



**Standard Operating Procedure (SOP)<sup>1</sup> for District Mining Operations**  
**Not Started Permits**  
**SOP No. BMP-011**  
**July 14, 2021**

**BACKGROUND**

Regulations for both coal and noncoal state that permits not *activated* within 3 years of their issuance terminate except if the operator requests an *extension* [See § 86.40 and § 77.128]. The purpose of this document is to standardize the handling of requests by the District Mining Offices (DMO) for extensions for permits that have not started and to ensure that they are processed in accordance with the regulations and applicable case law.

The regulations at § 86.40 and § 77.128 say that a permit shall terminate if the permittee has not begun the mining activities covered by the permit within 3 years of the issuance of the permit.<sup>2</sup> However, the Department may grant reasonable extensions of time for commencement of these activities upon receipt of a written statement (prior to the termination date) showing that the extensions of time are necessary. Examples for justification of extensions include litigation or other conditions beyond the control and without the fault or negligence of the permittee. The use of the plural “extensions” is interpreted by the Department to mean more than one may be granted if there is suitable justification. However, the Department presumes upon issuance that the permittee intends to commence mining at the site within the standard 3-year span allotted and repeated extensions of a not started permit should be rare. An extended delay of mineral extraction means that the permit information becomes stale or must be changed to reflect the new situation. For example, ground water assessments become outdated, surface water designations may change status that requires revisions to E&S controls, property interests and mapping change significantly, or different technology may be applicable to undertake the operations. In addition, a permit that is not activated within the given time frame fails to meet the intent of the regulations governing the permitting process, which is to allow for extraction and reclamation in a timely manner. Eventually, a permit must be nullified because the permittee has failed to commence the operation for which the permit was issued. Therefore, the following represents a

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<sup>1</sup> Disclaimer: The process and procedures outlined in this SOP are intended to supplement existing requirements. Nothing in the SOP shall affect regulatory requirements. The process, procedures and interpretations herein are not an adjudication or a regulation. There is no intent on the part of the Department to give the rules in this SOP that weight or deference. This document establishes the framework within which the Department will exercise its administrative discretion in the future. The Department reserves the discretion to deviate from this policy statement if circumstances warrant.

<sup>2</sup> In process is a proposal to change § 77.128 from a 3 year to a 5-year limit for activation.

process to allow permittees a fair allowance to delay the start of the permit where there are reasonable justifications – up to two extensions and a renewal – for a maximum of 10 years in most cases.

## **PROGRAM SPECIFIC PRACTICES**

### **A. Permit status**

*Activated/Activation* – Refers to a date when extraction operations commence (permit is “active” or “activated”). If the permit is not activated within the time frame set in the regulations [§ 86.40 and § 77.128], the permit will terminate or require an extension via the procedure outlined here.

*Active* – The state of a permit where extraction is currently occurring. The ACTIVE status in efacts was previously used to represent any surface mining activities on the site including tree removal, placement of a haul road, or installation of a sediment pond. While beginning this activity in preparation for mining means that the permittee will acquire bond liability for the site, according to legal decisions, “activated” means undertaking coal/mineral extraction or retrieval.

*Activities* – Mining activities as defined in the respective regulations. These activities are associated with extraction. While mining activities include site preparatory work – such as timbering and installation of roads and E&S controls – these activities are conducted in association with extraction, which is the intent of the mining permit. Legal decisions have established that the purpose of a permit is to extract coal/minerals so, for that purpose, preparation work is considered as a mining activity<sup>3</sup> but does not mean the permit is *activated*.

*Not Started* – Permit is issued but extraction has not commenced. NOT STARTED is an efacts status that should be used until extraction begins. The operator can incur bond liability under NOT STARTED if they conduct earth disturbance activities that do not yet include extraction of coal/minerals.

1. Upon issuance, the permit status in the efacts system is set to NOT STARTED.
2. The permit status is changed to ACTIVE only when extraction begins.
3. If the permittee starts activities but does not reach the extraction of material by the designating activation time, an extension request is necessary. The permittee cannot apply for a temporary cessation as cessation is contingent on extraction having commenced.

### **B. Coal**

1. A coal mining activity permit is issued with an expiration date of 5 years. The DMO will run a status report quarterly and flag permits that are in NOT STARTED status.
2. If the permit has not been started at 2.5 years (midterm), the permittee should be advised in a letter/official email (and noted in the inspection report) that the permit will terminate at 3 years (with this date explicitly provided) unless the operator does either of the following: 1) begins

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<sup>3</sup> See *Keck v. DEP*, 2007 EHB 343, 348; see also *New Hanover Township v. DEP*, 2014 EHB 834, 884-85.

extraction, or 2) requests an extension in writing. This notification should be sent no less than 30 days prior to the 3-year anniversary.

3. The DMO should document that the permittee was informed of the action they must take by this specific date or the permit will be terminated.
4. If the operator wishes to request an extension, they should be instructed to submit a request for extension via a letter or email from an authorized company official to the Department that must include a justification for the need to extend the 3-year activation date. Verbal requests to Department personnel are not acceptable. This extension request must be received **prior to** the 3-year activation date.
5. If the DMO accepts the justification for extension, they acknowledge this in a written notice. In most cases, the required starting date can be set ahead two years – that is, to the original permit's 5-year expiration (renewal) date. This action is a minor permit revision.
6. The DMO should state the following in the notice of permit correction.

*The permittee has submitted a justification for, and the Department has approved, a request to extend the permit activation date from [original 3-year limit date] for an additional 2 years as provided under § 86.40. This permit expires on [date]. If the permittee wishes to maintain this mining permit, the permittee must submit a permit renewal prior to that date whether mining has commenced or not.*

7. This permit should remain flagged in quarterly reports for as long as it is NOT STARTED.
8. The typical renewal process under § 86.55 would then be applied. However, if the permit remains in NOT STARTED status at the time of renewal, the DMO should request updates to permit modules since the information may have changed for reasons related to the inactivity at the site – operation plans, property ownership, new home construction, related industrial activities, well information, etc. The DMO should consider any changes that have occurred since permit issuance that may affect the cumulative hydrologic assessment that was completed with the original permit. This information is in addition to the requirements of § 86.53, related to reporting of new information. The permittee should be notified to update the PNDI survey and other permits or waivers from other agencies obtained at the time of permit issuance with current information.
9. If a renewal is issued for a NOT STARTED permit, the permit expiration date is now set at a subsequent 5-year date but another 3-year permit activation clock begins anew.
10. At the second midterm point, if the permit is still NOT STARTED, the permittee can again request an extension to push the activation of the permit to the second permit expiration date. As before, the permittee should be reminded of this necessary action in letter/official email (and noted in the inspection report) that the permit will terminate at 8 years (with this date explicitly provided) unless the operator does either of the following: 1) begins extraction, or 2) requests an extension in writing. This notification should be sent no less than 30 days prior to the 8-year anniversary.
11. The DMO must, again, document this correspondence. This request also must be received before the date stated for termination (8-years from original permit issuance).
12. The DMO can subject this second extension request to a higher level of scrutiny than the initial request. The DMO should meet with the operator to discuss the permit status and to document the

reasoning for or against the extension. The DMO can ask the operator for an anticipated activation date and remind the permittee that extensions beyond 10 years are typically not granted and the permit will be terminated.

13. If the second extension is justified and the permit information is adequate (in consideration of § 86.53), the permit can be extended to the 10-year date from original issuance.
14. If the permit is not activated by the second expiration date (10 years after the initial issuance), the permittee would not typically be allowed an additional extension, though there may be circumstances where this hard cut-off would not be appropriate. At this 10-year mark, the permit can be reissued as “reclamation only” if the permittee has incurred bond liability<sup>4</sup>, or it can be terminated, and the bond released. A new permit application process must begin if mining is anticipated in the future. The permittee should be provided reasonable notice of this termination (in lieu of the typical renewal reminder) at least 6 months prior to the action.

### **C. Noncoal**

Noncoal permits are currently required to activate (commence extraction) within 3 years (both large and small). The permittee can apply for an extension, but the regulations do not specify the time frames for such an extension. Noncoal permits do not have a 5-year renewal cycle that provides an expiration date. The Department has proposed that § 77.128 be revised to clarify that the permittee has 5 years to activate extraction or they may renew the permit that includes a justification for extending the activation limit. The renewal rules and restrictions are provided in § 77.143. As part of the renewal, updates to permit modules will be required since the information may have changed for reasons related to the inactivity at the site – operation plans, property ownership, new home construction, related industrial activities, well information, etc. The DMO should consider any changes that have occurred since permit issuance that may affect the hydrologic conditions assessed under the original permit. The permittee should be notified to update the PNDI survey and other permits or waivers from other agencies obtained at the time of permit issuance with more recent information.

If a noncoal permit is renewed, the activation clock is reset for another 5 years. If, after 10 years, the permit remains in a NOT STARTED status, the permit may be terminated (see step #14 in Section B. above).

When a noncoal permit is renewed, the DMO should send notification of the renewal application to the following: PA Fish and Boat Commission, PA Game Commission, PennDOT, and the municipality and county. Additionally, any agencies that provided specific comment in the initial permit review should be notified of the renewal.

### **D. Transfer**

Transfer of the permit can be accepted up to the final expiration date, and after all extensions have been exhausted. No additional extensions should be granted in association with the transfer other than the time it takes to issue the transferred permit. Transfers should only be considered an option if the new operator intends to promptly begin mining.

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<sup>4</sup> If bond liability has been incurred, such as installation of E&S controls, the operator should be instructed to apply for bond release including public notice. [§ 86.152 (c)]

## **E. Permit conditions**

All extension/renewal actions for NOT STARTED permits should contain a condition stating that the permit must be activated (commence extraction) by the date for which extension or renewal has been granted. In all cases, the permit must state the dates required for action by the permittee, whether that be to commence extraction, request an additional extension, or submit a permit renewal, as applicable.

## **F. Suspension of water monitoring**

The Permittee may request suspension of water monitoring requirements from the time of permit issuance due to non-activation. The DMO has discretion regarding these requirements and can issue a minor permit revision in response. Quarterly monitoring should be restarted at least two quarters prior to activation and monthly monitoring restarted at least 2 months ahead.

## **G. Minimum bond option**

If a permittee indicates that they will not commence mining immediately upon issuance of the permit, the DMO may allow the permittee to post a minimum bond. This option should be used only where justification is provided (i.e., financial hardship) and with assurances that the permittee understands that mining without adequate bond is a violation of the regulations where penalties are imposed. The permit must contain a condition that mining cannot commence until the full bond amount is posted.

The following permit condition is suggested, edited as appropriate to the site-specific situation:

*No earth disturbance activities shall commence under this permit unless the following updates are submitted and approved by the Department:*

- *mining and reclamation plans*
- *bond updates to the mining and operations plans and in accordance with current bond rate guidelines*
- *exhibits and application information modules showing existing residential, commercial, and industrial activities, including ownership, reflecting any changes since the permit was issued.*
- *PNDI survey, if older than 3 years*
- *waivers/permits from other agencies, if dated more than 3 years ago*

## **H. Acceptable justification for activation extension**

The approval of an extension should not be automatic but requires a reasonable justification. In some cases, unfavorable market conditions are cited by the permittee as the reason that operations have not started. This is justifiable for the first request for extension or renewal but may not be suitable for subsequent requests. The permittee should justify particularly significant situations to be allowed to remain in NOT STARTED status past the 8<sup>th</sup> year of the permit. Such situations must be “reasonable,” “necessary,” and “beyond the control and without fault of negligence of the permittee.” These situations may include continued litigation, additional external approvals or permits, or unfavorable market conditions. The permittee should supply a robust repeat justification regarding “market conditions” as this reason suggests the permit may not ever be activated except during very favorable economic conditions. Where zoning or other approvals are necessary, the DMO should advise the permittee that they are responsible for securing these necessary approvals before permit issuance to avoid delays in activating an issued permit.