

Original amendment submission date	Date of final publication	Citation/description
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> <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>

[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]

§ 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) [Reserved]

(h) By November 1, 1991, Pennsylvania shall submit information, sufficient to demonstrate that the revenues generated by the collection of the reclamation fee, as amended in § 86.17(e), will assure that the Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e). 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 sur-

face impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim.

(i)–(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) By November 1, 1991, Pennsylvania shall amend §86.174(b)(3), or otherwise amend its program to be no less effective than 30 CFR 800.40(c)(2) by requiring the necessary reference to chapter 88.

(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)-(gg) Reserved

(hh) By November 1, 1991, Pennsylvania shall amend §89.59(a)(1) and (2) or otherwise amend its program to be no less effective than 30 CFR 784.14(h)(1) to require the monitoring plan to specify that, at a minimum, the total dissolved solids or specific conductance, pH, total iron, total manganese, and water levels shall be monitored and data submitted to Pennsylvania at least every three months for each three months for each monitoring location.

(ii)-(jj) [Reserved]

(kk) By April 22, 1992, Pennsylvania shall amend the following rules of the Pennsylvania Surface Mining and Conservation Act to correct cross-references:

(1) At section 3.1(c), replace the cross-reference to section 4.2(f) with one to 4b(f).

(2) At section 3.1(d), replace the cross-reference to section 18.6 with one to 24.

(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 per-

formance 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) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a)(8) of (a)(11) to require that, within 30 days of the initial judicial review affirming a violation, the applicant submit proof that the violation has been corrected or is in the process of being satisfactorily corrected.

(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 include 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) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §§87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) to require that the configuration and species composition for reclaimed forest land be reviewed and approved, either on a site-by-site basis or a program wide basis, by the Bureau of Forestry.

(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 offi-

cer 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 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.

(vvv) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to clarify the meaning of the term "excess soil and related materials" as that term is used in the definition of "coal refuse disposal activities."

(www) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to authorize stream buffer zone variances for coal refuse disposal activities only where such activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect water quality and quantity, or other environmental resources of the stream.

(xxx) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to clarify, in the regulations to be developed to implement the provisions of section 6.2 of the Coal Refuse Disposal Act (as is required by Section 3.2(b) of the Coal Refuse Disposal Act), that preexisting discharges that are encountered must be treated to the State effluent standards at Chapter 90, subchapter D at 90.102.

(yyy) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to clarify that Subsection 6.2(h) of the Coal Refuse Disposal Act pertains to preexisting discharges that are not encountered.

(zzz) By July 1, 1998, Pennsylvania shall amend the Pennsylvania pro-

gram, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to be no less effective than 30 CFR 816.116(b)(5), by limiting the application of the revegetation standards under Subsection 6.2(k) of its Coal Refuse Disposal Act, to areas that were previously disturbed by mining and that were not reclaimed to the State reclamation standards.

(aaaa) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to clarify that under Subsection 6.2(1) of its Coal Refuse Disposal Act, a special authorization for coal refuse disposal operations will not be granted, when such an authorization would result in the site being reclaimed to lesser standards than could be achieved if the moneys paid into the Fund, as a result of a prior forfeiture on the area, were used to reclaim the site to the standards approved in the original permit under which the bond moneys were forfeited.

(bbbb) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, by adding implementing rules no less effective than 30 CFR 785.13, and no less stringent than SMCRA Section 711 and which clarify that experimental practices are only approved as part of the normal permit approval process and only for departures from the environmental protection performance standards, and that each experimental practice receive the approval of the Secretary.

(cccc)-(ffff) [Reserved]

(gggg) By August 25, 2000, Pennsylvania shall amend its performance standards for coal refuse disposal, or provide a written description of an amendment together with a timetable for enactment which is consistent with

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established administrative or legislative procedures in the state, to require that haul roads and access roads be designed, constructed and maintained to control or prevent erosion.

[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]

§ 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.

939.775 Administrative and judicial review of decisions.

939.777 General content requirements for permit applications.

939.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

939.779 Surface mining permit applications—minimum requirements for information on environmental resources.

939.780 Surface mining permit applications—minimum requirements for reclamation and operations plan.

939.783 Underground mining permit applications—minimum requirements for information on environmental resources.

939.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

939.785 Requirements for permits for special categories of mining.

939.795 Small operator assistance.

939.800 General requirements for bonding of surface coal mining and reclamation operations.

939.815 Performance standards—coal exploration.

939.816 Performance standards—surface mining activities.

939.817 Performance standards—underground mining activities.