guarantee program, which provides for bond coverage for the scenario where the site is reclaimed, grass has been planted and the stage 2 liability has been released. Therefore, it is not appropriate or necessary to make the suggested revision to the regulation.

3. **Comment:** There is no legal requirement or "need" to offset any increase in the \$0 reclamation fee, which would have the practical effect of eliminating the reclamation fee as a source of revenue to the Reclamation Fee O & M Trust Account. (3)

**Response:** The proposed rulemaking language was crafted in order to implement the MRAB's recommendation to provide them with information about impending funding needs in order to assure proper funding of the Reclamation Fee O & M Trust account, whether it be by adjustments to the reclamation fee or other available funding sources. The MRAB expressed interest in assuring that any increases to the reclamation fee be minimized. The adjustable reclamation fee is a legally enforceable means by which the Commonwealth can assure sufficient funding that is both sustainable and flexible in order to address both long-term treatment costs at the ABS Legacy sites and fluctuations in O & M costs at these sites.

The proposed wording overemphasized this intention to minimize the reclamation fee. Therefore subsection 86.17(e)(2) of the rulemaking has been revised to delete the phrase "...the need to offset an increase in the reclamation fee and..." In addition, to assure that the Department provides the MRAB with the necessary information under their recommendation, the phrase "...including an estimate of the reclamation fee for the calendar year immediately following the current fiscal year" has been inserted. This retains the

requirement to provide information to, and collaborate with, the MRAB but eliminates the impression that the reclamation fee should remain at \$0 or could only be increased.

4. **Comment:** The proposed amendment would subvert the intention that the Reclamation Fee O & M Trust Account be funded through the adjustable reclamation fee by implementing a premise that is not in Act 157, namely that the public coffers should always be tapped in preference to charging coal mine operators a reclamation fee. (3)

**Response:** One of the intentions of Act 157 is to provide a variety of funding sources for the Reclamation Fee O & M Trust Account. This is evident from section 19.2(b)(5), which allows for the “interest earned on the funds in the Land Reclamation Financial Guarantee Account” to be transferred into the Reclamation Fee O & M Trust Account. Similarly, section 19.2(b)(6) allows for the transfer of premiums paid for Land Reclamation Financial Guarantees to supplement the funding of the Reclamation Fee O & M Trust Account. The process for the adjustable reclamation fee is required under existing regulation and will be in place until the funding for the ABS Legacy actuarially sound. The existing regulations at § 86.187 (Use of money) state in subsection (a) (iii) that the “Department may deposit other moneys into the Reclamation Fee O&M Trust Account, including appropriations, donations, or, the fees collected for sum-certain financial guarantees needed to facilitate full-cost bonding in accordance with applicable law.” The Reclamation Fee O & M Trust account is intended to have a variety of funding streams, one of which is from the reclamation fee. The reclamation fee is unique, in that it serves as an enforceable regulatory mechanism that provides long-term revenue and is adjustable to account for variations in costs and availability of other revenue streams. Proposed section 86.17(e)(2) has been revised to remove any inference that Act 157 included a legislative goal to eliminate reliance on the reclamation fee as an important revenue source.

5. **Comment:** Relating to the language added at the request of the MRAB in section 86.17(e)(2), the added language could have the practical effect of eliminating the reclamation fee as a source of revenue. We ask the EQB to review the language added to the regulation, consider amendments and provide further explanation. (4)

**Response:** The regulations require that the adjustable reclamation fee be in place until the funding for ABS legacy is actuarially sound. Whether revenue is needed from the reclamation fee or not will be based on a number of factors, primarily whether money is available from the other sources of revenue contributing to the account. If the legislature appropriates all of the money authorized under section 19.2(b)(7) of Act 157 each year, that may have the practical effect of eliminating the reclamation fee, regardless of the language in section 86.17(e)(2). The language has been revised to remove the impression that the goal is to offset or eliminate the adjustable reclamation fee.

6. **Comment:** Relating to the language added at the request of the MRAB in section 86.17(e)(2), it states “...the need to offset an **increase** in the reclamation fee...” It is our understanding that within the several sources of funding available, the fee could be increased and possibly later decreased. Therefore, rather than using the word “increase” we suggest

phrasing the regulation as an “adjustment” or similar language suitable to the EQB’s intent.  
(4)

**Response:** The regulatory language has been revised, deleting the reference to the increase of the reclamation fee. Instead, a requirement to provide an estimate of the reclamation fee for the subsequent calendar year has been inserted. This provides for the information that the MRAB had requested and eliminates the impression that the reclamation fee can only be increased.

7. **Comment:** We recommend that section 86.162b(f)(3) be revised to include the statutory language. (4)

**Response:** This section has been revised to incorporate the statutory language.

8. **Comment:** Section 86.162b (k)(3) is not clear with respect to what a coal mine operator must demonstrate. (4)

**Response:** This section has been revised to include the description that the demonstration may be done through documentation that the operator has not be subject to any notices of violation under section 86.165 for failing to maintain a proper bond based on late payments.

9. **Comment:** Section 86.162b(m)(2) should be revised to specify that the payment schedule be in writing. (4)

**Response:** This suggested revision has been included in the revised rulemaking.