

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: Department of Environmental Protection

(2) Agency Number:

Identification Number: 7-496

IRRC Number: **3121**

(3) PA Code Cite: 25 Pa. Code Chapters 87, 88 & 90

(4) Short Title: Remining Requirements

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This final-form rulemaking updates the Commonwealth's remining regulations to reflect the federal regulatory requirements. The federal requirements are different from the current state requirements in two ways. First, the federal requirements include two options for the statistical methods for determining the pollution baseline, while the state requirements only allow for one of these methods. Second, the federal regulations provide for remining in cases where the pollution baseline cannot be determined. The final-form rulemaking eliminates these differences.

The regulations also include provisions incorporating requirements that have historically been included on a permit-by-permit basis. These elements include the monitoring requirements, action triggers and performance standards.

(8) State the statutory authority for the regulation. Include specific statutory citation.

This proposed rulemaking is authorized under the authority of section 5 of The Clean Streams Law (35 P.S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20)

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No. The rulemaking is not mandated by any federal or state law.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The remining program in Pennsylvania allows for liability protection for mine operators who mine and reclaim areas with abandoned mine lands with pollutional discharges. This results in reclamation of abandoned mine land features (for example, highwalls and spoil piles) at no cost to the Commonwealth.

This rulemaking will allow for additional reclamation of abandoned mine lands by providing protection to mine operators from long-term treatment liability in more situations. The provisions of the rulemaking that allow for remining in circumstances where calculating the baseline pollution load of discharges is not feasible has the potential to open up areas to remining where it was not previously possible. Remining typically results in substantial improvements in water quality in addition to the land reclamation.

The rulemaking also provides flexibility since it allows for both statistical methods included in the federal rule. This provides consistency with the federal requirements as well.

It is not possible to quantify the benefits because there are many factors which influence the decision to request a permit for coal mining. However, it is clear that the regulation will provide protection for mine operators in more circumstances than the existing regulations.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Yes. The rulemaking is more stringent than the federal requirements at 40 CFR 434 with respect to discharges for which it is infeasible to calculate a baseline pollutant load. The federal requirements rely exclusively on the pollution abatement plan for these mine sites. The rulemaking at §§ 87.210, 88.510 and 90.310 (d)(2), (3) & (5), includes requirements to establish an in-stream pollutant baseline in certain circumstances.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Pennsylvania has been a national leader in the implementation of remining requirements. Other states are required to comply with the effluent limitations established for coal mining in the federal regulations. The rulemaking continues Pennsylvania's leadership in coal remining in the United States.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

During the development of the rulemaking, the Department engaged with the Mining and Reclamation Advisory Board’s (MRAB) Regulation, Legislation and Technical committee through a series of meetings. The final-form rulemaking reflects the results of this effort. Progress reports were provided to the MRAB throughout the interaction with the committee. The MRAB represents a cross-section of the coal mining industry and citizens, including the mine operators which are small businesses. The recommendations of the MRAB are fully incorporated into the final-form rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

There are about 500 licensed surface coal mining operators in Pennsylvania, most of which are small businesses that will be subject to this regulation. Generally, the impact on these operators will be positive because the rulemaking will allow for mining of reserves that were previously not feasible to mine. Some additional sampling costs are anticipated. However, these costs are not out of line with the costs incurred through the typical planning process that is required for permitting a coal mine site.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

There are about 500 licensed surface coal mining operators in Pennsylvania, most of which are small businesses that will be subject to this regulation. However, the regulations have a specific scope-remining sites-which limits the number of entities which will need to comply with the requirements. It is a business decision for each applicant as to whether they want to undertake a project which entails remining. The rulemaking provides protection for these mine operators from the potential long-term pollution liability associated with post-mining discharges.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

These regulations will allow mining to occur in areas where it was not previously feasible due to the number or location of pre-existing discharges. Remining results in substantial reclamation that would otherwise not be completed because of the legacy of unregulated mining in Pennsylvania. In addition, the rulemaking provides greater flexibility than the existing regulations because it allows for an additional statistical method to establish a pollutant baseline and determine compliance. This is expected to have a positive impact on the regulated community and the environment.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The additional costs resulting from this regulation are minimal. The costs will only be incurred if the mine operator chooses to take advantage of the protections provided under the regulation. It is likely that additional sites will be feasible to mine due to the implementation of the proposed rulemaking. These costs are evaluated by prospective mine operators as part of the pre-mining planning and development. Implementation of these regulations will result in an overall improvement in water quality.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

It is not possible to quantify the costs or savings to the regulated community since it will depend upon how many mine permit applications will be subject to the regulations. The decision-making of the applicant and the coal market will ultimately determine to scale of costs or savings. Savings will result from the protection from perpetual liability for discharge treatment which can be very costly, depending upon the volume and water quality of the discharge.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation is not applicable to local governments so there will be no costs or saving.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no known additional costs to the state government. Ultimately, since implementation of these regulations will result in an overall improvement in water quality, cost to state government is likely to be reduced. It will reduce the need for other measures to improve water quality.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

It is not anticipated that additional reporting, recordkeeping or other paperwork will be required as a result of this rulemaking. It may be necessary to revise some of the forms currently used.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Regulated Community	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Savings	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
COSTS:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Regulated Community	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
REVENUE LOSSES:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Regulated Community	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Revenue Losses	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

(23a) Provide the past three-year expenditure history for programs affected by the regulation.				
Program	FY -3 (2012-13)	FY -2 (2013-14)	FY -1 (2014-15)	Current FY (2015-16)
Interstate Mining	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000
Environmental Protection Operations	\$ 7,659,447	\$ 8,375,310	\$ 8,076,598	\$ 5,840,303
Environmental Program Management	\$ 1,685,383	\$ 1,161,917	\$ 1,175,807	\$ 917,695
General Government Operations	\$ 66,238	\$0	\$ 17,422	\$0
General Operations	\$ 376,511	\$ 762,272	\$ 835,525	\$ 549,228
Coal & Clay Mine Subsidence Fund - General Operations	\$ 287,231	\$ 143,450	\$ 116,346	\$ 51,646
Bituminous Mine Subsidence & Land Conservation Act	\$ 69,378	\$ 79,096	\$ 124,460	\$0
Clean Water Fund	\$0	\$ 517,481	\$ 911,351	\$ 329,328
Well Plugging Acct	\$ 55,010	\$ 41,768	\$ 43,868	\$ 46,671
Reclamation Fee O&M Trust	\$ 28,145	\$ 16,660	\$ 20,346	\$ 15,715
<p>(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:</p> <ul style="list-style-type: none"> (a) An identification and estimate of the number of small businesses subject to the regulation. (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record. (c) A statement of probable effect on impacted small businesses. (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. <p>This regulation is not expected to have an adverse impact on small businesses.</p>				
<p>(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.</p> <p>There are no special provisions.</p>				

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

During the interaction with the MRAB Regulation, Legislation and Technical committee, the alternative of adopting only one of the two methods in the federal regulations was considered. The analysis was based upon the fact that method 1 has been used in Pennsylvania since 1985. Method 2 has not been used in Pennsylvania. The recommendation of the committee was to adopt both methods in order to maintain the maximum amount of flexibility. In addition, alternatives to the requirement to continue monitoring after submission of an application were evaluated. There were three alternatives identified- (1) retaining the requirement; (2) making the monitoring optional, with the applicant determining whether to do it or; (3) eliminating the reference from the regulation, which would exactly match the federal regulations. The MRAB recommended that the regulation allow for, but not require the additional monitoring (option 2).

The rulemaking reflects the recommendations of the MRAB since both methods are included and the monitoring requirement has been changed to being optional based on the applicant's decision.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

These regulatory methods were not considered because the final regulations must be approved by the Office of Surface Mining Reclamation and Enforcement. The criteria for approval include consistency with the federal requirements, which do not allow for the alternatives listed.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data was not used as the basis for this regulation.

(29) Include a schedule for review of the regulation including:

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| A. The date by which the agency must receive public comments: | November 2, 2015 |
| B. The date or dates on which public meetings or hearings will be held: | None |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Quarter 3, 2016 |
| D. The expected effective date of the final-form regulation: | Quarter 3, 2016 |
| E. The date by which compliance with the final-form regulation will be required: | Quarter 3, 2016 |
| F. The date by which required permits, licenses or other approvals must be obtained: | Quarter 3, 2016 |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The coal mining program in Pennsylvania is subject to oversight by the Office of Surface Mining Reclamation and Enforcement. This oversight will routinely review the effectiveness of the coal mining program which will include this specific regulation.