

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND
COAL MINING: GENERAL

Subchapter B. PERMITS
REVIEW, PUBLIC PARTICIPATION AND APPROVAL, DISAPPROVAL
OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

§ 86.37. Criteria for permit approval or denial.

(a) A permit or revised permit application will not be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of the information in the application or from information otherwise available, which is documented in the approval, and made available to the applicant, that the following apply:

(1) The permit application is accurate and complete and that the requirements of the acts and this chapter have been complied with.

(2) The applicant has demonstrated that the coal mining activities can be feasibly accomplished as required by the act and this chapter under the operation and reclamation plan contained in the application.

(3) The applicant has demonstrated that there is no presumptive evidence of potential pollution of the waters of this Commonwealth.

(4) The assessment of the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance as described in § 87.69, § 88.49, § 89.36 or § 90.35 has been made by the Department, and the activities proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(5) **[The proposed permit] The area covered by the operator's bond and upon which the operator proposes to conduct surface mining activities within the boundary of the proposed surface or coal mining activities permit** is not one of the following:

(i) Included within an area designated unsuitable for mining under Subchapter D (relating to areas unsuitable for mining).

(ii) Within an area which has been included in a petition for designation under § 86.124(a)(6) (relating to procedures: initial processing, recordkeeping and notification requirements).

(iii) On lands subject to the prohibitions or limitations of Subchapter D.

(iv) Within 100 feet (30.48 meters) of the outside right-of-way line of any public road, except as provided for in Subchapter D.

(v) Within 300 feet (91.44 meters) from any occupied dwelling, except as provided for in Subchapter D.

(vi) Within 100 feet (30.48 meters) of a stream, except as provided for in § 86.102 (relating to areas where mining is prohibited or limited).

(6) The proposed activities will not adversely affect any publicly owned parks or places included on the National Register of Historic Places, except as provided for in Subchapter D. The effect of the proposed coal mining activities on properties listed on or eligible for listing on the National Register of Historic Places has been taken into account by the Department. This finding may be supported in part by inclusion of appropriate permit conditions or operational plan changes to protect historic resources, or a documented decision that no additional protective measures are necessary.

(7) Prior to approval of the bond under Subchapter F (relating to bonding and insurance requirements), a right of entry has been obtained from the landowner for each parcel of land to be affected by the coal mining activities in accordance with § 86.64 (relating to right of entry).

(8) The applicant has submitted proof that a violation related to the mining of coal by the applicant, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1 (relating to definitions) or by a related party of the acts, a rule, regulation, permit or license of the Department has been corrected or is in the process of being corrected to the satisfaction of the Department, whether or not the violation relates to an adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. A permit issued under this paragraph on the basis that a violation is in the process of being corrected or pending the outcome of an appeal, and the appropriate regulatory authority program having jurisdiction over the violation provides for a stay of execution of the abatement procedure or a court of competent jurisdiction has issued a supersedeas providing that relief, will be issued conditionally.

(9) A statement from the applicant that all reclamation fees required by 30 CFR Part 870 (relating to abandoned mine reclamation fees) have been paid.

(10) There are no past or continuing violations which show the applicant’s, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1, lack of ability or intention to comply with the acts or the regulations promulgated thereunder, whether or not the violation relates to an adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. If the Department makes a finding that the applicant or the operator specified in the application or a person who owns or controls the applicant or operator or a person owned or controlled by the applicant or operator, has demonstrated a pattern of willful violations of the acts of a nature and duration and with resulting irreparable damage to the environment as to indicate an intent not to comply with the acts, a permit will not be issued.

(11) The applicant has submitted proof that a violation by the applicant or by a person owned or controlled by the applicant or by a person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1, of a law, rule or

regulation of the United States or a state—other than the law of the Commonwealth—law, rule or regulation pertaining to air or water environmental protection enacted under Federal law, has been corrected or is in the process of being satisfactorily corrected. A permit issued under this paragraph on the basis that a violation is in the process of being corrected or pending the outcome of an appeal, and the appropriate regulatory authority program having jurisdiction over the violation provides for a stay of execution of the abatement procedure or a court of competent jurisdiction has issued a supersedeas providing that relief, will be issued conditionally.

(12) The applicant shall submit the bond required under Subchapter F prior to the issuance of the permit.

(13) The applicant has satisfied the requirements of § 87.53, § 88.32, § 88.491(k), § 89.121 or § 90.22.

(14) The proposed postmining land use of the permit area meets the requirements of § 87.159, § 88.89, § 88.183, § 88.289, § 88.493, § 89.88 or § 90.166.

(15) The proposed activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544).

(16) A statement from the applicant that State and Federal final civil penalty assessments have been paid. Final civil penalty assessments are civil penalty assessments which have not been appealed within 30 days of assessment or appealed civil penalty assessments which have been adjudicated by the EHB or other applicable judicial forum. For purposes of this subsection, civil penalty assessments include State and Federal civil penalty assessments related to coal mining activities which are assessed by one of the following:

- (i) The Department under the authority of the acts.
- (ii) The Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) under the authority of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328).
- (iii) A State regulatory authority which has been granted primary jurisdiction by OSMRE to implement the Federal coal mining regulatory program within its boundaries.

(b) An incremental phase approval of the permit will not be granted to conduct mining or reclamation operations or to expand mining or reclamation operations within a permit area if the Department has already issued an incremental phase approval for the area to another permittee, except for an area used for access or haul roads. An incremental phase approval of the permit will not be granted to conduct mining or reclamation operations, or permission to expand mining or reclamation operations within a permit area which has been limited to a portion or phase of the entire area until the applicant:

(1) Has filed with the Department a bond in accordance with § 86.143 (relating to requirements to file a bond).

(2) Meets the requirements of subsection (a)(7)-(9).

(c) After an application is approved, but before the permit is issued, the Department will reconsider its decision to approve the application, based on the compliance review required by subsection (a)(8), (10) and (11) in light of new information submitted under §§ 86.62(d) and 86.63(c) (relating to identification of interests; and compliance information).

CHAPTER 87. SURFACE MINING OF COAL

Subchapter E. SURFACE COAL MINES: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 87.160. Haul roads and access roads.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; and flooding and damage to public or private property. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, in accordance with current, prudent engineering practices and necessary design criteria established by the Department. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 87.166 (relating to haul roads and access roads: restoration) unless retention of the road [**and its maintenance plan**] is approved as part of the postmining land use.

(b) The haul or access road may not be located in or within 100 feet (30.48 meters) of a perennial or intermittent stream except in accordance with § 86.102 (relating to areas where mining is prohibited or limited). A crossing of a perennial or intermittent stream shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachment or water obstruction shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

(c) Each road shall have a drainage system that is compatible with the natural drainage system, is structurally stable, and which will pass safely the peak flow from a 10-year, 24-hour precipitation event or larger event if required by the Department. The drainage system shall include a sloped or crowned road surface, cross drains or culverts, stabilized ditches, erosion-resistant surfacing, sediment traps and other appropriate sediment control measures as required by § 87.106 (relating to hydrologic balance: sediment control measures).

(d) Roads shall be constructed on stable areas that avoid wet or unstable soils.

(e) Prior to the construction of the road, topsoil shall be removed, stored on a stable site and protected against erosion and compaction until restoration of the haul road.

(f) Disturbed areas adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion.

(g) Haul roads shall be surfaced with material sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. Acid or toxic-forming material may not be used for surfacing or construction of a road except where the road is within the confines of a coal refuse disposal or reprocessing area and the effluent meets the requirements of § 87.102 (relating to hydrologic balance: effluent standards).

h) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired or reclaimed as soon as practicable after the damage has occurred.

(i) Haul roads and roads approved as part of the postmining land use shall be certified by a qualified registered professional engineer or qualified registered land surveyor that the roads have been constructed or reconstructed as designed in accordance with the approved plan.

CHAPTER 88. ANTHRACITE COAL

Subchapter B. SURFACE ANTHRACITE COAL MINES: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 88.138. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; flooding and damage to public or private property. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 88.144 (relating to haul roads and access roads: restoration) unless retention of the road [**and its maintenance plan**] is approved as part of the postmining land use.

(b) The haul road may not be located in or within 100 feet (30.48 meters) of a perennial or intermittent stream except in accordance with § 86.102 (relating to areas where mining is prohibited or limited). Any crossing of a perennial or intermittent stream shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachment or water obstruction shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

(c) Each road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 10-year precipitation event or larger event if required by the Department. The drainage system shall include sloped or crowned road surfaces, cross drains or culverts, stabilized ditches, erosion resistant surfacing, sediment traps and other appropriate sediment control measures as required by § 88.96 (relating to hydrologic balance: sediment control measures).

(d) Roads shall be constructed on stable areas that avoid wet or unstable soils.

(e) Prior to the construction of the road, all topsoil shall be removed, stored on a stable site and protected against erosion and compaction until restoration of the haul road.

(f) Any disturbed area adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion.

(g) Acid-forming or toxic-forming material may not be used for surfacing or construction of a road except where the road is within the confines of a road refuse disposal or reprocessing area and the effluent meets the requirements of § 88.92 (relating to hydrologic balance: effluent standards).

**Subchapter C. ANTHRACITE BANK REMOVAL AND
RECLAMATION: MINIMUM ENVIRONMENTAL PROTECTION
PERFORMANCE STANDARDS**

§ 88.231. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; flooding and damage to public or private property. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 88.237 (relating to haul roads and access roads: restoration) unless retention of the road **[and its maintenance plan]** is approved as part of the postmining land use.

(b) The haul road may not be located in or within 100 feet (30.48 meters) of a perennial or intermittent stream except in accordance with § 86.102 (relating to areas where mining is prohibited or limited). Any crossing of a perennial or intermittent stream shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachments or water obstructions comply with Chapter 105 (relating to dam safety and waterway management).

(c) Each road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 10-year precipitation event or larger event if required by the Department. The drainage system shall include sloped or crowned road surfaces, cross drains or culverts, stabilized ditches, erosion resistant surfacing, sediment traps and other appropriate sediment control measures as required by § 88.191 (relating to hydrologic balance: sediment control measures).

(d) Roads shall be constructed on stable areas that avoid wet or unstable soils.

(e) Prior to the construction of the road, all topsoil shall be removed, stored on a stable site and protected against erosion and compaction until restoration of the haul road.

(f) Any disturbed area adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion.

(g) Acid-forming or toxic-forming material may not be used for surfacing or construction of a road except where the road is within the confines of a coal refuse disposal or reprocessing area and the effluent meets the requirements of § 88.187 (relating to hydrologic balance: effluent standards).

**Subchapter D. ANTHRACITE REFUSE DISPOSAL: MINIMUM
ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS**

§ 88.335. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; flooding and damage to public or private property. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 88.341 (relating to haul roads and access roads: restoration) unless retention of the road [**and its maintenance plan**] is approved as part of the postmining land use.

(b) The haul road may not be located in or within 100 feet of a perennial or intermittent stream except in accordance with § 86.102 (relating to areas where mining is prohibited or limited). Any crossing of a perennial or intermittent stream shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachment or water obstruction shall meet the requirement of Chapter 105 (relating to dam safety and waterway management).

(c) Each road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 10-year precipitation event or larger event if required by the Department. The drainage system shall include sloped or crowned road surface, cross drains or culverts, stabilized ditches, erosion resistant surfacing, sediment traps and other appropriate control measures as required by § 88.296 (relating to hydrologic balance: sediment control measures).

(d) Roads shall be constructed on stable areas that avoid wet or unsuitable soils.

(e) Prior to the construction of the road, all topsoil shall be removed, stored on a stable site and protected against erosion and compaction until restoration of the haul road.

(f) Any disturbed area adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion.

(g) Acid or toxic-forming material may not be used for surfacing or construction of a road except where the road is within the confines of a coal refuse disposal or reprocessing area and the effluent meets the requirements of § 88.292 (relating to hydrologic balance: effluent standards).

CHAPTER 90. COAL REFUSE DISPOSAL

**Subchapter D. PERFORMANCE STANDARD FOR COAL
REFUSE DISPOSAL**

§ 90.134. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent: **erosion and** contributions of sediment to streams or runoff outside the affected area; flooding; air and water pollution; damage to fish and wildlife or their habitat; and

damage to public or private property. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, in accordance with current, prudent engineering practices, and necessary design criteria established by the Department. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 90.140 (relating to haul roads and access roads: restoration), unless retention of the road **[and its maintenance plan are] is** approved as part of the postmining land use.

(b) The haul road or access roads may not be located in or within 100 feet (30.48 meters) of a perennial or intermittent stream except in accordance with § 86.102 (relating to areas where mining is prohibited or limited). Crossing of a perennial or intermittent stream shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachment or water obstruction shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

(c) Each road shall have a drainage system that is compatible with the natural drainage system, structurally stable and will pass safely the peak flow from a 10-year, 24-hour precipitation event, or larger event if required by the Department. The drainage system shall include sloped or crowned road surface, cross drains or culverts, stabilized ditches, erosion-resistant surfacing, sediment traps and other appropriate sediment control measures as required by § 90.106 (relating to hydrologic balance: erosion and sedimentation control).

(d) Roads shall be constructed on stable areas that avoid wet or unstable soils.

(e) Prior to the construction of the road, all topsoil shall be removed, stored on a stable site and protected against erosion and compaction until restoration of the haul road.

(f) Disturbed areas adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion.

(g) Haul roads shall be surfaced with material sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. Acid or toxic-forming material may not be used for surfacing or construction of a road except when the road is within the confines of a coal refuse disposal or reprocessing area, and the effluent meets the requirements of § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices).

(h) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired or reclaimed as soon as practicable after the damage has occurred.

(i) Haul roads and roads approved as part of the postmining land use shall be certified by a qualified registered professional engineer or qualified registered land surveyor that the roads have been constructed or reconstructed as designed in accordance with the approved plan.