

COMMENTS AND RESPONSES
Conventional Bonding for Land Reclamation – Coal
563-2504-001

Notice of availability of this draft technical guidance for public comment was published in the May 12 *Pennsylvania Bulletin*. The Department received comments from eleven individuals prior to the close of the 30-day comment period. This document lists the commenters, summarizes their comments and provides the Department's responses. Comments on the guidance as a whole are covered by listing the commenter, by number, then the Department's response. Comments specific to portions of the text follow the organization of the draft technical guidance. These commenters are also identified by number. The Department also received a number of comments from the Bureau of District Mining Operations and the Bureau of Abandoned Mine Reclamation staffs. For the most part they provided suggestions to improve understanding and implementation. Although their comments resulted in changes to the guidance, they do not appear in this document.

List of Commenters

Commenter 1:	Robert J. Duke Director of Underwriting The Surety Association of America Washington, D.C.
Commenter 2:	Brian R. Rich Vice President Reading Anthracite Company Pottsville, Pa.
Commenter 3:	John F. Beadle, P.E. I & I Engineering, Inc. Pottsville, Pa.
Commenter 4:	Robin B. Koeberle, P.G. Blaschak Coal Corp. Mahanoy City, Pa.
Commenter 5:	Louis Pagnotti, III, P.E. Pagnotti Enterprises, Inc. Wilkes-Barre, Pa.
Commenter 6:	Billie Ramsey ARIPPA Lemoyne, Pa.

- Commenter 7: Kurt J. Weist
Senior Attorney
Citizens for Pennsylvania's Future
Harrisburg, Pa.
- Commenter 8: Duane C. Feagley
Pennsylvania Anthracite Council
Pottsville, Pa.
- Commenter 9: Michael G. Young
Director of Regulatory Affairs
Pennsylvania Coal Association
Harrisburg, Pa.
- Commenter 10: Martin J. Cerullo, Esquire
Cerullo, Datte & Wallbillich, P.C.
Pottsville, Pa.
- Commenter 11: David R. Christ
Treasurer
Reading Anthracite Company
Pottsville, Pa.

Comments and Responses

General Comments (by commenter)

Commenters 2, 3, 8, 10: The Department's Impact Analysis for this guidance greatly underestimates the amounts of additional bond that will be needed by the anthracite industry and the associated costs for obtaining the additional bond. The old bonding system allows operators to secure insurance, bonding and lending, which in turn allows operators to enter into long-term contracts. The conventional bonding system will require immediate changes, which may cause anthracite operators to forfeit contracts with customers, suppliers and lenders. Before the Department imposes full cost bonding on anthracite operators, we request that a separate and accurate economic impact analysis be done on the anthracite surface mining industry.

Response: The Department acknowledges that the Impact Analysis did not include the potential effects on the large, open-pit type operations, which exist in the anthracite region. We agree that there will be a significant economic impact on these types of operations. However, even a general estimate of the economic impact on these operations cannot be made without determining the bonding liability on individual permits. The Department intends to work individually with the operators of large, open pits to address adequate bonding and concurrent reclamation. Additionally, operators of large pits are free to modify their mining operation and reclamation plan with Department approval to minimize their bond obligation on the permits.

Commenter 2: Changing the program from “Full Cost Bonding” to “Conventional Bonding” and labeling the current bonding system “Alternate Bonding System” suggests that the Department may have known of the perceived shortcomings of the current system for some time. Had we known of the potential of a full cost bonding system, our business plans may have been different.

Response: This proposed change to full cost bonding should not have been a surprise. The Mining and Reclamation Advisory Board, on which the anthracite industry has at least one seat, has been aware of the problems with the current, or alternate, bonding system for many years. Furthermore, as the guidance explains, implementation for existing permits will be phased over a 10-11 month period. New permit applications received after the effective date of the guidance will be bonded under the conventional bonding system.

Commenter 2: The Department’s 1999 *Annual Report on Mining Activities* estimates that 90 percent of all anthracite surface mines involve remining. Isn’t this sufficient evidence that the anthracite operators as a group are more than offsetting any adverse costs anthracite bond forfeitures could have on BAMR funds?

Response: We certainly acknowledge the environmental benefits resulting from remining by the anthracite industry. However, the commenter fails to consider that under the Pennsylvania Surface Mining Conservation and Reclamation Act (SMCRA) the funds for AML reclamation are separate and distinct from the funds for bond forfeiture reclamation. Additionally, many of the abandoned minelands remined by the anthracite industry would not qualify for AML funds under the present ranking of those lands by BAMR. But most importantly, SMCRA requires sites to be bonded in an amount that will cover the Commonwealth’s cost to reclaim a site if forfeiture should occur. The act makes no provision for consideration of the reclamation achieved through remining by operators as a group or separately for determining bond amounts.

Commenter 2: The forfeiture rate for the anthracite industry is lower than that of the bituminous region, while anthracite production is only 11.58% of bituminous production. Although anthracite contributes less than 12% of the total surface coal mined, it is bearing the greatest burden imposed by full cost bonding. These costs cannot be borne by the industry or passed on to our customers because of the competitiveness of Chinese coal imports.

Response: The forfeiture rate for all coal mining in Pennsylvania is 10.4%. The forfeiture rate for anthracite surface mines is currently 8.4%, but this number will probably increase significantly within the next year. In any event, SMCRA clearly requires sites to be bonded in an amount that will cover the Commonwealth’s cost to reclaim the site if forfeiture should occur. The Department understands that the increased bonds under the conventional bonding system are a greater burden on anthracite operators than on bituminous operators. This is due in part to the poor market for anthracite coal, but operational costs for anthracite surface mining are also a problem, for example many operators routinely handle spoil two or more times over the life of the mine.

Commenter 2: Remining is a major focus of Reclaim PA. This new bonding system could cause a negative impact on anthracite mining, which in turn will affect Reclaim PA.

Response: The Department is cognizant of the potential impacts on the objectives of Reclaim PA and has proposed the bonding assistance programs described in the guidance to minimize those impacts.

Commenters 2, 3: A local, privately owned railroad, serves a major portion of the anthracite region. If anthracite shipments continue to decline it is highly probable that the railroad will discontinue operations, which will affect many other businesses in the region.

Response: According to production reports received by the Department, total anthracite production has steadily declined since 1996. In 1996 anthracite production was at a thirty-year high of 11.6 million tons. In 2000, anthracite production was 3.9 million tons. The Department sees the potential for anthracite forfeitures due to a lack of market as a potentially greater impact than potential negative impacts from full cost bonding.

Commenter 3: The impact analysis prepared by the Department grossly underestimates the engineering costs to the industry to convert to the conventional bonding system. We estimate these costs will range from \$7,000 to \$15,400 per permit.

Response: We agree that those operations that need to make significant changes to operation plans and associated maps will face higher engineering costs. However, of the 114 anthracite operators reporting production in 1999, only four did not qualify as small operators under the Small Operator Assistance Program (SOAP). This program pays for most of the costs in preparing a permit application. The average SOAP grant for a permit application in 2000 was \$17,000.

Commenter 3: The Department arrived at the unit cost for the conventional bonding program based on bids received from contractors. The contractor is not familiar with the site, has to bring equipment and supplies onto the site, and make a profit. The surface mine operator knows the site and has the equipment onsite. The operator's main objective is to accomplish reclamation so that the Department releases his bonds. Under the present bonding system, it is in the operator's best interest to complete reclamation and remain in good standing with the Department, as evidenced by the low forfeiture rate among anthracite operators.

Response: We know that an anthracite operator can reclaim his site at a lower cost than an outside contractor. The bond, according to SMCRA, covers the situation where the operator does not reclaim the site and a contractor has to be used.

Commenters 3, 4, 8: Because significant differences in geology and mining techniques exist between bituminous and anthracite coal mining, the same standards cannot be easily applied to the two industries. Furthermore, the federal Surface Mining Control and Reclamation Act of 1977 recognized this difference by exempting anthracite surface mining operations from the specific bond limits and period of revegetation responsibility. The full cost bonding system causes these differences to become more pronounced and places an undue burden on the anthracite operator.

Response: Pennsylvania law, primarily the Surface Mining Conservation and Reclamation Act (SMCRA), authorizes the conventional bonding system and requires the bond to be full cost. SMCRA makes no distinction between anthracite and bituminous mining. In enacting this law the General Assembly would have considered differences between bituminous and anthracite mines.

Commenter 3: The conventional bonding system, in combination with ever-tightening governmental regulations and declining anthracite market conditions, will only serve to further weaken a deteriorating anthracite mining industry.

Response: The Department sees the decline of the anthracite mining industry as primarily tied to a declining market. With the decline in market comes an increase in the potential for forfeitures. Full cost bonding is essential to protect the Commonwealth under these economic conditions.

Commenters 5,8: The commenters request the Department consider the economic impact of the new policy on the anthracite mining industry and that the Department meet with the industry prior to implementing the new policy.

Response: The Department is aware of the economic impact on the anthracite mining industry. The anthracite mining industry needs to be aware of the potential economic impact of forfeiture on an under-bonded site to the Commonwealth. The Department has discussed and will be discussing the conventional bonding system with the Mining and Reclamation Advisory Board, which includes representation from the anthracite mining industry. The Department also met separately with members of the anthracite industry in 2000 and briefed them on the new process for calculating bonds and on the conversion assistance programs. The Department encourages individual operators to meet with the District Mining Office to discuss their individual bonding situations.

Commenter 7: The guidance should explain that it requires all sites with postmining discharges to include a component in the bond calculation for postmining water treatment.

Response: Because bonding for postmining treatment may involve significant costs to the coal mining industry and a significant burden on Department staff, it will be handled as a separate initiative. The Department will be notifying operators with postmining discharges later this year of the need to post additional bond to cover postmining treatment.

Commenter 7: Pennsylvania cannot and should not abandon its alternate bonding system because it would be unlawful and unwise.

Response: This guidance is not intended to address the legal liability issues surrounding the replacement of the alternate bonding system. It is intended to address the technical issues surrounding the implementation of the conventional bonding system on new and existing permits. While the Department recognizes the issues raised by the commenter, any further adjustment to the bonding program will require additional notice and comment opportunities.

Commenter 8: “While the Department will privately acknowledge the environmental benefits of anthracite re-mining...it is not even mentioned in the draft guidance document.” [Emphasis added.]

Response: The Department strongly disagrees with this statement. The Department has gone out of its way to inform the public about the amount of re-mining by the coal industry, including anthracite, through the MRAB annual reports, the *Update* and the Department’s web site for Reclaim PA.

Commenters 3, 5, 8, 10: The Department cannot get beyond the discussion phase of developing bond credits for anthracite surface operators, why? Without those credits, anthracite re-mining will cease or be substantially reduced. Further, the Mining and Reclamation Advisory Board extended its approval of the conventional bonding system with the understanding that the Department would establish re-mining bond credits for re-mining operators. If the Department is planning such credits, when do they expect to have them implemented? If they are not developing those credits, please explain why? Bond credits should be issued for lands the operator has already reclaimed or is in the process of reclaiming and for lands reclaimed in the course of his past operations.

Response: As part of Reclaim PA, the Department instituted a bond credit program whereby mine operators may receive bond credits for voluntarily reclaiming abandoned minelands. Bond credits are then used for bonding other, permitted coal mining activities. Because the law does not allow coal extraction on projects earning bond credits, this program has had limited participation. The Department has also reviewed the proceedings of the Mining and Reclamation Advisory Board on the subject of full cost bonding. On June 7, 2000 the board unanimously voted to support the proposed guidelines for full cost bonding provided certain conditions are met. Those conditions make no reference to bond credits. Instead, they refer to the use of AML funds to support the re-mining financial guarantees for land reclamation bonds on re-mining areas. The draft guidance describes the enhancements to the re-mining financial guarantees program that accompanies the new bonding system. The Department notes that the anthracite industry has not attempted to avail itself of any of the Reclaim PA re-mining incentives or of the funding for application preparation by SOAP. Although the re-mining financial guarantees program has been in place since 1997, only one anthracite operator has chosen to participate in it. The Department welcomes open discussions to determine what incentives the anthracite operators will use.

Commenter 8: Will DEP provide partial bond credits for lands partially reclaimed?

Response: No. SMCRA states that bond credits are earned only upon complete reclamation of an abandoned site, or portion of an abandoned site.

Commenter 8: Will the Department provide bond credits for stream replacement and water quality improvements made by operators?

Response: No. The basic idea behind re-mining is that the economic value of the remaining mineral is what drives the operator to re-affect the site. The bond credit program is for voluntary reclamation of abandoned minelands by an operator. If the reclamation project involves stream

replacement, then the bond credit earned may include the replacement. Bond credits are not earned for water quality improvements.

Commenter 8: We recommend that the Department extend an “Experienced Operator Credit” to operators with a proven track record for compliance to laws and regulations regarding mining reclamation.

Response: The compliance record of all of Pennsylvania’s operators is excellent. In recent years 95% of DEP inspections found no violations. Forfeitures are typically the result of an operator’s business failing rather than a wanton disregard for the law. Therefore, an operator’s compliance record is not one of the factors the Department uses in determining the required bond amount for a permit.

Commenter 8: Most, if not all of the remining incentives developed by the Department simply do not work in the anthracite region. We urge the Department to work with the anthracite industry to explore and develop remining incentives that will work for anthracite operators. This should be done prior to implementing the draft technical guidance.

Response: The Department is willing to work with and consider any suggestions from the anthracite industry. However, the Department worked closely with industry and the Mining and Reclamation Advisory Board through the mid-1990’s to develop the remining incentives that went into effect in 1997. Despite the anthracite industry’s representation on the Board throughout this period, and its ample opportunity to provide input, it has chosen not to use any of the incentives. The Department will not delay implementation of the conventional bonding guidance.

Commenter 8: We suggest the Department host a “Conference on the Anthracite Industry” and invite state, federal and local officials to meet and focus specifically on anthracite coal issues prior to implementing this guidance. We believe that such a conference will encourage participation and generate new ideas on how to make anthracite mining more efficient and competitive.

Response: As “state officials”, the Department would participate in any such conference organized by the anthracite industry.

Commenter 9: The impact analysis indicates that most coal refuse disposal operations will be required to post additional bond. It is likely that almost all of them will. We are skeptical about the projected impact and are unsure that the applicability of conventional bonding to coal refuse disposal has been thought through all of the issues. If coal refuse disposal operations are eligible for conversion assistance, it might make sense to include them in the conversion. Otherwise, there should be a separate policy for bonding coal refuse disposal operations.

Response: The Department disagrees and will continue to include coal refuse disposal in this guidance. The Department believes that, except for post-disposal water treatment, the reclamation of refuse disposal sites can be broken down into unit operations covered by the Bond Rate Guidelines.

Commenter 9: One of the conditions for the MRAB's approval of the new bonding system is assurance that the surety industry will continue to write bonds in Pennsylvania under the full cost bonding program. DEP has indicated that the surety industry has responded favorably to the conventional bonding proposal.

Response: The Department received comments on this guidance from the Surety Association of America (Commenter 1). They indicated their appreciation of the conversion assistance program as a means for mitigating the impact of the new guidance on the surety industry.

Commenter 9: The per-acre reclamation fee, which is the foundation of the alternate bonding system, should be eliminated as soon as possible. Until this can be done, the Department should apply the fee to offset costs borne by the permittee.

Response: Elimination of the reclamation fee can only be accomplished by amending the coal mining regulations. The Department may consider this rulemaking at a future time. The Department cannot use the fees collected in the interim to offset permittees' costs. The Surface Mining Conservation and Reclamation Act dictates how these fees may be used.

Commenter 9: DEP should review and revise the regulations governing self-bonding. The system now is unworkable, and reform would reduce the strain on the bonding market and would promote accountability, efficiency and flexibility.

Response: The Department will consider revisions to the criteria for self-bonding at some time in the future. However, recall that any changes to the self-bonding regulations must be as effective as OSM's self-bonding requirements.

Commenter 9: DEP should review its guidance on surety reclamation of bond forfeiture sites to make it a more attractive option.

Response: Agreed. The Department will gladly entertain any suggestions for improving the guidance on surety reclamation, within the constraints of the Surface Mining Conservation and Reclamation Act.

Commenter 10: Due to the economic decline in the anthracite industry, the imposition of full cost bonding may be counter-productive, i.e., it may cause forfeitures. Requiring every operator to go to full cost bonding clearly overcompensates given the small number of actual forfeitures, particularly in the anthracite region. In lieu of imposing full cost bonding on all anthracite operators, the Department could work within existing regulations to assess where there is a relatively higher risk of forfeiture, and impose corresponding bond increases.

Response: The Department rejects this suggestion. SMCRA requires the bond to be based on the total estimated cost to the Commonwealth in completing the approved reclamation plan. Therefore, the bond must consider site conditions and the operator's method of mining. For example, the use of large pits and remote spoil storage add greatly to the cost of reclamation and the bond. Furthermore, the Department has found that the most frequent reason for forfeiture is

bankruptcy. In order for the Department to determine an operator's risk of forfeiture, the Department would have to assess the financial strength of the operator, including the market for his product.

Specific Comments (by subject, page and line)

APPLICABILITY

Commenter 7: page 1, lines 23-24: It would be helpful for DEP to clarify the specific kinds of operations that are covered by the guidance, and to make it clear that it covers anthracite operations.

Response: Agreed.

DEFINITIONS

Commenter 9: page 3, lines 28-32: Identify the significant components of reclamation. Treatment of postmining discharges should be added to the list of activities excluded from the definition of land reclamation.

Response: Agreed on both points.

BACKGROUND

Commenter 3: page 7, lines 13-16: The guidance states that the increase in bonds on a site will encourage operators to fulfill their responsibility to reclaim. Conversion to full cost bonding is more likely to cause operators to forfeit.

Response: The Department disagrees. The Commonwealth has funded and is offering conversion assistance to prevent that very situation.

Commenter 9: page 7, lines 40-46: We are somewhat concerned that the guidance applies to coal refuse disposal, surface areas of underground mines and coal preparation plants, in addition to land reclamation of surface mines. We have understood all along that the conventional bonding formulation would eventually apply to these other sites, but the Department's intent was to resolve problems with land reclamation of surface mines first. The implementation plan appears to be a somewhat sudden change, and the transition issues are not fully addressed in the guidance. (The commenter lists a number of issues, mostly about coal refuse disposal.) We recommend these other areas be addressed in a separate guidance.

Response: The Department intends to have a single guidance cover the bonding of coal mining activities. However, we agree that the implementation schedule in the guidance was intended to apply to the conversion of permits bonded under the ABS. The Department will also apply it to coal refuse disposal permits, which have never been bonded under a full cost system.

PROCEDURES

I. GENERAL

Commenter 9: page 7, lines 40-46: We are concerned that the implementation plan includes coal refuse disposal, preparation plants and the surface areas associated with underground mining. The outreach for this guidance was based solely on land reclamation of surface mines. There are a number of transition issues that are not fully addressed in the guidance.

Response: First, the Department disagrees that outreach was limited to surface mine operators. The deep mine industry was present at many of the outreach meetings. Additionally, the coal association, which represents those operators, was present at all of the outreach sessions. Nevertheless, the Department acknowledges that there are issues in applying this guidance to coal refuse disposal, preparation plants and surface areas of underground mines. The McMurray District Mining Office will be working closely with the permittees of those facilities to bring their bonds in line with this guidance. However, this guidance is intended to address bonding of all coal mining operations.

II. SETTING BOND RATE GUIDELINES

A. Discussion

Commenter 9: page 8, lines 7-9: The inclusion of a formula for calculating postmining treatment bonds (see p. 29, lines 4-8) is irrelevant in a document pertaining to bonding for land reclamation.

Response: Agreed. It has been removed. However, the mining industry is aware of the need for sound funding for postmining treatment. It is the Department's intention to notify individual permittees who have this obligation of the need to adjust their bonds or arrange some other financial assurance to cover their postmining treatment obligations. The Department intends to provide these notices by letters before the end of 2001.

B. General Methodology

Commenters 8,11: page 9, lines 11-22: According to the Pennsylvania Department of Labor, mine reclamation is exempt from the prevailing wage provisions of the federal Davis Bacon laws. Bond rates should not be based on a prevailing wage rate.

Response: Bond rates are based on the actual bids received for BAMR reclamation work.

Commenter 7: page 9, lines 11-17: The Department's proposed method for determining bond rate guidelines is to average the three lowest amounts for a unit operation from all bids received. This method may not ensure that DEP has enough money to complete the reclamation plan. An alternate methodology would be to average the unit costs from the winning bids. This would provide a bond rate within the range DEP actually paid for that unit operation. As a check on the validity of its numbers, DEP should plug the bond rate guidelines, including indirect costs,

proposed in the guidance into an actual contract, and compare that amount to the actual winning bid. Examples of such comparisons should be presented in the comment and response document.

Response: As suggested, the Department reviewed the unit cost for grading in the winning bids. The average cost of the winning bids is \$0.64 per cubic yard. The Bond Rate Guidelines lists two unit costs for grading, which depend on the distance the material must be moved. The BRG costs are \$0.50 and \$0.80 per cubic yard. The average winning bid falls between these two unit costs, which leads the Department to believe that its method is valid.

III. CALCULATING SITE-SPECIFIC BOND AMOUNTS

A. Operational Area Concept

Commenter 2: page 11, lines 5-12: The concept of a “floating” pit cannot be utilized at many anthracite operations due to the depth of the coal and the need to maintain roadways into the operation. This requires a higher percentage of open pit at all times. How does the Department justify this type of working parameters for anthracite?

Response: The law requires bond in the amount needed for the Commonwealth to hire contractors to complete the approved reclamation plan. A higher percentage of open pit equates to a higher reclamation cost to the Commonwealth should the operator forfeit.

Commenter 3: page 11, lines 5-12: The concept of “operational area” is only slightly feasible for the anthracite surface mine operator. This concept will put the anthracite operators at a severe cost disadvantage. The anthracite operator will be forced to modify his operational area to accommodate areas where no coal extraction will take place.

Response: The guidance leaves the operator to control the amount of bond through their operation and reclamation plans. The Department expects all operators to consider modifications to their operational areas in order to minimize their reclamation liability and the bond that will be needed.

Commenter 4: page 11, lines 5-40: The concept of having no need for successive bonding increments is totally incorrect for the anthracite operator. In order for the operational area concept to work, the operator will have to reduce the operational area in order to stay within his bonding limit. This will increase the number of bonding increments needed. Additionally, under this concept, the bond at the end of an operation’s life will still be at its maximum and depth of coal will limit any operator’s ability to produce coal from new areas.

Response: The Department has revised the guidance to say that the operational area concept may reduce the need for successive increments. The rest of the comment indicates confusion on how the operational concept works. The Department will help any operator understand how the operational area concept will work on his specific site.

Commenter 9: page 11, lines 7-9, 22-23: There is a mistaken reference to the Stage 3 maintenance bond being required during the entire time the mine is operational. This reference should be deleted.

Response: Agreed. The Stage 3 maintenance bond is only required when bonds are released on the final pit.

Commenter 7: page 11, line 24: The guidance should make it clear that specific permit conditions will define the permitted dimensions of the operational area. (This comment was originally made in reference to the section of the guidance titled "Monitoring and Compliance.")

Response: Agreed. A statement to that effect has been inserted on page 11, line 24.

B. Bond Calculation Procedures

Commenter 7: page 13, line 13: The BRGs are based on bids received during the preceding three years and are not adjusted for projected increases over the five-year permit term. DEP could treat inflation as a species of "indirect" cost by applying a compounded inflation rate to the direct costs calculated by the BRGs.

Response: The Department understands the commentator's concerns about inflation. However, the Department intends to rely on the annual and midterm reviews and the annual evaluation of the Bond Rate Guidelines to monitor the effects of inflation.

Commenter 7: page 13, line 13: The 1999 draft guidance included indirect costs for mobilization/demobilization and dewatering of pits. The current draft guidance does not explain why those cost were removed from the list of BRGs. Because the costs of dewatering and mobilization/demobilization are ones that the bond proceeds would have to cover in the event of forfeiture, the calculation procedure must explicitly account for them.

Response: The Department dropped dewatering from the BRG because there is no reliable methodology for estimating the amount or quality of water. More importantly, most surface mines are above the water table and will be dry. However, the Department has the authority to adjust the bond for unanticipated events. If during mining an event should occur that leads the Department to believe that a pit will fill with water if pumping would stop, the Department would require a suitable increase in the bond. The Department has reconsidered the costs for mobilization/demobilization and returned that unit operation to the Bond Rate Guidelines. Using the methodology described in the guidance, mobilization/demobilization is determined to be an indirect cost of 4% of direct costs or a \$40,000 lump sum, whichever is less.

Commenter 7: page 13, line 13: The regulations at 86.149(b)(6) say the bond calculation must account for additional estimated costs from applicable public contracting requirements. One set of indirect costs that fit this description are the administrative costs incurred by BAMR in preparing bid specification packages, reviewing bids and administering reclamation contracts.

Response: The Department's administrative costs are covered by the OSM grant. Therefore, the Department does not include those costs when calculating the bond amount.

Commenter 9: page 13, lines 13-17: If there is only one type of indirect cost, the guidance should refer to that cost as an E&S installation or upgrade and should make clear the circumstances where it is applicable.

Response: The wording of lines 13-17 has been revised based to specifically identify the two types of indirect costs.

C. Dispute Resolution

Commenter 3: page 13, line 41 - page 14, lines 9: The dispute resolution provision is heavily weighted against the operator. The initial negotiation and the proposed yearly negotiation will be an undue expense to the operator. Additionally, the mining operation will most likely be shut down or not working during the time the operator is seeking resolution to the dispute. A dispute resolution timetable must be established that does not force the operator to cease work indefinitely. Also, the bond amount decided upon should be formalized by an order or agreement with a given amount for a given time.

Response: The guidance does not say that an operator must shut down until a dispute is resolved. Furthermore, the dispute resolution process is a permit application review process. The bond amount is formalized in the permit. For now, the Department rejects the suggestion for including a rigid timetable for dispute resolution in the guidance. The Department feels it could be unnecessarily burdensome to both parties. However, the Department is willing to reconsider this decision if operators experience problems during implementation.

Commenter 7: page 13, line 41 – page 14, line 9: We recommend that the informal dispute resolution procedure be made available to any person and that DEP establish strict deadlines for making requests and completing each stage of the informal review. The availability of the informal review to third parties might obviate appeals to the Environmental Hearing Board.

Response: There is no regulatory or statutory basis for including third parties in the process of establishing the amount of bond on a permit. Therefore, the Department will not include such a process in this guidance. As stated previously, the Department is willing to reconsider using strict deadlines if operators or the Department experience problems during implementation.

Commenter 7: page 13, line 41 – page 14, line 9: We recommend the guidance make it clear that failure to invoke the informal dispute resolution process does not affect the right to challenge the bond amount determination in an appeal to the Environmental Hearing Board.

Response: Agreed. A statement to that effect has been added to the end of the section on dispute resolution.

Commenter 8: page 13, line 41 – page 14, line 9: We suggest that the guidance include timetables for the dispute resolution process.

Response: The Department feels that a rigid timetable is unnecessary. However, the Department is willing to reconsider this decision if operators experience problems during implementation.

IV. BONDING SPECIAL FEATURES

A. Structures Not Needing Bonds

Commenter 9: page 14, lines 14-26: The guidance should include a few additional examples of structures that do not need to be bonded, such as buildings and structures to remain as part of the postmining land use and areas already bonded by another operator.

Response: Agreed. The additional examples have been added.

B. Coal Ash Placement

Commenter 6: page 14, line 28 – page 15, line 4: The language on coal ash placement and refuse reprocessing looks fine.

Response: Thank you.

Commenter 7: page 14, lines 28-40: Although this section of the guidance states clearly that it applies to abandoned pits and that the operator using coal ash in an active pit is required to fill and reclaim the pit, we request that additional clarification be included in the final guidance.

Response: Agreed. A statement to clarify this has been added.

D. Water Supply Replacement Bonds

Commenter 7: page 15, lines 6-18: The guidance states that the water supply replacement bond is separate from the land reclamation bond and is covered by a separate guidance document. We request that the Department apply the full-cost concept to water supply replacement bonds instead of the flat \$3,500 bond currently required.

Response: The Department agrees and will consider a revision to technical guidance number 562-2500-702, *Insurance Requirements and Water Supply Replacement Assurance*.

V. REPORTING AND RECALCULATION OF BOND AMOUNTS

A. Annual Review

Commenter 7: page 15, line 23 – page 16, line 10: With respect to the midterm review, the guidance proposes a threshold of a 15% increase in the cost of reclamation for requiring the submission of additional bond. There should be no threshold for increasing the bond at midterm

because the midterm adjustment is the only mechanism for taking into account the increases in reclamation costs, as specifically required by § 86.149(b)(9). In no event should DEP raise the midterm threshold above 15%. Additionally, the guidance should specify the procedures and time limits that will apply to the requirement to submit additional bond.

Response: The Department disagrees and chooses to use the 15% threshold at midterm. During much of the permit term, the actual reclamation obligation is less than was calculated for the bond. For instance, pits are often only partially open to their full extent for long periods of time because the pit is in the process of being excavated and because of ongoing backfilling. Therefore, the Department's exposure is normally less than the bond amount. There is no need for the guidance to specify procedures and times for submitting additional bond. The regulations specify these at §86.165, *Failure to maintain proper bond*.

Commenter 9: page 15,lines 38-40: Since the operator is providing a report of reclamation activities annually to surface land owners, there should be a provision for ensuring that any concerns the landowner has with the accuracy of the report or the adequacy of the reclamation must be raised within a certain time after the report is provided.

Response: The Department disagrees. Although it would be convenient for the Department and operator to know within a reasonable period of time that the landowner has problems with the reclamation work, except for a formal action such as a bond release, neither the Department nor the operator has the authority to place a time limit on the landowner. The notice by the operator is not a legally binding document or an appealable action of the Department.

Commenter 7: page 16,lines7-10: The guidance should make it clear that any percentage increase threshold that applies to the midterm review does not apply to the requirement to adjust the bond amount at the time of permit renewal.

Response: The Department agrees and has inserted language to clarify this point.

VI. BOND RELEASE

Commenter 7: page 16,line 38 – page 17,line 21: We believe that there are a number of significant drawbacks to the bond release provisions in the draft guidance. Specifically:

- No maintenance bond is required until the operator requests bond release on the final operational area. We believe that this approach will only provide enough money to reclaim the operational area and would not cover any portion of the cost of reestablishing vegetation on older, reclaimed areas of the permit.
- No formal notice of an appealable action will be given to landowners, adjoining landowners, municipalities, etc. until the operator requests bond release on the final operational area. The delayed bond release process will force landowners and others to put up with any inadequate reclamation for years before the permittee begins the bond release process, and objections raised during the delayed bond release process could force the permittee to return to areas that would have been much cheaper and easier to regrade nearer the time of the original reclamation.

- No formal verification by DEP that the reclamation meets approximate original contour (AOC) requirements and the other Stage 1 and 2 standards before the permittee begins the bond release process. There is a possibility that the actual reclamation liability on the site (including the need to regrade areas that deviate materially from AOC) will greatly exceed the total remaining bond.

[The main points of this comment have been numbered to allow the reader to match the comment to the response.] (1) We suggest the Department require the permittee to post the Stage 3 maintenance bond on reclaimed areas at the time Stage 2 standards are achieved. This would signify that the area has been removed from the operational area. (2) For the benefit of the permittee, landowners and other interested parties, the DEP could make a formal finding that the area meets Stage 2 standards. These areas could be deleted from the maintenance bond calculation after they meet the 5-year liability period. (3) Furthermore, the guidance should indicate that DEP will determine if reclaimed areas meet the standards for AOC and Stage 1 and 2 bond release at the annual, midterm and permit renewal reviews. If the reclamation is inadequate, the DEP should issue a compliance order requiring timely compliance with the standards or posting of additional bond.

Response: (1) The procedure in the guidance for land that meets Stage 2 standards is consistent with the regulations. Subsection 86.149(a) states that the bond amount should be the estimated cost to the Department if it had to complete the reclamation. Once a portion of the permit area meets Stage 2 standards, the vegetation has been established, and the cost to the Department to reclaim that area is zero. Bond release, on the other hand, has a different standard, namely the Department has to retain enough bond to cover the cost of reestablishing vegetation and reconstructing drainage structures. It is at this point the operator is required to have the \$500 per acre maintenance bond on any areas that do not meet the Stage 3 standard. (2) Because landowners of affected properties are the most likely persons to object to reclamation work, the Department has revised the guidance to require operators to include in their annual notice to landowners a statement that landowners should contact the appropriate District Mining Office if they wish the Department to make a formal determination on the adequacy of the reclamation. Notice to adjacent landowners and municipalities will occur as part of the public notice for actual bond release. (3) DEP accepts the suggestion that DEP determine if reclaimed areas meet AOC and Stage 1 and 2 standards at the annual, midterm and permit renewal reviews. Appropriate changes have been made.

Commenter 7: page 17, lines 10-12: It does not appear that the \$500 maintenance bond takes into account the "...possible cost to remove erosion and sediment controls." mentioned in the guidance. Without covering this "possible cost," the bond will not guard against the worst-case scenario and would not ensure the performance of all required reclamation measures.

Response: The Department disagrees. It has never found a case of total failure of the vegetation after a site has reached Stage 2 standards. The \$500 per acre will provide sufficient funds to cover removal of any remaining erosion and sediment controls.

VII. MONITORING AND COMPLIANCE

Commenter 9: page 17, lines 29-30: The guidance should be more specific about what is to be measured at the site and what measurement techniques will be used by inspectors. This will ensure reasonable quality control in the field and give the operators valuable information to assist in the calculation of the bond.

Response: The Department agrees that more information on what to measure would be helpful and has added language for that purpose. The Department chooses not to specify the measurement techniques in the guidance. Prescribing specific techniques is unnecessary and overly restrictive.

Commenter 9: page 17, lines 29-35: The amount of pit open and available for pit measurement may vary considerably. Rarely will the entire pit floor be fully exposed to the dimensions used for calculating the bond. Will operators be able to submit information to DEP on the volume of material that needs to be replaced, where it is materially different than would be assumed by a simple calculation of the exposed area?

Response: The guidance foresees this possibility. It states that the inspector can require the operator to verify the dimensions of the operational area.

Commenter 7: page 17, lines 37-38: We suggest this sentence be revised to track the definition of “temporary exceedance” on page 4 of the guidance.

Response: The Department agrees and has revised the sentence accordingly.

Commenter 7: page 17, lines 39-40: Although apparently not DEP’s intention, the guidance indicates that DEP will take no enforcement action of a “temporary exceedance” other than noting on an inspection report.

Response: This is DEP’s intent. (See below.)

Commenter 7: page 17, line 26 – page 18, line 4: The most important problems with the draft guidance’s proposed approach to monitoring and compliance relate to the concept of “temporary exceedance.” No matter what its duration, a violation of permit conditions governing the dimensions of the disturbed operational area is not one that should be excused with only a note on an inspection report. Moreover, there is no reason to allow repeated violations of these permit conditions so long as they only occur twice per year and satisfy the other elements of the “temporary exceedance” definition. DEP should remove the “no more than twice per year” element and provide that more than one exceedance of the permitted dimensions will result in issuance of a notice of violation or compliance order.

Response: The Department agrees to modify the definition of “temporary exceedance” by replacing the “twice per year” condition with “once per permit term.” The Department will retain the enforcement strategy proposed in the guidance. The Department’s position is that as long as the bond amount is greater than the operator’s reclamation liability the Department can

afford to be flexible by allowing the permittee short-term variations in the dimensions of the operational area.

Commenter 9: page 17, lines 37-45: A key benefit of the floating pit concept is flexibility. In cases where the sufficiency of the bond is not in question, the guidance should encourage operators to communicate short-term changes that affect the size of the operational area and to provide a plan for returning the size of the operational area to the dimensions in the permit or submitting revised bond calculation worksheets.

Response: The Department agrees provided the operator communicates his intent before undertaking the changes. Appropriate revisions have been made.

VII. IMPLEMENTATION SCHEDULE

B. Existing Permits

Commenter 9: page 18, lines 17-41: If coal refuse disposal, preparation plants and surface areas of underground mines are going to be eligible for conversions assistance, it might be appropriate to include them in the transition and implementation schedule. If not, including them will rush through a change in the way these sites are bonded without fully exploring the impact. Furthermore, requiring transition of sites that are not covered by conversion assistance could burden DEP with work that is not under the deadline pressure that confronts surface mining permits.

Response: Coal refuse disposal, preparation plants and surface areas of underground mines are not eligible for conversion assistance. In the bituminous region, the transition to bonding under this guidance will be handled by the McMurray District Mining Office. We do not anticipate any workload problems with that office because it is not involved in the transition of surface mine permits.

Commenter 8: page 18, lines 17-41: We are concerned about the approval turn around time for bond increments. We request that the guidance spell out how bond increments will be handled.

Response: The Department has added a statement that requires the District Offices to follow the current timeframes for reviewing and handling bond increments.

Commenter 8: page 18, line 26: The guidance indicates that the operator may negotiate with the Department. Does this negotiation encompass both existing permits and new permits? We believe that it should be more clearly spelled out with regard to how, when and to what effect.

Response: The negotiation that the guidance refers to is in the context of a consent order and agreement for the purpose of setting a schedule for reduction of reclamation liability and posting additional bond for an existing permit. The guidance provides a dispute resolution process for disagreements over bond amounts on new permits.

Commenter 9: page 18, lines 21-25: Does DEP intend to send all of the notices out at once? Will response times be staggered? How long will the lead-time be?

Response: BMR will send out the notices for existing permits. Responses will be staggered at the discretion of the District Mining Offices. They will decide how much time will be give to the operators based on site status, the general condition of the site and the operator's potential interest in applying for conversion assistance. Language has been added to clarify this point.

Commenter 9: page 18, lines 25-27: The consent order and agreement was considered prior to setting up the conversion assistance program. Is the language here in error or as an alternative for permittees who are ineligible for conversion assistance? Please clarify.

Response: The consent order and agreement is intended for use for operators who have difficulty in obtaining the additional bond under the conventional bonding system. Clarifying language has been added.

IX. OPERATOR ASSISTANCE PROGRAMS

Commenter 1: page 19, lines 3-11: The commenter compliments the Department for it awareness of the surety industry's concerns by proposing measures to mitigate the impact to the sureties. If bond availability becomes an issue in the future, revisions to the guidance should be considered.

Response: The Department thanks the commenter. If bond availability becomes an issue for Pennsylvania's coal mining industry, the Department will work with the sureties, the coal operators and the Mining and Reclamation Advisory Board to reach an acceptable solution.

A. Conversion Assistance Program

Commenter 2: page 19, line 13 – page 21, line 7: The draft guidance does not explain how to participate in any of the assistance programs. Please provide directions for participation.

Response: A brief explanation of this process has been added to the guidance. The Department is in the process of solidifying these procedures. The District Mining Offices will provide this information to the operators during the conversion.

Commenter 7: page 19, line 14 – page 20, line 8: The conversion assistance program, for a number of reasons, is not an ideal solution, but it is a practical and sensible response to a difficult situation. We support the conversion assistance program as an appropriate element of the switch to the conventional bonding system.

Response: The Department appreciates your support.

Commenter 7: page 19, line 13 – page 20, line 8: Mines not currently under the ABS will experience significant increases in their bonding amounts under the proposed system. There

would appear to be no reason to have a blanket rule precluding current “full cost” sites from participating in the program if they satisfy the prerequisites.

Response: The Department disagrees. The \$7,000,000 appropriation, which supports the conversion assistance program, was based on the premise that it would be used for coal mining permits currently bonded under the ABS.

Commenter 7: page 19, line 13 – page 21, line 7: The guidance should clarify that the financial guarantees under the Conversion Assistance Program and the Land Reclamation Maintenance Bond Program serve all the purposes of a bond under SMCRA, CSL and CRDCA, and therefore, are not limited to guaranteeing land reclamation.

Response: Agreed.

Commenter 7: page 19, line 13 – page 21, line 7: The guidance should indicate that under both the conversion assistance program and the maintenance bond program, if a postmining discharge were to develop on a participating site, the program’s financial guarantee could not be released unless the operator put another financial mechanism in place to guarantee perpetual treatment of the discharge.

Response: The Department agrees that its financial guarantees cannot be released until the operator has another financial mechanism in place to cover the postmining treatment obligation. A statement has been added that says the operator will be required to post another financial mechanism to cover the cost of long-term treatment if any postmining discharges occur.

Commenter 3: page 19, line 15 – page 20, line 8: The conversion assistance program will only aid the operator in meeting his initial conventional bonding requirement for the active mining area. If these benefits cannot be rolled over, the operator will need to obtain his own additional bonding to continue the operation after completion of the current active mining phase.

Response: Conversion assistance will apply to the entire permit area until released for the final pit. However, if after the conversion to conventional bonding, the operator modifies his mining plan such that additional bond is required, the operator must provide the additional bond.

Commenter 9: page 19, line 15 – page 20, line 8: There is confusion about who will be eligible for conversion assistance. Will assistance be available to any permittee who will have an increase in bond under the conventional bonding, or will assistance be limited to permittees who are unable to secure the additional bond?

Response: The purpose of the conversion assistance program is to help operators currently bonded under the ABS who are unable to provide additional bond under the conventional bonding system. The Department assumes that operators who are able to get additional bonds from the private sector will do so because the fee for participation in the conversion assistance program, 1.5% per year, prepaid for the life of the mine, is generally higher than the premiums charged by surety companies.

Commenters 2,3,4,8,10: page 19, line 15 – page 21, line 7: The conversion assistance and the maintenance bond programs exclude permits that are hydrologically connected to a postmining discharge. This provision will exclude virtually all anthracite mining from participation.

Response: This provision has been modified to exclude only those permits that have an obligation to treat a postmining discharge. Very few anthracite operations have that obligation. (See below.)

Commenter 9: page 19, lines 20-21: Excluding all permits, including remining permits, where there is a discharge is extreme. DEP should limit the exclusion to situations where the conversion assistance funds could be encumbered because of the discharge.

Response: The Department agrees and has modified the provision to exclude only those permits with an obligation to treat a postmining discharge. Permits under Subchapters F and G are eligible for conversion assistance.

Commenter 7: page 19, lines 20-29: One prerequisite for participation should be that the operator has minimized the operational area and overall reclamation liability. DEP should require that the request for coverage include a description of what the operator has done to reduce the operational area and the reclamation liability.

Response: The Department is relying on the cost of the fee for the financial guarantee to induce permittees to minimize their bond obligation. The 1.5% is higher than what most sureties charge.

Commenter 7: page 19, lines 26-27: In an attempt to avoid potential legal challenges, the request for coverage should include the consent of any surety, financial institution or person with an interest in any bond collateral to the release of the conversion assistance financial guarantee before all other bonds.

Response: Agreed. The Department has added this condition.

Commenter 9: page 19, lines 28-29: DEP should clarify the request and fee provisions.

Response: Additional language has been inserted in the guidance to provide a brief explanation.

Commenter 9: page 20, line 4: Conversion assistance bonds will be the first bonds released under the conventional bonding system. Because of this, there appears to be a finite period for which the conversion assistance bonds will be committed to the conventional bonding conversion assistance. What will be done with the funds as they are de-obligated?

Response: The Department has not yet determined what will happen to these funds. The commenter is reminded that the actual funds are only 10% of the financial guarantees. Any forfeitures would reduce the funds by the amount of the forfeited financial guarantee.

Commenter 10: page 20, line 4: The \$7,000,000 may be woefully inadequate to cover the potential exposure of the conversion assistance program. Does the Department intend to use the \$7,000,000 to cover \$70,000,000 of exposure, assuming a 10% forfeiture rate?

Response: The appropriation will be used to cover \$70,000,000 of exposure. This has been clarified in the guidance.

B. Land Reclamation Maintenance Bond Program

Commenter 7: page 20, line 12 – page 21, line 7: The guidance does not indicate what specific source will be tapped to fund the Land Reclamation Maintenance Bond Program. The wording of the guidance suggests that public funds will be used. We feel that the Land Reclamation Maintenance Bond program is justified to the extent that it is limited to participants in the conversion assistance program. For other operators, however, the program will transfer to taxpayers a risk that is properly borne by mine operators. We recommend the maintenance bond program be limited to the operators who are participating in the conversion assistance program.

Response: The Department disagrees for several reasons. First, there is no reason to assume that the maintenance financial guarantee program is supported by public funds. The Department has determined that it needs \$100,000 to support this program, and the Department collects approximately \$600,000 from reclamation fees per year from active operators. Second, by freeing up private sector bonds sooner, operators will be able to undertake additional mining. This is desirable because of the significant amount of remining that is regularly done by active mining. Although the Remining Financial Guarantees Bond Program provides bonding assistance for remining, that program is limited by the funds available in the Remining Financial Assurance Fund. Third, the Department has determined that the risk to the Commonwealth under the Land Reclamation Maintenance Bond Program is nil.

Commenter 7: page 20, lines 12-45: The guidance should explain that even if all of the bonds issued by the private sector have been released for a site that enters the Land Reclamation Maintenance Bond program, the operation is still an inspectable unit and subject to bond adjustment if unexpected increases in the cost of reclamation arise.

Response: Agreed.

Commenter 7: page 20, line 10 – page 21, line 7: Concerning the operator's responsibility for requesting final bond release, DEP should limit any requirement to pre-pay the publication costs to situations where the operator truly has no incentive to request bond release. In most cases, this would be on the operator's last remaining permit. (Note: The commenter also provided a number of suggestions for improving the bond release process that are not pertinent to this guidance.)

Response: The Department is exploring various options for covering the cost of publication when the operator refuses to request bond release.

C. Remining Financial Guarantees Bond Program

Commenters 2,10: page 21, lines 11-41: At a meeting on June 6, 2000, the Department indicated that OSM would include use of Title IV funds as a guarantee for part of the bond on certain remining sites. The guidance makes no referral to such assistance. Please provide OSM's involvement and assistance.

Response: OSM has agreed to allow the use of AML 10% set-aside funds to support the remining financial guarantees program for permits on qualifying watersheds. The guidance has been revised to indicate the use of 10% set-aside funds for this purpose.

Commenter 2: page 21, lines 11-41: With respect to the Remining Financial Guarantees Bond Program, what is the estimated dollar on the amount of bond guarantee that may be provided for any permit and any one operator?

Response: The limits, if any, have not yet been determined. (See below.)

Commenter 2: page 21, lines 11-41: What is the number of acres of remining under this program today? Please provide the totals for anthracite and bituminous separately. What is the number of acres that will be covered after implementation of the conventional bonding program?

Response: As of May 31, 2001, the Remining Financial Guarantees program is covering 3,907 acres of remining in the bituminous region and 0 acres in the anthracite region. The Department has no way of estimating how many acres will be covered after implementation of the conventional bonding system. However, given that the anthracite industry has not used any of the Reclaim PA incentives in the past, the Department concludes that no acres will be covered in the anthracite coal region.

Commenter 2: page 21, lines 11-41: How will the total Remining Financial Guarantees Program be allocated to each permit, any one operator, bituminous and anthracite?

Response: Chapter 86, Section 86.281 limits the total financial guarantees on a single permit to 10% of the amount in a special account in the Remining Financial Assurance Fund, and the total financial guarantees to a single operator to 30% of the amount in the special account. The regulations and SMCRA do not separate anthracite from bituminous in the remining financial guarantees program.

Commenter 4: page 21, lines 11-41: Currently, the Financial Guarantees Program limits each operation to \$80,000 based on available funding. It was discussed that this figure would possibly increase to \$300,000. Even this amount will have to be increased greatly for the program to work under the conventional bonding system. Funding must be in place first in order for the Financial Guarantees Program to work under the proposed guidance.

Response: Because the commenter makes no mention of the conversion assistance program, the Department assumes that his concern is for new mining. The Department believes that the Remining Financial Guarantees Program will continue to provide incentives for remining. The

Remining Financial Guarantees Program is not intended to carry the bulk of an operator's bond obligation.

Commenter 9: page 21, lines 9-41: This is another excellent concept by DEP. However, we are concerned about the reference to the use of AML funds as an implied condition to loosening the per-permit and per-operator limits. The funds supporting this program need to be substantially increased or the limits need to be removed. The current limits will be a major impediment to significant increases in remining.

Response: With the addition of the OSM 10% set-aside funds, the Department believes that the Remining Financial Guarantees Program will continue to provide incentives for remining. The Remining Financial Guarantees Program is not intended to carry the bulk of an operator's bond obligation.

Appendix A

Commenter 9: page 23: The erosion and sediment maintenance/upgrade should be clarified or eliminated. This appears to be a typical bonding cost and it is not. The Stage 3 maintenance bond appears to be listed here by mistake and should be deleted.

Response: The bond calculation worksheet is very clear that the erosion and sediment controls upgrade is not a typical cost. The Stage 3 maintenance bond is not listed by mistake. It is included here for completeness.

Appendix B

Commenter 9: page 28, lines 22-23 and page 31, lines 31-32: DEP should not require three estimates, which seems difficult and burdensome. DEP should accept one estimate from a contractor on DEP's pre-approved list. DEP can reserve the right to challenge estimates that are unreasonable.

Response: The Department agrees that three independent estimates may be unreasonable in every situation. DEP has modified the bond calculation worksheet to have the operator identify the unit operations and sources of materials to be imported to the site.

Commenter 9: page 29, lines 4-9: This section should be deleted. DEP should proceed with a separate policy for financial assurance of long-term treatment.

Response: The Department agrees to delete this section and to pursue this aspect of bonding through a separate policy. Because bonding for postmining treatment may involve significant costs to the coal mining industry and a significant burden on Department staff, it will be handled as a separate initiative. The Department will be notifying operators with postmining discharges later this year of the need to post additional bond to cover postmining treatment. The same formula that we are removing from this guidance will be used to determine the bond for postmining treatment.