

EXECUTIVE SUMMARY

PROPOSED RULEMAKING FOR WATER SUPPLY REPLACEMENT FOR SURFACE COAL MINING

The Department is submitting a proposed rulemaking which will amend 25 Pa. Code Chapter 87 (relating to Surface Mining of Coal), 25 Pa. Code Chapter 88 (relating to Anthracite Coal) with associated minor corrections to 25 Pa. Code Chapter 89 (relating to Underground Mining of Coal and Coal Preparation Facilities), and 25 Pa. Code Chapter 90 (relating to Coal Refuse Disposal).

To maintain jurisdiction over the regulation of coal surface mining activities, the Commonwealth must maintain a federally-approved State program in accordance with the requirements of The Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (SMCRA), and with “rules and regulations consistent with regulations issued by the Secretary.” See 30 U.S.C.A. § 1253(a)(1) and (7). This proposed rulemaking addresses inconsistencies between the Commonwealth’s surface coal mining program and Federal requirements relating to water supply replacement so that the Commonwealth may maintain primary regulatory authority over coal mining activities in Pennsylvania.

This proposed rulemaking also aligns the language regarding water supply replacement for anthracite and bituminous surface mining with underground coal mining to the extent allowed by statute and ensures that the regulations are otherwise consistent with State law and Department practice, currently implemented through three Technical Guidance Documents (TGDs): (*Water Supply Replacement and Compliance* (# 562-4000-101); *Increased Operation and Maintenance Costs of Replacement Water Supplies on All Coal and Surface Noncoal Sites* (#562-4000-102)); and *Water Supply Replacement and Permitting* (#563-2112-605)).

The Mining and Reclamation Advisory Board (MRAB), and the Regulatory, Legislative and Technical (RLT) committee of the MRAB have participated in discussions about water supply replacement beginning with the creation of the TGDs noted above. The Department began presenting concepts for this proposed rulemaking to the MRAB beginning in 2017. After several meetings, and exchanges of comments and draft language, the MRAB recommended that the Department proceed with the proposed rulemaking on October 25, 2018. Subsequently, one regulatory provision allowing operators to recover costs from the Department under certain circumstances has been modified to reflect the 2000 repeal and replacement of its underlying statutory authority.

All these measures will provide clarity to mine owners and operators regarding compliance standards for water supply replacement and protect the rights of water supply owners and users who may have their water supplies affected by surface mining activities. The operators will benefit from the codification of the water supply replacement requirements into the Department’s regulations, eliminating ambiguity as to their responsibilities. Water supply owners in the counties that have coal surface mining activities will have greater clarity regarding their rights to a replacement supply.