

**EXECUTIVE SUMMARY**  
**Noncoal Program Corrections and Clarifications**  
**25 Pa. Code Chapter 77**

The Department of Environmental Protection (Department) proposes to amend Chapter 77 (relating to Noncoal Mining) to read as set forth in Annex A. The proposed rulemaking would provide updates and clarifications for the requirements for mining noncoal minerals in this commonwealth.

**Purpose of the Proposed Rulemaking**

Chapter 77 was finalized in 1990 to implement the Noncoal Surface Mining Conservation and Reclamation 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.

**Summary of the Proposed Rulemaking**

Most notably, the proposed rulemaking provides clarifications on points of confusion that have become apparent from implementing the noncoal regulatory program since 1990. Some examples of these clarifications include: updating the definitions for "Noncoal minerals," "Noncoal surface mining activities," and "Related party" in Section 77.1 to provide further clarifications for what each entail; adding transfers to the list of applications that are exempt from the requirement for public notification in a newspaper in Section 77.108 Subsection (f) in order to make it clear that permits for small operations may be transferred; updating Section 77.108 Subsection (m) to clarify that in order for a noncoal permit to be issued the applicant must hold a mining license; creating a new section for exploration by drilling (Section 77.113) to dispel confusion associated with the conflation of requirements for exploration by drilling and a permit waiver; and including the triggers for public meetings or informal conferences in several sections throughout the proposed rulemaking.

Since the promulgation of Chapter 77 in 1990, several errors in the regulations have also been identified. Some examples of these errors include: a spelling error within the definition of "sedimentation pond" in Section 77.1; the equation used for the limitation of the amount of explosives used in Section 77.564; and corrections to incorrect references throughout the regulation. The proposed rulemaking corrects these errors.

Additionally, the proposed rulemaking provides updates to agency names, terminology and Department operations to better reflect the present day and address changes since 1990. These proposed changes include: updating the reference of "the Soil Conservation Service" to its new name of "the Natural Resources Conservation Service" throughout Chapter 77; updating the entities that are required to be identified in an application for a mining license and those who will be considered in evaluating the eligibility for holding a mining license in Section 77.51; and eliminating the requirement for an application to be attested by a notary or district justice in Section 77.107 in order to facilitate electronic submission of applications.

**Affected Parties**

There are about 1,200 licensed noncoal mine operators that will benefit from the improved clarity of the requirements for mining noncoal minerals in Pennsylvania as a result of this

proposed regulation. Citizens of the commonwealth who reside in the vicinity of noncoal mine sites will also benefit, because clarity provides certainty as to the requirements and protections provided in the regulated environment.

### **Outreach (Advisory Committee/Stakeholder Consultation)**

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.

### **Recommendation**

The Department recommends adoption of this proposed rulemaking. A 45-day public comment period is also recommended with no public hearings.