

EXECUTIVE SUMMARY

Federal Office of Surface Mining Reclamation and Enforcement (OSM) Program Consistency Rule 25 Pa. Code Chapters 86 – 90

This final-form rulemaking amends the coal mining regulations at 25 Pa. Code Chapter 86 (relating to Surface and Underground Coal Mining: General), Chapter 87 (relating to Surface Mining of Coal), Chapter 88 (relating to Anthracite Coal), Chapter 89 (relating to Underground Mining of Coal and Coal Preparation Facilities) and Chapter 90 (relating to Coal Refuse Disposal).

PURPOSE OF THE REGULATION

This rulemaking is authorized under the Surface Mining Conservation and Reclamation Act, the Clean Streams Law, the Coal Refuse Disposal Control Act, the Bituminous Mine Subsidence and Land Conservation Act and the Administrative Code of 1929.

The Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) authorized the Office of Surface Mining Reclamation and Enforcement (OSM) under the U.S. Department of the Interior to administer programs for controlling surface coal mining operations across the United States. A state can assume primacy over the regulation of its coal mining regulatory programs if a state's regulations are consistent with (*i.e.*, no less protective than) the federal requirements. Pennsylvania achieved primacy over its surface coal mining program in 1982.

Over the past several years, OSM has identified several regulations within the Commonwealth's regulatory program that are inconsistent with federal requirements. Therefore, the Commonwealth must revise its regulations so that they are no less stringent than federal requirements. In this rulemaking, additional revisions are included to reflect general program maintenance, such as correcting typographical errors and updating organization names, statutory citations, remaining requirements, and the use of reference data for stormwater control facilities.

Failure to address these inconsistencies puts the Commonwealth at risk for losing program primacy to the federal government. The loss of program primacy would threaten the federal Title V grant which funds about fifty percent of the coal mining program which, in FY 16-17, totaled about \$25,413,733.

SUMMARY OF THE REGULATION

Therefore, inconsistencies in definitions and program processes in the regulations were addressed and amendments were made to the following sections:

- The language used in 25 Pa. Code § 86.151(d) to define the seeding period for which an operator is liable for site revegetation
- The definition of a "haul road" in 25 Pa. Code § 88.1 as it relates to an anthracite mining operation
- The definition of "surface mining activities" in 25 Pa. Code §§ 86.1 and 87.1
- The language used in 25 Pa. Code § 86.31 to define what local government entities should receive a notice for mining permit applications

As required by the OSM, the final-form rulemaking modified the following program processes:

- The process outlined in 25 Pa. Code § 86.158(b) by which certain collateral bonds are valued
- The effluent limitations for bituminous underground mines as previously listed in 25 Pa. Code § 89.52 (f)
- The upper limit for temporary cessation of operations for bituminous surface mines as previously included in 25 Pa. Code § 87.157
- The calculation of the threshold for assessing a civil penalty as explained in 25 Pa. Code § 86.194
- The means of notifying local governments of mining permit applications as listed in 25 Pa. Code § 86.31(c)(1)

Additionally, revisions are included to reflect general program maintenance, such as correcting typographical errors and updating organization names, statutory citations, reminding requirements, and the use of reference data for stormwater control facilities. The rulemaking does not require revisions to application forms and or any guidance documents.

PUBLIC COMMENT

The proposed rulemaking was published in the *Pennsylvania Bulletin* on October 27, 2018, opening a 30-day public comment period. Comments were received from three public commenters and the Independent Regulatory Review Commission (IRRC). All public comments were considered in the preparation of this final-form rulemaking and are addressed in the Comment and Response document.

AFFECTED PARTIES

The regulated community is comprised of about 400 coal mining businesses, most of which are small businesses. The regulations will apply consistently among all operations, for small and large businesses alike. The Department will achieve compliance assistance for this rulemaking through routine consultation with trade groups, citizens, and individual applicants.

ADVISORY GROUPS

The Department collaborated with the Mining and Reclamation Advisory Board (MRAB), which is composed of representation from anthracite surface mine operators, the Pennsylvania Coal Alliance, the Pennsylvania Anthracite Council, the County Conservation Districts, the Citizens Advisory Council, the Pennsylvania House of Representatives, and the Pennsylvania Senate to develop the proposed rulemaking.

This included discussion at several Regulation, Legislation and Technical (RLT) committee meetings. In July 2016, the Department delivered a presentation summarizing the proposed requirements to the MRAB at their quarterly meeting. At its April 6, 2017, meeting, the MRAB voted to concur with DEP's recommendation that the proposed rulemaking move forward in the regulatory process. At its April 25, 2019, meeting, the MRAB voted to concur with DEP's recommendation that the final-form rulemaking move forward in the regulatory process.

RECOMMENDATION TO THE BOARD

The Department recommends the adoption of this final-form rulemaking.