



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Mining Programs

Final-Form Rulemaking: Water Supply Replacement for Surface Coal Mining

(25 Pa. Code Chapters 87-90)

**Environmental Quality Board Meeting
November 17, 2020**

Tom Wolf, Governor

Patrick McDonnell, Secretary

Purpose

- Resolve inconsistency with federal requirements
- Make language similar to underground provisions
- Move requirements from policy to regulation
- Provide clarity to operators and water supply owners/users

Background

- Under the federal Surface Mining Control and Reclamation Act, states may assume primacy over regulation of surface coal mining and reclamation operations.
- Primacy states are subject to oversight by OSM.
- When OSM finds an issue, they formally require a program amendment.

OSM Required Program Amendments

- “De minimis” operator and maintenance (O&M) costs
- Ability to release bond with an outstanding water replacement order
- Lack of provisions for temporary water supply
- Ability to waive replacement
- Operator cost recovery

Additional Background

- Stakeholder outreach
 - Public meetings held
- Technical Guidance Documents implemented

Summary of Final-Form Rulemaking

- **Definitions:** Removal of “de minimis”, two additions, one revisions
- **Information Requirements:** Alternative water supplies, water supply surveys (new section)
- **New:** temporary supplies, reimbursement
- **Removed:** De minimis throughout, allowing bond release

Summary of Final-Form Rulemaking

- Clarifications:
 - Water supply replacement obligations
 - immediate replacement
 - adequacy of the supply
 - increased O&M costs
 - waivers for replacement
 - presumption of liability

Summary of Final-Form Rulemaking

- Replaced: Operator cost recovery
- Chapters 89 and 90 revised only to change the referenced section number for water supply replacement that changed with this proposal.

▶ Mining & Reclamation Advisory Board

- Discussed regulation at several committee meetings between October 2017 and April 2020
- Recommendations from MRAB incorporated
- In April 2020, the MRAB concurred with the Department's recommendation that the final rulemaking proceed in the regulatory process.

Comments on the Proposed Rulemaking

- Comments received from 1 public commenter and the Independent Regulatory Review Commission (IRRC)
- Comment topics included:
 - Clarification of use of water supply “owner” vs. “user”
 - Timing of completing water supply survey
 - Discussion of terms “excessive inconvenience” and “promptly”

Comments on the Proposed Rulemaking

- Comment topics included:
 - Sufficient sampling
 - Applicability to GFCC projects
 - Clarification of implementation of temporary water supplies

Changes from Proposed to Final

- One grammatical change
- Extended the window for an owner to respond to an operator's water supply survey request

Summary

The final-form rulemaking:

- Rectifies inconsistencies between Department regulations and federal requirements
- Aligns the requirements with underground mining operations
- Provides clarification to operators and the public

Recommendation

DEP recommends that the Board adopt this final-form rulemaking.



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