

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND
COAL MINING: GENERAL

Subchapter A. GENERAL PROVISIONS

§ 86.1 Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ABS LEGACY SITES—MINE SITES, PERMITTED UNDER THE PRIMACY ALTERNATE BONDING SYSTEM, THAT HAVE A POST-MINING POLLUTIONAL DISCHARGE WHERE THE OPERATOR HAS DEFAULTED ON ITS OBLIGATION TO ADEQUATELY TREAT THE DISCHARGE AND, EITHER THE BOND POSTED FOR THE SITE IS INSUFFICIENT TO COVER THE COST OF TREATING THE DISCHARGE, OR A TRUST TO COVER THE COSTS OF TREATING THE DISCHARGE WAS NOT FULLY FUNDED AND IS INSUFFICIENT TO COVER THE COST OF TREATING THE DISCHARGE.

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Occupied dwellings—A permanent building or fixed mobile home that is currently being used on a regular or temporary basis for human habitation.

OPERATIONAL AREA – THE MAXIMUM PORTION OF THE PERMITTED AREA THAT THE PERMITTEE IS AUTHORIZED TO DISTURB AT ANY SPECIFIC TIME DURING THE PERMIT TERM IN ACCORDANCE WITH THE APPROVED MINING AND RECLAMATION PLAN, INCLUDING ALL OF THE LAND AFFECTED BY MINING ACTIVITIES THAT IS NOT PLANTED, GROWING AND STABILIZED.

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Postmining Pollutational Discharge—A discharge of mine drainage emanating from or hydrologically connected to the permit area, which may remain after coal mining activities have been completed, and which does not comply with the applicable effluent requirements described in § 87.102, § 88.92, § 88.187, § 88.292, § 89.52 or § 90.102. The term includes minimal-impact postmining discharges, as defined in section 3 of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.3).

PRIMACY ALTERNATE BONDING SYSTEM – BONDING SYSTEM UTILIZED BY PENNSYLVANIA FROM JULY 31, 1982 UNTIL 2001 FOR SURFACE COAL MINES, COAL REFUSE REPROCESSING FACILITIES, AND COAL PREPARATION PLANTS IN WHICH A CENTRAL POOL OF MONEY TO BE USED BY THE DEPARTMENT FOR RECLAMATION OF FORFEITED SITES WAS FUNDED IN PART THROUGH IMPOSITION OF A PER-ACRE RECLAMATION FEE PAID BY OPERATORS OF PERMITTED SITES.

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Public Road—A thoroughfare open to the public which has been or is being used by the public for vehicular travel.

RECAPITALIZATION COSTS—THE COSTS ASSOCIATED WITH REPLACING DISCHARGE TREATMENT FACILITY COMPONENTS OR THE COSTS TO INSTALL TREATMENT SYSTEMS WITH LOWER OPERATION AND MAINTENANCE COSTS THAN THE SYSTEM BEING REPLACED.

Subchapter B. PERMITS

GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

§ 86.17. Permit and reclamation fees.

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(e) In addition to the bond established under §§ **86.143**, 86.145, 86.149 and 86.150 (relating to **REQUIREMENT TO FILE A BOND**; Department responsibilities; determination of bond amount; and minimum amount), **AND SUBJECT TO THE EXCEPTION PROVIDED FOR IN § 86.283(c) (RELATING TO PROCEDURES), [there is a \$100] THE APPLICANT FOR A PERMIT OR A PERMIT AMENDMENT SHALL PAY A** per acre reclamation fee for surface mining activities except for the surface effects of underground

mining. ~~[This reclamation fee may be paid as acreage within an approved surface mining permit is authorized for mining.] THIS RECLAMATION FEE SHALL BE ASSESSED FOR EACH ACRE OF THE APPROVED OPERATIONAL AREA AND SHALL BE PAID BY THE APPLICANT PRIOR TO THE DEPARTMENT'S ISSUANCE OF A SURFACE MINING PERMIT. IF A PERMIT AMENDMENT RESULTS IN AN INCREASE IN THE APPROVED OPERATIONAL AREA, THE RECLAMATION FEE WILL BE ASSESSED ON THE INCREASED ACREAGE AND SHALL BE PAID BY THE OPERATOR PRIOR TO THE DEPARTMENT'S ISSUANCE OF THE PERMIT AMENDMENT. [The reclamation fee will be deposited in the Surface Mining Conservation and Reclamation Fund as a supplement to forfeited bonds. The reclamation fee shall only be used for reclaiming mining operations which have defaulted on their obligation to reclaim.] [The fee required by this subsection is not required after _____ (Editor's Note: The blank refers to the effective date of adoption of this final rulemaking.).]~~

(1) THE RECLAMATION FEE MUST BE DEPOSITED INTO A SEPARATE SUBACCOUNT WITHIN THE SURFACE MINING CONSERVATION AND RECLAMATION FUND CALLED THE RECLAMATION FEE O&M ACCOUNT, AS A SUPPLEMENT TO BONDS FORFEITED FROM ABS LEGACY SITES. THE RECLAMATION FEE MUST BE USED BY THE DEPARTMENT TO PAY THE CONSTRUCTION COSTS AND OPERATION AND MAINTENANCE COSTS ASSOCIATED WITH TREATING POST-MINING POLLUTIONAL DISCHARGES AT ABS LEGACY SITES, AND SUCH MONEYS MAY NOT BE USED FOR ANY OTHER PURPOSE. ALL INTEREST EARNED ON THE MONEYS IN THE RECLAMATION FEE O&M ACCOUNT MUST BE DEPOSITED INTO THE RECLAMATION FEE O&M ACCOUNT AND MUST BE USED BY THE DEPARTMENT TO PAY THE CONSTRUCTION COSTS AND OPERATION AND MAINTENANCE COSTS ASSOCIATED WITH TREATING POST-MINING POLLUTIONAL DISCHARGES AT ABS LEGACY SITES. SUCH INTEREST MAY NOT BE USED FOR ANY OTHER PURPOSE. FOR PURPOSES OF THIS SECTION, OPERATION AND MAINTENANCE COSTS INCLUDES RECAPITALIZATION COSTS.

(2) AFTER THE END OF EACH FISCAL YEAR, THE DEPARTMENT MUST PREPARE A FISCAL-YEAR REPORT CONTAINING A FINANCIAL ANALYSIS OF THE REVENUE AND EXPENDITURES OF THE RECLAMATION FEE O&M ACCOUNT FOR THE PAST FISCAL YEAR AND THE PROJECTED REVENUES AND EXPENDITURES FOR THE UPCOMING FISCAL YEAR. BEGINNING WITH THE REPORT FOR FISCAL YEAR 2008-09, THE REPORT MUST INCLUDE THE DEPARTMENT'S CALCULATION OF THE REQUIRED AMOUNT OF THE RECLAMATION FEE, AND ANY PROPOSED ADJUSTMENT OF THE RECLAMATION FEE AMOUNT. THE FISCAL-YEAR REPORT MUST BE SUBMITTED TO THE MEMBERS OF THE MINING AND RECLAMATION ADVISORY BOARD FOR THEIR REVIEW

AND COMMENT AND MUST BE PUBLISHED ON THE DEPARTMENT'S WEBSITE. NOTICE OF THE REPORT'S AVAILABILITY MUST BE PUBLISHED IN THE PENNSYLVANIA BULLETIN. THE DEPARTMENT MUST REVIEW THE FISCAL-YEAR REPORT AT A MEETING OF THE MINING AND RECLAMATION ADVISORY BOARD.

(3) THE AMOUNT OF THE RECLAMATION FEE SHALL BE \$100 PER ACRE UNTIL DECEMBER 31, 2009. COMMENCING JANUARY 1, 2010 AND CONTINUING UNTIL THE ABS LEGACY SITES ACCOUNT IS ACTUARIALLY SOUND, THE RECLAMATION FEE MUST BE ADJUSTED AS NECESSARY TO ENSURE THAT THERE ARE SUFFICIENT REVENUES TO MAINTAIN A BALANCE IN THE RECLAMATION FEE O&M ACCOUNT OF AT LEAST \$3,000,000. THE MINIMUM AMOUNT OF THE RECLAMATION FEE SHALL BE \$50 UNTIL THE ABS LEGACY SITES ACCOUNT IS ACTUARIALLY SOUND.

(4) THE AMOUNT OF THE RECLAMATION FEE WILL BE ANNUALLY CALCULATED AND, IF NECESSARY, WILL BE ADJUSTED IN MULTIPLES OF \$50 BASED ON THE FOLLOWING FACTORS:

(i) THE CURRENT BALANCE IN THE RECLAMATION FEE O&M ACCOUNT;

(ii) THE TOTAL AMOUNT OF REVENUE INTO THE ACCOUNT DURING THE PREVIOUS FISCAL YEAR FROM COLLECTION OF THE RECLAMATION FEE, THE INTEREST ACCRUED BY THE RECLAMATION FEE O&M ACCOUNT, THE DEPOSITS OF CIVIL PENALTIES INTO THE ACCOUNT AND ANY DEPOSITS FROM OTHER SOURCES OF MONEYS INTO THE ACCOUNT;

(iii) THE AMOUNT OF ONGOING OPERATION AND MAINTENANCE COSTS INCURRED BY THE RECLAMATION FEE O&M ACCOUNT DURING PREVIOUS FISCAL YEARS;

(iv) THE PROJECTED NUMBER OF ACRES SUBJECT TO THE RECLAMATION FEE DURING THE UPCOMING YEAR;

(v) THE PROJECTED AMOUNT OF REVENUE INTO THE RECLAMATION FEE O&M ACCOUNT DURING THE CURRENT FISCAL YEAR FROM PROJECTED INTEREST ACCRUED BY THE ACCOUNT, PROJECTED DEPOSITS OF CIVIL PENALTIES, AND PROJECTED DEPOSITS OF MONEYS FROM ANY OTHER SOURCES; AND,

(vi) THE PROJECTED EXPENDITURES OF THE RECLAMATION FEE O&M ACCOUNT FOR OPERATION AND MAINTENANCE COSTS FOR THE CURRENT FISCAL YEAR.

(5) FOLLOWING THE DEPARTMENT'S REVIEW OF ITS CALCULATION OF THE REQUIRED RECLAMATION FEE AMOUNT AT A PUBLIC MEETING OF THE MINING AND RECLAMATION ADVISORY BOARD PURSUANT TO SUBSECTION (2), THE DEPARTMENT MUST PUBLISH ANY ADJUSTMENT IN THE REQUIRED AMOUNT OF THE RECLAMATION FEE IN THE PENNSYLVANIA BULLETIN. ADJUSTMENTS TO THE AMOUNT OF THE RECLAMATION FEE WILL BECOME EFFECTIVE UPON PUBLICATION IN THE PENNSYLVANIA BULLETIN. THE DEPARTMENT'S DETERMINATION OF THE REQUIRED AMOUNT OF THE RECLAMATION FEE PURSUANT TO SUBSECTIONS (3) AND (4) WILL BE A FINAL ACTION OF THE DEPARTMENT APPEALABLE TO THE ENVIRONMENTAL HEARING BOARD.

(6) THE DEPARTMENT WILL CEASE TO ASSESS AND COLLECT THE RECLAMATION FEE WHEN THE ABS LEGACY ACCOUNT ESTABLISHED PURSUANT TO § 86.187(a) (RELATING TO USE OF MONEY) BECOMES ACTUARIALLY SOUND. THE ABS LEGACY ACCOUNT WILL BECOME ACTUARIALLY SOUND WHEN ALL OF THE FOLLOWING CONDITIONS ARE MET:

(i) FINANCIAL GUARANTEES SUFFICIENT TO COVER RECLAMATION COSTS, INCLUDING THE COSTS TO TREAT ANY DISCHARGE IN PERPETUITY, HAVE BEEN APPROVED BY THE DEPARTMENT FOR ALL MINE SITES PERMITTED UNDER THE PRIMACY ALTERNATE BONDING SYSTEM;

(ii) CONSTRUCTION OF ALL NECESSARY DISCHARGE TREATMENT FACILITIES HAS BEEN COMPLETED AT ALL ABS LEGACY SITES; AND

(iii) THE ABS LEGACY ACCOUNT CONTAINS FUNDS WHICH GENERATE INTEREST AT A RATE AND IN AN AMOUNT SUFFICIENT TO PAY THE ANNUAL OPERATION AND MAINTENANCE COSTS FOR TREATING POST-MINING POLLUTIONAL DISCHARGES AT ALL ABS LEGACY SITES.

Subchapter F. BONDING AND INSURANCE REQUIREMENTS

BOND FORFEITURE

§ 86.187. Use of money.

(a) Moneys received from fees, fines, penalties, bond forfeitures and other monies received under authority of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1--1396.31), and interest earned on the moneys, will be deposited in the Fund.

(1) Moneys received from the RECLAMATION fees required by § 86.17[(b)] (E) (relating to permit and reclamation fees), and THE interest accrued on these monies, ~~[will be used only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds, as a supplement to bond forfeiture funds.]~~ MUST BE DEPOSITED INTO A SEPARATE SUBACCOUNT WITHIN THE FUND CALLED THE RECLAMATION FEE O&M ACCOUNT.

(i) THE DEPARTMENT MUST DEPOSIT INTO THE RECLAMATION FEE O&M ACCOUNT, UP TO \$500,000 IN A FISCAL YEAR, THE MONEYS COLLECTED FROM CIVIL PENALTIES ASSESSED BY THE DEPARTMENT PURSUANT TO THE SURFACE MINING CONSERVATION AND RECLAMATION ACT (52 P.S. §§ 1396.1--1396.31) LESS THE PERCENTAGE OF THOSE PENALTY MONEYS DUE THE ENVIRONMENTAL EDUCATION FUND PURSUANT TO 35 P.S. § 7528. IF THE AMOUNT OF PENALTY MONEYS COLLECTED EXCEEDS \$500,000 DURING A FISCAL YEAR, THE DEPARTMENT MAY DEPOSIT THE AMOUNT COLLECTED IN EXCESS OF \$500,000 INTO THE FUND AND USE THE EXCESS AMOUNT IN ACCORDANCE WITH SUBSECTION (3).

(ii) THE DEPARTMENT MUST DEPOSIT INTO THE RECLAMATION FEE O&M ACCOUNT A PORTION, TO BE DETERMINED AT THE DEPARTMENT'S DISCRETION, OF THE INTEREST EARNED ON OTHER MONEYS IN THE FUND.

(iii) THE DEPARTMENT MAY DEPOSIT OTHER MONEYS INTO THE RECLAMATION FEE O&M ACCOUNT, INCLUDING APPROPRIATIONS, DONATIONS, OR, THE FEES COLLECTED FOR SUM-CERTAIN FINANCIAL GUARANTEES NEEDED TO FACILITATE FULL-COST BONDING IN ACCORDANCE WITH APPLICABLE LAW.

(iv) ALL MONEYS DEPOSITED IN THE RECLAMATION FEE O&M ACCOUNT MUST BE USED TO PAY CONSTRUCTION COSTS AND OPERATION AND MAINTENANCE COSTS ASSOCIATED WITH

TREATING POST-MINING POLLUTIONAL DISCHARGES AT ABS LEGACY SITES, AND SUCH MONEYS MAY NOT BE USED FOR ANY OTHER PURPOSE. FOR PURPOSES OF THIS SECTION, OPERATION AND MAINTENANCE INCLUDES RECAPITALIZATION COSTS.

(2) Moneys received from the forfeiture of bonds will be used only to reclaim land and restore water supplies affected by the surface mining operations upon which liability was charged on the bond, except as otherwise provided **IN THIS SECTION AND** in §86.190 (relating to sites where reclamation is unreasonable, unnecessary or impossible; excess funds). Interest accrued on these monies will be used only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds, as a supplement to bond forfeiture funds.

(i) MONEYS RECEIVED FROM BONDS FORFEITED ON ABS LEGACY SITES, AND ALL INTEREST ACCRUED ON SUCH MONEYS, MUST BE DEPOSITED INTO A SEPARATE SUBACCOUNT IN THE FUND CALLED THE ABS LEGACY SITES ACCOUNT. THE DEPARTMENT MAY TRANSFER MONEYS FROM THE RECLAMATION O&M ACCOUNT INTO THE ABS LEGACY SITES ACCOUNT. THE DEPARTMENT MAY DEPOSIT OTHER MONEYS INTO THE ABS LEGACY SITES ACCOUNT, INCLUDING APPROPRIATIONS, DONATIONS, OR INTEREST EARNED ON OTHER MONEYS IN THE FUND. MONEYS IN THE ABS LEGACY SITES ACCOUNT, INCLUDING ALL INTEREST ACCRUED BY THE ACCOUNT, MUST BE USED TO PAY THE OPERATION AND MAINTENANCE COSTS ASSOCIATED WITH TREATING POST-MINING POLLUTIONAL DISCHARGES AT ABS LEGACY SITES, AND SUCH MONEYS MAY NOT BE USED FOR ANY OTHER PURPOSE.

(ii) THE DEPARTMENT MAY NOT MAKE ANY DISBURSEMENTS FROM THE ABS LEGACY SITES ACCOUNT UNTIL THAT ACCOUNT BECOMES ACTUARIALLY SOUND. THE ABS LEGACY ACCOUNT WILL BECOME ACTUARIALLY SOUND WHEN ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) FINANCIAL GUARANTEES SUFFICIENT TO COVER RECLAMATION COSTS, INCLUDING THE COSTS TO TREAT ANY DISCHARGE IN PERPETUITY, HAVE BEEN APPROVED BY THE DEPARTMENT FOR ALL MINE SITES PERMITTED UNDER THE PRIMACY ALTERNATE BONDING SYSTEM;

(B) CONSTRUCTION OF ALL NECESSARY DISCHARGE TREATMENT FACILITIES HAS BEEN COMPLETED AT ALL ABS LEGACY SITES; AND

(C) THE ABS LEGACY ACCOUNT CONTAINS FUNDS WHICH GENERATE INTEREST AT A RATE AND IN AN AMOUNT SUFFICIENT TO PAY THE ANNUAL OPERATION AND MAINTENANCE COSTS FOR TREATING POST-MINING POLLUTIONAL DISCHARGES AT ALL ABS LEGACY SITES.

(3) Other moneys deposited in the Fund may be used to reclaim land affected by surface mining operations and for other conservation purposes consistent with the purposes of the Fund, including restoration of water supplies affected by surface mining operations. The Department may also use the money in the Fund, other than the monies described in paragraphs (1) and (2), for necessary administrative expenses, including the purchase, lease or rental of vehicles, equipment, office space, laboratory supplies or other supplies, materials or services and personnel and overhead expenses.

(b) The Department, **after notifying and consulting with the landowner**, will expend the funds to reclaim the land affected by the operation in **[such]** a manner **[as to complete]** **which completes** the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site **or an alternative reclamation plan completed under subsection (c)**. The Department**[, after notifying and consulting with the landowner,]** will expend the funds to reclaim the land affected by the operation in **[such]** a manner **[as to complete a]** **which completes an alternative** reclamation plan in compliance with subsection (c) if either of the following apply:

* * * * *

(c) If the Department determines under subsection (b) that an alternative to the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site should be implemented, the Department will prepare and implement a plan **[that makes the bond forfeiture site suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation]** that complies with the applicable performance standards in accordance with § 86.189(c)(2), (3) or (4), whichever is appropriate, and that ensures 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.

§ 86.188. Evaluation of bond forfeiture sites.

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(b) The Department will prioritize a bond forfeiture site according to the following categories, which are listed in decreasing order of severity of condition:

* * * * *

[(5) Other sites which need reclamation.]

(c) The Department, in selecting sites for reclamation under § 86.189(b)(1) (relating to reclamation of bond forfeiture sites), will consider the following factors:

* * * * *

(3) [The availability of funds to accomplish the required reclamation of the site, or that portion of the site which is threatening life, health, safety, other property or the environment.

(4)] The willingness of the landowner, or other person, to undertake the reclamation of the site under § 86.189(b)(2), (3) or (4), as evidenced by previous reclamation activity performed on the site or other indications of willingness to reclaim by the landowner or other person.

[(5) (4) * * *

[(6) (5) * * *

[(7) (6) * * *

[(8) (7) * * *

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§ 86.189. Reclamation of bond forfeiture sites.

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(c) The Department will not enter into a reclamation contract under this section with a person unless the person demonstrates the following to the satisfaction of the Department:

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(2) For bond forfeiture sites for which permits were issued under the Federally-approved surface coal mining regulatory program which took effect July 31, 1982, the proposed reclamation plan will result in reclamation of the site in a manner consistent with The Clean Streams Law and the regulations promulgated thereunder for active surface coal mining operations, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations promulgated thereunder for active surface coal mining operations[, **except as provided in paragraph (5)**].

(3) For bond forfeiture sites for which the bonds were declared forfeit on or after May 3, 1978, and for which permits were not issued under the Federally-approved surface coal mining regulatory program which took effect July 31, 1982, the proposed reclamation plan will result in reclamation of the site in a manner that is consistent with the interim Federal program regulations first published at 42 FR 62639 (December 13, 1977), as well as The Clean Streams Law and the regulations promulgated thereunder in effect at the time the bonds were declared forfeit, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations promulgated thereunder in effect at the time the bonds were declared forfeit. If the Department's permit files for the site clearly show that surface mining activities on the site occurred before August 3, 1977, the proposed reclamation plan may be consistent with paragraph (4)[, **except as provided in paragraph (5)**].

(4) For bond forfeiture sites for which the bonds were declared forfeit before May 3, 1978, the proposed reclamation plan will result in reclamation of the site in a manner that is consistent with The Clean Streams Law and the regulations promulgated thereunder that were applicable to active surface coal mining operations at the time the bonds were declared forfeit, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations that were promulgated thereunder at the time the bonds were declared forfeit [, **except as provided in paragraph (5)**].

(5) **[In lieu of relevant statutes and regulations that are specifically applicable to post mining land use, the plan for a bond forfeiture site may propose to make the site suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation under § 86.187(c).**

(6)] Except in the case of a landowner of a bond forfeiture site under subsection (b)(2) and (4), the person shall demonstrate the following:

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§ 86.190. Sites where reclamation is unreasonable, unnecessary or impossible; excess funds.

(a) If the Department determines in the evaluation of a bond forfeiture site that completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site or an alternative reclamation plan is unreasonable, unnecessary or physically impossible, the bond amount will be made available for expenditure from the Fund

only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds. The reasons justifying this determination include[, **but are not limited to,**] the following:

* * * * *

[(3) The landowner refuses to allow the site to be reclaimed, and the site is not a hazard to public health, safety and welfare or adjacent property.]

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Subchapter J. REMINING AND RECLAMATION INCENTIVES

BONDING INCENTIVES

§ 86.283. Procedures.

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(c) An operator approved to participate in the financial guarantees program is not required to pay the per acre reclamation fee required by § 86.17(e) (relating to permit and reclamation fees) for the remining area.

(d) The Department will issue a letter to the operator specifying the amount of money in the financial guarantees special account in the Remining Financial Assurance Fund which has been reserved as collateral for the operator's reclamation obligations on the remining area. A copy of the letter will be kept in the operator's permit application file.