

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 938**

[PA-144-FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on a proposal to remove a required amendment.

SUMMARY: We are announcing the proposed removal of a required amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee will assure that the Surface Mining Conservation and Reclamation Fund (Fund) can be operated in a manner that will meet the alternative bonding system requirements contained in the Federal regulations. In addition, the amendment required Pennsylvania to clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim.

This document gives the times and locations that the Pennsylvania program is available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. July 28, 2003. If requested, we will hold a public hearing on the amendment on July 21, 2003.

We will accept requests to speak at a hearing until 4 p.m., e.s.t. on July 11, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger, Acting Director, Harrisburg Field Office at the address listed below.

You may review copies of the Pennsylvania program, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours,

Monday through Friday, excluding holidays.

George Rieger, Acting Director,
Harrisburg Field Office, Office of
Surface Mining Reclamation and
Enforcement, Harrisburg
Transportation Center, Third Floor,
Suite 3C, 4th and Market Streets,
Harrisburg, Pennsylvania 17101,
Telephone: (717) 782-4036, Internet:
grieger@osmre.gov.

Joseph Pizarchik, Director, Bureau of
Mining and Reclamation,
Pennsylvania Department of
Environmental Protection, Rachel
Carson State Office Building, P.O. Box
8461, Harrisburg, Pennsylvania
17105-8461, Telephone: (717) 787-
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FOR FURTHER INFORMATION CONTACT:

George Rieger, Telephone:
(717) 782-4036. Internet:
grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- I. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Action

In the May 31, 1991, **Federal Register** (56 FR 24687), we required Pennsylvania to amend its program as described above in the **SUMMARY** section. We required the amendment, which is codified at 30 CFR 938.16(h), as a result of our review of changes Pennsylvania

made to its program at 25 Pennsylvania Code (Pa. Code) 86.17. This section of Pennsylvania's regulations describes permit and reclamation fees. In 1991, Pennsylvania amended 25 Pa. Code 86.17 in four ways by: (1) Clarifying that a per acre reclamation fee is required in addition to the bond required under 25 Pa. Code sections 86.145, 86.149 and 86.150; (2) Exempting the underground mining operations from the requirement to pay the \$50 reclamation fee; (3) Adding a statement that the reclamation fee may be paid, as acreage within the mining permit is authorized for mining; and (4) Requiring that the reclamation fee deposited in the Surface Mining Conservation and Reclamation Fund shall only be used for reclaiming mining operations which have defaulted on their obligation to reclaim.

In the 1991 rulemaking, we indicated that the proposed revisions raised questions concerning the ability of Pennsylvania's alternative bonding system (ABS) to meet the requirements of 30 CFR 800.11(e) (56 FR at 24689). Specifically, the proposed revisions exempt underground mining operations from the requirement to submit the \$50 reclamation fee without also excluding the use of the funds generated from the fee to reclaim the surface effects of underground mines that default on their obligation to reclaim.

Also in the 1991 rulemaking, we mentioned a letter we wrote to Pennsylvania on January 15, 1991, (Administrative Record No. PA 799.00) in which we noted our concerns regarding the adequacy of Pennsylvania's ABS. Specifically, we noted that the ABS must be modified to provide the resources needed to reclaim existing permanent program forfeiture sites within a reasonable timeframe and to ensure that future forfeiture sites will be reclaimed in a timely manner. These resources must be sufficient to complete the reclamation plan approved in the permit.

Pennsylvania responded, by letter dated February 27, 1991 (Administrative Record No. PA 779.01), with information pertaining to its ABS. The response reported that analysis of the solvency of the ABS for 1989 and 1990 showed a deficit in the fund in both years. Pennsylvania also noted that all adjudicated and final forfeitures have been or are in the contracting process, and that it is taking action to eliminate the deficit.

Because of the concerns regarding the effect of the revision of 25 Pa. Code 86.17 to exempt underground mines from payment of the \$50 reclamation fee and the ability of the Fund to meet the requirements of 30 CFR 800.11(e), and

in consideration of the State's findings regarding the solvency of this Fund, we conditionally approved the amendment on May 31, 1991, with the requirements as noted in 30 CFR 938.16(h).

Subsequent to the May 31, 1991, decision discussed above, our continuing oversight activities determined that the Pennsylvania ABS contained unfunded reclamation liabilities for backfilling, grading, and revegetation. In addition, our oversight determined that the ABS was financially incapable of abating or treating pollutional discharges from bond forfeiture sites. Based upon oversight findings and consistent with 30 CFR 732.17, we notified Pennsylvania on October 1, 1991 (Administrative Record No. PA 802.00), that the Pennsylvania ABS * * * [was] "no longer in conformance with SMCRA (section 509) and Federal regulations." [30 CFR 800.11(e)] The notice concluded that the Pennsylvania Department of Environmental Protection (PADEP) must submit either proposed amendments or a description of amendments to be proposed to remedy the ABS deficiencies, together with a timetable for adoption and implementation consistent with the established administrative procedures in Pennsylvania. The notice also required that the PADEP submission must include provisions for an actuarial study of a scope sufficient to address the identified concerns.

Our required amendment at 30 CFR 938.16(h) required Pennsylvania to submit information, sufficient to demonstrate that the revenues generated by the collection of the reclamation fee, as amended in 25 Pa. Code Section 86.17(e), will assure that the Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e). We stated that Pennsylvania could provide such a demonstration through an actuarial study showing the Fund's soundness or financial solvency.

As a result, by letter dated June 5, 2003 (Administrative Record No. PA 802.27), PADEP provided a document to us entitled: *Pennsylvania Bonding System Program Enhancements*. PADEP asserts that the information in this document, developed jointly by OSM and PADEP, will satisfy our concerns as to whether the Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e). For that reason, the PADEP stated that the program enhancements it had implemented should be sufficient to satisfy the concerns we expressed in our October 1, 1991, Part 732 Notification letter. Specifically, PADEP has, within existing statutory and regulatory

authorities, implemented a number of bond system and program enhancements to cover both land reclamation and post-mining discharge treatment on existing active/inactive permits and forfeited sites. Pennsylvania's efforts include:

Revising the Conventional Bonding System—Pennsylvania has revised the conventional bonding system (CBS) for all active/inactive permits. Pennsylvania's revised CBS contains two components: A full cost/conventional bond for land reclamation and a water treatment bond based on revised bond rate guidelines.

Conversion to CBS—Pennsylvania has converted all active permits and is completing the conversion of the inactive permits that operated under the ABS to a full cost bond under the CBS.

Funding for ABS Forfeiture Land Reclamation—Pennsylvania has provided general revenue funding to address the land reclamation funding shortfall on primacy bond forfeiture sites.

ABS Primacy Forfeiture Discharge Abatement—Pennsylvania has developed a plan to address long-term pollutional discharges on ABS primacy bond forfeiture sites. The plan will use existing reclamation and funding mechanisms to abate discharges through a watershed approach.

Mandatory Bond Adjustment—Pennsylvania is proposing to replace the discretionary bond adjustment language in 25 Pa. Code Section 86.152(a) with the Federal mandatory bond adjustment language. This change, which we will consider in a future rulemaking, will ensure that bonds on sites under the CBS will contain sufficient funds to allow PADEP to complete the reclamation plan in the event of forfeiture.

Also, PADEP performed both an actuarial study and an internal review of the Pennsylvania bonding program. The actuarial study was completed in September 1993, and the internal review resulted in a report issued in February 2000 titled: *Assessment of Pennsylvania's Bonding Program for Primacy Coal Mining Permits*.

On June 12, 2003 (Administrative Record No. PA 802.29), we sent a letter to the Secretary of the PADEP, informing her that the State's bonding program enhancements are sufficient to satisfy the concerns contained in our October 1, 1991, Part 732 Notification Letter. That 1991 letter dealt with the same subject matter, *i.e.*, the solvency of the State's Surface Mining Conservation and Reclamation Fund, as does the first portion of the required amendment at 30 CFR 938.16(h). Since we are now

satisfied that the State's bonding program enhancements adequately address our concerns about the ability of the bonding program to ensure the completion of the reclamation plans for all operations on which the operators default on their obligations to reclaim, we are proposing the removal of the first portion of 30 CFR 938.16(h).

Finally, a second letter dated June 5, 2003, from PADEP (Administrative Record No. PA 802.28) contained a clarification concerning the procedures Pennsylvania uses for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim, also required by 30 CFR 938.16(h). At the time we issued the required amendment, we were concerned that the \$50 reclamation fee would be used to reclaim the surface effects of underground mine forfeitures. We are proposing herein to remove the remaining portion of the required amendment based upon this clarification.

In summary, our required amendment at 30 CFR 938.16(h) required Pennsylvania to submit information sufficient to demonstrate that the revenues generated by the collection of the reclamation fee, as amended in 25 Pa. Code 86.17(e), will assure that the Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e). We stated that Pennsylvania could provide such a demonstration through an actuarial study showing the Fund's soundness or financial solvency. In addition, Pennsylvania shall clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim.

Based upon the information contained in PADEP's letter of June 5, 2003, which was submitted to address OSM's October 1, 1991, notice under 30 CFR 732.17 and OSM's May 31, 1995, follow-up letter, and based upon PADEP's second letter dated June 5, 2003 (Administrative Record No. PA 802.28), we are proposing the removal of the required amendment at 30 CFR 938.16(h).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether OSM should consider the information submitted by Pennsylvania sufficient to satisfy the required amendment at 30 CFR 938.16(h). Because we decided on June 12, 2003, that PADEP's bonding

program enhancements satisfy the concerns expressed in our October 1, 1991, Part 732 Notification Letter, we are not seeking comments on the adequacy of those bonding program enhancements.

Written Comments

Send your written or electronic comments to OSM at the address given above.

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. PA-144-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782-4036.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on July 11, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We

will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments

submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This proposed rule applies only to the Pennsylvania program and therefore does not affect tribal programs.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement

because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which

is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 12, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03-16101 Filed 6-25-03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-03-026]

RIN 1625-AA09

Drawbridge Operation Regulations; Charles River, Dorchester Bay, and Saugus River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of three bridges, the Craigie Bridge, mile 1.0, across the Charles River, the William T. Morrissey Boulevard Bridge, mile 0.0, across Dorchester Bay, and the General Edwards SR1A Bridge, mile 1.7, across the Saugus River, all in Massachusetts. This proposed rule would require an eight-hour advance notice for openings during the time periods at night when these bridges have historically received few requests to open. This action is expected to meet the reasonable needs of navigation while relieving the bridge owner from the burden of crewing these bridges at periods when they seldom open for navigation.

DATES: Comments must reach the Coast Guard on or before August 25, 2003.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, 408 Atlantic Avenue, Boston, Massachusetts, 02110, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (617) 223-8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking.

Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, (617) 223-8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-03-026), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background

The owner of the bridges, the Metropolitan District Commission (MDC), requested a change to the operating regulations for three of their bridges, the Craigie Bridge, the William T. Morrissey Boulevard Bridge, and the General Edwards SR1A Bridge. The requested change to the drawbridge operation regulations would require an eight-hour advance notice during various time periods when these bridges have historically received few requests to open.

The Coast Guard reviewed the drawbridge opening logs submitted by the bridge owner, and determined that the bridges had few requests to open during the time periods the bridge owner has requested the eight-hour advance notice requirement. This