

# RULES AND REGULATIONS

## Title 22—EDUCATION

### STATE BOARD OF EDUCATION

[22 PA. CODE CH. 49]

[Correction]

#### Certification of Professional Personnel

An error occurred in a rule of the State Board of Education which appeared at 29 Pa.B. 4954, 4963 (September 25, 1999). Words were inadvertently omitted from § 49.91(b). The correct version of § 49.91(b) appears in Annex A, with ellipses referring to the existing text of the regulation.

#### Annex A

#### TITLE 22. EDUCATION

#### PART I. STATE BOARD OF EDUCATION

#### Subchapter C. HIGHER EDUCATION

#### CHAPTER 49. CERTIFICATION OF PROFESSIONAL PERSONNEL

#### Subchapter A. GENERAL PROVISIONS

#### INTERN CERTIFICATES

#### § 49.91. Criteria for eligibility.

\* \* \* \* \*

(b) The applicant will be issued an Instructional I Certificate upon completion of the approved intern program and satisfactory achievement on the assessment of professional knowledge and practice.

[Pa.B. Doc. No. 99-1626. Filed for public inspection September 24, 1999, 9:00 a.m.]

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 86]

#### Surface and Underground Coal Mining

The Environmental Quality Board (Board) by this order amends Chapter 86 (relating to surface and underground coal mining: general). The 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; or which impose disproportionate costs on the regulated community.

This order was adopted by the Board at its meeting of July 20, 1999.

#### A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

#### B. Contact Persons

For further information, contact David C. Hogeman, Chief, Division of Environmental Analysis and Support, Bureau of Mining and Reclamation, Rachel Carson State Office Building, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-4761, or Joseph Pizarchik, Assistant Director, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. 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 order is available electronically through the Department's website (<http://www.dep.state.pa.us>).

#### C. Statutory Authority

These amendments are proposed under the authority of the following provisions of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P. S. §§ 1396.1—1396.19a): section 4.2(a) of the SMCRA (52 P. S. § 1396.4b(a)), which provides general rulemaking authority; section 4.5 of the SMCRA (52 P. S. § 1396.4e), which provides for the designation of an area as unsuitable for all or certain types of surface mining operations; the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66) (act): section 3.2(a) of the act (52 P. S. § 30.53b(a)), which authorizes the adoption of rules and regulations; section 6.1 of the act (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; The Clean Streams Law (CSL) (35 P. S. §§ 691.1—691.1001): section 5 of the CSL (35 P. S. § 691.5), which authorizes the adoption of rules and regulations, section 315(h)—(o) of the CSL (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 sections 1920-A and 1930-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30), which authorize the adoption of regulations necessary for the Department to perform its work and which provide that it is the Board's duty to review petitions for, and to designate, areas as unsuitable for mining.

#### D. Background and Purpose

These 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 analyze which regulations were more stringent than Federal law and regulations, lacked clarity, and imposed disproportionate costs on the regulated community. The Department 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 rulemaking package. Regulations that are more stringent than Federal requirements are proposed for revision, unless justified by a compelling and articulable interest of the Commonwealth 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 decisionmaking 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 Department rejected this alternative because it was found to conflict with section 1930-A of The Administrative Code of 1929.

The second alternative, which is the subject of this final rulemaking, would retain the existing Board rulemaking process. Subsequent to the MRAB meeting, the Department modified this "legislative" version. 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 and acceptance of a complete petition.

Numerous changes to the regulatory language in §§ 86.1 and 86.101—86.130 provide clarity and 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.

The proposed rulemaking amendments were adopted by the Board at its meeting of October 21, 1997, and published at 28 Pa.B. 941 (February 14, 1998), with a 60-day public comment period. The public comment period ended on April 15, 1998. There were no public hearings.

Comments on the proposed rulemaking were received from the Pennsylvania Coal Association (PCA) and from the Independent Regulatory Review Commission (IRRC). The comments and the Department's responses were discussed with the MRAB at its meeting of July 10, 1998.

In response to comments received during the official public comment period on the proposed rulemaking, a draft final rulemaking was prepared. The draft final rulemaking amendments were discussed with the MRAB at its meeting of July 10, 1998. The MRAB suggested that the Department add an exemption to § 86.102(9) (relating to areas where mining is prohibited or limited) concerning waivers to the restrictions of mining within 300 feet (91.44 meters) of an occupied dwelling. An exemption has been added to the final-form rulemaking consistent with the Federal language in 30 CFR 761.12 (relating to procedures). The MRAB also suggested changing § 86.125 (relating to procedures: hearing requirements) to read that a public hearing be held within 9 months of receipt of a petition. The SMCRA and Federal statutes and regulations, require a public hearing to be held within 10 months of receipt of a complete petition and for a decision to be made within 60 days after that. The justification for a more stringent provision must be made by a compelling public interest, an articulable interest of the Commonwealth or be required by State

law. None of these conditions is satisfied in this case and the Department has not changed this regulatory language.

After review of other related information by the Department, additional changes were made to the draft final rulemaking. On January 31, 1997, the Federal Office of Surface Mining Reclamation and Enforcement (OSM) published a proposed interpretative rulemaking on activities applicable to section 522(e) of the CSL, areas unsuitable for mining. In doing so, OSM presented its definition of "surface coal mining operation"—information that the Department had sought for over a year. Although OSM's action provided the Department with the guidance needed, it was subsequently recognized that there was an inconsistency between interpretation of the definition included in the Federal proposed rulemaking and the Department's definition of "surface mining operations" found in § 86.101. Consequently, the Department revised the definition of "surface mining operations" to eliminate the inconsistency.

An Advance Notice of Final Rulemaking (ANFR) was developed to provide for public comment on the changes made in the draft final rulemaking (§ 86.1, concerning the definition of "surface mining operations" and § 86.126, concerning Board actions) that had not been previously reviewed by the public. This notice was published at 29 Pa.B. 548 (January 30, 1999) with a 30-day public comment period and was sent to the PCA and to IRRC, who had commented on the proposed rulemaking. Sixteen comment letters were received during the comment period on the ANFR.

The draft final rulemaking and comments received on the ANFR were discussed with the MRAB at its meeting of April 22, 1999. The MRAB recommended that the amendments be adopted as final rulemaking by the Board.

#### E. *Summary of Comments and Responses on Proposed Rulemaking*

Comments on the proposed rulemaking were received from the PCA and from IRRC. The following is a discussion of the comments received on the proposed rulemaking.

The PCA believes decisions concerning designation of areas as unsuitable for mining should be made through an administrative adjudicatory process; the process should provide for cross-examination of expert witnesses as occurs in the Federal program; and an adjudicatory process permits the possibility of resolution within 12 months. Although the Department considered an administrative adjudicatory process, it was decided to retain the regulatory process. First, the regulatory process provides more opportunities for public input in the decisionmaking than does the adjudicatory process. Adopting the adjudicatory process would significantly reduce the opportunities for public participation in the decision process. Second, section 1930-A of The Administrative Code of 1929 provides that the Board has the authority and the duty to review areas unsuitable for mining petitions and to designate areas as unsuitable for mining.

A recommendation was made that the regulations retain a requirement for a verbatim transcript of the public hearing. The requirement for providing a verbatim transcript of the public hearing is contained in § 86.125(d) of both the proposed rulemaking and in the final-form rulemaking.

It was also recommended that metric units of measurement be deleted or that an explanation be included in the

preamble that they are a convenient reference, which impose no substantive requirements. Equivalent standard international metric system units have been inserted as a convenient reference and impose the same requirements as existing standard measurements.

Both the PCA and IRRC noted that the reference to section 4.5(h) of SMCRA in the definition of "fragile lands" is redundant. The reference to section 4.5(h) of SMCRA has been deleted from the definition of "fragile lands" in the final-form rulemaking.

The PCA suggested that § 86.102(9)(ii) be revised to provide an exception so that waivers obtained prior to the effective date of the Federal law do not need to be knowingly made. An exception to the requirement that a waiver of the right to restrict mining within 300 feet (91.44 meters) of an occupied dwelling be knowingly made if the waiver was obtained prior to August 3, 1977, has been added to § 86.102(9). This inclusion is consistent with Federal regulatory language used in 30 CFR 761.12.

It was suggested that the definition of "historic lands" in § 86.101 be revised to delete references to lands eligible for inclusion on the National Register of Historic Places in conformance with proposed revisions to § 86.102(3) and that the word "air" should be deleted from § 86.123(c)(3) in conformance with proposed revisions to the definition of "surface mining operations" in § 86.1. The proposed rulemaking language in §§ 86.102(3) and in 86.123(c)(3) is consistent with the language in Federal regulations. An informal inquiry to the Federal Office of Surface Mining Reclamation and Enforcement's OSM Field Office indicated that the suggested changes would make the Department's regulations less effective than Federal requirements. Therefore, no change has been made in the final-form rulemaking.

IRRC commented that the changes to § 86.103(2)(ii) could result in a permit being issued through inaction of a reviewing agency. The change is consistent with Federal language in 30 CFR 761.12(f)(2). This change provides that in the absence of an objection from an agency, the Department may make a decision concerning the proposed mining operation in conjunction with § 86.37(a)(5) and (6) (relating to criteria for permit approval or denial).

IRRC noted that the proposed change to § 86.125(i) which adds the phrase, "or as otherwise established by the Department" is too vague and the term "regulatory decision" used in § 86.126(b) is not defined. In addition, IRRC suggested that § 86.126(b) should differentiate the procedures used when acting on the Department's recommendation to designate or not to designate an area as unsuitable for mining. The phrase "or as otherwise established by the Department" and the term "regulatory decision" have been deleted. In addition, two paragraphs have been added to § 86.126(b), which provide the procedures the Board will use concerning designation decisions. Applicable statutory citations have been included.

IRRC also requested clarification of Federal requirements in 30 CFR 764.19(b) (relating to decision) that require a final written decision within 12 months of receipt of a complete petition. The proposed changes to § 86.125(j) provide that the Department will prepare a recommendation to the Board within 60 days of the close of the public comment period. Since the Board must still act on the Department's recommendation, there is a concern as to how the 12-month requirement will be met. The areas unsuitable for mining process is established by separate statutes that contain somewhat conflicting provisions. Federal statutes and regulations require a final

written decision by the regulatory authority within 60 days of a public hearing, or if no hearing is held, within 12 months of the receipt of a complete petition. Commonwealth statutes contain similar requirements. The Administrative Code of 1929, however, requires decisions concerning the designation of areas as unsuitable for mining to be made by the Board through the rulemaking process. Because this regulatory process requires mandatory legislative and administrative review schedules and an opportunity for additional public comment, it is not possible for the Board to issue a final written regulatory decision within 12 months. The changes will, however, provide a more timely decisionmaking process. Under this final-form rulemaking, the 12-month statutory requirement will be met when the Department submits a written recommendation to the Board within 12 months of receipt of a complete petition. The Department would also provide notification and a statement of the reasons for the recommendation to the petitioner and intervenors. If the Board decision is that an area should not be designated, the petition process would end with the publication of the Board decision. If the Board decision is that the area should be designated, the Department would submit a proposed rulemaking in accordance with the statutes and existing procedures. 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 designation of areas as unsuitable for mining and is consistent with the Administration's objectives to improve public access to information and decisionmaking in the Department.

IRRC requested an explanation of what procedure would occur if rather than accepting a Department recommendation, the Board requested additional information or study. If the Board determines that additional information or study is needed, the Department will be asked to provide an appropriate response. The Department routinely provides additional information in response to Board questions.

IRRC also asked that an explanation of the specific changes in the proposed rulemaking that diminish the disproportionate costs on the regulated community be identified in the Regulatory Analysis Form. An explanation has been provided in the Regulatory Analysis Form consistent with the revisions to § 86.126(b) in the final-form rulemaking. The revisions will provide a more timely decision in those cases when the Board determines that an area should not be designated as unsuitable for mining and will allow issuance of mine permits which may have been delayed because of a petition to have the area designated as unsuitable for mining.

The MRAB suggested that the Department add an exemption to § 86.102(9) to provide a waiver to the restriction on mining within 300 feet (91.44 meters) of an occupied dwelling if the waiver was obtained prior to August 3, 1997. An exemption has been added to the draft final rulemaking consistent with Federal language in 30 CFR 761.12.

The MRAB also suggested that the Department consider changing § 86.125 to read that a public hearing on a petition be held within 9 months of receipt of a petition to designate an area as unsuitable for surface mining operations. Pennsylvania SMCRA and Federal statutes and regulations require a public hearing to be held within 10 months of receipt of a complete petition and for a decision to be made within 60 days after that. The purpose of the suggested change was to provide an

additional 30 days for the Department to present a recommendation to the Board. The suggested change, if implemented, would make this provision more stringent than the Federal regulations. The justification for a more stringent provision must be made by a compelling public interest, an articulable interest of the Commonwealth or be required by State law. None of these conditions are satisfied in this case. In addition, the desired objective would still not be achieved, since there would continue to be a requirement to make a decision within 60 days of the hearing. For these reasons the Department has not changed this regulatory language.

#### F. *Advance Notice of Final Rulemaking*

In response to comments received during the official public comment period on the proposed rulemaking and following the Department's review of other related information, the Department prepared a draft final regulation that contains significant changes in two areas:

*§ 86.101. Definitions.* In the definition of "surface mining operations," the reference to activities related to underground coal mining that affect the land surface has been deleted to clarify that surface mining operations do not include any surface effects of underground mining resulting from activities that were conducted beneath the land surface.

*§ 86.126. Procedures: decision.* Subsection (b) has been changed to delete the term "regulatory" and add paragraphs (1) and (2) to clarify Board action on decisions.

The Department solicited comments on the draft final regulations by publication of an ANFR at 29 Pa.B. 548.

Sixteen comment letters and electronic transmissions were received during the public comment period on the ANFR.

General comments were made that many of the proposed regulatory changes weaken environmental protections. Comments received also questioned the premise that the Commonwealth's regulations should conform to Federal regulations if there is a perception that environmental standards are lowered in doing so. Several commentators supported the regulatory changes.

The proposed changes are being made under Governor Ridge's Executive Order 1996-1 dated February 6, 1996, and the Department's Regulatory Basics Initiative. In fulfilling these requirements, the Department has modified regulations to conform to the Federal requirements, except where there was a compelling and articulable interest of the Commonwealth, or the regulatory language was required by a State law, in which case the more stringent Commonwealth language was retained. Some of the proposed changes were made to improve the clarity of the regulatory language.

Comments were received that dealt with the changes in the two areas identified by the Department, as well as other changes contained in the draft final regulations. The Department has carefully reviewed these comments and has determined that changes are appropriate in two sections of the draft final regulations. They are §§ 86.1 and 86.121.

The following is a summary of comments relating to specific sections of the ANFR along with the Department's responses. Comments and responses on general issues are presented after the discussion on individual sections.

Commentators indicated that the reference to a definition in the *Code of Federal Regulations* in § 86.1 is

inappropriate and confusing because the Federal definition of "valid existing rights" (VER) is not resolved. Section 4.5 of SMCRA, section 6.1 of the act and section 315 of the CSL provide that VER is to be as defined under section 522 of the Federal Surface Mining Control and Reclamation Act of 1977 Federal SMCRA. This change will conform the Commonwealth's regulations to the statutes and will make it unnecessary for the Commonwealth to change its definition if the Federal definition is changed.

It was suggested that the existing definition in § 86.1 of a "complete application" is better than the change to "administratively complete application" because under the proposed changes an application need only "address" each requirement, instead of needing to "demonstrate compliance with applicable statutes and regulations." The Department agrees that the proposed change does not adequately clarify this issue as intended, therefore, the definition of "complete application" has been retained, and appropriate language will be considered in future rulemaking.

Several commentators said that it is premature and unsound to delete language pertaining to activities and impacts related to underground mining that affect the land surface from the definition in § 86.101 of "surface mining operations." No final Federal action has yet been taken on this issue. The definition of "surface mining operations," as proposed, is in accordance with OSM's proposed interpretive rulemaking published in the January 31, 1997, *Federal Register* (Fed. Reg., 62, No. 21, Friday, January 31, 1997) and is consistent with the 1991 opinion of the Federal Department of the Interior's Office of the Solicitor. While the Federal government's position specifically addresses "subsidence" and section 522(e), it does so through interpreting the definition of "surface coal mining operations." "Surface coal mining operations" is used both in section 522(e) and in the areas unsuitable for mining provisions and must be interpreted consistently. Therefore, the Federal government's interpretation of "surface coal mining operations" must also apply to the areas unsuitable for mining provisions.

One commentator believed that section 522(e) of the Federal SMCRA and the Federal interpretation are limited to subsidence and should not be extended to water resource impact and Areas Unsuitable for Mining petitions. The commentator also believes that the Department's changes go beyond the proposed Federal interpretation regarding subsidence and include water resources and the areas unsuitable for mining petition process. The Department believes the draft final rulemaking is consistent with Federal requirements and that it addresses the difference between the physical characteristics of mining activities conducted on the surface as opposed to underground. The Department believes that protection of water resources from underground coal mining activities can only be accomplished on a case-by-case basis through the permit review process.

It was suggested that the word "significantly" should not be added to the definition of "fragile lands" in § 86.101 because any impacts to fragile lands could be considered significant. Additionally, the last part of the existing definition, beginning with "and buffer zones adjacent to the boundaries of areas where surface mining operations are prohibited . . ." should be retained to ensure effective environmental protection. The Department believes that the addition of the term "significant" will not reduce environmental protections and the buffer zones in question will still be protected by mining prohibitions and limitations in § 86.102.

Comments were received suggesting that the existing sentence defining nonprofit organizations as local agencies in this circumstance should not be deleted from § 86.101. When a nonprofit organization has designated lands for public recreational use, those lands should be treated as public parks. The Department believes that the proposed changes will not reduce the protection for publicly owned parks.

Several commentators stated that regulatory changes in § 86.102(3) deleting the phrase "on or eligible for inclusion" to the National Register of Historic Places would limit protection only to those sites listed on the National Register. The recommended changes conform the Commonwealth's coal mining regulations to the Federal coal mining regulations in 30 CFR 761.11 (relating to areas where mining is prohibited). The impacts of proposed mining on sites eligible for listing on the National Register of Historic Places are to be addressed during the Department's permit application review process.

It was pointed out that the proposed changes to § 86.102(9) reduce the protection of individuals whose dwellings are within 300 feet of proposed operations and thus should not be adopted. The change is consistent with Federal regulations in 30 CFR 761.11(e) and makes it clear that the regulations will reflect the possession of property rights of the interested persons in accordance with the Commonwealth's property law.

Comments received noted that the proposed change from "may" to "will" in § 86.103(e) reduces the protections currently afforded to public parks and National Register places. It is not always clearly evident that mining effects "will" affect a public or historic site. Additionally, the stipulation in § 86.103(e)(2)(ii) that "failure of an agency to respond to a notification within a specified comment period constitutes an approval" is not acceptable. The Department notes that the regulatory changes provide a 30-day response time for the appropriate agency with allowance for an additional 30-day extension if requested by the agency. The Department believes that the regulatory changes provide sufficient time for the agency to respond to a notification.

It was suggested that a demonstration of an "injury in fact" test as changes to § 86.123(c)(5) propose is entirely inappropriate and should not be added to the regulations because this would shift the burden of proof onto the injured party. The Department notes that previous petitions requesting areas to be designated were accepted by the Department for study based on the petitioners' demonstration of interests that were, or could have been, adversely affected and petitions based on similar demonstrations could meet the requirement of a demonstration of "injury in fact."

It was also suggested that the proposed sentence "A frivolous petition is one in which the allegations of harm lack serious merit" in § 86.124(a)(2) is unnecessary because the existing meaning of the word "frivolous" is appropriate. The Department, during its initial review, determined the complete, incomplete or frivolous nature of petitions and the change would not materially affect the way unsuitable for mining petitions are processed. The new provision clarifies how the term will be interpreted and applied by the Department.

Several commentators stated that the agency identified in § 86.125 conducting the public fact-finding hearings on areas unsuitable for mining petitions should not be changed from the Board to the Department. The Department responds that this revision simply clarifies the

Department's responsibility for the administrative aspects of petitions. The Board will continue to have access to all information obtained from public fact-finding hearings.

One commentator asked whether the Board's final decision would bypass the proposed rulemaking stage and public participation, or if the decision on the petition will be published as a proposed rule. The Department responds that final rulemaking changes to § 86.126(b) retain the existing Board rulemaking process including proposed and final rulemaking provisions if the Board's initial decision is to designate an area unsuitable for mining. If the Board's decision is to not designate an area as unsuitable for mining, the rulemaking process will end with the publication of the decision in the *Pennsylvania Bulletin*.

It was suggested that the existing language pertaining to coal exploration in § 86.129 that affords protection to areas under study for designation, as well as designated areas, should be retained. It is unclear how coal exploration activities can be consistent with uses and values of an area designated unsuitable for mining. The Department responds that coal exploration has never been prohibited on areas designated unsuitable for mining. The Federal language in 30 CFR 762.14 (relating to exploration on land designated unsuitable for surface coal mining operations) provides for requirement of written approval and the protection of the values and uses of the area designated unsuitable for mining.

One commentator indicated that there was no preamble provided with the ANFR explaining the changes being proposed and there was no comment and response document, making it difficult to understand some of the changes made since the regulations were approved as proposed. Additionally, the 30-day public comment period was too short to allow for review. The Department responds that the purpose of the ANFR was to provide for public review of the draft final rulemaking and to obtain comment on two new issues that had not previously been considered by the public. Since the ANFR was solicited prior to development of the final-form rulemaking, a comment and response document on the proposed rulemaking was not yet available when the ANFR was released for comment. It is the Department's policy to present comments and responses for both the proposed rulemaking and the ANFR to the Board as part of the final-form rulemaking.

Comments received stated that Federal approval by the OSM is needed for all changes to the Commonwealth's coal mining regulations before they become effective. In addition, in the administration, interpretation and implementation of the State program the Department is obligated to conform to the Federal laws and regulations. The Department notes OSM requires final State action on rulemaking changes before formal review of the changes by OSM. The rulemaking will be forwarded to OSM for review and approval when the changes have been approved by the Board.

#### G. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of these final-form regulations.

##### *Benefits*

These amendments were 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.

No additional costs should result from these changes. The coal mining industry, the public and State government could see savings in the form of reduced time necessary to read and interpret regulations. There could also be some savings to the coal mining industry in reducing time for decisions not to designate an area as unsuitable for mining. The principal benefit of these amendments, however, is that the revised requirements will be no more stringent than Federal law, will provide for more timely decisionmaking and will be more easily understood by the regulated community and the general public. The change will also benefit the public from involvement in the decisionmaking process and opportunity for expressing concerns.

#### *Compliance*

The 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 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 amendments will impose no additional costs or paperwork requirements on the regulated community.

#### *H. Sunset Review*

These final-form 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 they were intended.

#### *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 1998, the Department submitted a copy of the proposed rulemaking to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC and the public. The comments are addressed in the comment and response document and Section E of this Preamble. The Committees did not provide comments on the proposed rulemaking.

These final-form regulations were deemed approved by the House Environmental Resources and Energy Committee and Senate Environmental Resources and Energy Committee on August 23, 1999. IRRC met on September 9, 1999 and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

#### *J. Findings of the Board*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

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

(3) These final-form regulations do not enlarge the purpose of the proposal published at 28 Pa.B. 941

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of the Preamble.

#### *K. Order of the Board*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 86, are amended by amending §§ 86.1, 86.101—86.103, 86.121 and 86.123—86.130 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,  
*Chairperson*

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

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5031 (September 25, 1999).)

### **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:

*Acts*—Include the following:

(i) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31).

(ii) The Air Pollution Control Act (35 P. S. §§ 4001—4015).

(iii) The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

(iv) The Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66).

(v) Article XIX-A of The Administrative Code of 1929 (71 P. S. §§ 510.1—510.1081).

(vi) The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21).

(vii) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).

(viii) The Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

*Applicant*—A person who seeks to obtain a permit from the Department to conduct coal mining activities under this chapter.

*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*—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 and areas of recreational value due to high environmental quality.

*Historic lands*—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, National historic landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

\* \* \* \* \*

*Public building*—A structure that is owned or leased and principally used by a government agency for public business or meetings.

*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.

\* \* \* \* \*

*Renewable resource lands*—Areas which contribute significantly to the long-range productivity of water supply or of food or fiber products. These lands 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 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.

**§ 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 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 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 activities may be permitted if the Department of Conservation and Natural Resources and the Department find that significant land and water conservation benefits will result when remining 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 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 find that significant land and water conservation benefits will result when remining of previously mined lands is proposed, 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 exist:

(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.

(ii) The owner thereof has provided a written waiver 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.

(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.

(iii) A new waiver is not required if the applicant for a permit had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet (91.44 meters) of the dwelling.

(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.

(a) Upon receipt of a complete permit application for surface mining operations, the Department will review the application to determine whether the surface mining operations are limited or prohibited under § 86.102 (relating to areas where mining is prohibited or limited) on the lands which would be disturbed by the proposed operation.

(b) If the proposed surface mining operations would include Federal lands within the boundaries of a National forest, and the applicant seeks a determination that mining is permissible under § 86.102(2), the applicant shall submit a permit application to the Regional Director of the Office of Surface Mining Reclamation and Enforcement and the Department for processing under 30 CFR Chapter 7, Subchapter D (relating to Federal lands program). Approval from the Director is required before a permit may be issued by the Department.

(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 road or haulage roads join the right-of-way line—or if the applicant proposes to relocate a public road, the Department will:

(1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road.

(2) Provide notice in a newspaper of general circulation in the affected locale of a public hearing, if one has been requested, at least 2 weeks before the hearing.

(3) Insure that an opportunity for a public hearing has been afforded in the locality of the proposed surface mining operations, at which members of the public may participate, for the purpose of determining whether the interests of the public and affected landowners will be protected.

(4) Review the information received at the public hearing, if one has been held, and the findings of applicable State and local agencies as to whether the interests of the public and affected landowners will be protected from the proposed surface mining operations.

(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 as specified in § 86.102(9).

(e) When the proposed surface mining operations will adversely affect a 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 place, a copy of the completed permit application containing the following:

(1) A request for that agency's approval or disapproval of the surface mining operations.

(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 constitutes an approval of the proposed permit by that agency.

(f) If the Department determines that the proposed surface mining operations are not prohibited under § 86.102, it may nevertheless, pursuant to appropriate



petitions, designate the lands as unsuitable for all or certain types of surface mining operations under §§ 86.121—86.129.

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

**§ 86.121. Areas exempt from designation as unsuitable for surface mining operations.**

This section and §§ 86.122—86.129 do not apply to areas on which:

(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) or 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 on forms developed by 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 they are 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 requirement of this subsection cannot be met due to the staff limitations of the Department, the Department may process the petitions in accordance with the priority system authorized by subsection (b)(2). Within this 30-day period, the Department will also notify an applicant with pending surface mining operation 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, each accepted petition will be considered and acted upon by the Department under the procedures of this part.

\* \* \* \* \*

(c) Until 3 days before the 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 Department's 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 on each complete petition received under this section and submit it to the EQB 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 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.

(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.

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

(1) Local, State and Federal agencies which may have an interest in the decision on the petition.

(2) Persons known to the Department to have an ownership or other interest in the area covered by the petition.

(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.

(g) The 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 will begin between 4 and 5 weeks before the scheduled date of the public hearing.

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

(i) Written comments on the petition will be received and considered 15 days after the conclusion of the public hearing. 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 Department will 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.

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

**§ 86.126. Procedures: decision.**

(a) In deciding whether to designate an area as unsuitable for surface mining operations, the EQB will consider:

(1) The information contained in the database and inventory system.

(2) Information provided by other governmental agencies.

(3) The detailed statement prepared under § 86.124(e) (relating to procedures: initial processing, recordkeeping and notification requirements).

(4) Oral and written testimony received during and written testimony received subsequent to public hearing.

(5) The recommendations of the Department.

(b) The EQB will promptly send the decision by certified mail to the petitioner, intervenors and to the Office of Surface Mining Reclamation and Enforcement.

(1) If the decision is to designate an area as unsuitable for surface mining operations, the EQB will deposit and publish its decision as a regulation in the manner required by the Regulatory Review Act (71 P. S. §§ 745.1—745.15); the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1102, 1201—1208 and 1602) known as the Commonwealth Documents Law and 45 Pa.C.S. Part I (relating to publication and effectiveness of Commonwealth documents).

(2) If the decision is not to designate an area as unsuitable for surface mining operations, the EQB will publish its decision in the *Pennsylvania Bulletin* within 30 days.

**§ 86.127. Database and inventory system requirements.**

(a) The Department will expeditiously develop a database and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(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, private conservancies and the agency administering section 127 of the Clean Air Act (42 U.S.C.A. § 7470).

(c) The Department will review and update the database and inventory system as information becomes available:

(1) On potential mineral resources of this Commonwealth, demand of the resources, the environment, the economy and the supply of minerals sufficient to enable the Department to prepare the statements required by § 86.124(e) (relating to procedures: initial processing, recordkeeping and notification requirements).

(2) From petitions, publications, experiments, permit applications, mining and reclamation operations and other sources.

**§ 86.128. Public information.**

The Department will:

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

(2) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface mining operations or to have designations terminated and describe how the inventory and database system can be used.

(3) Maintain a map of areas designated as unsuitable for all or certain types of surface mining operations.

(4) Make available to persons information within its control regarding designation or terminations, including mineral or elemental content which is potentially toxic in the environment. Other information which is properly classified as proprietary or confidential will be protected by the Department as may be required by law.

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

(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 be conducted on an area designated as unsuitable for surface mining operations in accordance with this chapter if the following apply:

(1) The exploration is consistent with the designation.

(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) and the Department has issued written approval for the exploration.

**§ 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 (30.48 meters) 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 Louden deep mine railroad grade, for a distance of approximately 5,500 feet (approximately 1.68 kilometers) to the northern terminus of the Louden deep mine, then proceeding westerly and northwesterly along the edge of the Louden deep mine, exclusive of an approximately 2-acre (approximately 0.81 hectares) 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, 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 (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.

\* \* \* \* \*

(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 5-472; 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.

[Pa.B. Doc. No. 99-1712. Filed for public inspection October 8, 1999, 9:00 a.m.]