

EXECUTIVE SUMMARY

Noncoal Mining Clarifications and Corrections 25 Pa. Code Chapter 77

Purpose and Summary of the Final Rulemaking

The Department of Environmental Protection (Department) presents this final-form rulemaking to amend Chapter 77 for consideration by the Environmental Quality Board (Board). Chapter 77 was finalized in 1990 to implement the Commonwealth's Noncoal Surface Mining Conservation and Reclamation Act. After years of implementing the noncoal regulatory program, the Department has identified several necessary clarifications to the regulatory provisions established in 1990. Many of the revisions are administrative in nature.

This final-form rulemaking addresses several errors and administrative corrections. For example, the equation used for the limitation of the amount of explosives used is incorrect. The rulemaking also updates agency references which have changed since 1990. For example, the Natural Resources Conservation Service was formerly named the Soil Conservation Service. In addition, the rulemaking provides clarifications in several sections, including the triggers for public meetings or informal conferences.

Outreach (Advisory Committee/Stakeholder Consultation)

The Department consulted with the Aggregate Advisory Board throughout the development of these regulations. The interaction began in October 2018 with a discussion of concepts at an Aggregate Advisory Board Regulation, Legislation and Technical (RLT) committee meeting. After several RLT committee meetings 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. The Department presented the draft final-form regulation to the Aggregate Advisory Board on November 3, 2021, and February 1, 2023. The Aggregate Advisory Board voted unanimously to recommend that this final-form rulemaking proceed after suggesting the Department add language to clarify the applicability of civil penalties in the cessation order subsection of § 77.293. The Board has incorporated this language as suggested by the Aggregate Advisory Board.

Affected Parties

There are about 1,200 licensed noncoal mine operators who will benefit from the clarification and corrections in the final-form rule. Commonwealth residents who reside in the vicinity of noncoal mine sites will also benefit from the minimum insurance protection coverage increase, which provides adequate compensation for bodily harm or property damage caused by noncoal operations.

Public Comments

The Board adopted the proposed rulemaking on November 17, 2020. Notice of the public comment period on the proposed rulemaking was published in the *Pennsylvania Bulletin* on March 20, 2021 (51 Pa.B. 1519). The 45-day public comment period opened on March 20, 2021 and closed on May 4, 2021.

The Board received comments from four commentators and the Independent Regulatory Review Commission. The comments received on the proposed regulation are summarized in Section E of the final Preamble and in the Comment and Response Document that accompanies this final-form rulemaking.

The Department has considered all the public comments received on the proposed rulemaking in preparing this final rulemaking, and recommends the final-form rulemaking be revised as set forth in Annex A. The Department recommends some changes from the proposed rulemaking to this final rulemaking in response to comments received on the proposed rulemaking. In response to comments received on the proposed rulemaking, the Department proposes revisions to clarify the following: that both existing and designated uses of streams are considered when deciding whether to grant a waiver for noncoal exploration activities, when a summary report of the findings of a public hearing or informal conference on a permit application is issued, and specify when and how the Department will assess civil penalties for violations of the Noncoal Surface Mining Conservation and Reclamation Act and The Clean Streams Law.

Recommendation

The Department recommends adoption of this final-form rulemaking.