

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 86]

### Surface and Underground Coal Mining

The Environmental Quality Board (Board) by this order proposes to amend Chapter 86 (relating to surface and underground coal mining; general). The proposed amendments are the result of the Department of Environmental Protection's (Department) Regulatory Basics Initiative and Executive Order 1996-1, which directed the Department to revise regulations which are more stringent than Federal law, unless there is a compelling State interest; lack clarity; and which impose disproportionate costs on the regulated community.

This proposal was adopted by the Board at its meeting of October 21, 1997.

#### 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 David C. Hogeman, Chief, Division of Environmental Analysis and Support, Bureau of Mining and Reclamation, 5th floor, Rachel Carson State Office Building, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-4761, or Joseph Pizarchik, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P. O. Box 8464, 9th Floor, 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 authority of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), section 4.2(a), 52 P. S. § 1396.4b(a), which provides general rulemaking authority, section 4.5, 52 P. S. § 1396.4e, which provides for the designation of an area as unsuitable for all or certain types of surface mining operations; and under the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66), section 3.2(a), 52 P. S. § 30.53b(a), which authorizes the adoption of rules and regulations, section 6.1, 52 P. S. § 30.56a, which provides for the designation of an area as unsuitable for all or certain types of coal refuse disposal operations; and under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), section 5, 35 P. S. § 691.5, which authorizes the adoption of rules and regulations, section 315(h)—(o), 35 P. S. § 691.315(h)—(o), which provides for the designation of an area as unsuitable for all or certain types of surface mining operations; and under sections

1920-A and 1930-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30), which authorizes the adoption of regulations necessary for the Department to perform its work.

#### D. *Background and Purpose*

These proposed amendments are the result of the Department's Regulatory Basics Initiative, which was initiated in August 1995, and Governor Ridge's Executive Order 1996-1 dated February 6, 1996. Under both of these initiatives, the Department was directed to review its existing regulations to ensure that they were consistent with several rulemaking directives. The Department has solicited public input concerning its existing regulations. Comments received by the Department, and the Department's own review of its existing regulations, have identified a number of provisions which need to be revised. These are contained in this proposed rulemaking package.

In August of 1995, the Department began the Regulatory Basics Initiative to analyze regulations which were more stringent than Federal law and regulations, lacked clarity and imposed disproportionate costs on the regulated community. Regulations which are more stringent than Federal requirements are proposed for revision, unless justified by a compelling and articulable Pennsylvania interest or required by State law.

As a result of this review, the Department developed two alternative proposals for consideration and presented them to the Mining and Reclamation Advisory Board (MRAB) at its meeting of October 3, 1996.

The first of these alternatives, in addition to providing clarity and changing those regulations found to be more stringent than Federal requirements, would have changed the existing Board rulemaking process to a Department decision-making process. The existing rulemaking process involves substantial administrative and technical effort and requires 19 to 27 months to reach a final decision. This process does not allow a final regulatory decision on a designation to be made within 12 months. This adjudicatory version provided for a public hearing early in the petition review process, reduced the time necessary to make a final decision on the petition by approximately 1 year and would have subjected Department decisions to review by the Environmental Hearing Board.

The second alternative, which is the subject of this proposed rulemaking, would retain the existing Board rulemaking process. Although this process does require additional time to reach a final decision, it also provides a more significant level of public participation in decisions concerning the designation of areas as unsuitable for mining, in keeping with this administration's objective to improve public access to information and decisionmaking in the Department. Under this approach, the Department makes a final recommendation to the Board within 12 months of the receipt of a complete petition.

Numerous changes to the regulatory language in § 86.1 (relating to definitions) and §§ 86.101—86.130 are being proposed to provide clarity and to enhance the consistency with the language used in Federal regulations. Sections 86.102(9), 86.103(e) and 86.129 are being changed because they were found to be more stringent than Federal requirements. Metric equivalences have also been incorporated where appropriate.

Under the Regulatory Basics Initiative, the Department solicited public input through a notice in the *Pennsylvania Bulletin* at 25 Pa.B. 3343 (August 19, 1995) and the Department's Web site (<http://www.dep.state.pa.us>). The proposed amendments are the result of suggestions from the public and the Department's own review of its regulations.

The proposed amendments were discussed with the MRAB at its meeting of October 3, 1996. The MRAB recommended that the Board consider an adjudicatory decisionmaking process for proposed rulemaking.

#### E. *Summary of Amendments*

Numerous nonsubstantive changes have been made throughout these regulations to correct references to agency names, typographical errors and to clarify language and add metric equivalences where appropriate. Substantive changes are described as follows by section.

##### § 86.1. *Definitions.*

The proposed changes would add a definition for "administratively complete application" as it is defined by Federal regulations in 30 CFR 701.5 (relating to permanent regulatory program: definitions) and would delete the definition for "complete application." This change will provide clarification of the mine permit application requirements consistent with the context in which the term is used in the Department's coal mining regulations.

The proposed changes would also replace the definition of "valid existing rights" with a reference to the term defined by Federal regulations in 30 CFR 761.5 (relating to areas unsuitable for mining). This change is consistent with State statutory requirements (52 P. S. § 1396.4e). The Office of Surface Mining Reclamation and Enforcement (OSMRE) is considering revisions to this definition in response to court rulings and a reference to the Federal requirements will avoid the need for future rulemaking if changes are implemented by OSMRE.

##### § 86.101. *Definitions.*

The definitions of "fragile lands," "historic lands," "public building," "public park," "renewable resource lands," "significant recreational, timber, economic or other values incompatible with surface mining" and "surface mining operations" are proposed to be changed for clarification consistent with the language used in Federal regulations in 30 CFR 700.5, 701.5, 761.5 and 762.5 (relating to general: definitions; permanent regulatory program: definitions; areas unsuitable for mining: definitions; and criteria for designating areas as unsuitable for surface coal mining operations: definitions).

##### § 86.102. *Areas where mining is prohibited or limited.*

Section 86.102(1) is proposed to be changed to be consistent with 30 CFR 761.11 (relating to areas where mining is prohibited or limited) by providing a prohibition of mining on Wild and Scenic Rivers or study river corridors established in any guidelines under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C.A § 1276(a)).

Section 86.102(3) is proposed to be changed to delete the prohibition of mining for sites which are eligible for listing, but not listed, on the National Register of Historic Places. This change is consistent with 30 CFR 761.11(c).

Section 86.102(4), (5) and (7) is proposed to be changed to add the Department of Conservation and Natural

Resources as approving authority for mine permit actions on certain Commonwealth property consistent with the responsibility assigned to that agency.

Section 86.102(9) was found to be more restrictive than Federal counterpart regulations in 30 CFR 761.11(e). The proposed changes would provide that a valid waiver of the mining restriction by a property owner would remain in effect against subsequent owners who had actual or constructive knowledge of the existing waiver. This change is consistent with the Federal requirements.

Section 86.102(11) is proposed to be changed to provide clarification that cemeteries, which serve as barriers to mining, may be moved in accordance with applicable law. The change is consistent with Federal requirements in 30 CFR 761.11(g).

##### § 86.103. *Procedures.*

Section 86.103(d) is proposed to be changed in order to be consistent with the proposed changes concerning mining restrictions within 300 feet of an occupied dwelling in § 86.102(9) (relating to areas where mining is prohibited or limited).

Section 86.103(e) was found to be more stringent than Federal requirements concerning notification where proposed surface mining would adversely affect a publicly owned park. This proposed change will make the State requirement consistent with Federal requirements in 30 CFR 761.12(f) (relating to procedures).

##### § 86.121. *Areas designated unsuitable for mining.*

This section is proposed to be clarified to be consistent with the Federal language in 30 CFR 762.13 (relating to land exempt from designation as unsuitable for surface coal mining operations).

##### § 86.123. *Procedures: petitions.*

Section 86.123(c)(5) is proposed to be clarified to be consistent with Federal language in 30 CFR 764.13(a) (relating to petitions: right to petition) which requires a demonstration of an injury in fact to determine that a petitioner has an interest that could be adversely affected.

##### § 86.124. *Procedures: initial processing, recordkeeping and notification requirements.*

Section 86.124(a)(2) is proposed to be changed to provide clarification that a frivolous petition is one in which the allegations of harm resulting from mining do not have serious merit. This proposed change is consistent with the language of Federal regulations in 30 CFR 764.15(a)(3) (relating to initial processing, recordkeeping and notification requirements).

Section 86.124(c) is proposed to be changed to include a requirement that intervenors describe how they are directly affected.

Section 86.124(f) is proposed to be changed to provide that the Department will prepare a recommendation within 12 months of the receipt of a complete petition.

##### § 86.125. *Procedures: hearing requirements.*

§ 86.125 (a)—(i) is proposed to be changed to provide clarification that it is the Department's responsibility to conduct public hearings on petitions and to provide notice of the hearings to the public, the petitioner and intervenors.

Section 86.125 (j) proposes to provide clarification that within 60 days of the close of the public comment period on a petition, the Department will prepare a recommendation to the Board and will provide written notice of its recommendation to the petitioner and intervenors.

*§ 86.126. Procedures: decision.*

The proposed changes to this section would provide clarification of the decisionmaking process for those cases when the Board determines that an area under petition should not be designated as an area unsuitable for mining. These proposed changes are consistent with the Federal requirements in 30 CFR 764.17, 764.19, 764.23 and 764.25 (relating to hearing requirements; decision; public information; and regulatory authority responsibility for implementation).

*§ 86.127. Database and inventory system requirements.*

This section contains several proposed minor stylistic and format changes.

*§ 86.128. Public information.*

The purpose of the proposed changes to this section is to correct language format and agency citations.

*§ 86.129. Coal exploration.*

This section was found to be more stringent than Federal requirements because of restrictions on exploration activities within areas under petition for designation as unsuitable for mining, which are not contained in the Federal regulations. The proposed changes make this section consistent with the Federal requirements in 30 CFR 762.14 (relating to exploration on land designated as unsuitable for surface coal mining operations).

*§ 86.130. Areas Designated as Unsuitable for Mining.*

This section contains numerous proposed minor changes that provide metric measurements for existing designations.

*F. Benefits, Costs and Compliance*

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

*Benefits*

These amendments are proposed to reduce unnecessary requirements, provide clarity, eliminate redundant or outdated requirements or eliminate State requirements more stringent than their Federal counterparts, when there is no compelling State interest in being more stringent.

The coal mining industry, the public and State government could see savings in the form of reduced time necessary to read and interpret regulations.

*Compliance*

The proposed changes are procedural and administrative in nature. They will impose no additional compliance costs on the regulated community. The Department conducts public information workshops for persons or organizations who may be interested in having an area designated unsuitable for mining. These workshops will be modified to describe the changes to the designation process made by these proposed amendments.

Coal mine operators who may be affected by a request to designate an area as unsuitable for mining are identified by the Department when a petition is received and are notified of the regulatory requirements, in writing.

*Costs*

The proposed amendments will impose no additional costs or paperwork requirements on the regulated community. These proposed amendments may reduce the time necessary to read and interpret regulations resulting in potential savings to the regulated community and State government.

*G. Sunset Review*

These proposed amendments 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 they were intended.

*H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed amendments on February 2, 1998, 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 10 days of the close of the Committees' 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 the regulation.

*I. Public Comments*

*Written Comments*—Interested persons are invited to submit written comments, suggestions or objections regarding 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 15, 1998 (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 15, 1998 (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 regulation will be considered.

*Electronic Comments*—Comments may be submitted electronically to the Board at RegComments@A.1.dep.state.pa.us and must also be received by the Board by April 15, 1998. A subject heading of the proposal and a return name and address, must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF  
*Chairperson*

**Fiscal Note:** 7-331. No fiscal impact; (8) recommends adoption.

Annex A

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

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter A. GENERAL PROVISIONS

§ 86.1. Definitions.

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

\* \* \* \* \*

**Administratively complete application**—An application for a permit which contains completed forms, standard reports and information addressing each application requirement of the Department which have been properly signed and witnessed, a filing fee and proof of publication necessary for the Department to initiate processing and public review.

\* \* \* \* \*

[ **Complete application**—An application for a permit which contains an application form properly completed, signed and witnessed, a filing fee, proof of publication, the standard reports or forms required by the Department to process a permit and which demonstrates compliance with applicable statutes and regulations. ]

\* \* \* \* \*

**Valid existing rights**—[ Includes the following:

(i) Except for haul roads and activities enumerated in subparagraph (iii), property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the applicant to produce minerals by a surface mining operation. The person proposing to conduct surface mining operations on the lands shall hold current State and Federal permits necessary to conduct the operations on those lands and either have held those permits on August 3, 1977, or had made by that date a complete application for the permits, variances and approvals required by the Department.

(ii) For haul roads, the term includes:

(A) A recorded right-of-way, recorded easement, or a permit for a haul road recorded as of August 3, 1977.

(B) Another road in existence as of August 3, 1977.

(iii) Coal preparation activities, and their associated haul roads, which were not subject to this chapter and Chapters 87—90 prior to August 25, 1989, were in existence on or before July 6, 1984, and were operating in compliance with applicable laws prior to that date.

(iv) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon the usage and custom at the time

and place where it came into existence, and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right and that the document has been signed by the surface owner.

(v) The term does not include the mere expectation of a right to conduct surface mining operations or the right to conduct underground coal mining. ]

Rights which exist under the definition of “valid existing rights” in 30 CFR 761.5 (relating to areas unsuitable for mining).

\* \* \* \* \*

Subchapter D. AREAS UNSUITABLE FOR MINING  
GENERAL PROVISIONS

§ 86.101. Definitions.

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

\* \* \* \* \*

**Fragile lands**—Geographic areas containing natural, ecologic, scientific or esthetic resources that could be significantly damaged or destroyed by surface mining operations. Examples include, but are not limited to, valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality and [ **buffer zones adjacent to the boundaries of** ] areas where surface mining operations are prohibited under section 4.5(h) of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4e(h)).

**Historic lands**—[ **Historic or cultural districts, places, structures or objects, including archaeological and paleontological sites, National Historic Landmark sites, sites listed** ] Areas containing historic, cultural or scientific resources. Examples of historic lands include archaeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, [ **sites** ] **National Historic Landmarks, properties** having religious or cultural significance to [ **native** ] Native Americans or religious groups [ **or sites** ], and **properties** for which historic designation is pending.

\* \* \* \* \*

**Public building**—A structure that is owned [ **by a public agency or used principally** ] or leased and principally used by a government agency for public business [ , ] or meetings [ **or other group gatherings** ].

**Public park**—An area or portion of an area dedicated or designated by a Federal, State or local agency primarily for public recreational use, whether or not the use is limited to certain times or days, including land leased, reserved or held open to the public because of that use. [ **For the purposes of this subchapter, local agency**

**includes nonprofit organizations owning lands which are dedicated or designated for public recreational use. ]**

\* \* \* \* \*

**Renewable resource lands—[ Aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands ] Areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.**

**Significant recreational, timber, economic or other values incompatible with surface mining operations—**Significant values which could be damaged by, and are not capable of existing together with, surface mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on **[ offsite ] other affected areas** which could be affected by mining. Values to be evaluated for their importance include:

\* \* \* \* \*

**Surface mining operations—**The extraction of coal from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip and auger mining, dredging, quarrying and leaching and surface activity connected with surface or underground coal mining, including, but not limited to, exploration, site preparation, entry, tunnel, slope, drift, shaft and borehole drilling and construction and activities related thereto, coal refuse disposal, coal processing and preparation facilities and activities involved in or related to underground coal mining which are conducted on the surface of the land, produce changes in the land surface, or disturbs the surface **[ , air ]** or water resources of the area.

**§ 86.102. Areas where mining is prohibited or limited.**

Subject to valid existing rights as defined in § 86.1 (relating to definitions), surface mining operations except those which existed on August 3, 1977, are not permitted:

(1) On lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic **[ River ] Rivers Act** (16 U.S.C.A. § 1276(a)) or **study rivers or study river corridors as established in guidelines under that act** and National Recreation Areas designated by act of Congress.

\* \* \* \* \*

(3) Which will adversely affect a publicly-owned park or a place included **[ on or eligible for inclusion ]** on the National Register of Historic Places, unless approved jointly by the Department and the Federal, State or local governmental agency with jurisdiction over the park or places.

(4) On lands within the State park system. Surface mining operations may be permitted if **the Department of Conservation and Natural Resources and the Department [ finds ] find** that significant land and

water conservation benefits will result when re-mining of previously mined land is proposed.

(5) On lands within State forest picnic areas, State forest natural areas and State forest wild areas. Surface mining operations may be permitted on State forest lands other than picnic areas, natural areas and wild areas, if **the Department of Conservation and Natural Resources and the Department [ finds ] find** that one or more of the following apply:

\* \* \* \* \*

(7) On lands within the authorized boundaries of Pennsylvania Scenic River Systems which have been legislatively designated as such under the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21—820.29). Surface mining operations may be permitted if **the Department of Conservation and Natural Resources and the Department [ finds ] find** that significant land and water conservation benefits will result when re-mining of previously mined lands is proposed, **[ or when the Department finds ] and** that the surface mining operation is consistent with the Scenic Rivers System designation and will not adversely affect the values which the designation is designed to protect.

(8) Within 100 feet **(30.48 meters)** measured horizontally of the outside right-of-way line of a public road, except:

\* \* \* \* \*

(ii) When the Department, with concurrence of the agency with jurisdiction over the road, allows the public road to be relocated or the area affected to be within 100 feet **(30.48 meters)** of the road, after the following:

\* \* \* \* \*

(9) Within 300 feet **(91.44 meters)** measured horizontally from an occupied dwelling, unless **one or more of the following apply:**

(i) **The only part of the surface mining operations which is within 300 feet (91.44 meters) of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling [ or unless the current ] .**

(ii) **The owner thereof has provided a written waiver [ consenting ] by lease, deed or other conveyance clarifying that the owner and signatory had the legal right to deny surface mining operations and knowingly waived that right and consented to surface mining operations closer than 300 feet (91.44 meters) of the dwelling as specified. [ The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner. ]**

(A) **A valid waiver shall remain in effect against subsequent owners who had actual or constructive knowledge of the existing waiver at the time of purchase.**

(B) **Subsequent owners shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records or if the surface mining operations have proceeded to within the 300 foot (91.44 meters) limit prior to the date of purchase.**

(10) Within 300 feet **(91.44 meters)** measured horizontally of a public building, school, church, community or institutional building or public park.

(11) Within 100 feet (30.48 meters) measured horizontally of a cemetery. **Cemeteries may be relocated under the act of April 18, 1877 (P. L. 54, No. 54) (9 P. S. §§ 41—52).**

(12) Within 100 feet (30.48 meters) measured horizontally of the bank of a perennial or intermittent stream. The Department may grant a variance from this distance requirement if the operator demonstrates beyond a reasonable doubt that there will be no adverse hydrologic impacts, water quality impacts or other environmental resources impacts as a result of the variance. The variance will be issued as a written order specifying the methods and techniques that shall be employed to prevent adverse impacts. Prior to granting a variance, the operator is required to give public notice of application thereof in two newspapers of general circulation in the area once a week for 2 successive weeks. If a person files an exception to the proposed variance within 20 days of the last publication thereof, the Department will conduct a public hearing with respect thereto. The Department will also consider information or comments submitted by the Fish and Boat Commission prior to taking action on a variance request.

**§ 86.103. Procedures.**

\* \* \* \* \*

(c) If the proposed surface mining operations are to be conducted within 100 feet (30.48 meters) measured horizontally of the outside right-of-way line of a public road—except where mine access roads or haulage roads join the right-of-way line—or if the applicant proposes to relocate a public road, the Department will:

\* \* \* \* \*

(d) When the proposed surface mining operations would be conducted within 300 feet (91.44 meters) measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver [from the current owner of the dwelling, consenting to the surface mining operations within a closer distance of the dwelling] as specified in [the waiver. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner.] § 86.102(9) (relating to areas where mining is prohibited or limited).

(e) When the proposed surface mining operations [may] will adversely affect a [public] publicly owned park or a place included on the National Register of Historic Places, the Department will transmit to the Federal, State or local agencies with jurisdiction over, or a statutory or regulatory responsibility for, the park or [historic] place, a copy of the completed permit application containing the following:

\* \* \* \* \*

(2) A notice to the appropriate agency that it shall respond within 30 days from receipt of the request.

(i) Upon request by the appropriate agency, a 30-day extension may be granted.

(ii) Failure to object within the comment period shall constitute an approval of the proposed permit by that agency.

\* \* \* \* \*

**CRITERIA AND PROCEDURES FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE MINING**

§ 86.121. Areas [designated] exempt from designation as unsuitable for surface mining operations.

[ (a) The requirements of this ] This section and §§ 86.122—86.129 do not apply to [permit] areas on which [surface mining operations were being conducted under a permit issued under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), or if substantial legal and financial commitments as defined by the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior under section 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. § 1272) if the surface mining operations were in existence prior to January 4, 1977.

(b) Permits for surface mining operations will not be issued in areas designated unsuitable under this subchapter. The permits may be issued in areas where the applicant has prior substantial legal and financial commitments in a surface mining operation if the applicant establishes the existence of the commitments to the satisfaction of the Department. In considering the permit applications in designated areas, the Department will impose terms and conditions to preserve and protect the applicable values and uses of the area. ]:

(1) Surface mining operations were being conducted on August 3, 1977.

(2) Surface mining operations have been authorized by a valid permit issued under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66), The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21).

(3) A person establishes that substantial legal and financial commitments in surface mining operations were in existence prior to January 4, 1977.

**§ 86.123. Procedures: petitions.**

\* \* \* \* \*

(c) The petitioner shall provide the following information [to the Department's Bureau of Mining and Reclamation (Bureau)] on forms developed by [that Bureau] the Department:

\* \* \* \* \*

(5) Identification of the petitioner's interest which is or may be adversely affected. A person having an interest which is or may be adversely affected shall demonstrate an "injury in fact" by describing the injury to the specific affected interest and demonstrating how the person is among the injured.

\* \* \* \* \*

**§ 86.124. Procedures: initial processing, record-keeping and notification requirements.**

(a) Within 30 days of receipt of a petition, the Department will notify the petitioner by certified mail whether or not the petition is complete as required by § 86.123 (relating to procedures: petitions). If the 30-day require-

ment of this subsection cannot be met due to the staff limitations of the Department, the Department may process the petition in accordance with the priority system authorized by subsection (b)(2). Within the 30-day period, the Department will also notify an applicant with pending surface mining permit applications in the area covered by the petition.

\* \* \* \* \*

(2) The Department may reject petitions for designations or terminations of designations which are frivolous. **A frivolous petition is one in which the allegations of harm lack serious merit.** Once the requirements of § 86.123 are met **[ , no party may bear a burden of proof, but ]** each accepted petition will be considered and acted upon by the Department under the procedures of this part.

\* \* \* \* \*

(c) Until 3 days before the **[ EQB ] Department** holds a hearing under § 86.125 (relating to procedures: hearing requirements), a person may become an intervenor in the proceeding by filing allegations of facts **describing how the designation determination directly affects the intervenor**, supporting evidence, a short statement identifying the petition to which the allegations pertain, a request for intervenor status **[ , ]** and **the** name, address and telephone number.

(d) Beginning immediately after a complete petition is filed, the Department will compile and maintain a record consisting of documents relating to the petition filed with or prepared by the Department. The Department will make the record available for public inspection **[ , ]** free of charge, and copying at reasonable cost, during normal business hours at the **[ Bureau of Mining and Reclamation ]** district **mining** office in the county or multicounty area in which the land petitioned is located, and at the main office of the Department.

\* \* \* \* \*

(f) The Department will prepare a recommendation **[ in the form of a proposed rulemaking ]** on each complete petition received under this section and submit it to the EQB **[ as a proposed regulation under this section ]** **within 12 months of receipt of the complete petition.**

**§ 86.125. Procedures: hearing requirements.**

(a) Within 10 months of the receipt of a complete petition, the **[ EQB ] Department** will hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held.

(b) The hearing shall be legislative and fact-finding in nature, without cross examination of witnesses. **[ The EQB will make a verbatim transcript of the hearing. ]**

(c) **No person will bear the burden of proof or persuasion.**

(d) **A verbatim transcript of the hearing will be made and included in the public record.**

**[ (b) ](e)** The **[ EQB ] Department** will give notice of the date, time and location of the hearing **by first class mail postmarked not less than 30 days before the scheduled hearing to:**

\* \* \* \* \*

(2) **[ The petitioner and the intervenors.**

**(3) A person with ] Persons known to the Department to have an ownership or other interest [ made known to the Department ]** in the area covered by the petition.

**[ (4) Notice of the hearing shall be sent by first class mail and postmarked not less than 30 days before the scheduled date of the hearing. ]**

**(f) The Department will give notice of the date, time and location of the hearing by certified mail postmarked not less than 30 days before the scheduled hearing to the petitioner and to the intervenors.**

**[ (c) ](g)** The **[ EQB ] Department** will notify the general public of the date, time and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement **[ shall ] will** begin between 4 and 5 weeks before the scheduled date of the public hearing.

**[ (d) ](h)** The **[ EQB ] Department** may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

**[ (e) ](i) [ The EQB will receive and consider written ] Written** comments on the petition **will be received and considered 15 days after the conclusion of the public hearing or as otherwise established by the Department.** If a hearing will not be held on a petition, the comments may be received and considered for 45 days following publication of a notice that there will be no public hearing.

**(j)** Within 60 days of the close of the public comment period, the **[ EQB ] Department** will **[ make a final written decision ]** prepare a recommendation to the EQB, **including a statement of the reasons for the recommendation and provide written notice of its recommendation to the petitioner and intervenors.**

**[ (f) ](k)** If **[ that ]** all petitioners and intervenors so stipulate, the petition may be withdrawn from consideration prior to the hearing.

**§ 86.126. Procedures: decision.**

(a) In **[ reaching its decision on the proposed rule ]** **deciding whether to designate an area as unsuitable for surface mining operations,** the EQB will consider:

\* \* \* \* \*

(b) **[ A final written decision in the form of a regulation will be issued by the EQB within 60 days following the public hearing, including a statement of reasons for the decision. ]** The EQB will promptly send the **regulatory** decision by certified mail to the petitioner, intervenors **[ , ]** and to the **[ Regional Director of the ]** Office of Surface Mining Reclamation and Enforcement, and will deposit and publish its **regulatory** decision as **[ a regulation in the manner ]** required by the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1102, 1201—1208 and 1602); 45 Pa.C.S. §§ 501—907.

[; and sections 3 and 4 of the act of July 9, 1976 (P. L. 877, No. 160) (45 Pa.Sp. Pamph. 84 page 35). ]

§ 86.127. [ Data base ] Database and inventory system requirements.

\* \* \* \* \*

(b) The Department will include in the system information relevant to the criteria in § 86.122 (relating to criteria for designating lands as unsuitable), including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Office, the Fish and Boat Commission, the Department of Conservation and Natural Resources' Scenic Rivers Program, the Game Commission, [ the Department of Community and Economic Development, ] private conservancies and the agency administering section 127 of the Clean Air Act (42 U.S.C.A. § 7470).

\* \* \* \* \*

§ 86.128. Public information.

The Department will:

(1) Make the information and database system developed under § 86.127 (relating to [ data base ] database and inventory system requirements) available to the public for inspection free of charge and for copying at reasonable cost during established office hours.

\* \* \* \* \*

§ 86.129. Coal exploration on areas designated as unsuitable for surface mining operations.

[ The submission of a petition to designate an area unsuitable for all or certain types of surface mining operations or designation ]

(a) Designation of an area as unsuitable for all or certain types of surface mining operations under this chapter does not prohibit coal exploration operations in the area.

(b) Coal exploration may [ not ] be conducted on an area designated as unsuitable for surface mining operations [ or where a petition to designate an area unsuitable for surface mining operations has been received by the Department ] in accordance with this chapter [ unless the exploration is ] if the following apply:

(1) The exploration is consistent with the designation [ or the purposes of the submitted petition and will ].

(2) The exploration will be conducted to preserve and protect the applicable values and uses of the area[ . ] under Subchapter E (relating to coal exploration), [ Exploration may not be conducted unless ] and the Department has [ been notified in advance and has ] issued written approval for the exploration. [ under § 86.133(f) (relating to general requirements). Approval will not be issued unless the person seeking the approval has described the nature and extent of the proposed operation, and has described in detail the measures to be employed to prevent adverse effects. ]

§ 86.130. Areas designated as unsuitable for mining.

\* \* \* \* \*

(b) The following is a list of descriptions of areas which are unsuitable for all or certain types of surface mining operations and where all or certain types of surface mining operations will not be permitted:

(1) The tract of approximately 233 acres (approximately 94.29 hectares) in Blacklick Township, Cambria County, described as follows:

Beginning at the northwest corner of the land owned by the Griffithtown Water Association and proceeding to the southwest corner, then easterly towards the southeast corner of the property and continuing in the same easterly direction to a point located 100 feet horizontal distance west of the Lower Freeport outcrop; then continuing in a southerly direction, remaining 100 feet (30.48 meters) from and paralleling the Lower Freeport outcrop as the outcrop proceeds easterly to intersect the 2,040 foot (621.79 meter) elevation contour; then along a straight line extending in a northeasterly direction intersecting the 2,282-foot (695.55 meter) elevation point and continuing to US 422; then west along US 422 to an intersection formed by a road, driveway or farmlane approaching US 422 from the north and located approximately 1.86 miles east (approximately 2.99 kilometers) of the junction of US 422 and Pa. Route 271 in Belsano; then continuing southwesterly in a straight line to the northwest corner of the Griffithtown Water Association property.

(2) The surface area overlying surface mineable coal reserves in a tract of approximately 11,200 acres (approximately 4,532 hectares) in Rush Township, Centre County, which tract is described as follows:

The surface water drainage basin of Cold Stream upstream from the mouth of Tomtit Run, including the surface water drainage basins of all tributaries to Cold Stream upstream from and including Tomtit Run except for the surface water drainage of a tributary known locally as Big Spring Run that enters Cold Stream from the west approximately 500 feet (approximately 152.4 meters) upstream from the Stony Point Road (Township Road 600) bridge over Cold Stream.

(3) The tract of approximately 119 acres (approximately 48.16 hectares) in Logan Township, Blair County and Gallitzin Township, Cambria County within the Mill Run watershed, that is underlain by surface mineable coal reserves, and that has not been previously disturbed by surface or deep mining. The tract is more particularly described as follows:

Beginning at the summit of a hill in the northwest corner of the Mill Run-Little Laurel Run watershed divide, southwest of the village of Buckhorn on or near the Cambria-Blair County line, and being at the eastern edge of the previously surface mined area; then along the watershed divide in a northeasterly direction for a distance of approximately 2,500 feet (approximately 762 meters) to the point of intersection of the watershed divide with the Mercer coal seam outcrop; then proceeding in a southeasterly and southerly direction along the Mercer coal outcrop, and running roughly parallel to and 100 to 200 feet (30.48 to 60.96 meters) easterly of the old Loudon deep mine railroad grade, for a distance of approximately 5,500 feet (approximately 1.68 kilometers) to the northern terminus of the Loudon deep mine, then proceeding westerly and northwesterly along the edge of the Loudon deep mine, exclusive of an approximately 2-acre (approximately 0.81 hect-



ares) ungraded surface mine, to its intersection with the toe of spoil of the previously surface mined area; then in a northwesterly direction along the spoil banks remaining from previous surface mining activity a distance of approximately 3,800 feet (**approximately 1.16 kilometers**) to the summit of the hill, being the place of beginning.

(4) The surface mineable coal reserves in a tract of approximately 5,600 acres (**approximately 2,266.32 hectares**) in Rush Township, Centre County, which tract is the surface water drainage basin of Black Bear Run.

\* \* \* \* \*

(9) The tract of approximately 525 acres (**approximately 212.46 hectares**) in Elder Township, Cambria County, described as follows:

Beginning at the northern edge of a raw water storage tank located approximately 2,000 feet (**approximately 609.60 meters**) south of Township Route 551 and 2,150 feet (**655.32 meters**) west of State Route 36; then proceeding in a northeasterly direction, intersecting the Borough of Hastings Water Authority access road at a point approximately 1,450 feet (**approximately 441.96 meters**) from the access road's junction with Township Route 551; then continuing due north, intersecting Township Route 551 at a property, fence or tree line located approximately 1,250 feet (**approximately 381 meters**) west of the junction of Township Route 551 and State Route 36; then north along the property, fence or tree line to a point located on Legislative Route 221 approximately 1,100 feet (**approximately 335.28 meters**) west of State Route 36 in St. Boniface; then continuing in a southeasterly direction to the junction of State Route 36 and Legislative Route 11056; then along Legislative Route 11056 to a point approximately 1,300 feet (**approximately 396.24 meters**) east of State Route 36; then continuing south along a property, fence or tree line to another property, fence or tree line that is approximately 475 feet (**approximately 144.78 meters**) south of Legislative Route 11056; then 575 feet (**175.26 meters**) due west along this property, fence or tree line to a point located approximately 350 feet (**approximately 106.68 meters**) east of State Route 36; then due south to meet State Route 36 at its junction with a private road, driveway or farm lane approaching State Route 36 from the east, located approximately 950 feet (**approximately 289.56 meters**) south of the junction of Township Route 551 and State Route 36; then south along State Route 36 for approximately 900 feet (**approximately 274.32 meters**) to a tree, fence or property line; then along the line, intersecting the Laurel Hill anticline axis at a point approximately 1,575 feet (**approximately 480.06 meters**) due east of State Route 36; then south along the anticlinal axis (which trends approximately N 40° E) intersecting State Route 36 approximately 625 feet (**approximately 190.5 meters**) north of the junction of Legislative Routes 221 and 11077 and intersecting Legislative Route 11076 approximately 600 feet (**approximately 182.88 meters**) north of its junction with Legislative Routes 221 and 11067 for 6,800 feet (**2,072.64 meters**) to a point approximating the edge of an Upper Kittanning underground coal mine complex known as the Pardee No. 29; then continuing in the same southwesterly direction to a point located 200 feet (**60.96 meters**) horizontal distance southwest of the Pardee No. 29 Mine complex; then proceeding in

a northerly direction remaining 200 feet (**60.96 meters**) from and paralleling the edge of the Pardee No. 29 Mine complex for approximately 4,250 feet (**approximately 1,295.4 meters**) to a point that is approximately 200 feet (**approximately 61.96 meters**) horizontal distance west of the Upper Kittanning coal outcrop (intersecting an unnamed tributary to a farm pond located approximately 3,300 feet (**approximately 1,005.84 meters**) due south of Township Route 551 and 3,300 feet (**1,005.84 meters**) due west of State Route 36); then continuing north, remaining 200 feet (**60.96 meters**) from and parallel to the coal outcrop to a property, fence or tree line located approximately 1,820 feet (**approximately 554.74 meters**) south of Township Route 551; then due east along the line to the northwest corner of the land owned by the Borough of Hastings; then returning to the point of origin.

(10) The tract of 527 acres (**213.28 hectares**) of surface mineable coal reserves in the southern surface water drainage basin of North Fork Tangascootack Creek watershed. The 527 acres (**213.28 hectares**) encompass the Mercer coal crop line to the southern watershed divide of the North Fork Tangascootack Creek watershed, which tract is located in Bald Eagle, Grugan and Beech Creek Townships, Clinton County.

\* \* \* \* \*

(12) The surface mineable coal reserves in the surface water drainage basins of Rankin Hollow Run and the East Fork Brewster Hollow Run, tributaries of Sixmile Run, upstream of the water supplies for the Coaldale Borough-Six Mile Run Area Water Corporation. The two tracts, totaling approximately 525 acres (**approximately 212.47 hectares**), are located in Broad Top Township, Bedford County.

(13) The surface mineable coal reserves of the Lower Kittanning, Clarion and Mercer coals in the surface water drainage basin of Bells Gap Run, which tract is located in Antis and Logan Townships, Blair County and Dean and Reade Townships, Cambria County; except that the surface mineable coal reserves of the three designated seams are not designated unsuitable for surface mining operations in the following areas:

(i) A tract of approximately 41 acres (**approximately 16.59 hectares**) of abandoned mine lands located northwest of the town of Highland Fling, said tract being described as follows:

Beginning at the point where Township Route 502 intersects the surface water drainage divide between Tubb Run and Brubaker Run approximately 750 feet (**approximately 228.6 meters**) northwest of the intersection of Township Route 502 and State Route 1016; then proceeding due east, to a point on State Route 1016 approximately 475 feet (**approximately 144.78 meters**) north-northeast of the intersection of State Route 1016 and Township Route 502; then continuing to a point approximately 2,250 feet (**approximately 685.8 meters**) north along State Route 1016; then due west to a point on the surface water drainage divide between Tubb Run and Brubaker Run approximately 2,800 feet (**approximately 853.44 meters**) north-northwest of the intersection of Township Route 502 and State Route 1016; then in a southerly direction along the said surface water drainage divide to the point of origin.

(ii) The permit areas of Cambria Coal Company SMP #11783035, Cambria Coal Company SMP #11823006,

Swistock Associates Coal Corp. MDP #4278BC10, E. P. Bender Coal Co. SMP #11793025, and Benjamin Coal Company MDP #4278SM2, in accordance with § 86.121(a) (**relating to areas exempt from designation as unsuitable for surface mining operations**).

(14) The surface mineable coal reserves within the Goss Run watershed upstream of the Brisbin Dam, including a small tract of land within the watershed of the West Tributary to Goss Run, a total of approximately 555 acres (**approximately 224.61 hectares**), are designated unsuitable for all types of surface mining operations. This includes a land area beginning at the breast of the Brisbin Dam, thence due southwest to Pa. Route 153, thence north along the centerline of Pa. Route 153 to the intersection of Pa. Route 153 with township route T-657, thence north along the watershed divide between the Brisbin Dam drainage and the West Tributary drainage to a point at the intersection of the Goss Run and Little Beaver Run watershed divide, thence southwest along the Goss Run and Little Beaver Run watershed divide to a point at the intersection of the Brisbin Dam drainage divide, thence southwest along the Brisbin Dam drainage divide to the point of beginning; except that the surface mineable coal reserves are not designated unsuitable for surface mining operations in the following areas:

The permit areas of the James I. Cowfer Contracting, Inc. SMP 17663037 and James I. Cowfer Contracting, Inc. SMP 17820152, in accordance with § 86.121(a).

\* \* \* \* \*

(17) All types of surface mining operations within a tract of 450 acres (**182.12 hectares**) located in Slippery Rock and Wayne Townships, Lawrence County described as follows:

Beginning at the intersection of Township Road T-347 and Township Road T-472; then in a northerly direction following Township Road T-472 for a distance of approximately 4,800 feet (**approximately 1,643.04 meters**) to the Wayne Township and Slippery Rock Township boundary line; then in a westerly direction following the township line for a distance of approximately 800 feet

(**approximately 243.84 meters**) to the southwest corner of a land parcel owned, or formerly owned, by Edris Ann Thalgott; then in a northerly direction following the Edris Ann Thalgott property line for a distance of approximately 2,050 feet (**approximately 624.84 meters**) to the southwest corner of a land parcel owned, or formerly owned, by Lois Mackey; then following the Lois Mackey property line in a northerly direction for a distance of approximately 950 feet (**approximately 289.56 meters**) to the intersection of the Lois Mackey property line with State Road SR2024; then in an easterly direction following State Road SR 2024 for a distance of approximately 2,100 feet (**approximately 640.08 meters**) to the intersection with the southwest corner of a land parcel owned, or formerly owned, by Dale Mackey; then in a northerly direction following the Dale Mackey property line for a distance of approximately 1,650 feet (**approximately 502.92 meters**) to the northwest corner of the Dale Mackey property; then in an easterly direction following the Dale Mackey property line for a distance of approximately 600 feet (**approximately 182.88 meters**) to the northeast corner of the Dale Mackey property; then following the Dale Mackey property line in a southerly direction for a distance of approximately 1,250 feet (**approximately 381.00 meters**) to the Dale Mackey property line intersection with the northeast corner of a land parcel owned, or formerly owned by Richard E. Michaels; then following the Richard E. Michaels property line in a southerly direction for a distance of approximately 250 feet (**approximately 76.20 meters**) to the Richard E. Michaels property line intersection with State Road SR 2024; then following Township Road T-478 in a southerly direction for a distance of approximately 7,200 feet (**approximately 2,194.56 meters**) to the intersection of Township Road T-478 with Township Road T-347; then in a westerly direction following Township Road T-347 for a distance of approximately 2,000 feet (**approximately 609.60 meters**) to the point of origin.

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