

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