

**FINAL-FORM RULEMAKING  
ENVIRONMENTAL QUALITY BOARD  
[ 25 PA. CODE CHS. 88 AND 90 ]**

**Coal Refuse Disposal Revisions**

The Environmental Quality Board (Board) amends Chapters 88 and 90 (relating to anthracite coal; and coal refuse disposal). The amendments are intended to implement the act of October 4, 2019 (P.L. 452, No. 74) (Act 74) and to address the differences between the Commonwealth's regulations and Federal regulations relating to temporary cessation at coal refuse disposal sites.

This final-form rulemaking was adopted by the Board at its meeting of DATE.

*A. Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and approval by the Office of Surface Mining Reclamation and Enforcement.

*B. Contact Persons*

For further information contact Gregory Greenfield, Environmental Group Manager, Bureau of Mining Programs, P.O. Box 8461, 5th Floor, 400 Market Street, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5015, or Christopher Minott, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, 9th Floor, 400 Market Street, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania Hamilton Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form 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" and then navigate to the Board meeting of DATE).

*C. Statutory Authority*

The final-form rulemaking is authorized under section 5 of the Clean Streams Law (35 P.S. § 691.5); section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.4b(a)); section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); 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*

Section 1 of Act 74 amended section 6.1 of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a) to conform with the regulations and standards for temporary cessation adopted by the United States Office of Surface Mining Reclamation and Enforcement under Federal law, namely the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (SMCRA) and regulations at 30 CFR 816.131 (relating to cessation of operations: Temporary). Previously, while Federal rules under SMCRA provided flexibility, the Commonwealth's Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66) had limited the temporary cessation of

operations at a coal refuse disposal site to no more than 1 year. Act 74 removed the Commonwealth's 1-year limitation and clarified that any rules or regulations promulgated must be in conformance with Federal provisions on this subject. Act 74 also gave the Department an opportunity to promulgate regulations linking the status of operations generating coal refuse or related material to the coal refuse disposal area. The status of a coal refuse disposal site is directly related to the status of the source of the refuse and the revisions will ensure that a change in status of one will result in a change in the status of the other. For example, when an underground coal mine is actively mining coal and sending the refuse material to a coal refuse disposal site, both facilities are considered active. If that underground coal mine is approved for temporary cessation, the coal refuse disposal site would also be approved for temporary cessation since no refuse material is being generated to be sent there. If mining was to begin again, both facilities would be considered active, whereas, if the mine was to permanently cease operations, the coal refuse disposal facility would be considered permanently ceased unless an alternative source of refuse material can be found.

The requirements for temporary cessation include a reference to a system to prevent precipitation from contacting the coal refuse. Act 74 also revised section 6.1 of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a) to include an enumerated list of the circumstances under which this system must be installed. Previously, the requirement was listed in paragraph form, which was somewhat unclear.

Other changes to the regulations are a result of the Department's experiences with reviewing applications for the permitting of coal refuse disposal sites. Confusing or incorrect requirements in the regulations have resulted in applications being considered technically deficient and sent back to the permittee for corrections. The clarifications will improve the quality of the applications and reduce the amount of correction letters sent to address these items. This includes the existing performance standards for terraces and surface water runoff at coal refuse disposal sites which, as written, have led to confusion on the purpose and intent. The terrace requirements are revised to state that terraces must be constructed as they are needed to control erosion and prevent cascading failures of the final cap rather than just being an optional use. The use of the terms "off of the fill" and "adjacent to and above the fill" in this section were amended to clarify the original intent and resolve the existing conflicts with other parts of the section.

The Department worked with the Mining and Reclamation Advisory Board (MRAB) to develop these regulations. The MRAB is composed of two licensed bituminous surface mine operators, one licensed anthracite surface mine operator, four public members of the Citizens Advisory Council, one anthracite or one bituminous licensed professional engineer, one county conservation district representative, one majority party State senator, one minority party State senator, one majority party State representative and one minority party State representative. The revisions were first mentioned at the January 23, 2020, MRAB meeting as part of the review of the current regulatory agenda. At the March 16, 2020, MRAB Regulation, Legislation and Technical (RLT) committee meeting, the draft language was reviewed and the MRAB RLT committee suggested changes to the language. A second meeting of the MRAB RLT committee took place on May 18, 2020, to review the draft revised language resulting from the March 16, 2020, committee meeting. The Department reviewed the revised draft with the MRAB again at its meeting on July 16, 2020. A third meeting of the MRAB RLT committee took place on

October 15, 2020, to review the revised draft and the committee recommended a minor revision to the permanent cessation section. At the MRAB meeting of October 22, 2020, the MRAB recommended that the Department proceed with the proposed rulemaking. At the MRAB meeting of January 20, 2022, the MRAB recommended that the Department proceed with the final-form rulemaking.

*E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking*

*§ 88.310. Coal refuse disposal: general requirements*

Subsection (k)(1) is amended to individually enumerate the triggers for installation of the system to prevent precipitation from encountering the coal refuse to reflect the list of triggers included in Act 74. This amendment includes the language in Act 74 which clarifies that there is not a 1-year upper limit on the length of temporary cessation.

No changes were made to this section from proposed rulemaking to final-form rulemaking.

*§ 88.332. Cessation of operations: temporary*

Act 74 amended section 6.1 of the Coal Refuse Disposal Control Act to conform with the regulations and standards for temporary cessation under Federal law. To be consistent with the Federal regulations at 30 CFR 816.131, subsection (a) is amended, and the existing requirements for temporary cessation for anthracite coal refuse disposal sites are amended as follows.

Amendments to subsection (a), which are based on the Federal requirements, address temporary cessation status of operations lasting 30 days or more and will require a notice to be submitted to the Department. The list of items that must be included in this notice are enumerated as paragraphs (1)—(4) and include the affected acres in the permit area; a description of the extent and kind of reclamation of the area; a description of the activities that will continue during the temporary cessation status; and a description of the status of the operation or operations that is the source of the coal refuse. Paragraphs (1)—(3) are based on the Federal regulations and are in the existing subsection (a). Paragraph (4) is based on the language in Act 74 to provide for the connection of coal refuse or related material to the coal refuse disposal area. Act 74 removed the 1-year limitation on temporary cessation and that part of subsection (a) is deleted.

Amendments to subsection (b) address temporary cessation status of operations lasting 90 days or more and, in addition to the items required to be submitted in subsection (a), there are two additional items that must be included in the notice submitted to the Department. These items may be submitted at the same time as the subsection (a) notice or subsequent to that notice. These two additional items are enumerated as paragraphs (1) and (2) and include the confirmation that the current bond is adequate to complete reclamation and the timing of the installation of the phased system to prevent precipitation from contacting the refuse. The difference in requirements between subsections (a) and (b) ensures the operator does not need to address longer-term requirements if the temporary cessation will last less than 90 days. While this distinction is neither found in the Federal requirements nor Act 74, it has been addressed

here because the amendments now allow for an unlimited time for cessation. The confirmation that the bond amount is adequate to complete the reclamation of the site as it currently exists is necessary to assure that the site can be fully reclaimed if the site ends up in bond forfeiture. The requirement for a schedule for the system to prevent precipitation from coming into contact with the refuse is to assure that the potential water quality impacts of long-term cessation are mitigated. The existing statement about exemptions for a seasonal shutdown or labor strike is deleted from this subsection as a justification for a longer temporary cessation is no longer needed since the upper one-year time limit is deleted.

Amendments to subsection (c) include the obligation to comply with the environmental protection statutes or "acts" as defined in § 86.1 (relating to definitions) and Chapters 86-90, in addition to the provisions of the permit. Previously, subsection (c) only required compliance with the provisions of the permit. The amendments clarify that operators are required to submit a permit renewal while under temporary cessation.

Subsection (d) states that temporary cessation status ends as a result of the resumption of coal refuse disposal operations and subsequent notices of temporary cessation status must include updated information that is outlined in § 88.332 (relating to cessation of operations: temporary).

Subsection (e) states that temporary cessation status for the coal refuse disposal operation ends when an operation that is a source of the coal refuse resumes its operations or ends by permanent cessation.

Subsection (f) states that temporary cessation status for the coal refuse disposal operation ends when the coal refuse disposal operation itself ends by permanent cessation as specified in § 88.333 (relating to cessation of operations: permanent).

No changes were made to this section from proposed rulemaking to final-form rulemaking.

#### § 88.333. *Cessation of operations: permanent*

While neither the Federal regulations nor statute address this, subsection (b) is added to this section to provide a trigger for when a temporary cessation has developed into a permanent cessation. This necessitates the lettering of the existing language as subsection (a). Subsection (b) describes the circumstances that will terminate the temporary cessation status of a coal refuse disposal facility for noncompliance, listed as paragraphs (1)—(3). The three circumstances which will terminate the temporary cessation status are failure to comply with a final adjudicated proceeding through an act or omission which violates the acts defined in § 86.1 or Chapters 86—90; failure to comply with a permit condition required by the acts or Chapters 86—90; and failure to comply with a consent order and agreement or a consent order. The intent of this new subsection is to trigger the reclamation requirement for sites where chronic noncompliance exists and allows the Department to have the ability to begin reclamation, if necessary. In these cases, it is unlikely that the permittee will be able to meet their obligations to complete the required reclamation. The termination of temporary cessation status constitutes a final action of the Department and the Department will provide notice and an opportunity to appeal to the operator when this status changes and triggers the reclamation requirements.

No changes were made to this section from proposed rulemaking to final-form rulemaking.

§ 90.31. *General requirements*

The Act 74 amendments to the Coal Refuse Disposal Control Act provided for the Department to promulgate regulations to link operations generating coal refuse or related material to the coal refuse disposal area. Paragraph (6) requires the description of the operations that will be the source of the coal refuse to be disposed of in the application for a coal refuse disposal permit. As plans change, this facility information can be updated to include other related facilities.

No changes were made to this section from proposed rulemaking to final-form rulemaking.

§ 90.50. *Design criteria: groundwater and surface water protection system*

In response to Act 74, amendments to subsection (b) add "as specified in the permit" as paragraph (1.1) to the list of triggers for the installation of the system for preventing precipitation from encountering coal refuse that will be installed to prevent adverse impacts to groundwater and surface water. Paragraph (2) is revised to update the reference to subsection (b) in § 90.167 (relating to cessation of operations: temporary) to reflect the amendments to that section.

Subsection (c) is amended in this final-form rulemaking to update the title of technical guidance Document Number 563-2112-656, which was revised on July 17, 2021, to "Liners and Caps for Coal Refuse Disposal Areas."

§ 90.122. *Coal refuse disposal*

Amendments to subsection (h) parallel the language from Act 74 relating to when the system to prevent precipitation from encountering the coal refuse is to be implemented. Paragraphs (1)—(4) were deleted and reserved and paragraphs (5)—(8) were added to list the instances when an operator must install the system to prevent precipitation from contacting the coal refuse. These include when each phase of the operation reaches capacity; when specified in the permit; when an operator temporarily ceases operation for a period of 90 days or more; or when the operation permanently ceases. The construction and design requirements currently contained in paragraphs (1) and (3) of subsection (h) are moved to subsection (h).

The Department observed confusion among applicants regarding the purpose of terraces at coal refuse disposal sites and the need for clarification in the regulations. Subsection (m) is revised to require terraces to control erosion and enhance stability and make their use as roads optional. Previously, terraces were not required if the maximum overall completed out slopes in subsection (m) are not exceeded, but terraces are required to break up lengthy out slopes of very large coal refuse embankments to control erosion and prevent cascading failures of the final cap and soil on an entire embankment out slope. An amendment changed the reference in this subsection from subsection (n) to (o) because terraces are needed to divert the drainage off of the fill and not as a diversion adjacent to or above the fill.

The Department's experience with reviewing the applications for coal refuse disposal sites noted that part of the subsection referenced for diverting surface water runoff cannot be satisfied as written and the intent of the subsection is confusing. Subsection (n) is amended to clarify the design requirements for diverting surface water runoff away from the fill. The reference to all subsections of § 90.104 (relating to hydrologic balance: diversions) are amended by deleting the reference to § 90.104(b) as the design requirements of § 90.104(b) conflict with the hydraulic requirements in this section and the requirement to maintain diversion channels located above the refuse fills in perpetuity.

When reviewing coal refuse disposal site applications, the Department has observed that the applications often require technical deficiency letters due to confusion caused by incorrect or nonapplicable section references in the existing regulations. Subsection (o) is amended to require surface water runoff diverted off of the fill to be conveyed in channels in natural ground or suitable engineered fill. The reference to § 90.104 and § 90.105 (relating to stream channel diversions) has been deleted as they were confusing and conflicted with the design requirements in this section. Diverted off the fill is a different function than a diversion channel located adjacent to or above the fill and § 90.105 is not related to the management of disposal area runoff.

No changes were made to this section from proposed rulemaking to final-form rulemaking.

#### *§ 90.167. Cessation of operations: temporary*

Act 74 amended section 6.1 of the Coal Refuse Disposal Control Act to conform with the regulations and standards for temporary cessation under Federal law. To be consistent with the Federal regulations at 30 CFR 816.131, subsection (a) is amended, and the existing requirements for temporary cessation for bituminous coal refuse disposal sites are amended as follows.

Amendments to subsection (a), which are based on the Federal requirements, address temporary cessation status of operations lasting 30 days or more and will require a notice to be submitted to the Department. The list of items that must be included in this notice are enumerated as paragraphs (1)—(4) and include the affected acres in the permit area; a description of the extent and kind of reclamation of the area; a description of the activities that will continue during the temporary cessation status; and a description of the status of the operation or operations that is the source of the coal refuse. Paragraphs (1)—(3) are based on the Federal regulations and are in the existing subsection (a). Paragraph (4) is added based on the language in Act 74 to provide for the connection of coal refuse or related material to the coal refuse disposal area.

Amendments to subsection (b) address temporary cessation status of operations lasting 90 days or more and in addition to the items required to be submitted in subsection (a), there are two additional items that must be included in the notice submitted to the Department. These items may be submitted at the same time as the subsection (a) notice or subsequent to that notice. These two additional items are enumerated as paragraphs (1) and (2) and include the confirmation that the current bond is adequate to complete reclamation and the timing of the installation of the phased system to prevent precipitation from contacting the refuse. The difference in requirements between subsections (a) and (b) ensures the operator does not need to

address longer-term requirements if the temporary cessation will last less than 90 days. While this distinction is neither found in the Federal requirements nor Act 74, it has been addressed here because the amendments now allow for an unlimited time for cessation. The confirmation that the bond amount is adequate to complete the reclamation of the site as it currently exists is necessary to assure that the site can be fully reclaimed if the site ends up in bond forfeiture. The requirement for a schedule for the system to prevent precipitation from coming into contact with the refuse is to assure that the potential water quality impacts of long-term cessation are mitigated. The existing statement about exemptions for a seasonal shutdown or labor strike is deleted from this subsection as a justification for a longer temporary cessation is no longer needed since the upper time limit is deleted.

Amendments to subsection (c) include the obligation to comply with the environmental protection statutes or "acts" as defined in § 86.1 and Chapters 86—90, in addition to the provisions of the permit. Previously, subsection (c) only required compliance with the provisions of the permit. The amendments clarify that operators are required to submit a permit renewal while under temporary cessation.

Subsection (d) is deleted and reserved since Act 74 removed the one-year limitation on temporary cessation. The installation of the system preventing precipitation from contacting the coal refuse is included in subsection (b), which addresses the requirements for temporary cessation of 90 days or more.

Subsection (e) states that temporary cessation status ends as a result of the resumption of coal refuse disposal operations and any subsequent notices of temporary cessation status must include updated information that is outlined in § 90.167.

Subsection (f) states that temporary cessation status for the coal refuse disposal operation ends when an operation that is a source of the coal refuse resumes its operations or ends by permanent cessation.

Subsection (g) states that temporary cessation status for the coal refuse disposal operation ends when the coal refuse disposal operation itself ends by permanent cessation as specified in § 90.168 (relating to cessation of operations: permanent).

No changes were made to this section from proposed rulemaking to final-form rulemaking.

#### § 90.168. *Cessation of operations: permanent*

While neither the Federal regulations nor statute address this, subsection (b) is added to this section to provide a trigger for when a temporary cessation has developed into a permanent cessation. This necessitates the lettering of the existing language as subsection (a). Subsection (b) describes the circumstances that will terminate the temporary cessation status of a coal refuse disposal facility for noncompliance, listed as paragraphs (1)—(3). The three circumstances which will terminate the temporary cessation status are failure to comply with a final adjudicated proceeding through an act or omission which violates the acts defined in § 86.1 or Chapters 86—90; failure to comply with a permit condition required by the acts or Chapters 86—90; and

failure to comply with a consent order and agreement or a consent order. The intent of this new paragraph is to trigger the reclamation requirement for sites where chronic noncompliance exists and allows the Department to have the ability to begin reclamation, if necessary. In these cases, it is unlikely that the permittee will be able to meet their obligations to complete the required reclamation. The termination of temporary cessation status constitutes a final action of the Department and the Department will provide notice and an opportunity to appeal to the operator when this status changes and triggers the reclamation requirements.

No changes were made to this section from proposed rulemaking to final-form rulemaking.

#### § 90.202. *General requirements*

Amendments to subsection (b)(1) changed the reference from a "coal preparation facility" to a "coal mining activity." This change was made because not all coal refuse is the result of coal preparation. For example, some surface mines will take their refuse to a refuse disposal site. The existing language is also inconsistent with the language in section 4.1 of the Coal Refuse Disposal Control Act (52 P.S. § 30.54a).

No changes were made to this section from proposed rulemaking to final-form rulemaking.

#### F. *Summary of Comments and Responses on the Proposed Rulemaking*

Two comments were submitted to the Department during the public comment period. Aside from general support for the proposed rulemaking, none of the comments specifically addressed any particular aspects of the rulemaking. No changes or modifications are made to the regulation in response to comments.

One commentator suggested a change to the proposed rulemaking to require the Department to publish a notice in the *Pennsylvania Bulletin* when the status of a coal refuse disposal site changes. The Board notes that there are hundreds of mine sites currently permitted in the Commonwealth and an individual site's status can change frequently throughout the year. Due to the frequency of these changes and the timing of the formal publication process, notifying the public of these changes through the *Pennsylvania Bulletin* would be both inefficient and untimely. The Board suggests a more effective method for the public to access the real-time status of any permitted operation, as well as other relevant information on permitted mining activities, is through the Department's database, Environmental Facilities Application Compliance Tracking System, known as eFACTS, available at <https://www.ahs.dep.pa.gov/eComment/>.

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

##### *Benefits*

This final-form rulemaking makes the Department's regulations consistent with State law and Federal regulations related to the operation of coal refuse disposal areas. This final-form rulemaking clarifies when an operator must install a system for preventing precipitation from encountering coal refuse, which will improve environmental protection by reducing the



likelihood that precipitation will generate a pollutorial discharge from the site. This final-form rulemaking establishes a relationship between the coal refuse disposal area and the source of the refuse, which will improve environmental protection by ensuring that disposal areas do not remain unreclaimed long after the source has ceased generating refuse. This final-form rulemaking is not expected to directly improve public health, although it may have an indirect public health benefit to the extent that it reduces the likelihood of pollutorial discharges from coal refuse disposal areas.

#### *Compliance costs*

Existing and future permittees of coal refuse disposal sites are required to comply with this final-form rulemaking, which does not create any new compliance costs and it is not expected to prevent or avoid costs. This final-form rulemaking clarifies the existing requirements which may avoid costs associated with navigating unclear requirements that could be inconsistently interpreted or applied.

#### *Compliance assistance plan*

Compliance assistance for this final-form rulemaking will be provided through the Department's routine interaction with trade groups and individual applicants. No financial assistance will be necessary or provided.

#### *Paperwork requirements*

This final-form rulemaking does not require additional paperwork.

#### *H. Pollution Prevention (if applicable)*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) 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 final-form rulemaking incorporates the following pollution prevention incentives: it clarifies when an operator must install a system for preventing precipitation from encountering coal refuse, which will improve environmental protection by reducing the likelihood that precipitation will generate a pollutorial discharge from the site; and requires some relationship between the coal refuse disposal area and the source of the refuse, which will improve environmental protection by ensuring that disposal areas do not remain unreclaimed long after the source has ceased generating refuse.

#### *I. 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.

### *J. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 20, 2021, the Department submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 6914 (November 6, 2021), and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on DATE, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on DATE and approved the final-form rulemaking.

### *K. Findings of the Board*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 51 Pa.B. 6914 (November 6, 2021).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

### *L. Order of the Board*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 88 and 90, are amended to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this final-form regulation to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form regulation to the IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this final-form regulation and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PATRICK McDONNELL,  
*Chairperson*