

§ 938.13

30 CFR Ch. VII (7–1–11 Edition)

(e) We are not approving the following amendments that Pennsylvania submitted on May 23, 2006:

(1) At 25 Pa. Code 86.17(e), the sentence “This fee shall not be required after (effective date of this rule-making).”

(2) At 25 Pa. Code 86.283(c), the proposed deletion of the entire subsection.

[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; 71 FR 54595, Sept. 18, 2006; 73 FR 38920, July 8, 2008]

§ 938.13 State statutory and regulatory provisions set aside.

(a) The following provisions of Pennsylvania’s Bituminous Mine Subsidence 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Conservation Act (BMSLCA) are inconsistent with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and are superseded to the extent noted effective December 9, 2004.

(1) Section 5.1(b) (52 P.S. 1406.5a(b)) of BMSLCA is superseded to the extent that it would limit an operator’s liability to restore or replace a water supply covered under section 720 of SMCRA.

(2) Section 5.2(g) (52 P.S. 1406.5b(g)) of BMSLCA is superseded to the extent that it would limit an operator’s liability to restore or replace a water supply covered under section 720 of SMCRA.

(3) Section 5.2(h) (52 P.S. 1406.5b(h)) of BMSLCA is superseded to the extent it would preclude Pennsylvania from requiring the restoration or replacement of a water supply covered under section 720 of SMCRA.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thereof for the operations in question and within the boundary of the entire mine as depicted in said application,” is superseded to the extent it would limit an operator’s liability for restoration of, or compensation for, subsidence damages to structures protected under section 720 of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(5) Section 5.4(c) (52 P.S. 1406.5d(c)) of BMSLCA is superseded to the extent it limits an operator’s liability for repair of, or compensation for, subsidence damage to a structure covered under section 720 of SMCRA.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“All claims under this subsection shall be filed within two years of the date damage to the building occurred” is superseded to the extent that it would limit an operator’s liability for restoration of, or compensation for, subsidence damages to a structure covered under section 720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.

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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. Hamner, 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: §§1, 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), .71(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)(ii)(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.
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).

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November 30, 1999 ..	June 26, 2000	<p>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).</p> <p>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).</p>
January 3, 2001	August 15, 2001	<p>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.</p>
January 3, 2001	November 16, 2001	<p>25 Pa. Code 86.174.</p>
July 29, 1998	December 27, 2001	<p>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).</p>
February 25, 2002	November 6, 2002	<p>Bituminous Mine Subsidence and Land 2001 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,” “irreparable 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>
November 22, 1999 ..	July 7, 2003	<p>25 Pa. Code 86.37, 87.160, 88.138, 88.231, 88.335, 90.134, 87.160.</p> <p>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).</p>

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Original amendment submission date	Date of final publication	Citation/description
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 EPAct structures and EPAct 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). In PASMCRA, 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(i); 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.
December 18, 1998 ..	May 13, 2005	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).
May 23, 2006	April 17, 2007	25 Pa. Code: 86.187(a)(1), (b), (c); 86.188(b)(5) [deleted]; 86.188(c)(3) [deleted]; 86.189(c)(2) through (c)(4) [deleted reference to (c)(5)], 86.189 (c)(5) [deleted]; 86.190 (a) [the words "but are not limited to" are deleted]; 86.190(a)(3) [deleted].
December 18, 2006 ..	October 4, 2007	25 Pa. Code 86.6 [add].
June 8, 2006	December 1, 2008 ..	25 Pa. Code 210.11, 87.1, 88.1, and 89.5 added definition for mine opening blasting; 87.124(b) correction of reference error; 87.126(b)(2)(ii) phrase deletion; 87.127(b), 87.127(e), 87.127(e)(1), 87.127(f)(1); 87.129(4); 88.135(a), 88.135(b), 88.135(f)(1), 88.135(h), 88.135(i); 88.493(7)(i); 89.62 (adding new language); 87.127(l) and 88.135(l) (deleted in their entirety).
August 1, 2008	August 10, 2010	52 P.S. 1396.4(d.2); 25 Pa. Code 86.1, 86.17(e), 86.187(a); The Conversion Assistance Program; Trust Funds as an Alternative Bonding System (ABS); Demonstration of Sufficient Funding for Outstanding Land Reclamation at Primacy ABS Forfeiture Sites; and, Demonstration of Sufficient Funding for Construction of All Necessary Discharge Treatment Facilities at the ABS Forfeiture Sites.

[62 FR 9953, Mar. 5, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 938.15, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 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 sec-

tion 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) [Reserved]

(h) No later than October 12, 2010, Pennsylvania must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to ensure that its program provides suitable, enforceable funding mechanisms, that are sufficient to guarantee