

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 77]

Noncoal Regulations

The Environmental Quality Board (Board) proposes to amend Chapter 77 (relating to noncoal mining). The amendments are the result of the Department of Environmental Protection's (Department) Regulatory Basics Initiative to revise regulations which impose disproportionate economic costs, which are obsolete or redundant, which are prescriptive or technology specific, and which lack clarity.

This proposal was adopted by the Board at its meeting of December 17, 1996.

A. Effective Date

These proposed amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rule-making.

B. Contact Persons

For further information contact Evan T. Shuster, Chief, Division of Monitoring and Compliance, Bureau of Mining and Reclamation, P. O. Box 8461, Room 203 Executive House, Harrisburg, PA 17105-8461 (717) 787-7846, or Leigh Cohen, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464 (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department's Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

These amendments are proposed under the rulemaking authority of the following acts: section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (Noncoal SMCRA) (52 P. S. § 3311(a)); section 5(b) of The Clean Streams Law (35 P. S. § 691.5(b)); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20) which authorizes the Board to adopt regulations necessary for the Department to perform its work.

D. Background and Purpose

In August 1995, the Department announced the Regulatory Basics Initiative to revise regulations which impose disproportionate economic costs, which are obsolete or redundant, and which lack clarity. Under this initiative the Department solicited public input through a notice in the *Pennsylvania Bulletin* and the Department's web site (<http://www.dep.state.pa.us>). The amendments being proposed at this time are the result of suggestions from the public and the Department's own review of its regulations. Additionally, the Department proposes to insert, where appropriate, equivalent measures in standard international metric units.

E. Summary of Regulatory Requirements

A description of the revisions to Chapter 77 follows:

§ 77.1 (relating to definitions)

The amendment adds a definition for "general permit." The term is used extensively in proposed Subchapter J (relating to general permits) which establishes procedures for developing general permits.

§ 77.51 (relating to license requirement)

This amendment replaces the terms "small noncoal license" and "small noncoal exemption," with a general reference to the Noncoal Surface Mining Conservation and Reclamation Act (Noncoal SMCRA) (52 P. S. §§ 3301—3826) requirements for liability insurance.

§ 77.53 (relating to suspension and revocation)

Subsection (a) is revised to correctly refer to § 77.51(e) which deals with issuing and renewing licenses.

§ 77.54 (relating to fees)

New language is inserted to acknowledge that alternate fee requirements may be established in Noncoal SMCRA which will supersede the requirements of this section.

§ 77.102 (relating to compliance with existing permits)

Noncoal surface mine permits issued prior to the effective date of this chapter (March 17, 1990) contain a condition which requires reclamation concurrent with the progress of the proposed mining operation to the highest extent possible. This requirement was in the regulations prior to March 17, 1990. In some cases, concurrent reclamation may not have been fully addressed in the approved mining plans in these earlier permits. In other cases changing market conditions and long term overburdened storage have created conditions whereby reclamation is not current with the progress of mineral extraction. These conditions create large and extremely expensive reclamation obligations for this type of operation. These obligations can likely exist after all mineral extraction is completed and income from the mining operation has ceased. If this obligation is not fulfilled by the permittee, the obligation passes to the Commonwealth. In order to minimize the chance that this situation will occur, this section is revised to allow the Department to require a modification to mining and reclamation plans in permits issued prior to March 17, 1990, in order to comply with the applicable concurrent reclamation requirements, to the extent that it is practicable.

§ 77.108 (relating to permits for small noncoal operations)

The title of this section is revised by deleting the word "general." The use of this term is confusing since this section does not deal with general permits as that term is used in Noncoal SMCRA. Other amendments to this section increase the allowable yearly tonnage limit for small noncoal operations from 2,000 to 10,000 tons per year; add a reference to § 77.163 (relating to right of entry); and require a blast plan if blasting will occur.

Language is added to subsection (f) to indicate clearly that the Department is responsible for publishing public notice of applications and bond releases in the *Pennsylvania Bulletin* and that the requirement to publicize notices in local newspapers does not apply to activities authorized under this section.

The allowable production on small noncoal permits is increased from 2,000 to 10,000 tons per year with the limit applied to each permit issued under this section. A

provision requiring mineral production by an applicant's family to be attributed to the applicant is no longer appropriate and is deleted.

The remaining revisions to § 77.108 establish a minimum bond of \$1,000 and basic reclamation standards for bond release. The conditions under which the Department may delegate some of its regulatory functions to a conservation district are revised to refer to operations authorized under this section, as provided by the Noncoal SMCRA.

The proposed amendments to this section will enable a person who holds a large noncoal mining license to obtain a small noncoal permit in appropriate situations.

§ 77.109 (relating to noncoal exploration activities)

The amendments to this section provide for a less complex authorization process for noncoal exploration activities conducted outside a permit area and less prescriptive performance standards. The information to be provided in a notice of intent to conduct exploration activities is more clearly described.

§ 77.110 (relating to permit waiver—oil and gas well site development)

The language in this section is proposed to be replaced with a statement that oil and gas well borrow areas which meet the requirements of section 603.1 of the Oil and Gas Act (58 P.S. § 601.603a) are exempt from the provisions of the Noncoal SMCRA.

§ 77.126 (relating to criteria for permit approval or denial)

This proposed amendment requires the Department to make written findings for permit approval or denial. Language is inserted to clarify the cross reference to § 77.504 (relating to distance limitations and areas designated as unsuitable for mining). Present § 77.126(a)(6) is being deleted since it is redundant and is covered by amended § 77.126(a)(8). These revisions also include language which clearly states that the applicant for a permit transfer must obtain a noncoal license and that the Department will consider the State and Federal endangered species acts in its permit decisions. An incorrect reference in subsection (b)(2) has been corrected.

§ 77.128 (relating to permit terms)

The proposed amendments expand reasons for which the Department may grant an extension of time for commencement of mining activities to include conditions beyond the control of the permittee when there has been no negligence on the permittee's part.

§ 77.142 (relating to public notice of permit revision)

This section is proposed to be rewritten to identify specific types of major permit revisions which are required to have public notice. Presently many minor changes to a permit, which have insignificant impacts on the environment and the public, are required to have public notices.

§ 77.144 (relating to transfer of permit)

The vague language of subsection (c)(1) is proposed to be replaced with a specific reference to § 77.126(a)(6)—(8) which requires the new operator be in compliance with this section and the Noncoal SMCRA. The proposed language does not change the requirements of this section.

§ 77.164 (relating to personal injury and property damage insurance information)

Language which exempts small noncoal permits from the requirement to provide proof of liability insurance is proposed to be deleted. The new language requires proof of insurance when required by the Noncoal SMCRA. The current language of the Noncoal SMCRA exempts operators who produce less than 2,000 tons (1,960 metric tons) per year from the requirement for liability insurance. Related changes are being made to § 77.231 (relating to terms and conditions for liability).

§ 77.165 (relating to proof of publication)

This proposed amendment provides that a copy of the weekly advertisements can be submitted as an alternative to a notarized proof of publication.

§ 77.204 (relating to period of liability)

Current language in this section refers to the Noncoal SMCRA and other environmental acts. This reference is replaced with language from section 9(j) of the Noncoal SMCRA (52 P.S. § 3309(j)) which provides that the Department may release a bond in whole or in part if the Department is satisfied that the reclamation covered by the bond has been accomplished as required by the Noncoal SMCRA.

§ 77.205 (relating to bond adjustments)

A new provision is proposed to be added which requires the Department to notify the permittee, surety and a person with a property interest in collateral, who has requested this notice of any proposed adjustment to the bond. The provision also provides the permittee an opportunity for an informal conference to discuss bond adjustments prior to the adjustments. The title of this section is revised to read "bond adjustments."

§ 77.231 (relating to terms and conditions for liability insurance)

This proposed amendment references Noncoal SMCRA as the basis for the requirement for liability insurance, and deletes the reference to an operator's status as a small noncoal operator.

§ 77.241 (relating to scope)

This section is proposed to be amended to provide that the bond release procedures of §§ 77.242 and 77.243 (relating to procedures for seeking release of bond; and criteria and schedule for release of bond) will be followed unless other requirements are specified by these regulations or by a general permit issued. These proposed amendments will allow the Department to develop specific bond release procedures for general permits.

§ 77.242 (relating to procedures for seeking release of bond)

The proposed amendments require an applicant for bond release to submit the proof of publication within 60 days after filing the application for bond release. This change provides the applicant for bond release a longer time period in which it may submit the proof of publication. Additional language provides that the application will not be considered complete and may be returned if the proof of publication is not received within the 60-day period.

§ 77.243 (relating to criteria and schedule for release of bond)

This proposed revision replaces a vague and undefined standard for initial bond release with a requirement that land be stabilized to prevent accelerated erosion and sedimentation as specified in Chapter 102 (relating to erosion control).

§ 77.401 (relating to responsibilities)

This section describes the general requirement for permit applicants to provide information on environmental resources on areas which may be affected by proposed mining activities. A new provision allows the Department to waive any requirements of this subchapter for specific categories of surface mining operations if the information is not needed to evaluate potential impacts on the public and the environment.

§ 77.403 (relating to description of hydrology and geology—general requirements)

The present regulations convey the impression that similar hydrologic and geologic descriptions may be needed for all types of noncoal operations. The proposed amendments require that an applicant submit geologic and hydrologic information to the extent it is necessary for the Department to evaluate the potential hydrologic impacts of the type of noncoal mining operation being proposed. Subsection (b) is revised to limit the Department's authority to require modeling and other predictive techniques to situations in which the proposed mining has the potential to impact streams or water supplies.

§ 77.456 (relating to reclamation information)

This section is proposed to be reworded to require reclamation plans to be designed to provide for reclamation which is as concurrent as possible with the progress of mining. An additional change requires a timetable for reclamation activities to meet the requirements of § 77.595 (relating to concurrent reclamation) which relates to concurrent reclamation.

§ 77.461 (relating to dams, ponds, embankments and impoundments)

This amendment provides that hydrologic and geologic information in general and design plans are required only when requested by the Department. The present regulation requires hydrologic and geologic information for all impounding structures covered by this section. Specific information is often not needed to evaluate sediment ponds.

§ 77.502 (relating to signs and markers)

The changes to this section require signs which identify a permit to be posted within 60 days after permit issuance. The present regulation is not clear regarding the time period when these signs are to be installed. This amendment also requires the telephone number of the operator to be identified on the sign. The purpose of this is to provide the public with evidence that a permit has been issued on a specific area particularly when the permit is not activated for a long period after permit issuance.

§ 77.503 (relating to casing and sealing of drilled holes)

These proposed amendments replace the phrase "Prevent, to the maximum extent possible," with the word "minimize." This change is proposed so that the language of this section remains consistent with a similar section in the coal mining regulations which are also being revised under the Regulatory Basics Initiative. These proposed amendments do not weaken or diminish the effectiveness of this performance standard. This amendment also deletes subsection (d) dealing with barriers around oil and gas wells. The identical language is found at § 77.504(c).

§ 77.504 (relating to distance limitations and areas designated unsuitable for mining)

To maintain consistent terminology within this chapter "surface mining operations" is replaced with "surface mining activities." A minor editorial change is made in subsection (c). The principal revision to this section provides that waivers to allow mining activities within 300 feet (91.4 meters) of an occupied dwelling or commercial or industrial building which are signed by a property owner remain effective for subsequent purchasers of the dwelling or building if the purchaser had constructive knowledge of the waiver at time of purchase. The revision also defines what is meant by "constructive knowledge."

§ 77.527 (relating to sediment controls)

The title is proposed to be revised to more accurately indicate the applicability of this section to the more general "sediment controls." Additional changes clarify when sediment controls other than sediment ponds may be used. The subsection dealing with removal of ponds and facilities is modified to include other controls.

§ 77.562 (relating to preblasting surveys)

The proposed revisions to this section replace a confusing and unenforceable standard for the exemption from requiring preblasting surveys with precise values in a graph (Figure 1). Figure 1 represents levels of ground vibration below which the probability of threshold damage to a dwelling, such as hairline cracks in plaster or drywall, is virtually zero. At higher vibration frequencies the allowable vibration level may exceed the current design standard of 0.5 inches per second peak particle velocity. At extremely low vibration frequencies, the allowable level will be less than 0.5 inches per second. Figure 1 is the result of extensive research by the United States Bureau of Mines (USBM). A discussion of this research can be found in USBM Report of Investigations #8507, Structure Response and Damage Produced by Ground Vibration From Surface Mine Blasting. Additional references to USBM research may be obtained from the person identified in Section B of this Preamble.

These proposed amendments include provisions which describe how the operator must monitor blasting for compliance with the vibration levels in Figure 1 and which prohibit additional blasting if vibration levels exceed the levels in Figure 1 and preblasting surveys have not been offered. These proposed amendments also clarify that the right to a preblasting survey extends to schools, churches, commercial and industrial buildings.

§ 77.564 (relating to surface blasting requirements)

These proposed amendments clarify the provision that the maximum peak particle velocity does not apply at a structure owned by the permittee.

§ 77.572 (relating to permit line setback)

This section is proposed to be rewritten to eliminate confusing language dealing with the distance that a highwall must be set back from the boundary of the bonded area.

§ 77.594 (relating to final slopes)

Additional language clarifies when the Department will consider approving a final slope greater than 35° on terraced reclamation slopes. The proposal also indicates that the final safety bench in unconsolidated materials is needed to provide for safe exit from a postmining impoundment.

§ 77.595 (relating to concurrent reclamation)

This section is proposed to be amended by inserting a requirement that reclamation procedures conform to the reclamation plan required by § 77.456. A new subsection is added which specifies the conditions under which reclamation may be delayed until mineral extraction is completed. Reasons for these delays must be explained in the reclamation plan. In any event, reclamation must begin within 30 days of the end of mineral extraction. The purpose of these amendments is to eliminate safety hazards from highwalls as soon as practicable.

Subchapter J (relating to general permits)

This new subchapter authorizes the Department to develop general permits for categories of noncoal mining where the Department determines that the operations within that category are similar in nature and can be adequately regulated utilizing standard specifications and conditions. It describes the nature of a general permit and that the general permit is a substitute for individual permits. Subchapter J establishes the minimum contents of a general permit, the procedures for issuing a general permit and the requirements for operators wishing to register under the general permit. Finally, the proposal requires persons who operate under the general permit to maintain a mining operator's license and comply with the terms and conditions of the permit, the regulations and applicable laws.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Benefits

These amendments are proposed in order to revise noncoal mining regulations which impose disproportionate economic costs, regulations which are obsolete or are redundant, regulations which are prescriptive or technology specific, and regulations which lack clarity. The noncoal mining industry, the Department and the public will benefit from these amendments.

Benefits to the general public cannot be quantified. They include more timely reclamation of highwalls which eliminates potential safety hazards and better documentation of Department decisions to issue permits through the requirement for the Department to provide written findings.

The benefits to the regulated community will primarily be a savings in permitting costs as follows:

	Site/yr.	Savings/ site	Savings
—Less prescriptive permit application requirements based on type of operation	20	\$2,000	\$40,000
—General Permit compared to large noncoal permit application	10	\$4,000	\$40,000
—Large noncoal operation obtaining small noncoal permits	10	\$3,000	\$30,000
Total Savings			\$110,000

The Department will benefit by a savings through a reduction in the time and effort to review permit applications as follows:

—Reduced review times with general permits:

Affected Sites	Time Saved	Ave. Wage	Savings/Year	
10 large	110 hrs.	\$15/hr.	\$16,500	\$16,500
5 small	5 hrs.	\$15/hr.	\$1,500	\$1,500

—Review of hydrology/geology information based on reduced level of detail for certain types of noncoal operations:

Affected Sites	Time Saved	Ave. Wage	Savings/Year	
20	40 hrs.	\$20/hr.	\$16,000	\$16,000

—Large noncoal operations obtaining small noncoal permits:

Affected Sites	Time Saved	Ave. Wage	Savings/Year	
10	100 hrs.	\$15/hr.	\$15,000	\$15,000

Total Savings \$49,000/yr.

Compliance Costs

The proposed changes will impose no additional compliance costs on the regulated community.

Compliance Assistance Plan

Since noncoal mining regulation is an established program in this Commonwealth, compliance assistance will be limited to an effort to inform the industry of the specific changes in the program. This can be accomplished by mailing fact sheets directly to mine operators. If necessary, regional roundtable meetings with the industry will be arranged.

Paperwork Requirements

The proposed amendments will impose no additional paperwork on the regulated community. It will be necessary for the Department to revise several existing forms and technical guidance documents.

G. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which it was intended.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 4, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor, and the General Assembly before final publication of regulations.

I. Public Comments

Written comments. Interested persons are invited to submit written comments, suggestions or objections re-

garding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, Pa 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments received by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 16, 1997 (within 60 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by April 16, 1997 (within 60 days of publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us and must also be received by the Board by April 16, 1997. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

J. *Public Hearings*

The Environmental Quality Board will hold two public hearings for the purpose of accepting comments on this proposal. They will be held at 1 p.m. on the following dates:

March 25, 1997: Ramada Inn, Route 255 and I-80 (Exit 17), DuBois, PA

March 31, 1997: Ramada Inn—Allentown, 1500 MacArthur Road, Whitehall, PA

Persons wishing to present testimony at a hearing are requested to contact Nancy Roush at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Nancy Roush directly at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TTD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-303. (1) Noncoal Surface Mining Conservation and Reclamation Fund; (2) Implementing Year 1996-97 is \$0; (3) 1st Succeeding Year 1997-98 is \$5,000; 2nd Succeeding Year 1998-99 is \$5,000; 3rd Succeeding Year 1999-00 is \$5,000; 4th Succeeding Year 2000-01 is \$5,000; 5th Succeeding Year 2001-02 is \$5,000; (4) Fiscal Year 1995-96 \$5,447,000; Fiscal Year 1994-95 \$4,847,000; Fiscal Year 1993-94 \$4,252,000; (7) Licenses and fees; (8) recommends adoption.

These proposed amendments also result in minor cost savings to the Department's Operations and Environmental Program Management Appropriations. Cost savings

may be realized from a reduction in administrative workload associated with review of certain permit applications.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 77. NONCOAL MINING

Subchapter A. GENERAL PROVISIONS

§ 77.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

* * * * *

General permit—[**A permit issued under section 26 of the act (52 P. S. § 3326).**] **A permit that is used for any category of noncoal surface mining activities authorized by the act if the Department determines that the activities in the category are similar in nature and can be adequately regulated utilizing standardized specifications and conditions. A general permit shall specify the design, operating and monitoring requirements as are necessary to adequately protect life, health, property and the environment and under which the surface mining activities may be conducted.**

* * * * *

Subchapter B. SURFACE MINING OPERATOR'S LICENSE

§ 77.51. License requirement.

* * * * *

(b) *Noncoal surface mining operator's license application.* Application for license shall be made in writing on forms prepared and furnished by the Department and contain information pertaining to:

* * * * *

(2) Public liability insurance [**except to operators who meet the requirements of and obtain a small noncoal license**] **when required by the act.**

* * * * *

(d) *Public liability insurance.* [**Except for operators who meet the small noncoal exemption,**] **When required by the act,** the applicant shall provide a certificate of insurance for the term of the license covering surface mining activities of the applicant in this Commonwealth under § 77.231 (relating to terms and conditions for liability insurance).

* * * * *

§ 77.53. Suspension and revocation.

(a) The Department may suspend or revoke a license for a reason listed in § 77.51 [**(f)**] **(e)** (relating to license requirement).

* * * * *

§ 77.54. Fees.

Unless otherwise established by the act, the following license fees apply:

[(a)](1) ***

[(b)](2) ***

Subchapter C. PERMITS AND PERMIT APPLICATIONS

GENERAL

§ 77.102. Compliance with existing permits.

A person may conduct noncoal mining activities under permits issued by the Department prior to March 17, 1990, under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31) or the act and in compliance with the terms and conditions of the permit except for the requirements of §§ 77.504 and 77.561 (relating to distance limitations and areas designated as unsuitable for mining; and general requirements). The Department may require modification of mining and reclamation plans for a permit issued prior to March 17, 1990, to ensure compliance, to the extent practicable, with the applicable concurrent reclamation requirements.

§ 77.108. [General permits] Permit for small noncoal operations.

(a) A person who intends to conduct noncoal surface mining activities from which the total weight of mineral mined per year is less than [2,000] 10,000 tons (9,800 metric tons), prior to conducting the activities, shall apply in writing for a small [operator] noncoal permit on forms furnished by the Department.

(b) In lieu of the application requirements of this subchapter and Subchapters G and H (relating to information on environmental resources; and requirements for operation and reclamation plan), an application for a small noncoal permit shall include the following:

* * * * *

(3) Information and documents [concerning right of entry] required by § 77.163 (relating to right of entry).

* * * * *

(9) A United States Geological Survey topographical map or aerial photograph approved by the Department with the proposed permit area outlined.

* * * * *

(11) A notarized statement signed by the applicant stating that the yearly production from the proposed mining activity will not exceed [2,000] 10,000 tons (9,800 metric tons).

(12) A blast plan, if applicable.

(13) Other information the Department deems relevant.

* * * * *

(d) A person [qualifying for a small operator permit] operating under this section shall comply with Subchapter B (relating to surface mining operator's license).

(e) In lieu of the requirements of Subchapter I (relating to environmental protection performance standards), [a small operator] this permit has the following conditions:

* * * * *

(3) The operating face of a bench may not exceed a height of 25 feet (7.6 meters). Multiple benching shall be developed as necessary.

(4) Reclamation shall be conducted concurrently with mining operations on a one for one basis—1 acre (0.4 hectare) reclaimed for each acre (0.4 hectare) affected, unless the operator demonstrates, to the Department's satisfaction, acceptable alternate concurrent reclamation.

* * * * *

(7) The permittee shall identify this operation during its lifetime by constructing and maintaining a weather resistant sign with a minimum size of 2 feet by 3 feet (60 centimeters by 91.4 centimeters) to be located immediately adjacent to the closest public highway, from which it shall be clearly visible, at the junction of that public highway with the access road to the operation. The sign shall be painted with a light background and show, in a contrasting color, the name of the permittee and the permit number under which the operation is being conducted. The letters and numbers shall be a minimum height of 1½ inches (3.8 centimeters).

(8) [The permittee is responsible for complying with local zoning ordinances under section 16 of the act (52 P. S. § 3316).

(9) Topsoil, as needed for reclamation, shall be conserved onsite for replacement on affected areas upon completion of mining and prior to revegetation. Topsoil in excess of that needed for reclamation, as demonstrated by the applicant, may be removed from the site.

[(10)](9) ***

[(11)](10) ***

(f) [A general] The Department will publish its decision on a small noncoal permit [shall be published] application and a final bond release in the Pennsylvania Bulletin [at least 30 days prior to the effective date of the permit]. Permit applications and bond releases under this section are exempt from the newspaper public notice requirements of section 10(a) of the act (52 P. S. § 3310(a)).

(g) It is unlawful for a person who has obtained a small noncoal surface mining permit to mine more than [2,000] 10,000 tons (9,800 metric tons) in a 1-year period from each permit issued under this section.

(h) [Minerals produced by members of the applicants' family, relatives or related parties shall be attributed to the applicant unless the applicant demonstrates that there is no direct or indirect business relationship between them.

(i) A general small noncoal permit will require [A person operating under a small noncoal permit shall submit a bond in accordance with the bond rates established by the Department. The minimum bond for a small noncoal permit is \$1,000.

(i) Bond release shall be based on the reclamation requirements under this section in lieu of §§ 77.241—77.243 (relating to release of bonds).

(j) The Department may by agreement delegate to a conservation district one or more of its regulatory functions under the act for **[surface mining operators licensed to mine less than 2,000 tons of marketable minerals per year] operations authorized under this section as allowed by the act.** A conservation district acting under a delegation agreement has the same powers and duties otherwise vested in the Department to implement the act to the extent delegated by agreement.

§ 77.109. Noncoal exploration activities.

(a) **[Application. This section applies to a person who conducts or seeks to conduct noncoal exploration outside of the permit area. Noncoal exploration which substantially disturbs the natural land surface shall comply with the minimum performance standards and design requirements of this section. The Department may, if it deems necessary, require compliance with other applicable performance and design requirements of this chapter.**

(b) **Definition.** The following word, when used in this section has the following meaning, unless the context clearly indicates otherwise:

Substantially disturb—For purposes of noncoal exploration, to have an impact upon land, air or water resources by activities such as blasting, mechanical excavation, construction of roads and other access routes, and the placement of structures, excavated earth or other debris on the surface of land.

(c) **General requirements.**

(1) **[A person who intends to conduct noncoal exploration [during which noncoal minerals will not be removed except from boreholes or coreholes in the area to be explored] outside an existing permit shall [, prior to conducting the exploration,] file with the Department [one copy of] a written notice of intention to explore for each exploration area at least 10 days prior to the start of exploration activities on forms provided by the Department.**

[(2)](b) The notice shall include:

[(i)](1) ***

[(ii)] The name, address and telephone number of the representative who will be present at and responsible for conducting the exploration activities.

(iii)](2) A map, at a scale of 1:24,000, of the exploration area showing the extent of the exploration area and **[drill hole] locations of drill holes, exploratory pits, trenches and excavations.**

[(iv)](3) ***

(4) The method of exploration and types of equipment to be used.

[(v)] A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.]

(5) The purpose of testing.

(6) The amount of mineral needed for testing (if exploration is by test pit, trench or excavation).

(7) Other information the Department deems relevant to assure compliance with the environmental acts (for example—the location of access roads).

(c) Exploration by drilling methods may proceed 10 days after the notice of intent to explore form is submitted to the Department unless notified otherwise by the Department or if the area is located within the distance limitations of § 77.504 (relating to distance limitations and areas designated unsuitable for mining).

[(3)] A person who conducts noncoal exploration which substantially disturbs the natural land surface shall comply with the noncoal exploration performance and design standards of this section.

(4)] (d) ***

[(5)](e) ***

[(6)](f) A person who conducts noncoal exploration activities will observe the distance limitations under § 77.504 **[relating to distance limitations and areas designated unsuitable for mining].**

(g) Exploration activities shall be conducted to accomplish the following:

(1) Minimize environmental impacts on roadways and vegetation.

(2) Provide erosion controls for excavated areas, including access roads, in accordance with Chapter 102 (relating to erosion control).

(3) Avoid disturbance of wetland areas.

(h) The areas affected by the noncoal exploration shall be graded to approximate original contour when possible or restored to a slope not to exceed 35° unless approved by the Department under § 77.594(2)(v) (relating to final slopes), and will contain no depressions which will impound water. Drill holes shall be sealed under § 77.503 (relating to casing and sealing of drilled holes). The affected areas shall be revegetated.

[(d) Noncoal exploration performance and design standards. The performance standards in this section are applicable to noncoal exploration which substantially disturbs the land surface.

(1) Habitats of wild and endangered species or wetland areas may not be disturbed during noncoal exploration.

(2) The person who conducts noncoal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations to minimize environmental damage to the area and to provide supportive information for a permit application that the person may submit under this chapter.

(3) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts noncoal exploration to that absolutely necessary to conduct the exploration. Vehicular travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(i) New roads in the exploration area shall comply with §§ 77.631 and 77.632 (relating to general requirements; and restoration).

(ii) Existing roads may be used for exploration in accordance with the following:

(A) Applicable Federal, State and local requirements shall be met.

(B) If the road is significantly altered for exploration, including, but not limited to, change of grade, widening or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then paragraph (7) shall apply to areas of the road which are altered or which result in these additional contributions.

(C) If the road is significantly altered for exploration activities and will remain as a permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of §§ 77.631 and 77.632 are met for the design, construction, alteration and maintenance of the road.

(iii) Promptly after exploration activities are completed, existing roads used during exploration shall be restored to one of the following:

(A) A condition equal to or better than their pre-exploration condition.

(B) The condition required for permanent roads under §§ 77.631 and 77.632.

(4) If excavations, artificial flat areas or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after the features are no longer needed for noncoal exploration.

(5) Topsoil shall be removed, stored and redistributed on disturbed areas as necessary to assure successful revegetation.

(6) Revegetation of areas disturbed by noncoal exploration shall be performed by the person who conducts the exploration, or his agent.

(7) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads and support facilities, an ephemeral, intermittent or perennial streams may not be diverted during noncoal exploration activities. Overland flow of water shall be diverted in a manner that does the following:

(i) Prevents erosion.

(ii) Prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area, to the extent possible using the best technology currently available.

(iii) Complies with other applicable State or Federal requirements.

(8) An exploration hole, borehole, well or other exposed underground opening created during exploration shall meet the requirements of § 77.503 (relating to casing and sealing of drilled holes).

(9) Facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that the Department determines may remain to do one of the following:

(i) Provide additional environmental quality data.

(ii) Reduce or control the onsite and offsite effects of the exploration activities.

(iii) Facilitate future surface mining and reclamation operations by the person conducting the exploration, under an approved permit.

(10) Noncoal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures which comply with Chapter 102 (relating to erosion control).

(11) Toxic-forming or acid-forming materials shall be handled and disposed of under § 77.529 (relating to acid-forming and toxic-forming spoil).

(12) Blasting operations of noncoal exploration sites shall comply with applicable State and Federal laws in the use of explosives and with §§ 77.561(b) and (c) and 77.562 (relating to general requirements; and preblasting surveys).

(e) *Noncoal exploration compliance duties.*

(1) Noncoal exploration and reclamation activities which substantially disturb the natural land surface shall be conducted in accordance with the noncoal exploration requirements of applicable State and Federal laws, this chapter and conditions on approval for exploration and reclamation imposed by the Department.

(2) (i) [A person who conducts noncoal] Noncoal exploration [in violation of this subchapter] activities shall be subject to the applicable inspection and enforcement provisions of the Department, and Subchapters E and F (relating to civil penalties for noncoal mining activities; and enforcement and inspection).

(f) (j) *Public availability of information.*

(1) Except as provided in paragraph (2), information submitted to the Department under [the subchapter] this section will be made available for public inspection and copying at the appropriate [District Office of the Department] district mining office.

(2) Information which pertains only to the analysis of the chemical and physical properties of the mineral ([excepting] except information regarding the mineral or elemental content that is potentially toxic to the environment) will be kept confidential and will not be made a matter of public record.

§ 77.110. Permit waiver—oil and gas well site development.

[As used in this section the term “borrow area” means an area where minerals are extracted solely for the purpose of oil and gas well development. The noncoal surface mining permit requirements of the act and this chapter do not apply to the extraction of noncoal minerals from borrow areas for the purpose of oil and gas well site development, including access road construction, if the well operator demonstrates, at a minimum, to the Department’s satisfaction that the following exist:

(1) The noncoal minerals are used solely for site development at a well site regulated under the Oil and Gas Act (58 P. S. § 601.101—601.605).

(2) The borrow area will not be used for a period exceeding 30 days.

(3) The well operator maintains a valid Noncoal Surface Mining Operator License prior to the extraction of noncoal minerals under Subchapter B (relating to surface mining operator's license).

(4) Noncoal mineral extraction in the borrow area will be conducted in accordance with an erosion and sedimentation control plan or permit implemented under Chapter 102 (relating to erosion control).

(5) The areas affected by the extraction of noncoal minerals will be graded and restored to a slope not to exceed 35 degrees, and will contain no depressions which will impound water. The affected areas will be revegetated to provide a quick germinating, fast-growing, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal to extent of cover to the natural vegetation of the area. Introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. Vegetative cover shall be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the land use, when compared with the utility of naturally-occurring vegetation during each season of the year.

(6) The reclamation of the borrow area will commence within 10 days of the last extraction of noncoal minerals and will be completed within 30 days. Planting shall be completed by the first normal period for favorable planting.]

This chapter does not apply to a borrow area where minerals are extracted solely for the purpose of oil and gas well development, including access road construction, if the owner or operator of the well meets the requirements of section 603.1 of the Oil and Gas Act (58 P. S. § 601.603).

REVIEW, PUBLIC PARTICIPATION, ITEMS AND CONDITIONS OF PERMIT APPLICATIONS

§ 77.126. Criteria for permit approval or denial.

(a) A permit, permit renewal or revised permit application will not be approved, unless the application affirmatively demonstrates [to] and the Department finds in writing, on the basis of the information in the application or from information otherwise available, that the following apply:

* * * * *

(4) The proposed permit area, as defined in § 77.1 (relating to definitions) for surface mining activities—unless the requirements of § 77.504 (relating to distance limitations and areas designated as unsuitable for mining) are demonstrated—is:

(i) Not within 100 feet (30.5 meters) of the outside right-of-way line of a public highway.

(ii) Not within 300 feet (91.4 meters) of an occupied dwelling house or commercial or industrial building unless released by the owner thereof.

(iii) Not within 100 feet (30.5 meters) of the bank of a perennial or intermittent stream.

(iv) Not within 300 feet (91.4 meters) of a public building, school or community or institutional building.

(v) Not within 100 feet (30.5 meters) of a cemetery.

(vi) Not within 300 feet (91.4 meters) of a public park.

(vii) Not within 125 feet (38.1 meters) of an oil or gas well.

* * * * *

(6) [The applicant is in satisfactory compliance with compliance orders of the Department.

(7)] The applicant or related party, as indicated by past or continuing violations, has not shown a lack of ability or intention to comply with the act or the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31).

[(8)](7) ***

[(9)](8) ***

[(10)](9) ***

(10) The proposed activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their known critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544), the Wild Resource Conservation Act (32 P. S. §§ 5301—5314), 30 Pa.C.S. (relating to the Fish and Boat Code) and 34 Pa.C.S. (relating to the Game and Wildlife code).

(11) The applicant has obtained a noncoal license.

(b) No incremental phase approval of the permit will be granted to conduct mining or reclamation operations, or permission to expand mining or reclamation operations within a permit area which has been limited to a portion or phase of the entire area until the applicant:

* * * * *

(2) Has met the requirements of subsection (a)(5) [and (6) for surface mining and subsection (a)(5)—(7) for underground mining]—(8).

§ 77.128. Permit terms.

* * * * *

(b) A permit will terminate if the permittee has not begun the noncoal mining activities covered by the permit within 3 years of the issuance of the permit. The Department may grant reasonable extensions of time for commencement of these activities upon receipt of a written statement showing that the extensions of time are necessary if litigation precludes the commencement or threatens substantial economic loss to the permittee or if there are conditions beyond the control and without the fault or negligence of the permittee. Requests for extensions shall be submitted to the Department prior to expiration of the permit. [A permittee whose] If a permit has not been activated within 3 years [nor] or the permittee has not been granted an extension [shall], the permittee may apply for a permit renewal.

(c) A permit renewal application shall be filed under § 77.143 (relating to permit renewals).

PERMIT REVIEWS, RENEWALS, REVISIONS AND TRANSFERS

§ 77.142. Public notice of permit revision.

A permit revision request is subject to the notice requirements of § 77.121 (relating to public notices of filing of permit applications) under the following circumstances:

(1) For surface mining activities:

(i) Discharging to a different watershed [**not previously receiving a discharge from the operation**] or a change in water [**handling procedure. Water handling includes, but is not limited to,**] treatment facility design [**and**] which would result in a change in effluent limits or additional discharge points.

* * * * *

(iii) A [**major**] change in the type of reclamation [**plan including, but not limited to, changes in the final reclamation slopes or means to achieve the final slopes**] (for example—approximate original contour, terrace, water impoundment or other alternative reclamation).

(iv) A [**proposed**] physical change in the mine configuration. Physical changes include[, **but are not limited to,**] stream diversion structures, new or expanded haul [**roads and**] road connections to a public highway, elimination of public highways and increases in approved pit depth.

* * * * *

(vi) The addition of mineral processing to the mining activity.

(2) For underground mining activities:

(i) Discharging to a different watershed [**not previously receiving a discharge from the operation**] or a change in water [**handling procedure. Water handling includes, but is not limited to,**] treatment facility design [**and**] which would result in a change in effluent limits or additional discharge points.

(ii) A [**proposed**] physical change in the mine configuration. Physical changes include[, **but are not limited to,**] stream diversion structures, new or expanded haul [**roads**] road connections to a public highway, elimination of public highways[,] and new openings [**and acreage modifications**].

(iii) A [**proposed**] change to the postmining land use.

§ 77.144. Transfer of permit.

* * * * *

(c) The Department may allow a permittee to transfer a permit to another operator if the successor operator:

(1) [**Is entitled to a permit under the environmental acts, the act, regulations adopted thereunder and the terms and conditions of permits issued thereunder**] Meets the requirements of § 77.126.(a)(6)—(8) (relating to criteria for permit approval or denial).

* * * * *

(5) Submits additional information to enable the Department to determine that the applicant is able to operate the mine in a manner complying with [**the act and**] the environmental acts.

REQUIREMENTS FOR LEGAL, FINANCIAL COMPLIANCE AND RELATED INFORMATION

§ 77.164. Personal injury and property damage insurance information.

An application for noncoal mining activities, [**except for small noncoal permits**] when required by the act, shall contain proof of liability insurance under § 77.231 (relating to terms and conditions for liability insurance).

§ 77.165. Proof of publication.

(a) An application shall contain an intent to publish noting that the advertisement requirement of § 77.121(a) (relating to public notices of filing of permit applications) is in the process of being satisfied. Prior to the issuance of the permit, and within 4 weeks after the last date of advertisement, the applicant shall submit a copy of the [**advertisement**] advertisements as required by § 77.121(a) [**and**] or the original notarized proof of publication to the Department.

* * * * *

Subchapter D. BONDING AND INSURANCE REQUIREMENTS

AMOUNT AND DURATION OF LIABILITY

§ 77.204. Period of liability.

(a) Liability under bonds posted for a noncoal mining activity shall continue for the duration of the mining activities and its reclamation as provided in the act, this chapter and the conditions of the permit for [**a period of**] 5 years after completion of the mining and reclamation of the area, unless released in whole or in part prior thereto [**as provided by the act, the environmental acts and this subchapter**] if the Department is satisfied that the reclamation covered by the bond has been accomplished as required by the act.

* * * * *

§ 77.205. [Adjustments] Bond adjustments.

* * * * *

(d) The Department will notify the permittee, the surety and any person with a property interest in collateral who has requested notification, of any proposed adjustment to the bond amount. The Department will also provide the permittee an opportunity for an informal conference on the proposed adjustment.

FORM, TERMS AND CONDITIONS OF BONDS AND INSURANCE

§ 77.231. Terms and conditions for liability insurance.

(a) A license applicant or licensee, [**except small noncoal operators,**] when required by the act, shall submit proof of liability insurance before a license is

issued or renewed and before a permit is issued. The proof shall consist of a certificate issued by an insurance company authorized to do business in this Commonwealth, and the certificate may be filed at the time of license application and renewal thereof; or, otherwise annually filed with the Department certifying that the permittee has a public liability insurance policy in force covering the licensee's mining and reclamation operations in this Commonwealth.

* * * * *

RELEASE OF BONDS

§ 77.241. Scope.

Sections 77.242 and 77.243 (relating to procedures for seeking release of bond; and criteria and schedule for release of bond) set forth the procedures and criteria for release of bonds for mining and reclamation operations, unless otherwise specified by the terms and conditions of this chapter or by a general permit issued under this chapter.

§ 77.242. Procedures for seeking release of bond.

(a) Release of bond. The permittee may file an application with the Department for release of all or part of the bond liability applicable to a permit or designated phase of a permit area after reclamation, restoration and abatement work in a reclamation stage, as defined in § 77.243 (relating to criteria and schedule for release of bond), has been completed on the permit area or designated phase of a permit area, subject to the following conditions:

* * * * *

(2) [Within 10 days after the final date of publication for application for final release, the permittee shall submit proof of publication of the advertisement required by subsection (b). The proof of publication shall be considered part of the bond release application.] Within 60 days after filing the application for release, the permittee shall submit proof of publication of the advertisement required by subsection (b). The proof of publication shall be considered part of the bond release application. If the proof of publication is not received within 60 days after filing the application for release of bond, the application will be considered incomplete and the Department may return the application with no further action.

* * * * *

§ 77.243. Criteria and schedule for release of bond.

* * * * *

(b) For the purposes of this section the following apply:

(1) Reclamation Stage I shall be deemed to have been completed when:

* * * * *

(iii) The lands [are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of the act, this chapter or the permit] have been stabilized to prevent accelerated erosion and sedimentation in accordance with Chapter 102 (relating to erosion control).

* * * * *

Subchapter G. INFORMATION ON ENVIRONMENTAL RESOURCE

§ 77.401. Responsibilities.

A permit application shall contain a description of the existing, premining resources within the proposed permit and adjacent area that may be affected by the proposed surface mining activities. The description shall include the information required in this subchapter. The Department may waive, wholly or in part, the requirements of this subchapter for any category of surface mining operation, if the Department determines that the requirement is not needed to evaluate impacts on public health and safety and the environment.

§ 77.403. Description of hydrology and geology—general requirements.

(a) An application shall contain a description, under this section and §§ 77.404—77.407, of the geology, hydrology and water quality and quantity of surface waters and groundwaters within the general area, and water which will flow into or receive discharges of water from the general area to the extent necessary for the type of noncoal operation for the Department to evaluate the impacts of the operation. The information may be gathered from appropriate government agencies, if available.

(b) The use of modeling or other predictive techniques may be required by the Department as part of the permit application [, but the same surface water and groundwater information shall be required for each site when models are not used] if the proposed mining activity has the potential to impact water supplies or streams.

Subchapter H. REQUIREMENTS FOR OPERATION AND RECLAMATION PLAN

§ 77.456. Reclamation information.

An application shall contain a plan [for the reclamation of the lands within the proposed permit area, including] which provides for reclamation concurrent with the progress of the proposed mining operation to the highest extent possible. The plan shall include the following information:

(1) A timetable describing the steps to be taken in the reclamation plan and their relative sequence to each other to meet the requirements of § 77.595 (relating to concurrent reclamation).

* * * * *

§ 77.461. Dams, ponds, embankments and impoundments.

* * * * *

(b) The general plan shall contain the following:

* * * * *

(2) Preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure if requested by the Department.

* * * * *

[(4) A certification statement which includes a schedule setting forth the dates that a detailed design of the structure will be approved by the Department, in writing, before construction of the structure begins.]

(c) The design plan for a structure shall:

* * * * *

(2) Include design and construction requirements for each structure, including [required] geotechnical information if requested by the Department.

* * * * *

(5) Include a stability analysis if the structure is more than 15 feet (4.6 meters) in height as measured from the upstream toe of the embankment to the crest of the emergency spillway or has a storage volume of more than 50 acre feet (61.7 cubic meters).

* * * * *

Subchapter I. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

GENERAL

§ 77.502. Signs and markers.

(a) The operator shall identify the operation for the duration of the surface mining activities by posting and maintaining a sign which will be clearly visible at the junction of each haul road and the public highway. The sign shall be constructed of a durable, weather resistant material and shall be of a minimum size of 2 feet by 3 feet (60 centimeters by 91.4 centimeters) with a light background and contrasting letters and numbers of a minimum height of 1½ inches (3.8 centimeters) that may be easily seen and read. The sign shall show the name of the operator conducting the surface mining activities, the telephone number of the operator and the identification number of the current permit authorizing noncoal mining activities. The sign shall be erected within 60 days after permit issuance.

* * * * *

§ 77.503. Casing and sealing of drilled holes.

(a) An exploration hole, other drill or borehole, well or other exposed underground opening—except for holes solely drilled and used for blasting—or other opening exposed during surface mining activities shall be cased, sealed or otherwise managed as approved by the Department if necessary to:

* * * * *

(2) [Prevent, to the maximum extent possible,] Minimize disturbance to the prevailing hydrologic balance.

* * * * *

[(d) A solid barrier of undisturbed earth, 125 feet in radius, shall be maintained around oil and gas wells, unless one of the following applies:

(1) The well is sealed under subsection (c).

(2) The Department approves, in writing, a lesser distance, if the following apply:

(i) Access to the well is provided at all times.

(ii) The integrity of the well is maintained.

(iii) The well operator agrees in writing to the lesser distance.]

§ 77.504. Distance limitations and areas designated as unsuitable for mining.

(a) Except as provided in subsection (b), a person may not conduct noncoal surface mining [operations] activities, other than borrow pits for highway construction purposes, as follows:

(1) Within 100 feet (30.5 meters) of the outside line of right-of-way of a public highway.

(2) Within 300 feet (91.4 meters) of an occupied dwelling house or commercial or industrial building, unless released by the owner thereof.

(3) Within 300 feet (91.4 meters) of a public building, school, community or institutional building.

(4) Within 300 feet (91.4 meters) of a public park.

(5) Within 100 feet (30.5 meters) of a cemetery.

* * * * *

(b) The Department may allow operators to operate within the distance limitations of subsection (a) if the operator demonstrates:

* * * * *

(2) Support areas. For parts of surface mining [operations] activities other than opening or expansion of pits, that special circumstances warrant [operations] activities within the distance limitations, that the public health and safety will not be endangered, that the environment and the interests of the public and the landowners affected thereby will be adequately protected and that there are no feasible or prudent alternatives to conducting those aspects of the [operation] activity within the distance limitations.

(c) A solid barrier of undisturbed material, 125 feet (38.1 meters) in radius shall be maintained around oil and gas wells unless one of the following apply:

* * * * *

(d) Areas to be affected within the 100-foot (30.5 meters) stream barrier shall meet the requirements of § 77.523 (relating to water obstructions and encroachments) in addition to subsection (b).

(e) When the surface mining activities would be conducted within 300 feet (91.4 meters) measured horizontally of an occupied dwelling or commercial or industrial building, the applicant shall submit with the application a written waiver from the owner of the dwelling or building, consenting to the activities within a closer distance of the dwelling or building as specified in the waiver. The waiver shall be:

(1) Knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(2) Effective against subsequent purchasers of the dwelling or building who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser shall be deemed to have constructive knowledge if the waiver was recorded at the office of the recorder of deeds in the county in which the dwelling or building is located or if the surface mining activities have proceeded to within the 300 foot (91.4 meters) limit prior to the date of purchase.

[(e)] (f) ***

* * * * *

HYDROLOGIC BALANCE

§ 77.527. Sedimentation [ponds] controls.

(a) Surface drainage from the disturbed area, including areas which have been graded, seeded or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. The Department may waive the required use of sedimentation ponds when the person who conducts surface mining activities demonstrates to the satisfaction of the Department that **alternate sediment [ponds are not necessary to meet the effluent limitations under § 77.522 (relating to effluent standards)] control facilities will prevent accelerated erosion and sedimentation in accordance with Chapter 102 (relating to erosion control).**

* * * * *

(c) Sedimentation ponds and **controls and** other treatment facilities shall be maintained until removal of the ponds and facilities is approved by the Department.

(d) Sedimentation ponds shall meet[, at a minimum,] the requirements of Chapters 102 and 105, if applicable, and be designed to meet the effluent requirements of the permit.

USE OF EXPLOSIVES

§ 77.562. Preblasting surveys.

(a) [No preblasting] Preblasting surveys will not be required if blasting is designed [to meet a peak particle velocity of .5 inch per second or less—with no seismographed blast to exceed .75 inch per second—] and conducted below the levels of blasting vibration shown on Figure #1 at the nearest [residence] dwelling, school, church, commercial or institutional building neither owned nor leased by the operator. [The .5 inch per second peak particle velocity limit shall remain in effect for the life of the operation.] If preblast surveys are not conducted, the operator shall provide a seismograph record including both the particle velocity time-history (wave form) and the particle velocity and vibration frequency levels for each blast.

(1) The vibration frequency shall be displayed and analyzed over the frequency range of 2 Hz through 100 Hz.

(2) The permittee shall obtain Department approval of the analytical method used to determine the predominant frequency before applying this alternative criterion.

(3) If an operator who has not offered preblasting surveys, blasts at a level exceeding the levels of vibration in figure #1, no additional blasting may be conducted until one of the following applies:

(i) The operator meets the requirements of subsections (b)—(e).

(ii) The operator demonstrates that subsequent blasting will produce vibrations at levels below the levels of blasting vibration shown in Figure #1.

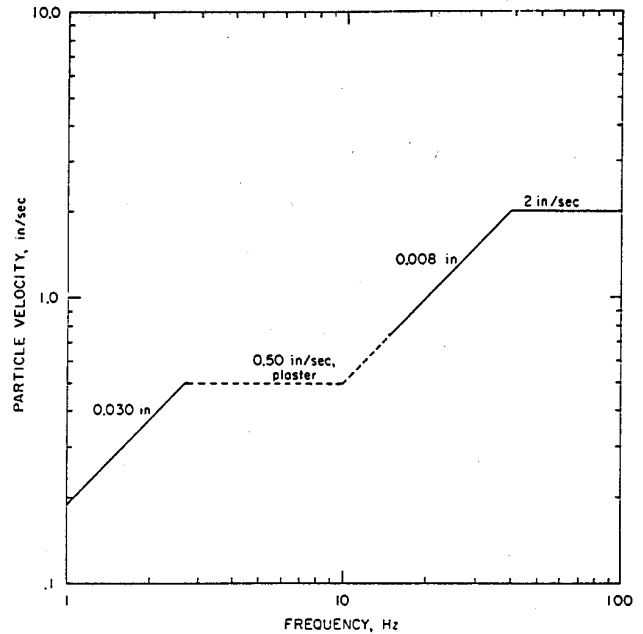


Figure #1.—Levels of blasting vibration using a combination of velocity and frequency.

(b) If the operator intends to conduct blasting at vibration levels exceeding [.5 inch per second] the levels of vibration in Figure #1 at the nearest dwelling, school, church, commercial or institutional building neither owned nor leased by the operator, [he] the operator shall offer preblast surveys. At least 30 days before commencement or resumption of the blasting, the operator shall notify, in writing, the residents or owners of dwellings or other structures located within [1000] 1,000 feet (304.8 meters) of the area where blasting will occur of their right to request a preblasting survey and how to request a preblasting survey. On the request to the Department or operator by a resident or owner of a dwelling or structure that is located within [1000] 1,000 feet (304.8 meters) of [a part of] the [permit] area where blasting will occur, the [persons who conduct the surface mining activities] operator shall promptly conduct a preblasting survey of the dwelling or structure. If a dwelling or structure is renovated or added to subsequent to a preblast survey, then, upon request by the resident or owner to the Department or operator, a survey of the additions and renovations shall be performed by the operator in accordance with this section. The operator shall provide the Department with a copy of the request.

* * * * *

§ 77.564. Surface blasting requirements.

* * * * *

(j) The maximum peak particle velocity limitation of subsection (i) does not apply at [the following locations:] a structure owned by the permittee.

[(1) At a structure owned by the person conducting the mining activity, and not leased to another party.

(2) At structures owned by the person conducting the mining activity, and leased to another party.]

* * * * *

OPERATIONS

§ 77.572. Permit line setback.

(a) [A permit boundary line setback distance shall be maintained for the highwall during mining.] Highwalls shall be set back from the boundary of the area covered by a bond under § 77.193 (relating to requirement to file bond). The setback shall be of sufficient width to accomplish the following:

* * * * *

[(3) Allow for a minimum 25-foot wide working area above the top of the final reclamation slope. The minimum setback in unconsolidated material shall be at least equal to the height of the face if the face is greater than 25 feet.]

(b) The minimum setback distance shall be 25 feet (7.6 meters) in consolidated material. In unconsolidated material, the minimum setback distance shall be equal to the height of the exposed unconsolidated material unless otherwise approved by the Department.

[(b)(c) ***

BACKFILLING AND GRADING

§ 77.594. Final slopes.

Final slopes for reclamation of noncoal surface mines shall conform with the following requirements:

* * * * *

(2) If terracing is approved for postmining reclamation, the final overall slope shall be 35 [degrees] ° or less unless otherwise approved under subparagraph (v).

(i) If a water impoundment is part of the reclamation, the slope shall extend to 50 feet (15.2 meters) below the post reclamation water level at a maximum slope of 35 [degrees] ° to serve as a safety bench for safe exit from the impoundment. The underwater safety bench may be reduced to a lesser depth—a minimum 25-foot (7.6 meters) width shall be maintained in all cases—if the operator demonstrates to the Department's satisfaction that there will be an overflow at a defined elevation or that the seasonal water table fluctuation will not require a 50-foot (15.2 meters) depth. **For purposes of safe exit from an impoundment in unconsolidated materials, the Department may require an underwater safety bench be sloped at less than 35° from the horizontal.**

* * * * *

§ 77.595. Concurrent reclamation.

(a) Reclamation procedures, including backfilling, grading, topsoil replacement and revegetation of land that is disturbed by noncoal surface mining shall be kept concurrent with the progress of the proposed operation to the greatest extent possible in conformance with §§ 77.456, 77.592—77.594, this section [and], § 77.596 and the approved reclamation plan.

(b) If site conditions dictate that reclamation cannot begin until mineral extraction is terminated, the reasons for this delay shall be detailed in the reclamation plan required under § 77.456 (relating to reclamation information).

(c) Reclamation shall begin within 30 days of when mineral extraction is terminated, and be

completed within the time period specified in the approved reclamation plan.

(d) Mineral extraction is considered to be terminated when the permitted extent of the mineral reserves has been extracted.

(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)

Subchapter J. GENERAL PERMITS

Sec.

77.801. Scope.
77.802. Authorization for general permits.
77.803. Nature of a general permit; substitution for individual applications and permits.
77.804. Contents of general permits.
77.805. Procedure for issuance.
77.806. Registration requirements.
77.807. Compliance with permit conditions, regulations and laws.

§ 77.801. Scope.

This subchapter applies to the issuance of general permits by the Department under section 26(b) of the act (52 P. S. § 3326(b)).

§ 77.802. Authorization for general permits.

Under this subchapter, the Department may issue general permits for any category of noncoal surface mining activities if the Department determines the following:

- (1) The activities in the category are similar in nature.
- (2) The activities in the category can be adequately regulated utilizing standardized specifications and conditions.
- (3) The activities in the category, in the opinion of the Department, are more appropriately regulated under a general permit than under individual permits.

§ 77.803. Nature of a general permit; substitution for individual applications and permits.

(a) When the Department issues a general permit for a specified category of noncoal surface mining activities, persons who intend to conduct a noncoal surface mining activity in accordance with the specifications and conditions of the general permit may do so without obtaining an individual permit.

(b) The general permit sets forth the standardized specifications and conditions for design, operations and monitoring as are necessary to adequately protect life, health, property and the environment. The operator shall comply with the standardized specifications and conditions of the general permit in lieu of the requirements of Subchapters C, D, G, H and I.

(c) A person may only use a general permit if the following apply:

- (1) Activities are conducted in accordance with the specifications, terms and conditions of the applicable general permit.
- (2) The operator of the noncoal surface mining activity complies with the registration requirements in the general permits, as authorized by § 77.806 (relating to registration requirements).

(d) The Department may amend, suspend, revoke, reissue or terminate any general permit or any individual registration authorized under this subchapter.

(e) Notwithstanding subsections (a)—(c), the Department may require an operator authorized by a general permit to apply for, and obtain, an individual permit when the person or municipality is not in compliance with the conditions of the general permit.

§ 77.804. Contents of general permits.

A general permit at a minimum shall:

(1) Describe the category of noncoal surface mining activities authorized by the general permit, including any exceptions to that authorization.

(2) Specify the areas where the general permit is effective.

(3) Set forth a set of standardized specifications or plans for the category of noncoal surface mining activities or a reference to specific criteria and requirements adopted by another Federal or State agency which adequately regulate the category or particular aspects of this category.

(4) Set forth conditions governing the erosion controls, operations, reclamation, blasting, inspection and monitoring of the activities covered by the general permit as are necessary to assure compliance with the act and with other laws administered by the Department.

(5) Specify registration requirements, if any, established under § 77.806 (relating to registration requirements).

(6) Set forth registration fees, if any, and bond requirements, if any, and procedures for release of bond for the category covered by the general permit.

§ 77.805. Procedure for issuance.

(a) The Department may issue or modify a general permit for a category of noncoal mining activities and in accordance with this section.

(b) At least 30 days prior to issuance of a general permit, the Department will publish notice in the *Pennsylvania Bulletin* of intent to issue a general permit, including the text of the proposed general permit and the locations where standardized plans may be reviewed.

(c) An opportunity shall be provided for interested members of the public and State agencies to provide written comments to the Department on a proposed general permit.

(d) The Department may hold a public hearing on a proposed general permit for the purposes of gathering information and comments.

(e) General permits issued by the Department will be published in the *Pennsylvania Bulletin* at least 30 days prior to the effective date of the permits, as required by section 26(b) of the act (52 P. S. § 3326(b)).

§ 77.806. Registration requirements.

(a) The Department may require the registration of noncoal surface mining activities conducted under a general permit.

(b) Registration requirements shall be set forth in each general permit.

(c) Registration requests at a minimum shall set forth:

(1) The name, address and surface mining operator's license number of the person responsible for the activities.

(2) The location of the activities.

(3) The name or number of the general permit being utilized for the activities.

(4) Information and documents to satisfy the requirement of § 77.163 (relating to right of entry).

(5) Identification of ownership interests in the property including rights to the minerals.

(6) The names and addresses of the owners of record of surface areas contiguous to any part of the area proposed for authorization to operate under a general permit.

(7) A description of the proposed noncoal surface mining activities that demonstrates that the operation would qualify to operate under the general permit.

(d) For an activity requiring registration under this section, an amended registration shall be filed if there is a change of ownership of the entity conducting the surface mining activities.

(e) For an activity requiring registration under this section, the applicant cannot conduct surface mining activities under a general permit until notice of Department approval of registration.

(f) The Department may require public notice in a newspaper of a proposed registration.

§ 77.807. Compliance with permit conditions, regulations and laws.

A person who operates under a general permit shall maintain a valid surface mining operator's license and comply with the specifications, terms and conditions of the general permit, applicable law and regulations.

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