

EXECUTIVE SUMMARY

FINAL RULEMAKING
MINE OPENING BLASTING
(25 Pa. Code Chapters 77, 87 – 89 and 210)

This rulemaking clarifies that the use of explosives in connection with the construction of a mine opening for an underground coal or noncoal mine is a surface mining activity subject to the applicable requirements in Chapter 77, Chapter 87 or Chapter 88 (relating to noncoal mining; surface mining of coal; and anthracite coal) and that the person conducting the blasting activity shall possess a blaster's license. In addition, the scheduling requirements applicable to the use of explosives for constructing openings for coal and industrial mineral underground mines are made more flexible. The requirements for protective measures to be taken when surface coal mine blasting is in proximity to a public highway or an entrance to a mine are also made more flexible. Finally, a category for mine opening blasting is being added to the classifications of blaster's licenses.

The Surface Mining Conservation and Reclamation Act (SMCRA) and the Noncoal Surface Mining Conservation and Reclamation Act (NCSMCRA) broadly define "surface mining activities" and "surface mining" respectively, to include activities conducted on the surface that are incidental to the establishment or operation of an underground mine, including, among other things, the construction of the mine opening from the surface to the coal seam or mineral strata being or to be mined. Mine opening construction occurs in proximity to inhabited areas and the Department receives complaints about the effects of the related blasting activity during the construction of the entire opening (to the coal seam or mineral being mined). Applying surface mining blasting regulations to the construction of the entire mine opening is necessary because it limits airblast and ground vibration and prohibits the flyrock that potentially could result from the blasting.

Even though the explosives regulations for surface anthracite and bituminous mines require all blasts to be conducted by a blaster licensed under Chapter 210 (relating to licensing of blasters), there may have been some confusion as to whether Chapter 210 applies to entry blasting. *See* §§ 87.124(d) (relating to use of explosives: general requirements), 88.134(c) (relating to blasting: general requirements) and 210.12 (relating to scope). This confusion is related to the fact that blasting for underground mines is also authorized by the Pennsylvania Anthracite Coal Mine Act and the Pennsylvania Bituminous Coal Mine Act (52 P.S. §§ 70.101 *et seq.* and 701-101 *et seq.*) and persons authorized by the Pennsylvania Anthracite Coal Mine Act and the Pennsylvania Bituminous Coal Mine Act are exempt from Chapter 210. It is the Department's position that the requirements of §§ 87.124(d) and 88.134(c) (requiring that all surface blasting activities be conducted by a competent blaster licensed in compliance with Chapter 210) apply. Based on the unique issues regarding mine opening blasting, it is necessary to create a separate license classification for this activity that takes into consideration that mine opening blasters are conducting blasting operations below the surface that result in the need to limit that blasting's effect on people and property on the surface.

The requirement regarding the scheduling of blasts, when applied to all mine opening blasting, poses a significant risk to mine workers without significantly protecting the rest of the public. A risk of instability in a mine opening under construction exists if that opening passes through sandstone or shale strata because these rocks deteriorate when exposed to air and water. If this situation exists, blasting on an as-needed basis is necessary to enable the expeditious grouting of the mine opening with a ring of cement, sealing off the exposure to air and water. Public protection is provided by applying limits to airblast and ground vibration and prohibiting flyrock.

Barricading and guarding a highway, as required by §§ 87.127 and 88.135 (relating to use of explosives: surface blasting requirements; and blasting: surface blasting requirements) is not always the best method for protecting the public from mine blasting near that highway. In many cases careful design of blasts protects the public more than barricading roads that are heavily traveled, subjecting the traveling public to the threat of accidents resulting from blocking of the road.

The regulations are more stringent than the federal regulations because the federal regulations only apply to the initial blasts for mine opening blasting. The risks and nuisances to persons and property near mine opening blasting constitute a compelling need for these regulations.

These regulations were published in the Pennsylvania Bulletin on September 2, 2006. There was a 30-day comment period. The Board received comments from the Pennsylvania Coal Association and the Independent Regulatory Review Commission. These commentators raised two main issues. First, they questioned the statutory authority to apply the surface coal mine blasting regulations to all mine opening blasting. Second, they questioned the need for applying the surface coal mine blasting regulations to all mine opening blasting.

As explained in greater detail in the Comment and Response Document, all activities related to the construction of the entire mine opening is surface mining activity regulated by the SMCRA and NCSMCRA.

The Mining and Reclamation Advisory Board (MRAB) considered this final rulemaking package at the January 25, 2007 meeting. The Department's regulatory authority over the blasting associated with the construction of the entire shaft was discussed. The discussion led to a motion that the MRAB not endorse the regulations. The motion not to endorse the regulation carried 4-3 because members of the MRAB hold that mine opening blasting down to the coal seam is not surface mining activity. Although the Department appreciates the advice of the MRAB, the Department will move forward to final rulemaking. The Department recommends proceeding to final rulemaking because the SMCRA statutory definition of "surface mining activity" includes "strip, auger mining, dredging, quarrying and leaching, and all surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction..."