

**NOTICE OF PROPOSED RULEMAKING  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD  
Noncoal Mining Clarifications and Corrections  
25 Pa. Code, Chapter 77**

**Preamble**

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code, Chapter 77 (relating to Noncoal Mining). The proposed amendments provide updates and clarifications for the requirements for mining noncoal minerals in this commonwealth.

This proposal was adopted by the Board at its meeting of \_\_\_\_\_ (date)\_\_\_\_\_.

*A. Effective Date*

These amendments will go into effect upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

*B. Contact Persons*

For further information contact William Allen, Director, Bureau of Mining Programs, P.O. Box 8461, Rachel Carson State Office Building, 5<sup>th</sup> floor, 400 Market Street, Harrisburg, PA 17105-8461, (717) 787-5015, or Christopher Minott, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, 9<sup>th</sup> Floor, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-9372. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board (EQB)").

*C. Statutory Authority*

This proposed rulemaking is being made under the authority of section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (act) (52 P.S. § 3311(a)), which authorizes the Board to promulgate regulations as it deems necessary to carry out the provisions and purposes of the act; section 5 of The Clean Streams Law (35 P.S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to adopt rules and regulations necessary for the performance of the work of the Department.

*D. Background and Purpose*

Chapter 77 was finalized in 1990 to implement the act. Since 1990, the Department's experience implementing the noncoal mining regulatory program has highlighted several issues that necessitate clarification of the regulations in Chapter 77. Many of the proposed revisions are administrative in nature.

The Department worked with the Aggregate Advisory Board to develop these proposed regulations. The Aggregate Advisory Board is comprised of the Secretary of the Department of Environmental Protection, three aggregate surface mining operators, four members of the public from the Citizens Advisory Council, one member from county conservation districts, one Senate member from the majority party, one Senate member from the minority party, one House member from the majority party, and one House member from the minority party. The interaction with the Aggregate Advisory Board began in October 2018 with a discussion of concepts at a Regulatory, Legislative and Technical (RLT) committee meeting. Interaction with the Aggregate Advisory Board continued with several meetings of the RLT committee throughout 2019 and 2020. On May 6, 2020, the Aggregate Advisory Board voted to concur with the Department's recommendation that the proposed rulemaking proceed in the regulatory process.

#### *E. Summary of Regulatory Requirements*

##### *§ 77.1 Definitions*

Several amendments to the definitions are proposed. Two new terms are proposed to be defined. "Insignificant boundary correction" is added to identify the changes to permit boundaries that may require a major permit revision as described in § 77.141. "Local government" is defined to be used in several sections to describe the entities that must be notified of applications or actions. Clarifications are proposed for the definitions of "Noncoal minerals" and "Noncoal surface mining activities." The definition of "Noxious plants" would be revised to update the citation of the law relating to noxious plants. The definition of "Related party" would be amended to include a director of a corporation and members and managers of Limited Liability Companies. A correction is proposed in the definition of "Sedimentation pond."

##### *§ 77.51 License Requirement*

Subsections (c)(1) and (e) are proposed to be revised to include a director of a corporation and members and managers of Limited Liability Companies as parties that need to be identified in an application for a mining license and as parties who will be considered in evaluating the eligibility for holding a mining license. The revisions are proposed since Limited Liability Companies have become more common in the years since 1990. These changes are also consistent with the proposed change to the definition of "Related party" in § 77.1.

Subsection (f)(2)(i) is proposed to be revised to remove the statement about the Department notification 60 days prior to expiration and to require the submission of a mining license renewal application at least 60 days before the current license expires to be consistent with section 5(a) of the act.

##### *§ 77.107 Verification of application*

This section is proposed to be revised to eliminate the requirement for an application to be attested by a notary or district justice. Most notably, this update will facilitate the electronic submission of applications.

*§ 77.108 Permit for small noncoal operations*

Subsection (f) is proposed to be amended to add transfers to the list of applications that are exempt from the requirement for public notification in a newspaper. This will make it clear that permits for small operations may be transferred. Because transfers were previously omitted from the list, it has been unclear whether these permits are transferable as § 77.144 (relating to transfers) requires newspaper public notice. This created confusion because it doesn't make sense that a new permit for a small operation would be exempt from the newspaper public notice, but the transfer of the same permit would be subject to the newspaper public notice requirement.

Subsection (m) is proposed to be revised to add reference to the regulatory requirement that an applicant must hold a mining license in order for the permit to be issued.

*§ 77.109 Noncoal exploration activities*

Noncoal exploration activities have been subject to confusion, because they may be authorized in various ways depending on the circumstances of the exploration. Exploration is included in the definition of "noncoal surface mining activities" in § 77.1, which suggests that it must be authorized under a permit. However, exploration may be conducted by drilling or by excavation. Exploration may be allowed by drilling upon notice to the Department. Exploration by excavation may be authorized by a permit or through acknowledgment by the Department of a permit waiver.

In these proposed regulations, a new section (77.113) is added to establish the requirements for exploration by drilling while § 77.109 has been updated to establish requirements for exploration by excavation. These updates will distinguish the two forms of exploration activity from one another and provide clarity to the regulated community.

Subsection 77.109(a) is proposed to be revised to clarify that a written notice must be provided to the Department for anyone who intends to conduct noncoal exploration in an area outside of an existing noncoal surface mining permit and to make reference to the proposed § 77.113. This section also lists the permit or waiver authorization options for exploration by excavation.

Subsection 77.109(b) is proposed to be revised to modify what information must be included in the noncoal exploration notice to the Department. Specifically, the proposed revisions add a requirement for contact information for a representative from the entity preparing to explore and clarify that it is the amount to be removed for testing that is to be reported in the notice. Also, requirements are proposed to be added to the notice relating to what environmental protection measures are proposed to be implemented to prevent any adverse impacts to the environment from exploration activities and relating to a blast plan if explosives are needed to conduct the exploration.

Existing subsection (c) is moved to the proposed § 77.113 since it relates to exploration by drilling. This results in the relettering of subsection (d) as subsection (c).

Existing subsection (e), which relates to noncoal exploration activities where minerals will be removed, is proposed to be deleted and replaced with new language in subsection (d) that sets threshold amounts for a permit waiver. There are two threshold amounts proposed. A permit waiver may be granted for noncoal exploration activities where less than 20 tons of material will be removed without justification of the amount. If the exploration is expected to need more than 20 tons, then a justification can be provided by the applicant. With justification, an upper limit of 1,000 tons is proposed for this permit waiver. The justification is related to the amount of material needed to provide valid test results for various aggregate certifications of the material. These thresholds were identified through discussions with the Aggregate Advisory Board RLT committee. The concept is that 20 tons is a relatively small amount, representing one truckload of material. The 1,000-ton threshold was identified based on the 200-ton minimum requirement of the PA Department of Transportation specifications for certification in Bulletin 14 with the recognition that more than one size of material may need to be produced from a particular mine.

New subsection (e) is proposed to describe the considerations to be made by the Department in evaluating a waiver request.

Subsection (h), is proposed to be revised to delete the reference to the restoration to a slope not exceeding 35 degrees. This proposed revision is based on the fact that this slope requirement is no longer necessary due to the limited amount of material that may be removed without a permit.

New subsection (k) is proposed to be added to require compliance with Chapters 210 (relating to Blaster's License) and 211 (relating to the storage, handling and use of explosives) for those exploration projects that require the use of explosives.

#### *§ 77.113 Permit waiver-noncoal exploration drilling*

Section 77.113 is proposed to be added to provide separate requirements for exploration conducted through drilling. This section includes the concepts currently in § 77.109(c). Subsection (a) allows for exploration to be conducted 10 days after notice to the Department unless the Department requests more information to assure compliance or if the exploration is planned for areas within the distance limitations established in § 77.504 (relating to distance limitations and areas designated as unsuitable for mining). Subsection (b) establishes a performance standard for sealing the drill holes and allows for drill holes to remain open to serve a purpose, such as to be used as a monitoring well or water well.

#### *§ 77.121 Public notices of filing of permit applications*

Subsection (a) is proposed to be revised to require each local government (that is, the city, borough, incorporated town or township) where the operation is located be included in the local newspaper public notice required at the time of filing an application.

Subsection (c) is proposed to be revised to require use of certified mail rather than registered mail for notice of a proposed permit to the property owners within the proposed permit area. Registered mail is not necessary because it is unimportant to track the progress of the mailing, whereas certified mail provides the benefit of documenting receipt of the notice.

Subsection (d) is proposed to be revised to modify when the Department will publish notice in the *Pennsylvania Bulletin* of the proposed activities based on the Department's acceptance of the application rather than upon receipt. This eliminates unnecessary notices for applications that are returned and not accepted for review by the Department. The change in reference to the permit is also clarified by eliminating the modifier "complete" which is no longer needed because an application must be complete in order to be accepted.

Subsection (e) is proposed to be revised in a similar fashion to subsection (d) relating to the acceptance of the permit application and also to specify that the notice required under this subsection must be in writing. Also, the newly defined term "local government" is substituted for "city, borough, incorporated town or township," and the requirement for the notice to be sent by registered mail is eliminated. Registered mail is not necessary because it is unimportant to track the progress of the mailing, whereas certified mail provides the benefit of documenting receipt of the notice. This will also facilitate the use of electronic notices, where appropriate. The contents of the notice are also proposed to be updated to reflect the new term "local government" in subsections (e) and (f).

#### *§ 77.123 Public hearings-informal conferences*

Subsection (a)(2) is proposed to be revised to change the reference from § 77.121(d) to § 77.121(e). This is a correction of an error. The reference is for identifying those parties who should be notified when an application is submitted. Section 77.121(e) lists these parties.

Subsection (b) is proposed to be revised to set the public hearing or informal conference due date based on the close of the comment period rather than on when the request was received. This eliminates the possibility of needing to have multiple hearings if more than one request is received at different times during the public comment period.

Subsection (e) is proposed to be revised to describe the results of the public hearing or informal conference in a report available to the public instead of only giving the findings of the public meeting or informal conference to each person who attended. The deadline for providing the report is proposed to be contemporaneous with the permit decision.

#### *§ 77.128 Permit terms*

Subsection (b) is proposed to be revised to change the time frame for when a permit terminates from 3 years to 5 years. The five-year term is proposed so that the term of the mining permit will be synchronized with the National Pollutants Discharge Elimination System (NPDES) permit, where applicable. NPDES permits have a term of five years. This subsection is also revised to allow extensions through the permit renewal process. This assures that updated information is provided before extending the permit beyond the five-year period.

*§ 77.141 Permit revisions*

Subsection (b) is proposed to be deleted to eliminate the requirement for submission of a major permit revision at least 180 days before undertaking the change. This time frame is unnecessary, because the Department has found that often these revisions can be acted upon more quickly than 180 days. With this proposed change incorporated, the applicant must plan the timing of their application based on the complexity of the application rather than on a flat time frame. This deletion results in the relettering of existing subsections (c) through (f) to become (b) through (e) respectively.

Existing subsection (c), relettered to be subsection (b), is proposed to be revised to add a reference to § 77.105 (relating to application contents) to describe what constitutes a complete application for revision and to add “modules” to paragraph (2) to make it clear that only the portions of the application relating to the revision must be included. Paragraph (2) is also revised to correct the typographical error where “the acts” should be “the act.”

Existing subsection (d), relettered to be subsection (c), is proposed to be revised to delete “complete” from the description of the application since this is redundant with the previous subsection.

Existing subsection (e), relettered to be subsection (d), is proposed to be revised to clarify how an application for a revision that is adding acreage for support activities will be reviewed and adds an exception from this review for insignificant boundary corrections. Specifically, the reference to “the same procedures as an application for a new permit but will be processed a revision to the existing permit” is intended to allow for a permit to be revised when additional acreage for support activities is needed and to avoid the need for a smaller adjacent permit where plans have changed. The procedures relating to a new permit assure that the environmental impacts are fully vetted prior to approval of the revision. For example, the original application would have been evaluated for the potential impacts to nearby properties. Since the added area would not have been reviewed from this perspective, the additional area must be evaluated to determine if there could be any additional potential impacts for the proposed revision.

Existing subsection (f), relettered to be subsection (e), is proposed to be revised similarly as the previous subsection, but specific additional considerations are identified for the review of revisions to add acreage for mineral extraction, including the effect on hydrologic balance, the relation to the existing operation and reclamation plan, and the practicality of approving a new permit for the additional area. For example, the application for the addition would have been evaluated for the potential impacts to water supplies. Since the added area would not have been reviewed from this perspective, the additional area must be evaluated to determine if there could be any additional potential water supply impacts for the proposed revision.

Subsection (f) is added to provide cross references to the requirements for public notice and compliance with the existing permit. This subsection also is proposed to add the requirement that each major revision may be subject to providing current environmental resources information and a review of the bond liability.

Subsection (g) is proposed to be added to identify the circumstances where the Department may require a major permit revision. These include unanticipated substantial impacts to public health, safety or environment. The impacts included are described as unanticipated and substantial. The intent is to make it clear that a permit revision is not required for impacts that were planned for in the original permit and that the impact must rise to the level of being substantial as opposed to an incidental impact. For example, a highwall failure resulting in encroachment upon areas where mining is prohibited or limited would meet the criteria of being unanticipated and substantial, requiring a major permit revision, while a highwall failure that can be easily remediated within the existing permit area is unanticipated, but it is not substantial and therefore would not require a major permit revision. Another example that illustrates the intent of this requirement is where mining is being conducted in an area prone to the development of karst features. Many of the potential impacts can be predicted based on modeling as part of an application-these impacts would not be unanticipated. However, if sinkhole development as a result of the mining occurs beyond the predicted area of influence, then this would likely require a major permit revision. Another category that may trigger the requirement for a major permit revision is when the permittee must change their plans from what was presented in the application and approved by the Department. This is intended to capture major operational changes or alterations of the post-mining configuration of the reclamation as compared with the approved plans.

#### *§ 77.142 Public notice of permit revision*

Section 77.142 is proposed to be revised to add subsections (b) and (c). This necessitates the lettering of the existing single section as subsection (a). Subsection (a) includes two proposed revisions. First, in paragraph (1)(iii), “the addition of reclamation fill” for surface mining activities has been added as an example of the change in type of reclamation that would be subject to the notice requirements of § 77.121. Second, the phrase “but not limited to,” is inserted and permit area additions are proposed to be added to the examples of a physical change to the mine configuration in paragraph (1)(iv).

Subsection (b) is proposed to be added to include new mining or support as subject to public notice if the revision includes a lateral or vertical change in the plans. Some large quarries that pump groundwater are limited with respect to the depth to which they are authorized to mine (and pump). For example, where mining is planned for decades, it is not possible to predict the potential hydrologic impacts as the quarry goes deeper with the initial application. The operation may be approved to mine in vertical increments to allow for the reassessment of the hydrologic conditions systematically after a particular depth has been reached. More robust predictions can be made based on the updated hydrologic data available after the initial mining has been conducted as to the potential effects of deepening the operation. This vertical incremental approval necessarily includes further public participation because of the potential off-site impacts of pumping large amounts of groundwater. The reference to lateral changes is intended to include areas added to the footprint of the permit area only. This subsection also excludes incremental approvals within the previously approved permit area from the notice requirement. This is due to the fact that the environmental impacts of these areas have already been evaluated as part of the initial application review.

Subsection (c) is proposed to be added to clarify that unaffected areas to be deleted from the footprint of the permit may be approved without public notice. This also includes restored areas that have been disturbed only by exploration by drilling.

*§ 77.143 Permit renewals*

Subsection (b)(2) is proposed to be revised to delete the reference to “a new application” and to cross reference subsection 77.141(f), which relates to permit revisions. This is intended to clarify that the addition of area to a permit is not integral to a renewal, but constitutes a permit revision.

Subsection (b)(8) is proposed to be revised to change “send copies of its decision to” to “notify” and append “of the Department’s decision” to clarify the requirement.

*§ 77.144 Transfer of permit*

Subsection (a) is proposed to be revised to rephrase the statement of the purpose of this section.

Subsection (b) is proposed to be revised to clarify that name changes, including those changes which result from a conversion in corporate entity, do not subject a permit to the transfer requirements. In the case of a name change, it is still the same entity holding the permit. Conversions of corporate entity provide the resulting entity with the same permit rights that the previous form of entity had.

Subsection (c) is proposed to be revised to clarify that Department approval is required for a transfer to be effective. Paragraph (c)(4) is proposed to be revised to include the exception of small noncoal permits, which are not subject to newspaper public notice, from the public notice requirement to transfer a small noncoal permit. The inclusion of this exception clarifies that a small noncoal permit may be transferred.

*§ 77.224 Special terms and conditions for collateral bonds*

Subsection (c)(2) is proposed to be revised to delete the \$100,000 maximum amount for certificates of deposit. This insurable amount has been revised by the agencies responsible for this and could be subject to further revision. Therefore, is it not appropriate to retain the amount in the regulations. Also, it is proposed to spell out the applicable agency names rather than using the acronyms.

*§ 77.231 Terms and conditions for liability insurance*

Subsection (b) is proposed to be revised to add that the insurance is written on an occurrence basis. Generally, insurance can be written on either a claims-made or occurrence basis. With claims-made insurance, the claim must be filed during the term of the insurance coverage. With occurrence coverage, claims may be filed as long as the damage occurred during the course of the insurance coverage. This is particularly important for the kinds of impacts associated with



mining, because the impacts are not instantaneous and may take some time to manifest themselves.

Subsection (d) is proposed to be revised to clarify that notification by the insurer to the Department be made whenever changes occur affecting the adequacy of the policy, including cancellation.

Subsection (e) is proposed to be revised to increase the coverage limits for insurance. Section 5 (c) of Noncoal SMCRA (52 P.S. § 3305(c)) specifies that the amount of insurance be prescribed by regulation. The current limits have been in place since the regulations were finalized in 1990. The proposed increase in limits is intended to reflect the increase in costs over time. The numbers are consistent with the requirements that are in place for coal mining.

Subsection (h) is proposed to be revised to delete “solely” in describing the certificate holder. There are circumstances where other parties may also be a certificate holder.

#### *§ 77.242 Procedures for seeking release of bond*

Subsection (g)(2) is proposed to be revised to correct the erroneous reference to subsection (e), which relates to the inspection of the reclamation work. The correct reference is subsection (f), which relates to the subject of the subsection, public hearings and informal conferences.

#### *§ 77.291 Applicability*

This section is proposed to be revised to refer to the act and the Clean Streams Law. This revision is proposed because there are many types of violations which violate both the act and the Clean Streams Law. This revision makes it clear that penalties for these violations will be assessed using the same procedures.

#### *§ 77.293 Penalties*

Subsections (a) and (b) are proposed to be revised to add the reference “of the act or any rule, regulation, order of the Department or a condition of permit issued under the act” because these requirements are from the act, so they only are applicable to violations of the act.

#### *§ 77.301 Procedures for assessment of civil penalties*

Subsection (a), which relates to the notice of a proposed assessment, is proposed to be revised to change three things: the notice method from registered mail to certified mail, the deadline for service from 30 to 45 days, and the trigger to be the issuance of the enforcement action. Registered mail is not necessary because it is unimportant to track the progress of the mailing, whereas certified mail provides the benefit of documenting receipt of the notice. The deadline for the proposed assessment is proposed to be extended to allow for more time to establish an appropriate initial penalty amount. This will also assist in managing the Department’s workload while maintaining timeliness to assure due process. The existing regulation has the time trigger as the Department’s knowledge of the violation. This is proposed for revision, because it is not

always possible to document the first knowledge of a violation. It is more appropriate to use the date of the enforcement action as this is a date that will always be easily identified.

Subsection (d)(2) is proposed to be revised to eliminate the registered mail alternative and to correct the typographical error of “in” instead of “on” in the description relating to the site identification sign, which is required to have the permittee’s address on it.

*§ 77.410 Maps, cross section and related information*

Subsection (a)(11) is proposed to be revised to use the newly defined term “local government” instead of municipality or township. The proposed revision for subsection (a)(13) corrects a typographical error.

*§ 77.531 Dams, ponds, embankments and impoundments-design, construction and maintenance*

Subsection (a) is proposed to be revised to update the name of the Natural Resources Conservation Service, which was formerly known as the Soil Conservation Service.

*§ 77.532 Surface water and groundwater monitoring*

Subsection (c) is proposed to be revised to change Chapter 92 to Chapter 92a because Chapter 92 was reserved and replaced with Chapter 92a several years ago.

*§ 77.562 Preblasting surveys*

There are several references to “preblast surveys,” which are proposed to be revised to be “preblasting surveys.” This is consistent with other references in this subchapter.

*§ 77.563 Public notice of blasting schedule*

There is a reference to “preblast survey,” which is proposed to be revised to be “preblasting survey.” This is consistent with other references in this subchapter.

*§ 77.564 Surface blasting requirements*

Subsection (f) is proposed to be revised to change the location of the 133-dB air blast limit from the main paragraph to create a new subsection (f)(1). This results in existing subsections (f)(1) and (2) being renumbered as (f)(2) and (f)(3) respectively. New subsection (f)(2) is proposed to be revised to change “lower” to “alternative” to allow for the possibility of a higher air blast level being approved. A higher air blast level may be appropriate where it is clear that the controlling structure will not be subject to damage with the higher threshold.

Subsection (i) is proposed to be revised to change the reference to a peak particle velocity of 2.0 inches per second to be to the z-curve, which is figure 1 in § 77.562, which relates to preblasting surveys. This proposed change makes the requirements more internally consistent.

Subsection (k) is revised to correct the description of the time interval to be used in determining the maximum weight of explosives that could be used. The reference in this section to “any 8 millisecond or greater period” is incorrect. The inclusion of “or greater” is wrong and results in the weight of explosives used in the entire blast needing to be considered in the formula. In addition, the formula term “d” is currently omitted in the description of the formula, so the proposed revision inserts “d” where it is needed. Also, in the section, the denominator in the formula is proposed to be changed from 50 to 90. This is consistent with the requirements in Chapter 211, which relates to the storage, handling and use of explosives.

#### *§ 77.565 Records of blasting operations*

Several revisions are proposed for the requirements for the blast records. This is primarily an effort to provide consistency with blast record requirements in § 211.133 of Chapter 211. In subsections (10) and (11), “in pounds” is proposed to be inserted for the weight of explosives, because the scaled distance formula requires the weight to be in pounds. These proposed requirements are consistent with the requirements in § 211.133, subsections (a)(14) and (a)(15), respectively. In subsections (11) and (12), “8 millisecond” is proposed to be inserted, because the scaled distance formula is based on this time period. This is consistent with § 211.133 (a)(15). Subsection (16) is proposed to be revised to insert “total quantity and” so that the number of detonators will be reported. This is consistent with § 211.133 (a)(23). Subsection (17) is proposed to be revised to be more descriptive of what needs to be included in the sketch of the blast. This is consistent with § 211.133 (a)(9). Subsection (19) is proposed to include three instances where “seismographic” is replaced with “seismograph.” Subsections (22), (23) and (24) are proposed to be added to include the scaled distance, the location of the seismographs and the type of circuit, respectively. These requirements are consistent with § 211.133, subsections (a)(19), (a)(2) and (a)(16), respectively.

#### *§ 77.593 Alternatives to contouring*

Subsection (1)(i) is proposed to be revised to change “is likely to” to “can.” This is intended to clarify the justification needed for the alternative to contouring. The former phrase is somewhat speculative, where the latter is more concrete. Subsection (1)(vi) is proposed to be revised to clarify the requirement. Subsection (2) is revised to correct the error in reference to “subsection (a)” since there is no subsection (a).

#### *§ 77.618 Standards for successful revegetation*

Subsection (a)(2) is proposed to be revised to change the reference of “United States Department of Agriculture Soil Conservation Service” to be “Natural Resources Conservation Service,” because this agency changed its name several years ago.

#### *§ 77.654 Cleanup*

This section is proposed to be revised to correct “cleanup” to be two words.

### *§ 77.655 Closing of underground mine openings*

This section is proposed to be revised to correct the error where two of the items were run together in subsection (a)(1)(iii). The item “to prevent access to underground workings” is deleted from this subsection and appended in this section as subsection (a)(1)(v).

### *§ 77.807 Change of ownership*

The section is proposed to be revised to correct the typographical error where “chance” should be “change.”

## *F. Benefits, Costs, and Compliance*

### *Benefits*

The revisions in this proposed rulemaking will provide clarity to mine operators regarding compliance standards. In some cases, this will result in reduced costs. Clarity in the requirements can prevent errors in applications and improve efficiency.

### *Compliance costs*

Very few of the new or revised requirements are likely to increase costs. One example that will increase costs is the proposed updated insurance requirements. The increased coverage limits will increase the cost of insurance for those operators who maintain the minimum coverage amounts. However, many operators already have insurance that meets the proposed increased coverage limits.

### *Compliance assistance plan*

Compliance assistance for this proposed rulemaking will be provided through the Department's routine interaction with trade groups and individual applicants. There are about 1,200 licensed noncoal surface mining operators in this Commonwealth, most of which are small businesses that will be subject to this regulation.

### *Paperwork requirements*

This proposed rulemaking does not require additional paperwork.

## *G. Pollution Prevention*

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency

because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

This proposed rulemaking has minimal impact on pollution prevention since it is predominantly administrative, focused on updating regulations to reflect current requirements, amendments to state statutes and references to citations, names and data sources.

#### H. *Sunset Review*

The Board is not establishing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

#### I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on DATE, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

#### J. *Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by                     .

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

*K. Public Hearings*

If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

PATRICK McDONNELL,  
Chairperson