

our basis for proposing to remove it. Therefore, the comment is outside the scope of this action.

PennFuture indicated that the program enhancements document suggests that PADEP will include long term treatment costs in calculating the water treatment component of conventional bonds, but the formula it provides (in Appendix 1) incongruously does not take into account the costs of replacing the treatment system.

First, the approach to calculating costs for conventional bonds is outside the scope of the 1991 rulemaking codified at 30 CFR 938.16(h) and our basis for proposing to remove it. In any case, we have found that PADEP's approach to calculating the annual treatment cost includes a component for recapitalization. Our technical staff has been working with PADEP on refining treatment cost calculations and confirms that the cost of reconstructing the discharge treatment system is included. Please note that PADEP plans to address this issue through a specific guidance document that will be open to public comment. We encourage you to contact PADEP and notify them of your interest to review and comment on new and revised technical guidance documents.

PennFuture commented that the method for calculating the bond for an underground mine can be "clarified" once and for all only if it is part of the OSM-approved, OSM-enforceable State regulatory program.

Underground bond calculation procedures are part of the approved program. Consistent with Federal regulatory programs, States may implement bonding calculations and bond rates through agency guidelines. Pennsylvania maintains bond rate guidelines through its Technical Guidance Document system. We have generally not required the submission of those guidance documents as program amendments nor would we expect to unless they seemed to conflict with the approved program. In any case, the method for calculating the bond amount for conventional bonds required to be posted for the surface effects of underground mines is beyond the scope of this rulemaking which, as previously explained, is limited to the ABS.

PennFuture commented that PADEP's June 5, 2003, submission does not satisfy the first requirement of 30 CFR 938.16(h) to demonstrate that Pennsylvania's bonding program guarantees timely and complete reclamation of all bond forfeiture sites. PADEP has not submitted such proof, and the unfolding situation with C&K Coal Company shows that it is unable to do so.

Please review our responses to a number of similar comments above. PADEP's June 5, 2003, submission does satisfy the requirements of 30 CFR 938.16(h). In addition, PADEP has provided a credible approach to addressing residual reclamation obligations covered by the ABS. These include the provision of \$5.5 million for land reclamation, the conversion of active mine permits to full cost bonding, and the development of a long-term treatment approach to pollutional discharges on active and forfeited mine sites. Forfeiture situations such as those presented by C&K Coal Company are unfortunate and are representative of the types of challenges that PADEP faces as it addresses those residual obligations. We have committed to a cooperative partnership with PADEP that will target the resources of both agencies towards the implementation of the bond program enhancements put forth by PADEP under the program enhancements document. We are confident that the shift from the ABS to conventional bonds (which brings the Pennsylvania program into conformance with Federal requirements) together with ongoing and planned enhancements to address the residual ABS obligations, constitutes the best approach to resolving residual obligations of the ABS such as the one referenced in the comment.

PennFuture commented that we should allow the required program amendment codified at 30 CFR 938.16(h) to remain in place, and should now institute the Part 733 proceedings we should have initiated in early 1992 based on PADEP's failure to satisfy the two requirements codified therein.

Please see our response above to similar comments. The required amendment at 30 CFR 938.16(h) has been satisfied and we have no basis for initiating proceedings under 30 CFR part 733.

The following comments from PennFuture are derived from its letter to us dated July 25, 2003, regarding our action in terminating the 1991 notice. As we noted above, we are identifying and responding to these comments only to the extent that they arguably apply to removal of the required amendment at 30 CFR 938.16(h) and have not already been addressed above.

PennFuture stated that OSM has flip-flopped from its previous insistence that all forfeiture discharges receive timely treatment.

We do not agree with this comment. We have consistently required, in Pennsylvania as well as other states, that any ABS must have sufficient assets to complete the reclamation plan of all

sites covered by the ABS. We have consistently judged efforts to correct identified deficiencies in an ABS by that same standard. However, this is the first time we have faced a situation in which a State has decided to replace ABS bond coverage for new and existing permits with conventional bonds rather than trying to fix a deficient ABS and continue reliance upon it. Again, when the bond coverage being provided to operations as part of an approved program under 30 CFR 800.11(e) is determined to be insufficient, it is appropriate to require replacement of that bond coverage with a conventional bond posted under 30 CFR 800.11(a) through (d). That is what OSM would do if we were to institute a Federal bonding program in Pennsylvania or any other State with an ABS. However, there is no obligation to make the bond coverage under subsection (e) solvent before doing so. That does not mean that the obligation to treat forfeiture discharges goes away. That obligation remains first with the permittee. Second, it resides with the bond coverage to the extent funds are available. However, Pennsylvania, or any other State, is only obligated to treat forfeiture discharges to the extent bond funds are available.

PennFuture stated that by using a watershed approach to address primacy forfeiture discharges, OSM is attempting to hide the failure of PADEP and OSM to ensure full implementation of the reclamation plan for every primacy forfeiture site.

We do not believe this comment is within the scope of this rulemaking. However, we will respond. We support PADEP's approach to address all mine drainage problems in the Commonwealth, including those from primacy forfeitures, on a watershed basis. Given the range of State and Federal government programs and citizen based mine drainage treatment efforts ongoing in Pennsylvania, PADEP must carefully consider each primacy forfeiture discharge in the context of all pollution in the watershed. Without such an approach, scarce programmatic and technical resources could be wasted. SMCRA and the 30 CFR part 800 bonding regulations do not prohibit the regulatory authority from implementing discharge abatement activities in the context of an entire watershed.

PennFuture stated that it will take years for the agencies to perform all the studies, calculate all the wasteload allocations, create the priority lists, evaluate the available funding and other mechanisms, and confront the hard decisions to formally abandon certain