

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 86—88 AND 90]
Coal Mine Permits/Road Requirements

The Environmental Quality Board (Board) proposes to amend Chapters 86—88 and 90 to read as set forth in Annex A. The proposed amendments address criteria for approval/denial of coal mine permits and performance standards concerning roads used in conjunction with coal surface mines and coal refuse disposal operations.

This proposal was adopted by the Board at its meeting of July 17, 2001.

A. Effective Date

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

B. Contact Persons

For further information contact J. Scott Roberts, Director, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103; or Bo Reiley, 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) 654-5984 (TDD users) or (800) 654-5988 (voice users). These proposed amendments are available electronically through the Department of Environmental Protection's (Department) website (<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 (52 P. S. § 1396.4b(a)); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. Background and Purpose

This proposed rulemaking amends existing provisions relating to criteria for approval/denial of coal mine permits and performance standards concerning haul roads and access roads used in conjunction with coal surface mines and coal refuse disposal operations. Approximately 600 operators of anthracite and bituminous surface mines and coal refuse disposal operations will be affected by these proposed amendments. This proposed rulemaking is necessary to clarify the existing regulations and to make the regulations consistent with Federal regulations.

During the surface coal mining permit application approval process under § 86.37 (relating to criteria for permit approval or denial), it was established practice for a mining permit applicant to submit a permit application that included a mining plan for the entire permit area. Any necessary waiver approvals related to distance limitations (such as waiver for mining activities within 300 feet of an occupied dwelling) were typically included in the mining plan for the initial bonding increment. The mining permit applicant would provide bonding to cover

the initial increment of mining, and the Department, in issuing the mining permit, authorized mining activities only for that initial increment. When the permittee provided bonding for subsequent increments to be mined and obtained the necessary waiver approvals for that increment, the Department authorized mining activities for that specific increment.

The Environmental Hearing Board (EHB) in *Peter Blose vs. DEP and Seven Sisters Mining Company, Inc.* (No. 98-034-R) (March 7, 2000) (*Blose*) held that this established practice was contrary to § 86.37(a)(2), and that the Department may not approve a permit if any coal mining activities are proposed within 300 feet of an occupied dwelling located on the entire permit area if the waiver for allowing mining activities had not been obtained.

The proposed amendment to § 86.37(a)(5) would allow the Department to continue to review and approve mining permits following those procedures in place prior to the EHB's decision in *Blose*. These procedures, while still fully protective of occupied dwellings, have the additional benefits of ensuring that both the amount of bond calculated to ensure proper reclamation of the site and all erosion and sedimentation plans are as current as possible.

Sections 87.160(a), 88.138(a), 88.231(a), 88.335(a) and 90.134(a) are proposed for change by deleting the requirement for a road maintenance plan for roads to be retained (upon completion of the mining and reclamation activities) as part of the postmining land use. This requirement for a road maintenance plan is proposed for deletion because it is more stringent than the corresponding Federal requirements. In addition, since the landowner has agreed to the retention of the road as a postmining land use and will be responsible for its maintenance, the Department has never required a maintenance plan after the completion of mining and reclamation activities. Therefore, the Board also proposes to delete this requirement because it is unnecessary.

Section 90.134(a) (relating to haul roads and access roads: general) is also proposed for change to include a requirement that haul roads and access roads used in conjunction with coal refuse disposal activities must be designed, constructed and maintained to control or prevent erosion. This amendment is proposed to address a condition placed on the Commonwealth's approved coal mining regulatory program by the Federal Office of Surface Mining. The proposed amendment makes this specific requirement consistent with the requirements for other coal mining operations.

These proposed amendments were reviewed and discussed with the Mining and Reclamation Advisory Board (MRAB), the Department's advisory body for regulations pertaining to the surface mining of coal. A draft of the proposed rulemaking was reviewed and discussed with the MRAB at its meeting on April 26, 2001. The MRAB supports the proposed rulemaking.

E. Summary of Regulatory Requirements

The following sections are proposed for change along with a description of the specific change.

§ 86.37. Criteria for permit approval or denial.

Section 86.37(a)(5) is being amended to require that areas within the proposed permit area that are proposed for surface mining activities and are covered by the operator's bond, must include the appropriate approvals/waivers for mining activities proposed within barrier areas. Currently, these approvals/waivers must be provided for all areas within the proposed permit area.

§§ 87.160, 88.138, 88.231, 88.335 and 90.134. Haul roads and access roads.

The Board proposes to amend §§ 87.160(a), 88.138(a), 88.231(a), 88.335(a) and 90.134(a) by deleting the requirements for a road maintenance plan for roads to be retained (upon completion of the mining and reclamation activities) as part of the postmining land use. These requirements for a road maintenance plan are not found in the Federal counterpart to these sections (30 CFR 816.150). Since the landowner has agreed to the retention of the road as a postmining land use and will be responsible for its maintenance, the Department has never required a maintenance plan after completion of mining and reclamation activities. Therefore, the Board proposes these amendments because the requirements are unnecessary.

Section 90.134(a) is also proposed for change to include a requirement that haul roads and access roads used in conjunction with coal refuse disposal activities must be designed, constructed and maintained to control or prevent erosion. This amendment is proposed to address a recent condition placed on the Commonwealth's approved coal mining regulatory program by the Federal Office of Surface Mining. This amendment will make § 90.134(a) consistent with the requirements for other coal mining operations and the counterpart Federal regulations (30 CFR 816.150(b)(1)).

F. Benefits, Costs and Compliance

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

Benefits

The coal mining industry and the Department will benefit from these amendments. In the case of proposed amendments to § 86.37, a permit applicant would benefit by avoiding the costs to prepare and publicize a permit revision should the specific types of activities proposed in barrier areas after permit issuance require public notice. The cost savings for that would not be easily quantifiable because of the inability to estimate or predict with much degree of accuracy the number of proposals that would be submitted that require public notice. In the case of proposed changes to §§ 87.160, 88.138, 88.231, 88.335 and 90.134, a permittee would benefit by reduction in costs of preparing maintenance plans for mining roads to be retained (upon completion of the mining and reclamation activities) as part of the postmining land use. The Department will benefit by reduction in the amount of staff time needed to review the plans. The estimated cost savings related to deleting the requirement for road maintenance plans is \$47,750 annually for the industry and \$19,100 annually for the Department.

Compliance Costs

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

Compliance Assistance Plan

The Department will provide written notification of the amendments to the coal mining industry.

G. Pollution Prevention

The proposed rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multimedia pollution prevention approach of existing requirements in Chapters 86—88 and 90.

H. Sunset Review

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

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 8, 2001, the Department submitted a copy of the proposed amendments 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 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 that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the Governor and the General Assembly.

J. 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, 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 September 17, 2001. 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 September 17, 2001. 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-form rulemaking will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by September 18, 2001. 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.

DAVID E. HESS,
Chairperson

Fiscal Note: 7-367. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter B. PERMITS

REVIEW, PUBLIC PARTICIPATION AND APPROVAL, DISAPPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

§ 86.37. Criteria for permit approval or denial.

(a) A permit or revised permit application will not be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of the information in the application or from information otherwise available, which is documented in the approval, and made available to the applicant, that the following apply:

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(5) [The proposed permit area] The area covered by the operator's bond and upon which the operator proposes to conduct surface mining activities within the boundary of the proposed surface or coal mining activities permit is not one of the following:

(i) Included within an area designated unsuitable for mining under Subchapter D (relating to areas unsuitable for mining).

(ii) Within an area which has been included in a petition for designation under § 86.124(a)(6) (relating to procedures: initial processing, recordkeeping and notification requirements).

(iii) On lands subject to the prohibitions or limitations of Subchapter D.

(iv) Within 100 feet (30.48 meters) of the outside right-of-way line of any public road, except as provided for in Subchapter D.

(v) Within 300 feet (91.44 meters) from any occupied dwelling, except as provided for in Subchapter D.

(vi) Within 100 feet (30.48 meters) of a stream, except as provided for in § 86.102 (relating to areas where mining is prohibited or limited).

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CHAPTER 87. SURFACE MINING OF COAL

Subchapter E. SURFACE COAL MINES: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 87.160. Haul roads and access roads.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; [and] flooding; and damage to public or private property. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or recon-

struction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, in accordance with current, prudent engineering practices and necessary design criteria established by the Department. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 87.166 (relating to haul roads and access roads: restoration) unless retention of the road [and its maintenance plan] is approved as part of the postmining land use.

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CHAPTER 88. ANTHRACITE COAL

Subchapter B. SURFACE ANTHRACITE COAL MINES: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 88.138. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; flooding; and damage to public or private property. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 88.144 (relating to haul roads and access roads: restoration) unless retention of the road [and its maintenance plan] is approved as part of the postmining land use.

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Subchapter C. ANTHRACITE BANK REMOVAL AND RECLAMATION: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 88.231. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; flooding; and damage to public or private property. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 88.237 (relating to haul roads and access roads: restoration) unless retention of the road [and its maintenance plan] is approved as part of the postmining land use.

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

§ 88.335. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; flooding; and damage to public or private property. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 88.341 (relating to haul roads and access roads: restoration) unless retention of the road [and its maintenance plan] is approved as part of the postmining land use.

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CHAPTER 90. COAL REFUSE DISPOSAL

Subchapter D. PERFORMANCE STANDARD FOR COAL REFUSE DISPOSAL

§ 90.134. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent: **erosion and** contributions of sediment to streams or runoff outside the affected area; flooding; air and water pollution; damage to fish and wildlife or their habitat; and damage to public or private property. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for

grade, width, surface materials, surface drainage control, culvert placement and culvert size, in accordance with current, prudent engineering practices, and necessary design criteria established by the Department. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 90.140 (relating to haul roads and access roads: restoration), unless retention of the road **[and its maintenance plan are]** is approved as part of the postmining land use.

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