

Title 25—ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CHS. 86—90]

Federal Office of Surface Mining Reclamation and Enforcement Program Consistency

The Environmental Quality Board (Board) amends 25 Pa. Code Chapters 86-90 (relating to Surface and Underground Coal Mining; Surface Mining of Coal; Anthracite Coal; Underground Mining of Coal and Coal Preparation Facilities; and Coal Refuse Disposal) to read as set forth in Annex A. This final-form rulemaking primarily addresses inconsistencies between the Commonwealth's coal mining regulatory program and Federal regulations. This final-form rulemaking updates requirements to comply with the Federal coal mining regulations at 30 CFR Parts 700 through 955 (relating to mineral resources) and, for general program maintenance, includes additional revisions to correct typographical errors, organization names, statutory citations, remaining requirements, and the use of reference data for the sizing of stormwater control facilities.

This final-form rulemaking was adopted by the Board at its meeting on _____.

A. Effective Date

This rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact William Allen, Bureau of Mining Programs, Rachel Carson State Office Building, 5th Floor, 400 Market Street, P.O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5015, or Joseph Iole, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-9376. This final-form rulemaking is available on the Department's web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. Statutory Authority

This final-form 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); section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); section 7(b) of the Bituminous Mine Subsidence and Land Conservation Act (52 P.S. § 1406.7(b)); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

D. Background and Purpose

This final-form rulemaking addresses inconsistencies between the Commonwealth's coal mining program and Federal requirements. The Board also includes in this final-form rulemaking additional revisions for general program maintenance, such as correcting

typographical errors and updating organization names, statutory citations, reminding requirements, and the use of reference data for the sizing of stormwater control facilities.

Required Program Amendments

The Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (Federal SMCRA) “establish[ed] a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” See 30 U.S.C.A. § 1202(a). Federal SMCRA authorizes the Secretary of the Interior, through the Office of Surface Mining Reclamation and Enforcement (OSM), to administer the programs for controlling surface coal mining operations, and to review and approve or disapprove State programs for controlling the same. See 30 U.S.C.A. § 1211(c)(1).

Federal SMCRA allows a State to assume jurisdiction over the regulation of surface coal mining and reclamation operations if the State can administer that program according to Federal standards. See 30 U.S.C.A. § 1253. When a State program is approved by OSM, the State achieves “primacy” over the regulation of its surface coal mining program. The Commonwealth achieved primacy in 1982. See 47 FR 33,050, 33,076 (July 30, 1982). To keep its jurisdiction over the regulation of coal surface mining activities, the Commonwealth must maintain a State program in accordance with the requirements of Federal SMCRA, 30 U.S.C.A. § 1255(a), and with “rules and regulations consistent with regulations issued by the Secretary.” See 30 U.S.C.A. § 1253(a)(1) and (7).

OSM identified several of the Commonwealth’s regulations that require revision because they are not as effective as the Federal requirements. The Commonwealth is therefore required to revise existing regulations so that they are no less stringent than the Federal standards. See 30 CFR Part 938. The required program amendments are as follows:

Augmented Seeding

OSM disapproved of the use of the term “augmented” in the last sentence of section 86.151(d) (relating to period of liability) because it found it to be less stringent than the Federal requirement for the bond liability period. 30 CFR 938.12(d). According to the OSM, “augmented” seeding by definition restarts the period for liability. However, the Commonwealth’s proposed regulation had referred to a normal husbandry practice (per OSM) as augmented seeding that would not restart the period for which an operator is liable. Therefore, this final-form rulemaking deletes the term “augmented” from section 86.151(d) to match OSM’s understanding of seeding that does not restart the period of liability.

Bonding

OSM required the Commonwealth to revise its regulations relating to the valuation of certain collateral bonds at section 86.158(b) (relating to special terms and conditions for collateral bonds). OSM’s requirements are as follows:

Pennsylvania shall amend its rules at § 86.158(b)(1) or otherwise amend its program to be no less effective than 30 CFR 800.21(a)(2) by requiring that the value of all government securities pledged as collateral bond shall be determined using the current market value.

Pennsylvania shall amend § 86.158(b)(2) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(1) by requiring that the provisions related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture.

Pennsylvania shall amend § 86.158(b)(3) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(2) to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that the collateral bond is sufficient to satisfy the bond amount requirements.

30 CFR 938.16(m)—(o).

To address these issues, this final-form rulemaking includes revisions to section 86.158(b). In subsection (b)(1), “may” is changed to “will,” requiring the Department to be the entity responsible for valuing collateral at its current market value not at face value. This final-form rulemaking also adds “less any legal and liquidation costs” to subsection (b)(2) and revises subsection (b)(3) to require the posting of any needed additional bond amount with the permit renewal, which is at least every 5 years.

Haul Roads

OSM also required that the Commonwealth revise its regulations at section 88.1 related to the use of public roads as part of an anthracite mining operation:

Pennsylvania shall submit a proposed amendment to § 88.1 to require that the definition of haul road include all roads (including public roads) that are used as an integral part of the coal mining activity and to clarify that the area of the road includes the entire area within the right-of-way, including roadbeds, shoulders, parking and side areas, approaches, structures, and ditches.

30 CFR 938.16(mmm).

This final-form rulemaking adds the following to the definition of a haul road at 25 Pa. Code § 88.1: “The term includes public roads that are used as an integral part of the coal mining activity.” OSM’s requirement to clarify that the activity includes the right-of-way and other features of the road does not require an additional revision in this final-form rulemaking. The elements OSM requires are already included in the existing definition of “Road” at section 88.1, and the definition of “Road” includes a reference to “haul roads.”

General Consistency Amendments

Unrelated to issues of consistency with Federal law, the Department and various third parties have identified several typographical, citation, and reference errors within the Department's regulations, outdated source material, and areas of the program that require more clarity. These general consistency amendments are as follows:

Effluent Limitations for Bituminous Underground Mines

The Commonwealth currently lists effluent limitations for bituminous underground mines at section 89.52 (relating to water quality standards, effluent limitations and best management practices). Subsection (f) includes alternative effluent limitations for underground mine discharges that can be adequately treated using passive treatment technology. However, the Federal effluent limit guidelines at 40 CFR Part 434 only include alternative limits for passive treatment systems applicable to surface mines instead of underground mines. When the Board revised the regulations to add subsection (f) related to underground mines, this distinction was missed. This discrepancy came to light during a recent evaluation comparing the Federal effluent limit guidelines with the requirements in section 89.52.

Therefore, this final-form rulemaking eliminates the alternative effluent limits for underground mine passive treatment systems from subsection (f).

Temporary Cessation

The Commonwealth's regulations regarding the temporary cessation of operations for bituminous surface mines included a 180-day upper limit on the amount of time that an operation can be in temporary cessation status. The Federal rules that address temporary cessation at 30 CFR 816.131 do not include an upper limit on the duration of temporary cessation status. Therefore, this final-form rulemaking includes revisions to section 87.157 (relating to cessation of operations: temporary) removing the upper time limit.

Temporary cessation for anthracite coal mines is addressed at sections 88.131 (regarding anthracite surface mines), 88.219 (regarding anthracite bank removal), and 88.332 (regarding anthracite coal refuse disposal). Sections 88.131 and 88.219 do not include an upper time limit for temporary cessation status. Section 88.332, applicable to anthracite coal refuse disposal, includes a 1-year upper time limit.

To ensure temporary cessation for anthracite coal mines is regulated the same way as bituminous mines, this final-form rulemaking revises sections 87.157, 88.131 and 88.219 to include the same suite of revised requirements related to temporary cessation status, including a requirement for operators to submit information to the Department, consistent with 30 CFR 816.131, and triggers for when the status ends because of reactivation, or terminates through the permittee's failure to comply with the law, regulations or the permit.

This final-form rulemaking also requires permittees to submit a timely renewal application when applicable. Amendments included in this final-form rulemaking do not lessen environmental protection related to surface mining because the performance standards in existing regulations focus on pollution prevention. The Department provides the same attention to sites in temporary cessation status as it does to active sites, through monthly inspections to ensure compliance with performance standards and updates to bond amounts, as appropriate.

Because the Coal Refuse Disposal Control Act, 52 P.S. §§ 30.51-30.66, includes the 1-year upper time limit, this requirement is retained in section 88.332.

Definition of Surface Mining Activities

This final-form rulemaking replaces the existing definition of “surface mining activities” at 25 Pa. Code §§ 86.1 and 87.1 (relating to definitions) with a cross-reference to the Federal definition of “surface mining activities” from 30 CFR 701.5 (which in turn refers to “surface coal mining and reclamation operations” defined at 30 CFR 700.5). This amendment is in response to issues informally raised by OSM related to the scope of the existing definition.

Civil Penalties

As outlined in section 86.194, the Department uses a system for assessment to determine the amount of a civil penalty that depends on the specific circumstances of the violation. Currently, section 86.193(b) requires the Department to assess a civil penalty if the penalty the Department calculates equals \$1,100 or more. Correspondingly, section 86.193(c) affords the Department discretion whether to assess a civil penalty that equals less than \$1,100. The threshold dollar amount of \$1,100 in § 86.193(b) that triggers a mandatory assessment is based on the Federal civil penalty program found at 30 CFR 723 (relating to civil penalties).

The Federal program calculates penalty amounts by using a point system. Under this point system, a violation is given a certain number of points based on its circumstances and a formula is then used to equate those points to a dollar value. A violation that amounts to 30 points or more under the Federal system requires a penalty. Periodically, the Federal government revises the dollar amounts on the table, while the point threshold that triggers a mandatory penalty assessment remains fixed.

To address the fluctuating dollar amount from the Federal program’s penalty calculations, this final-form rulemaking includes references to 30 CFR 723.12 and 723.14 instead of listing a specific penalty amount, so the Commonwealth’s threshold for mandating the assessment of a penalty will always correctly reflect the Federal point system trigger.

Administrative Requirements

Two differences between the Commonwealth’s requirements and the Federal requirements came to light during the recent development of the ePermitting application for new bituminous surface mines.

First, section 86.31 (relating to public notices of filing of permit applications) requires notification by registered mail to the municipality where mining is proposed. This requirement for registered mail is not in the Federal rules. Therefore, this final-form rulemaking revises section 86.31(c)(1) to retain the notification but to delete the registered mail requirement. In addition to consistency with the Federal regulations, this proposal will allow for electronic notice in cases where it is appropriate. This update will allow the Department flexibility to use registered mail and electronic notices as needed.

Second, section 86.62(a)(3) (relating to identification of interests) requires the date of issuance of the Mine Safety and Health Administration Identification Number to be provided in an application. This date of issuance is not required under the Federal rules. Therefore, this final-form rulemaking deletes the date of issuance from this subsection.

Employee Financial Interest Reporting Form

Section 86.238 lists an old OSM form number for reporting employee financial interests. The current form number is OSM Form 23. Therefore, this final-form rulemaking changes “Form 705-1” to “Form 23.”

Storm Events

Sections 87.103, 88.93, 88.188, 88.293 and 89.53 each include a table of data representing the amount of precipitation over 10 years for a 24-hour storm event on a county-by-county basis. Section 90.103 includes tables of similar data representing the 1-year and 10-year rainfall events. The Department derived the data in these tables from the climatological data available in the early 1980s, which only provided data for a limited number of stations in each county.

The regulations include the highest value in this data for each county. In subsequent years, additional data has been gathered and the National Oceanic and Atmospheric Administration (NOAA) has developed an online tool which provides the precipitation amount for various storm events for any location in the Commonwealth, currently available through the following link: <https://hdsc.nws.noaa.gov/hdsc/pfds/>.

Generally, the amount of precipitation for each storm event is lower than what is currently listed in the tables in the regulations. Therefore, in many cases, stormwater control facilities are over-designed and require unnecessary earth disturbance. This final-form rulemaking removes the tables and replaces them with a general reference to data available through NOAA or an equivalent resource. This will result in properly-sized stormwater controls and reduced costs for mine operators.

Remining Financial Guarantees

The Department identified and established best practices for managing accounts in the Remining Financial Guarantee (RFG) Program, similar to those established for the Land Reclamation Financial Guarantee Program. To provide stability to the RFG Program, the first

best practice designates a monetary threshold and a reserve in the account. The designated threshold establishes the program limits while the reserve provides funds to pay for costs incurred when the financial guarantee program is used for land reclamation.

This final-form rulemaking includes an addition to section 86.281(b) to describe the process used to determine the amount of an individual remaining financial guarantee. This final-form rulemaking also includes revisions to section 86.281(c) to clarify that the designated amount is maintained at the program level rather than on a permit-by-permit basis. This final-form rulemaking amends section 86.281(d) to refer to the designated amount when describing the permit limit, the operator limit, and the program limit and section 86.281(f) to describe the reserve.

An additional best practice targets risk management. For example, one method to manage risk includes limiting the participation of operators who previously failed to make the required payments on a timely basis. This final-form rulemaking revises section 86.282(a)(4) to add that to participate, the operator may not have been previously issued a notice of violation relating to maintaining bonds, including a missing or late payment. The requirement includes a 3-year window so as not to permanently prohibit participation for an operator who had a missing or late payment.

The existing regulatory language at section 86.284(d) (relating to forfeiture) differs from the statutory language in section 4.12 of the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA), 52 P.S. § 1396.41(d), which has resulted in confusion when interpreting the requirement. This final-form rulemaking revises section 86.284(d) to read the same as PA SMCRA.

Natural Resources Conservation Service

The existing regulations include numerous references to the Soil Conservation Service. This agency changed its name to the Natural Resources Conservation Service. This final-form rulemaking corrects these references.

Conservation District

Section 86.189(b)(4) includes a reference to the Soil Conservation District. The current name of the agency to which this refers is the Conservation District. This final-form rulemaking makes this revision.

Chapter 92a Reference Correction

The existing regulations include references to Chapter 92. In 2010, the Board reserved Chapter 92 and replaced it with Chapter 92a. This final-form rulemaking corrects these references throughout Chapters 86—90.

Department Reference

Section 86.232 includes a reference to the Department of Environmental Resources. This final-form rulemaking updates this reference to be the Department of Environmental Protection.

Water Quality Standards Implementation

In 2000, the Board finalized Chapter 96 (relating to water quality standards implementation). The mining regulations have not been updated to include reference to Chapter 96. This final-form rulemaking corrects this by including references to Chapter 96 in sections 87.102, 88.92, 88.187, 88.292 (relating to hydrologic balance: effluent standards), 89.52 (relating to water quality standards, effluent limitations and best management practices) and 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices).

Coal Ash and Biosolids

Section 86.54 includes the terms “fly ash disposal” and “sewage sludge.” Section 87.100 also uses the terms “fly ash” and “sewage sludge.” The correct term instead of “fly ash” is “coal ash,” which is defined at section 287.1 (relating to definitions). This definition of coal ash includes fly ash and other materials. In addition, disposal of coal ash is not allowed in the context of active mining sites. Coal ash may be beneficially used to enhance reclamation under Chapter 290 (relating to beneficial use of coal ash). Similarly, “biosolids” is a term which includes reference to “sewage sludge”, so it is more appropriate to use. Therefore, this final-form rulemaking revises sections 86.54 and 87.100 to correct these terms to instead refer to “coal ash” and “biosolids”.

Anthracite Mine Operators Emergency Bond Fund

In 1992, section 4.7 of PA SMCRA, 52 P.S. § 1396.4g, was revised to allow anthracite surface mining operators to participate in the Anthracite Mine Operators Emergency Bond program. Prior to this, participation was limited to only deep mine operators. This final-form rulemaking changes the references to “deep mine” to be “mine” in section 86.162a (relating to Anthracite Mine Operators’ Emergency Bond Fund). This clarifies that not only deep mines are eligible to participate in the Anthracite Mine Operators Emergency Bond program.

Coal Refuse Disposal Site Selection

In 2010, section 4.1 of the Coal Refuse Disposal Control Act, 52 P.S. § 30.54a, was amended to add to the list of preferred sites for siting coal refuse disposal facilities. The amendment added the following language: “An area adjacent to or an expansion of an existing coal refuse disposal site.” This final-form rulemaking reflects this statutory change in section 90.201.

Reviews of active permits

Section 86.51 (relating to reviews of active permits) includes the phrase "...a review of the permit shall be no less frequent than the permit midterm of every 5 years, whichever is more frequent." The "of" underlined above should be "or." This final-form rulemaking corrects this error.

Mine Safety and Health Administration

Section 86.84 (relating to applications for assistance) includes a reference to the Mining Enforcement and Safety Administration. The reference should be the Mine Safety and Health Administration. This final-form rulemaking corrects this error.

"Road" Definition

The definition of "road" at section 88.1 (relating to definitions) begins with "A surface right-of-way for purposes of travel by land vehicles used in coal exploration of surface coal mining and reclamation operations." The "of" underlined above should be "or." This final-form rulemaking corrects this error.

Remining Program

After the Board finalized remining regulations in October 2016, discrepancies in the citations were identified in Chapter 88. In section 88.502 (relating to definitions) subsection (ii), the citation to section 88.295(b)—(g) is incorrect. The correct citation is section 88.295 (b)—(i). Similarly, in section 88.507(c) (relating to treatment of discharges) the citations are incomplete. The correct citations are sections 88.95(b)—(g), 88.190(b)—(g) and 88.295(b)—(i). Finally, section 88.508 (relating to request for bond release) lists "Section 86.172(a) (b) and (d)." Section 90.308 also refers to § 86.172(d). There is no subsection 86.172(d). This final-form rulemaking includes revisions to address each of these errors.

E. Summary of Changes to the Proposed Rulemaking

Section 86.1 and 87.1 Changes

The language incorporating the definition of "surface mining activities" from 30 CFR 701.5 is revised to include language consistent with other Department regulations to denote that the Federal definition is adopted in its entirety.

Section 86.31 Changes

The final-form rulemaking includes several revisions from the proposed rulemaking. The Board made the following two revisions to section 86.31 in response to comments on the proposed rulemaking. First, the Board will retain the existing language listing a "city, borough, incorporated town or township," replacing the proposed term "municipality." Second, the Board specified that the notice to local governments will be written notice.

The Board made several additional revisions for clarification and consistency with the Commonwealth's statutes and regulations. Sections 86.54 and 87.100 were revised in the proposed rulemaking to replace the term "sewage sludge" with the term "biosolids." To be consistent with Chapter 271 and the proposed amendment to section 87.100, the term "residential septage" is also added in this final-form rulemaking to section 86.54.

Section 88.107 Changes

The proposed rulemaking deleted language from section 88.107(g) regarding the recovery of "attorney fees and expert witness fees" by the operator because of the act of December 20, 2000 (P.L. 980, No. 2000-138). This act created a new scheme for recovery of litigation costs in mining proceedings at 27 Pa.C.S. Chapter 77 (relating to costs and fees) in order to conform to Federal law. The proposed change also reflected a similar amendment to section 87.119(g) in 2011. *See* 41 Pa.B. 3084 (June 18, 2011).

The act of December 20, 2000 also repealed section 4.2(f)(5) of PA SMCRA, which provided the statutory authority for these regulations in their entirety, and not only with respect to litigation costs. OSM did not approved either section 87.119(g) or 88.107(g) because the repeal of section 4.2(f)(5) of PA SMCRA left the regulations with no remaining statutory authority to support them. *See* 30 CFR 938.12(c)(6) and 70 FR 25472 at 25484 (May 13, 2005). In order to streamline OSM's review on this topic, the change to section 88.107 in this rulemaking will not be made, and revisions consistent with 27 Pa.C.S. Chapter 77 and the repeal of section 4.2(f)(5) of PA SMCRA are will be incorporated in proposed rulemaking #7-545 (related to water supply replacement) adopted by the Board on June 18, 2019. This proposed rulemaking is anticipated to open for public comment during the fourth quarter of 2019.

Section 88.332 Changes

Because the Coal Refuse Disposal Control Act includes a 1-year upper time limit related to requirements triggered by temporary cessation, the proposal to remove this time limit from section 88.332 has been undone. To improve clarity, the final-form rulemaking retains the current language and inserts a reference to the specific section of the Coal Refuse Disposal Control Act where this requirement is stated.

Section 89.52 Changes

In section 89.52(f)(3), the word "Any" which was proposed at the beginning of the section is being revised to be "A" for clarity.

F. Summary of Comments and Responses on the Proposed Rulemaking

The following summaries are based on comments that were received from three public commenters and the Independent Regulatory Review Commission (IRRC).

Related to Haul Roads

One commenter was concerned that the term “public roads”, as used in the revised definition of “Haul roads” in Section 88.1, is very broad and could be used to impose additional bonding and other fees on common use public roads that are shared by thousands of other business concerns. Because of these concerns, they requested that the EQB include language in the preamble of the regulation to address these concerns.

In response to this comment, the language “integral part of the coal mining activity” is intended to address mining activities that normally would not occur on a public road. This includes any use of the public road by off-road vehicles or equipment that cannot be licensed for on-road use. The length of the public road to be defined as a haul road will be limited to the length of the public road used for travel by vehicles or equipment that are an integral part of the coal mining activity. Any use of a public road by licensed on-road vehicles is not considered to be an integral part of the coal mining activity for the purpose of the definition of “haul road.”

Related to Administrative Requirements

Another commenter pointed out that Section 86.31 requires notification by registered mail and that the Federal rules do not change this requirement. The commenter asserts that the proposed regulation would revise section 86.31(c)(1) to retain the notice requirement but delete language that requires the notice be sent by registered mail. The commenter contends that this notification is too important to not notify by registered mail. The commenter states that since the Federal policy does not require electronic notification, the existing notification by registered mail should be retained. IRRRC additionally asked the Board to explain the reasonableness of not requiring registered mail, under what circumstances electronic notice is appropriate, and how the new notification requirement adequately protects public health, safety, and welfare.

In response to this comment, the Federal requirement at 30 CFR 773.6(a)(3) requires: “[T]he regulatory authority shall issue written notification indicating the applicant’s intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted.” The Federal requirement is to provide written notice to the local government agency and does not specify the means by which written notice is given.

The regulation has been revised to require written notification to be consistent with the Federal requirement and allow the Department flexibility to use mail or electronic notice. The Department may provide notice by registered mail on a case-by-case basis. Authorizing the Department to provide notice by means other than registered mail is reasonable because it implements part of the Department’s “Permit Reform Initiative” to reduce permit backlogs, modernize the permitting process, and better utilize technology to improve both oversight and efficiency. As notice becomes automated through the Department’s electronic permitting system, parties will receive notice of completed permit applications in a more timely manner, and the resources the Department saves can be committed to other work directed at protecting the public health, safety, and welfare. The Department does not believe that the regulation requires standards to determine when electronic notice is appropriate because, in practice, the

method of written notice should not be an issue. Local government agencies are generally involved very early in the application process (before a complete application is submitted). The transition to electronic notification requires interaction and cooperation between the Department and the local government in order to establish the appropriate contacts. This interaction will provide the opportunity for the local government to express any concerns they have about the process at that time.

IRRC further noted that the Annex proposes to delete the phrase “the city, borough, incorporated town or township” and replace that language with “the municipality.” IRRC points out that Section 86.1 contains a definition of the term “municipality” that defines a municipality as, “A county, city, borough, town, township, school district, institution or an authority created by any one or more of the foregoing.” IRRC asked whether the Board intended to expand notification to all the entities listed under the definition of municipality.

In response to this comment, the Federal Rule at 30 CFR § 773.6(a)(3)(i) is to provide written notice to “[l]ocal governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation” The Department interprets this requirement to apply to general purpose units of government, specifically, the city, borough, incorporated town or township. The amendment in the proposed rulemaking was not intended to expand the notification requirement to counties or special purpose local government units in addition to relevant authorities included under 25 Pa. Code § 86.31(c)(2) (“Sewage and water treatment authorities that may be affected by the activities.”) and (c)(3) (“Governmental planning agencies with jurisdiction to act with regard to land use, air or water quality planning in the area of the proposed activities.”). Language in the final-form rulemaking is therefore revised by reverting to the existing language listing “the city, borough, incorporated town or township.”

Related to the Regulatory Analysis Form

IRRC also pointed out that the Regulatory Analysis Form indicates that no data was the basis of the proposed rulemaking, but that the data available through the NOAA on-line tool for precipitation events is referred to repeatedly in the proposed regulation, so the Board should clarify that the availability of the data from the NOAA tool is the basis for the revisions proposed.

In response, the Regulatory Analysis Form has been revised to reflect the fact that the data available through the NOAA on-line tool was used as a basis for the regulation. The response includes a link to the web page where the tool is available.

Related to Storm Events

IRRC also asked about the term “equivalent resources,” which is used in several sections, relating to the determination of the size of storm events.

In response to this comment, this term is intended to allow for continued reliance on the data in the case where there is a government reorganization, technological advance or other factor that would cause the specific description of the tool to be outdated. While this can be

corrected through further rulemaking, the “equivalent resources” reference will provide continuity.

In Support of the Regulatory Process

One commentator acknowledged the collaborative process undertaken in developing the proposed regulations. In response, the Board acknowledges the comment.

Mining and Reclamation Advisory Board Collaboration

The Department collaborated with the Mining and Reclamation Advisory Board’s (MRAB) Regulation, Legislation and Technical (RLT) committee to develop the proposed rulemaking. This included discussion at several RLT committee meetings and with the full board.

At its April 6, 2017, meeting, the MRAB voted to concur with the Department’s recommendation that the proposed rulemaking move forward in the regulatory process. At its April 25, 2019, meeting, the MRAB voted to concur with the Department’s recommendation that the final-form rulemaking move forward in the regulatory process.

G. Benefits, Costs and Compliance

Benefits

The revisions in this final-form rulemaking will resolve inconsistencies with Federal requirements, allow the Commonwealth to maintain program primacy, provide clarity to mine operators regarding compliance standards, and result in properly-sized stormwater facilities. In some cases, the latter benefit will result in reduced costs, because current regulations may require larger facilities than necessary.

Compliance Costs

None of the new or revised requirements are likely to increase costs. Due to the benefits described above, this final-form rulemaking is likely to reduce costs. For example, the rulemaking will result in properly-sized stormwater facilities. In many cases, this will result in reduced costs because the updated regulations may no longer require larger than necessary facilities.

Compliance Assistance Plan

Compliance assistance for this final-form rulemaking will be provided through the Department’s routine interaction with trade groups and individual applicants. There are about 400 licensed surface coal mining operators in this Commonwealth, most of which are small businesses that will be subject to this regulation.

Paperwork Requirements

This final-form rulemaking does not require additional paperwork.

H. *Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source through the substitution of environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final-form rulemaking has minimal impact on pollution prevention since it is predominantly focused on updating regulations to reflect current Federal requirements, amendments to state statutes and references to citations, names and data sources.

I. *Sunset Review*

The Board is not proposing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 2, 2018, the Department submitted a copy of this proposed rulemaking published at 48 Pa.B. 6844, October 27, 2018, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees, for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final rulemaking, the Department has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on _____, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

K. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 48 Pa.B. 6844 (October 27, 2018).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(1) The regulations of the Department, 25 Pa. Code Chapters 86-90, are amended as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(2) The Chairman of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(3) The Chairman shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(4) The Chairman of the Board shall certify this order and Annex A, as approved for legality and form, and deposit them with the Legislative Reference Bureau, as required by law.

(5) This order shall take effect immediately.

PATRICK McDONNELL,
Chairperson