

person who conducts surface coal mining operations which include auger mining.

§ 937.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 937.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 937.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 937.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 937.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each inspection report regarding inspections conducted pursuant to this subpart to the Oregon Department of Geology and Mineral Industries.

§ 937.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each enforcement action document and order to show cause issued pursuant to this subpart to the Oregon Department of Geology and Mineral Industries.

§ 937.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface mining and reclamation operations.

§ 937.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 937.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 938—PENNSYLVANIA

Sec.

938.1 Scope.

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AUTHORITY: 30 U.S.C. 1201 *et seq.*

§ 938.1

§ 938.1 Scope.

This part contains all rules applicable only within Pennsylvania that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 33079, July 30, 1982]

§ 938.10 State regulatory program approval.

The Pennsylvania state program as submitted on February 29, 1980, as amended on June 9, 1980, as resubmitted on January 25, 1982, and amended on April 9, 1982, and May 5, 1982, is conditionally approved, effective on July 31, 1982. Beginning on that date, the Department of Environmental Resources shall be deemed the regulatory authority in Pennsylvania for all surface coal mining and reclamation operations and for all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Pennsylvania permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Environmental Resources agreeing to the conditions in 30 CFR 938.11 are available at the following locations:

(a) Pennsylvania Department of Environmental Resources, Market Street State Office Building, 400 Market Street, P.O. Box 2063, Harrisburg, Pennsylvania 17101-2063; Telephone: (717) 787-4686.

(b) Office of Surface Mining Reclamation and Enforcement, Third Floor, suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

[59 FR 17930, Apr. 15, 1994]

§ 938.11 Conditions of State regulatory program approval.

The approval of the Pennsylvania state program is subject to the Commonwealth revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statutes, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the Commonwealth, the compo-

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nent of the program to which the Secretary recommends the change be made.

(a)-(i) [Reserved]

[47 FR 33079, July 30, 1982, as amended at 48 FR 13417, Mar. 31, 1983; 48 FR 45391, Oct. 5, 1983; 49 FR 20492, May 15, 1984; 49 FR 27319, July 3, 1984; 51 FR 18321, May 19, 1986; 66 FR 57665, Nov. 16, 2001]

§ 938.12 State statutory, regulatory, and proposed program amendment provisions not approved.

(a) We are not approving the following provisions or portions of provisions of the proposed program amendment that Pennsylvania submitted on July 29, 1998:

(1) Section 5.1(b) (52 P.S. 1406.5a(b)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(1).

(2)-(4) [Reserved]

(5) Section 5.2(g) (52 P.S. 1406.5b(g)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(2).

(6) Section 5.2(h) (52 P.S. 1406.5b(h)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(3).

(7)-(10) [Reserved]

(11) Section 5.4(a)(3) (52 P.S. 1406.5d(a)(3)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(4).

(12) Section 5.4(c) (52 P.S. 1406.5d(c)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(5).

(13) Section 5.5(b) (52 P.S. 1406.5e(b)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(6).

(b) We are not approving the following portions of provisions of the proposed program amendment that Pennsylvania submitted on November 22, 1999:

(1) Sections 25 Pa. Code 86.124(f) and 25 Pa. Code 86.125(j) are not approved to the extent that these sections would allow Pennsylvania more time to complete a final written decision on a lands unsuitable for surface mining activities petition than is allowed by the provisions of the Federal regulations at 30 CFR 764.19(b).

(c) We are not approving the following portions of provisions of the proposed program amendment that Pennsylvania submitted on December 18, 1998:

(1) 4.2(f)(4) of PASMCR. We are not approving Subsection (4) to the extent that it would allow Phase 3 bond release.

(2) 4.12(b) of PASMCR. We are not approving Subsection (b) to the extent that it creates an alternative bonding system.

(3) 25 Pa. Code 86.281(e). The last sentence which states, "If the actual cost of reclamation by the Department exceeds the amount reserved, additional funds from the Remining Financial Assurance Fund will be used to complete reclamation" is not approved.

(4) 25 Pa. Code 87.1 and 88.1, Definition of "de minimis cost increase." The definition is not approved as it applies to coal mining activities.

(5) 25 Pa. Code 87.119 and 88.107. With regard to coal mining activities, we are not approving Subsection (a) to the extent that it would allow the replaced water supply to be of a lesser quantity and quality than the premining water supply or does not provide for temporary replacement of water supplies. We are not approving Subsection (a)(1)(v) to the extent it would pass on operating and maintenance costs of a replacement water supply in excess of the operating and maintenance costs of the premining water supply to the landowner or water supply user. We are not approving Section (a)(2) to the extent that an operator is not required to provide for all increased operating and maintenance costs of a restored or replaced water supply. Finally, we are not approving Subsection (a)(3) to the extent it would allow a waiver from the requirements for replacing a water supply outside the requirements of 30 CFR 701.5 regarding the definition of the term, "replacement of water supply."

(6) 25 Pa. Code 87.119(g) and 88.107(g). These sections are not approved.

(7) 25 Pa. Code 87.119(i) and 88.107(i). We are not approving Subsection (i) to the extent that it would allow Phase 3 bond release.

[66 FR 67063, Dec. 27, 2001, as amended at 68 FR 40154, July 7, 2003; 69 FR 71551, 71559, Dec. 9, 2004; 70 FR 25491, May 13, 2005]

§ 938.13 State statutory and regulatory provisions set aside.

(a) The following provisions of Pennsylvania's Bituminous Mine Subsid-

ence and Land Conservation Act (BMSLCA) are inconsistent with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and are superseded to the extent noted effective December 9, 2004.

(1) Section 5.1(b) (52 P.S. 1406.5a(b)) of BMSLCA is superseded to the extent that it would limit an operator's liability to restore or replace a water supply covered under section 720 of SMCRA.

(2) Section 5.2(g) (52 P.S. 1406.5b(g)) of BMSLCA is superseded to the extent that it would limit an operator's liability to restore or replace a water supply covered under section 720 of SMCRA.

(3) Section 5.2(h) (52 P.S. 1406.5b(h)) of BMSLCA is superseded to the extent it would preclude Pennsylvania from requiring the restoration or replacement of a water supply covered under section 720 of SMCRA.

(4) The portion of section 5.4(a)(3) (52 P.S. 1406.5d(a)(3)) of BMSLCA that states, "in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application," is superseded to the extent it would limit an operator's liability for restoration of, or compensation for, subsidence damages to structures protected under section 720 of SMCRA that were in existence at the time of mining.

(5) Section 5.4(c) (52 P.S. 1406.5d(c)) of BMSLCA is superseded to the extent it limits an operator's liability for repair of, or compensation for, subsidence damage to a structure covered under section 720 of SMCRA.

(6) The portion of Section 5.5(b) (52 P.S. 1406.5e(b)) of BMSLCA that states, "All claims under this subsection shall be filed within two years of the date damage to the building occurred" is superseded to the extent that it would limit an operator's liability for restoration of, or compensation for, subsidence damages to a structure covered under section 720 of SMCRA.

(b) [Reserved]

[69 FR 71559, Dec. 9, 2004]

§ 938.15 Approval of Pennsylvania regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these

amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
April 26, 1983, May 12, 1983.	October 5, 1983	Bureau of Water Quality Management Underground Mine/Coal preparation Plant Permit Application Instructions; Bituminous Underground Mining Operation Permit/Manual; Coal Refuse Disposal Permit Application; Anthracite Coal Refuse Disposal Permit Application; Anthracite Bank Removal and Reclamation Permit Application; Anthracite Surface Mine Permit Application; Anthracite Underground Mining Operation Permit Application/Manual; Memorandum of Understanding between the Pennsylvania Department of Environmental Resources and the Pennsylvania Museum and Historical Commission.
August 1, 1983	January 4, 1984	25 PA Code 89.143(2)(iii)(A) through (D), (4), .144(b)(3), .145(a)(4), (b), (d), .146(e), .147(a).
January 17, 1984	March 20, 1984	Pennsylvania policy statement: Citizen Complaint Procedures, Department of Environmental Resources Inspection and Enforcement Policy for Mining Operations, Civil Penalty Program.
October 31, 1983	May 15, 1984, July 3, 1984.	25 PA Code 86.5, .38(b), .112(b), .134(c), .211; 87.1, .112(c)(1), (2), (d), (e), .144, .138, .175; 89.86(a)(1), .161, .162, .163; 90.1, .112(c), (d), (e); addendum to the DER Inspection and Enforcement Policy for Mining Operations.
March 30, 1984	November 27, 1984	25 PA Code chapter 88, subchapters A through D, F.
March 2, 1984	April 4, 1985	Blaster training, examination and certification program, as contained in 25 PA Code chapter 210, subchapter A.
April 19, 1985	August 15, 1985	Blaster certification program.
April 18, 1985	November 4, 1985	25 PA Code chapter 89, subchapter F on subsidence control regulations.
September 5, 1985	February 19, 1986	Act 158 of 1984; 25 PA Code chapter 87, subchapter F; chapter 88, subchapter G; letters from the Pennsylvania Deputy General Counsel and the First Deputy Attorney General to Rebecca W. Hanmer, Director, Office of Water Enforcement Permits, U.S. EPA, dated July 8, 1985, and August 19, 1985, respectively.
November 2, 1984	May 19, 1986	25 PA Code 86.37(a)(13), .171(e)(12), .172(d)(2)(iii); 88.1—definitions for "cropland," "historically used for cropland," "prime farmland," and "soil survey", .24(b)(4), .30(a), (1), .31(a)(7), .32, .61, .129, .134(a), (e), .135(c)(1), (f)(2), (h), .136(a), (c), .137(18), (19), .217, .330, .381(b)(2), (c)(6), (8), (9), .491(i)(1), (13), (22), (23), (j), (k), .492(m), .493(8).
September 30, 1985	September 8, 1986	Civil Penalty Program: §§I, II.2, II.4, II.8; Inspection and Enforcement Policy: §§II.B.2.a.(4), (5), E, J.
April 18, 1985	June 18, 1987	25 PA Code 89.143(b).
January 22, 1987	July 14, 1987	§ 4.2(F)(II): right-of-entry requirements.
April 14, 1987	October 27, 1988	§§ II.J of the Inspection and Enforcement Policy, II.2 of the Civil Penalty Program, both concern alternative enforcement actions for failure to abate violations.
December 5, 1988	July 14, 1989	25 PA Code 86.1, .12; 88.1, .381; 89.5.
August 17, 1988	August 18, 1989	Civil Penalty Program, § II (Assessment), paragraph 4; Program Guidance Manual, § 1:3:6 (Civil Penalty Assessments) Part 1—Coal, paragraph 4.
August 21, 1986	November 3, 1989	PA Policy Statement entitled Reclamation in Lieu of Cash Payment for Civil Penalties found in Department of Environmental Resources Program Guidance Manual at § 1:3:9.
December 22, 1989	May 31, 1991	25 PA Code 86.17(e), .83(a)(2), .112(b)(1), .158(b)(1), (2), (3), .174(d)(1), .175(1), (2), (3), .182(d); 87.73, .112(b)(1), (f), .125(a), .127(e)(2), (h), .131(n), .135(a), .138; 88.24(b)(4), .492(c)(4); 89.34(a)(1), (2)(ii), .59(a)(1), (2), (3), .74(d), .82, .101(a), (d), .172(b); 90.112(b)(1), (d), (f), .150.
September 24, 1986	October 24, 1991	25 PA Code 86.182, .186 through .190; PA SMCRA §§ 3.1, 4(a), (b), 18(c)(i), 18.8.
May 27, 1992	October 28, 1992	25 PA Code 86.83, .94.
June 2, 1992	November 16, 1992	25 PA Code 86.1; 88.1, .381; 89.5.
December 18, 1991	December 30, 1992, January 14, 1993, April 8, 1993.	25 PA Code 86.1, .36(c), .37(a), (c), .41, .43, .44, .52(c)(4), .53, .55(d), .62, .63, .101, .102, .129, .132, .133, .134(3)(iii)(C), (12), .136, .151(a), (d), (h), .163, .165, .193(3), (f), .194, .195, .202, .212; 87.1, .11, .14, .21, .42(2), .54(a)(9), (22), .77, .112(c), .151(d), .155, .160, .166; 88.1, .22(2), .31(a)(9), (22), .56, .115, .116, .381(c)(9), .491(a)(1)(ii), (i)(7), .492(f); 89.5, .26, .38(a), (b), (c), .86, .90, .111(c); 90.1, .11(a)(3), .21(a)(9), (24), .40, .112(c), .134, .140, .155(d), .159.
February 18, 1993	July 6, 1993	25 PA Code 86.17.
March 9, 1993	December 6, 1993	PA SMCRA § 4(d) concerning financial instruments for performance bonds.
May 11, 1993	July 20, 1994	25 PA Code 86.142, .159, .166.
October 24, 1994	April 3, 1995	25 PA Code 86.81 through .89, .91 through .95.

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Original amendment submission date	Date of final publication	Citation/description
December 19, 1996 ..	May 30, 1997	25 PA Code, Chapter 86, Subchapter D: 86.101; 86.102; 86.103; 86.121; 86.122; 86.123; 86.124; 86.125; 86.126; 86.127; 86.128; 86.129; 86.130.
January 23, 1995	November 7, 1997 ..	Chapters 86 through 90.
September 13, 1995	April 22, 1998	Pennsylvania law Act 1994–114 concerning the special authorization for refuse disposal in areas previously affected by mining which contain pollutional discharges: Title and 1; 3; 3.2(b); 4.1; 6.1(h)(5), (i); 6.2; 6.3; 15.1.
October 8, 1998	March 26, 1999 and June 8, 1999.	52 P.S. 1396.3, 1396.4h.
August 17, 1998	February 2, 2000	Letter from Pennsylvania to OSM dated August 17, 1998 (PA–837.80), except a decision on the required amendment at 30 CFR 938.16(www) is deferred.
November 2, 1999	November 3, 2000 ..	25 Pa. Code 86.1, 86.124, 86.152, 86.156, 86.160, 86.171, 86.182, 86.193, 86.194, 86.195, 86.201, and 86.202.
November 8, 1999	March 23, 2000	25 PA Code §§ 86.80, 86.81, 86.82, 86.83, 86.84, 86.85, 86.86 (deleted), 86.87, 86.91 (deleted), 86.92, 86.94, 86.95 (deleted). Note: The incorporation of the reference to § 89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is approved to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The incorporation of this reference into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1).
		25 PA Code 86.81(a)(2)(iii) is approved to the extent that the SOAP funds are not used to fund the activities required under 25 PA Code §§ 87.41 and 87.42(1) or §§ 88.21 and 88.22(1).
		The reference of §§ 87.77, 88.56 and 89.38 (regarding archaeological and historic information) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is approved to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The incorporation of these references (regarding public parks) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).
November 30, 1999 ..	June 26, 2000	25 Pa. Code 86.2, 86.37, 86.40, 86.64, 86.70, 86.132–86.134, 86.174, 87.1, 87.77, 87.93, 87.97, 87.101, 87.106, 87.126, 87.127, 87.138, 87.144, 87.146, 87.159, 87.160, 87.166, 87.173, 87.174, 87.176, 87.209, 88.1, 88.56, 88.83, 88.91, 88.96, 88.118, 88.133, 88.138, 88.144, 88.191, 88.221, 88.231, 88.237, 88.283, 88.291, 88.296, 88.334, 88.335, 88.341, 88.492, 88.509, 89.38, 89.65, 89.67, 89.82, 89.87, 89.88, 89.90, 90.1, 90.40, 90.93, 90.97, 90.101, 90.106, 90.134, 90.140, 90.147, 90.150, 90.166.
January 3, 2001	August 15, 2001	25 Pa. Code 86.174.
January 3, 2001	November 16, 2001	Addition of Chapter 77, Section 7708 to 2001 Title 27 of the Pennsylvania Consolidated Statutes; repeal of the fifth sentence of section 4(b) and section 4.2(f)(5) of the Surface Mining Conservation and Reclamation Act of May 31, 1945 (P.L. 1198, No. 418); repeal of the last sentence of section 5(g) of the Bituminous Mine Subsidence and Land Conservation Act of April 27, 1966 (1st Sp. Sess., P.L. 31, No. 1); repeal of the last sentence of section 5(i) of the Coal Refuse Disposal Control Act of September 24, 1968 (P.L. 1040, No. 318).

Original amendment submission date	Date of final publication	Citation/description
July 29, 1998	December 27, 2001	<p>Bituminous Mine Subsidence and Land Conservation Act: Repeal of Section 4 (52 P.S. 1406.4); 5(b)(partial approval); 5.1(a)(1) (52 P.S. 1406.5a(a)(1) (conditional approval); 5.1(a)(2) and (3) (52 P.S. 1406.5a(a)(2) and (3)); 5.2(a)(1), (2), and (3) (52 P.S. 1406.5b(a)(1), (2), and (3)); 5.2(b)(1) (52 P.S. 1406.5b(b)(1)); 5.2(c) (52 P.S. 1406.5b(c)); 5.2(e)(1) and (3) (52 P.S. 1406.5b(e)(1) and (3)); 5.2(f) (52 P.S. 1406.5b(f)); 5.2(j) (52 P.S. 1406.5b(j)); 5.2(k) (52 P.S. 1406.5b(k)); 5.4(a) (52 P.S. 1406.5d(a))(partial approval); 5.4(a)(1), (2) and (4) (52 P.S. 1406.5d(a)(1), (2) and (4)); 5.4(b) (52 P.S. 1406.5d(b)); 5.5(a) (52 P.S. 1406.5e(a))(partial approval); 5.5(d), (e), and (g) (52 P.S. 1406.5e(d), (e) and (g)); 5.6(a) and (b) (52 P.S. 1406.5f(a) and (b)); 6 (52 P.S. 1406.6)(partial approval); 9.1(a), (b), (c), and (d) (52 P.S. 1406.9a(a), (b), (c), and (d)); Repeal of Section 15 (52 P.S. 1406.15); 17.1 (52 P.S. 1406.17a); 18.1 (52 P.S. 1406.18a)</p> <p>25 Pa. Code Section: 89.5, the definitions of the following terms: "dwelling," "ir-reparable damage," "material damage," "noncommercial building," "public buildings and facilities," "public water supply system," "rebuttable presumption area," "underground mining," "underground mining operations," and "water supply;" 89.33; 89.34; 89.35; 89.36; 89.141(a); 89.141(d)(2), (4), (5), (7), (8), (10) and (11); 89.141(d), (d)(3), (6), and (9)(partial approval); deletion of 89.142; 89.142a(a) (partial approval) 89.142a(a)(1), (2), (3) and (4); 89.142a(b); 89.142a(c)(1) and (2)(i) " (v); 89.142a(c)(3) (partial approval); 89.142a(d) (partial approval); 89.142a(e); 89.142a(f)(1) (partial approval); 89.142a(f)(1)(i), (ii), (iv), and (v); 89.142a(f)(2)(i) (partial approval); 89.142a(g)(1) (partial approval); 89.142a(g)(2), and (3); 89.142a(h) (1) and (2) (partial approval); 89.142a(i)(1) (partial approval); 89.142a(i)(2), (j), (k), and (l); deletion of 89.143; 89.143a(a) (partial approval); 89.143a(b); 89.143a(d)(1) and (2) (partial approval);deletion of 89.144; 89.144a(a)(2), and (3); deletion of 89.145; 89.145a(a)(1)(i)-(vi); 89.145a(a)(2) and (3); 89.145a(b)(partial approval); 89.145a(c); 89.145a(d); 89.145a(e)(1) and (2) (partial approval); 89.145a(f)(1)(i)-(iv); 89.145a(f)(2); 89.145a(f)(3)(i) and (ii)(partial approval); 89.145a(f)(3)(iii); 89.145a(f)(4); 89.146a(a) and (b); 89.146a(c) (partial approval); 89.152(a)(1) and (3); 89.152(b); 89.153 (a), (b), and (c); 89.154(a) through (d); 89.155(a), 89.155(b)(1) and (2) (partial approval); 89.155(b)(3) and (4); 89.155(c) (partial approval).</p>
February 25, 2002	November 6, 2002 ..	25 Pa. Code 86.37, 87.160, 88.138, 88.231, 88.335, 90.134, 87.160.
November 22, 1999 ..	July 7, 2003	25 Pa. Code 86.1 definition of "valid existing rights;" 86.101 definitions of "fragile lands," "historic lands," "public building," "public park," "renewable resource lands," "significant recreational value, timber, economic or other values incompatible with surface mining operations," and "surface mining operations;" 86.102(1), (3) through (5), and (7) through (12); 86.103(c), (d), and (e); 86.121, 86.123(c) and (c)(5); 86.124(a), (c), (d) and (f); 86.125; 86.126; 86.127; 86.128; 86.129; and 86.130(b).
February 25, 2002	August 15, 2003	25 Pa. Code 210.11; 210.13–210.19; 211.101–211.103; 211.111–211.115; 211.121–211.125; 211.131–211.133; 211.141; 211.151–211.162; 211.171–211.173; 211.181–211.182
December 20, 2001 ..	October 2, 2003	25 Pa. Code 88.281, 88.310, 88.332, 89.59, 90.1, 90.5, 90.12, 90.13, 90.34, 90.45, 90.49, 90.50, 90.101, 90.116a, 90.122, 90.167, 90.201–207, 90.301–309, and 90.401.
August 27, 2003	December 9, 2004 ..	25 Pa. Code 86.1 modification of definition of underground mining activities, 86.151(b)(2), 86.152(a), 89.5. Addition of definitions of EPAAct structures and EPAAct water supplies; removal of definition of permanently affixed appurtenant structures; modification of definitions of underground mining activities and underground mining operations, 89.141(d), 89.142a(a), (c) through (i), 89.143a(a), (c) and (d), 89.144a(a) and (b), 89.145a(a), (b), (e) and (f), 89.146a(c)(2), and 89.152(a) and (b). In BMSLCA, Sections 5.2(b)(2), 5.2(d), 5.2(e)(2), 5.2(i), 5.3(a), 5.3(b), 5.3(c), 5.5(c), 5.5(f), 5.6(c), and 5.6(d).
December 18, 1998 ..	May 13, 2005	In PASMCRRA, Section 3 Definition of "Total Project Costs;" Sections 3.1; 4(a), (d), (d.2), (g), and (h); 4.2(f) (partial approval); 4.2(f); 4.6(i) and (j); 4.7; 4.10; 4.11; 4.12 (partial approval); 4.13; 18(a), (a.1), (a.2), and (a.3); 18(f), (g)(4) and (5); 18.7; 18.9; 18.10. 25 Pa. Code 86.142 Definitions of "Annuity," "Trustee," and "Trust Fund;" 25 Pa. Code 86.151(b), (c), and (j); 86.152(a) and (b); 86.156(b); 86.157(3), (4), (5), (6), (7), and (8); 86.158(c)(6), (e), (f), and (g); 86.161(3); 86.168; 86.171(a), (b)(6) and (7), (f)(4), (g), and (h); 86.174(a) and (d); 86.175(a) and (b)(3); 86.182(a)(3) and (4), (d), (e), (f), (g); 86.195(b), 86.251–253; 86.261–86.270; 86.281(a)–(d); 86.281(e) (partial approval); 86.282–284; 86.291–295; 86.351–359. 25 Pa. Code 87.1 Definitions of "Water Supply," "Water Supply Survey;" deletion of 87.11–21; 87.119 (partial approval); 87.147(b). 25 Pa. Code 88.1 Definitions of "Water Supply," "Water Supply Survey;" 88.107 (partial approval); 88.121(b); 88.209(b).

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[62 FR 9953, Mar. 5, 1997, as amended at 62 FR 29296, May 30, 1997; 62 FR 60177, Nov. 7, 1997; 63 FR 19820, Apr. 22, 1998; 64 FR 30388, June 8, 1999; 65 FR 4886, Feb. 2, 2000; 65 FR 15558, Mar. 23, 2000; 65 FR 39299, June 26, 2000; 65 FR 66174, Nov. 3, 2000; 66 FR 42752, Aug. 15, 2001; 66 FR 57665, Nov. 16, 2001; 66 FR 67064, Dec. 27, 2001; 67 FR 67531, Nov. 6, 2002; 68 FR 40154, July 7, 2003; 68 FR 48798, Aug. 15, 2003; 68 FR 56776, Oct. 2, 2003; 69 FR 71551, Dec. 9, 2004; 70 FR 25491, May 13, 2005]

§ 938.16 Required regulatory program amendments.

Pursuant to 30 CFR 732.17, Pennsylvania is required to submit the following proposed program amendments by the dates specified.

(a)–(e) [Reserved]

(f) By August 24, 1987, Pennsylvania shall amend its regulations at 88.129(f)(1) and (2) and the corresponding provisions under Chapter 88, Subchapters C, D, and F (88.217, 88.330 and 88.491) or otherwise amend its program to be consistent with section 510(d) of SMCRA by requiring that the restoration of prime farmland soil productivity shall be determined on the basis of measurement of crop yields.

(g)–(l) [Reserved]

(m) By November 1, 1991, Pennsylvania shall amend its rules at § 86.158(b)(1) or otherwise amend its program to be no less effective than 30 CFR 800.21(a)(2) by requiring that the value of all government securities pledged as collateral bond shall be determined using the current market value.

(n) By November 1, 1991, Pennsylvania shall amend § 86.158(b)(2) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(1) by requiring that the provisions related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture.

(o) By November 1, 1991, Pennsylvania shall amend § 86.158(b)(3) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(2) to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that the collateral bond is sufficient to satisfy the bond amount requirements.

(p) and (q) [Reserved]

(r) By November 1, 1991, Pennsylvania shall amend § 86.193(h) or otherwise amend its program to be no less effective than 30 CFR 846.12(a) by clarifying that an individual civil penalty is not a substitute for mandatory civil penalties and to clarify when the assessment of an individual civil penalty may be appropriate.

(s)–(v) [Reserved]

(w) By November 1, 1991, Pennsylvania shall amend §§ 87.125(a), or otherwise amend its program to be no less stringent than section 515(b)(15)(E) of SMCRA to provide the opportunity to request a preblasting survey to every resident or owner of a man-made structure or dwelling within one-half mile of any part of the permit area.

(x)–(ll) Reserved

(mm) By April 22, 1992, Pennsylvania shall amend 25 Pa. Code 86.187(b)(1) or otherwise amend its program by requiring that alternative reclamation plans comply with all applicable performance standards in accordance with 86.189(c)(2), (c)(3) or (c)(4), whichever is appropriate.

(nn) By April 22, 1992, Pennsylvania shall amend 25 Pa. Code 86.187(c) and section 18(c) of the Pennsylvania Surface Mining and Conservation Act or otherwise amend its program to be no less effective than 30 CFR 816.133(a) and 817.133(a) by requiring that alternative postmining land use determinations for sites with forfeited bonds under the Federal interim program or under Pennsylvania's permanent program be made to ensure that all disturbed areas are restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses.

(oo) By April 22, 1992, Pennsylvania shall delete 25 Pa. Code 86.189(c)(5) or otherwise amend its program to be no less effective than 30 CFR 816.133(a) and 817.133(a) by requiring that sites bonded during the Federal interim program or under Pennsylvania's permanent

program be restored to conditions that are capable of supporting the uses they were capable of supporting before any mining or higher or better uses.

(pp) By April 22, 1992, Pennsylvania shall delete 25 Pa. Code 86.190(a)(3).

(qq) By April 22, 1992, Pennsylvania shall delete the words "but are not limited to" from the introductory paragraph of 86.190(a).

(rr) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.36(c) to require permit denial for unabated violations of any Federal or State program under SMCRA, without the three-year limitation.

(ss) [Reserved]

(tt) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a)(10) to require that all violations of the Federal SMCRA and all programs approved under SMCRA be considered in determining whether there is a demonstrated pattern of willful violations.

(uu) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a) to require that the criteria upon which the regulatory authority bases its decision to approve or deny a permit application are based on all information available to the regulatory authority.

(vv) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a) to include language that would prohibit permit approval if the applicant or anyone linked to the applicant through the definition of "owned or controlled" or "owns or controls" has forfeited a bond and the violation upon which the forfeiture was based remains unabated.

(ww) By May 1, 1993, Pennsylvania shall submit a proposed amendment to sections 86.37(a)(9) and (a)(16) to require denial of a permit if it finds that those linked to the applicant through the definition of "owned or controlled" or "owns or controls" are delinquent in payment of abandoned mine reclamation fees or delinquent in the payment of State and Federal final civil penalty assessments.

(xx) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(c), to require that the regulatory authority's reconsideration of its decision to approve the permit in-

clude a review of information, updated for the period from permit approval to permit issuance, pertaining to the payment of abandoned mine reclamation fees and civil penalty fees and the status of unabated violations upon which a bond forfeiture was based.

(yy) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.43, to require the regulatory authority to review the circumstances under which a permit was issued whenever it has reason to believe that the permit may have been improvidently issued.

(zz) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.62(b)(2)(ii) to correct the cross-reference to 86.63 with a reference to section 86.212(c).

(aaa) By May 1, 1993, Pennsylvania shall submit a proposed amendment to sections 86.62(c) and 87.14(3) to include the requirement that the application include the address for each permit held by a related entity or company, and identification of the regulatory authority for each such permit.

(bbb) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.63(a)(3) to require that all applications for surface mining permits include the specific information required by section 86.63(a)(3)(i)-(viii) for all cessation orders received, by the applicant and anyone linked to the applicant through ownership and control, prior to the date of the application.

(ccc) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §86.133(f) to require that exploration on areas designated as unsuitable for mining shall be subject to permitting requirements no less effective than the Federal regulations at 30 CFR 772.12.

(ddd) [Reserved]

(eee) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §86.195 (a) and (b) to specify that individual civil penalties may be assessed against corporate directors or agents of the corporate permittee and to include provisions for the assessment of an individual civil penalty for a failure or refusal to comply with any orders issued by the Secretary.

(fff) [Reserved]

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(ggg) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §86.151(d) to define the point at which seeding, fertilization, irrigation, or rill and gully repairs cease to be augmentative and may be considered nonaugmentative normal husbandry practices. Moreover, Pennsylvania shall submit a proposed amendment to require such practices be evaluated and approved in accordance with the state program amendment process and 30 CFR 732.17.

(hhh) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §§87.155(b)(5), 89.86(e)(2)(iii)(B) and 90.159(b)(3) to require that at least 80 percent of the trees and shrubs to be used in determining the success of stocking and adequacy of planting, at the time of bond release, have been in place for 60 percent of the applicable minimum period of responsibility.

(iii) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §§87.112(c) and 89.111(c) to require a seismic safety factor of at least 1.2 for all impoundments that meet the criteria of 30 CFR 77.216(a) or are located where failure could cause loss of life or serious property damage.

(jjj) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §90.112(c)(2) to require that all impounding structures that meet the criteria of 30 CFR 77.216(a) and are either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway capacity and/or storage capacity to safely pass or control the runoff from the 6-hour PMP or greater precipitation event.

(kkk) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §88.1 to require the definition of affected area to include all roads which receive substantial use and are substantially impacted by the mining activity.

(lll) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §88.1 to require that the definition of access road include all roads that are improved or maintained for minimal and infrequent use and that the area of the road is comprised of the entire area within the right-of-way, including roadbeds, shoulders, parking and side

areas, approaches, structures, and ditches.

(mmm) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §88.1 to require that the definition of haul road include all roads (including public roads) that are used as an integral part of the coal mining activity and to clarify that the area of the road includes the entire area within the right-of-way, including roadbeds, shoulders, parking and side areas, approaches, structures, and ditches.

(nnn) By September 19, 1994, Pennsylvania shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise section 86.159(l)(2) to require two officer signatures for each corporate indemnitor, an affidavit from the corporation(s) certifying that entering into the indemnity agreement is valid under all applicable Federal and State laws, and documents that evidence the authority of the signatories to bind the corporation and an authorization by the parent corporation to enter into the indemnity agreement.

(ooo) [Reserved]

(ppp) By January 6, 1998, Pennsylvania shall submit a proposed amendment to section 86.5(m), or otherwise amend its program, to provide for notification of the operator and any intervenors of a decision not to revoke an exemption.

(qqq) By January 6, 1998, Pennsylvania shall submit a proposed amendment to subsection 86.55(j), or otherwise amend its program, to require that any applications for permit renewal be submitted at least 120 days before the permit expiration date.

(rrr) By January 6, 1998, Pennsylvania shall submit a proposed amendment to subsections 87.108(c), 89.24(c), and 90.108(c), or otherwise amend its program, to require, without exception, that sedimentation ponds cannot be removed sooner than two years after the last augmented seeding.

(sss) By January 6, 1998, Pennsylvania shall submit proposed amendments to subsections 88.105(c), 88.201(c) and 88.305(c), or otherwise amend its

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program, to require additional hydrologic testing whenever the PHC determination indicates that adverse impacts may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of surface or ground water supplies.

(ttt) By January 6, 1998, Pennsylvania shall submit a proposed amendment to sections 88.321 and 90.133, or otherwise amend its program, to require that no noncoal waste be deposited in a coal refuse pile or impounding structure.

(uuu) By January 6, 1998, Pennsylvania shall submit a proposed amendment to provide counterparts to the Federal regulations at 30 CFR 702.15 (d), (e), (f) and 702.17 (c)(2) and (c)(3) to require that authorized representatives have the right to enter operations conducting incidental coal extraction and that administrative reviews of the State's determinations be conducted.

[50 FR 32849, Aug. 15, 1985 and 50 FR 45823, Nov. 4, 1985, as amended at 51 FR 18321, May 19, 1986; 51 FR 31945, Sept. 8, 1986; 52 FR 19510, May 26, 1987; 52 FR 23173, June 18, 1987; 53 FR 43439, Oct. 27, 1988; 56 FR 24719, May 31, 1991; 56 FR 55087, Oct. 24, 1991; 57 FR 62229, Dec. 30, 1992; 58 FR 18160, Apr. 8, 1993; 59 FR 36944, July 20, 1994; 60 FR 16793, Apr. 3, 1995; 62 FR 60177, Nov. 7, 1997; 63 FR 32615, June 15, 1998; 64 FR 30388, June 8, 1999; 65 FR 15558, Mar. 23, 2000; 65 FR 39299, June 26, 2000; 66 FR 42752, Aug. 15, 2001; 66 FR 67064, Dec. 27, 2001; 67 FR 67531, Nov. 6, 2002; 68 FR 19744, Apr. 22, 2003; 68 FR 51449, Aug. 27, 2003; 68 FR 56776, Oct. 2, 2003; 68 FR 57814, Oct. 7, 2003; 69 FR 71551, Dec. 9, 2004]

§ 938.20 Approval of Pennsylvania abandoned mine land reclamation plan.

The Pennsylvania Abandoned Mine Land Reclamation Plan as submitted on November 3, 1980, is approved. Copies of the approved Plan are available at the following locations:

(a) Pennsylvania Department of Environmental Resources, Bureau of Abandoned Mine Reclamation, Market Street State Office Building, 400 Market Street, P.O. Box 2063, Harrisburg, Pennsylvania 17105-2063.

(b) Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, Fourth and Market Streets, Harrisburg, Pennsylvania 17101.

[59 FR 17930, Apr. 15, 1994]

§ 938.25 Approval of Pennsylvania abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
April 17, 1992	October 30, 1992 ...	Part D of Plan—Initiative, Part E of Plan—Modifications.
November 21, 1997 ..	March 26, 1999	Part F—Government Financed Construction Contracts.

[62 FR 9953, Mar. 5, 1997, as amended at 64 FR 14619, Mar. 26, 1999]

PART 939—RHODE ISLAND

Sec.

939.700 Rhode Island Federal program.

939.701 General.

939.702 Exemption for coal extraction incidental to the extraction of other minerals.

939.707 Exemption for coal extraction incidental to Government-financed highway or other construction.

939.761 Areas designated unsuitable for surface coal mining by Act of Congress.

939.762 Criteria for designating areas as unsuitable for surface coal mining operations.

939.764 Process for designating areas unsuitable for surface coal mining operations.

939.772 Requirements for coal exploration.

939.773 Requirements for permits and permit processing.

939.774 Revision; renewal; and transfer, assignment, or sale of permit rights.