FINAL-FORM RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 77]

Noncoal Mining Clarifications and Corrections

The Environmental Quality Board (Board) amends Chapter 77 (relating to noncoal mining). This final-form rulemaking provides updates and clarifications for the requirements for mining noncoal minerals in this Commonwealth.

This final-form rulemaking was adopted by the Board at its meeting of DATE.

A. *Effective Date*

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

B. *Contact Persons*

For further information contact Sharon Hill, Environmental Program Manager, Bureau of Mining Programs, P.O. Box 8461, Rachel Carson State Office Building, 5th Floor, 400 Market Street, Harrisburg, PA 17105-8461, (717) 787-5015, or Richard Marcil, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, 9th Floor, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8504. Persons with a disability may use the Pennsylvania Hamilton Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of DATE).

C. *Statutory Authority*

This final-form rulemaking is authorized under section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (act) (52 P.S. § 3311(a)), which authorizes the Board to promulgate regulations as it deems necessary to carry out the provisions and purposes of the act; section 5 of The Clean Streams Law (35 P.S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to adopt rules and regulations necessary for the performance of the work of the Department.

D. *Background and Purpose*

Chapter 77 was finalized in 1990 to implement the act. Since 1990, the Department's experience implementing the noncoal mining regulatory program has uncovered several issues that require clarification of the regulations in Chapter 77. Many of these revisions are administrative in nature.

The Department worked with the Aggregate Advisory Board to develop these regulations. The Aggregate Advisory Board is comprised of the Secretary of the Department of Environmental Protection, three aggregate surface mining operators, four members of the public from the Citizens Advisory Council, one member from county conservation districts, one Senate member

from the majority party, one Senate member from the minority party, one House member from the majority party and one House member from the minority party. The Department's interaction with the Aggregate Advisory Board on this rulemaking began in October 2018 with a discussion of concepts at a Regulatory, Legislative and Technical (RLT) committee meeting. After several RLT committee meetings throughout 2019 and 2020, on May 6, 2020, the Aggregate Advisory Board voted to concur with the Department's recommendation that the proposed rulemaking proceed in the regulatory process. The Department presented the draft final-form regulation to the Aggregate Advisory Board on November 3, 2021, and February 1, 2023. The Aggregate Advisory Board voted unanimously to recommend that this final-form rulemaking proceed after suggesting the Department add language to clarify the applicability of civil penalties in the cessation order subsection of § 77.293 (relating to penalties). The Board has incorporated this language as suggested by the Aggregate Advisory Board.

E. *Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking*

§ 77.1. Definitions

Several definitions are amended and two new terms are defined. "Insignificant boundary correction" is added to identify the changes to permit boundaries that may require a major permit revision as described in § 77.141 (relating to permit revisions). "Local government" is defined to be used in several sections to describe the entities that must be notified of applications or actions. Clarifications are included for the definitions of "Noncoal minerals" and "Noncoal surface mining activities." In particular, the phrase "ancillary and customary" was added to the latter definition to encompass non-extractive activities that normally occur within the mining permit boundaries in support of the mining activity, such as crushing, bagging or equipment storage. The definition of "Noxious plants" is revised to update the citation of the law relating to noxious plants. The definition of "Related party" is amended to include a director of a corporation and members and managers of Limited Liability Companies. A correction is made in the definition of "Sedimentation pond."

§ 77.51. License requirement

Subsections (c)(1) and (e) are revised to include a director of a corporation and members and managers of Limited Liability Companies as parties that need to be identified in an application for a mining license and as parties who will be considered in evaluating the eligibility for holding a mining license. The revisions are included since Limited Liability Companies have become more common in the years since 1990. These changes are also consistent with the change to the definition of "Related party" in § 77.1 (relating to definitions).

Subsection (f)(2)(i) is revised to remove the statement about the Department notification 60 days prior to expiration and to require the submission of a mining license renewal application at least 60 days before the current license expires to be consistent with section 5(a) of the act (52 P.S. § 3305(a)).

§ 77.107. Verification of application

This section is revised to eliminate the requirement for an application to be attested by a notary or district justice. Most notably, this update will facilitate the transition to electronic submission of applications.

§ 77.108. Permit for small noncoal operations

Subsection (f) is amended to add transfers to the list of applications that are exempt from the requirement for public notification in a newspaper. This will make it clear that permits for small operations may be transferred. Because transfers were previously omitted from the list, it has been unclear whether these permits are transferable as § 77.144 (relating to transfer of permit) requires newspaper public notice. This created confusion because it is inconsistent that a new permit for a small operation would be exempt from the newspaper public notice, but the transfer of the same permit would be subject to the newspaper public notice requirement.

Subsection (m) is revised to add reference to the regulatory requirement that an applicant must hold a mining license in order for the permit to be issued.

§ 77.109. Noncoal exploration activities

Noncoal exploration activities have caused confusion for operators because they may be authorized in various ways depending on the circumstances of the exploration. Exploration is included in the definition of "noncoal surface mining activities" in § 77.1, which suggests that it must be authorized under a permit. However, exploration may be conducted by drilling or by excavation. Exploration may be allowed by drilling upon notice to the Department. Exploration by excavation may be authorized by a permit or through acknowledgment by the Department of a permit waiver.

In this final-form rulemaking, § 77.113 (relating to permit waiver—noncoal exploration drilling) is added to establish the requirements for exploration by drilling while § 77.109 (relating to noncoal exploration activities) has been updated to establish requirements for exploration activities using means that include excavation. These updates will distinguish the two forms of exploration activity from one another and provide clarity to the regulated community.

Subsection (a) is revised to clarify that a written notice must be provided to the Department for anyone who intends to conduct noncoal exploration in an area outside of an existing noncoal surface mining permit and to make reference to the proposed § 77.113. This section also lists the permit or waiver authorization options for exploration by excavation.

Subsection (b) is revised to modify what information must be included in the noncoal exploration notice to the Department. Specifically, the revisions add a requirement for contact information for a representative from the entity preparing to explore and clarify that it is the amount to be removed for testing that is to be reported in the notice. Also, requirements are added to the notice relating to what environmental protection measures are proposed to be implemented to prevent any adverse impacts to the environment from exploration activities and relating to a blast plan if explosives are needed to conduct the exploration.

The regulatory provisions in subsection (c) are moved to § 77.113 since that section relates to exploration by drilling. Subsection (c) is reserved.

Subsection (e) is amended with new language that sets threshold amounts for a permit waiver related to exploration activities. A permit can be waived when minerals will be removed to determine if the material is suitable for some commercial purpose. If found to be suitable, the operator would then pursue a mining permit. Two threshold amounts have been established with this final-form rulemaking – 20 tons and 1,000 tons. These thresholds were identified through discussions with the Aggregate Advisory Board RLT committee. A permit waiver may be granted for noncoal exploration activities where less than 20 tons of material (approximately one truckload) will be removed. This minimum amount of material is used to determine commercial viability of the mineral resource in several cases. No additional justification is needed. If the applicant proposes to extract more than 20 tons, then a justification for the estimated amount must be provided. The maximum amount will not exceed 1,000 tons, and this upper limit is not intended to be the "default" amount that can be removed under the exploration waiver. The justification must be related to the amount of material needed to provide valid test results for commercial use of the aggregate materials. The 1,000-ton maximum was identified by industry stakeholders in accordance with the Department of Transportation specifications for aggregate producer certification (Bulletin 14). Bulletin 14 states that a 200-ton minimum of processed and stockpiled material is the source for qualification samples for each aggregate size. Large quarry operations can produce multiple sizes and, consequently, multiple stockpiles of 200-tons each. From the proposed rulemaking to this final-form rulemaking, a comma was added after "prior to beginning exploration" for clarity.

New subsection (e.1) describes the factors considered by the Department in evaluating a waiver request. In subsection (e.1)(2), language was revised from the proposed rulemaking to this final-form rulemaking to clarify that existing or designated uses of the receiving streams are evaluated for adverse effects resulting from exploration activities.

Subsection (h) deletes the reference to the restoration to a slope not exceeding 35 degrees. This slope requirement is no longer necessary due to the limited amount of material that may be removed without a permit. This results in a reclamation standard of approximate original contour.

Subsection (k) is added to require compliance with Chapters 210 and 211 (relating to blaster's license; and storage, handling and use of explosives) for those exploration projects that require the use of explosives.

Designators for subsections and paragraphs throughout this section are changed from the proposed rulemaking to this final-form rulemaking to conform with the Legislative Reference Bureau's rule prohibiting reuse of designators.

§ 77.113. Permit waiver—noncoal exploration drilling

Section 77.113 is added to provide separate requirements for exploration conducted through drilling. This section includes the concepts currently in § 77.109(c). Subsection (a) allows for exploration to be conducted 10 days after notice to the Department unless the Department

requests more information to assure compliance or if the exploration is planned for areas within the distance limitations established in § 77.504 (relating to distance limitations and areas designated as unsuitable for mining). Subsection (b) establishes a performance standard for sealing the drill holes and allows for drill holes to remain open to serve a purpose, such as to be used as a monitoring well or water well.

Subsection (b) is revised from the proposed rulemaking to this final-form rulemaking to replace the words "provided that" with "if" in conformance with the *Pennsylvania Code and Bulletin Style Manual* rules.

§ 77.121. Public notices of filing of permit applications

Subsection (a) is amended to require each local government (that is, the city, borough, incorporated town or township) where the operation is located be included in the local newspaper public notice required at the time of filing an application.

Subsection (c) is amended to require use of certified mail rather than registered mail for notice of a proposed permit to the property owners within the proposed permit area. Registered mail is not necessary because it is not essential to track the progress of the mailing, whereas certified mail provides the benefit of documenting receipt of the notice.

Subsection (d) is amended to modify when the Department will publish notice in the *Pennsylvania Bulletin* of the proposed activities based on the Department's acceptance of the application rather than upon receipt. This eliminates unnecessary notices for applications that are returned and not accepted for review by the Department. The change in reference to the permit is also clarified by eliminating the modifier "complete" which is no longer needed because an application must be complete in order to be accepted.

Subsection (e) is amended in a similar fashion to subsection (d) relating to the acceptance of the permit application and also to specify that the notice required under this subsection must be in writing. Also, the newly defined term "local government" replaces "city, borough, incorporated town or township," and the requirement for the notice to be sent by registered mail is eliminated. Registered mail is not necessary because it is not essential to track the progress of the mailing, whereas certified mail provides the benefit of documenting receipt of the notice. This will also facilitate the use of electronic notices, where appropriate. The contents of the notice are also updated to reflect the new term "local government" in subsections (e) and (f).

§ 77.123. Public hearings—informal conferences

Subsection (a)(2) is amended to change the reference from § 77.121(d) (relating to public notices of filing of permit applications) to § 77.121(e). This is a correction of an error. The reference is for identifying those parties who should be notified when an application is submitted. Section 77.121(e) lists these parties.

Subsection (b) is amended to set the public hearing or informal conference due date based on the close of the comment period rather than on when the request was received. This eliminates the need to have multiple hearings if more than one request is received at different times during the public comment period.

Subsection (e) is deleted and reserved from the proposed rulemaking to this final-form rulemaking. The language is moved to new subsection (g). This subsection is revised to describe the report that summarizes comments received during a public hearing or informal conference. This report, which will include Department "findings," will be publicly available on the Department's website instead of distributed only to those persons who attended. The deadline for providing the report is contemporaneous with the permit decision for ease of public distribution, although it may be available prior to a final permit action being taken.

§ 77.128. Permit terms

Subsection (b) is amended to change the time frame for when a permit terminates from 3 years to 5 years. The 5-year term is included so the term of the mining permit will be synchronized with the National Pollutant Discharge Elimination System (NPDES) permit, where applicable. NPDES permits have a term of 5 years. This subsection is also revised to allow extensions through the permit renewal process. This ensures that updated information is provided before extending the permit beyond the 5-year period.

§ 77.141. Permit revisions

Subsection (b) is deleted and reserved to eliminate the requirement for submission of a major permit revision at least 180 days before undertaking the change. This time frame is unnecessary, because the Department has found that often these revisions can be acted upon more quickly than 180 days. With this change, the applicant must plan the timing of their application based on the complexity of the application rather than on a flat time frame.

Subsection (c) is amended to add a reference to § 77.105 (relating to application contents) to describe what constitutes a complete application for revision and to add "modules" to paragraph (2) to make it clear that only the portions of the application relating to the revision must be included. Paragraph (2) is also revised to correct the typographical error where "the acts" should be "the act."

Subsection (d) is amended to delete "complete" from the description of the application since this is redundant with the previous subsection.

Subsection (e) is amended to clarify how an application for a revision that is adding acreage for support activities will be reviewed and adds an exception from this review for insignificant boundary corrections. Specifically, the reference to "the same procedures as an application for a new permit but will be processed a revision to the existing permit" is intended to allow for a permit to be revised when additional acreage for support activities is needed and to avoid the need for a smaller adjacent permit where plans have changed. The procedures relating to a new permit assure that the environmental impacts are fully vetted prior to approval of the revision. For example, the original application would have been evaluated for the potential impacts to nearby properties. Since the added area would not have been reviewed from this perspective, the additional area must be evaluated to determine if there could be any additional potential impacts for the proposed revision.

Subsection (f) is revised similarly as the previous subsection, but specific additional considerations are identified for the review of revisions to add acreage for mineral extraction,

including the effect on hydrologic balance, the relation to the existing operation and reclamation plan, and the practicality of approving a new permit for the additional area. For example, the application for the addition would have been evaluated for the potential impacts to water supplies. Since the added area would not have been reviewed from this perspective, the additional area must be evaluated to determine if there could be any additional potential water supply impacts for the proposed revision.

Subsection (g) is added to provide cross references to the requirements for public notice and compliance with the existing permit. This subsection also adds the requirement that each major revision may be subject to providing current environmental resources information and a review of the bond liability.

Subsection (h) is added to identify the circumstances where the Department may require a major permit revision. These include unanticipated substantial impacts to public health, safety or environment. The impacts included are described as unanticipated and substantial. The intent is to make it clear that a permit revision is not required for impacts that were planned for in the original permit and that the impact must rise to the level of being substantial as opposed to an incidental impact. For example, a highwall failure resulting in encroachment upon areas where mining is prohibited or limited would meet the criteria of being unanticipated and substantial, requiring a major permit revision, while a highwall failure that can be easily remediated within the existing permit area is unanticipated, but it is not substantial and therefore would not require a major permit revision. Another example that illustrates the intent of this requirement is where mining is being conducted in an area prone to the development of karst features. Many of the potential impacts can be predicted based on modeling as part of an application-these impacts would not be unanticipated. However, if sinkhole development as a result of the mining occurs beyond the predicted area of influence, then this would likely require a major permit revision. Another category that may trigger the requirement for a major permit revision is when the permittee must change their plans from what was presented in the application and approved by the Department. This is intended to capture major operational changes or alterations of the post-mining configuration of the reclamation as compared with the approved plans.

Designators for subsections throughout this section are changed from the proposed rulemaking to this final-form rulemaking to conform with the Legislative Reference Bureau's rule prohibiting reuse of designators.

§ 77.142. Public notice of permit revision

Section 77.142 (relating to public notice of permit revision) is amended to add subsections (b) and (c). This necessitates the lettering of the existing single section as subsection (a). Subsection (a) includes three revisions. First, in paragraph (1)(iii), "the addition of reclamation fill" for surface mining activities has been added as an example of the change in type of reclamation that would be subject to the notice requirements of § 77.121. Second, the phrase "but are not limited to," is inserted and permit area additions are added to the examples of a physical change to the mine configuration in paragraph (1)(iv). Third, the phrase "but are not limited to" is also inserted and permit area additions are again added to the examples of a physical change to the mine configuration in paragraph (2)(ii).

Subsection (b) is added to include new mining or support as subject to public notice if the revision includes a lateral or vertical change in the plans. Some large quarries that pump groundwater are limited with respect to the depth to which they are authorized to mine (and pump). For example, where mining is planned for decades, it is not possible to predict the potential hydrologic impacts as the quarry goes deeper with the initial application. The operation may be approved to mine in vertical increments to allow for the reassessment of the hydrologic conditions systematically after a particular depth has been reached. More robust predictions can be made based on the updated hydrologic data available after the initial mining has been conducted as to the potential effects of deepening the operation. This vertical incremental approval necessarily includes further public participation because of the potential off-site impacts of pumping large amounts of groundwater. The reference to lateral changes is intended to include areas added to the footprint of the permit area only. This subsection also excludes incremental approvals within the previously approved permit area from the notice requirement. This is due to the fact that the environmental impacts of these areas have already been evaluated as part of the initial application review.

Subsection (c) is added to clarify that unaffected areas to be deleted from the footprint of the permit may be approved without public notice. This also includes areas that have been disturbed only by exploration by drilling.

Subsection (c) is revised from the proposed rulemaking to this final-form rulemaking to replace the words "provided that" with "if" in conformance with the *Pennsylvania Code and Bulletin Style Manual* rules.

§ 77.143. Permit renewals

Subsection (b)(2) is amended to delete the reference to "a new application" and to cross reference § 77.141, which relates to permit revisions. This is intended to clarify that the addition of area to a permit is not integral to a renewal, but constitutes a permit revision.

Subsection (b)(2) is revised from the proposed rulemaking to this final-form rulemaking to correct the cross-references to § 77.141(e) and (f).

Subsection (b)(8) is amended to change "send copies of its decision to" to "notify" and append "of the Department's decision" to clarify the requirement.

§ 77.144. Transfer of permit

In the proposed rulemaking, subsection (a) was revised to rephrase the statement of the purpose of this section. In this final-form rulemaking, the language is not being amended and will remain as written to align with the *Pennsylvania Code and Bulletin Style Manual* rules.

Subsection (b) is amended to clarify that name changes, including those changes which result from a conversion in corporate entity, do not subject a permit to the transfer requirements. In the case of a name change, it is still the same entity holding the permit. Conversions of corporate entity provide the resulting entity with the same permit rights that the previous form of entity had.

Subsection (c) is amended to clarify that Department approval is required for a transfer to be effective. Paragraph (4) is revised to include the exception of small noncoal permits, which are not subject to newspaper public notice, from the public notice requirement to transfer a small noncoal permit. The inclusion of this exception clarifies that a small noncoal permit may be transferred.

§ 77.224. Special terms and conditions for collateral bonds

Subsection (c)(2) is amended to delete the $100,000 maximum amount for certificates of deposit. This insurable amount has been revised by the agencies responsible for this and could be subject to further revision. Therefore, is it not appropriate to retain the amount in the regulations. Also, the applicable agency names are spelled out rather than using the acronyms.

§ 77.231. Terms and conditions for liability insurance

Subsection (b) is amended to add that the insurance is written on an occurrence basis. Generally, insurance can be written on either a claims-made or occurrence basis. With claims-made insurance, the claim must be filed during the term of the insurance coverage. With occurrence coverage, claims may be filed as long as the damage occurred during the course of the insurance coverage. This is particularly important for the kinds of impacts associated with mining, because the impacts are not instantaneous and may take some time to manifest themselves.

Subsection (d) is amended to clarify that notification by the insurer to the Department be made whenever changes occur affecting the adequacy of the policy, including cancellation.

Subsection (e) is amended to increase the coverage limits for insurance. Section 5(c) of the act specifies that the amount of insurance be prescribed by regulation. The current limits have been in place since the regulations were finalized in 1990. The increase in limits is intended to reflect the increase in costs over time. The numbers are consistent with the requirements that are in place for coal mining.

Subsection (h) is amended to delete "solely" in describing the certificate holder. There are circumstances where other parties may also be a certificate holder.

§ 77.242. Procedures for seeking release of bond

Subsection (g)(2) is amended to correct the erroneous reference to subsection (e), which relates to the inspection of the reclamation work. The correct reference is subsection (f), which relates to the subject of the subsection, public hearings and informal conferences.

§ 77.291. Applicability

This section is amended to refer to the act and The Clean Streams Law (35 P.S. §§ 691.1—691.1001). This revision is included because there are many types of violations which violate both the act and The Clean Streams Law. This revision makes it clear that penalties for these violations will be assessed using the same procedures. The terms "the environmental acts and the act" were removed because this subchapter is specific to civil penalty procedures only under the

act and The Clean Streams Law. The procedures would not apply to other environmental acts that may be cited; in such cases, the regulations implementing those other statutes would describe the respective procedures.

Subsection (b) is revised from the proposed rulemaking to this final-form rulemaking to remove the reference to subsection (b) of section 605 the The Clean Streams Law (35 P.S. § 691.605) because both subsections apply to civil penalties.

§ 77.293. Penalties

Subsections (a) and (b) are amended to add the language "of the act or any rule, regulation, order of the Department or a condition of permit issued under the act" because these requirements are explicitly stated in the act and to clearly state what violations are covered.

Subsections (a) and (b) are revised from the proposed rulemaking to this final-form rulemaking to to add that up to $10,000 per day for each violation of The Clean Streams Law will be applied for cessation orders under subsection (a)(2) and may be applied for civil penalties under subsection (b)(3). This clarifies the penalties that could be applied if those civil penalties are assessed under both statutes listed in § 77.291 (relating to applicability). For clarity, subsection (a)(3) is added to list the existing substantive provision regarding the $750 daily civil penalty involving a failure to correction a violation separately.

§ 77.301. Procedures for assessment of civil penalties

Subsection (a), which relates to the notice of a proposed assessment, is amended to change three things: the notice method from registered mail to certified mail, the deadline for service from 30 to 45 days, and the trigger to be the issuance of the enforcement action. Registered mail is not necessary because it is not essential to track the progress of the mailing, whereas certified mail provides the benefit of documenting receipt of the notice. The deadline for the proposed assessment is extended to allow for more time to establish an appropriate initial penalty amount. This will also assist in managing the Department's workload while maintaining timeliness to assure due process. The existing regulation has the time trigger as the Department's knowledge of the violation. This is revised because it is not always possible to document the first knowledge of a violation. It is more appropriate to use the date of the enforcement action as this is a date that will always be easily identified.

Subsection (d)(2) is amended to eliminate the registered mail alternative and to correct the typographical error of "in" instead of "on" in the description relating to the site identification sign, which is required to have the permittee's address on it.

§ 77.410. Maps, cross section and related information

Subsection (a)(11) is amended to use the newly defined term "local government" instead of municipality or township. The revision for subsection (a)(13) corrects a typographical error.

§ 77.531. Dams, ponds, embankments and impoundments—design, construction and maintenance

Subsection (a) is amended to update the name of the Natural Resources Conservation Service, which was formerly known as the Soil Conservation Service.

§ 77.532. Surface water and groundwater monitoring

Subsection (c) is amended to change Chapter 92 to Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) because Chapter 92 was reserved and replaced with Chapter 92a several years ago.

§ 77.562. Preblasting surveys

Several references to "preblast surveys" are amended to "preblasting surveys" to be consistent with other references in this subchapter.

§ 77.563. Public notice of blasting schedule

The reference to "preblast survey" is amended to "preblasting survey" to be consistent with other references in this subchapter.

§ 77.564. Surface blasting requirements

Subsection (f) is amended to clarify the maximum airblast limit of 133 dBL and to allow exceptions to that maximum value under certain conditions. This clarification resulted in the removal of the specific limit from the main paragraph and the creation of the new subsection (f)(1.1). Existing subsection (f)(1) is renumbered as (f)(1.2). Subsection (f)(1.2) is amended to change "lower" to "alternative" to be consistent with requirements in Chapter 211 (relating to storage, handling and use of explosives) that allow for an exception for a higher air blast level to be approved for noncoal permits. See § 211.151(d) and (e) (relating to prevention of damage or injury). In some limited instances, a higher air blast level may be appropriate where it is clear that the controlling structure will not be subject to damage with the higher threshold. This revision allows for either an decrease or increase in the air blast level based on site-specific circumstances. The factors that the Department must consider in evaluating alternatives include potential damage and whether the alternative will create or mitigate a public nuisance.

Although it does not occur very often, occasionally there are buildings located close to mining operations that are engineered structures (which are more robust and would not be subject to damage from vibrations) but are not owned by the mining permittee. In those cases, a higher air blast level may be allowed if it is determined that the higher air blast level will not damage the building and not cause annoyance to the building's occupants. Air blast attenuates over distance. If a higher than 133 dBL air blast level is granted, an evaluation of the attenuation of the air blast is conducted and, if necessary, based on distances from blasting, additional seismograph monitoring is required to ensure that the 133 dBL regulatory limit is not exceeded at other buildings or structures.

Designators for paragraphs in this subsection are changed from the proposed rulemaking to this final-form rulemaking to conform with the Legislative Reference Bureau's rule prohibiting reuse of designators.

Subsection (i) is amended to change the reference to a peak particle velocity of 2.0 inches per second to be to the z-curve, which is Figure 1 in § 77.562 (relating to preblasting surveys). This change makes the requirements more internally consistent.

Subsection (k) is amended to correct the description of the time interval to be used in determining the maximum weight of explosives that could be used. The reference in this subsection to "any 8 millisecond or greater period" is incorrect. The inclusion of "or greater" is incorrect and results in the weight of explosives used in the entire blast needing to be considered in the formula. In addition, the formula term "d" is currently omitted in the description of the formula, so the revision inserts "d" where it is needed. Also, in this subsection, the denominator in the formula is changed from 50 to 90. This is consistent with the requirements in Chapter 211.

§ 77.565. Records of blasting operations

Several amendments are included for the requirements for the blast records. This is primarily an effort to provide consistency with blast record requirements in § 211.133 (relating to blast reports). In paragraphs (10) and (11), "in pounds" is inserted for the weight of explosives, because the scaled distance formula requires the weight to be in pounds. These requirements are consistent with the requirements in § 211.133, subsections (a)(14) and (15), respectively. In paragraphs (11) and (12), "8 millisecond or less" is inserted, because the scaled distance formula is based on this time period. This is consistent with § 211.133(a)(15). Paragraph (16) is revised to insert "total quantity and" so that the number of detonators will be reported. This is consistent with § 211.133(a)(23). Paragraph (17) is revised to be more descriptive of what needs to be included in the sketch of the blast. This is consistent with § 211.133(a)(9). Paragraph (19) is revised to include three instances where "seismographic" is replaced with "seismograph." Paragraphs (22), (23) and (24) are added to include the scaled distance, the location of the seismographs and the type of circuit, respectively. These requirements are consistent with § 211.133, subsections (a)(19), (a)(2) and (a)(16), respectively.

§ 77.593. Alternatives to contouring

Paragraph (1)(i) is amended to change "is likely to" to "can." This is intended to clarify the justification needed for the alternative to contouring. The former phrase is somewhat speculative, where the latter is more concrete. Paragraph (1)(vi) is amended to clarify the requirement. Paragraph (2) is amended to correct the error in reference to "subsection (a)" since there is no subsection (a).

§ 77.618. Standards for successful revegetation

Subsection (a)(2) is amended to change the reference of "United States Department of Agriculture Soil Conservation Service" to "Natural Resources Conservation Service" because this agency changed its name several years ago.

§ 77.654. Cleanup

This section is amended to correct "cleanup" to be two words.

§ 77.655. Closing of underground mine openings

This section is amended to correct the error where two of the items were run together in subsection (a)(1)(iii). The item "to prevent access to underground workings" is deleted from this subsection and appended in this section as subsection (a)(1)(v).

§ 77.807. Change of ownership

The section is amended to correct the typographical error where "chance" should be "change."

F. *Summary of Comments and Responses on the Proposed Rulemaking*

Notice of the public comment period on the proposed rulemaking was published in the *Pennsylvania Bulletin* on March 20, 2021 (51 Pa.B. 1519). The 45-day public comment period opened on March 20, 2021 and closed on May 4, 2021. The Board received comments from four commentators during the public comment period, as well as the Independent Regulatory Review Commission (IRRC), which submitted comments on June 3, 2021. Comments and responses are separated by subject and summarized below. Detailed responses to all public comments are provided in the comment and response document that accompanies this final-form rulemaking.

Exploration

IRRC and a commentator suggested amendments to the rule will result in disparate regulation based on the weight of material excavated during exploration. There was also a request to explain how the 200-ton minimum requirement as specified in the Department of Transportation specifications for aggregate producer certification (Bulletin 14) relates to the 1,000-ton upper threshold.

In response, the Board acknowledges there are various permit authorizations for noncoal exploration depending on the exploration circumstances. Section 77.1 includes exploration in the definition of "noncoal surface mining activities," therefore, exploration activity is still subject to the environmental protection performance standards established in the regulations. Exploration can occur through several methods, including drilling. However, drilling does not generate substantial disturbances that necessitate reclamation. All exploration activities are required to maintain the distance limitations, protecting streams and wetlands as required by § 77.109(f). In addition, § 77.109(h) requires reclamation through grading to approximate original contour and revegetation. This is the same reclamation standard as those activities conducted under a permit.

Regarding thresholds, a permit waiver may be granted for noncoal exploration activities where less than 20 tons of material (approximately one truckload) will be removed. This minimum amount of material is used to determine commercial viability of the mineral resource in several cases. No additional justification is needed for removal of this minimum amount. Subsection 77.109(d)(2) requires justification by the applicant for any amount above the 20-ton threshold. The maximum amount will not exceed 1,000 tons, and this upper limit is not intended to be the

"default" amount that can be removed under the exploration waiver. The justification must be related to the amount of material needed to provide valid test results for commercial use of the aggregate materials. A primary commercial use for aggregate materials mined in this Commonwealth is for construction of roadways, and aggregate specifications are set by the Department of Transportation. The 1,000-ton maximum was identified by industry stakeholders in accordance with Bulletin 14, which is a publication for aggregate producers that establishes the Commonwealth's framework for testing and classifying aggregate type (for example, fine vs. coarse) and quality. Bulletin 14 states that a 200-ton minimum of processed and stockpiled material is the source for qualification samples for each aggregate size. Since mining operations often produce multiple sizes of aggregate, more than one test is typically needed during exploration. Consequently, multiple stockpiles of 200-tons may be produced during exploration activities. The threshold of 1,000 tons will allow operators to conduct up to five tests on different 200-ton piles. Therefore, the operator's scope for exploration is tied to the anticipated use of the material. By using the two stated thresholds of 20—1,000 tons, the Department creates a structure for sufficient extraction of material while minimizing both the extent of earth disturbance and the burden on the operator. This size threshold provides a discrete upper limit to the amount of mined aggregate that may be extracted without a permit for testing purposes and is rationally related to the bare minimum tonnage needed to adequately test the mined aggregate.

IRRC and a commentator expressed concern that the rule will generate unreclaimed excavation areas with steep slopes, posing a danger to the public. The Board notes that the regulations do not allow areas impacted by exploration to remain unreclaimed. Section 77.109(h) requires reclamation through grading to approximate original contour and revegetation, which is more protective because it creates a higher standard of reclamation to protect the public health, safety and welfare.

IRRC also asked why exploration avoids only wetlands, but not streams, ponds or springs per § 77.109(g)(3). In response, wetlands are singled out because they are not otherwise protected elsewhere in the exploration regulations. Streams are specified in the distance limitations referred to in § 77.109(f), so they must also be avoided. Ponds and springs are protected to the extent they are used as water supplies.

Permit Activation Period

IRRC and a commentator questioned why the Board proposed to change the permit activation period from three years to five years and requested an explanation for this change and how it protects the public health, safety and welfare and is in the public interest.

The Board believes there is a misunderstanding of the permit activation requirements. Currently, if a permittee does not initatiate mining activities within three years, the permittee must request an extension. This involves an administrative process where the permittee must justify the request to maintain their permits with legitimate business reasons, such as responding to unexpected market demands. The decision to grant or deny an extension is based on a review of the operator's justification. Under § 77.131 (relating to progress report), a mine operator is required to provide notice to the Department within 90 days of when the site is activated. This facilitates tracking of the site's status and provides the opportunity for the Department to conduct an inspection as the operation begins. Extending the activation period to five years ensures that

the application materials, including environmental or hydrologic changes, will be updated with the 5-year renewal. This process includes a review of the potential impacts of the mining based on contemporaneous conditions in the vicinity of the mine site.

Permit Revisions

IRRC and some commentators noted that the amendments allow operators to add support acreage to existing permits as a major revision, as opposed to the current practice that requires a new permit. The commentators expressed concerns that permit revisions and modifications are reviewed under less stringent standards and are issued more frequently than original permit applications, resulting in less intensive environmental safeguards. IRRC and some commentators also asked about the effects of permit revisions relating to other environmental features like streams and wetlands.

In response, in the rulemaking the Board adds the definition of "insignificant boundary correction," which includes the requirement that there be no significant difference in environmental impact. All other revisions are reviewed through the same procedures as an application for a new permit. Therefore, the environmental protective standards are maintained. The review of the effect on the hydrologic balance necessarily includes the evaluation of potential impacts to streams and wetlands because these are hydrologic resources.

Civil Penalties

Commentators opposed the proposed rule change in § 77.301(a) (relating to procedures for assessment of civil pentalies) that will expand the time period before a civil penalty is assessed from 30 days to 45 days out of a concern that violators will not be held accountable.

The Board notes that there is a misunderstanding expressed in this comment. The 15 days of additional time for the civil penalty process to be initiated will not have any effect on the accountability of a violator with respect to civil penalties. The additional time allows the Department to better manage the workflow and establish effective penalty amounts. The civil penalty process begins with an enforcement action that notes a violation. Then a proposed penalty amount is calculated. This is the time frame reflected in the revision. After the proposed penalty is provided to the violator, they have an opportunity to request a conference. After this process runs its course, the final penalty is established. The existing 30-day time frame is particularly limiting in cases where a violation is the subject of escalating enforcement actions. In the case of notices of violation (NOV), which generally address less serious violations, a civil penalty is not assessed. However, if the violator fails to comply with requirements of an NOV, then another enforcement action (an order) will be issued. A civil penalty will be associated with this order. Under the current rule, the proposed assessment would need to be sent within 30 days of the identification of the violation noted in the original NOV. The 30-day time would likely be passed by the time the follow up order is issued. The proposed revisions provide the Department time to determine the most appropriate civil penalty. While the civil penalty process is triggered by an enforcement action, the civil penalty and enforcement action are managed on separate tracks. The civil penalty process has no impact on the resolution of the enforcement action. Also, resolving the violation before the civil penalty is assessed does not stop the civil penalty process.

IRRC noted that the Board proposed to amend § 77.291 (relating to applicability) to specify the statutes for which violations of the subchapter are applicable to assessments of civil penalties. For consistency, IRRC asked if § 77.293(a) and (b)(1) should be amended to include both of the statutes contained in § 77.291.

The Board responds that the reference to The Clean Streams Law was included in § 77.291 to clarify for the regulated community that noncoal mining permits are issued under both the act and The Clean Streams Law. As a result, violation of a noncoal mining permit can be a violation of both The Clean Streams Law and the act. Subsections 77.293(a) and (b) are written to match the current statutory maximum civil penalties for noncoal violations allowed under the act. These requirements are not based on The Clean Streams Law. This topic was discussed with the Aggregate Advisory Board with the intent that the proposed amendments specify the requirements under the act. However, in response to IRRC's comments, the Board has added language to include information on civil penalty assessments related to The Clean Streams Law to subsection (a) on cessation orders and to subsection (b) on civil penalties. These revisions include clarifying language suggested by the Aggregate Advisory Board to specify that the penalties of subsection (a)(2) only apply when a cessation order is issued.

Blasting

IRRC asked if, under circumstances where the Department has determined that a higher air blast level may be appropriate, the Board considered amending § 77.563 to require the person conducting the mining activities to inform other interested parties within close proximity of the blasting operation about the exception to the maximum decibel level. IRRC also asked the Board to discuss the impact of allowing a higher threshold on the regulated community, and on residents, local governments and public utilities surrounding the blasting operation.

Two commentators also objected to allowing any upward departure from the current 133 dBL maximum air blast level to an unknown maximum because the limit prevents bodily harm and property damage and removing the limit does not meet Constitutional and other Federal and State statutory requirements. The commentators also requested that the Department revert to the existing language in § 77.564(f)(2) to allow for lower alternative blasting levels, but prohibit higher alternative blasting levels.

The Board provides the following response. This section on alternative air blast was revised to clarify the maximum air blast limit of 133 dBL and to allow exceptions to that maximum value under certain conditions. The change of "lower" to "alternative" was made to be consistent with requirements in Chapter 211 (relating to storage, handling and use of explosives) that allow for an exception for a higher air blast level to be approved for noncoal permits. See § 211.151(d) and (e). In some limited instances, a higher air blast level may be appropriate where it is clear that the structures will not be subject to damage with the higher threshold. If a limit higher than the existing 133 dBL air blast limit is granted, an evaluation of the attenuation of the air blast is conducted and, where necessary based on distances of structures, additional seismograph monitoring would be required to ensure that the 133 dBL regulatory limit is not exceeded at other buildings or structures. The alternative language allows for either a decrease or an increase in the air blast level that may be warranted based on site-specific circumstances including geographical considerations which may enhance air blast effects. The factors that the Department

must consider in evaluating alternatives include potential damage and whether the alternative will create a public nuisance.

In response to the comments on Constitutional, Federal and State statutory requirements, the Department disagrees with commentator's assertion that the Department would violate Federal or State constitutional law, the Federal Clean Air Act, the Federal Pollution Prevention Act, or allow a regulatory or physical taking, when it permits air blast above 133 dBL under its current regulatory structure or the modifications in this rulemaking. The Commonwealth's regulatory limit (133 dBL) for air blast comes from the recommended safe limit established by the United States Bureau of Mines Report of Investigation (RI) 8485, *Structure Response and Damage Produced by Airblast from Surface Mining*. Moreover, the alternative limit provision in this final-form rulemaking does not alter the Department's obligation to consider noise from a proposed mining operation and determine if operational mining noise will constitute a public nuisance under § 1917-A of the Administrative Code of 1929. See *Plumstead Twp. v. DER*, 1995 EHB 741, 789-90; *see also Chimel v. DEP*, 2014 EHB 957, 1000.

A commentator also requested that the Board revise § 77.564(f) to require an owner to provide written notice to the lessee of the adverse health effects linked to noise, to allow interested parties to petition the Department to specify lower maximum allowable air blast levels, and to add language requiring mining operations to minimize and abate noise. For the reasons discussed previously and in more detail in the comment and response document, the Board has not adopted the suggested language because the Commonwealth's regulatory limit (133 dBL) for air blast comes from the recommended safe limit established by the Federal government and the Department is required to protect public health and safety, as well as neighboring properties, in its implementation of the air blast regulations.

Public Participation

A commentator and IRRC asserted that changing the *Pennsylvania Bulletin* notice publication date from after the date of receipt of the permit application to the date after the permit is accepted by the Department effectively shortens the time period that the public has to prepare and submit questions and comments to the Department regarding the permit application. The commentator also objected to only one hearing or informal conference being held by the Department, irrespective of the number of groups requesting a meeting based on different concerns.

In response, the Board notes that the public notice for applications is accomplished in two ways—the applicant must publish a newspaper public notice (once a week for four weeks, beginning at the time that the application is filed) and the Department publishes notice in the *Pennsylvania Bulletin*. The proposed change only relates to the notice in the *Pennsylvania Bulletin*. Since the newspaper public notice requirement is being maintained, the length of the public comment period is not being shortened. The proposed change is intended to avoid publishing notice in the *Pennsylvania Bulletin* for applications which are not ultimately accepted for review. Effective public participation can be achieved through one public meeting for each application. In addition to public meetings, there are opportunities for written comments to be provided.

IRRC posed several questions relating to the notice to the public entities provided pursuant to § 77.121(e) including how the Department will confirm receipt with electronically filed applications, whether requests for public meetings will be accepted electronically, when electronic notices are not appropriate, and if the mail will continue to be used for notices. In response, the Board notes that the Department is in the process of transitioning to electronic permit applications. The Department recognizes its responsibility to provide the notice and to provide documentation that the notice was provided. Certified mail will continue to be used when it is necessary to demonstrate delivery.

A commentator requested that transfers and small permits not be exempt from public notice in a newspaper and that electronic notice be used. In response, the Board notes that small noncoal permits are exempt from the public notice requirements in the existing regulations because of their insignificant potential effect upon the safety and protection of the life, health, property and the environment. However, transfer of large noncoal permits are subject to the public notice requirements and all permit decisions by the Department are published in the *Pennsylvania Bulletin.*

IRRC and a commentator note that § 77.142(c) is being added to clarify that unaffected areas to be deleted from the footprint of the permit may be approved without public notice and that the Board explains that this also includes restored areas that have been disturbed only by exploration drilling. They ask how the applicant will demonstrate that the area has not been affected by surface mining and note that the language in the annex does not mention restoration. In response, the deletion of unaffected areas that have been incidentally affected by exploration is exempt from public notice because exploration drilling creates minimal disturbance and may be conducted without a mining permit. The area is subsequently sealed, regraded and revegetated upon completion of drilling. The applicant must demonstrate that an area is unaffected by submitting new maps. These new maps are reviewed by a field inspector to confirm that the area is truly eligible prior to the approval of the request to delete an area from the footprint of the permitted area. Restoration that may be needed as a result of drilling activities is addressed under § 77.113(b).

Findings

IRRC and a commentator noted that the proposed rulemaking deleted the requirement in § 77.123 (relating to public hearings—informal conferences) for the Department to issue a report on the findings of the public hearing within 60 days after the hearing date. The concern was that the removal of the deadline could leave the public with no time to read or respond to the Department's report because it is issued at the same time as the permit.

IRRC also noted that the proposed language in the annex differs from the intent described in the preamble and referenced 52 P.S. § 3310(c) as requiring the Department to notify, within 60 days of the hearing or conference, the applicant of its decision to approve or disapprove or of its intent to disapprove. Presumably, the report under the new language would be made available to the public within this same time period. IRRC asked the Board to explain in greater detail the need for and its rationale for the proposed changes.

IRRC also noted that the amendments to § 77.123(e) appear to be inconsistent with the notification requirements under § 77.143(b)(8) (relating to permit renewals) and asked the rationale for differing notification requirements among permit applications and permit renewals.

In response, the summary report (that contains "findings") serves three purposes. First, the report documents the public's concerns expressed during a public meeting (any public hearing or informal conference) as part of the public record to show that the Department recorded and considered the concerns voiced in the public event. Second, the report provides responses to these concerns in the context of permit application information. Third, the report explains the action taken by the Department to issue or deny the application in response to public comments and concerns.

After the public meeting takes place and the Department reviews all comments, the next action by the Department is stated in § 77.123(f), "the Department will notify the applicant of its decision to approve or disapprove or of its intent to disapprove *subject to the submission of additional information*." (emphasis added). In most cases, the Department will ask the applicant to supply additional information in response to the public meeting comments.

Instead of issuing a report within a set timeframe that will contain incomplete information, the Department waits until the applicant provides additionally requested information and then crafts the findings (as part of the "summary report" document) based on the final version of the application that is acted upon by the Department. Therefore, the summary report resulting from a public meeting is completed and provided to interested parties in conjunction with the permitting action.

In response to this comment, the revised subsection § 77.123(e) was changed to "Reserved" and the revisions added instead as a new subsection (g) at the end of the section to better reflect the typical chronological order of steps.

A permit issuance or denial is not a "regulatory process" as stated by the commentator. The summary report is not subject to further commentary by the public. It documents previous public comments and represents a closure of the review process. The next step for engagement by any party in the permitting process would be the consideration of appeal of the permit action for which directions are provided in the decision notice issued with the permit action.

In response to the comment about the language in 52 P.S. § 3310(c), that section applies specifically to hearings or conferences on final bond release action only. Therefore, this time limit of 60 days would not apply to issuance of new or revised permits. The statute is silent regarding timelines for providing the findings or for taking a permit action in those situations even though the regulations reflect the 60-day post-public meeting for other permit actions. Section 77.242 (relating to procedures for seeking release of bond) does not refer to § 77.123 regarding public hearings. Instead, § 77.242(f) explains the public hearing procedures for bond release. In that situation, the time limitations in 52 P.S. § 3310(c) would be applicable.

The Department further notes that these notification requirements are not inconsistent with the notification requirements under § 77.143(b)(8) regarding mine permit renewals. Proposed § 77.143(b)(8) states that the Department will "notify the applicant, persons who filed objections

or comments to the renewal and persons who were parties to an informal conference held on the permit renewal of the Department's decision" to renew a mining permit. Both the current and proposed revisions to § 77.143 are silent as to any temporal requirements regarding renewals. So, to be consistent, the notification to commenters on renewals will occur in conjunction with the Department's decision.

Bonding

A commentator expressed support for the amendment to remove the maximum limit of $100,000 for Certificates of Deposit for collateral bonds, which creates the possibility of increasing the collateral bonds to amounts that more accurately reflect appropriate bond amounts. In response, the Board notes that under the rule there will be a limit on the amount of an individual Certificate of Deposit. This limit will be the maximum insurable amount by Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation, which is currently $250,000. This limit has no effect on the amount of bonds required as multiple certificates can be accepted.

Miscellaneous

A commentator objects to the characterization that the proposed rulemaking "has minimal impact on pollution prevention." The Board notes that revisions are primarily administrative. This is the reason the preamble describes the pollution prevention impact as minimal. For example, relating to exploration, the addition of § 77.113 implements the current requirements. The creation of the new section is intended to clarify the distinction between the requirements for when exploration involves extraction and when it is conducted strictly by drilling. Other changes made may seem to be more substantial, but are not expected to have any pollution impact. For example, the revision to allow increased air blast limits is mitigated by the requirement that any increase must not create a nuisance.

A commentator suggested that § 77.51 (relating to license requirement) provide for a longer reporting period than 5 years preceding the data of application to have a broader view of the applicant's history with mines especially considering the long life of a mine. The Board notes that the 5-year look-back period has been effective at identifying the history of applicants and related parties. In addition to the self-reporting on an application, the Department maintains a database of mine operators and related parties that provides supplementary information considered by the Department in evaluating applications.

IRRC and a commentator asked if attained use should be added to designated use and water quality provision in § 77.109(e)(2) and the commentator questioned if the Department considers attained use in making a determination. In response, this section has been revised from the proposed rulemaking to include reference to the existing (attained) and designated uses of the stream, which may be affected by exploration. This is consistent with water quality standards in 25 Pa. Code Chapter 93. Contrary to the commentator's assertion, the Department applies these requirements by evaluating the more stringent of the existing or designated use. Permit applications and exploration requests include the review of measure to be taken to protect the hydrologic balance of potentially affected waters.

IRRC suggested that the Board provide more detailed explanations for the revisions in the proposed rulemaking as many appear to be substantive and not simply administrative in nature. In response, the Board has supplemented explanations the Regulatory Analysis Form (RAF) and the preamble to allow IRRC to determine if the regulation is in the public interest. Additionally, the commentators' concerns on substantive regulatory amendments are addressed directly in the comment and response document for this final-form rulemaking.

IRRC requested clarification on what ancillary and customary activities are in the context of adding the phrase to the definition of "noncoal surface mining activities" in § 77.1. The Board included the phrase "ancillary and customary" as a result of the interaction with the Aggregate Advisory Board. The phrase is intended to clarify that only activities normally conducted to support the mining activity would be included in the definition. "Ancillary" is intended to connote activities that support mining. "Customary" is intended to connote the usual or normal suite of activities. Examples of these activities include, but are not limited to, bagging, crushing, sales and storage facilities. Inclusion of these activities on the mining permit area allows the Department to better regulate potential pollution from such facilities and ensure complete reclamation upon completion of mineral extraction.

IRRC asked if the Board considered making the information in § 77.109(c) and (j)(1) available, upon request, to the public in an electronic format. The Board did consider the ability to supply this information digitally to the public. Generally, the Department makes the information requested for any permit application available in the most efficient form, and in electronic format whenever possible. Most application documentation can be submitted in or converted to digital storage formats. However, digital submittal is not mandated and not all paper applications are easily converted. The Department currently accepts some applications through the ePermitting online application and continues to expand these offerings. The transition to managing all documents in electronic form will be accomplished incrementally as the program is expanded and permits are updated.

The Board also received several comments and questions on subjects outside the scope of the proposed rulemaking. Responses are provided in the comment and response document prepared for this final-form rulemaking.

G. *Benefits, Costs and Compliance*

Benefits

The revisions in this final-form rulemaking will provide clarity to mine operators regarding compliance standards. In some cases, this will result in reduced costs. Clarity in the requirements can prevent errors in applications and improve efficiency, saving time for both operators and the Department.

Compliance costs

Very few of the new or revised requirements are likely to increase costs. One example that will increase costs is the updated insurance requirements. The increased coverage limits will increase the cost of insurance for those operators who maintain the minimum coverage amounts. However, many operators already have insurance that meets the increased coverage limits.

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 1,200 licensed noncoal surface mining operators in this Commonwealth, most of which are small businesses that will be subject to this final-form rulemaking.

Paperwork requirements

This final-form rulemaking does not require additional paperwork.

H. *Pollution Prevention*

The Federal 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 administrative, focused on updating regulations to reflect current requirements, amendments to Commonwealth statutes and references to citations, names and data sources.

I. *Sunset Review*

The Board is not establishing 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 February 25, 2021, the Department submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 1519 (March 20, 2021), and a copy of a Regulatory Analysis Form to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees.

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

Under section 5.1(j.2) of the Regulatory Review Act, on ___(DATE)___, this 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 ____(DATE)____ and approved this 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), referred to as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

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

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 51 Pa.B. 1519.

(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:

(a) The regulations of the Department, 25 Pa. Code Chapter 77, are amended by amending §§ 77.1, 77.51, 77.107, 77.108, 77.109, 77.121, 77.123, 77.128, 77.141, 77.142, 77.143, 77.144, 77.224, 77.231, 77.242, 77.291, 77.293, 77.301, 77.410, 77.531, 77.532, 77.562, 77.563, 77.564, 77.565, 77.593, 77.618, 77.654, 77.655 and 77.807 and adding 77.113 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this final-form rulemaking 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.

(c) The Chairperson of the Board shall submit this final-form rulemaking 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).

(d) The Chairperson of the Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RICHARD NEGRIN,
Acting Chairperson