

In support of its previous comment that OSM and PADEP cannot “write-off” outstanding obligations of an ABS, PennFuture referenced past OSM decisions in Missouri (56 FR at 21281), Kentucky (57 FR at 37090), and West Virginia (60 FR at 51918) (codifying quoted language at 30 CFR 948.16(l)).

We do not agree that The Workplan will “write-off” primacy forfeiture discharges. The Workplan provides for PADEP to develop and maintain a statewide strategy and to dedicate staff resources expeditiously to address primacy forfeiture discharges. The Workplan also provides for periodic reporting on the status of the discharge inventory, reclamation accomplishments, and to provide us with information on program issues encountered during the process. In addition, the Workplan makes information on the statewide strategy, site-specific abatement plans and abatement schedules available to the public. We have concluded that the development of a statewide strategy and site-specific plans with periodic reporting and public involvement provides a process that will address all primacy forfeiture discharges in a manner that will maximize the environmental benefits on a watershed basis. At the same time, we reiterate an earlier response that pointed out that converting from an ABS that is deficient to conventional bonds is quite distinct from efforts to maintain and correct deficiencies in an ABS, as was done by Missouri, Kentucky and West Virginia. Again, Pennsylvania is not obligated to make its ABS solvent before replacing the ABS with conventional bonds.

PennFuture commented that it disagreed with the discussion in the program enhancements document that dealt with bond program “liability” versus “programmatic accountability.” PennFuture stated that the document makes no effort to explain the distinction between the State not being “liable” for treatment costs on bond forfeiture sites and it having “programmatic accountability” to ensure there is sufficient funding available for that purpose.

While this comment is outside the scope of this rulemaking we will clarify the point. Again, the operator remains liable for all unfinished reclamation obligations, including water treatment at a forfeited site. The regulatory authority has an obligation to use forfeited and/or ABS funds to complete the reclamation plan to the extent funds are available. The regulatory authority also has programmatic accountability to assure that there are sufficient funds available. However, failure to fulfill its

programmatic responsibility to assure that sufficient funds are available in the event of forfeiture does not make the State liable for completing the reclamation plan.

Penn Future commented that the Workplan wrongly classifies Title V primacy bond forfeiture sites as a subset of “[t]he universe of abandoned mine lands,” and that PADEP has decided that discharges from primacy forfeiture sites are properly classified as nonpoint source discharges for TMDL purposes. Penn Future takes issue with the letter from the Environmental Protection Agency dated November 7, 2001, that discusses the use of TMDL’s when addressing discharges on abandoned mine sites.

While we believe this comment falls outside the scope of this rule making, we will address it. We disagree with the Penn Future’s characterization of the letter with regard to the Workplan. The Workplan does not address whether specific discharges are point or non-point sources. Primacy forfeiture discharges will be addressed by PADEP through a variety of financial and reclamation mechanisms consistent with Pennsylvania’s approved Environmental Protection Agency (EPA) water quality program. The Workplan includes a commitment by PADEP to make discharge abatement plans available to the public. At that time, the public will have an opportunity to comment on the treatment of discharges on a site-by-site basis.

Penn Future commented that the Workplan fails to mention any discharges addressed by remining or the “rec-in-lieu” program.

While we believe this comment falls outside the scope of this rule making, we will address it. The value of remining efforts in Pennsylvania is well known and OSM and PADEP chose to not devote the considerable space needed to establish the value of the activity. Persons interested in the accomplishments of the remining program in Pennsylvania can visit the EPA website and obtain a copy of the document “Coal Remining—Best Management Practices Guidance Manual” (EPA 821-B-01-010). Under Section 6 of that document, there is a considerable amount of information on the water quality accomplishments of remining in Pennsylvania. Both reclamation mechanisms, and particularly remining, present opportunities for PADEP to address primacy forfeiture discharges.

PennFuture commented that PADEP is unable to pledge future use or availability of certain resources as part of the discharge abatement Workplan.

PennFuture specifically questioned the availability of Growing Greener grants and the 10% Set-Aside under the SMCRA Abandoned Mine Land Program.

While we believe this comment falls outside the scope of this rulemaking, we will address it. We do not agree with the comment. The Workplan provides for PADEP to develop and maintain a statewide strategy using a number of financial and reclamation resources. Growing Greener Grants and the 10% Set-Aside represent potentially significant resources and have been used to achieve meaningful reclamation in the treatment of post-mining pollutional discharges. While the extent of their contribution will have to be determined on an annual basis, past accomplishments demonstrate their value to the overall Workplan approach to pollution abatement.

PennFuture commented that treatment bonds and trust funds will not prevent future primacy forfeitures. PennFuture stated that although the posting of full-cost water treatment bonds or, as an alternative to those bonds, establishment of treatment trusts may curb the rate of growth of the ABS funding shortfall, they will not prevent that shortfall from expanding or the list of untreated primacy forfeiture discharges from lengthening.

While we believe this comment is outside the scope of this rulemaking, we agree that bonds and trusts funds specifically covering the treatment of pollutional may not be a final solution for every discharge. However, we believe these efforts will significantly reduce the potential shortfall of the ABS. PADEP has invested a great deal of effort in developing a remedy to the inadequacies of the classic bonding approach to long-term discharges. In the short-term, it has used its enforcement and compliance process to initiate a number of treatment trusts on active mine sites. It has invested staff resources to the development of a workable trust approach. For the long-term, PADEP has committed to a process whereby operators will have to put up a separate bond that will provide for long-term treatment in the event of a forfeiture. If operators refuse or are unable to come up with the bond, PADEP will use its enforcement and compliance process to force the operator to commit to building a financial assurance (trust) over a specified period of time. This is an approach PennFuture supported in a request for comments on OSM’s Advance Notice of Proposed Rulemaking published in the **Federal Register** on May 17, 2002 regarding AMD bonding issues (67 FR 35070). We