

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 88 AND 90]

### Coal Refuse Disposal

The Environmental Quality Board (Board) proposes to amend Chapters 88 and 90 (relating to anthracite coal; and coal refuse disposal). The amendments address permitting and performance standards for coal refuse disposal operations.

This proposal was adopted by the Board at its meeting of April 18, 2000.

#### A. *Effective Date*

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

#### B. *Contact Persons*

For further information contact Evan T. Shuster, Chief, Division of Permits, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103, or Joseph Pizarchik, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-984 (TDD users) or (800) 654-5988 voice (users). This proposed rulemaking is available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

#### C. *Statutory Authority*

The amendments are proposed under the authority of section 4.2 of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P. S. § 1396.4b(a)); section 3.2 of the Coal Refuse Disposal Control Act (CRDCA) (52 P. S. § 30.53b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### D. *Background and Purpose*

The proposed rulemaking is necessary to update Chapters 88 and 90 to bring them into conformance with the CRDCA as amended by the act of December 7, 1994 (P. L. 808, No. 114) (Act 114). Act 114 was signed into law on December 7, 1994, and became effective on February 5, 1995.

Subsequent to Act 114 becoming law, the Department developed a supporting technical guidance document, titled "Coal Refuse Disposal—Site Selection." The technical guidance document clarifies the Act 114 site selection process and outlines information needed to apply for, and receive, a stream barrier variance under section 6.1 of the CRDCA (52 P. S. § 30.56a). The technical guidance document was circulated for comment to the regulated community, Fish and Boat Commission, Game Commission, the Federal Office of Surface Mining (OSM), United States Environmental Protection Agency (EPA), United States Fish and Wildlife Service and the United States Army Corps of Engineers. On April 22, 1998, the OSM published a conditional approval of the Act 114 amendments in 63 FR No. 77 (April 22, 1998). The published approval also recognized that the Department's technical guidance document had satisfied the concerns of the

United States Fish and Wildlife Service regarding compliance with section 7 of the Endangered Species Act. On May 2, 1998, the Department submitted a letter to the OSM outlining its approach to addressing the required conditions through rulemaking. The proposed amendments include those clarifications.

This proposal relates to permitting and performance standards for coal refuse disposal operations. It contains new provisions for a mandatory preapplication site selection process; criteria for design and performance of groundwater and surface water protection systems; criteria relating to the design and performance of systems that prevent precipitation from contacting coal refuse; criteria relating to stream buffer zone variances; and requirements relating to experimental practices.

Additionally, it provides the regulatory language needed to implement section 6.2 of the CRDCA (52 P. S. § 30.56b). The CRDCA postponed implementation of the section 6.2 provisions pending the promulgation of regulations governing the use of sites with preexisting pollutional discharges. This proposed language is intended to promote the use and reclamation of sites that were previously impacted by mining.

This proposal amends § 90.12 (relating to geology) to request geologic information that is needed to review a permit application for coal refuse disposal activities. The proposal adds language to § 90.13 (relating to groundwater information) regarding groundwater flow as it relates to groundwater and surface water protection, and language describing requirements relating to preventing precipitation from contacting the coal refuse during temporary cessation.

In addition to the Act 114 provisions, § 90.116a (relating to hydrologic balance: water rights and replacements) includes a cross reference to the water supply replacement provisions of the current surface mining regulations in Chapter 87 (relating to surface mining of coal). The proposed amendment clarifies that coal refuse disposal site operators are required to replace water supplies that are impacted by their operations.

These proposed regulatory changes were reviewed and discussed with the Mining and Reclamation Advisory Board (MRAB). The MRAB is the Department's advisory body for regulations pertaining to surface coal mining, including coal refuse disposal. A draft of the proposed rulemaking was reviewed and discussed with the MRAB's Regulation, Legislation and Technical Committee on November 17, 1999. The MRAB concurred with the proposed rulemaking at its meeting on January 6, 2000.

#### E. *Summary of Regulatory Requirements*

As indicated in Section D of this Preamble, these proposed changes are primarily the result of amendments to the CRDCA. The following summary identifies the section of the regulations proposed for change or addition along with a description of the specific change.

##### *§ 90.1. Definitions.*

A definition of "public recreational impoundment" is added. The proposed definition is based on section 3 of the CRDCA (52 P. S. § 30.53). Under the CRDCA, watersheds that are less than 4 square miles in area and that drain to a point on a stream coinciding with the upstream limit of a public recreational impoundment cannot be approved for coal refuse disposal unless the site proposed is a preferred site.

*§ 90.5. Site selection and permitting; and § 88.281 Requirements.*

The proposed sections reflect section 4.1 of the CRDCA (52 P. S. § 30.54a), which outlines a comparative analysis process for evaluating potential sites for coal refuse disposal. The CRDCA and the proposed amendments establish a two-step process for the permitting of coal refuse disposal sites. The first step is a preapplication site selection process intended to steer applicants to areas previously disturbed by mining. In the absence of previously disturbed sites, the site selection process requires an evaluation of nearby candidate sites with the goal of choosing the site that results in minimal adverse impacts. Following the Department's approval of the applicant's site selection, the applicant shall proceed to the second step which involves preparing and submitting a permit application for the selected site. The proposed § 90.5 language outlines the need to conduct the mandatory site selection step prior to applying for a permit for coal refuse disposal activities. Proposed § 88.281 of the anthracite regulations cross references the site selection requirements of Chapter 90.

*§ 90.12. Geology.*

Revisions are proposed to § 90.12 to solicit a more appropriate geologic description for proposed coal refuse disposal sites. The existing language in § 90.12 is borrowed from Chapter 87 and was written to gather information relating to sites where coal will be mined. The proposed language solicits information on surficial geology, soils and characteristics of joints and fractures. This information is more useful in evaluating sites that will be used for coal refuse disposal activities.

*§ 90.13. Groundwater information.*

Revisions are proposed to § 90.13 to reflect the requirements of section 6.1(i) of the CRDCA. Under the Act 114 amendments, all new coal refuse disposal areas must include systems to prevent adverse impacts to surface and groundwater. The effectiveness of any system designed to drain, divert, contain or otherwise control groundwater and surface water in and around coal refuse disposal piles is, in part, dependent on an understanding of a site's predisposal groundwater/surface water interactions. Proposed § 90.13 is intended to collect this information to allow a complete technical evaluation of the proposed groundwater and surface water protection system.

*§ 90.34. Reclamation: postdisposal land use.*

Section 90.34 contains revisions to reflect more clearly the fact that postdisposal land use consistently differs from predisposal land use. In addition, a minor grammatical change is proposed to improve § 90.34(a)(2).

*§ 90.45. Prime farmland.*

The proposed revision is intended to draw attention, by cross reference, to the prime farmland provision in proposed Subchapter E (relating to site selection). Coal refuse disposal is prohibited under Subchapter E on sites with prime farmland unless the site is a preferred site.

*§ 90.49. Stream buffer zone variance; and § 88.281 Requirements.*

The proposed language reflects section 6.1(h)(5) of the CRDCA, which gives the Department authority to grant a variance to dispose of coal refuse within 100 feet (30.48 meters) of the bank of a stream and to relocate or divert streams for the purpose of coal refuse disposal. Language is included to ensure that coal refuse disposal operations,

which fall outside the scope of § 90.49, comply with the stream buffer zone provisions of § 86.102(12) (relating to areas where mining is prohibited or limited). The proposed § 90.49 requires that the variance be issued as a written order and that operators give public notice of the application for the variance. There are also provisions requiring the Department to conduct a public hearing when any person files an exception to the proposed variance.

Prior to the development of the proposed amendments, the Department had submitted the Act 114 amendments to the OSM for approval as a program amendment. Proposed § 90.49 includes a requirement that each stream variance for purposes of coal refuse disposal shall be accompanied by a demonstration that "the activities will not cause or contribute to the violation of State or Federal water quality standards, and will not adversely affect water quality and quantity, or other environmental resources of the stream." This requirement differs from the precise language of section 6.1(h)(5) of the CRDCA, which requires a demonstration that "there will be no significant adverse hydrologic or water quality impacts as a result of the variance." The proposed language is based on Federal program requirements communicated to the Department by the OSM in its conditional approval of the Act 114 amendments. The Department previously took action to address this matter by suspending implementation of the term "significant" in section 6.1(h)(5) of the CRDCA. This matter was announced at 28 Pa.B. 2544 (May 30, 1998). Other changes necessary to make this requirement consistent with the Federal counterpart requirement are incorporated in proposed § 90.49(c)(1).

*§ 90.50. Design criteria: Groundwater and surface water protection system; and § 88.281 Requirements.*

The proposed language reflects section 6.1(i) of the CRDCA, which requires that all new coal refuse areas include systems to prevent adverse impacts to surface and groundwater and to prevent precipitation from contacting the coal refuse. The proposed § 90.50 outlines design criteria relating to these systems and requires that the applicant provide a determination of the potential mine subsidence related impacts. The phrase "... prevent precipitation from coming into contact with the coal refuse" in § 90.50(b) is based on section 6.1(i) language. This statutory requirement was intended to ensure that precipitation contacting the coal refuse is kept to a minimum thereby reducing the volume of water needing treatment after the site is closed. The system is required to be designed and installed in a manner that minimizes the amount of time coal refuse is exposed to precipitation. The object is to have the system installed incrementally as refuse disposal progresses. The final system, in conjunction with the groundwater and surface water diversion systems, will result in greatly reduced postdisposal outflows. Section 88.281 of the anthracite regulations cross references the requirements of § 90.50.

*§ 90.116a. Hydrologic balance: Water rights and replacement.*

The proposed language is included to formally incorporate the existing water supply replacement criteria of § 87.119 (relating to hydrologic balance: water rights and replacement) into Chapter 90. The requirement in § 87.119 applies to all surface mining activities, one of which is coal refuse disposal. It has been historically used to address water supply impacts at coal refuse sites.

*§ 90.122. Coal refuse disposal; and § 88.310 Coal refuse disposal: general requirements.*

The proposed revisions include performance standards based on requirements of section 6.1(i) of the CRDCA relating to systems that prevent precipitation from contacting the coal refuse and systems that prevent adverse impacts to surface and groundwater. When coupled with the proposed design criteria in § 90.50 (cross referenced in the anthracite regulations in § 88.281), the revised §§ 90.122 and 88.310 will require that coal refuse disposal areas be provided with the groundwater and surface water protection systems prescribed by section 6.1(i) of the CRDCA.

Additionally, existing § 90.122(e) and (g) is proposed to be deleted. Section 90.122(e) is unnecessary since it duplicates requirements for information that is required in greater detail under § 90.122(d) and (f). Section 90.122(g) is not needed due to the fact that new coal refuse disposal sites will be required to include design features, such as the system to protect groundwater and surface water, that will address groundwater discharges and surface water flows at proposed disposal sites.

The revision will also correct a typographical error in § 88.310(e).

*§ 90.167. Cessation of operation: temporary; and § 88.332 Cessation of operations: temporary.*

The proposed revisions reflect section 6.1(i) of the CRDCA which requires that the system for preventing precipitation from contacting the coal refuse be installed when the operator temporarily ceases operation of the coal refuse disposal area for a period in excess of 90 days.

*Subchapter E. Site Selection (All of Subchapter E is incorporated into Chapter 88 by cross reference in § 88.281.)*

The proposed Subchapter E covers the site selection process required under section 4.1 of the CRDCA. The site selection process takes place prior to the time of permit application and is designed to ensure that coal refuse disposal will take place in a suitable location.

*§ 90.201. Definitions.*

Section 90.201 is a newly proposed section. It defines the terms that apply to the site selection process.

The proposed definition of the term "preferred site" is taken verbatim from section 4.1 of the CRDCA. Under the CRDCA, a preferred site is either an unreclaimed mine site or a site polluted by acid mine drainage. One of the prime functions of the Act 114 revisions to the CRDCA was to steer mine operators to preferred sites.

The proposed definition of the term "search area" is based on section 4.1(c) and (d) of the CRDCA. Since the source of coal refuse is normally a coal preparation facility, the definition delineates the search area based on the location of the preparation facility.

The proposed definition of the term "selected site" was added to clarify its meaning as used throughout Subchapter E. Due to the use of similar terms in the proposed amendments, such as "preferred site," "alternate site" and "approved site," it was necessary to provide a specific definition for the term "selected site."

*§ 90.202. General requirements; § 90.203 Proposing a preferred site; and § 90.204 Proposing an alternate site.*

Proposed §§ 90.202—90.204 are based on section 4.1 of the CRDCA. Section 90.202 outlines general provisions regarding the evaluation and comparison of preferred and

alternate sites. It also addresses areas where coal refuse disposal is restricted. Section 90.203 addresses the standard of approval for preferred sites. Section 90.204 outlines the procedures that apply when an applicant proposes an alternate site. Subsection (a) covers situations where both preferred sites and alternate sites are present within the search area. Subsection (b) applies to situations where no preferred sites exist within the search area. The proposed language spells out the process for evaluation of available sites for coal refuse disposal, a process for delineating sites to be evaluated based on the search areas prescribed under sections 4.1(c) and (d) of the CRDCA, and a process for demonstrating that an alternate site is the most suitable for coal refuse disposal.

*§ 90.205. Alternatives analysis.*

Proposed § 90.205 describes the provisions of section 4.1(e) of the CRDCA. It clarifies that the alternatives analysis conducted under Subchapter E fulfills the alternatives analysis requirements of the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).

*§ 90.206. Disapproval of a proposed site.*

The proposed language is designed to clarify that the Department's disapproval of a given site under the site selection process relates to that site and not to the entire search area or to areas beyond the search area.

*§ 90.207. Approval of a selected site.*

The proposed language reflects the fact that final approval for coal refuse disposal is given after review of the complete coal refuse disposal permit application, and that permit issuance is not an automatic extension of the site selection approval. The final decision regarding permit issuance is contingent upon the design of the facility meeting the requirements of Chapters 86—90.

*Subchapter F. Coal Refuse Disposal Activities on Areas with Preexisting Pollutational Discharges. (All of Subchapter F is incorporated into Chapter 88 by cross-reference at § 88.281.)*

*§ 90.301 Scope, § 90.302 Definitions, § 90.303 Applicability, § 90.304 Application for authorization, § 90.305 Application approval or denial, § 90.306 Operational requirements, § 90.307 Treatment of discharges, § 90.308 Request for bond release, and § 90.309 Criteria and schedule for release of bonds on pollution abatement areas.*

The proposed subchapter is designed to provide incentives for operators to enter, conduct coal refuse disposal activities and reclaim areas that were previously affected by coal mining activities that have pollutational discharges. The proposed language is modeled on the existing remaining incentive provisions of Chapters 87 and 88. These provisions have been in effect since 1985 and have been successful in encouraging operators to enter sites with preexisting pollutational discharges. The result has been new and innovative technology for the control and treatment of mine drainage, improvement to water quality, recovery of coal reserves that would otherwise remain unmined, and reclamation of abandoned sites at operator cost instead of state cost.

At the present time, coal refuse disposal site operators who re-affect areas with existing pollutational discharges will have their bonds held by the Department unless they eliminate those discharges. As a result, operators typically develop coal refuse disposal operations on virgin sites. Section 6.2 of the CRDCA was intended to provide incentives to encourage operators to re-affect previously disturbed land by creating limited exception to the exist-

ing regulation. These exceptions provide for special permits and release of bonds at areas with preexisting pollutional discharges. The proposed amendments are expected to encourage reclamation of abandoned mine lands.

The major provision of proposed Subchapter F is a modified level of treatment required for preexisting discharges, which are not encountered during redisturbance of a site or during the implementation of the abatement program. For this class of discharges, section 6.2 of the CRDCA establishes a baseline pollution load treatment level based on "best professional judgment" instead of the standard treatment levels required under the existing § 90.102. An effluent limitation based on best professional judgment takes into account the quality and quantity of the preexisting discharge on a case-by-case basis; whereas the standard effluent limitations set fixed limitations for all discharges regardless of preexisting quality. The proposed amendments obligate the Department to release bonds if the abatement plan significantly improves the quality of the discharges. If the operator fails to obtain a significant improvement but, nevertheless, does not worsen the discharges, the Department is still obligated to release the bond provided the operator has taken certain steps specified by the Department that are necessary to improve water quality.

*Subchapter G. Experimental Practices. (Subchapter G is incorporated into Chapter 88 by cross reference in § 88.281.)*

§ 90.401. *General.*

The proposed section reflects the requirements of section 6.3 of the CRDCA (52 P. S. § 30.56c). The proposed § 90.401 is designed to encourage advances in coal refuse disposal practices and advances in technology that will enhance environmental protection. Federal regulations require substantial coordination during review of experimental practice applications between the state regulatory agency and the OSM. Therefore, Federal counterpart language relating to experimental practices is fully incorporated by cross reference in § 90.401(b) to ensure that the proposed language is consistent with the Federal requirements.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a statement of the benefits of a proposed amendments, as well as the costs that may be imposed.

These proposed amendments should result in substantial benefits to the Commonwealth. Although costs and benefits cannot be calculated with precision, the Department has developed some estimates that provide a means of gauging the significance of these regulations. The benefits and costs are as follows:

1. The site selection provisions of the proposed amendments are designed to steer operators who are evaluating coal refuse disposal sites to areas previously disturbed by mining. The regulations minimize the total number of disposal sites. The limited number of sites serves to minimize the likelihood of citizens being exposed to the effects of coal refuse disposal. To make the use of sites with preexisting discharges more palatable to operators, Act 114 included provisions for modified discharge limits and alternative reclamation standards. Unlike the other sections of Act 114, these provisions were not self-implementing. They are contingent on this rulemaking. This rulemaking will therefore fulfill the intent of Act 114.

2. Prior to the Act 114 amendment to the CRDCA, operators were exposed to potentially unlimited liability for treatment of preexisting discharges that would remain after coal refuse disposal was complete. This potential liability has discouraged operators from reentering sites and thus limited the amount of operator reclamation.

3. The proposed Subchapter F will impose no new costs on private entities. This is because the proposed amendments simply create an option for operators to use if they so choose. If operators choose to use sites with preexisting discharges, they will bear slightly higher costs in preparing permit applications than they would incur for other permit applications. Costs will be related to the development of abatement plans, as well as implementation of the abatement plans and certification of completion of these plans. Costs will vary based on the number of discharges and the degree of pollution at the site as well as the technology needed to achieve a predicted improvement. Costs for characterization of discharge quality and quantity are estimated to be approximately \$500 per discharge. The proposed amendments will be used when operators perceive that the economic benefits for disposing of coal refuse in an area previously affected by mining outweigh the additional costs required to characterize the preexisting discharges.

4. The proposed Subchapter E provisions mirror the self-implementing provisions of Act 114. The regulated industry has been complying with the requirements since Act 114 became effective in 1995. The additional up-front site characterization and alternatives analysis required by Act 114 and proposed Subchapter E can result in significant costs to the operator (\$50,000—\$70,000 per site).

5. Act 114 and the proposed amendments require coal refuse disposal sites to incorporate systems to prevent adverse impacts to surface and groundwater and to prevent precipitation from contacting the coal refuse. The regulated community has been following this self-implementing Act 114 provision since 1995. The proposed regulations do not add new requirements beyond the statutory requirements. The proposed amendments covering the types of systems to be installed are not prescriptive; therefore, the costs related to design and construction can vary considerably depending on the systems proposed. However, the costs of designing and installing systems at large coal refuse disposal sites may be substantial. The economic impact is partly mitigated due to the limited number of anticipated sites and the fact that the State's largest coal producers will typically develop these sites. Additionally, since the required systems will reduce groundwater and surface water recharge to the coal refuse pile, the costs will be offset by the long-term savings realized due to reduced water treatment costs.

The benefits of the proposed amendments outweigh the costs for the following reasons. First, no operator will use the Subchapter F option unless that operator is convinced that he can conduct coal refuse disposal activities on the site and obtain release of bond. Because the proposed amendments present the operator with an option, they will be used only when the operator perceives that the benefits outweigh the costs. In addition, the proposed amendments will result in a reduction of water pollution from areas that have been previously mined, will lead to additional reclamation of areas that have been previously mined, and will benefit the Commonwealth and landowners by promoting the reuse of previously disturbed areas as opposed to virgin sites. In addition, the site-selection provisions, in conjunction with surface and groundwater

protection systems, will result in improved water quality and disposal of coal refuse at the most environmentally suitable site available.

Subchapter F imposes no additional paperwork because it merely creates an option for operators to disturb areas that contain preexisting pollutional discharges. If an operator exercises this option, Subchapter F does require increased background water quality information not ordinarily required in permit applications. This information is necessary to ensure accurate information about the quantity and quality of preexisting pollutional discharges from the site, so that any changes in background data caused by the proposed activities may be more completely and accurately understood. Subchapter G (relating to experimental practices) will require an applicant to submit a substantial amount of additional paperwork. The additional paperwork will only apply to sites where an operator chooses to propose experimental practices.

G. *Sunset Review*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 31, 2000, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, 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' review period. The notification shall specify the regulatory review criteria that 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 final-form regulations.

I. *Public Comments*

*Written Comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by August 16, 2000 (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 August 16, 2000. 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@dep.state.pa.us and must also be received by the Board by August 16, 2000. 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.

J. *Public Hearings*

The Board will hold two public hearings for the purpose of accepting comments on this proposal. They will be held at 7 p.m. on the following dates:

July 19, 2000      Quality Hotel  
100 South Centre Street  
Pottsville, Pa.

July 28, 2000      Days Inn  
127 West Byers Avenue  
I-70 & Turnpike Exit 8  
New Stanton, Pa.

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

Persons in need of accommodations as provided for in the American With Disabilities Act of 1990 should contact Joan Martin directly at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-598 (TDD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,  
*Chairperson*

**Fiscal Note:** 7-352. No fiscal impact; (8) recommends adoption.

**Annex A**

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

**Subpart C. PROTECTION OF NATURAL  
RESOURCES**

**CHAPTER 88. ANTHRACITE COAL**

**Subchapter D. ANTHRACITE REFUSE DISPOSAL:  
MINIMUM ENVIRONMENTAL PROTECTION  
PERFORMANCE STANDARDS**

**§ 88.281. Requirements.**

A person who conducts coal refuse disposal activities shall comply with the performance standards and design requirements of this subchapter, §§ 90.5, 90.49, 90.50 and Subchapters E—G of Chapter 90.

\* \* \* \* \*

**§ 88.310. Coal refuse disposal: general requirements.**

\* \* \* \* \*

(e) The coal refuse to be placed in [ full ] the fill shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered and graded to allow surface and subsurface

drainage to be compatible with the natural surroundings, and ensure a long-term static safety factor of 1.5 and seismic safety factor of 1.2.

\* \* \* \* \*

(j) The system to prevent adverse impacts to the surface water and groundwater shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit and shall function to prevent adverse impacts to surface water and groundwater.

(k) The system to prevent precipitation from coming in contact, with the coal refuse shall be constructed in accordance with design schematics, descriptions, plans, maps, profiles and cross-sections approved in the permit and shall function to prevent precipitation from contacting the coal refuse. The system shall be installed as phases of the disposal area reach capacity, as specified in the permit, when the operation temporarily ceases for more than 90 days (unless the Department approves a longer period, not to exceed 1 year) or when the operation permanently ceases. The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 88.330 (relating to revegetation: standards for successful revegetation) and for prevention of erosion.

§ 88.332. Cessation of operations: temporary.

(a) As soon as it is known that the operation will temporarily cease for more than 30 days, the operator shall submit a notice of intention, in writing, to temporarily cease the operation. The notice shall include a statement of the exact number of acres which will have been affected in the permit area, the extent and kind of reclamation of those areas, and identification of the backfilling, regrading, revegetation, monitoring and water treatment activities that will continue during the temporary cessation. The system for preventing precipitation from contacting the coal refuse shall be installed when the temporary cessation exceeds 90 days. The Department may approve a longer period, not to exceed 1 year, under subsection (b).

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CHAPTER 90. COAL REFUSE DISPOSAL

Subchapter A. GENERAL PERMIT AND APPLICATION REQUIREMENTS FOR COAL REFUSE DISPOSAL

§ 90.1. Definitions.

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

\* \* \* \* \*

**Public recreational impoundment**—A closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water and which is owned, rented or leased by the Federal government, the Commonwealth or a political subdivision of this Commonwealth and which is used for swimming, boating, water skiing, hunting, fishing, skating or other similar activities.

\* \* \* \* \*

§ 90.5. Site selection and permitting.

(a) Prior to applying for a permit to conduct coal refuse disposal activities, the applicant shall comply with Subchapter E (relating to site selection).

(b) After the Department has approved a site in accordance with Subchapter E, the applicant may apply for a permit for coal refuse disposal activities in accordance with Chapters 86 and 88 (relating to surface and underground coal mining: general; and anthracite coal) and this chapter.

Subchapter B. MINIMUM ENVIRONMENTAL RESOURCES INFORMATION REQUIRED IN PERMIT APPLICATIONS FOR COAL REFUSE DISPOSAL

§ 90.12. Geology.

[ (a) ] The application shall include a description of the areal and structural geology within the proposed permit and adjacent area, including the lithology of the strata that influence the occurrence, availability, movement and quality of groundwater that may be affected by the coal refuse disposal [ , ]. [ including the following:

(1) ] For lands within the proposed permit and adjacent areas, the applicant shall provide a description of the geology with complementing maps and cross sections and the results of test borings [ . and coal samplings. The description shall include the stratum immediately beneath the coal seam to be mined and all overlying strata, or, where an aquifer or existing deep mine below the lowest coal to be mined may be affected, the aquifer or existing deep mine and all overlying strata for mines underlain by existing deep mines and greater than 200 feet below surface drainage throughout the proposed mine, the description need only include the strata down to and including the stratum immediately below the coal seam to be mined ]. The description shall include the strata down to and including any aquifer that may be affected. At a minimum, the description shall include:

[ (i) ] (1) \* \* \*

[ (ii) ] (2) Depth, lithology and structure [ of overburden or underlying strata ] of near-surface bedrock.

[ (iii) ] (3) \* \* \*

[ (2) For any portion of a permit area in which the strata will be removed, test borings or core samples shall be collected down to and including the stratum immediately below the lowest coal seam to be mined or stratum to be removed and analyzed to provide the following data:

(i) Logs of drill holes that show the lithologic characteristics, including physical characteristics and thickness of each stratum, and location and quality of groundwater.

(ii) Chemical analyses of each stratum with the overburden and the stratum immediately below the coal seam to be mined to identify those strata that contain acid-forming, toxic-forming or alkalinity-producing materials.

(iii) Chemical analyses for acid-forming and toxic-forming substances of the coal seam, including the total sulfur content.

(b) An application may request that the requirements for a statement of the results of the test borings or core samplings, as required under subsection (a)(2), may be waived in part or in its entirety by the Department. ]

(4) A description of glacial, alluvial or colluvial deposits or other unconsolidated deposits that are present within or beneath the proposed permit area, including their thickness and location.

(5) A description of mine workings that are present beneath the proposed permit area.

(6) The attitude and characteristics of joints, cleats, fracture zones and faults within the permit and adjacent areas.

(7) The location and identification of coal seam crop lines within the permit area.

(8) A description of the physical characteristics of soils within the permit area.

(9) A description of aquifers that are present beneath the proposed permit area.

§ 90.13. Groundwater information.

The application shall contain a description of the premining or baseline groundwater hydrology of the proposed permit and adjacent area, including the following:

\* \* \* \* \*

(2) Other information on the baseline hydrogeologic properties of the groundwater system shall be included with the application. The Department may require information on indicator parameters such as pumping test, lithologic and piezometer data or that other appropriate information be provided. **Specific attention shall be given to describing the groundwater flow system as it relates to the design and operation of the proposed groundwater and surface water protection system as described in § 90.50 (relating to design criteria: groundwater and surface water protection system).**

**Subchapter C. MINIMUM OPERATION AND RECLAMATION PLAN INFORMATION REQUIRED IN APPLICATIONS FOR COAL REFUSE DISPOSAL**

§ 90.34. Reclamation: postdisposal land use.

(a) An application shall contain a description of the proposed land use, following reclamation, of the lands to be affected within the proposed permit area by coal refuse disposal activities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain the following:

\* \* \* \* \*

(2) [ When pastureland is the postdisposal land use, the ] The detailed management plan to be implemented when pastureland is the postdisposal land use.

(3) [ When a land use different from the predisposal land use is proposed, materials ] Materials needed for approval of the alternative use under § 90.166 (relating to postdisposal land use).

\* \* \* \* \*

§ 90.45. Prime farmland.

A person who conducts, or intends to conduct, coal refuse disposal activities on prime farmlands historically used for cropland, in accordance with Subchapter E (relating to site selection), shall submit a plan, as part of the permit application, for the disposal and restoration of the land. The plan shall contain, at a minimum:

\* \* \* \* \*

§ 90.49. Stream buffer zone variance.

(a) *Stream buffer zone restriction.* Coal refuse disposal operations may not occur within 100 feet (30.48 meters) of the bank of a stream. The Department may grant a variance for disposal of coal refuse under subsection (c).

(b) *Compliance required.* Coal refuse disposal operations other than coal refuse disposal shall comply with § 86.102(12) (relating to areas where mining is prohibited or limited).

(c) *Variance.* The Department may grant a variance from the 100-foot (30.48-meter) stream buffer zone to dispose of coal refuse in the 100-foot (30.48-meter) stream buffer zone. The stream buffer zone is the area within 100 feet (30.48 meters) measured horizontally from the bank of any stream.

(1) Stream buffer zone variances will only be granted if the operator demonstrates to the satisfaction of the Department that the coal refuse disposal will not adversely affect water quality and quantity, or other environmental resources of the stream and will not cause or contribute to the violation of applicable State or Federal water quality standards.

(2) Prior to granting a variance, the operator shall be required to give public notice of the application in two newspapers of general circulation in the area once a week for 2 successive weeks.

(i) If a person files an exception to the proposed variance within 20 days of the last publication of the notice, the Department will conduct a public hearing with respect to the application within 30 days of receipt of the exception.

(ii) The Department will also consider information or comments submitted by the Fish and Boat Commission prior to taking action on a variance request.

(3) The variance will be issued as a written order specifying the methods and techniques that shall be employed to prevent or mitigate adverse impacts.

§ 90.50. Design criteria: groundwater and surface water protection system.

(a) The application shall include a description of the system that will be installed to prevent adverse impacts to groundwater and surface water. The description shall include maps, plans and other information necessary to evaluate the design of the system.

(b) The application shall include a description of the system that will be installed to prevent precipitation from coming into contact with the coal refuse. The description shall include maps, plans and other information necessary to evaluate the design of the system. The coal refuse disposal operation shall be designed in phases to minimize the amount of time the entire coal refuse area is

exposed to precipitation prior to the installation of the system to prevent precipitation from contacting the coal refuse. The application shall describe the design of the system for preventing precipitation from contacting coal refuse and how the system will be installed in accordance with the following:

(1) During routine coal refuse disposal as phases of the coal refuse disposal area reach capacity.

(2) During periods of temporary cessation as directed under § 90.167(d) (relating to cessation of operations: temporary).

(3) When the operation permanently ceases.

(c) The application shall include a description of the site's susceptibility to mine subsidence and the potential impacts of mine subsidence on the systems described in subsections (a) and (b). The description shall include the measures to be taken to ensure the long-term functionality of the systems described in subsections (a) and (b) with particular attention to subsidence-induced impacts or other physical or chemical processes that could adversely affect the operation of the systems.

**Subchapter D. PERFORMANCE STANDARD FOR COAL REFUSE DISPOSAL**

**§ 90.101. Hydrologic balance: general requirements.**

\* \* \* \* \*

(b) Coal refuse disposal activities shall be planned and conducted to prevent pollution of [ the water ] ground-water and surface water and prevent, to the maximum extent possible, changes to the water quantity, depth to groundwater and location of surface water drainage channels so that the approved postdisposal land use of the permit is not adversely affected.

\* \* \* \* \*

**§ 90.116a. Hydrologic balance: water rights and replacement.**

A person who conducts coal refuse disposal activities and adversely affects a water supply by contamination, pollution, diminution or interruption shall comply with § 87.119 (relating to hydrologic balance: water rights and replacement).

**§ 90.122. Coal refuse disposal.**

\* \* \* \* \*

(e) [ The coal refuse disposal area shall be located on the most moderately sloping and naturally stable areas available as approved by the Department. Fill materials suitable for disposal shall be placed upon or above a natural terrace, bench or berm to provide additional stability and prevent mass movement.

(f) \* \* \*

[ (g) The coal refuse disposal area should be located in areas where groundwater discharge and surface water flows are minimal.

[ (h) ] (f) \* \* \*

(g) The disposal area shall be provided with a system to prevent adverse impacts to the surface water and groundwater. The system shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-

sections approved in the permit and shall function to prevent adverse impacts to surface water and groundwater.

(h) The disposal area shall be provided with a system to prevent precipitation from coming in contact with the coal refuse. The system shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit and shall function to prevent precipitation from contacting the coal refuse. The system shall be installed as phases of the disposal area reach capacity, as specified in the permit, when the operation temporarily ceases for a period in excess of 90 days (unless the Department approves a longer period, not to exceed 1 year) or when the operation permanently ceases. The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 90.159 (relating to revegetation: standards for successful revegetation) and for the prevention of erosion.

\* \* \* \* \*

**§ 90.167. Cessation of operations: temporary.**

\* \* \* \* \*

(b) Temporary cessation of an operation [ shall ] may not exceed 90 days unless the Department approves a longer period for reasons of seasonal shutdown or labor strike.

\* \* \* \* \*

(d) The operator shall install the system for preventing precipitation from contacting the coal refuse when the temporary cessation exceeds 90 days. The Department may approve a longer period, not to exceed 1 year, for reasons of a labor strike or business necessity.

(Editor's Note: Subchapters E—G are proposed to be added. They are printed in regular type to enhance readability.)

**Subchapter E. SITE SELECTION**

Sec.	
90.201.	Definitions
90.202.	General requirements.
90.203.	Proposing a preferred site.
90.204.	Proposing an alternative site.
90.205.	Alternative analysis.
90.206.	Disapproval of proposed site.
90.207.	Approval of selected site.

**§ 90.201. Definitions.**

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

*Preferred site*—A watershed polluted by acid mine drainage; a watershed containing an unreclaimed surface mine but which has no mining discharge; a watershed containing an unreclaimed surface mine with discharges that could be improved by the proposed coal refuse disposal operation; unreclaimed coal refuse disposal piles that could be improved by the proposed coal refuse disposal operation; or other unreclaimed areas previously affected by mining activities.

*Search area*—For a proposed coal refuse disposal site associated with an existing coal mining activity, it is the geographical area within a 1-mile radius of the existing coal preparation facility. For a proposed coal refuse disposal site associated with a proposed coal mining activity, it is a 25-square mile area around the coal



preparation facility. In defining the 25-square mile area, consideration shall be given to environmental, technical, transportation, economic and social factors.

*Selected site*—A location selected by the applicant and approved by the Department under this subchapter for which the applicant can then apply for a permit to conduct coal refuse disposal activities.

**§ 90.202. General requirements.**

(a) A preferred site shall be used for coal refuse disposal unless the applicant demonstrates to the Department that an alternate site is more suitable based upon engineering, geology, economics, transportation systems, and social factors and is not adverse to the public interest.

(b) Where there are no preferred sites located within the search area, the applicant shall conduct a comparative analysis of the potential coal refuse disposal sites in accordance with § 90.204(b) (relating to proposing an alternate site).

(c) The Department will not approve a site proposed by the applicant for coal refuse disposal activities when the Department finds one of the following:

(1) The adverse environmental impacts of using the site for coal refuse disposal activities would clearly outweigh the public benefits.

(2) The site is known or is likely to contain Federally listed threatened or endangered plants or animals unless the Department concludes and the United States Fish and Wildlife Service concurs that the proposed use of the site would be unlikely to adversely affect those species.

(d) The Department will not approve a site, unless it is a preferred site, proposed by the applicant for coal refuse disposal if the site contains one or more of the following:

- (1) Prime farmlands.
- (2) An exceptional value watershed as defined under Chapter 93 (relating to water quality standards).
- (3) Threatened or endangered plants or animals listed exclusively under the Commonwealth's protection programs.
- (4) An area that contributes at least 5% of the drainage to wetlands designated as exceptional value under Chapter 105 (relating to dam safety and waterway management) unless a larger percentage contribution is authorized by the Department after consultation with the Fish and Boat Commission.

(5) A watershed less than 4 square miles in area upstream of the intake of a public water supply.

(6) A watershed less than 4 square miles in area upstream of the upstream limit of a public recreational impoundment.

(e) As part of the site selection process, an applicant may request approval for more than one site. The Department will evaluate each site proposed for coal refuse disposal and, when the Department finds that a proposed site meets the requirements of this subchapter, it will designate it as an approved site. The applicant will then have the option of choosing a selected site from among the approved sites and submitting an application for coal refuse disposal for that site.

**§ 90.203. Proposing a preferred site.**

If the applicant proposes to use a preferred site, the Department will approve the proposed site subject to § 90.202(c) (relating to general requirements) provided

the applicant demonstrates that the attendant adverse environmental impacts will not clearly outweigh the public benefits.

**§ 90.204. Proposing an alternate site.**

(a) Where a preferred site exists within the search area, but the applicant proposes an alternate site, the applicant shall:

(1) Demonstrate that the alternate site is more suitable than all preferred sites within the search area.

(2) Identify other alternate sites considered and provide the basis for the rejection of these sites.

(3) Based on reasonably available data, demonstrate that it is the most suitable site based on environmental, economic, technical, transportation and social factors.

(b) If a preferred site does not exist within the search area, the applicant shall:

(1) Identify all the sites considered within the search area and provide the basis for their consideration.

(2) Provide the basis for the rejection of considered sites.

(3) Based on reasonably available data, demonstrate to the Department that the proposed site is the most suitable based on environmental, economic, technical, transportation and social factors.

**§ 90.205. Alternatives analysis.**

The alternatives analysis required by §§ 90.202(b) and 90.204 (relating to general requirements; and proposing an alternative site) satisfies the requirement for an alternatives analysis under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and regulations promulgated under that act.

**§ 90.206. Disapproval of a proposed site.**

If the Department disapproves the applicant's proposed site, the applicant may submit a new proposal supporting the selection of another site located either within or outside of the search area.

**§ 90.207. Approval of a selected site.**

Department approval of a selected site does not indicate the Department will approve an application for coal refuse disposal activities for the selected site.

**Subchapter F. COAL REFUSE DISPOSAL ACTIVITIES ON AREAS WITH PREEXISTING POLLUTIONAL DISCHARGES**

Sec.	Scope.
90.301.	Definitions.
90.302.	Applicability.
90.303.	Application for authorization.
90.304.	Application approval or denial.
90.305.	Operational requirements.
90.306.	Treatment of discharges.
90.307.	Request for bond release.
90.308.	Criteria and schedule for release of bonds on pollution abatement areas.
90.309.	

**§ 90.301. Scope.**

(a) This subchapter specifies procedures and rules applicable to those who seek authorization to engage in coal refuse disposal activities on an area on which there are preexisting pollutional discharges resulting from previous mining and describes the terms and conditions under which the Department may release bonds to operators who have received authorization.

(b) Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A—D apply to

authorizations to mine areas with preexisting pollutional discharges except as specifically modified by this subchapter.

**§ 90.302. Definitions.**

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

*Abatement plan*—Any individual technique or combination of techniques, the implementation of which will result in reduction of the baseline pollution load. Abatement techniques include, but are not limited to: addition of alkaline material, special plans for managing toxic and acid-forming material, regrading, revegetation and relocating coal refuse to a coal refuse disposal area that includes systems to prevent adverse impacts to surface and groundwater and to prevent precipitation from contacting the coal refuse.

*Actual improvement*—The reduction of the baseline pollution load resulting from the implementation of the approved abatement plan; except that any reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement. Treatment approved by the Department of the coal refuse before, during or after placement in the coal refuse disposal area is not considered to be water treatment.

*Baseline pollution load*—The characterization of the pollutional material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by the Department, including seasonal variations and variations in response to precipitation events. The Department will establish in each authorization the specific parameters it deems relevant for the baseline pollution load, including, at a minimum, iron and acid loadings.

*Best professional judgment*—The highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the Department under sections 301 and 402 of the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1311 and 1342).

*Best technology*—Measures and practices which will abate or ameliorate, to the maximum extent possible, discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

*Coal refuse disposal activities*—The storage, dumping or disposal of any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, underground development wastes, coal processing wastes, excess soil and related materials, associated with or near a coal seam, that are either brought above ground or otherwise removed from a coal mine in the process of mining coal or are separated from coal during the cleaning or preparation operations. The term does not include the removal or storage of overburden from surface mining activities.

*Excess soil and related material*—Rock, clay or other material located immediately above or below a coal seam and which is extracted from a coal mine during the process of mining coal. The term does not include topsoil or subsoil.

*Pollution abatement area*—The part of the permit area that is causing or contributing to the baseline pollution load. The term includes adjacent and nearby areas that must be affected to bring about significant improvements

of the baseline pollution load and may include the immediate locations of the discharges.

**§ 90.303. Applicability.**

(a) Authorization may not be granted under this subchapter unless the authorization is part of the following:

(1) A permit issued after February 6, 1995, but only if the authorization request is made during one of the following periods:

(i) At the time of the submittal of the permit application for the coal refuse disposal activities, including the proposed pollution abatement area.

(ii) Prior to a Department decision to issue or deny that permit.

(2) A permit revision under § 86.52 (relating to permit revisions), but only if the operator affirmatively demonstrates to the satisfaction of the Department that:

(i) The operator has discovered pollutional discharges within the permit area that came into existence after its permit application was approved.

(ii) The operator has not caused or contributed to the pollutional discharges.

(iii) The proposed pollution abatement area is not hydrologically connected to an area where coal refuse disposal activities have been conducted under the permit.

(iv) The operator has not affected the proposed pollution abatement area by coal refuse disposal activities.

(v) The Department has not granted a bonding authorization and mining approval for the area under § 86.37(b) (relating to criteria for permit approval or denial).

(b) Notwithstanding subsection (a), authorization may not be granted under this subchapter for repermitting under §§ 86.12 and 86.14 (relating to continued operation under interim permits; and permit application filing deadlines), permit renewals under § 86.55 (relating to permit renewals: general requirements) or permit transfers under § 86.56 (relating to transfer of permit).

**§ 90.304. Application for authorization.**

(a) An operator who requests authorization under this subchapter shall comply with the permit application requirements of Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A—D, except as specifically modified by this subchapter. The operator shall also:

(1) Delineate on a map the proposed pollution abatement area, including the location of the preexisting discharges.

(2) Provide a description of the hydrologic balance for the proposed pollution abatement area that includes:

(i) Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events and modeled baseline pollution loads using this monitoring program.

(ii) Monitoring for pH, alkalinity, acidity, total iron, total manganese, aluminum, sulfates, total suspended solids and other water quality parameters the Department deems relevant.

(3) Provide a description of the abatement plan that represents best technology and includes the following:

(i) Plans, cross-sections and schematic drawings describing the abatement plan proposed to be implemented.

(ii) A description and explanation of the range of abatement level that is anticipated to be achieved, costs and each step in the proposed abatement plan.

(iii) A description of the standard of success for revegetation necessary to ensure success of the abatement plan.

(b) The operator seeking this authorization shall continue the water quality and quantity monitoring program required by paragraph (2) after making the authorization request. The operator shall submit the results of this continuing monitoring program to the Department on a monthly basis until a decision on the authorization request is made.

**§ 90.305. Application approval or denial.**

(a) Authorization may not be granted under this subchapter unless the operator seeking the authorization affirmatively demonstrates the following to the satisfaction of the Department on the basis of information set forth in the application:

(1) Neither the operator, nor an officer, principal shareholder, agent, partner, associate, parent corporation, subsidiary or affiliate, sister corporation, contractor or subcontractor, or a related party as defined in § 86.1 (relating to definitions) has either of the following:

(i) Legal responsibility or liability as an operator for treating the water pollution discharges from or on the proposed pollution abatement area.

(ii) Statutory responsibility or liability for reclaiming the proposed pollution abatement area.

(2) The proposed abatement plan will result in significant reduction of the baseline pollution load and represents best technology.

(3) The land within the proposed pollution abatement area can be reclaimed.

(4) The coal refuse disposal activities on the proposed pollution abatement area will not cause additional surface water pollution or groundwater degradation.

(5) The standard of success for revegetation will be achieved. The standard of success for revegetation for sites previously reclaimed to the standards of Chapters 87, 88 and 90 shall be the standards in § 90.159 (relating to revegetation: standards for successful revegetation). The standard of success for revegetation for sites not previously reclaimed to the standards of Chapters 87, 88 and 90 shall be, at a minimum, the following, provided the site is not a bond forfeiture site where the forfeited money paid into the fund is sufficient to reclaim the forfeited site to the applicable standards:

(i) A ground cover of living plants not less than can be supported by the best available topsoil or other suitable material in the reaffected area.

(ii) A ground cover no less than that existing before disturbance of the area by coal refuse disposal activities.

(iii) Adequate vegetation to control erosion. Vegetation may be no less than that necessary to ensure the success of the abatement plan.

(6) The coal refuse disposal activities on permitted areas other than the proposed pollution abatement area will not cause surface water pollution or groundwater degradation.

(7) Requirements of § 86.37(a) (relating to criteria for permit approval or denial) that are consistent with this section have been met.

(b) An authorization may be denied under this subchapter if granting the authorization will, or is likely to, affect a legal responsibility or liability under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), Chapter 86 (relating to surface and underground coal mining; general) or Subchapters A—D, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

(c) Authorization may not be granted under this subchapter unless there are one or more preexisting discharges from or on the pollution abatement area.

(d) The authorization allowed under this subchapter is only for the pollution abatement area and does not apply to other areas of the permit.

**§ 90.306. Operational requirements.**

An operator who receives an authorization under this subchapter shall comply with Chapter 86 (relating to surface and underground coal mining; general) and Subchapters A—D except as specifically modified by this subchapter. The operator shall also:

(1) Implement the approved water quality and quantity monitoring program for the pollution abatement area until the requirements of § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas) are met.

(2) Implement the approved abatement plan.

(3) Notify the Department immediately prior to the completion of each step of the abatement plan.

(4) Provide a progress report to the Department within 30 days after the completion of each step of the abatement program that includes a notarized statement signed by the operator, and if required by the Department, a statement signed by the supervising engineer, that all work has been performed in accordance with the terms and conditions of the pollution abatement authorization, the approved maps, plans, profiles and specifications.

**§ 90.307. Treatment of discharges.**

(a) Except for preexisting discharges that are not encountered during coal refuse disposal activities or the implementation of the abatement plan, the operator shall comply with § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices).

(b) The operator shall treat the preexisting discharges that are not encountered during coal refuse disposal activities or implementation of the abatement plan to comply with the effluent limitations established by best professional judgment. The effluent limitations established by best professional judgment may not be less than the baseline pollution load. If the baseline pollution load, when expressed as a concentration for a specific parameter, satisfies the effluent limitation in § 90.102 for that parameter, the operator shall treat the preexisting discharge for that parameter to comply with either effluent limitations established by best professional judgment or the effluent limitations in § 90.102.

(c) For purposes of subsections (a) and (b), the term "encountered" may not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the abatement plan that would otherwise drain into the affected area, as long

as the diversions are designed, operated and maintained under § 90.104(b)—(h) (relating to hydrologic balance: diversions).

(d) An operator required to treat preexisting discharges will be allowed to discontinue treating the discharges under subsection (b) when the operator affirmatively demonstrates the following to the Department's satisfaction:

(1) The preexisting discharges are meeting the effluent limitations established by subsection (b) as shown by groundwater and surface water monitoring conducted by the operator or the Department.

(2) Coal refuse disposal activities under the permit—including the pollution abatement area—are being or were conducted under the requirements of the permit and the authorization, and Chapter 86 (relating to surface and underground mining: general) and this chapter except as specifically modified by this subchapter.

(3) The operator has implemented each step of the abatement plan as approved in the authorization.

(4) The operator did not cause or allow additional surface water pollution or groundwater degradation by re-affecting the pollution abatement area.

(e) If after discontinuance of treatment of discharges under subsection (d) the discharges fail to meet the effluent limitations established by subsection (b), the operator shall reinstitute treatment of the discharges under subsection (b). An operator who reinstates treatment under this subsection will be allowed to discontinue treatment if the requirements of subsection (d) are met.

(f) Discontinuance of treatment under subsection (d) may not be deemed or construed to be or to authorize a release of bond under § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas).

**§ 90.308. Request for bond release.**

Sections 86.172(c) and 90.309 (relating to criteria for release of bond; and criteria and schedule for release of bonds on pollution abatement areas) apply to the release of bonds for pollution abatement areas authorized by this subchapter. Section 86.172(a), (b) and (d) is not applicable to the release of bonds.

**§ 90.309. Criteria and schedule for release of bonds on pollution abatement areas.**

(a) The Department will release up to 50% of the amount of bond for the authorized pollution abatement area if the applicant demonstrates and the Department finds the following:

(1) The coal refuse disposal activities were conducted on the permit area, including the pollution abatement area, under the requirements of the permit and the authorization, Chapter 86 (relating to surface and underground mining: general) and this chapter except as specifically modified by this subchapter.

(2) The operator has satisfactorily completed backfilling, planting, grading, installing the water impermeable cover and drainage control in accordance with the approved reclamation plan.

(3) The operator has properly implemented each step of the pollution abatement plan approved and authorized under this subchapter.

(4) The operator has not caused degradation of the baseline pollution load at any time during the 6 months prior to the submittal of the request for bond release

under this subsection and until the bond release is approved as shown by all groundwater and surface water monitoring conducted by the permittee under § 90.306(a)(1) (relating to operational requirements) or conducted by the Department.

(5) The operator has not caused or contributed to surface water pollution or groundwater degradation by re-affecting the pollution abatement area.

(b) The Department will release up to an additional 35% of the amount of bond for the authorized pollution abatement area but retain an amount sufficient to cover the cost to the Department of reestablishing vegetation if completed by a third party if the operator demonstrates and the Department finds the following:

(1) The operator has replaced the topsoil or material conserved under § 90.97 (relating to topsoil: removal), completed final grading, planting and established revegetation under the approved reclamation plan and achieved the standards of success for revegetation in § 90.305(a)(5) (relating to approval or denial).

(2) The operator has not caused or contributed to groundwater or surface water pollution by re-affecting the pollution abatement area.

(3) The operator has achieved the following standards:

(i) Achieved the actual improvement of the baseline pollution load described in the approved abatement plan as shown by groundwater and surface water monitoring conducted by the permittee for the time provided in the abatement plan after completion of backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard for success in § 90.305(a)(5).

(ii) Achieved the following:

(A) At a minimum has not caused degradation of the baseline pollution load as shown by groundwater and surface water monitoring conducted by the operator or the Department for one of the following:

(I) For 12 months from the date of initial bond release under subsection (a), if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 90.205(a)(5) have been completed.

(II) If treatment has been initiated at any time after initial bond release under subsection (a) and § 90.307(e) (relating to treatment of discharges), for 12 months from the date of discontinuance of treatment under § 90.307(d) if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 90.305(a)(5) have been completed.

(B) Conducted all the measures provided in the approved abatement plan and additional measures specified by the Department in writing at the time of initial bond release under subsection (a) for the area requested for bond release.

(C) Caused aesthetic or other environmental improvements and the elimination of public health and safety problems by engaging in coal refuse disposal activities and re-affecting the pollution abatement area.

(D) Stabilized the pollution abatement area.

(c) The Department will release the remaining portion of the amount of bond on the authorized pollution abatement area if the operator demonstrates and the Department finds the following:

(1) The operator has successfully completed the approved abatement and reclamation plans, and the pollution abatement area is capable of supporting the postdisposal land use approved under § 90.166 (relating to postdisposal land use).

(2) The operator has complied with the permit and the authorization, Chapter 86 and this chapter, except as specifically modified by this subchapter.

(3) The operator has not caused degradation of the baseline pollution load from the time of bond release under subsection (b) or, if treatment has been initiated after bond release under subsection (b) in accordance with § 90.307(e) for 5 years from the discontinuance of treatment under § 90.307(d).

(4) The applicable liability period has expired under § 86.151 (relating to period of liability).

### Subchapter G. EXPERIMENTAL PRACTICES

Sec.  
90.401. General.

#### § 90.401. General.

(a) To encourage advances in coal refuse disposal practices, coal refuse site reclamation, and advances in technology or practices that will enhance environmental protection with respect to coal refuse disposal activities, the Department may grant permits approving experimental practices and demonstration projects. The Department may grant these permits under the following circumstances:

(1) The environmental protection provided will be potentially more protective or at least as protective as required by this chapter, the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66) and Chapter 86 (relating to surface and underground coal mining: general).

(2) The coal refuse disposal activities approved under the permits are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices or demonstration projects.

(3) The experimental practices or demonstration projects do not reduce the protection afforded public health and safety below that provided by this chapter, the Coal Refuse Disposal Control Act and Chapter 86.

(b) Experimental practice permits issued under this subchapter shall meet the provisions, standards and information requirements of 30 CFR 785.13 (relating to experimental practices mining).

[Pa.B. Doc. No. 00-1042. Filed for public inspection June 16, 2000, 9:00 a.m.]

## [25 PA. CODE CH. 78] Oil and Gas Wells

The Environmental Quality Board (Board) proposes to amend Chapter 78 (relating to oil and gas wells). The amendments are needed to reflect the statutory amendment of May 15, 1998 (P. L. 358, No. 57) (Act 57), which eliminated the bonding requirement for oil and gas wells drilled prior to April 18, 1985. These amendments also clarify several sections, including brine spill reporting, notification requirements, permit requirements, disposal options and requirements for drilling through a gas storage reservoir.

This proposal was adopted by the Board at its meeting of April 18, 2000.

#### 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 James Erb, Director of the Bureau of Oil and Gas Management, P.O. Box 8765, Rachel Carson State Office Building, Harrisburg, PA 17105-8765, (717) 772-2199, or Marylou Matas, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submission of 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 of Environmental Protection (Department) Web site (<http://www.dep.statepa.us>).

#### C. Statutory Authority

The proposed rulemaking is being made under the authority of section 604 of the Oil and Gas Act (58 P. S. § 601.604) (act), which directs the Board to adopt regulations to implement the provisions of the act; section 5(b) of The Clean Streams Law (35 P. S. § 691.5(b)) (law), which grants the Department the power and duty to formulate, adopt, promulgate and delete rules and regulations necessary to implement the provisions of the act; section 304 of the law (35 P. S. § 691.304), which grants the Department the power to adopt, prescribe and enforce rules and regulations as may be necessary for the protection of the purity of the waters of this Commonwealth, or parts thereof, and to purify those now polluted, and to assure the proper and practical operation and maintenance of treatment works approved by the Department; section 402(a) of the law (35 P. S. § 691.304(a)), which grants the Department the authority to require by rules and regulations that activities be conducted under a permit or other conditions established by the Department whenever the Department finds that the activity creates a danger of pollution of the waters of the Commonwealth or that regulation is necessary to avoid pollution; section 105(a) of the Solid Waste Management Act (SWMA) (35 P. S. § 6018.105(a)), which grants the Board the power and duty to adopt the rules and regulations of the Department to carry out the provisions of the SWMA; and sections 1901-A, 1917-A and 1920-A of The Administrative Code of 1929; and sections 30 and 31 of the act of December 3, 1970 (P. L. 834, No. 275 (71 P. S. §§ 510-103 and 510-104)).

#### D. Background and Purpose

The proposal is required to update the current regulations to reflect the legislated changes in Act 57 regarding bonding for wells drilled prior to April 18, 1985. It incorporates recommendations received during the Oil and Gas Customer Needs Project regarding standardizing the use of pits, clarifying terms, organization of the sections of the regulations, and the placement of design criteria in the regulations. It also includes an additional recommendation regarding notification requirements for de minimis brine spill reporting. The Oil and Gas Technical Advisory Board suggested additional precautions regarding notification requirements to coal owners and gas storage operators as well as advance notice of procedures when drilling is proposed in relation to gas storage operations.

### E. Summary of Regulatory Requirements

Numerous nonsubstantive changes have been made throughout these proposed amendments to correct typographical errors, to eliminate redundancy and to clarify language where appropriate. The substantive changes are described in the following by section.

#### § 78.1. Definitions.

The proposed changes add a definition for "reportable release of brine." This change will provide clarification as to the quantity of spilled brine that must be reported. This definition is being added in conjunction with § 78.66 (relating to release of polluting substances).

#### § 78.17. Permit renewal.

The proposed changes add affected coal owners and gas storage operators to the persons who must be notified when an operator requests a permit renewal. This change provides consistency with other sections of the regulation that allow coal owners and gas storage operators the opportunity for notification and objection of well permits.

#### § 78.53. Erosion and sedimentation control.

The proposed change references the best management practices for oil and gas well operators as part of the technical guidance found in the *Oil and Gas Operators Manual*.

#### § 78.56. Pits and tanks for temporary containment.

Subsection (a) is being changed to recognize additional operations that may result in the discharge of pollutinal substances, as well as include additional pollutinal substances, which must be contained. This section eliminates the permitting requirement for recompletion, servicing and plugging pits, which are temporary in nature.

Subsection (a)(4) is being changed to recognize another substance, drill cuttings from below the casing seat, that shall sidered when an operator is installing, constructing or maintaining the temporary pit.

Subsection (a)(4)(v) is added to clarify the maintenance requirement for pit liners.

Subsection (d) is amended to include pits used during servicing and plugging.

#### § 78.59. Pits used during servicing and plugging.

This section is deleted because the proposed changes to § 78.56 regulate the same pits.

#### § 78.60. Discharge requirements.

Subsection (b)(5) is being changed to clarify that tophole water may include accumulated precipitation, and is more appropriately characterized as the discharge.

#### § 78.61. Disposal of drill cuttings.

Subsections (a)—(c) are being changed to add a leading description to each subsection.

Subsection (b)(8) is being added to clarify that liquid fraction is disposed of in accordance with the proper discharge requirements. This subsection is added for consistency with subsection (a).

#### § 78.62. Disposal of residual waste—pits.

#### § 78.63. Disposal of residual waste—land application.

Sections 78.62(a)(3) and 78.63(a)(3) are being clarified to reflect the legislative changes that Act 57 created. Act 57 eliminated the bonding requirement for onsite disposal of residual wastes at oil and gas wells drilled prior to April 18, 1985.

#### § 78.66. Release of polluting substance.

This section is being added to clarify when a brine spill shall be reported to the Department. This section also details the notification requirements for a brine release.

#### § 78.75. Alternative methods.

Subsections (c) and (d) are being changed to clarify who is to be notified when an alternate method of casing, plugging or equipping a well is proposed by the well operator. The proposed amendment includes all potentially impacted parties, such as coal owners and gas storage operators. This amendment clarifies that these owners and operators also have the opportunity to evaluate the impact the alternate method may have on their interests.

#### § 78.76. Drilling within a gas storage reservoir area.

Subsection (a) is being changed to clarify that when a well operator proposes to drill within a gas storage area or reservoir protective area, the Department and the gas storage operator are to receive copies of the drilling proposal to allow them the opportunity to evaluate the impact on gas storage operations. Subsection (b) clarifies that the storage operator may object to the drilling, casing or cementing plan of the proposed well. The proposed amendments delete subsection (c) because the provision is included in the new § 78.87(a)(4).

#### § 78.78. Pillar permit applications.

Subsection (a) is being added to recognize the Department's use of the most current coal pillar study when considering a coal pillar permit application. The most recent coal pillar study was developed in 1957 and is still valid. Several other states also use this study in determining pillar adequacy.

Subsection (b) is being added to allow coal mine operators the opportunity to demonstrate alternative adequate methods for developing a coal pillar.

#### §§ 78.81 and 78.87. General provisions and gas storage reservoir protective casing and cementing procedures.

Section 78.81(d) is being relocated and rewritten as new § 78.87 to improve clarity of the regulation.

The subject matter of § 78.87 is similar to that of § 78.81(d). The proposed amendments reformat the requirement in § 78.81(d) into various subsections in § 78.87, making it more understandable.

#### §§ 78.91—78.93. General provisions; wells in coal areas—surface or coal protective casing is cemented; wells in coal areas—surface or coal protective casing anchored with a packer or cement.

These three sections are being amended to delete the word "expanding" throughout. The word "expanding" was used as an adjective to describe "cement." Cement expands upon curing; therefore, the use of the adjective is not necessary.

#### § 78.302. Requirement to file a bond.

This section is being revised to reflect the legislative change of Act 57, which eliminated the bonding requirement for oil and gas wells drilled prior to April 18, 1985.

#### § 78.303. Form, terms and conditions of the bond.

Subsections (a)(3) and (e)(3) are being deleted to reflect the legislative changes of Act 57.

#### § 78.309. Phased deposit of collateral.

Subsection (a)(1) is being revised to reflect the legislative changes of Act 57. This proposal clarifies that an

operator who has a phased deposit of collateral bond in effect as of the date of Act 57 (November 26, 1997) may maintain that bond. Due to the elimination of the bonding requirement for oil and gas wells drilled prior to April 18, 1985, operators can no longer qualify for a new phased deposit of collateral bond.

Subsection (a)(1)(iv) is being changed to clarify that all of the operator's wells are included in the number of wells considered for the purpose of calculating an operator's annual deposit amount. This proposal reflects the legislative changes of Act 57.

Subsection (b)(1)(ii) is being deleted because it only applied to pre-Act wells. This proposal reflects the legislative changes of Act 57.

#### *§ 78.310. Replacement of existing bond.*

This section is being changed to delete the fee-in-lieu of bond option since new fee-in-lieu of bonding is not allowed. This proposal reflects the legislative changes of Act 57.

#### *§ 78.901. Definitions.*

This section is being deleted as the only definition listed is for the Natural Gas Policy Act (15 U.S.C.A. §§ 3301—3432 and 42 U.S.C.A. § 7255), a Federal program no longer delegated to the Department.

#### *§ 78.903. Frequency of inspections.*

Paragraph (17) is being deleted in accordance with the Department's operation under the act, and not the Natural Gas Policy Act. The Federal program was discontinued.

#### *F. Benefits, Costs and Compliance*

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

##### *Benefits*

These amendments are proposed to reduce unnecessary permitting and reporting requirements, standardize the use of pits, clarify terms, organize the sections of the regulation, and provide information as to where to find design criteria. It includes a recommendation regarding notification requirements for de minimis brine spill reporting. The Oil and Gas Technical Advisory Board suggested additional precautions regarding notification requirements to coal owners and gas storage operators as well as advance notice of procedures when drilling is proposed in relation to gas storage operations. It also reflects the legislative changes of Act 57. The oil and gas industry and the Department should realize savings in the form of reduced time and reduced costs due to decreased permitting and reporting requirements and improve clarity by making the regulations easier to read and interpret. The proposal regarding elimination of the permit requirement for temporary pits will affect operators with active drilling or plugging programs. The renewal notification requirements will benefit coal owners and gas storage operators. The spill reporting proposal will benefit about 2,000 operators with active wells as well as reduce the Department's staff time to address reported de minimis spills.

##### *Compliance Costs*

Operators proposing to drill a well in a gas storage area will have to provide the storage well operator the details of how the operator intends to construct the well. There will be fewer than 20 occurrences each year. The proposed changes are procedural and administrative in nature and

will result in minimal additional compliance costs to the Department and the regulated community. These costs are not quantifiable.

##### *Compliance Assistance Plan*

The technical guidance for the coal pillar permit criteria is made available on the Department web site. The best management practices for erosion and sedimentation control is made available in the *Oil and Gas Operators Manual*. Both of these documents are available from the contact persons listed in section B.

##### *Paperwork Requirements*

These proposed amendments will reduce certain paperwork required for brine spill reporting and the elimination of permits for certain pits.

##### *G. Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Board 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)), on May 31, 2000, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Board, the General Assembly and the Governor of objections raised.

##### *I. Public Comments*

*Written Comments*—Interested persons are invited to submit comments, suggestion 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 submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by July 17, 2000 (within 30 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 July 17, 2000 (within 30 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@dep.state.pa.us and must also be received by the Board by July 17, 2000. A subject heading of the proposal and a return address must be included in each transmission. If an

acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,  
Chairperson

**Fiscal Note:** 7-353. 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 78. OIL AND GAS WELLS**

**Subchapter A. GENERAL PROVISIONS**

**§ 78.1. Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

**Reportable release of brine—Spilling, leaking, emitting, discharging, escaping or disposing of one of the following:**

(i) **More than 5 gallons of brine within a 24-hour period on or into the ground at the well site where the total dissolved solids concentration of the brine is equal or greater than 10,000 mg/l.**

(ii) **More than 15 gallons of brine within a 24-hour period on or into the ground at the well site where the total dissolved solids concentration of the brine is less than 10,000 mg/l.**

\* \* \* \* \*

**Subchapter B. PERMITS, TRANSFERS AND  
OBJECTIONS**

**PERMITS AND TRANSFERS**

**§ 78.17. Permit renewal.**

An operator may request a 1-year renewal of a well permit. The request shall be accompanied by a permit fee, the surcharge required in section 601 of the act (58 P. S. § 601.601), and an affidavit affirming that the information on the original application is still accurate and complete, that the well location restrictions are still met and that the surface owners, coal owners and operators, gas storage operators and water supply owners within [ 1000 ] 1,000 feet have been notified of this request for renewal. The request shall be received by the Department at least 15-calendar days prior to the expiration of the original permit.

**Subchapter C. ENVIRONMENTAL PROTECTION  
PERFORMANCE STANDARDS**

**§ 78.53. Erosion and sedimentation control.**

During and after earthmoving or soil disturbing activities, including the activities related to siting, drilling, completing, producing, servicing and plugging the well, constructing, utilizing and restoring the access road and restoring the site, the operator shall construct, install and maintain erosion and sedimentation control measures and facilities in accordance with [ the requirements of ]

Chapter 102 (relating to erosion and sediment control) and an erosion and sedimentation control plan prepared under that chapter. **Best management practices for oil and gas well operations are listed in the Oil and Gas Operators Manual, Commonwealth of Pennsylvania, Department of Environmental Protection, Guidance No. 550-0300-001 (April 1997), as amended and updated.**

**§ 78.56. Pits and tanks for temporary containment.**

(a) Except as provided in §§ 78.60(b) and 78.61(b) (relating to discharge requirements; and disposal of drill cuttings), the operator shall contain pollutional substances and wastes from the drilling, altering [ or ], completing, **recompleting, servicing and plugging** the well, including brines, drill cuttings, drilling muds, oils, stimulation fluids, well treatment and servicing fluids, **plugging** and drilling fluids other than gases in a pit, tank or series of pits and tanks. The operator shall install or construct and maintain the pit, tank or series of pits and tanks in accordance with the following requirements:

\* \* \* \* \*

(4) A pit or tank that contains **drill cuttings from below the casing seat**, pollutional substances, wastes or fluids other than tophole water, fresh water and uncontaminated drill cuttings shall be impermeable and comply with the following:

\* \* \* \* \*

(v) **If the liner drops below the 2 feet of freeboard, the pit shall be managed to prevent the pit contents from leaking from the pit and the 2 feet of lined freeboard shall be restored.**

\* \* \* \* \*

(d) Unless a permit under The Clean Streams Law (35 P. S. §§ 691.1—691.1001) or approval under § 78.57 [ , ] or § 78.58 [ or § 78.59 ] (relating to control, storage and disposal of production fluids; and existing pits used for the control, storage and disposal of production fluids [ ; and pits used during servicing and plugging ] has been obtained for the pit, the owner or operator shall remove or fill the pit within 9 months after completion of drilling [ or recompletion of the well ], or in accordance with the extension granted by the Department under section 206(g) of the act (58 P. S. § 601.206(g)). **Pits used during servicing, plugging and recompleting the well shall be restored within 90 days of construction.**

**§ 78.59. [ Pits used during servicing and plugging ]  
(Reserved).**

**[ Pits used for servicing and plugging a well shall comply with § 78.57 (relating to control, storage and disposal of production fluids), except that:**

(1) **A variance may be requested from the standard of § 78.57(c)(2)(iii) for a pit that exists only during dry times of the year and is located above groundwater.**

(2) **The requirement that the liner thickness be at least 30 mils does not apply.**

(3) **The pit shall be restored within 90 days of construction of the pit. ]**

**§ 78.60. Discharge requirements.**

\* \* \* \* \*



(b) The owner and operator may not discharge top hole water or water in a pit as a result of precipitation by land application unless the discharge is in accordance with the following requirements:

\* \* \* \* \*

(3) The specific conductance of the discharge is less than 1,000 µmhos/cm.

\* \* \* \* \*

(5) [ **Top hole water** ] **The discharge** shall be spread over an undisturbed, vegetated area capable of absorbing the top hole water and filtering solids in the discharge, and spread in a manner that prevents a direct discharge to surface waters and complies with § 78.53 (relating to erosion and sedimentation control).

\* \* \* \* \*

**§ 78.61. Disposal of drill cuttings.**

(a) **Drill cuttings from above the casing seat—pits.** The owner or operator may dispose of drill cuttings from above the casing seat determined in accordance with § 78.83(b) (relating to surface and coal protective casing and cementing procedures) in a pit at the well site if the owner or operator satisfies the following requirements:

\* \* \* \* \*

(b) **Drill cuttings from above the casing seat—land application.** The owner or operator may dispose of drill cuttings from above the casing seat determined in accordance with § 78.83(b) by land application at the well site if the owner or operator satisfies the following requirements:

\* \* \* \* \*

(8) **The liquid fraction is disposed of in accordance with § 78.60 (relating to discharge requirements).**

(9) \* \* \*

[ (9) ] (10) \* \* \*

(c) **Drill cuttings from below the casing seat.** [ **Drill cuttings and liquids from below the casing seat determined in accordance with § 78.83(b) shall be contained in a pit, tank or a series of pits and tanks in accordance with § 78.56(a) (relating to pits and tanks for temporary containment).** ] After removal of the free liquid fraction and disposal in accordance with § 78.60 (relating to discharge requirements), [ **the remaining** ] drill cuttings from below the casing seat determined in accordance with § 78.83(b) may be disposed of as follows:

\* \* \* \* \*

**§ 78.62. Disposal of residual waste—pits.**

(a) After the removal and disposal of the free liquid fraction of the waste under § 78.60(a) (relating to discharge requirements), the owner or operator may dispose of residual waste, including contaminated drill cuttings, in a pit at the well site if the owner or operator satisfies the following requirements:

\* \* \* \* \*

(3) The requirements of section 215 of the act (58 P. S. § 601.215) are satisfied by filing a surety or collateral bond for [ **the well and well site** ] wells drilled after **April 18, 1985.**

\* \* \* \* \*

**§ 78.63. Disposal of residual waste—land application.**

(a) The owner or operator may dispose of residual waste, including contaminated drill cuttings, at the well site by land application of the waste if the owner or operator satisfies the following requirements:

\* \* \* \* \*

(3) The requirements of section 215 of the act (58 P. S. § 601.215) are satisfied by filing a surety or collateral bond for [ **the well and well site** ] wells drilled after **April 18, 1985.**

\* \* \* \* \*

**§ 78.66. Release of polluting substances.**

(a) **A release of a polluting substance causing or threatening pollution of the waters of this Commonwealth, shall comply with the reporting and corrective action requirements of § 91.33 (relating to incidents causing or threatening pollution).**

(b) **If a reportable release of brine on or into the ground occurs at the well site, the owner or operator shall notify the appropriate regional office of the Department as soon as practicable, but within 2 hours after detecting or discovering the release.**

(c) **The notice required by subsection (b) shall be by telephone and describe:**

(1) **The name, address and telephone number of the company and person reporting the incident.**

(2) **The date and time of the incident or when it was detected.**

(3) **The location and cause of the incident.**

(4) **The quantity of the brine involved.**

(5) **Available information concerning the contamination of surface water, groundwater or soil.**

(6) **Remedial actions planned, initiated or completed.**

(d) **If, because of an accident, an amount of brine less than the reportable amount as described in § 78.1 (relating to definitions), spills, leaks or escapes, such an incident does not have to be reported.**

(e) **Upon the occurrence of any release, the owner or operator shall take necessary corrective actions:**

(1) **To prevent the substance from reaching the waters of this Commonwealth.**

(2) **To recover or remove the substance which was released.**

(3) **To dispose of the substance in accordance with this subchapter or as approved by the Department.**

**Subchapter D. WELL DRILLING, OPERATION AND PLUGGING  
GENERAL**

**§ 78.75. Alternative methods.**

\* \* \* \* \*

(c) The well operator shall notify all coal owners and operators [ **affected by** ] and gas storage operators of record of the proposal, by certified mail. The well operator shall state in the application that he has sent the certified mail notice to the coal [ **operator** ] owners

and operators and gas storage operators of record, either simultaneously with or prior to submitting the proposal to the Department.

(d) The coal owners and operators and gas storage operators of record shall have up to 15 days from their receipt of the notice to file objections or to indicate concurrence with the proposed alternative method or material.

\* \* \* \* \*

§ 78.76. Drilling within a gas storage reservoir area.

(a) An operator proposing to drill a well within a gas storage reservoir area or a reservoir protective area to produce gas or oil shall forward by certified mail a copy of the well location plat, the drilling, casing and cementing plan and the anticipated date drilling will commence to the gas storage reservoir operator and shall submit proof of notification to the Department with the well permit application.

(b) The storage operator may file an objection with the Department to the drilling casing and cementing plan or the proposed well location within 15 days of receipt of the notification and request a conference in accordance with section 501 of the act (58 P. S. § 601.501).

[(c) When cementing casing in a well drilled through a gas storage reservoir, the operator shall insure that no gas is present in the drilling fluids in an amount that could interfere with the integrity of cementing the casing.]

§ 78.78. Pillar permit applications.

(a) The Department will use recommendations for coal pillar size and configuration set forth in the coal pillar study, listed in the Department's Coal Pillar Technical Guidance Number 550-2100-006 (October 31, 1998) and any updates or revisions, as a basis for approval or disapproval of coal pillar permit applications submitted by underground coal mine operators.

(b) Where proposed coal pillar size and configuration does not conform to the recommendations of the most current coal pillar study, the underground coal mine operator may request Department approval for an alternate coal pillar size and configuration.

CASING AND CEMENTING

§ 78.81. General provisions.

(a) The operator shall conduct casing and cementing activities under this section and §§ 78.82—[ 78.86 ] 78.87 or an approved alternate method under § 78.75 (relating to alternative methods). The operator shall case and cement a well [in order] to accomplish the following:

\* \* \* \* \*

[(d) A well drilled through a gas storage reservoir or a reservoir protective area shall be drilled, cased and cemented as follows:

(1) An operator shall use drilling procedures capable of controlling anticipated gas storage reservoir pressures at all times when drilling through a gas storage reservoir horizon. Operators shall use blow-out prevention equipment with a pressure rating in excess of the allowable maximum storage

pressure for the gas storage reservoir before drilling into the gas storage reservoir or gas storage horizon.

(2) An operator shall run intermediate or production casing from a point located at least 100 feet below the gas storage horizon to the surface. The operator shall cement this casing by circulating cement to a point at least 200 feet above the gas storage reservoir or gas storage horizon. This casing which is intended to protect the gas storage reservoir and the well shall be installed according to a procedure approved by the Department and established by mutual agreement between the well operator and the gas storage reservoir operator.]

§ 78.87. Gas storage reservoir protective casing and cementing procedures.

(a) In addition to the other provisions in this subchapter, a well drilled through a gas storage reservoir or a reservoir protective area shall be drilled, cased and cemented as follows:

(1) An operator shall use drilling procedures capable of controlling anticipated gas flows and pressures when drilling from the surface to 200 feet above a gas storage reservoir or gas storage horizon.

(2) An operator shall use drilling procedures capable of controlling anticipated gas storage reservoir pressures and flows at all times when drilling from 200 feet above a gas storage reservoir horizon to the depth at which the gas storage protective casing will be installed. Operators shall use blow-out prevention equipment with a pressure rating in excess of the allowable maximum storage pressure for the gas storage reservoir.

(3) To protect the gas storage reservoir, an operator shall run intermediate or production casing from a point located at least 100 feet below the gas storage horizon to the surface. The operator shall cement this casing by circulating cement to a point at least 200 feet above the gas storage reservoir or gas storage horizon.

(4) When cementing casing in a well drilled through a gas storage reservoir, the operator shall insure that no gas is present in the drilling fluids in an amount that could interfere with the integrity of the cement.

(b) A request by an operator for approval from the Department to use an alternative method or material for the casing, plugging or equipping of a well drilled through a gas storage reservoir under section 211 of the act (58 P. S. § 601.211) shall be made in accordance with § 78.75 (relating to alternative methods).

PLUGGING

§ 78.91. General provisions.

\* \* \* \* \*

(c) When a well is being plugged from attainable bottom, the operator shall install a 50-foot plug of [expanding] cement at the attainable bottom and plug the remainder of the well under §§ 78.92—78.98.

\* \* \* \* \*

§ 78.92. Wells in coal areas—surface or coal protective casing is cemented.

(a) In a well underlain by a workable coal seam, where the surface casing or coal protective casing is cemented

and the production casing is not cemented or the production casing is not present, the owner or operator shall plug the well as follows:

(1) The retrievable production casing shall be removed and the well shall be filled with nonporous material from the total depth or attainable bottom of the well, to a point 20 feet above the top of the lowest stratum bearing or having borne oil, gas or water. At this point there shall be placed a plug of [expanding] cement, which shall extend for at least 50 feet above that point. Between this sealing plug and a point 20 feet above the next higher stratum bearing or having borne oil, gas or water, the hole shall be filled with nonporous material and at that point there shall be placed another 50-foot plug of [expanding] cement which will completely seal the hole. In like manner, the hole shall be filled and plugged, with reference to each of the strata bearing or having borne oil, gas or water. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of [expanding] cement or other materials approved by the Department. Where the production casing is not retrievable, the operator shall plug that portion of the well under § 78.91(d) (relating to general provisions).

(2) After plugging strata bearing or having borne oil, gas or water, the well shall be filled with nonporous material to a point approximately 100 feet below the surface or coal protective casing seat, whichever is deeper. At this point, a 100-foot plug of [expanding] cement shall be installed.

\* \* \* \* \*

(b) The owner or operator shall plug a well, where the surface casing, coal protective casing and production casing are cemented, as follows:

\* \* \* \* \*

(2) [Expanding cement] Cement plugs shall be set in the cemented portion of the production casing so that the plugs will extend from at least 50 feet below each stratum bearing or having borne oil, gas or water, to a point at least 100 feet above each stratum bearing or having borne, oil, gas or water. A Department approved mechanical plug may be set 20 feet above each stratum bearing or having borne oil, gas or water as a substitute for the plug of [expanding] cement. Nonporous material shall separate each [expanding] cement plug or mechanical plug. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of cement or other materials as approved by the Department.

(3) Following the plugging of the cemented portion of the production casing, the uncemented portion of the production casing shall be separated from the cemented portion and retrieved. The maximum distance the stub of the uncemented portion of the production casing may extend is 100 feet below the surface or coal protective casing whichever is lower. In no case may the uncemented portion of the casing left in the well extend through a formation bearing or having borne oil, gas or water. Other stratum above the cemented portion of the production casing bearing or having borne oil, gas or water shall be plugged by filling the hole with nonporous material to 20 feet above the stratum and setting a 50-foot plug of [expanding] cement. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of cement

or other material as approved by the Department. When the uncemented portion of the production casing is not retrievable, the operator shall plug that portion of the well under § 78.91(d).

(4) After plugging all strata bearing or having borne oil, gas or water, the well shall be filled with nonporous material to a point approximately 100 feet below the surface or coal protective casing seat, whichever is deeper. At this point a 200-foot [expanding] cement plug shall be placed so that the plug extends from 100 feet below the casing seat to a point at least 100 feet above the casing seat.

\* \* \* \* \*

§ 78.93. Wells in coal areas—surface or coal protective casing anchored with a packer or cement.

(a) In a well where the surface casing or coal protective casing and production casing are anchored with a packer or cement, the owner or operator shall plug the well as follows:

(1) The retrievable production casing shall be removed and the well shall be filled with nonporous material from the total depth or attainable bottom of the well, to a point 20 feet above the top of the lowest stratum bearing or having borne oil, gas or water. At this point there shall be placed a plug of [expanding] cement, which shall extend for at least 50 feet above that point. Between this sealing plug and a point 20 feet above the next higher stratum bearing or having borne oil, gas or water, the hole shall be filled with nonporous material and at that point there shall be placed another 50-foot plug of [expanding] cement which will completely seal the hole. In this manner, the hole shall be filled and plugged, with reference to each of the strata bearing or having borne oil, gas or water. The operator may treat multiple strata as one stratum and plug as described in this subsection with a single column of cement or other material as approved by the Department. When the production casing is not retrievable, the operator shall plug this portion of the well under § 78.91(d) (relating to general provisions).

(2) The well shall then be filled with nonporous material to a point approximately 200 feet below the lowest workable coal seam, or surface or coal protective casing seat, whichever is deeper. Beginning at this point a 100-foot plug of [expanding] cement shall be installed.

\* \* \* \* \*

(b) The owner or operator shall plug a well, where the surface casing and coal protective casing is anchored with a packer or cement and the production casing is cemented, as follows:

(1) If the total depth or attainable bottom is deeper than the cemented production casing seat, the operator shall plug that portion of the well under subsection (a)(1).

(2) An [expanding] cement plug shall be set in the cemented portion of the production casing so that the plugs extend from at least 50 feet below each stratum bearing or having borne oil, gas or water, to a point at least 100 feet above each stratum bearing or having borne, oil, gas or water. A Department approved mechanical plug may be set 20 feet above the stratum bearing or having borne oil, gas or water as a substitute for the plug of [expanding] cement. Nonporous material shall separate each [expanding] cement plug or mechanical plug. The operator may treat multiple strata as one stratum

and plug as described in this subsection with a single column of cement or other materials as approved by the Department.

(3) Following the plugging of the cemented portion of the production casing, the uncemented portion of the production casing shall be separated from the cemented portion and retrieved. The maximum distance the stub of the uncemented portion of the production casing may extend is 100 feet below the surface or coal protective casing whichever is lower. In no case may the uncemented portion of the casing left in the well extend through a formation bearing or having borne oil, gas or water. Other stratum above the cemented portion of the production casing bearing or having borne oil, gas or water shall be plugged by filling the hole with nonporous material to 20 feet above the stratum and setting a 50-foot plug of [expanding] cement. The operator may treat multiple strata as one stratum and plug as described in this paragraph with a single column of cement or other material approved by the Department. When the uncemented portion of the production casing is not retrievable, the operator shall plug that portion of the well under § 78.91(d).

(4) The well shall be filled with nonporous material to a point approximately 300 feet below the bottom of the surface casing or coal protective casing, whichever is deeper. In this case, a 100-foot plug of [expanding] cement shall then be placed in the well beginning at that point and extending to a point approximately 200 feet below the bottom of the casing seat.

\* \* \* \* \*

**Subchapter G. BONDING REQUIREMENTS**

**§ 78.302. Requirement to file a bond.**

For a well that has not been plugged, the owner or operator shall file a bond or otherwise comply with the bonding requirements of section 215 of the act (58 P. S. § 601.215) and this chapter. **A bond or bond substitute is not required for a well drilled before April 18, 1985.**

**§ 78.303. Form, terms and conditions of the bond.**

(a) The following types of security are approvable:

\* \* \* \* \*

(3) [For operators who meet the requirements of section 215(d)(1) of the act (58 P. S. § 601.215(d)(1)), a phased deposit of collateral bond as provided in § 78.309(a) (relating to phased deposit of collateral).

(4) ] For individuals who meet the requirements of section 215(d.1) of the act, a phased deposit of collateral bond as provided in § 78.309(b).

\* \* \* \* \*

(e) The bond amounts required under section 215 of the act are as follows:

\* \* \* \* \*

[ (3) For a fee in lieu of providing a bond one of the following:

(i) Fifty dollars annual nonrefundable payment per single well for one to nine wells.

(ii) Five hundred dollars annual nonrefundable payment for ten to twenty wells.

(iii) One thousand dollars annual nonrefundable payment for 21 to 200 wells.]

**§ 78.309. Phased deposit of collateral.**

(a) Operators.

(1) Eligibility. An operator who [seeks to satisfy the collateral bond requirements of the act by submitting phased deposit of collateral under section 215(d)(1) of the act (58 P. S. § 601.215(d)(1)), shall meet the following eligibility requirements: ] had a phased deposit of collateral in effect on November 26, 1997, may maintain that bond for wells requiring bonding, for new well permits and for wells acquired by transfer.

\* \* \* \* \*

[ (ii) An operator shall have at least one well drilled prior to April 18, 1985.

(iii) An operator shall certify that the operator is unable to obtain a bond for a well drilled prior to April 18, 1985.

(iv) ] (ii) Under the following schedule, an operator shall make [an initial] a deposit with the Department of approved collateral prior to the issuance of a permit for a well or the transfer of a permit for a well, and shall make subsequent annual deposits and additional well payments[:]. For the purpose of calculating the required deposit, all of the operator's wells are included in the number of wells.

Number of wells	[ Initial Deposit ]	Annual Deposit	per Additional Well
1-10 with no intention to operate more than 10	[ \$250/well ]	\$50/well	N.A.
11-25 or 1-10 and applies for additional well permits	[ \$2,000 ]	\$1,150	\$150
26-50	[ \$3,000 ]	\$1,300	\$400
51-100	[ \$4,000 ]	\$1,500	\$400
101-200	[ \$8,000 ]	\$1,600	\$1,000

[ (v) ] (iii) An operator shall make the phased deposits of collateral as required by the bond.

\* \* \* \* \*

(b) Individuals.

(1) Eligibility.

(i) An individual who seeks to satisfy the collateral bond requirements of the act by submitting phased deposit of collateral under section 215(d.1) of the act (58 P. S. § 601.215(d.1)), may not drill more than ten new wells per calendar year. A well in which the individual has a financial interest[, ] is to be considered one of the wells permitted under this section. A partnership, association or corporation is not eligible for phased deposit of collateral under this subsection.

(ii) [An individual who seeks to submit phased collateral deposits shall attest to the individual's inability to obtain a bond.

(iii) ] \* \* \*

[ (iv) ] (iii) \* \* \*

[ (v) ] (iv) \* \* \*

\* \* \* \* \*

§ 78.310. Replacement of existing bond.

(a) An owner or operator may replace an existing surety or collateral bond with another surety or collateral bond that satisfies the requirements of this chapter, if the liability which has accrued against the bond, the owner or operator who filed the first bond and the well operation is transferred to the replacement bond. An owner or operator may not substitute [ a fee in lieu of a bond or ] a phased deposit of collateral bond under section 215(d) and (d.1) of the act (58 P. S. § 601.215(d) and (d.1)) for a valid surety bond or collateral that has been filed and approved by the Department.

\* \* \* \* \*

Subchapter X. STATEMENTS OF POLICY
INSPECTION POLICY REGARDING OIL AND GAS WELL ACTIVITIES

§ 78.901. [ Definitions ] (Reserved).

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

NGPA—Natural Gas Policy Act of 1978 (15 U.S.C.A. §§ 3301—3432 and 42 U.S.C.A. § 7255). ]

§ 78.903. Frequency of inspections.

The Department, its employes and agents intend to conduct inspections at the following frequencies:

\* \* \* \* \*

[ (17) At least once prior to the issuance of an NGPA determination. ]

[Pa.B. Doc. No. 00-1043. Filed for public inspection June 16, 2000, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 3 AND 62]

[L-00000150]

Licensing Requirements for Natural Gas Suppliers

The Pennsylvania Public Utility Commission (Commission) on April 13, 2000, adopted a proposed rulemaking order establishing licensing requirements for natural gas suppliers. The contact persons are Robert Bennett, Bureau of Fixed Utility Services, (717) 787-5553 and Patricia Krise Burket, Law Bureau, (717) 787-3464.

Executive Summary

On June 22, 1999, Governor Thomas J. Ridge signed into law the Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201—2212 (act). Under the act, beginning on November 1, 1999, retail customers have had the ability to choose their natural gas supplier. Previously, consumers procured their natural gas supply requirements as a package from the jurisdictional public utility. The package included what are now the basic components of competitive natural gas supply service, commodity, capacity and storage, balancing and aggregation services of the natural gas utility.

On July 15, 1999, the Commission issued a final order which adopted interim licensing procedures and a license

application. These interim licensing procedures were to be temporary in nature, and would be replaced by regulations. As the first step in promulgating these regulations, the Commission has revised its interim licensing procedures and has redrafted them as proposed regulations.

Through these proposed regulations, the Commission is seeking comments and reply comments from interested parties.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 2, 2000, the Commission submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, 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' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of this proposal to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Commission, the General Assembly and the Governor of objections raised.

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; Nora Mead Brownell; Aaron Wilson, Jr.; Terrance J. Fitzpatrick

Public Meeting held April 13, 2000

Licensing Requirements for Natural Gas Suppliers; 52 Pa. Code Chapter 62; Doc. No.: L-00000150

Proposed Rulemaking Order

On June 22, 1999, Governor Thomas J. Ridge signed into law the Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201—2212 (act). Under the act, beginning on November 1, 1999, retail customers have had the ability to choose their natural gas supplier. Previously, consumers procured their natural gas supply requirements as a package from the jurisdictional public utility. The package included what are now the basic components of competitive natural gas supply service, commodity, capacity and storage, balancing and aggregation services of the natural gas utility. The section 2202 of the act (relating to definitions) defines a natural gas supplier as:

An entity other than a natural gas distribution company, but including natural gas distribution company marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of a natural gas distribution company. The term includes a natural gas distribution company that provides natural gas supply outside its certificated service territories. The term includes a municipal corporation, its affiliates or any joint venture, to the extent that it chooses to provide natural gas supply services to retail customers located outside of its corporate or municipal limits, as applicable, other than:

(i) as provided prior to the effective date of this chapter, pursuant to a certificate of public convenience if required under this title;

(ii) total natural gas supply services in de minimis amounts;

(iii) natural gas supply services requested by, or provided with the consent of, the public utility in whose certificated territory the services are provided; or

(iv) natural gas supply services provided to the municipal corporation itself or its tenants on land it owns or leases, or is subject to an agreement of sale or pending condemnation, as of September 1, 1999, to the extent permitted by applicable law independent of this chapter.

The term excludes an entity to the extent that it provides free gas to end-users under the terms of an oil or gas lease. Notwithstanding any other provision of this title, a natural gas supplier that is not a natural gas distribution company is not a public utility as defined in section 102 (relating to definitions) to the extent that the natural gas supplier is utilizing the jurisdictional distribution facilities of a natural gas distribution company or is providing other services authorized by the Commission.

66 Pa.C.S. § 2202.

As used in the definition of a natural gas supplier, the term natural gas supply services includes (i) the sale or arrangement of the sale of natural gas to retail customers; and (ii) services that may be unbundled by the Commission under section 2203(3) of the act (relating to standards for restructuring of the natural gas utility industry). Natural gas supply service does not include distribution service. See 66 Pa.C.S. § 2202.

On June 24, 1999, the Commission issued a Tentative Order and draft licensing application for interim licensing of natural gas suppliers pending the promulgation of regulations. The Tentative Order established a comment period ending July 9, 1999, and was served on the Office of Consumer Advocate, the Office of Small Business Advocate, Pennsylvania jurisdictional gas utilities, and other interested parties. The Commission's order was also posted on the Commission's website. Comments were received from numerous parties.

On July 15, 1999, the Commission adopted a Final Order which set forth interim licensing procedures and a license application. Re: *Requirements for Natural Gas Suppliers—Guidelines pursuant to Chapter 22 Natural Gas Choice and Competition Act Section 2208*, order entered July 16, 1999 at Doc. No. M-00991248F0002.

In its July 16, 1999 Order, the Commission recognized that the interim licensing procedures were to be temporary in nature, and that they would be replaced by regulations. As the first step in promulgating these regulations, the Commission has revised its interim licensing procedures and has redrafted them as proposed regulations.

The Commission seeks general comments on the proposed regulations. Persons submitting comments are requested to provide supporting justification for requested revisions, and propose suggested regulatory language for incorporation into the final-form regulations.

While the proposed rulemaking is derived predominantly from the interim licensing guidelines, the Commission has included in the proposed regulations provisions that exempt from licensing nontraditional marketers and marketing services consultants that work as agents for a licensed natural gas supplier under certain restrictions. The restrictions are that the supplier is the financially

responsible party: (1) for the provision of natural gas supply services to retail customers; and (2) for all unlawful acts committed by the agent. Nontraditional marketers include community-based organizations, civic, fraternal or business associations, common interest groups that endorse a supplier's services to their members or constituents (nontraditional marketers). Marketing services consultants are commercial entities, such as telemarketing firms and auction-type websites, that are under contract as an agent to a licensed supplier and that market natural gas supply services to consumers on the supplier's behalf.

The definition of "natural gas supplier" in section 2202 of the act is very broad, and our initial interpretation of the law had been that every entity that engages in an activity listed as that undertaken by a natural gas supplier must be licensed. However, we have come to recognize that some of these activities may be undertaken by entities like those listed previously who will not have any direct physical or financial responsibility for the procurement of the customer's natural gas. Under these circumstances, we do not believe that the public interest requires that these entities comply with the licensing requirements. Comment is specifically requested on these exemptions.

In addition, the proposed rulemaking would develop different financial surety mechanisms intended to facilitate customer choice for the gas industry contrasted with those in force for customer choice in the electric industry. This treatment may be extended to other areas as well.

The Commission seeks particular comment on whether, and to what extent, disparate treatment between industries is appropriate in the proceeding as a matter of law and policy. The Commission is interested in developing final regulations and policies that reflect the increased probability of gas and electric convergence in this Commonwealth.

Accordingly, under 66 Pa.C.S. §§ 501, 2203(12) and 2208 and the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1208), and regulations promulgated thereunder in 1 Pa. Code §§ 7.1—7.4, we propose to amend the regulations in 52 Pa. Code by amending §§ 3.551 and 62.101—62.115 as previously noted and to read as set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. A rulemaking docket shall be opened to promulgate regulations for the licensing of natural gas suppliers as set forth in Annex A.
2. The Secretary shall submit this order and Annex A to the Office of the Attorney General for preliminary review as to form and legality.
3. The Secretary shall submit a copy of this order, together with Annex A, to the Governor's Budget office for review of fiscal impact.
4. The Secretary shall submit this order and Annex A for review and comments by the designated standing committees of both houses of the General Assembly, and for review and comments by IRRC.
5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. Within 30 days of this order's publication in the *Pennsylvania Bulletin*, an original and 15 copies of any comments concerning this order shall be submitted to the Pennsylvania Public Utility Commission, P. O. Box 3265,

Harrisburg, PA 17105-3265. One copy of a diskette containing the comments in electronic format should also be submitted.

7. A copy of this order and Annex A be served on the Office of Consumer Advocate, the Office of Small Business Advocate, all natural gas distribution companies and all licensed natural gas suppliers, posted on the Commission's web site at <http://puc.paonline.com>, and provided to all interested persons.

8. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau at (717) 772-4597.

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-217. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 3. SPECIAL PROVISIONS**

**Subchapter H. FORMS**

**§ 3.551. Official forms.**

The following is a list of forms which may be obtained from the Office of the Secretary of the Commission.

\* \* \* \* \*

**(16) Application for natural gas supplier license.**

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

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 62. NATURAL GAS SUPPLY  
CUSTOMER CHOICE**

**Subchapter D. LICENSING REQUIREMENTS  
FOR NATURAL GAS SUPPLIERS**

Sec.	Definitions.
62.101.	Scope of licensure.
62.102.	Application process.
62.103.	Application form.
62.104.	Change in organizational structure or operational status.
62.105.	Open and nondiscriminatory access.
62.106.	Publication of notice of filing.
62.107.	Protests to applications.
62.108.	Approval.
62.109.	Regulatory assessments.
62.110.	Reporting requirements.
62.111.	Bonds or other security.
62.112.	Transfer or abandonment of license.
62.113.	License suspension; license revocation.
62.114.	Standards of conduct and disclosure for licensees.
52.115.	

**§ 62.101. Definitions.**

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

*Act*—The Natural Gas Choice and Competition Act (66 Pa.C.S. §§ 2201—2212).

*Applicant*—A person or entity seeking to obtain a license to supply retail natural gas supply services to retail customers.

*City natural gas distribution operation*—A collection of real and personal assets used for distributing natural gas to retail gas customers owned by a city or a municipal

authority, nonprofit corporation or public corporation formed under section 2212(m) of the act (relating to city natural gas distribution operations).

*License*—A license granted to an NGS under this subchapter.

*Licensee*—A person or entity that has obtained a license to provide natural gas supply services to retail customers.

*Marketing*—The publication, dissemination or distribution of informational and advertising materials regarding the NGS's services and products to the public by personal contact, print, broadcast, electronic media, direct mail or by telecommunication.

*Marketing services consultant*—A commercial entity, such as a telemarketing firm or auction-type website, that under contract to a licensee, acts as an agent to market natural gas supply services to retail gas customers for the licensee. A marketing services consultant:

(i) Does not collect revenues directly from retail customers.

(ii) Is not responsible for the scheduling of natural gas supplies.

(iii) Is not responsible for the payment of the costs of the natural gas to suppliers, producers or NGDCs.

*NGDC—Natural Gas Distribution Company*—A public utility or city natural gas distribution operation that provides natural gas distribution services and which may provide natural gas services and other services.

*NGS—Natural Gas Supplier*—An entity other than an NGDC, including an NGDC's marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of an NGDC.

(i) The term includes an NGDC that provides natural gas supply services outside its certificated service territories.

(ii) The term includes a municipal corporation, its affiliates or any joint venture to the extent that it chooses to provide natural gas services to retail customers located outside its corporate or municipal limits, as applicable, other than:

(i) As provided prior to July 1, 1999, the effective date of the act, under a certificate of public convenience if required.

(ii) Total natural gas supply services in de minimis amounts.

(iii) Natural gas supply services requested by or provided with the consent of the public utility in whose certificated territory the service is provided.

(iv) Natural gas supply services provided to the municipal corporation itself or its tenants on land it owns or leases, or is subject to an agreement of sale or pending condemnation, as of September 1, 1999, to the extent permitted by applicable law.

*Natural gas supply services*—The term includes:

(i) The sale or arrangement of the sale of natural gas to retail gas customers.

(ii) Services that may be unbundled by the Commission under section 2203(3) of the act (relating to standards for restructuring of natural gas utility industry).

*Nontraditional marketer*—A community-based organization, civic, fraternal or business association, common interest group or commercial entity that works with a

licensed supplier as an agent to market natural gas supply services to its members or constituents. A nontraditional marketer:

- (i) Conducts its transactions through a licensed NGS.
- (ii) Does not collect revenues directly from retail customers.
- (iii) Does not require its members or constituents to obtain its natural gas service through the nontraditional marketer or a specific licensed NGS.
- (iv) Is not responsible for the scheduling of natural gas supplies.
- (v) Is not responsible for the payment of the costs of the natural gas to its suppliers or producers.

*Offer to provide service*—The extension of an offer to provide services or products communicated orally or in writing to a customer.

*Retail gas customer*—A direct purchaser of natural gas supply services or natural gas distribution services, other than an NGS.

*Supplier of last resort*—A supplier approved by the Commission under section 2207(a) of the act (relating to obligation to serve) to provide natural gas supply services to customers who contracted for natural gas that was not delivered, or who did not select an alternative NGS, or who are not eligible to obtain competitive natural gas supply, or who return to the supplier of last resort after having obtained competitive natural gas supply.

#### § 62.102. Scope of licensure.

(a) An NGS may not engage in marketing, or may not offer to provide, or provide natural gas supply services to retail customers until it is granted a license by the Commission.

(b) An NGDC acting within its certified service territory as a supplier of last resort is not required to obtain a license.

(c) The owners/operators of a building or facility that manages the internal distribution system supplying a building or facility and supplies natural gas and other related services to occupants of the building or the facility where the owner/operators, and not the occupants, are the direct purchasers of the natural gas supply services are not required to obtain a license.

(d) A nontraditional marketer is not required to obtain a license. Each nontraditional marketer and each licensed NGS shall provide the Commission with a copy of their agreement to market natural gas supply services to retail customers prior to the nontraditional marketer engaging in any natural gas supply service sales activity. The licensed natural gas supplier shall be responsible for violations of 66 Pa.C.S. (relating to the Public Utility Code) and applicable regulations of this title, orders and directives committed by the nontraditional marketer and fraudulent, deceptive or other unlawful marketing or billing acts committed by the nontraditional marketer.

(e) A marketing services consultant is not required to obtain a license. Each marketing services consultant and each licensed NGS shall provide the Commission with a copy of its agreement to market natural gas supply services to retail customers prior to the marketing services consultant engaging in any natural gas supply service sales activity. The licensed NGS shall be responsible for violations of 66 Pa.C.S. and applicable regulations of this title, orders and directives committed by the marketing services consultant and fraudulent, deceptive

or other unlawful marketing or billing acts committed by the marketing services consultant.

#### § 62.103. Application process.

(a) An application for a license shall be made on the form provided by the Commission. A copy of the application can be obtained from the Commission's Secretary. The application form is also available on the Commission's web site. An application shall be verified by an oath or affirmation as required in § 1.36 (relating to verification). See section 2208(b) of the act (relating to requirements for natural gas suppliers).

(b) An original and eight copies of the completed application and supporting attachments shall be filed. An electronic copy of the application shall also be filed. An application for a license shall be accompanied by the application fee as established in § 1.43 (relating to schedule of fees payable to the Commission).

(c) Copies of the completed applications with supporting documentation shall be served on the following:

- (1) The Office of Consumer Advocate.
- (2) The Office of Small Business Advocate.
- (3) The Office of the Attorney General.
- (4) The Bureau of Consumer Protection.

(5) The Department of Revenue, and each NGDC in whose service territory the applicant intends to provide natural gas supply services.

(d) Incomplete applications and those without supporting attachments, if needed, will be rejected without prejudice. The license application, with supporting attachments, shall be completed in its entirety.

(e) When an answer on the application requires the disclosure of privileged or confidential information not otherwise available to the public, the applicant may designate at each point in the application where information is disclosed that is confidential and privileged. One copy of this confidential or privileged information conspicuously marked at the top as "CONFIDENTIAL" may be submitted to the Office of the Secretary with the application.

(1) An applicant shall provide reasons for protecting this information.

(2) The request for confidentiality will be treated as a petition for protective order and will be ruled on by the Commission in conjunction with the license application.

(3) Pending disposition, the information will be used solely for the purpose of evaluating the license application, and the confidentiality of this information will be maintained consistent with the Commission's rules and regulations pertaining to confidentiality.

#### § 62.104. Application form.

(a) The application form includes information that will be used in the evaluation of the financial fitness and technical fitness to render service. Information includes:

- (1) Identification of the geographic area that the applicant proposes to serve.
- (2) Identification of the type of service that the applicant proposes to furnish.
- (3) Identification of the class of customers to which the applicant proposes to provide these services.
- (4) Identification of the applicant's utility affiliates.
- (5) Description of the applicant's business structure.



(6) Financial information sufficient to demonstrate financial fitness. This information may include credit ratings and history, audited financial statements and insurance pertinent to the conduct of the applicant's business as an NGS.

(7) Evidence of competency and experience in providing the scope and nature of the applicant's proposed services. This evidence may include:

- (i) Descriptions of the applicant's prior experience.
- (ii) Proposed staffing and employe training commitments.
- (iii) Business plans and agreements.
- (iv) Arrangements and contracts for natural gas supply procurement, transmission and related services.
- (8) Evidence of information demonstrating the applicant's ability to comply with Commission applicable requirements concerning customer billing, customer education, billing and terms of service and customer information. This evidence may include:
  - (i) Prior regulatory experience of the applicant.
  - (ii) Prior business experience in energy or other service-oriented industries.
  - (iii) Staffing and staff training commitments, agreements.
  - (iv) Arrangements and contracts for customer education and information service.
  - (v) Customer satisfaction survey results.
  - (vi) Government agency reports.
  - (vii) Complaint statistics compiled by the Better Business Bureau or similar business organizations.

(9) Certification that notice of the application was published in accordance with § 54.35 (relating to publication of notice of filing) shall be filed with the Commission's Secretary. The certification shall be notarized and include a photostatic copy of the notices as published. An application will not be considered complete for Commission review without this certification.

(b) Additional information that shall be submitted in support of the application includes:

- (1) The name, address, telephone number, electronic numbers and addresses used to transmit tax and related information of the persons responsible for preparing and filing the applicant's Pennsylvania tax returns.
- (2) The trade names or fictitious names used by the applicant.
- (3) The type of business association (for example, sole proprietor, partnership or corporation).
- (4) The names of the owners, general partners or corporate officers.
- (5) The number of applicant's current and anticipated employes working in this Commonwealth.
- (6) An identification of the applicant's assets in this Commonwealth.
- (7) The principal office in this Commonwealth or of its registered agent.
- (8) The applicant's Department of Revenue tax identification numbers including Sales Tax license number, employer identification number and corporate box number.

#### **§ 62.105. Change in organizational structure or operational status.**

(a) The applicant is under a duty to inform the Commission of a material change in the information provided in the application during the pendency of the application, or while the licensee is operating in this Commonwealth.

(b) A material change in the organizational structure or operation that affects an applicant's or a licensee's operation in this Commonwealth shall be reported to the Commission within 30 days of the date of the change. Specifically, notification shall be given to the Commission of a change in the following:

- (1) Affiliation with an NGDC.
  - (2) Affiliation with an entity that has a franchised service area.
  - (3) Affiliation with other NGS.
  - (4) Affiliation with licensed electric generation supplier.
  - (5) Office location.
  - (6) Chief executive officer or operating partners.
  - (7) Customer classes served expanded to include residential and small commercial customers.
- (c) Unless directed otherwise by the Commission, the licensee does not need to file an amended application with the Commission.

#### **§ 62.106. Open and nondiscriminatory access.**

A municipal corporation shall, before it is permitted to provide natural gas supply services as a licensed NGS, demonstrate, and the Commission will determine, that by the date of the issuance of the license, it will provide other NGSs open and nondiscriminatory access to its gas distribution system under standards that are comparable to those found in the act, taking into consideration the particular circumstances of the municipal corporation's ownership or operation, or both, of its natural gas distribution system.

#### **§ 62.107. Publication of notice of filing.**

(a) Notice of filing an application shall be published in newspapers of general circulation covering each county in which the applicant intends to provide service as required by § 5.14(a)(2) (relating to applications requiring notice). Applicants may contact the Commission's Press Secretary to confirm the identity of the newspapers of general circulation in which notice shall be published.

(b) The notice shall be written in plain language and include the name, address and telephone number of the applicant, a description of the proposed service or services to be provided and the geographic area to be served.

(1) The notice shall include the application docket number and a statement that protests related to the technical or financial fitness of the applicant shall be filed within 15 days of the publication date of the notice with the Commission's Secretary, Public Utility Commission, P. O. Box 3265, Harrisburg, Pennsylvania 17105-3265.

(2) The notice in an acceptable electronic format shall be submitted to the Commission's Secretary for posting on the Commission's Internet web site.

#### **§ 62.108. Protests to applications.**

(a) Consistent with § 5.14(b) (relating to applications requiring notice), a 15-day protest period commences on the date notice of the application filing is published in newspapers. An interested party may file a protest to an application in compliance with § 5.52(a) (relating to

content of a protest to an application) and shall set out clearly and concisely the facts upon which challenge to the fitness of the applicant is based. An applicant may file an answer to the protest within 10 days of when the protest is filed. Protests which do not fully comply with § 5.52(a) (relating to content of a protest to an application) will be rejected.

(b) Protests may challenge only the applicant's financial and technical fitness to provide the service for which a license is requested. Consistent with the requirements of due process, sanctions, such as revocation or suspension of a supplier's license or the imposition of a fine, may be imposed on parties who intentionally misuse the protest process by repeated filing of competitive protests.

(c) A protest to the applicant's technical or financial fitness to provide service will be assigned to Commission staff for review. Staff will determine if the protest fully complies with § 5.52(a) and sets out clearly and concisely the facts upon which the challenge to the fitness of the applicant is based.

(1) Staff will determine if the protest is sufficiently documented.

(2) If a protest is not sufficiently documented, Commission staff will prepare a recommendation for Commission consideration dismissing the protest and granting the application.

(3) If a protest is sufficiently documented, the application will be transferred to the Office of Administrative Law Judge for hearings or mediation as deemed appropriate.

#### § 62.109. Approval.

(a) A license will be issued, authorizing the whole or any part of service requested, if the Commission finds that:

(1) The applicant is fit, willing and able to properly perform the service proposed in conformance with applicable provisions of 66 Pa.C.S. (relating to the Public Utility Code) and the lawful Commission orders and regulations, specifically including Chapter 56 (relating to standards and billing practices for residential utility service).

(2) The proposed service is consistent with the public interest and the policy declared in the act. (See 66 Pa.C.S. § 2208(b) (relating to requirements for natural gas suppliers)).

(b) Completed applications, with all supporting documentation, including any documentation or clarifying information requested by Commission staff, if unprotested, will be processed within 45 days after acceptance by the Commission. If the application is not processed within the time period, the application will be deemed approved. The review period may be extended for a reasonable period of time by Secretarial Letter.

#### § 62.110. Regulatory assessments.

(a) A licensee shall be required to pay assessments to be used to defray regulatory costs. See 66 Pa.C.S. § 510 (relating to assessment for regulatory expenses upon public utilities).

(1) Assessments will be based upon the administrative costs incurred by the Commission related to suppliers.

(2) These costs include:

(i) Maintaining records related to licensees, and administering other provisions of 66 Pa.C.S. (relating to the Public Utility Code) related to maintenance of adequate reserve margins.

(ii) Compliance with Chapter 56 (relating to standards and billing practices for residential utility service).

(iii) Fulfilling consumer information and education obligations.

(b) Yearly assessments shall be paid by the licensee within 30 days of receipt of notice of the amount lawfully charged against it as a condition of maintaining a license to supply natural gas. See 66 Pa.C.S. § 510(c).

#### § 62.111. Reporting requirements.

(a) A licensee shall file an annual report on or before April 30 of each year, for the previous calendar year. The annual report shall contain the following information:

(1) The total amount of gross receipts from the sales of natural gas supply services for the preceding calendar year.

(2) The total amount of natural gas sold during the preceding calendar year.

(b) A licensee shall be required to meet periodic reporting requirements issued by the Commission to fulfill the Commission's duty under the act pertaining to reliability and to inform the Governor and the General Assembly of the progress to a fully competitive natural gas market.

(c) The information requested in this section will be made available for public review upon request to the Commission subject to any rulings on confidentiality made by the Commission.

#### § 62.112. Bonds or other security.

(a) A license will not be issued or remain in force until the licensee furnishes proof of a bond or other security. See section 2208(c)(1)(i) of the act (relating to requirements for natural gas suppliers).

(b) The purpose of the security requirement is to ensure the licensee's financial responsibility. See section 2208(c)(1)(i) of the act.

(c) The amount and the form of the security, if not mutually agreed upon by the NGDC and the licensee, shall be reasonably based on the criteria established in this section. The criteria shall be applied in a non-discriminatory manner. The Commission will periodically review the established criteria upon petition by any party.

(1) The amount of the security should be reasonably related to the financial exposure imposed on the NGDC or supplier of last resort resulting from the default or bankruptcy of the licensee. At a minimum, the amount of security should materially reflect the difference between the cost of gas incurred and the supplier's charges, if any, incurred by the NGDC or supplier of last resort during one billing cycle.

(i) The amount of security established under this paragraph may be modified based on one, or more of the following:

(A) The licensee's past operating history, including the length of time that the licensee operated on the NGDC's system, the number of customers served and past supply reliability problems.

(B) The licensee's credit reports.

(C) The number and class of customers being served.

(D) Information that materially affects a licensee's creditworthiness.

(E) The licensee's demonstrated capability to provide the volume of natural gas necessary for its customers' needs.

(ii) The amount of the security may be adjusted, but not more often than every 6 months. The adjustments shall be reasonable and based on one or more of the following criteria:

(A) Changes in a licensee's recent operating history on the NGDC's system.

(B) Changes in a licensee's credit reports.

(C) Changes in the number or class of customers being served by the licensee.

(D) Changes in circumstances that materially affect a licensee's creditworthiness.

(E) The licensee's demonstrated capability to provide the volume of natural gas necessary for its customers' needs.

(2) The following legal and financial instruments and property shall be acceptable as security:

(i) Bond.

(ii) Irrevocable letter of credit.

(iii) Corporate, parental or other third-party guaranty.

(3) In addition to the requirements in this section, small suppliers with annual operating revenues of less than \$1 million may utilize real or personal property with the following supporting documentation acceptable as security:

(i) A verified statement from the licensee that it has clear title to the property and that the property has not been pledged as collateral, or otherwise encumbered in regard to any other legal or financial transaction.

(ii) A current appraisal report of the market value of the property.

(d) The licensee shall submit to the Commission documentation demonstrating that it has complied with the bonding or security requirement. One copy of each bond, letter of credit, or other financial or legal instrument or document evidencing an agreement between the licensee and the NGDC shall be submitted to the Commission.

(e) Licensee liability for unreasonable service, or for violations of 66 Pa.C.S. (relating to the Public Utility Code) and Commission orders and regulations is not limited by these security requirements.

#### **§ 62.113. Transfer or abandonment of license.**

(a) A license may not be transferred without prior Commission approval. See section 2208(d) of the act (relating to requirements for natural gas suppliers). Approval for transfer shall be obtained by petition to the Commission. The granting of a petition does not eliminate the need for the transferee to complete and file with the Commission an application that demonstrates the transferee's financial and technical fitness to render service under the transferred license.

(b) A licensee may not abandon service without providing 90 days prior written notice to the Commission, the licensee's customers, the affected distribution utilities and suppliers of last resort. The licensee shall provide written individual notice to its customers at approximately 90 days and 60 days preceding the effective date of the abandonment.

#### **§ 62.114. License suspension; license revocation.**

(a) A licensee shall comply with the applicable requirements of 66 Pa.C.S. (relating to the Public Utility Code) and Commission regulations and orders. Consistent with

due process, a license may be suspended or revoked, and fines may be imposed against the licensee for:

(1) Failure to pay the yearly assessment.

(2) Failure to furnish and maintain a bond or other security.

(3) Failure to comply with the rules, regulations, orders or directives of the Department of Revenue.

(4) Failure to provide the address of its current principal office in this Commonwealth or of its registered agent.

(5) Failure to follow the principles in § 62.115 (relating to standards of conduct and disclosure for licensees).

(6) Violation of applicable provisions of 66 Pa.C.S., Commission regulations and lawful Commission orders. See section 2208(c)(2) of the act (relating to requirements for natural gas suppliers).

(7) Violation of Pennsylvania consumer protection law.

(b) The unauthorized transfer by a NGDC, or its affiliate, of a customer's NGS without the customer's express consent will result in a fine, or the suspension, or the revocation of the license of that NGDC's affiliated NGS. See section 2206(b) of the act (relating to consumer protection and customer service).

(c) The unauthorized transfer by a licensed NGS, or its affiliate, of a customer's NGS without the customer's express consent will result in a fine, or the suspension, or the revocation of the license of that NGS.

#### **§ 62.115. Standards of conduct and disclosure for licensees.**

To protect the consumers of this Commonwealth, licensees shall adhere to the following principles in the provision of natural gas service:

(1) A licensee shall provide accurate information about its natural gas services using plain language and common terms in communications with consumers. When new terms are used, the terms shall be defined again using plain language.

(2) A licensee shall provide notification of change in conditions of service, intent to cease operation as a natural gas supplier, explanation of denial of service, proper handling of deposits and proper handling of complaints in accordance with this title.

(3) A licensee shall maintain the confidentiality of a consumer's personal information including the name, address and telephone number, and historic payment information, and provide the right of access by the consumer to the consumer's own load and billing information.

(4) A licensee may not discriminate in the provision of natural gas as to availability and terms of service based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income and exercise of rights under the Consumer Credit Protection Act (15 U.S.C.A. §§ 1601—1693c). See 15 U.S.C.A. §§ 1691—1691f (relating to equal credit opportunity); and 12 CFR Part 202 (relating to equal credit opportunity (Regulation B)).

(e) A licensee is responsible for the fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives. A licensee shall inform consumers of state consumer protection laws that govern the cancellation or rescission of

natural gas supply contracts. See section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-7).

(f) A licensee shall comply with relevant Commission regulations, orders and directives that may be adopted.

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