

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

Blast Site Clarification for Noncoal Mining Operations

The Environmental Quality Board (Board) amends Chapter 77 (relating to noncoal mining) to read as set forth in Annex A. This final-omitted rulemaking corrects an inconsistency in the use of two defined terms by changing one use of the term “blast area” to “blast site” in § 77.564(g)(7) (relating to surface blasting requirements). The amendment ensures that the language used in the noncoal mining regulations in Chapter 77 is consistent with both terms as defined in § 211.101 (relating to definitions) and used in Chapter 211 (relating to storage, handling and use of explosives).

Notice of proposed rulemaking is omitted under section 204 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204), known as the Commonwealth Documents Law (CDL). Section 204(3) of the CDL provides that an agency may omit the notice of proposed rulemaking if the “agency for good cause finds... that the [public notice and comment] procedures specified in sections 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.”

Here, the final-omitted process is appropriate because the proposed change is minor, uncontroversial, and does not amend current practice because the regulated community is already adhering to the blasting safety regulations in Chapter 211. Public notice and solicitation of public comments are unnecessary and contrary to the public interest because use of incorrect terminology in § 77.564(g)(7) could lead to confusion for Department of Environmental Protection (Department) staff, noncoal mine operators and contractors providing blasting services. Public notice and comment do not alter the need to correct this inconsistency. There is a substantial public interest served by ensuring that the safety standards for blasting in Chapters 77 and 211 are consistent.

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

A. Effective Date

This final-omitted 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 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This final-omitted rulemaking is available on the Department’s website at www.dep.pa.gov (select

“Public Participation,” then “Environmental Quality Board,” then navigate to the Board meeting of **DATE**).

C. Statutory Authority

This final-omitted rulemaking is authorized under section 11(a) and (e)(1) of the Noncoal Surface Mining Conservation and Reclamation Act (act) (52 P.S. § 3311(a) and (e)(1)). Section 11(a) of the act grants the Board the authority to adopt regulations necessary to carry out the provisions and purposes of the act and for the health and safety of those persons employed at surface mining operations. Section 11(e)(1) of the act requires the use of explosives for surface mining to be conducted in accordance with regulations promulgated by the Board. Additionally, section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20) authorizes the Board to adopt rules and regulations necessary for the performance of the work of the Department.

D. Background and Purpose

In December 2023, the Department’s Bureau of Mining Programs identified an inconsistent use of the term “blast area” in one instance in § 77.564(g)(7). Section 77.564(g)(7) was promulgated in 1990 and used the term “blast area” throughout the provision. See 20 Pa.B. 1643 (March 17, 1990). Subsequently, the terms “blast area” and “blast site” were defined in Chapter 211 in 2001. See 31 Pa.B. 3751 (July 14, 2001). As a result, one instance of “blast area” as it is used in § 77.564(g)(7) is inconsistent with those definitions in Chapter 211. In the context of the sentence, the correct term to use is “blast site.”

“Blast site” is defined in § 211.101 as the specific location where explosive charges are loaded into the blast holes. “Blast area” is defined in § 211.101 as the larger area around the blast site that must be cleared and secured to prevent injury to persons and damage to property. In other words, the “blast area” consists of a buffer zone around the “blast site” to ensure mine worker and public safety. When explosives are being loaded into drill holes ahead of a “shot” (blast), the blast site plus a buffer zone of 50 feet around the blast site is cleared of all persons and equipment except those necessary to prepare for the blast, as required by § 211.154(b) (relating to preparing the blast). However, the existing language in § 77.564(g)(7) requires “work within a radius of 50 feet of the blast area” to cease, which means the operator must include an extra 50-foot radius in addition to the buffer zone around the blast site.

Under § 77.561(c) (relating to general requirements), blasting operations shall be conducted in compliance with Chapter 211. Likewise, under § 211.103(c) (relating to enforcement), operators are required to comply with Chapter 77 as it relates to the use of explosives. If mine operators are required to comply with an interpretation of § 77.564(g)(7) that applies the definition of “blast area” in § 211.101, it will require them to halt activity across an excessive portion of the mine site whenever explosives are being prepared at the blast site. This interpretation results in a larger disruption of activities at a noncoal mine than is necessary to ensure mine worker and public safety, which was not intended and is not consistent with the same safety requirements in Chapter 211.

The Department has notified the noncoal mining operators and blasting contractors of the terminology inconsistency, that the Department is in the process of correcting it and explained

how the regulation should be interpreted in the meantime. The Department discussed the draft regulatory amendment with the Aggregate Advisory Board at its August 28, 2024 meeting.

E. Summary of the Final-Omitted Rulemaking

§ 77.564. Surface blasting requirements.

This final-omitted rulemaking amends subsection (g)(7) by correcting one use of the term “blast area” to “blast site.” As explained previously, the amendment corrects terminology to ensure that the language used in the noncoal mining regulations is consistent with the definitions of both terms in the Department’s regulations on storage, handling and use of explosives in § 211.101.

F. Benefits, Costs and Compliance

Benefits

This regulation is intended for general safety of the mine workers and the public. This final-omitted rulemaking rectifies an inconsistency but does not lessen the effective safe boundary for blasting operations. The regulated community and Department staff enforcing the blasting regulations will benefit by having clear regulatory language in Chapter 77 that is consistent with the blasting requirements in Chapter 211. This final-omitted rulemaking will clarify the regulatory language to ensure that mine operators are not required to shut down a larger area surrounding each blast site than necessary for worker or public safety.

Compliance costs

This final-omitted rulemaking is not expected to not have any financial or economic impacts.

Compliance assistance plan

No formal compliance assistance is necessary for implementation of this final-omitted rulemaking, because the amendment is not substantive. The Department has already notified the impacted entities of the inconsistent language in the regulation and explained how the regulation should be interpreted in the meantime. The Department will incorporate the correction into the training program for licensed blasters and ensure onsite blasting inspectors inform permittees of the amendment.

Paperwork requirements

This final-omitted rulemaking will not revise paperwork requirements.

G. Pollution Prevention

This final-omitted rulemaking will not impact pollution prevention efforts of the Department.

H. *Sunset Review*

The Board is not establishing a sunset date for this regulation since it is needed for the Department to carry out its statutory authority. The Department will continue to monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

I. *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (RRA) (71 P.S. § 745.5a(c)), on **DATE**, the Department submitted a copy of this final-omitted rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. On the same date, the Department submitted a copy of the final-omitted rulemaking to the Office of Attorney General under section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)). A copy of this material is available to the public upon request.

Under section 5.1(j.2) of the RRA, on **DATE**, this final-omitted rulemaking was **(deemed)** approved by the House and Senate Committees. Under section 5.1(e) of the RRA, IRRC met on **DATE**, and approved this final-omitted rulemaking.

J. *Findings of the Board*

The Board finds that:

- (1) The amendment as set forth in Annex A is appropriate to ensure consistency among the Department's surface blasting requirements in Chapters 77 and 211.
- (2) Use of the omission of notice of proposed rulemaking procedure is appropriate because the notice of proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) are, in this instance, both unnecessary and contrary to the public interest.
- (3) This amendment is necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble and is in the public interest.

K. *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 § 77.564 to read as set forth in Annex A.
- (b) The Acting Chairperson of the Board shall submit this final-omitted 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 Acting Chairperson of the Board shall submit this final-omitted rulemaking to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the RRA.

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

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

JESSICA SHIRLEY,
Acting Chairperson