



**pennsylvania**  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

November 14, 2016

Mr. Ben Owens  
Office of Surface Mining Reclamation and Enforcement  
Pittsburgh Field Division  
3 Parkway Center  
Pittsburgh, PA 15220

RE: Program Amendment

Dear Mr. Owens:

Pennsylvania is submitting the enclosed program amendment for your review and final action.

The program amendment consists of the implementation plan for the ABS Legacy sites and the current lists of the various categories of sites.

I have also included supplemental information, which is intended to provide background and context. Please feel free to contact me if you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Callaghan".

Thomas Callaghan, P.G.  
Director  
Bureau of Mining Programs

Enclosures

Mr. Ben Owens

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November 14, 2016

Bcc: Robert Reiley  
John Stefanko  
William Allen  
30-Day Files

TC:srp

## INTRODUCTION

On August 1, 2008, the Pennsylvania Department of Environmental Protection (“Pennsylvania” or “Department”) sent the Office of Surface Mining Reclamation and Enforcement (“OSM”) a proposed program amendment entitled “ABS Program Amendment.” *See* 74 Fed. Reg. 2005 (Jan. 14, 2009). This proposed amendment was intended to satisfy a required amendment imposed by OSM in a final rule published in the *Federal Register* on May 31, 1991, 56 Fed. Reg. 24687, and codified at 30 CFR 938.16(h).

On August 10, 2010, OSM published a final rule partially approving and partially disapproving the Alternative Bonding System (“ABS”) Program Amendment, *see* 75 Fed. Reg. 48526 (Aug. 10, 2010). Among other things, OSM’s August 10, 2010 final rule:

Approved, pursuant to 30 U.S.C. § 1259(c), as part of Pennsylvania’s approved regulatory program under SMCRA: Pennsylvania’s Conversion Assistance Program and Land Reclamation Financial Guarantees as alternative financial assurance mechanisms for guaranteeing land reclamation; and Pennsylvania’s use of trust funds under 52 P.S. § 1396.4b as alternative financial assurance mechanisms for guaranteeing the treatment of post-mining discharges in perpetuity.

Approved, as part of Pennsylvania’s approved regulatory program under SMCRA, regulations adopted by Pennsylvania in 2008 that: define the term “ABS Legacy Sites;” create a separate subaccount within Pennsylvania’s Surface Mining Conservation and Reclamation Fund called the “Reclamation Fee O&M Trust

Account,” which may be used solely to pay the construction costs and operation and maintenance costs associated with treating postmining pollutional discharges at ABS Legacy Sites, *see* 25 Pa. Code §§ 86.17(e)(1) & 86.187(a)(1); and create another separate subaccount within Pennsylvania’s Surface Mining Conservation and Reclamation Fund called the “ABS Legacy Sites Trust Account,” which, upon being determined to be “actuarially sound,” will replace the Reclamation Fee O&M Trust Account as the source of funding used by the Department to pay the construction costs and operation and maintenance costs associated with treating postmining pollutional discharges at ABS Legacy Sites, *see* 25 Pa. Code §§ 86.17(e)(6), 86.187(a)(2).

As required by OSM’s August 10, 2010 final rule, Pennsylvania initiated the second program amendment proceeding by submitting a proposed program amendment to OSM on October 1, 2010, *see* 76 Fed. Reg. 6587 (Feb. 7, 2011). After twice reopening the comment period in response to supplemental submissions, *see* 76 Fed. Reg. 64048 (Oct. 17, 2011); 78 Fed. Reg. 11617 (Feb. 19, 2013), OSM published a final rule on September 17, 2015, *see* 80 Fed. Reg. 55746 (Sept. 17, 2015), which approved Pennsylvania’s October 1, 2010 program amendment, as supplemented.

This proposed program amendment is being submitted to OSM to further define how the Department will implement its obligations under the approved ABS Program Amendment consistent with OSM oversight.

## IMPLEMENTATION PROCESS

### Implementation Process for ABS Legacy Sites

The ABS Program Amendment added to Pennsylvania's approved state regulatory program under SMCRA a new category of mines known as "ABS Legacy Sites." As defined in 25 Pa. Code § 86.1, "ABS Legacy Sites" are "[m]ine sites, permitted under the Primacy Alternate Bonding System [ABS], that have a postmining polluttional 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."

It is important to have an accurate and up-to-date list of the mine sites classified as "ABS Legacy Sites." One reason is that under 25 Pa. Code §§ 86.17(e)(1), (6); 86.187(a)(1)(iv), (2)(ii), the moneys in the Reclamation Fee O&M Trust Account and ABS Legacy Sites Trust Account may only be spent on treating discharges from ABS Legacy Sites. In addition, under 25 Pa. Code §§ 86.17(6)(ii), (iii); 86.187(a)(2)(iii)(B), (C), the ABS Legacy Sites Trust Account cannot be found "actuarially sound" until the construction of the necessary treatment facilities has been completed at all ABS Legacy Sites, and the amount of funds in the ABS Legacy Sites Trust Account (after combination with the Reclamation Fee

O&M Trust Account) is sufficient to generate enough interest to pay the annual costs of treating the discharges from the ABS Legacy Sites.

The current list of ABS Legacy Sites is attached to this proposed program amendment as Attachment #1.

For planning purposes, it is also helpful to identify the mines that may in the future become ABS Legacy Sites. These “Potential ABS Legacy Sites” are currently permitted mines that would, if the mine operator were to default on its obligation to adequately treat the postmining pollutional discharge(s) from the site, satisfy the definition of “ABS Legacy Sites” as defined in 25 Pa. Code § 86.1 – and therefore would be added to the list of “ABS Legacy Sites” on Attachment #1 to this proposed program amendment – because the bond or trust (or combination thereof) currently posted for the site is insufficient to cover the cost of treating the discharge(s). The Department has no current expectation that the operator of any of these “Potential ABS Legacy Sites” will default on its treatment obligations. Moreover, the Department attests that the operator of each of these sites has a long term plan in place to supplement its current bond or trust so that, when the plan is completed, sufficient funds will be available to cover the cost of treating the discharges in perpetuity. The current list of “Potential ABS Legacy Sites” is attached to this proposed program amendment as Attachment #2. Based on what it knows today, the Department expects any future additions to the list of ABS

Legacy Sites (Attachment #1) to come from the list of Potential ABS Legacy Sites (Attachment #2).

There may be additional mines of which the Department currently is unaware, however, that are properly considered “ABS Legacy Sites.” In the unexpected circumstances described in Paragraph 2, below, a mine that does not appear on the list of Potential ABS Legacy Sites may nevertheless be added to the list of ABS Legacy Sites.

1. If a mine site on the list of Potential ABS Legacy Sites in Attachment #2 suffers bond forfeiture, the Department will remove it from the list of Potential ABS Legacy Sites in Attachment #2 and add it to the list of ABS Legacy Sites in Attachment #1.

2. A mine site permitted under Pennsylvania’s Primacy ABS also may be added to the list of ABS Legacy Sites in Attachment #1 if:

a. bond release was obtained by the mine operator through fraud, misrepresentation, or concealment at a time when the mine was covered by the Primacy ABS; or

b. the Department’s determination of the required amount, or the funded amount, of the bond or trust fund established to guarantee perpetual treatment of the post-mining discharge(s) was based on:

i. fraud, misrepresentation, or concealment by the mine operator, including, but not limited to, the understatement of any cost figures used in the calculation of the amount of the bond or trust fund, or any material misrepresentation

concerning the value of, or the extent of ownership of, any asset used to fund a trust fund; or

ii. underestimation of the value of an asset(s) lacking an available market value, such as coal reserves.

3. A mine may be removed from the list of ABS Legacy Sites in

Attachment #1 only if:

a. there no longer is any post-mining discharge from the mine that must be treated in order to satisfy the applicable requirements;

b. the amount of bond posted for the mine becomes sufficient to guarantee the adequate treatment of all post-mining discharges from the mine in perpetuity; or

c. a trust fund covering the mine is established and fully funded, or becomes fully funded, in an amount that is sufficient to guarantee the adequate treatment of all post-mining discharges from all mines covered by the trust in perpetuity.

4. Whenever the Department adds any mine to or removes any mine from the list of ABS Legacy Sites in Attachment #1 or the list of Potential ABS Legacy Sites in Attachment #2, the Department will request concurrence from OSM consistent with its oversight authority and publish in the *Pennsylvania Bulletin*, within a reasonable time, a notice identifying the list(s) affected and the mine(s) added or removed, and providing a brief explanation of the basis for the change(s) made.



**Implementation Related to ABS Bond Forfeiture Sites: Completion of Land Reclamation and Currently Necessary Treatment System Construction**

**Completion of Land Reclamation**

1. The mining operations listed in Attachment #3 to this proposed program amendment were permitted and bonded under the Primacy ABS, and the mine operator had not completed the reclamation of the land on the mine sites when the Department forfeited the reclamation bond. The Department will take all actions within its authority and control to ensure that, by December 31, 2018, all backfilling, regrading, and initial planting/ seeding has been completed at all of the mining operations mines listed in Attachment #3 to this proposed program amendment.

2. By January 31 of each year, Pennsylvania will provide to OSM, and make publicly available through the Department's web site, a report certifying the progress made during the preceding calendar year toward satisfying the obligation stated in the preceding paragraph. This annual certification will cease when the Department certifies that the obligation stated in the preceding paragraph has been fulfilled.

**Currently Necessary Treatment System Construction**

1. The mining operations listed in Attachment #4 to this proposed program amendment are ABS Legacy Sites for which the Department is aware of a

currently existing need for a new treatment system(s) to be constructed or installed, or an existing treatment system(s) to be repaired, replaced, or upgraded, in order to provide treatment for a post-mining discharge(s). The initial construction/ installation or repair/replacement/upgrading of the relevant treatment system(s) occurring after the filing of this proposed program amendment at the mining operations listed in Attachment #4 to this proposed program amendment will be referred to as the “currently necessary ABS Legacy Site post-mining discharge treatment system installation and rehabilitation.”

2. The Department will take all actions within its authority and control to ensure that, by December 31, 2018, the currently necessary ABS Legacy Site post-mining discharge treatment system installation and rehabilitation has been completed at the mining operations listed in Attachment #4 to this proposed program amendment.

3. By January 31 of each year, Pennsylvania will provide to OSM, and make publicly available through the Department’s web site, a report certifying the progress made during the preceding calendar year toward satisfying the obligation stated in the preceding paragraph. This annual certification will cease when the Department certifies that the obligation stated in the preceding paragraph has been fulfilled.

## **Implementation of Mixed-Site, Partially-Funded, Department-Directed Trusts**

For the purposes of this proposed program amendment:

- a. a “mixed-site trust” is a trust fund established by a mine operator, or with the proceeds from collecting the reclamation bonds posted by a mine operator, to pay for the treatment of post-mining discharges from multiple mines that include both Primacy ABS bond forfeiture sites and mines that were not permitted and bonded under the Primacy ABS (Non-ABS Sites).
- b. a “partially-funded trust” is a trust fund for which the assets held by the trust are insufficient to provide perpetual treatment of all of the discharges covered by the trust; and
- c. a “Department-directed trust” is a trust fund for which the operator of the mines covered by the trust has ceased to exist, or the reclamation bonds for the mines covered by the trust have been forfeited by the Department, and the Department, in accordance with the instrument creating the trust, directs the trust’s expenditures on mine drainage treatment.

Since the creation of the Reclamation Fee O&M Trust Account and the category of “ABS Legacy Sites” in 2008, the Department has considered all Primacy ABS bond forfeiture sites covered by a mixed-site, partially-funded, Department-directed trust to be ABS Legacy Sites. Further, for all such trusts the Department has used funds from the ABS Reclamation Fee O&M Trust Account to pay for the discharge treatment at the ABS Legacy Sites. The Department will continue to implement this variety of trust in this same manner. Specifically:

1. For a mixed-site, partially-funded, Department-directed trust, the Department will consider the Primacy ABS bond forfeiture sites to be ABS Legacy Sites.

2. For all mixed-site, partially-funded, Department-directed trusts, the Department will use funds from the ABS Reclamation Fee O&M Trust Account or the ABS Legacy Sites Trust Account to pay for the discharge treatment at the ABS Legacy Sites.

ATTACHMENT #1  
ABS Legacy Sites

Permit Number	Mine Operator	Mine Site
03840112	Darmac Coal Inc.	Darmac #14
03890108	Darmac Coal Inc.	Silver Rock
05830101	L&B Coal Co.	No. 5
10820121	Pengrove Coal Co.	Ruth
10830121	Sunbeam Coal Corp.	Jacques
10860118	C&K Coal Co.	Snyder Sertik
10940105	Doverspike Bros. Coal Co.	Emrick
11693000	K&J Coal Co.	Westover
11783035	C&K Coal Co.	Bell Woodcock
11813019	PA Energy Corp.	Horse Hill Strip
11823002	C&K Coal Co.	Stroud
11850106	C&K Coal Co.	Cambria 51
11950102	Laurel Land Development, Inc.	McDermott
14663003	Power Operating	Dugan 2
14663004	Power Operating	Dugan 4
14663010	R.S. Carlin	Mine #26
14803008	Avery Coal	Pine Glen
16713004	C&K Coal Co.	Hill Estate
16803011	Glacial Minerals Inc.	Vosburg
16803030	C&K Coal Co.	Smith Heasley
16820107	REM Coal Co. Inc.	Truittsburg
16830114	C&K Coal Co.	Tremba Horner
16840103	C&K Coal Co.	Kriebel
16850101	Glacial Minerals Inc.	Blair Mine
17723164	Al Hamilton Contr. Co.	Little Beth
17753159	Al Hamilton Contr. Co.	Miller Stein
17803054	Thompson Bros.	Alder Run
17803176	Al Hamilton Contr. Co.	Sandturn
17810104	Thompson Bros.	Morris #2
17810154	Thompson Bros.	001 Strip
17813143	Chews Contracting	Little D
17820106	Al Hamilton Contr. Co.	Pearce
17820114	Power Operating	Vought
17820132	Benjamin Coal	Little Beaver #1
17820143	Avery Coal Co.	Victoria
17820166	Al Hamilton Contr. Co.	Carnwath
17850109	Al Hamilton Contr. Co.	Ralston
17860105	Benjamin Coal	Marshall
17870114	M & M Const. Co. Inc.	Latherow Mine

ATTACHMENT #1  
ABS Legacy Sites

Permit Number	Mine Operator	Mine Site
17880129	K&J Coal Co.	Gaber/Brown
17890115	Al Hamilton Contr. Co.	Kaufman
17921605	Thomas Coal Sales	Greenwood Tipple
17970107	Al Hamilton Contr. Co.	Kaufman North
18860101	Lobb Inc.	Narco
26753065	Purco Coal Inc.	Watkiss Mine
26830108	Arthur Brooks Coal Co.	Honsacker Site
26840110	James Rumble & Wm. Bane	Luzerne Twp. Mine
26931601	Global Coal Recovery Inc.	Isabella Mine
30840102	Greene County Coal	McNatt Strip
32823035	Acme Drilling	Broom Strip
33743044	REM Coal Co. Inc.	Smail
33803040	REM Coal Co. Inc.	Orcutt
33830117	Gurosik Coal Co. Inc.	King
33840111	Doverspike Bros. Coal Co.	Mowery Mne
56763022	Delta Mining Inc.	Maust Mine
56773084	D&E Const. Co.	Moore Strip
56773136	Bituminous Coals Inc	Addison Strip
56783046	H&H Coal Co.	James E. Long
56793053	Delta Mining Inc.	Hay 2
56793078	Windber High Std. Coal	Brant Strip
56803014	Delta Mining Inc.	Bashore Mine
56813054	L&L Mining Inc.	Berkey
56823108	C & O Coal Co.	Burkholder Strip
56840103	Metco Mining & Minerals Inc.	Ankey Mine
56840112	Amer. Dev. Co.	Job 33
56960111	Big J Mining Inc.	Sorber Mine
57830101	Bernice Mining	Lewis Mine
61783001	C&K Coal Co.	Racic
61820102	H&D Coal	Merola
61820105	Pengrove Coal Co.	Martin Mine
65703058	Frank Kowalski	Kowalski No. 1 Strip
65830202	Delta Penn Corp.	Hostetter Mine
65940108	Bulldog Excav.	Andrews Strip

**ATTACHMENT #3**  
**ABS Bond Forfeiture Sites**  
**That Need**  
**Land Reclamation Work**

<b>Permit Number</b>	<b>Mine Operator</b>	<b>Mine Site</b>
14663004	Power Operating Co. Inc.	Dugan 4
17820114	Power Operating Co. Inc.	Vought
17841605	Benjamin Coal Co.	3 Prep Plant
26931601	Global Coal Recovery Inc.	Isabella Mine
26840202	Grandstone Coal Co.	Grandstone Site
40920101	Laurel Run Corp.	Laurel Run Mine
49851605	Twin Creek Coal Co.	Swift Breaker Mine
54813225	Shamrock Coal Co. Inc.	Reber 4 Mine
54830110	J&W Coal Co.	Lake Run 1 Mine
65860201	Aspenenergy Inc.	Wilpen Operation
65920108	Bituminous Proc. Co. Inc.	Wyano Mine
65920201	Ebony Coal Co.	Claridge Sub F Refuse Pile

ATTACHMENT #2  
Potential ABS Legacy Sites

Permit Number	Mine Operator	Mine Site
11773037	Cooney Bros. Coal Co.	Caroff Strip
11803038	Cooney Bros. Coal Co.	Pot Ridge 2 Strip
11813039	Cooney Bros. Coal Co.	Feller 2 Strip
11813040	Cooney Bros. Coal Co.	Dunlo 1 Strip
11830102	MB Energy Inc.	Grabiak Strip
11860104	Cooney Bros. Coal Co.	Bethlehem Strip
17970102	Enercorp Inc.	Forcey Mine
32810135	MB Energy Inc.	Dietrich Mine
32820134	MB Energy Inc.	CBC Strip
32823005	Blairsville Assoc.	Eagle Strip & Auger
32841601	Robindale Energy Servs., Inc.	Dilltown Preparation Plant
32880108	MB Energy Inc.	Brush Valley 1 Mine
32950104	Big Mack Leasing Co. Inc.	Iselin 18 Mine
54733020	BET Assoc. IV LLC	LCN Mine
56663098	PBS Coals Inc.	Jolin Strip / Job 12
56663135	PBS Coals Inc.	Walker Mine
56743138	Cooney Bros. Coal Co.	Pot Ridge Lasky Strip
56813050	Shade Mining Co.	Shade 3 Mine
56813104	PBS Coals Inc.	Roberts Mine
56841605	Croner, Inc.	Goodtown Preparation Plant
56860104	Rosebud Mining Co.	Schrock Strip
56880103	Rosebud Mining Co.	Jopa 1
56890102	Svonavec Inc.	Ohler Strip
56950101	Rosebud Mining Co.	Poorbaugh Strip
56950105	Marquise Mining Corp.	MF Land Operation
56960106	Rosebud Mining Co.	Horner
56960107	PBS Coals Inc.	Acosta
65810113	MB Energy Inc.	Campbell Skovira Mine
65860105	MB Energy Inc.	Ridge Road Mine



ATTACHMENT #4  
 ABS Legacy Sites That Need  
 Treatment System Work

Permit Number	Mine Operator	Mine Site
05830101	L&B Coal Co.	No. 5
10820121	Pengrove Coal Co.	Ruth
10830121	Sunbeam Coal Corp.	Jacques
10940105	Doverspike Bros. Coal Co.	Emrick
11950102	Laurel Land Development, Inc.	McDermott
14663010	R.S. Carlin	Mine #26
14803008	Avery Coal	Pine Glen
17723164	Al Hamilton Contr. Co.	Little Beth
17803054	Thompson Bros.	Alder Run
17810104	Thompson Bros.	Morris #2
17820132	Benjamin Coal	Little Beaver #1
17820143	Avery Coal Co.	Victoria
17820166	Al Hamilton Contr. Co.	Camwath
17850109	Al Hamilton Contr. Co.	Ralston
17860105	Benjamin Coal	Marshall
17890115	Al Hamilton Contr. Co.	Kaufman
17970107	Al Hamilton Contr. Co.	Kaufman North
26753065	Purco Coal Inc.	Watkiss Mine
26830108	Arthur Brooks Coal Co.	Honsacker Site
26840110	James Rumble & Wm. Bane	Luzerne Twp. Mine
26931601	Global Coal Recovery Inc.	Isabella Mine
56813054	L&L Mining Inc.	Berkey
56840112	Amer. Dev. Co.	Job 33
61820105	Pengrove Coal Co.	Martin Mine
65703058	Frank Kowalski	Kowalski No. 1 Strip
65830202	Delta Penn Corp.	Hostetter Mine
65940108	Bulldog Excav.	Andrews Strip

## **BACKGROUND FOR ABS IMPLEMENTATION PROGRAM AMENDMENT**

### **Introduction**

The definition of "ABS Legacy Sites" at 25 Pa. Code 86.1 includes four elements:

- 1) Permitted under the Primacy Alternate Bonding System;
- 2) having a post-mining polluttional discharge;
- 3) the operator has defaulted on its obligation to treat the discharge; and
- 4) either the bond posted is insufficient to cover the treatment costs or the trust is not fully funded.

A mine site permitted under the Primacy Alternate Bonding System ("ABS") means that the permit was issued under the primacy program, which began in Pennsylvania on July 31, 1982. The primacy ABS was in place from July 31, 1982 through the early 2000's. The primacy ABS included per-acre bond rates, supplemented by a non-refundable per-acre reclamation fee. The transition from the ABS to conventional bonding took place beginning in 2001 through a conversion process where permits were reissued with bonds calculated based upon the full cost of reclamation, including water treatment.

The element of the definition of ABS Legacy Sites relating to having a post-mining polluttional discharge means that the permittee has incurred an obligation to treat water that does not meet effluent limitations and/or water quality standards. Sites with post-mining discharges are tracked in Pennsylvania through the Mine Drainage Inventory.

Under the statutory framework in Pennsylvania, a mine operator has an obligation to treat polluttional discharges for which they are responsible. Responsibility for treatment can be incurred in two ways –causing or allowing a discharge. Causation is based on the actions of the operator and usually requires the Department to make an affirmative finding of responsibility. Allowing a discharge means having pollution that leaves the permitted area.

Default by an operator occurs when they cease providing the required treatment for a discharge for which they are responsible. This default typically results in a bond forfeiture action if the site is bonded. In a case where there is a trust, the discontinuance of treatment results in failure to comply with the consent order establishing the trust and associated obligations. Default does not require that a site be forfeited. However, in the case of a default the permittee and related parties become permanently ineligible to receive permits from the Department or other state regulatory authorities through the entry in the Applicant/Violator System.

Bond amounts and trust amounts are calculated using the methods which result in funding the obligation to treat on a long-term basis. The Department has systematically approached the existing sites with post-mining discharges to establish these long-term financial guarantees. In some cases, a trust is established where the operator is required to make payments into the trust over time. Any of the sites permitted under the primacy ABS included in these "payment plan" trusts have the potential to become ABS Legacy Sites, if the operator fails to make the required payments and defaults on the obligation to treat.

## **Implementation Process**

Lists have been established and will be maintained to keep track of the ABS Legacy Sites (List 1), potential ABS Legacy Sites (List 2), ABS land reclamation sites (List 3) and ABS Legacy Sites for which the initial treatment system installation is needed (List 4).

The proposed program amendment provides a process for moving sites from the list of potential ABS Legacy Sites to the list of ABS Legacy Sites.

The proposed program amendment includes the concept that a site can be added to the list of ABS Legacy Sites if bond release was obtained through fraud or the like. This scenario has played out in one case (Purco) where the Department discovered the discharges after the bonds had been released.

The proposed program amendment also includes a reference to the underestimation of assets posted as part of a trust agreement. An example of this scenario has played out in the Al Hamilton case where coal reserves were included in the valuation of the trust and the value has not materialized.

The proposed program amendment requires the Department to request concurrence from OSM consistent with its oversight authority when sites are being added or removed from the list of ABS Legacy Sites or from the list of potential ABS Legacy Sites. This concurrence will be requested in writing through a letter or email message to the Harrisburg Field Office. The concurrence request will include a justification of the action. In some cases, joint field review and other meetings may be needed to provide the information necessary for an evaluation to be completed. After the concurrence is received, the Department will initiate the notice in the *Pennsylvania Bulletin*.

The mine sites included in the ABS Legacy are categorized as abandoned sites for the purpose of inspection frequency.

## **Completion of Land Reclamation**

The proposed program amendment sets a December 31, 2018 deadline to complete the backfilling, regrading and initial planting/seeding for the ABS forfeiture sites that need land reclamation work. In a case where there is a contract for this reclamation, the warranty period may extend beyond the end of 2018. However, the intent is to have all of the work, except for any needed warranty work done by the end of 2018.

## **Initial Treatment System Construction**

The proposed program amendment includes a list of ABS Legacy Sites where treatment facilities have yet to be built. A deadline of December 31, 2018 for the construction of the necessary facilities is provided.

## **Annual Reporting**

The proposed program amendment includes a reporting requirement, due January 31 of each year. The purpose of the report is to certify progress made during the previous year for the land reclamation and initial treatment facility construction for the ABS Legacy Sites where treatment facilities have yet to be built. The reporting requirement ceases when both the land reclamation and the initial treatment system construction have been completed. The report will be posted on the Department's web page. Notice of availability of the report will be provided to OSM.

## **Mixed Site Partially Funded, Department Directed Trusts**

The proposed program amendment includes a section about Mixed Site (i.e. the trust includes ABS Legacy Sites and sites that are not ABS Legacy Sites) Partially Funded (i.e. the trust is not fully funded), Department Directed Trusts (i.e. the operator has defaulted on its treatment obligation and the Department now directs the trust). This is intended to describe the current management of the C&K and Al Hamilton Contracting trusts.

The sites that are not ABS Legacy Sites include underground mine sites (in the Al Hamilton Contracting case) and pre-primacy sites (in both the C & K and Al Hamilton Contracting cases). These categories of sites were not "permitted under the Primacy Alternate Bonding System" so they do not meet the definition of ABS Legacy Sites. Therefore, the cost for treatment for underground mine sites and pre-primacy sites is not eligible for funding from the Reclamation Fee O & M Trust Account.

In the C&K case, the cost of treatment for all of the sites where treatment is taking place is paid for by the trust. The cost for treatment for the ABS Legacy Sites is reimbursed from the Reclamation Fee O & M Trust Account through a grant agreement with the trustee. A similar arrangement is planned for the Al Hamilton Contracting trust.

There are other trusts where the operator is currently treating (it is not yet Department directed) that include mixed sites (including underground mines and pre-primacy sites) and the trust is subject to a payment plan (it is partially funded). Under the proposed program amendment, if a default occurs prior to full funding, the trust will be managed in the same manner as the C&K and Al Hamilton Contracting trusts.

## **Summary**

The proposed program amendment implements the approved regulatory program in Pennsylvania. There is no federal counterpart for the program amendment because it implements the specific regulatory program for Pennsylvania relating to its ABS. Prompt approval of the program amendment will facilitate oversight of the effective implementation of the approved program.