

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.

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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 799.01), 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