Final-Form Rulemaking: Water Supply Replacement for Surface Coal Mining (25 Pa. Code Chapters 87-90)

Environmental Quality Board Meeting
November 17, 2020
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
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
• Stakeholder outreach
  – Public meetings held

• Technical Guidance Documents implemented
• **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.
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”
• 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
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
DEP recommends that the Board adopt this final-form rulemaking.
John Stefanko
Deputy Secretary
Office of Active and Abandoned Mining Operations
jstefanko@pa.gov

Bill Allen
Director
Bureau of Mining Programs
wallen@pa.gov

Christopher Minott
Bureau of Regulatory Counsel
cminott@pa.gov