

## **EXECUTIVE SUMMARY**

### **Coal Refuse Disposal Revisions 25 Pa. Code Chapters 88 and 90**

The Department of Environmental Protection (Department) recommends final-form amendments to 25 Pa. Code Chapter 88 (relating to Anthracite Coal) and Chapter 90 (relating to Coal Refuse Disposal). The final-form amendments implement Act 74 of 2019 and address the differences between the Commonwealth and Federal regulations relating to temporary cessation at coal refuse disposal sites.

#### **Purpose of the Final-Form Rulemaking**

The final-form rulemaking will implement Act 74 of 2019 which will resolve the differences between the Commonwealth and Federal regulations relating to temporary cessation at coal refuse disposal sites. Implementing Act 74 also allowed the Department to promulgate regulations linking the status of operations generating coal refuse or related material to the coal refuse disposal area. The final-form rulemaking also clarifies several items related to the design of coal refuse disposal sites.

#### **Summary of the Final-Form Rulemaking**

Previously, Pennsylvania's Coal Refuse Disposal Control Act (CRDCA) (52 P.S. § 30.56a) limited the temporary cessation of operations at coal refuse disposal sites to no more than one year while the Federal rules, under The Surface Mining Control and Reclamation Act, allowed for flexibility with temporary cessation status. Act 74 of 2019 amended Section 6.1 of the CRDCA to remove Pennsylvania's one-year limitation and mandated that promulgated rules or regulations must be consistent with the Federal provisions on this subject. The requirements for temporary cessation include a reference to a system to prevent precipitation from contacting the coal refuse. The Act 74 revision to Section 6.1 of the CRDCA resulted in an enumerated list of the circumstances under which this system must be installed. The final revisions include the enumerated list, which replaces the requirements previously specified in paragraph form.

Act 74 also provided the Department the authority to promulgate regulations which would provide for the connection of coal refuse or related material to the coal refuse disposal area. This will ensure that if the status of the refuse source changes, then the status of the coal refuse disposal area would also change and trigger certain requirements under that status.

During the review process for a proposed coal refuse disposal site, the Department provides a technical review of the application and identifies any missing, incomplete, or other issue in the form of a technical deficiency letter. Several common issues that the Department encounters are a result of an unclear and/or incorrect subsection in the existing regulations. The final-form rulemaking clarifies the intentions of the subsection as it relates to terraces and resolves incorrect subsection references as in the case for diverting surface water off the fill.

The only change from the proposed rulemaking to the final-form rulemaking was an update to the title of the technical guidance document referenced in § 90.50(c), “Liners and Caps for Coal Refuse Disposal Areas.”

### **Affected Parties**

The existing 23 operators of coal refuse disposal sites in Pennsylvania and any future permittees of coal refuse disposal sites will benefit from the improved clarity of the requirements for coal refuse disposal sites as a result of these proposed regulations. As a result of the clarifications for when an operator must install a system to prevent precipitation from coming into contact with coal refuse, individuals who reside in the vicinity of coal refuse disposal sites will benefit from the reduced likelihood that precipitation will generate a pollutional discharge from the site.

### **Outreach (Advisory Committee/Stakeholder Consultation)**

The Department worked with the Mining and Reclamation Advisory Board (MRAB) to develop these final regulations. The proposed revisions were first mentioned at the January 23, 2020 MRAB meeting as part of the review of the current regulatory agenda. At the March 16, 2020 MRAB Regulation, Legislation, and Technical (RLT) Committee meeting, the draft language was reviewed, and the committee suggested changes to the regulatory language. A second meeting of the MRAB RLT committee took place on May 18, 2020 to review the draft revised language resulting from the March 16, 2020 committee meeting. At the MRAB meeting of July 16, 2020, the Department reviewed the revised draft with the Board. A third meeting of the MRAB RLT committee took place on October 15, 2020 to review the revised draft and the committee recommended a minor revision to the permanent cessation section. At the October 22, 2020 meeting, the MRAB recommended the Department proceed with the proposed rulemaking. At the MRAB meeting of January 20, 2022, the Department reviewed the public comments received with the Board. The Board unanimously voted to recommend that the Department proceed with the final-form rulemaking.

### **Public Comments**

The proposed rulemaking was published on November 6, 2021, opening a 30-day public comment period.

The Department received comments from the Pennsylvania Coal Alliance (PCA) and Center for Coalfield Justice (CCJ). The comments from PCA expressed support for the proposed rulemaking and acknowledged the Department’s work with the MRAB to develop the proposed rulemaking. The comments from CCJ expressed general support for the proposed rulemaking and suggested that as part of a notice to temporarily cease operations, the Department should publish notice of the temporary cessation in the *Pennsylvania Bulletin*. Given how routinely site statuses change throughout the year and that there are hundreds of mine sites currently permitted in the Commonwealth, it would be inefficient and untimely to notify the public of these changes through a publication process such as the *Pennsylvania Bulletin*. A more effective method for the public to find the real-time status of any permitted operation, as well as other relevant information on permitted mining activities, is through the Department’s database, Environmental

Facilities Application Compliance Tracking System, known as eFACTS, accessible at <https://www.ahs.dep.pa.gov/eComment/>.

**Recommendation**

The Department recommends adoption of this final-form rulemaking.