

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

**PART I. DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF
NATURAL RESOURCES**

ARTICLE I. LAND RESOURCES

CHAPTER 77. NONCOAL MINING

Subchapter A. GENERAL PROVISIONS

§ 77.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

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Impoundment—A closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment or waste.

Insignificant boundary correction—A small or inconsequential change to the permit boundary to correct an error in mapping, surveying or other minor adjustment that results in no significant difference in environmental impact.

Intermittent stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

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Large noncoal permit—A mining permit that authorizes the extraction of greater than 10,000 tons per year of noncoal materials.

Local government—A city, borough, incorporated town or township.

Major permit revision—A revision to a permit that requires public notice.

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Noncoal minerals—An aggregate or mass of mineral matter, whether or not coherent, that is extracted by surface mining. The term includes, but is not limited to, limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite, and clay. The term does not include peat[.]. **The term does not include** anthracite or bituminous coal or coal refuse, except as provided in section 4 of the act (52 P.S. § 3304).

Noncoal surface mining activities—The extraction of minerals from the earth, from waste or stockpiles or from pits or from banks by removing the strata or material that overlies or is above or between them or otherwise exposing and retrieving them from the surface. The term includes strip mining, auger mining, dredging, quarrying and leaching and the surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and **ancillary and customary** activities related thereto. The term does not include mining operations carried out beneath the surface by means of shafts, tunnels, or other underground mine openings. The term does not include the following:

- (i) The extraction of minerals by a landowner for the landowner's noncommercial use from land owned or leased by the landowner.
- (ii) The extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes of the Department of Transportation or the extraction of minerals under construction contracts with the Department if the work is performed under a bond, contract and specifications that substantially provide for and require reclamation of the area affected in the manner provided by the act.
- (iii) The handling, processing, or storage of slag on the premises of a manufacturer as a part of the manufacturing process.
- (iv) Dredging operations that are carried out in the rivers and streams of this Commonwealth and in Lake Erie.
- (v) The extraction, handling, processing, or storing of minerals from a building construction excavation on the site of the construction if the minerals removed are incidental to the building construction excavation, regardless of the commercial value of the minerals. For purposes of this section, the minerals removed are incidental if the excavator demonstrates that:
 - (A) Extraction, handling, processing or storing are conducted concurrently with construction.
 - (B) The area mined is limited to the area necessary to construction.
 - (C) The construction is reasonably related to the use proposed for the site.
- (vi) The removal and sale of noncoal materials from retail outlets.

Noxious plants—Species that have been included on the official State list of noxious plants for the Commonwealth under **[the Noxious Weed Control Law (3 P.S. §§ 255.1—255.11)] 3 Pa.C.S. Chapter 15 (relating to controlled plants and noxious weeds).**

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Recurrence interval—The interval of time in which a precipitation event is expected, on the average, to occur once. For example, the 10-year, 24-hour precipitation event expected to occur on the average once in 10 years.

Related party—A partner, associate, officer, **director, Limited Liability Company member, Limited Liability Company manager,** parent corporation, subsidiary corporation, affiliate, or person by or under common control with the applicant, contractor, or subcontractor.

Sedimentation pond—A primary sediment control structure, including, but not limited to, a barrier, dam, or excavated depression which [details] **detains** water runoff to allow sediment to settle out. The term does not include secondary sedimentation control structures, such as straw dikes, riprap check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that secondary sedimentation structures drain to a sedimentation pond.

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Subchapter B. SURFACE MINING OPERATOR'S LICENSE

§ 77.51. License requirement.

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(c) *Identification of ownership.* The application shall indicate whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity. For business entities other than single proprietorships, the application shall contain the following information if applicable:

(1) The name and address of the applicant, including partners, associates, officers, **directors, Limited Liability Company members, Limited Liability Company managers,** parent, or subsidiary corporations.

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(e) *Refusal to issue or renew license.* The Department will not issue a noncoal surface mining operator's license or renew or amend a license if it finds, after investigation and an opportunity for informal hearing, that a person, partner, associate, officer, **director, Limited Liability Company member, Limited Liability Company manager,** parent corporation or subsidiary corporation has been subject to a bond forfeiture under the act and environmental acts or has failed to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree under the act and environmental acts. The Department will not renew a license for an operator who uses the provisions for payment in lieu of bond unless the operator submits his annual payment with the license renewal application. A person who opposes the Department's decision on issuance or renewal of a license has the burden of proof.

(f) *License renewal requirements.*

(1) A person licensed as a noncoal surface mining operator shall renew the license annually according to the schedule established by the Department.

(2) Notice of license renewal and filing of an application for license renewal shall conform to the following:

(i) **[The Department will notify the licensee in writing at least 60 days prior to the expiration of the current license to renew the license. The applicant shall be responsible for filing a license renewal application prior to the expiration of the current license] The application for renewal shall be made at least 60 days before the current license expires.**

(ii) If the Department does not intend to renew a license, the Department will notify the licensee, a minimum of 60 days prior to expiration of the license. This section does not prevent the Department from not renewing the license for violations occurring or continuing within this 60-day period if the Department provides an opportunity for an informal hearing.

Subchapter C. PERMITS AND PERMIT APPLICATIONS

GENERAL

§ 77.107. Verification of application.

Applications for permits shall be verified by a responsible official of the applicant with a statement that the information contained in the application is true to the best of the official's information and belief[, and attested by a notary public or district justice].

§ 77.108. Permit for small noncoal operations.

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(f) The Department will publish its decision on a small noncoal permit application and a final bond release in the *Pennsylvania Bulletin*. Permit applications, transfers and bond releases under this section are exempt from the newspaper public notice requirements of section 10(a) of the act (52 P.S. § 3310(a)).

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(m) An application for a small noncoal permit shall be reviewed, approved, or denied in accordance with § 77.126(a)(1)—(8) **[and]**, (10) **and (11)** (relating to criteria for permit approval or denial).

§ 77.109. Noncoal exploration activities.

(a) A person who intends to conduct noncoal exploration outside an existing **noncoal surface mining** permit shall file with the Department a written notice of intention to explore for each exploration area at least 10 days prior to the start of exploration activities on forms provided by the Department. **Except for drilling operations as provided for in § 77.113 (relating to permit waiver—noncoal exploration drilling), no noncoal exploration activity shall occur except as authorized by either of the following:**

(1) A letter from the Department waiving the requirement for a permit.

(2) A permit issued in accordance with the act and this chapter.

(b) The notice shall include:

(1) The name, address and telephone number of the person seeking to explore.

(2) The name, address and telephone number of the representative who will be present at and responsible for conducting the exploration activities.

[(2)] (3) (A map, at a scale of 1:24,000, of the exploration area showing the extent of the exploration area and approximate locations of drill holes, exploratory pits, trenches, and excavations.

[(3)] (4) A statement of the period of intended exploration.

[(4)] (5) The method of exploration and types of equipment to be used.

[(5)] (6) The purpose of testing.

[(6)] (7) The amount of mineral needed for testing **[(if exploration is by test pit, trench, or excavation)] that is to be removed.**

(8) A description of the practices proposed to be followed to prevent adverse impacts to the environment as a result of the exploration activities.

(9) A blast plan if explosives are to be used.

(c) [Exploration by drilling methods may proceed 10 days after the notice of intent to explore form is submitted to the Department unless notified otherwise by the Department to provide other information to assure compliance with the environmental acts (for example—the location of access roads) or if the area is located within the distance limitations of § 77.504 (relating to distance limitations and areas designated unsuitable for mining).

(d)] The Department will, except as otherwise provided in § 77.124 (relating to public availability of information in permit applications), place the notices on public file and make them available for public inspection and copying during regular office hours at the established fee.

[(e) A person who intends to conduct noncoal exploration operations in which noncoal minerals will be removed shall, prior to conducting the exploration, obtain a permit under this chapter. Prior to removal of minerals, the Department may waive the requirement for the permit to enable the testing and analysis of noncoal properties.]

(d) To remove material from an exploration area, a person conducting noncoal exploration shall, prior to beginning exploration obtain a noncoal mining permit under this chapter or receive a waiver from the Department. A person who receives a waiver from the Department shall still comply with the performance requirements in subsections (f)—(k). The Department may waive the requirement for a noncoal mining permit if one of the following apply:

(1) The material removed from the site will be less than 20 tons.

(2) The person conducting noncoal exploration can, to the satisfaction of the Department, justify an amount greater than 20 tons, but which may not exceed 1,000 tons.

(e) In granting a waiver under subsection (d), the Department will consider:

(1) The method of exploration proposed.

(2) The potential for adversely affecting wetlands, streams or water supplies and the designated uses and quality of the receiving stream.

(f) A person who conducts noncoal exploration activities will observe the distance limitations under § 77.504 (relating to distance limitations and areas designated unsuitable for mining).

(g) Exploration activities shall be conducted to accomplish the following:

(1) To minimize environmental impacts on roadways and vegetation.

(2) To provide erosion controls for excavated areas, including access roads, in accordance with Chapter 102 (relating to erosion and sediment control).

(3) To avoid disturbance of wetland areas.

(h) The areas affected by the noncoal exploration shall be graded to approximate original contour [**when possible or restored to a slope not to exceed 35° unless approved by the Department § 77.594(2)(v) (relating to final slopes)**] within 30 days after completion of exploration, and will contain no depressions which will impound water. Drill holes shall be sealed under § 77.503 (relating to casing and sealing of drilled holes). The affected areas shall be revegetated within the first planting season after completion of exploration.

(i) Noncoal exploration activities shall be subject to the applicable inspection and enforcement provisions of the Department, and Subchapters E and F (relating to civil penalties for noncoal mining activities; and enforcement and inspection).

(j) Information will be made available to the public as follows.

(1) Except as provided in paragraph (2), information submitted to the Department under this section will be made available for public inspection and copying at the appropriate district mining office.

(2) Information which pertains only to the analysis of the chemical and physical properties of the mineral (except information regarding the mineral or elemental content that is potentially toxic to the environment) will be kept confidential and will not be made a matter of public record.

(k) Blasting in connection with noncoal exploration activity must comply with the requirements of Chapters 210 and 211 (relating to blaster's license; and storage, handling and use of explosives).

(Editor's Note: The following text is proposed to be added and printed in regular type to enhance readability.)

§ 77.113. Permit waiver—noncoal exploration drilling.

(a) Drilling that is done solely for the purpose of exploration where only the drilled material is removed from the site does not require a permit. Exploration by drilling methods may proceed 10 days after the notice of intent to explore is received by the Department except if the following applies:

(1) The applicant is notified by the Department to provide additional information to assure compliance with the environmental acts.

(2) The area is located within the distance limitations of § 77.504 (relating to distance limitations and areas designated unsuitable for mining).

(b) All drill holes must be sealed upon completion or finished as specified in the exploration plan. Drill holes may be used as monitoring wells or water wells provided that the wells are properly constructed and developed for their intended purposes.

REVIEW, PUBLIC PARTICIPATION, ITEMS AND CONDITIONS OF PERMIT APPLICATIONS

§ 77.121. Public notices of filing of permit applications.

(a) At the time of filing an application with the Department, an applicant for a permit, transfer, renewal or revision under § 77.142 (relating to public notice of permit revision) shall place an advertisement in a local newspaper of general circulation in the locality of the proposed noncoal mining activities once a week for 4 consecutive weeks. The advertisement shall contain the following information:

(1) The name and business address of the applicant.

(2) The **[township and county] local government** and county in which the operation is located. **If the operation spans multiple jurisdictions, then each local government and county shall be listed.**

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(c) During the public notification period, the applicant shall notify each property owner within the proposed permit area, by **[registered] certified** mail, of the proposed permit except for surface landowners who have a completed Consent of Landowner form submitted with the application.

(d) **[Upon receipt of a complete application] Upon acceptance of an application for review**, the Department will publish notice of the proposed activities in the *Pennsylvania Bulletin*.

(e) **[Upon receipt of a complete application] Upon acceptance of an application for review**, the Department will notify, **in writing**:

(1) **[By registered mail, the city, borough, incorporated town or township] Each local government** in which the activities are located.

(2) Federal, State and local government agencies with jurisdiction over or an interest in the area of the proposed activities.

(f) The content of the notice shall include:

(1) The application numbers.

(2) The name and business address of the applicant.

(3) **[The township] Each local government** and county in which the operation is located.

(4) The receiving streams.

- (5) A brief description of the operation and the location.
- (6) The location where a copy of the application may be inspected.
- (7) Where comments on the application may be submitted.

§ 77.123. Public hearings—informal conferences.

(a) A person having an interest that is, or may be, adversely affected may request in writing that the Department hold a public hearing or an informal conference on an application for a permit. The request shall:

(1) Briefly summarize the issues to be raised by the requestor at the public hearing or informal conference.

(2) Be filed with the Department within 30 days after the last publication of the newspaper advertisement placed by the applicant under § 77.121(a) (relating to public notices of filing of permit applications) or within 30 days of receipt of notice by the public entities to whom notification is provided under § ~~77.121(d)~~ 77.121(e).

(b) Except as provided in subsection (c), if a public hearing or an informal conference is requested under subsection (a), the Department will hold a public hearing or an informal conference within 60 days following **[the receipt of the request] the close of the public comment period provided under § 77.122(a) (relating to opportunity for submission of written comments or objections on the permit application)**. The public hearing or informal conference will be conducted as follows:

(1) The public hearing or informal conference shall be held in the locality of the proposed mining operation.

(2) The date, time and location of the public hearing or informal conference shall be advertised by the Department in a newspaper of general circulation in the locality of the proposed mine at least 2 weeks prior to the scheduled public hearing or informal conference.

(3) The public hearing or informal conference shall be conducted by a representative of the Department who may accept oral or written statements and other relevant information from a party to the public hearing or informal conference.

(c) If the parties requesting the public hearing or informal conference agree to withdraw their request, the public hearing or informal conference need not be held.

(d) Informal conferences held under § 77.504 (relating to distance limitations and areas designated as unsuitable for mining) may be used by the Department as the public hearing or informal conference required under proposed uses or relocation of public highways.

(e) **[The Department will give its findings of the public hearing or informal conference to the permit applicant and to each person who is a party to the public hearing or informal conference within 60 days of the public hearings or informal conference] After the public hearing or informal conference, the Department will prepare a summary report regarding the comments submitted. This document will be made available to the public prior to, or upon approval or denial of, the application.**

(f) Within 60 days of the public hearing or informal conference, the Department will notify the applicant of its decision to approve or disapprove or of its intent to disapprove subject to the submission of additional information.

§ 77.128. Permit terms.

(a) A permit will be issued for the duration of the mining and reclamation operation except for the NPDES permit, which shall be renewed every 5 years.

(b) A permit will terminate if the permittee has not begun the noncoal mining activities covered by the permit within **[3] 5** years of the issuance of the permit, **unless extended in accordance with this section**. The Department may grant reasonable extensions of time for commencement of these activities upon receipt of a written statement showing that the extensions of time are necessary if litigation precludes the commencement or threatens substantial economic loss to the permittee or if there are conditions beyond the control and without the fault or negligence of the permittee. Requests for extensions shall be submitted to the Department prior to expiration of the permit. If a permit has not been activated within **[3] 5** years, **[or the permittee has not been granted an extension,]** the permittee may apply for a permit renewal **that includes updated permit information as described in § 77.161 (relating to responsibilities)**.

(c) A permit renewal application shall be filed under § 77.143 (relating to permit renewals).

PERMIT REVIEWS, RENEWALS, REVISIONS AND TRANSFERS

§ 77.141. Permit revisions.

(a) A revision to a permit shall be obtained for a change to the noncoal mining activities, as defined by the Department, set forth in the application.

[(b) The permittee shall submit the application for permit revisions which require public notification to the Department at least 180 days before undertaking the change. In emergency situations, the Department may waive the 180-day requirement.

(c) [(b)] An application for revision shall be complete **as described in § 77.105 (relating to application contents)** and contain the following information:

(1) The permittee's name and address and permit number.

(2) A description of the proposed revisions, including appropriate maps, plans and application **modules** to demonstrate that the proposed revision complies with the **[acts] act**, the environmental acts, and this chapter.

[(d)] (c) The Department will approve or disapprove the **[complete]** application for revision under § 77.127 (relating to final permit action).

[(e) Revisions to change permit boundaries for needed support facilities may be considered by the Department.

(f) The addition of acreage for mineral extraction shall be considered as an application for a new permit, except if the Department deems the area to be an insignificant boundary correction.]

(d) Except for an insignificant boundary correction, the addition of acreage for support activities is subject to review through the same procedures as an application for a new permit but will be a revision to the existing permit.

(e) Except for an insignificant boundary correction, the addition of acreage for mineral extraction is subject to review through the same procedure as an application for a new permit but will be a revision to an existing permit, with consideration to the following:

(1) Effect on the hydrologic balance.

(2) Improvement to or logical extension of the existing overall operations and reclamation plan.

(3) Feasibility of issuing a new individual permit for the additional area.

(f) Any permit revision for circumstances described under § 77.142 (relating to public notice of permit revision) is a major revision and is subject to the provisions of § 77.121 (relating to public notices of filing of permit applications). The Department may require that any major revision include an update of related permit information to reflect current conditions or requirements including bond liability.

(g) The Department may require a permit revision in response to the following:

(1) Unanticipated substantial impacts that affect public health, safety or the environment have occurred or are expected to occur as a result of the mining activity.

(2) The permittee has deviated or must deviate from the approved operational information or reclamation plan.

§ 77.142. Public notice of permit revision.

(a) A permit revision request is subject to the notice requirements of § 77.121 (relating to public notices of filing of permit applications) under the following circumstances:

(1) For surface mining activities:

(i) Discharging to a different watershed or a change in water treatment facility design which would result in a change in effluent limits or additional discharge points.

(ii) The change of postmining land use.

(iii) A change in the type of reclamation (for example—approximate original contour, terrace, water impoundment, the addition of reclamation fill or other alternative reclamation).

(iv) A physical change in the mine configuration. Physical changes include, but are not limited to, stream diversion structures, new or expanded haul road connections to a public highway, permit area additions, elimination of public highways and increases in approved pit depth.

- (v) The addition of blasting to the operation.
- (vi) The addition of mineral processing to the mining activity.
- (2) For underground mining activities:

(i) Discharging to a different watershed or a change in water treatment facility design which would result in a change in effluent limits or additional discharge points.

(ii) A physical change in the mine configuration. Physical changes include, **but are not limited to**, stream diversion structures, new or expanded haul road connections to a public highway, **permit area additions**, elimination of public highways and new openings.

(iii) A change to the postmining land use.

(iv) The addition of mineral processing to the mining activity.

(b) Initiation of new mining or support area is subject to public notice if the plan includes a lateral or vertical change to the previously authorized permit area. Incremental mining within the permit area, as described in the permit application, is not subject to public notice.

(c) Deletion of area from within the permit boundary, with the exception of final bond release area, does not require public notice provided that the applicant can demonstrate that the area has not been affected by surface mining. Areas affected only by exploration by drilling may be deleted without public notice.

§ 77.143. Permit renewals.

(a) *NPDES permit renewals.* An application for renewal of an NPDES permit shall be filed with the Department at least 180 days before the expiration date of the NPDES permit in question. A renewal application shall be filed in the format required by the Department.

(b) *Mine permit renewals—general requirements.*

(1) A valid, existing permit issued by the Department will carry with it the presumption of successive renewals upon expiration of the term of the permit. Successive renewals will be available only for areas which were specifically approved by the Department on the application for the existing permit.

(2) A permit renewal will not be available for extending the acreage of the operation beyond the boundaries of the permit area approved under the existing permit. Addition of acreage to the operation will be considered **[a new application] under § 77.141(d) and (e) (relating to permit revisions)**. A request for permit revision may accompany a request for renewal and shall be supported with the information required for application as described in this chapter.

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(8) The Department will **[send copies of its decision to] notify** the applicant, persons who filed objections or comments to the renewal and **[to]** persons who were parties to an informal conference held on the permit renewal **of the Department's decision.**

§ 77.144. Transfer of permit.

(a) [A] **No** transfer, assignment or sale of the rights granted under a permit may [not] be made, except as provided in this section.

(b) Permits may be reissued in a new name, **without transfer**, if there is no change in legal entity, **including name changes that result from conversions of a corporate entity**.

(c) The Department may [allow a permittee to transfer] **approve the transfer of** a permit to another operator if the successor operator:

(1) Meets the requirements of § 77.126(a)(6)—(9) (relating to criteria for permit approval or denial).

(2) Assumes liability for reclamation, water pollution, planting and other responsibilities under the law, rules and regulations and the terms and conditions of the permit from the date of original issuance of the permit.

(3) Furnishes the Department with an appropriate bond in the amount specified by the Department under Subchapter D (relating to bonding and insurance requirements).

(4) Submits proof of publication as required by § 77.121 (relating to public notices of filing of permit applications) **with the exception of permits issued under § 77.108 (relating to permits for small noncoal operations)**.

(5) Submits additional information to enable the Department to determine that the applicant is able to operate the mine in a manner complying with the environmental acts.

Subchapter D. BONDING AND INSURANCE REQUIREMENTS

FORMS, TERMS AND CONDITIONS OF BONDS AND INSURANCE

§ 77.224. Special terms and conditions for collateral bonds.

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(c) A collateral bond pledging certificates of deposit is subject to the following conditions:

(1) The Department will require that certificates of deposit be assigned to the Department, in writing, and that the assignment be recorded upon the books of the bank issuing the certificates.

(2) The Department will not accept an individual certificate of deposit for a denomination in excess of **[\$100,000, or]** the maximum insurable amount as determined by the **[FDIC and FSLIC] Federal Deposit Insurance Corporation (FDIC) and Federal Savings and Loan Insurance Corporation (FSLIC)**.

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§ 77.231. Terms and conditions for liability insurance.

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(b) The insurance shall **be written on an occurrence basis and** provide for personal injury and property damage protection in a total amount determined by the Department on a case by

case basis, and adequate to compensate persons injured or property damaged as a result of the permittee's mining and reclamation operations and entitled to compensation under Pennsylvania law.

(c) If explosives are to be used by the permittee and loss, diminution in quantity or quality, contamination or interruption of public or private sources of water is possible as determined by the Department, the liability insurance shall include and the certificate shall provide a rider covering personal injury and property damage from these occurrences. The applicant may provide bond under subsection (i) in lieu of insurance to cover water supply loss, diminution, contamination or interruption.

(d) The insurance shall include a rider requiring that the insurer notify the Department whenever substantive changes are made **[in the policy, including termination] affecting the adequacy of the policy, including cancellation** or failure to renew.

(e) Minimum insurance coverage for bodily injury shall be **[\$300,000 per person and \$500,000 aggregate; and minimum insurance coverage for property damage shall be \$300,000 for each occurrence and \$500,000 aggregate] \$500,000 per person and \$1 million aggregate. Minimum insurance coverage for property damage shall be \$500,000 for each occurrence and \$1 million aggregate.**

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(h) The certificate holder shall be **[solely]** the Department.

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RELEASE OF BONDS

§ 77.242. Procedures for seeking release of bond.

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(g) *Review by Department.* Department review and decision will be as follows:

(1) The Department will consider, during inspection, evaluation and public hearing or informal conference decisions:

(i) Whether the permittee has met the criteria for release of the bond under § 77.243.

(ii) Whether the permittee has satisfactorily completed the requirements of the reclamation plan, or relevant portions thereof, and complied with the requirements of the act, this chapter, and the conditions of the permit.

(iii) Whether pollution of surface and subsurface water is occurring or the continuance of present pollution, and the estimated cost of abating pollution.

(2) If a public hearing or informal conference has not been held under subsection **[(e)] (f)**, the Department will notify the permittee in writing of its decision to release or not to release all or part of the bond.

(3) If there has been a public hearing or informal conference held, the notification of the decision shall be made to the permittee, and other interested parties, within 30 days after conclusion of the public hearing or informal conference.

(4) The notice of the decision will state the reasons for the decision, recommend corrective actions necessary to secure the release and notify the permittee and interested parties of the right to file an appeal to the decision with the EHB. An appeal shall be filed with the EHB under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and Chapter 1021 (relating to practice and procedures).

Subchapter E. CIVIL PENALTIES FOR NONCOAL MINING ACTIVITIES

GENERAL PROVISIONS

§ 77.291. Applicability.

This subchapter is applicable to assessments of civil penalties under **[the environmental acts and the act.]**:

(a) Section 21 of the act (52 P.S. § 3321).

(b) Section 605(b) of The Clean Streams Law (35 P.S. § 691.605(b)).

§ 77.293. Penalties.

(a) *Cessation order.* The Department will assess a civil penalty of up to \$5,000 per day for each violation **of the act or any rule, regulation, order of the Department or a condition of any permit issued under the act** which leads to a cessation order. If a violation involves a failure to correct within the period prescribed for its correction, a violation for which a cessation order or other abatement order has been issued, a civil penalty of at least \$750 will be assessed for each day the violation continues beyond the period prescribed for its correction.

(b) *Civil penalty.*

(1) The Department may assess a civil penalty of up to \$1000 per day for each violation **of the act or any rule, regulation, order of the Department or a condition of any permit issued under the act**, unless the operator demonstrates with clear and convincing evidence that the violations:

- (i) Result in no environmental damage.
- (ii) Result in no injury to persons or property.
- (iii) Are corrected within the required time prescribed for its abatement.

(2) If the violation involves a failure to correct within the period prescribed for its correction, a violation for which a cessation order or other abatement order was not issued, a civil penalty of at least \$250 will be assessed for each day the violation continues beyond the period prescribed for its correction.

PROCEDURES

§ 77.301. Procedures for assessment of civil penalties.

(a) *Initial review.* When the Department determines that a civil penalty will be assessed, it will make an initial review of the violation and will serve a copy of the results of the initial review, including the civil penalty computations, on the party responsible for the violation. The service will be by **[registered] certified** mail within **[30] 45** days of the Department's **[knowledge of the violation] issuance of the notice of violation or order.**

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(d) *Service.* The Department will serve a copy of the civil penalty assessment on the person responsible for a violation as follows:

(1) Upon the failure of the assessed party to timely request an assessment conference on the results of the initial review.

(2) Upon the completion of an assessment conference, or upon review of timely submitted information for review by the Department, if the Department does not decide to vacate the penalty. The service will be **[registered or]** by certified mail, or by personal service. If the mail is tendered at the address of the assessed person set forth **[in] on** the sign required under § 77.502 (relating to signs and markers), or at an address at which that person is in fact located, and the person refuses to accept delivery of or to collect the mail, the requirements of this paragraph will be deemed to have been complied with upon that tender.

Subchapter G. INFORMATION ON ENVIRONMENTAL RESOURCES

§ 77.410. Maps, cross sections and related information.

(a) An application shall contain maps and plans of the proposed permit area and within 1,000 feet of the permit area, except as otherwise designated by the Department, showing the following:

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(11) The **[municipality or township] local government** and county.

(12) The elevation and location of test borings and core samplings.

(13) The location and extent of existing or previously deep or **[surfaced] surface** mined areas.

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Subchapter I. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

HYDROLOGIC BALANCE

§ 77.531. Dams, ponds, embankments and impoundments—design, construction and maintenance.

(a) Dams, ponds, embankments and impoundments shall be designed, constructed and maintained in accordance with the **[Soil] Natural Resources** Conservation Service Engineering Standard # 350 "Pond" and if applicable, Chapter 105 (relating to dam safety and waterway management).

(b) A facility under subsection (a) shall be designed and certified to the Department by a qualified registered professional engineer, if required by Chapter 105, or qualified registered land surveyor.

§ 77.532. Surface water and groundwater monitoring.

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(c) In addition to the monitoring and reporting requirements established by the Department under Chapter **[92] 92a** (relating to National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance), surface water shall be monitored to accurately measure and record the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters when requested by the Department. The Department will approve the nature of data, frequency of collection, reporting requirements and the duration of the monitoring programs.

USE OF EXPLOSIVES

§ 77.562. Preblasting surveys.

(a) Preblasting surveys will not be required if blasting is designed and conducted below the levels of blasting vibration shown on Figure #1 at the nearest dwelling, school, church, commercial or institutional building neither owned nor leased by the operator.

If **[preblast] preblasting** surveys are not conducted, the operator shall provide a seismograph record including both the particle velocity time-history (wave form) and the particle velocity and vibration frequency levels for each blast.

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(b) If the operator intends to conduct blasting at vibration levels exceeding the levels of vibration in figure #1 at the nearest dwelling, school, church, commercial or institutional building neither owned nor leased by the operator, the operator shall offer **[preblast] preblasting** surveys. At least 30 days before commencement of blasting or resumption of blasting in accordance with § 77.562(a)(3)(i) the operator shall notify, in writing, the residents or owners of dwellings or other structures located within 1,000 feet (304.8 meters) of the area where blasting will occur of their right to request a preblasting survey and how to request a preblasting survey. On the request to the Department or operator by a resident or owner of a dwelling or structure that is located within 1,000 feet (304.8 meters) of the area where blasting will occur, the operator shall promptly conduct a preblasting survey of the dwelling or structure. If a dwelling or structure is renovated or added to subsequent to a **[preblast] preblasting** survey, then, upon request by the resident or owner to the Department

or operator, a survey of the additions and renovations shall be performed by the operator in accordance with this section. The operator shall provide the Department with a copy of the request.

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§ 77.563. Public notice of blasting schedule.

(a) *Blasting schedule publication.*

(1) Copies of the schedule shall be distributed by mail to local governments and to public utilities within 1000 feet of the blasting area.

(2) The blasting schedule shall be revised, published, and distributed in accordance with this section. Advice on requesting a **[preblast] preblasting** survey need not be provided to parties advised in the original distribution under subsection (a)(1).

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§ 77.564. Surface blasting requirements.

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(f) Airblasts shall be controlled so that they do not exceed **[133 dBL] the airblast level specified in this subsection** at a dwelling, public building, school, church or commercial or institutional structure, unless the structure is owned by the person who conducts the surface mining activities and is not leased to another person. The lessee may sign a waiver relieving the operator from meeting the airblast limitations of this subsection.

(1) Maximum decibel level. The maximum allowable airblast level is 133 dBL.

[(1)] (2) Exceptions. The Department may specify **[lower] alternative** maximum allowable airblast levels than those in this subsection for use in the vicinity of a specific blasting operation, if necessary.

[(2)] (3) Monitoring. The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The Department may require an airblast measurement of a blast and may specify the location of the requirements.

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(i) In blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity may not exceed **[2.0 inches per second] the levels of blasting vibration shown in Figure 1 in § 77.562** at the location of a dwelling, public building, school, church or commercial or institutional building or other structure designated by the Department. The maximum peak particle velocity shall be the largest of three measurements. The Department may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors.

(j) The maximum peak particle velocity limitation of subsection (i) does not apply at a structure owned by the permittee.

(k) When seismographs are not used to monitor peak particle velocity, the maximum weight of explosives to be detonated within any 8 millisecond **[or greater]** period may be determined by the formula **[$W = (d/50)^2$]** **$W=(d/90)^2$** where W equals the maximum weight of explosives, in pounds, that can be detonated in any 8 millisecond period **[or greater]**, and **d** equals the distance, in feet, from the blast to the nearest dwelling, school, church, commercial or institutional building. The development of a modified scale-distance factor may be authorized by the Department on receipt of a written request by the operator, supported by seismographic records of blasting at the mine site. If the peak particle velocity will exceed .5 inch per second with the adjusted scale-distance, § 77.562(d) shall be complied with prior to blasting at the adjusted levels.

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§ 77.565. Records of blasting operations.

A record of each blast shall be retained for at least 3 years and shall be available for inspection by the Department. Seismographic reports, if applicable, shall be made a part of that record. The record shall include the following data:

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(10) The total weight, **in pounds**, of explosives used.

(11) The maximum weight, **in pounds**, of explosives detonated per **8 millisecond or less** delay intervals.

(12) The maximum number of holes detonated per **8 millisecond or less** delay intervals.

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(16) The **total quantity and** type of delay detonator and delay periods used.

(17) The sketch **[of the delay pattern] showing the number of holes, burden, spacing, and pattern dimensions of the delay pattern and point of initiation.**

(18) The number of persons in the blasting crew.

(19) The **[seismographic] seismograph** and airblast records, when required, including the type of instrument, sensitivity and calibration signal of the gain setting and certification of annual calibration and the following:

(i) The **[seismographic] seismograph** or airblast level reading, or both, including exact location of the seismograph, its distance from the blast and the name of the property.

(ii) The name of the person taking the seismograph reading.

(iii) The name of person and firm analyzing the **[seismographic] seismograph** record.

(20) The reasons and conditions for an unscheduled blast.

(21) The total number of blasting caps used.

(22) The scaled distance.

(23) The location(s) of the seismograph(s), when required.

(24) The type of circuit, if electric detonation is used.

BACKFILLING AND GRADING

§ 77.593. Alternatives to contouring.

Alternative reclamation to approximate original contour may be authorized as follows:

(1) The applicant shall demonstrate that the proposed operation will be carried out over a substantial period of time and that the volume of mineral to be removed is large compared to the overburden to restore the area to approximate original contour. The applicant shall provide a description of the alternative and demonstrate that:

(i) The alternative to contouring **[is likely to] can** be achieved.

(ii) The alternative poses no actual or potential threat to public health or safety.

(iii) The alternative poses no actual or potential threat to water diminution, contamination, interruption or pollution.

(iv) The alternative is consistent with applicable land use policies, plans and programs.

(v) The alternative is consistent with Federal, State or local law.

(vi) The alternative is **[capable of supporting]** the highest or best use **[it can reasonably support] that can reasonably be supported** after mining and reclamation is completed.

(2) If the applicant does not meet the requirements of **[subsection (a)] paragraph (1)**, an alternative to contouring may be authorized if the applicant demonstrates that the operation will either restore the land affected to a condition capable of supporting the uses it was capable of supporting prior to mining or to a higher or better use. The applicant shall demonstrate that:

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REVEGETATION

§ 77.618. Standards for successful revegetation.

(a) When the approved postmining land use is cropland:

(1) The standards for successful revegetation shall be based upon crop productivity or yield.

(2) The approved standard shall be the average yields per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture **[Soil] Natural Resources** Conservation Service.

(3) The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last two consecutive growing seasons of the 5-year responsibility period established in § 77.615 (relating to species). Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

(b) When the approved postmining land use is other than cropland:

(1) The standards for successful revegetation shall be determined by ground cover.

(2) The approved standard shall be the percent ground cover of the vegetation which exists on the proposed area to be affected by surface mining activities. The Department will not approve less than a minimum of 70% ground cover of permanent plant species with not more than 1% of the area having less than 30% ground cover with no single or contiguous area having less than 30% ground cover exceeding 3000 square feet. When woody species are planted in mixture with herbaceous species, these standards shall be met and a minimum of 400 woody plants per acre shall be established unless alternate plans are approved or required by the Department. On slopes greater than 20 degrees, the minimum number of woody plants shall be 600 per acre.

(3) The percent of ground cover of the mined area shall meet the standards of paragraph (2) to qualify for Reclamation Stage I and Reclamation Stage II approval.

(4) For purposes of this subsection, the term "herbaceous species" means grasses, legumes and nonleguminous forbs. The term "woody plants" means woody shrubs, trees and vines.

CESSATION AND COMPLETION OF MINING

§ 77.654. **[Cleanup] Clean up.**

Upon completion of mining, the operator shall remove and **[cleanup] clean up** temporary unused structures, facilities, equipment, machines, tools, parts or other materials, property, debris or junk that were used in or resulted from the surface mining activity.

§ 77.655. **Closing of underground mine openings.**

(a) *Mine openings.*

(1) Upon completion of mining, a mine opening, except those approved for water monitoring or otherwise managed in a manner approved by the Department, shall be closed:

(i) To prevent degradation of surface waters and groundwaters.

(ii) To assist in returning the groundwater as near to its premining level as possible.

(iii) To assist in returning the hydrologic balance as near to its premining condition as possible **[to prevent access to underground workings]**.

(iv) To ensure the safety of people.

(v) To prevent access to underground workings.

(2) Prior to closing a mine opening, the plan for the closing shall be approved by the Department.

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Subchapter J. GENERAL PERMITS

§ 77.807. **Change of ownership.**

For an activity requiring registration under this section, an amended registration shall be filed if there is a **[chance] change** of ownership of the entity conducting the surface mining activities.