



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

COMMENT AND RESPONSE DOCUMENT

REMINING REQUIREMENTS

25 Pa. Code Chapters 87, 88, and 90
45 Pa.B. 5920 (October 3, 2015)
Environmental Quality Board Regulation #7-496
(Independent Regulatory Review Commission #3121)

List of Commentators on the Proposed Rulemaking

1. Rachel Hursh
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Comments and Responses

Comments were received from one public commentator and the Independent Regulatory Review Commission (IRRC).

1. **Comment:** The public comment relates to subsection 87.212(b)(4). It pointed out that the subscript to the term “x” in the statement “If n is odd, then M equals x” was omitted. (1)

Response: The correct subscript was inserted to properly identify the value of M if n is odd.

2. **Comment:** The regulatory analysis form (RAF) was incomplete because there was no information provided in the response to question 23. (2)

Response: This omission was corrected in the final-form rulemaking package.

3. **Comment:** The RAF failed to make reference to sections 88.510 and 90.310 in the response to question 11. (2)

Response: This omission was corrected in the RAF included with the final-form rulemaking package.

4. **Comment:** The preamble failed to explain the need for the change in the existing regulations found in subsection 87.204(a)(2) relating to the continuation of sampling after the baseline is established. In the existing regulations the continuation of sampling is mandatory, where under the proposed revision it is optional. This change also applies to sections 88.504 and 90.304. (2)

Response: An explanation is provided in the preamble and in response to the questions on the RAF. The rationale for this change is as follows: the federal regulations do not require the continuation of sampling; the established baseline is enforceable without any additional data; a cost could be incurred by operators for unnecessary data collection; and the Mining and Reclamation Advisory Board recommended said change. Further explanation has been provided that the alternative to the requirement in the proposed regulations was the elimination of any reference to the continuation of sampling in order to be consistent with the federal requirements.

5. **Comment:** Sections 87.210, 88.510 and 90.310 are ambiguous because the reference in subsection (d)(1) includes the phrases, "...establishing the baseline pollution levels under this subsection..." and "...the permit applicant may establish and in-stream baseline concentration..." (2)

Response: The wording was revised to include reference to the specific subsection (d)(4). In addition, these subsections have been revised to specify that "the permit applicant **shall** establish an in-stream baseline concentration at a suitable point downstream from the remaining operation, **unless the Department waives the sampling requirement under subsection (d)(5)** and the numeric effluent limitations in subsection (c)(1) do not apply."

6. **Comment:** Sections 87.213, 88.513 and 90.313 include calculations from the federal regulations, but do not match the federal regulations. Specifically, the calculations in subsections (b)(4), (b)(6) and (c)(7)(iii) are missing additional sets of parentheses and subsection (c)(7)(ii) includes a capital "M" rather than a small "m." (2)

Response: "M" in subsection (c)(7)(ii) is corrected to "m." The additional parentheses are not needed due to the rules about order of operations for arithmetic. Further, including unnecessary parentheses would result in less clarity and more ambiguity, so the final-form rulemaking does not revise the calculations to exactly match the federal calculations. However, the calculations in the final-form rulemaking provide the same results as the federal calculations.