

PROPOSED RULEMAKING

BOARD OF COAL MINE SAFETY

[25 PA. CODE CH. 208]

Underground Coal Mine Safety

The Board of Coal Mine Safety (Board) proposes to add Chapter 208 (relating to underground coal mine safety) to read as set forth in Annex A.

The Board is seeking comments to the proposed rulemaking. This proposed rulemaking has been drafted by the Department of Environmental Protection (Department) and the action of the Board to publish this proposed rulemaking is not an endorsement by the Board of these regulations but is instead to call for comment from interested parties, specifically of the mining industry and miners in this Commonwealth. In particular, the Board would like to call attention to §§ 208.11, 208.12, 208.15(b), 208.21, 208.32(b) and 208.41(b). Comments are invited on the need or necessity for the proposed rulemaking, the clarity of the wording and other concerns. This proposed rulemaking establishes safety standards regarding belt conveyor flammability, the design, installation and maintenance of mine seals for abandoned areas, escapeways, emergency response, and self-contained self-rescue devices. This proposed rulemaking principally incorporates by reference safety standards adopted by the United States Department of Labor, Mine Safety and Health Administration (MSHA) in 30 CFR Part 75 (relating to mandatory safety standards—underground coal mines). The MSHA regulations/standards being incorporated by reference implement some of the requirements of the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). See sections 201, 514, 515 and 14 of the MINER Act (30 U.S.C.A. §§ 826 and 963—965).

This proposed rulemaking was adopted by the Board at its meeting of April 8, 2010.

A. *Effective Date*

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Joseph Sbaffoni, Director, Bureau of Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown, PA 15401, (724) 439-7469; or Doug Brennan, Director, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this Preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available electronically through the Department's web site at www.depweb.state.pa.us.

C. *Statutory Authority*

This proposed rulemaking is being made under the authority of sections 106, 106.1 and 106.2 of the Bituminous Coal Mine Safety Act (BCMSA) (52 P. S. §§ 690-106, 690-106.1 and 690-106.2), which authorizes the adoption of regulations implementing the BCMSA including additional safety standards. The Board is directed to consider adopting regulations implementing the MINER Act regu-

lations. This proposed rulemaking is also being made under the authority of section 1917-A of The Administrative Code of 1929 (71 P. S. § 510-17), which authorizes the Department to prevent the occurrence of a nuisance.

D. *Background and Purpose*

At the National level, the MSHA regulates mine safety under the authority of the Federal Mine Safety and Health Act of 1977 (30 U.S.C.A. §§ 801—965) (Mine Safety Act). The MSHA regulations are in 30 CFR Parts 1—199 (relating to Mine Safety and Health Administration, Department of Labor). The operating requirements for underground coal mines are in 30 CFR Part 75.

The Mine Safety Act only preempts state laws or regulations that are less stringent than or that conflict with MSHA standards. See section 955 of the Mine Safety Act (30 U.S.C.A. § 955), regarding state laws. Unlike a state's ability under other Federal statutes to obtain primacy (primary enforcement authority), a state cannot obtain authority to enforce the Mine Safety Act in that state's jurisdiction. As a result, a number of states maintain an independent underground coal mine safety program with the mine operator being subject to two mine safety programs.

On June 15, 2006, the United States Congress amended the Mine Safety Act by enacting the MINER Act. The MINER Act addresses safety issues raised by fatal mine accidents at the Sago and Alma Mines in West Virginia and the Darby Mine in Kentucky. In addition, Congress adopted the Consolidated Appropriations Act of 2008 (Pub. L. No. 110-161, December 26, 2007, 121 Stat. 1844) directing the MSHA to adopt new belt conveyor flame-resistance standards. In accordance with these congressional mandates, the MSHA promulgated regulations addressing the flammability of belt conveyors, the strength of seals for abandoned areas, escapeways, refuge alternatives, post-accident breathable air, communications, tracking and mine rescue teams.

The Commonwealth has been regulating safety at underground bituminous coal mines since 1889. See the act of May 9, 1889 (P. L. 154, No. 171), regarding the recovery of the bodies of workmen. On July 7, 2008, the General Assembly enacted the BCMSA. The BCMSA is the first significant update of the Commonwealth's underground bituminous coal mine safety laws since 1961. See section 103(a) of the BCMSA (52 P. S. § 690-103(a)), regarding purpose and findings.

One of the significant changes made by the BCMSA is the authority to promulgate regulations for mine safety. The General Assembly established the Board to promulgate the regulations. This seven-member Board consists of the Department's Secretary as chairperson and three members representing the view point of mine workers and the viewpoint of underground bituminous coal mine operators respectively. See section 106 of the BCMSA, regarding the Board.

A significant problem with the preexisting law is that its safety standards were becoming outdated. See section 103 of the BCMSA. There was no effective mechanism to modify existing standards or to adopt new safety standards to address changes in technology or other hazards.

To rectify this problem, the BCMSA contains broad rulemaking authority to adopt regulations to either modernize safety standards in the BCMSA or adopt new safety standards not contained in the BCMSA. See sec-

tion 106 of the BCMSA. The Board was directed to start considering whether to adopt Federal mine safety standards not in the BCMSA. See section 106.1 of the BCMSA, regarding rulemaking. Of particular concern is the adoption of regulations implementing safety standards established by the MINER Act regulations. See section 106.1(h) of the BCMSA.

This proposed rulemaking implements the MINER Act's safety standards for belt conveyor flammability, mine seals for abandoned areas, escapeway, refuge alternatives and post accident breathable air.

As the following explains, there are only a few instances when the MINER Act regulations need to be either strengthened or clarified. Therefore, this proposed rulemaking incorporates by reference the applicable MSHA regulations. Adopting MSHA regulations by reference will enhance safety at underground coal mines because the potential for confusion by operators as to the appropriate safety standard is minimized. A future change in an MSHA regulation that has been incorporated by reference takes immediate effect in law in this Commonwealth. As a result, these regulations will remain current with MSHA regulations. If it appears that a proposed change to one of the incorporated by reference MSHA regulations is inappropriate or will reduce the safety of miners, the Board can act to make the appropriate modification to the Department's regulations.

Sealing of abandoned areas of mines

This issue is being addressed because inadequately sealed abandoned and unused portions of mines pose a significant safety hazard. Abandoned and unused areas of underground coal mines may contain coal dust and accumulated gas which can be ignited by rock falls, lightning and, in some instances, fires started by spontaneous combustion. Seals are used to isolate this environment from the active workings of the mine. They are also used to keep explosions in abandoned areas contained to that area. Without an adequate seal, the overpressure from an explosion in an abandoned area can cause serious injury to miners and damage mine equipment. In the Department's experience, the atmosphere in these abandoned areas does not remain inert. This creates the risk of having an abandoned area which could have a dangerous explosion that blows out the seals.

Under section 235 of the BCMSA (52 P. S. § 690-235), regarding unused and abandoned parts of mines, and its predecessor section 247 of the Pennsylvania Bituminous Coal Mine Act (PBCMA) (52 P. S. § 701-247), the Department is responsible for ensuring that abandoned parts of mines are adequately sealed. The Department has relied upon the MSHA's determination that a proposed seal, if installed properly, will meet a specified over pressure standard. The Department ensures that the seal is properly installed and maintained.

Initially, the MSHA required seals to have a strength to withstand an overpressure of at least 20 pounds per square inch (psi). The 20 psi standard was in the original version of 30 CFR 75.335 (relating to seal strengths, design applications, and installation). The definition of "overpressure" is in 30 CFR 75.2 (relating to definitions).

At 72 FR 28796 (May 22, 2007), as an Emergency Temporary Standard (ETS), the MSHA revised the seal strength standard to be at least 50 psi.

At 72 FR 21182 (April 14, 2008), the MSHA finalized the ETS with some additional revisions. A significant change was that the MSHA created a two-tier system. The operator can use a seal meeting the 50 psi standard

when the atmosphere of the abandoned area is inert, there is monitoring to ensure that the atmosphere remains inert and there are no other circumstances putting additional stress on the seals. Otherwise, the seal must have a strength of at least 120 psi. Rather than following this two-tier system, the Department has been requiring seals to meet the 120 psi standard. The proposed mine seal regulation codifies the current practice of the Department: requiring seals to meet at least a 120 psi standard; relying on the MSHA's determination that the seal is designed to meet the 120 psi standard; and ensuring that the operator is properly installing and maintaining the seal.

Belt conveyor flammability

One of the most significant hazards in an underground coal mine is a belt conveyor fire. Under section 273 of the PBCMA (52 P. S. § 701-273), regarding conveyor belts, construction and operation of conveyor equipment underground, operators were required to install belts with adequate flame-resistant coverings. In determining whether the belt covering was adequately flame-resistant, the Department relied upon the MSHA's approval of the belt as being flame-resistant.

The efficacy of the MSHA standard has been in question for some time.

At the time the BCMSA was being enacted, the MSHA had not yet promulgated the new belt flammability resistance standards. Therefore, rather than enacting a provision requiring belt conveyor coverings to meet a flammability standard, the General Assembly directed the Board to consider promulgating a regulation addressing belt flammability after the MSHA adopts MINER ACT regulations addressing belt flammability. See section 106.1(h) of the BCMSA.

At 73 FR 80580 (December 31, 2008), the MSHA promulgated a final rulemaking which, among other things, established a more stringent belt flammability standard and belt entry maintenance standards to minimize the possibility of a belt fire. The proposed rulemaking incorporates by reference the requirement that belts meet the new flammability resistance standard.

Emergency response

Most of the safety standards in the BCMSA are for the purpose of ensuring that a mine accident will not occur. Despite effective mine safety standards, serious accidents are still possible. Therefore, it is necessary to maximize the possibility of the miner's ability to survive a serious accident.

The MSHA regulations have always contained standards concerning escapeways as well as self-contained self-rescue devices which provide post accident breathable air. The MINER Act regulations strengthen these provisions and also establish emergency response and post accident communications standards. Adopting these MSHA regulations will enhance the Department's ability to ensure the safety of miners if, despite the operational safety standards, a fire or explosion occurs.

E. Summary of Regulatory Requirements

These regulations will be placed in Chapter 208. Creating a new chapter is necessary because the Commonwealth has never promulgated regulations addressing underground coal mine safety.

General provisions

§ 208.1. Definitions.

Most of the terms being defined in this proposed rulemaking are already defined in the BCMSA. They are

restated here for convenience. These terms are “act,” “approval or approved,” “miner,” “MSHA,” “NIOSH,” “operator,” “representative of miners” and “underground bituminous coal mine or mine.”

In addition, it is proposed to define “overpressure,” “psi” and “self-contained self-rescue device.” The terms “overpressure” and “psi” are used in proposed § 208.11 (relating to seals) to describe the strength of seals. The term “overpressure” has been defined in accordance with MSHA standards in 30 CFR 75.2. The term “self-contained self-rescue device” is used in proposed §§ 208.61—208.65 (relating to self-contained self-rescue devices). The term has been defined in accordance with the MSHA standards. See 73 FR 21182.

§ 208.2. *Scope.*

The safeguards and procedures required by these regulations will apply to underground bituminous coal mines, operators and miners subject to the BCMSA.

§ 208.3. *Access to material.*

This section authorizes the Department to obtain on an individual basis copies of the material an operator submits to the MSHA under the regulations incorporated by reference in Chapter 208. For the most part, the Department will be accepting the MSHA’s approval of seals and equipment. There are instances when the Department will need copies of this information to approve a plan or to raise concerns to the MSHA for its consideration as part of its review of the requested approval. The Department will provide this information to an official representative of the miners as requested, unless specified otherwise in Chapter 208.

Seals

§ 208.11. *Seals.*

Subsection (a) requires seals for abandoned areas to be designed, constructed and installed to withstand an overpressure of at least 120 psi. As with current practice, this subsection is more stringent than the MSHA regulation. The MSHA regulation permits a 50 psi standard if the atmosphere in the abandoned area is and remains inert. However, the monitoring system only measures the atmosphere at or near the seal. It does not monitor the atmosphere throughout the abandoned area. Therefore, there is significant uncertainty as to whether the atmosphere throughout the abandoned area is inert. Also, in the Department’s experience, the atmosphere in these abandoned areas does not remain inert. This creates the risk of having an abandoned area which could have a dangerous explosion that blows out the seals.

Subsection (b) incorporates by reference 30 CFR 75.335(a)(2) and (c) (relating to seal strengths, design applications and installation). This incorporation by reference ensures consistency because the Department will use the MSHA’s criteria for seals requiring a strength of 120 psi.

Subsection (c) incorporates by reference 30 CFR 75.335(a)(3). This incorporation by reference ensures consistency because the Department will use the MSHA’s criteria to require a seal to have a strength greater than 120 psi.

Subsection (d) establishes two key points. First, the Department will accept the MSHA’s approval of the seal’s design. Second, the Department will approve the installation of the seal as part of the ventilation plan for the abandoned area required by section 235 of the BCMSA. The Department needs to retain responsibility for the

installation of seals because of the potential impact on mining operations and the Department’s obligations under section 235 of the BCMSA. To minimize conflicts and paperwork the operator is to submit to the Department the same information it submits to the MSHA for approval to install the seal. Unlike the MSHA requirements, if applicable, the operator shall provide a copy of the approved seal design installation application to the miners’ representative at the same time the application is submitted to the Department. This enables the persons most at risk if the seal fails an opportunity to comment.

The Department did not duplicate the certification requirement in this proposed rulemaking because sections 218(d) and 218.1(b) of the BCMSA (52 P. S. §§ 690-218(d) and 690-218.1(b)), regarding preshift examination at fixed intervals and supplemental examination, require the person doing the examination to certify by initials, the time and date the seals were examined.

§ 208.12. *Sampling and monitoring requirements.*

This section incorporates by reference 30 CFR 75.336 (relating to sampling and monitoring requirements). The atmospheres of sealed areas shall be monitored by a person certified under the BCMSA as a mine foreman, assistant mine foreman or mine examiner. This monitoring can be conducted by means of an atmospheric monitoring system, rather than by using site specific sampling by a certified person.

Initially a sealed area is monitored once every 24 hours. If the seals’ design strength is 120 psi or greater, then monitoring may cease once the seals for the area reach the design strength. If the seal strength is less than 120 psi, monitoring shall continue at a lesser frequency in accordance with the MSHA approved seal or ventilation plan. There are requirements to ensure that the monitoring points and sampling frequencies remain valid. Finally, for those areas where the seal strength is less than 120 psi, the section addresses the actions to be taken if the atmosphere stops being inert.

§ 208.13. *Construction and repair of seals.*

Subsection (a) incorporates by reference 30 CFR 75.337 (relating to construction and repair of seals), the MSHA’s standards for approving the installation and repair of seals. This incorporation by reference ensures that the Department and the MSHA will be enforcing the same standards to ensure the safe installation and repair of seals.

The MSHA regulation requires the operator to maintain and repair seals to protect miners from the hazards of sealed areas.

The MSHA regulation specifies the actions to be taken by the operator prior to sealing an area.

The MSHA regulation requires the operator to designate a certified person to directly supervise the installation and repair of seals. This certified person is not required to be certified as a mine foreman, assistant mine foreman, or examiner under the BCMSA.

The MSHA regulation requires a senior mine official to certify that the seal has been installed in accordance with the approval.

The MSHA regulation specifies the operator’s notification and information submission requirements.

The MSHA regulation prohibits, without approval, cutting, welding or soldering within 150 feet of seals.

The MSHA regulation specifies requirements for gas sampling pipes.

The MSHA regulation includes requirements for draining water and slurry from a sealed area.

Subsection (b) requires that cutting, welding and soldering with an arc or flame within 150 feet of a seal must also be approved by the Department, as well as the MSHA. Conducting welding, cutting or soldering within 150 feet of a seal, such as the installation or repair of a seal, raises significant safety concerns relating to the operation of the mine.

The only difference between this proposed section and the MSHA regulation is that a copy of the information to justify welding, cutting or soldering within 150 feet of a seal is to be submitted, if applicable, to the representative of the miners. This enables the persons who could be placed at risk by the welding, cutting or soldering activity to have an opportunity to comment on the adequacy of the operator's proposal.

§ 208.14. *Training.*

This section establishes the training requirements for persons involved in the installation or repair of seals. It incorporates by reference 30 CFR 75.338 (relating to training). As a result, the Department and the MSHA will be using the same standards for determining who is qualified to be involved in the construction and repair of seals. The requirements can be summarized as follows: persons conducting sampling shall be trained as to the appropriate equipment, locations and methodologies for conducting sampling; persons involved in the installation or repair of seals shall be trained in the use of the approved materials and procedures for constructing and repairing seals; and the operator must certify that all persons involved in the installation and repair of seals have received the appropriate training.

§ 208.15. *Seals records.*

Subsection (a) incorporates by reference 30 CFR 75.339 (relating to seals records). The operator's recordkeeping and retention requirements for the Department will be identical to its requirements for the MSHA. Subsection (b) obligates the operator, upon request, to provide these records to the Department and, if applicable, the representative of the miners.

Escapeways

§ 208.21. *Escapeways.*

Subsection (a) incorporates by reference 30 CFR 75.380 (relating to escapeways; bituminous and lignite mines). The requirements can be summarized as follows:

There shall be at least two distinct and travelable escapeways.

The escapeways must run continuously from each working section, and each area where mechanized mining equipment is being installed or removed, to separate surface openings.

The escapeways shall be maintained in a safe and travelable condition.

Each escapeway shall be provided with a durable, flame-resistant lifeline which is equipped with directional signaling devices.

The openings shall be protected to prevent fires, fumes or flood water from entering the mine.

One escapeway will be the primary escapeway which shall be ventilated with intake air at a higher pressure from the belt entryway. Alternative ventilation standards that maintain the integrity of the escapeway can be approved.

The alternative escapeway must be isolated from the primary escapeway, except that the two escapeways may have a common air intake.

There is a limitation on the types of equipment that can be in the escapeways.

In general, the primary escapeway must be isolated from belt and haulage entries.

Shafts and slopes are to be provided with mechanical escape facilities.

Subsection (b) incorporates by reference 30 CFR 75.382 (relating to mechanical escape facilities). The requirements include the following: mechanical escape facilities shall be provided with overspeed, overwind and automatic stop controls; every mechanical escape facility with a platform, cage or other device must be equipped with brakes that can stop the fully loaded platform, cage or other device; mechanical escape facilities, including automatic elevators, shall be examined weekly; and a person trained to operate the mechanical escape facility always shall be available while anyone is underground.

Subsection (c) incorporates by reference 30 CFR 75.384 (relating to longwall and shortwall travelways). The requirements include the following: if longwall or shortwall mining systems are used and the two designated escapeways are located on the headgate side, a travelway shall be provided on the tailgate side of that longwall or shortwall; the route of travel shall be clearly marked; and if a roof fall or other blockage occurs that prevents travel in the travelway, work shall cease and miners shall be withdrawn to a safe area and the Department shall be notified.

Section 274 of the BCMSA (52 P. S. § 690-274) addresses mine openings or outlets. This section specifically requires that the two intake openings or outlets to the surface must not be at a common shaft, slope or drift opening. It also states that the openings or outlets must have a distinct means of egress available for use by the employees. For this reason, in subsection (a), the Department did not incorporate by reference the language in 30 CFR 75.380(c) that allows two escapeways to end in one multiple compartment shaft or slope separated by walls. Both the State and the Federal regulations require no fewer than two intake openings or outlets to the surface from every seam of coal being worked.

The Department will apply escapeway requirements in accordance with MSHA regulations to primary and secondary escapeways designated by mine operators. Section 230(c)(1)(iii) of the BCMSA (52 P. S. § 690-230(c)(1)(iii)) requires that the belt conveyor entry provides an intake escapeway to the main air current. Section 274(e) of the BCMSA also requires that intake and return entries shall be kept reasonably drained and reasonably free from refuse and obstructions of all kinds, so that individuals may safely travel throughout the whole length and have a safe means of egress from workings in case of emergencies.

Belts

§ 208.31. *Approval of conveyor belts.*

This section incorporates by reference 30 CFR 75.1108(b) and (c) (relating to approved conveyor belts). This provision provides the following:

Beginning December 31, 2009, conveyor belts installed by operators shall be approved by the MSHA as meeting the flame-resistant standards in 30 CFR Part 14 (relating to requirements for the approval of flame-resistant conveyor belts).

The compliance date may be extended if the MSHA extends its compliance date for installing conveyor belts approved under 30 CFR Part 14 based on a determination that these belts are not available.

All conveyor belts in a mine are to be approved by the MSHA under the 30 CFR Part 14 flame-resistant standard by December 31, 2018.

§ 208.32. *Maintenance of belt conveyors and belt conveyor entries.*

Subsection (a) incorporates by reference 30 CFR 75.1731 (relating to maintenance of belt conveyors and belt conveyor entries) so that the Department will be using the MSHA belt and belt entry maintenance requirements. These requirements are common sense actions that will minimize the risk of a conveyor belt fire. Subsection (b) makes it clear that the belt conveyor preshift and fixed interval inspections address compliance with these maintenance requirements. The maintenance requirements can be summarized as follows: damaged belt conveyor components shall be repaired or replaced; belt conveyors must be aligned to prevent rubbing; materials that contribute to a frictional heating hazard are to be excluded from the belt entry; and a spliced conveyor belt must retain its flame-resistant properties.

Emergencies

§ 208.41. *Emergency evacuation.*

Subsection (a) incorporates by reference 30 CFR 75.1501 (relating to emergency evacuations). This section requires that, for each shift underground, there shall be a person who will be responsible for taking charge during a mine emergency. The MSHA regulation permits this responsible person to be working underground. This runs the risk that the responsible person, due to the mine emergency, cannot take charge. Even if the responsible person is not caught up in the mine emergency, if that person is underground when the emergency happens, it will be difficult for that person to carry out all the duties of a responsible person. Therefore, subsection (b) adds to the MSHA requirements by requiring that an individual designated by the mine operator and trained to the same extent in emergency procedures as the responsible person shall be located on the surface at all times to take charge during mine emergencies if the responsible person is unable to carry out his duties. The individual on the surface is to have current knowledge of where persons are working underground, the mine's ventilation system, aspects of the mine relevant to post accident response, for example escapeways, communication systems, as well as, the different accident/emergency response plans and shall be annually trained in all the aspects of emergency response.

Responsible persons are authorized to initiate an evacuation when there is an imminent danger to miners due to fire or explosion or gas or water inundation. The operator is responsible for ensuring that persons working underground know the identity of their responsible person.

§ 208.42. *Emergency evacuation and firefighting program of instruction.*

This section incorporates by reference 30 CFR 75.1502 (relating to mine emergency evacuation and firefighting program of instruction). The Department will accept the MSHA's approval of the emergency evacuation and fire fighting program of instruction. The Department's interest is whether an operator is instructing all miners in the proper procedures they must follow if a mine emergency occurs. Miners shall be instructed in the following: mine

evacuation procedures; procedures for assembling and deploying fire and rescue equipment and personnel; mine rescue devices; refuge alternatives; different mine evacuation scenarios; use of fire suppression and fighting equipment; escapeway system; storage of self-contained self-rescuers in the mine; mine map; and escape, fire fighting and emergency evacuation plans in effect at the mine.

§ 208.43. *Use of fire suppression equipment.*

This section incorporates by reference 30 CFR 75.1503 (relating to use of fire suppression equipment). The operator is responsible for ensuring that the appropriate number of persons are trained in using the fire fighting equipment available on the following: working sections; attended equipment; and maintenance shifts.

§ 208.44. *Mine emergency evacuation training and drills.*

This section incorporates by reference 30 CFR 75.1504 (relating to mine emergency evacuation training and drills). The Department will be ensuring that the operator is conducting its MSHA-approved emergency training. Operators are required to conduct emergency training and require miners to participate. The training and drill must occur at least once each quarter. Each training and drill must address the following: hands on training on all the types of self-contained self-rescuers at the mine; a realistic escape scenario running the length of either the primary or alternative escapeway; a review of the mine and escapeway maps, the fire fighting plan and the mine emergency evacuation plan in effect at the mine; operation and location of fire fighting equipment and materials; the procedures for deploying refuge alternatives; and training in the transportation of the refuge alternative.

§ 208.45. *Escapeway maps.*

This section incorporates by reference 30 CFR 75.1505 (relating to escapeway maps). The Department and the MSHA will be enforcing the same escapeway mine map requirements. These regulations address the following: the map's depiction of information a miner needs to either escape the mine or to seek refuge within the mine; the places in the mine where the maps are to be posted; keeping the maps up to date; and notifying all affected miners of changes in the escapeway system.

§ 208.46. *Refuge alternatives.*

This section incorporates by reference 30 CFR 75.1506 (relating to refuge alternatives). The Department will accept and enforce the MSHA's approval of refuge alternatives and components. This incorporation by reference means that the Department and the MSHA will be using the same standards to ensure that operators have established refuges in the mine as an alternative when escape is not feasible. The requirements address the following: the use of refuge alternatives and components approved by the MSHA; the capacity of refuge alternatives; the location of refuge alternatives; identification of roof and rib support for the refuge alternative; maintenance of the refuge alternative and the refuge alternative's site; the identification of refuge alternatives; monitoring of the refuge alternative's atmosphere; and provision of a fire extinguisher.

§ 208.47. *Emergency response plan; refuge alternatives.*

This provision incorporates by reference 30 CFR 75.1507 (relating to Emergency Response Plan; refuge alternatives). Incorporating 30 CFR 75.1507 by reference enhances the Department's ability to ensure the adequacy of the mine refuge alternative being provided by an operator. The regulation requires the emergency response

plan, required by the MINER Act, to address the following: the provision of refuge alternatives; the methods to be used to maintain the refuge alternatives' atmosphere; the supplies, equipment and manuals to be included in a refuge alternative; and the procedures and arrangements to be used to provide additional supplies if the refuge alternative only has 48 hours of supplies.

§ 208.48. *Training and records for examination, maintenance and repair of refuge alternatives and components.*

This provision incorporates by reference 30 CFR 75.1508 (relating to training and records for examination, maintenance and repair of refuge alternatives and components). The Department will be using the MSHA requirements to ensure that refuge alternatives and components are properly maintained. The requirements address the following: the training of all persons responsible for maintaining refuge alternatives and components; documentation of repairs made to refuge alternatives or components; and maintenance of training and repair records.

Communications

§ 208.51. *Communications facilities for refuge alternatives.*

This provision incorporates by reference 30 CFR 75.1600-3 (relating to communications facilities; refuge alternatives). The Department and the MSHA will be using the same standards to ensure that refuge alternatives are provided with affective communications systems. These requirements address a two-way communications system and an additional backup system.

Self-Contained Self-Rescue Devices

§ 208.61. *Availability of approved self-contained self-rescue devices; instruction in use and location.*

This provision incorporates by reference 30 CFR 75.1714 (relating to availability of approved self-rescue devices; instruction in use and location). The Department and the MSHA will be using the same standards to ensure the availability of self-contained self-rescue devices. The regulation addresses the following issues: the operator's obligation to provide to miners who go underground and authorized visitors approved self-contained self-rescue devices which provide breathable air for at least 1 hour; and training in the use of self-contained self-rescue devices.

§ 208.62. *Approved self-contained self-rescue devices.*

This provision incorporates by reference 30 CFR 75.1714-1 (relating to approved self-rescue devices). The Department will be able to ensure that operators are using the appropriate self-contained self-rescue devices. In general, operators are required to provide self-contained self-rescue devices that are approved by the MSHA and the National Institute of Occupational Safety and Health.

§ 208.63. *Self-contained self-rescue devices; use and location requirements.*

This provision incorporates by reference 30 CFR 75.1714-2 (relating to self-rescue devices; use and location requirements). The Department and the MSHA will be using the same requirements on operators to provide self-contained self-rescue devices. The issues addressed

are as follows: the wearing or carrying of a self-contained self-rescue device by each person underground; the conditions and circumstances under which self-contained self-rescue devices can be near the person working underground rather than worn or carried by the person; the MSHA's approval for an operator to place self-contained self-rescue devices more than 20 feet away from the person; storing self-contained self rescuers underground; and the use and location of devices with a 10-minute capacity and additional 1-hour bottles.

§ 208.64. *Self-contained self-rescue devices; inspection, testing, maintenance, repair, and recordkeeping.*

This provision incorporates by reference 30 CFR 75.1714-3 (relating to self-rescue devices; inspection, testing, maintenance, repair, and recordkeeping). The Department will use the MSHA standards to ensure that self-contained self-rescue devices are properly maintained. The MSHA standards require the following: inspection, testing, maintenance and repair of self-contained self-rescue devices by an adequately trained person; inspection of self-contained self-rescue devices after being worn or used; testing filter self-contained self-rescuers; testing of self-contained self-rescue devices; documentation of the testing and maintenance activities; and the repair of self-contained self-rescue devices removed from service.

§ 208.65. *Additional self-contained self-rescue devices.*

This provision incorporates by reference 30 CFR 75.1714-4 (relating to additional self-contained self rescuers (SCSRs)). The Department will be enforcing the MSHA requirements for additional self-rescuers. The requirements address the provision of the following: additional self-contained self-rescuers in working places; additional self-contained self-rescuers on mantrips; and caches of self-contained self-rescuers in or between escapeways.

§ 208.66. *Map locations.*

This section incorporates by reference 30 CFR 75.1714-5 (relating to map locations of self-contained self-rescuers (SCSR)). This provision requires the mine operator to indicate the locations of all stored self-contained self-rescuers on mine maps.

§ 208.67. *Emergency tethers.*

This section incorporates by reference 30 CFR 75.1714-6 (relating to emergency tethers). This provision requires at least one tether, which is a durable rope or equivalent material, to be provided and stored with the additional self-contained self-rescuers.

§ 208.68. *Multi-gas detectors.*

This section incorporates by reference 30 CFR 75.1714-7 (relating to multi-gas detectors). This provision requires that a mine operator shall provide an MSHA-approved, handheld, multi-gas detector that can measure methane, oxygen and carbon monoxide to each group of underground miners and to each person who works alone. It also requires that at least one person in each group of underground miners shall be a qualified person under 30 CFR 75.150 (relating to tests for methane and for oxygen deficiency; qualified person) and that each person who works alone shall be trained to use the device. Multi-gas detectors shall be maintained and calibrated.

§ 208.69. *Reporting SCSR inventory, malfunctions and retention.*

This section incorporates by reference 30 CFR 75.1714-8 (relating to reporting SCSR inventory and malfunctions; retention of SCSRs).

F. *Benefits, Costs and Compliance*

Benefits

The intent of this proposed rulemaking is to enhance mine safety by ensuring that abandoned areas are isolated from the working mine, by reducing the possibility of belt conveyor fires and by enhancing the miners ability to survive a mine fire, cave-in or the inundation of a mine by gas or water. Abandoned areas are effectively isolated because the proposed rulemaking includes effective standards for the design, strength, installation and maintenance of mine seals. The possibility of a belt fire is reduced because the Department will be ensuring that belts have been approved under the MSHA's new belt conveyor flame-resistance standard and that the belt conveyor entryway is maintained in a manner to minimize the possibility of a fire. A miner's ability to survive a mine emergency is enhanced in several ways. First, the Department will be enforcing the MSHA requirements concerning emergency response and emergency response training. Second, to enhance the miners' ability to escape a mine, the Department will be ensuring that the MSHA's requirements for escapeways and self-contained self-rescue devices are met. In case the miners cannot escape the mine, the Department's enforcement of the MSHA's refuge alternative requirements will enhance the miners' ability to remain alive pending a rescue.

Currently, there are 38 underground bituminous coal mines in this Commonwealth. These mines employ approximately 4,420 persons, not all of whom work underground.

This proposed rulemaking reduces the possibility that 1 or more of the 4,420 persons working at mines will suffer a serious or fatal injury due to a mine fire, cave-in or an inundation of a mine by gas or water. Also, the belt conveyor fire-resistance and mine seal standards reduce the possibility of an explosion or a fire that would seriously damage the mine, mining equipment or cause the loss of life. The Department lacks the data to estimate the potential benefits from reducing these risks. Nonetheless, the potential benefits are significant because, as the following explains, the costs are minimal.

The only alternative to be considered was writing regulations that primarily restate the MINER Act regulations. This approach was rejected for two reasons.

First, in rewriting the regulations there is always the possibility of unintended differences, of style if nothing else, with the MINER Act regulations. These differences could become a source of confusion as to the appropriate standard to be followed by operators. Incorporating by reference the MSHA regulations with a few differences stated in the regulation minimizes this problem.

Second, the incorporation by reference enables the Department's regulations to remain consistent with the MSHA regulations. Of particular concern are incorporating any changes to the MSHA regulations due to a law suit brought by the International Mine Workers challenging some of the aspects of MSHA's belt flammability and alternative refuge regulations. This incorporation by reference will implement changes to the MSHA MINER Act regulations due to this litigation.

Compliance costs

This proposed rulemaking does not impose new compliance costs. For the most part, this proposed rulemaking imposes standards already being imposed by the MSHA. The only differences are instances when the proposed rulemaking requires a seal with a strength of 120 psi and the MSHA would permit a seal of 50 psi. However, this is not new. Since October 20, 2008, the Department has been requiring new seals to have a strength of 120 psi.

Compliance Assistance Plan

The Department will work with the Pennsylvania Coal Association to assist coal mine operators in complying with this proposed rulemaking. In addition, compliance assistance will be provided by the mine inspectors as part of their inspections of mines.

Paperwork Requirements

The only paperwork requirement imposed by this proposed rulemaking is that operators shall be required to submit to the Department applications to conduct welding, cutting or soldering within 150 feet of a seal.

G. *Sunset Review*

This proposed rulemaking 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 June 25, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

I. *Public Comments*

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Board of Coal Mine Safety, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th 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 on or before September 8, 2010. 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 the Board on or before September 8, 2010. 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 on or before September 8, 2010. A subject heading of the proposal and a

return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JOHN HANGER,
Chairperson

Fiscal Note: 7-455. No fiscal impact; (8) recommends adoption.

Annex A

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

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE IV. OCCUPATIONAL HEALTH AND SAFETY

CHAPTER 208 UNDERGROUND COAL MINE SAFETY

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COMMUNICATIONS

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SELF-CONTAINED SELF-RESCUE DEVICES

- 208.61. Availability of approved self-contained self-rescue devices; instruction in use and location.
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- 208.65. Additional self-contained self-rescue devices.
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- 208.67. Emergency tethers.
- 208.68. Multi-gas detectors.
- 208.69. Reporting SCSR inventory, malfunctions and retention.

GENERAL PROVISIONS

§ 208.1. Definitions.

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

Act—The Bituminous Coal Mine Safety Act (52 P. S. §§ 690-101—690-708).

Approval or approved—The term as defined in section 104 of the act (52 P. S. § 690-104).

MSHA—The term as defined in section 104 of the act.

Miner—The term as defined in section 104 of the act.

NIOSH—The term as defined in section 104 of the act.

Operator—The term as defined in section 104 of the act.

Overpressure—The highest pressure over the background atmospheric pressure that could result from an explosion, which includes the impact of the pressure wave on an object. See 30 CFR 7.502 (relating to definitions).

psi—Pounds per square inch.

Representative of the miners—The term as defined in section 104 of the act.

SCSR—Self-contained self-rescue device—A type of closed-circuit, self-contained breathing apparatus approved by MSHA and NIOSH under 42 CFR Part 84 (relating to approval of respiratory protective devices) for escape only from underground mines.

Underground bituminous coal mine or mine—The term as defined in section 104 of the act.

§ 208.2. Scope.

The safety standards and procedures in this chapter apply to all underground bituminous coal mines, operators and miners subject to the act.

§ 208.3. Access to material.

Upon request from the Department, or as required under this chapter, an operator shall submit to the Department a copy of any application, report, plan or other material submitted to MSHA pursuant to a regulation adopted by reference in this chapter. Upon request from the authorized representative of miners, the Department will provide copies of an application, report, plan or other material submitted to MSHA pursuant to a regulation adopted by reference in this chapter.

SEALS

§ 208.11. Seals.

(a) *Minimum seal strength.* Mine operators shall design, construct and maintain seals to withstand an overpressure of at least 120 psi.

(b) *Seal strengths and installation.* The provisions of 30 CFR 75.335(a)(2) and (c) (relating to seal strengths, design applications, and installation) are incorporated by reference.

(c) *Seal Strength greater than 120 psi.* The provisions of 30 CFR 75.335(a)(3) shall be used for determining when the strength of a seal exceeds 120 psi.

(d) *Seal installation approval.* The operator shall submit an application to install the MSHA-approved seal design to the Department for its review and approval. An approved application to install the seal shall be made part of the abandoned area ventilation plan required under section 235 of the act (52 P. S. § 690-235) regarding unused and abandoned parts of mines and follow 30 CFR 75.335(c).

(1) The operator shall provide the representative of the miners, if applicable, the approved seal design installation application at the same time the operator submits the application to the Department.

(2) Any individual installing the seal shall do so in accordance with the approved abandoned area ventilation plan.

§ 208.12. Sampling and monitoring requirements.

The provisions of 30 CFR 75.336 (relating to sampling and monitoring requirements) are incorporated by reference.

§ 208.13. Construction and repair of seals.

(a) *General.* The provisions of 30 CFR 75.337 (relating to construction and repair of seals) are incorporated by reference.

(b) *Welding, cutting, and soldering.* An individual may not perform any welding, cutting or soldering with an arc or flame within 150 feet of a seal unless otherwise approved by the Department.

(1) The operator shall submit to the Department and the representative of the miners, if applicable, an application containing the same information submitted to MSHA under 30 CFR 75.337(f).

(2) Any welding, cutting or soldering within 150 feet of a seal shall be performed in accordance with the application approved by the Department and made part of the abandoned area ventilation plan required under section 235 of the act (52 P. S. § 690-235), regarding unused and abandoned parts of mines.

§ 208.14. Training.

The provisions of 30 CFR 75.338 (relating to training) are incorporated by reference.

§ 208.15. Seals records.

(a) *General.* The provisions of 30 CFR 75.339 (relating to seals records) are incorporated by reference.

(b) *Access to records.* Upon request from the Department, or from the authorized representative of miners, mine operators shall provide access to any record required under this section.

ESCAPEWAYS**§ 208.21. Escapeways.**

(a) *Bituminous and lignite mines.* The provisions of 30 CFR 75.380 (relating to escapeways; bituminous and lignite mines) are incorporated by reference except that the language in 30 CFR 75.380(c) allowing the two escapeways to end in one multiple compartment shaft or slope separated by walls is not incorporated by reference.

(b) *Mechanical and escape facilities.* The provisions of 30 CFR 75.382 (relating to mechanical escape facilities) are incorporated by reference.

(c) *Longwall and shortwall travelways.* The provisions of 30 CFR 75.384 (relating to longwall and shortwall travelways) are incorporated by reference. If a roof fall or other blockage occurs that prevents travel in the travelway, the mine operator shall notify the Department.

BELTS**§ 208.31. Approval of conveyor belts.**

The provisions of 30 CFR 75.1108(b) and (c) (relating to approved conveyor belts) are incorporated by reference.

§ 208.32. Maintenance of belt conveyors and belt conveyor entries.

(a) *Maintenance standards.* The provisions of 30 CFR 75.1731 (relating to maintenance of belt conveyors and belt conveyor entries) are incorporated by reference.

(b) *Inspections.* Individuals conducting inspections of belt conveyors required under sections 218 and 218.1 of the act (52 P. S. §§ 690-218 and 690-218.1) regarding

preshift examination at fixed intervals and supplemental inspection shall address compliance with this section's maintenance requirements.

EMERGENCIES**§ 208.41. Emergency evacuation.**

(a) *Emergency evacuation.* The provisions of 30 CFR 75.1501 (relating to emergency evacuations) are incorporated by reference.

(b) *Individual located on the surface.* An individual designated by the mine operator to take charge during mine emergencies and trained to the same extent in emergency procedures as the responsible person shall be located on the surface during all shifts.

§ 208.42. Emergency evacuation and firefighting program of instruction.

The provisions of 30 CFR 75.1502 (relating to mine emergency evacuation and firefighting program of instruction) are incorporated by reference.

§ 208.43. Use of fire suppression equipment.

The provisions of 30 CFR 75.1503 (relating to use of fire suppression equipment) are incorporated by reference.

§ 208.44. Mine emergency evacuation training and drills.

The provisions of 30 CFR 75.1504 (relating to mine emergency evacuation training and drills) are incorporated by reference.

§ 208.45. Escapeway maps.

The provisions of 30 CFR 75.1505 (relating to escapeway maps) are incorporated by reference.

§ 208.46. Refuge alternatives.

The provisions of 30 CFR 75.1506 (relating to refuge alternatives) are incorporated by reference.

§ 208.47. Emergency response plan; refuge alternatives.

The provisions of 30 CFR 75.1507 (relating to emergency response plan; refuge alternatives) are incorporated by reference.

§ 208.48. Training and records for examination, maintenance and repair of refuge alternatives and components.

The provisions of 30 CFR 75.1508 (relating to training and records for examination, maintenance and repair of refuge alternatives and components) are incorporated by reference.

COMMUNICATIONS**§ 208.51. Communications facilities for refuge alternatives.**

The provisions of 30 CFR 75.1600-3 (relating to communications facilities; refuge alternatives) are incorporated by reference.

SELF-CONTAINED SELF-RESCUE DEVICES**§ 208.61. Availability of approved self-contained self-rescue devices; instruction in use and location.**

The provisions of 30 CFR 75.1714 (relating to availability of approved self-rescue devices; instruction in use and location) are incorporated by reference.

§ 208.62. Approved self-contained self-rescue devices.

The provisions of 30 CFR 75.1714-1 (relating to approved self-rescue devices) are incorporated by reference.

§ 208.63. Self-contained self-rescue devices; use and location requirements.

The provisions of 30 CFR 75.1714-2 (relating to self-rescue devices; use and location requirements) are incorporated by reference.

§ 208.64. Self-contained self-rescue devices; inspection, testing, maintenance, repair, and record-keeping.

The provisions of 30 CFR 75.1714-3 (relating to self-rescue devices; inspection, testing, maintenance, repair, and recordkeeping) are incorporated by reference.

§ 208.65. Additional self-contained self-rescue devices.

The provisions of 30 CFR 75.1714-4 (relating to additional self-contained self-rescuers (SCSRs)) are incorporated by reference.

§ 208.66. Map locations.

The provisions of 30 CFR 75.1714-5 (relating to map locations of self-contained self-rescuers (SCSR)) are incorporated by reference.

§ 208.67. Emergency tethers.

The provisions of 30 CFR 75.1714-6 (relating to emergency tethers) are incorporated by reference.

§ 208.68. Multi-gas detectors.

The provisions of 30.1714-7 (relating to multi-gas detectors) are incorporated by reference.

§ 208.69. Reporting SCSR inventory, malfunctions and retention.

The provisions of 30 CFR 75.1714-8 (relating to reporting SCSR inventory and malfunctions; retention of SCSR) are incorporated by reference.

[Pa.B. Doc. No. 10-1247. Filed for public inspection July 9, 2010, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[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 proposed rulemaking updates existing requirements regarding the drilling, casing, cementing, testing, monitoring and plugging of oil and gas wells, and the protection of water supplies. The proposed rulemaking includes updated material specifications and performance testing and amended design, construction, operational, monitoring, plugging, water supply replacement and gas migration reporting requirements. The additional requirements will minimize gas migration and will provide an increased degree of protection for both public and private water supplies.

This proposed rulemaking was adopted by the Board at its meeting of May 17, 2010.

A. Effective Date

The proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Scott Perry, Director, Bureau of Oil and Gas Management, Rachel Carson State Office Building, 5th Floor, 400 Market Street, P. O. Box 8765, Harrisburg, PA 17105-8461, (717) 772-2199; or Doug Brennan, Director, 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 Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at www.depweb.state.pa.us.

C. Statutory Authority

This proposed rulemaking is being made under the authority of section 604 of the Oil and Gas Act (act) (58 P. S. § 601.604), which directs the Board to adopt regulations necessary to implement the act, and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20). Section 1917-A of The Administrative Code of 1929 authorizes and requires the Department to protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition that is declared to be a nuisance by any law administered by the Department. Section 1920-A of The Administrative Code of 1929 authorizes the Board to promulgate regulations of the Department.

D. Background of the Proposed Rulemaking

A properly cased and cemented oil and gas well is critical to protecting fresh groundwater and public safety. Many of the regulations governing well construction and water supply replacement were promulgated in July 1989 and remain largely unchanged. New well drilling and completion practices used to develop Marcellus Shale wells, as well as recent impacts to drinking water supplies by both traditional and Marcellus Shale wells, caused the Department to reevaluate the existing requirements.

With the development of the oil and gas industry in this Commonwealth, the potential exists for natural gas to migrate from the wellbore (by means of either improperly constructed or old, deteriorated wells). This stray gas may adversely affect water supplies, as well as accumulate within or adjacent to structures such as residences and businesses. If a well is not properly constructed and operated there could be potential threat of a fire or explosion. These situations represent a threat to public safety, health and welfare.

It was determined that many, if not all, Marcellus well operators met or exceeded the current well casing and cementing regulations. However, it was also determined that the current regulations were not specific enough in detailing the Department's expectations of a properly cased and cemented well. Finally, the Department determined that the existing regulations did not address the need for an immediate response by operators to a gas migration complaint nor did they require routine inspection of existing wells by the operator.

A draft of the proposed rulemaking was presented to the Oil and Gas Technical Advisory Board (TAB) for its consideration on September 17, 2009. Because of the scope of the proposed rulemaking, TAB requested additional time to review and provide comment. As part of

its review, TAB formed a technical committee with representatives from various companies, trade groups and consultants. Since the initial meeting in September 2009, the Department has met with TAB and its subcommittee on October 28, 2009, January 14, 2010, January 21, 2010, and March 25, 2010. At the March 25, 2010, meeting, TAB voted unanimously to recommend that the Board offer these regulations as a proposed rulemaking.

In addition to developing the proposed rulemaking through TAB, the Department solicited comments from the public. The Department published an advanced notice of proposed rulemaking (ANPR) at 40 Pa.B. 623 (January 30, 2010) soliciting comments to proposed rulemaking. The public comment period closed March 2, 2010.

The ANPR procedure is an optional process, as it is not required under either the Regulatory Review Act (71 P.S. §§ 745.1—745.12) or the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204(3)), known as the Commonwealth Documents Law. The purpose of using the ANPR process is to solicit public comment on the proposed regulatory changes prior to presenting a proposed rulemaking to the Board. Through the ANPR process, the Department obtained valuable comments that warrant additional consideration by interested stakeholders as the proposed rulemaking moves through the formal rulemaking process.

E. Advanced Notice of Proposed Rulemaking Summary of Comments and Responses

The ANPR process is used to solicit public comment on proposed regulatory changes before the Department presents a rulemaking package to the Board. Through the ANPR process, the Department obtained valuable comments that warrant additional consideration by interested stakeholders as this proposed rulemaking moves through the formal rulemaking process.

The Department received comments from 87 individuals, businesses, trade organizations and public interest groups. A summary of the comments received was presented to TAB at its March 25, 2010, meeting for the members' review. The Department received a wide range of comments on the topic of water quality and quantity of replacement water supply. A second area of comments focused on the proposed cementing standards and cementing practices. It is the Department's experience that poorly cemented casing is the reason for many gas migration cases. Many of the commentators offered suggested language for cement standards and for testing cementing jobs. Closely associated with the cement and cementing standards is casing and casing standards. The Department received comments on the pressure testing requirements for the various casing strings as well as the use of centralizers and safety equipment associated with the individual strings.

The Department also received numerous comments concerning issues beyond the scope of this proposed rulemaking or beyond the scope of the Department's statutory authority. It is important to note that this proposed rulemaking is limited to protecting public safety and groundwater resources through proper well construction, water supply replacement or restoration, well inspection, gas migration investigation and response, and well plugging.

The Department determined that these issues will be addressed expeditiously. While other potential impacts to the environment from oil and gas well development warrant consideration, an evaluation will unduly delay the promulgation of these important regulations. The

Department intends to engage in another round of rulemaking to address additional issues presented by development of the Marcellus Shale and other unconventional resources such as coalbed methane. To the extent that commentators do not believe their comments have been sufficiently addressed, they may submit additional comments on this proposed rulemaking as part of the formal rulemaking process and the Department will address them through a formal comment/response document.

F. Summary of Proposed Rulemaking

§ 78.1. Definitions.

Definitions for "cement job log," "conductor pipe" and "intermediate casing" were added to strengthen new and existing provisions in Chapter 78. The definitions for "casing seat," "cement" and "surface casing" were amended to reflect current requirements. Finally, the definition of "retrievable" was rescinded and the substantive portion of the definition was inserted into the appropriate plugging regulations.

The Board is specifically requesting comments on the definition of "deepest fresh groundwater" which is defined as "the deepest fresh groundwater bearing formation penetrated by the wellbore as determined from drillers logs from the well or from other wells in the area surrounding the well or from historical records of the normal surface casing seat depths in the area surrounding the well, whichever is deeper." Ascertaining the deepest fresh groundwater zone is important because this is the depth to which surface casing must be set.

§ 78.51. Protection of water supplies.

This section has been significantly amended to reflect current case law on the requirements for operators to restore or replace a water supply that has been polluted or diminished as a result of gas or oil well drilling. The proposed rulemaking does not impose new or expanded duties on well operators but does clarify their responsibilities.

Water supplies that are polluted or diminished shall be restored or replaced. If the existing supply did not meet safe drinking water standards, the operator shall supply a water source that is as good as the preexisting supply. If a supply exceeded safe drinking water standards, the operator need only provide a supply that meets those standards. The owner of the supply may still seek an appropriate legal remedy to obtain a supply that meets preexisting standards if so warranted.

An increase in operating and maintenance costs shall be provided by the operator in perpetuity. If the supply was reasonably intended to provide a greater quantity than was currently used (and was capable of doing so), the operator shall provide a supply to meet the anticipated need.

Finally, if an operator is notified by an affected user of the supply that it has been impacted by drilling, the operator shall notify the Department in 10 days.

§ 78.52. Predrilling or prealteration survey.

Operators must now provide the Department and water supply owners with the results of their predrilling surveys within 10 days of receipt of the results.

§ 78.71. Use of safety devices—well casing.

The proposed amendments clarify that the casing to which the blow-out prevention equipment may be attached must be cemented in place.

§ 78.72. *Use of safety devices—blow-out prevention equipment.*

The proposed amendments more clearly define when blow-out preventer equipment must be used, where the controls of the equipment must be located in a manner that allows operation in case of an emergency, how defective equipment must be treated and the training a person shall have to operate the equipment. The Board is specifically requesting comments on establishing requirements for additional safety equipment and procedures.

§ 78.73. *General provision for well construction and operation.*

The proposed amendments reduce the allowable pressure that may be exerted on the surface casing seat. This proposed rulemaking will significantly reduce the possibility of a gas migration event by adding a margin of error onto the assumed hydrostatic pressure being exerted on the surface casing seat. A new requirement for check flow valves that prevent backflow from the pipeline has been included.

§ 78.75a. *Area of alternative methods.*

Section 211 of the act (58 P. S. § 601.211) provides that well construction or plugging regulations may be modified by an alternative method approved by the Department. This new section will broaden the Department's ability to use the "area of alternative methods" for geological regions when existing regulations do not necessarily provide sufficient protection of the environment. This procedure would be used to establish environmentally necessary protective measures on an area wide basis as opposed to a well-by-well basis. Establishing an area requires notice in the *Pennsylvania Bulletin* and an opportunity for the public to comment.

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

The proposed rulemaking would require operators to submit a casing and cementing plan to the Department for approval prior to drilling through a gas storage reservoir area or protective area.

§ 78.81. *General provisions.*

The proposed rulemaking rescinds subsection (c), which states that certain sections of the regulation do not apply to production or intermediate casing, to reflect new requirements.

§ 78.82. *Use of conductor pipe.*

The proposed rulemaking would further delineate the requirements for conductor pipe that is used to stabilize the top hole of a well so that it protects fresh groundwater.

§ 78.83. *Surface and coal protective casing and cementing procedures.*

The proposed rulemaking would prohibit the use of surface casing as production casing and requires an additional string of casing to be installed in a well unless the well is only used to produce oil that does not present a threat to groundwater or if the operator of a gas well demonstrates that all gas and fluids will be contained in the well.

Additional amendments require the use of air or fresh-water based fluids when drilling through the fresh groundwater zone, rescind subsection (c) that gives operators the ability to drill to producing zones prior to isolating fresh groundwater under certain circumstances and mandate the use of centralizers to position the casing in the wellbore.

The Board is specifically requesting comments on the placement of centralizers to ensure that the casing is properly located within the wellbore and that the well bore is sufficiently wide to ensure proper placement of cement. General references to American Petroleum Institute (API) standards are not as helpful as these standards are not generally available to the public.

§ 78.83a. *Casing and cementing plan.*

This new section requires operators to develop a casing and cementing plan that the Department can review at the well site. The plan must describe the casing used and the cementing practices to be employed. The Department can request submittal of the plan for approval prior to drilling.

§ 78.83b. *Casing and cementing—lost circulation.*

This new section requires operators to notify the Department when cement used to protect fresh groundwater is not returned to the surface despite pumping more than 120% of the estimated required volume.

If cement is not returned to the surface, unless the well only produces oil off a vented production pipe, additional strings of casing must be run and cemented.

§ 78.83c. *Intermediate and production casing.*

This new section specifies the cementing requirements for intermediate and production casing and specifies the pressure limitation for wells that produce gas off the annulus of the intermediate casing string.

§ 78.84. *Casing standards.*

This section has been significantly amended to require pressure testing of casing attached to a blow-out preventer with a pressure rating of 3,000 psi, as well as pressure testing for used or welded casing. For casing attached to a blow-out preventer, a passing pressure test is holding 120% of the maximum anticipated working pressures to which the casing will be exposed for 30 minutes without a 10% decrease in pressure. Passing pressure tests for other casing is holding the maximum anticipated working pressures to which the casing will be exposed for 30 minutes without a 10% decrease in pressure. The 10% decrease is included to account for normal variation in pressure gauges.

Additional welded casing standards include requiring three welded passes and certification for welders who do not have 10 years of experience welding casing.

§ 78.85. *Cement standards.*

This section was amended to provide additional objectives for well casing cement to meet as well as to reference new American Society for Testing and Materials standards in addition to American Petroleum Institute standards.

Subsection (b) was amended to eliminate actions that could disturb the cement while it sets over the mandated 8-hour wait time. New subsections (d) and (e) were added to require notification to the Department prior to cementing operations to ensure proper inspection of the cement job and to require the availability of the cement job log at the well site for inspection.

The Board is requesting additional comments on the concept of creating a zone of critical cement at the casing seat. Commentators in the ANPR process proposed that the zone of critical cement would include a 72-hour compressive strength standard of 1,200 psi. The zone of critical cement would also be required to meet the API free water separation standard conformance standard of

no more than 6 milliliters per 250 milliliters of cement tested in accordance with the current API RP 10B.

The Board is also requesting additional comments on a provision providing the Department the ability to set more stringent local standards if needed for pollution prevention and to establish quantitative temperature limits for water used in cement mixing.

§ 78.88. *Mechanical integrity of operating wells.*

This new section requires operators to inspect their wells at least quarterly for signs of physical degradation of the well in addition to determining whether the pressure in the well is within allowable limits. Wells that fail inspection shall be attended to immediately and the Department shall be notified.

§ 78.89. *Gas migration response.*

This new section requires well operators to notify the Department if the operator is notified or becomes aware of a gas migration event and to take investigative and corrective measures if so required by the Department. The section specifies that emergency responders and the Department shall be notified immediately if the level of natural gas detected is greater than 10% of the lower explosive limit of natural gas.

§§ 78.92—78.95. *Plugging.*

These sections have been modified to incorporate the substantive requirements of the rescinded definition of “retrievable” along with requiring an additional attempt to remove uncemented casing prior to plugging a well. The revised sections also require cement to be placed across the formerly producing formation as opposed to placing the cement plug on top of the formation as is the current requirement.

§ 78.96. *Marking the location of a plugged well.*

The amendments to this section permit the use of materials other than cement and metal to mark and hold a marker for a plugged well.

§ 78.121. *Production reporting.*

This section has been amended to incorporate the requirements of the act of March 22, 2010 (P. L. 167, No. 15) (Act 15) which requires semiannual production reporting of Marcellus Shale wells. The reporting date for all wells has been changed from March 31 to February 15 to match Act 15. Marcellus operators shall also report on August 15 each year. The Department is required to post the production of Marcellus wells on its web site. To accomplish this reporting requirement, the Department is mandating electronic production reporting.

§ 78.122. *Well record and completion report.*

This section has been amended to require certification by the operator of the proper construction of the well and to require additional information in the stimulation record including water source identification and volume as well as a list of chemicals used to stimulate the well.

G. *Benefits, Costs and Compliance*

Benefits

Both the residents of this Commonwealth and the regulated community will benefit from this proposed rulemaking.

The public will benefit in several ways. The updated casing and cementing requirements will provide an increased degree of protection for homeowners and both public and private water supplies. The proposed construction standards will align the Commonwealth’s regulations

with other states’ regulations as well as current industry standards. Pressure testing the casing and certain casing seats will detect construction deficiencies before a well could create a potential safety or environmental problem. Minimizing annular pressure will reduce the potential for gas migration. The new quarterly inspections and annual reporting will be a vital tool for operators to use in detecting potential safety or environmental impacts before they may become an issue. The proposed rulemaking also outlines the procedures the operator and the Department will utilize if there is a reported gas migration event.

The new construction standards and the well remediation measures will far outweigh the liability to the operator from the potential impacts to public safety and harm to the environment from gas migration or from polluting water resources that may result without these additional precautions.

Most of the proposed amendments are codifying existing best practices employed by prudent operators. These operators should not see much, if any, increased cost as a result of the proposed rulemaking. Any increased cost of constructing the well in time and materials will decrease the risk of gas migrations resulting from defective casing or cementing. As new areas of this Commonwealth are developed for natural gas, the proposed rulemaking will avoid many potential health, safety and environmental issues.

Costs

This proposed rulemaking will impose minimal additional costs on the Department. This proposed rulemaking will help the Department offset the potential health, safety and environmental issues.

The Department finds that most gas migration issues stem from inadequate cement procedures, cement returns or combinations of inadequate casing and cementing or over-pressured casing seats. Because the Department is proposing amendments that are predominately codifying existing industry standards, increased cost associated with drilling and operating oil and gas wells will be minimal. The potential increases in cost to an operator will be associated with assuring a well is properly completed, operated and plugged.

The potential increase in cost is minor when compared to the overall cost of well construction. When cement is not returned to the surface or when excessive pressure is placed on the surface casing seat, the proposed rulemaking requires the operator to install an additional string of casing. The construction cost for the additional string of casing is about \$10,000 per well.

Used casing, welded casing and casing attached to a high pressure blow-out preventer must be pressure tested to demonstrate its ability to withstand the highest anticipated working pressures to which the casing will be exposed. If the casing fails this test, the operator shall repair or replace the casing and ultimately pass the pressure test. In the Department’s estimation, less than 5% of the casing used is anticipated to fail a pressure test. The cost to repair or replace the defective casing is completely outweighed by the environmental damage that would result from a failed string of casing and the fact that the casing would still need to be repaired or replaced.

The typical cost to develop a Marcellus Shale well is around \$5,000,000. The additional cost of compliance would only be approximately 0.2% of the overall cost to develop a Marcellus Shale well.

The typical cost to develop a shallow gas well is \$250,000 and the typical cost to develop an oil well is \$200,000. In either situation, the additional cost of compliance would only be approximately 4% to 5% of the overall cost of the well.

The additional measures are proposed to reduce the potential for gas mitigation. If an operator fails to prevent a pollution event of a water supply, the anticipated cost to permanently replace one private water supply would be approximately \$4,000 to drill a new water well or \$30,000 to provide and permanently pay for a treatment system.

Compliance Assistance Plan

The Department has worked extensively with representatives from the regulated community and leaders from the several industry trade organizations have attended the advisory committee meetings when this proposed rulemaking has been discussed. Therefore, the requirements in the proposed rulemaking are well known.

However, the Department has scheduled several training sessions for the regulated community that address the Department's regulatory requirements. The Department will use these training sessions as an opportunity to further educate the industry about the new requirements.

Paperwork Requirements

An annual well inspection report, the semiannual production report mandated by Act 15 and the additional information required in the well completion report will require the submittal of two additional forms and additional information on an existing form.

H. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source through the substitution of environmentally-friendly materials, more efficient use of raw materials or the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

This proposed rulemaking will continue to assure that the citizens and the environment of this Commonwealth experience the advantage of our oil and gas resources. The proposed rulemaking will minimize gas migration and will provide an increased degree of protection for both public and private water supplies.

The proposed modifications include updated material specifications and performance testing. The proposed rulemaking adds more specific design, construction, operational and monitoring requirements. The plugging, water supply replacement and gas migration reporting regulations have been amended to ensure that public safety and fresh groundwater are protected.

I. Sunset Review

This proposed rulemaking 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.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 25, 2010, the Department

submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

K. Public Comments

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th 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 on or before August 9, 2010. 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 the Board on or before August 9, 2010. 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 on or before August 9, 2010. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

L. Public Hearings

The Board will hold four public hearings for the purpose of accepting comments on this proposed rulemaking. The hearings will be held as follows:

- July 19, 2010
7 p.m. Tunkhannock Area High School Auditorium
120 West Tioga Street
Tunkhannock, PA 18657
- July 21, 2010
7 p.m. Lycoming College
Heim Science Center Building
Room G-11
700 College Place
Williamsport, PA 17701
- July 22, 2010
7 p.m. Department of Environmental Protection
Northwest Regional Office
1st Floor Conference Room
230 Chestnut Street
Meadville, PA 16335
- July 22, 2010
7 p.m. Department of Environmental Protection
Southwest Regional Office
Waterfront Conference Room A and B
400 Waterfront Drive
Pittsburgh, PA 15222-4745

Persons wishing to present testimony at a hearing are requested to contact 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 to aid in transcribing the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD), or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

JOHN HANGER,
Chairperson

Fiscal Note: 7-459. 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:

* * * * *

Casing seat—The depth to which the surface casing or coal protection casing [is run] or intermediate casing is set. In wells without surface casing, the surface casing seat shall be considered to be equal to [the depth of casing which is normal for wells in the area] 50 feet below the deepest fresh groundwater.

Cement—A mixture of materials for bonding or sealing that attains a 7-day maximum permeability of 0.01 millidarcies and a 24-hour compressive strength of at least 500 psi in accordance with applicable [API] standards and specifications.

Cement job log—A written record that documents the actual procedures and specifications of the cementing operation. The record must include the type of cement with additives, the volume, yield and density in pounds per gallon of the cement and the amount of cement returned to the surface, if any. Cementing procedural information must include a description of the pumping rates in bbls per minute, pressures in psi, time in minutes and sequence of events during the cementing operation.

* * * * *

Conductor pipe—A short string of large-diameter casing used to stabilize the top of the wellbore in shallow unconsolidated formations.

* * * * *

Intermediate casing—A string of casing other than production casing that is used in the wellbore to isolate, stabilize or provide well control to a greater depth than that provided by the surface casing or coal protection casing.

* * * * *

[**Retrievable**—When used in conjunction with surface casing, coal protective casing or production casing, the casing that can be removed after exerting a prudent effort to pull the casing while applying a pulling force at least equal to the casing weight plus 5000 pounds or 120% of the casing weight, whichever is greater.]

* * * * *

Surface casing—[A string of pipe which extends from the surface and that segregates and protects fresh groundwater and stabilizes the hole] Casing used to isolate the wellbore from fresh groundwater and to prevent the escape or migration of gas, oil and other fluids from the well bore into fresh groundwater. The surface casing is also commonly referred to as the water string or water casing.

* * * * *

Subchapter C. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 78.51. Protection of water supplies.

(a) A well operator who affects a public or private water supply by pollution or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply as determined by the Department.

* * * * *

(d) [The operator shall affirmatively demonstrate to the Department's satisfaction that the quality of the restored or replaced water supply to be used for human consumption is at least equal to the quality of the water supply before it was affected by the operator. If the quality of the water supply before it was affected by the operator cannot be affirmatively established, the operator shall demonstrate that the concentrations of substances in the restored or replaced water supply do not exceed the primary and secondary maximum contaminant levels established under § 109.202 (relating to State MCLs, MRDLs and treatment technique requirements).] A restored or replaced water supply includes any well, spring, public water system or other supply approved by the Department, which meets the criteria for adequacy as follows:

(1) **Reliability, cost, maintenance and control.** A restored or replaced water supply, at a minimum, must:

- (i) Be as reliable as the previous water supply.
- (ii) Be as permanent as the previous water supply.
- (iii) Not require excessive maintenance.

(iv) Provide the owner and the user with as much control and accessibility as exercised over the previous water supply.

(v) Not result in increased costs to operate and maintain. If the operating and maintenance costs of

the restored or replaced water supply are increased, the operator shall provide for permanent payment of the increased operating and maintenance costs of the restored or replaced water supply.

(2) **Quality.** The quality of a restored or replaced water supply will be deemed adequate if it meets the standards established pursuant to the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), or is comparable to the unaffected water supply if that water supply did not meet these standards.

(3) **Adequate quantity.** (i) A restored or replaced water supply will be deemed adequate in quantity if it meets one of the following as determined by the Department:

(A) The water supply delivers the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(B) The water supply is established through a connection to a public water supply system which is capable of delivering the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(ii) For purposes of this paragraph and with respect to agricultural water supplies, the term reasonably foreseeable uses includes the reasonable expansion of use where the water supply available prior to drilling exceeded the actual use.

(4) **Water source serviceability.** Replacement of a water supply includes providing plumbing, conveyance, pumping or auxiliary equipment and facilities necessary for the surface landowner or water purveyor to utilize the water supply.

* * * * *

(f) [The oil or gas well operator's duty to replace or restore a water supply includes providing plumbing, conveyance, pumping or auxiliary equipment and facilities necessary for the surface landowner or water purveyor to utilize the water supply.

(g) [Tank trucks or bottled water are acceptable only as temporary water replacement for a period approved by the Department and do not relieve the operator of the obligation to provide a restored or replaced water supply.

[(h)] (g) If the well operator and the landowner, water purveyor or affected person are unable to reach agreement on the means for restoring or replacing the water supply, the Department or either party may request a conference under section 501 of the act (58 P. S. § 601.501).

(h) A well operator who receives notice from a landowner, water purveyor or affected person that a water supply has been affected by pollution or diminution, shall report receipt of the notice to the Department within 10 calendar days of receiving the notice.

§ 78.52. Predrilling or prealteration survey.

(a) A well operator who wishes to preserve its defense under section 208(d)(1) of the act (58 P. S. § 601.208(d)(1)) that the pollution of a water supply existed prior to the drilling or alteration of the well shall [**cause**] **conduct** a predrilling or prealteration survey [**to be conducted**] in accordance with this section.

* * * * *

(d) An operator electing to preserve its defenses under section 208(d)(1) of the act shall provide a copy of the results of the survey to the Department and the landowner or water purveyor within 10-calendar days of [**being notified by the Department to submit a copy**] receipt of the results.

* * * * *

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

GENERAL

§ 78.71. Use of safety devices—well casing.

(a) The operator shall equip the well with one or more strings of casing of sufficient **cemented** length and strength to **attach blow-out prevention equipment** and prevent blowouts, explosions, fires and casing failures during installation, completion and operation.

* * * * *

§ 78.72. Use of safety devices—blow-out prevention equipment.

(a) The operator shall use blow-out prevention equipment [**when well head pressures or natural open flows are anticipated at the well site that may result in a blow-out or when the operator is drilling in an area where there is no prior knowledge of the pressures or natural open flows to be encountered.**] in the following circumstances:

(1) **When drilling a well that is intended to produce natural gas from the Marcellus Shale formation.**

(2) **When well head pressures or natural open flows are anticipated at the well site that may result in a loss of well control.**

(3) **When the operator is drilling in an area where there is no prior knowledge of the pressures or natural open flows to be encountered.**

(4) **On wells regulated under the Oil and Gas Conservation Law (58 P. S. §§ 401—409).**

(5) **When drilling within 200 feet of a building.**

(b) Blow-out prevention equipment used [**shall**] **must** be in good working condition at all times.

(c) **Controls for the blow-out preventer must be accessible to allow actuation of the equipment. Additional controls for a blow-out preventer with a pressure rating of greater than 3,000 psi not associated with the rig hydraulic system must be located away from the drilling rig so that the blow-out preventer can be actuated if control of the well is lost.**

(d) The operator shall use pipe fittings, valves and unions placed on or connected to the blow-out prevention systems that have a working pressure capability that exceeds the anticipated pressures.

[(d)] (e) The operator shall conduct a complete test of the ram type blow-out preventer and related equipment for both pressure and ram operation before placing it in service on the well. The operator shall test the annular type blow-out preventer in accordance with the manufacturer's published instructions, or the instructions of a professional engineer, prior to the device being placed in

service. **Blow-out prevention equipment that fails the test may not be used until it is repaired and passes the test.**

[(e)] (f) When the equipment is in service, the operator shall visually inspect blow-out prevention equipment during each tour of drilling operation and during actual drilling operations test the pipe rams for closure daily and the blind rams for closure on each round trip. When more than one round trip is made in a day, one daily closure test for blind rams is sufficient. Testing shall be conducted in accordance with American Petroleum Institute publication API RP53, "API Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells." The operator shall record the results of the inspection and closure test in the drillers log before the end of the tour. **Blow-out prevention equipment that is not in good working order shall be repaired or replaced immediately and retested prior to the resumption of drilling.**

(g) All lines, valves and fittings between the closing unit and the blow-out preventer stack must be flame resistant and have a rated working pressure that meets or exceeds the requirements of the blow-out preventer system.

[(f)] (h) During drilling when conditions are such that the use of a blowout preventer can be anticipated, there shall be present on the **[rig floor a certified]** well site an individual **[responsible to]** who the operator has determined is trained and competent in the use of the blow-out prevention equipment. Satisfactory completion of a **[United States Geologic Survey (U.S.G.S.) approved]** well control course by the Independent Association of Drilling Contractors or equivalent study shall be deemed adequate **[certification]** for purposes of this subsection.

[(g)] (i) * * *
* * * * *

[(h)] (j) * * *

§ 78.73. General provision for well construction and operation.

(a) The operator shall construct and operate the well in accordance with this chapter and ensure that the integrity of the well is maintained and health, safety, environment and property are protected.

(b) The operator shall prevent gas **[and other fluids from lower formations from entering]**, oil, brine, completion and servicing fluids, and any other fluids from below the casing seat from entering fresh groundwater and prevent pollution or diminution of fresh groundwater.

[(b)] (c) After a well has been completed, recompleted, reconditioned or altered the operator shall prevent shut-in pressure **[or]** and producing back pressure at the surface casing seat **[or]**, coal protective casing seat **or intermediate casing seat when the intermediate casing is used in conjunction with the surface casing to isolate fresh groundwater** from exceeding **80%** of the hydrostatic pressure of the surrounding fresh groundwater system in accordance with the following formula. The maximum allowable shut-in pressure **[or]** and producing back pressure to be ex-

erted at the **[surface casing seat, or coal protective]** casing seat may not exceed the **[hydrostatic]** pressure calculated as follows: Maximum pressure = **(0.8 x 0.433 psi/foot)** multiplied by (casing length in feet).

[(c)] (d) After a well has been completed, recompleted, reconditioned or altered, if the shut-in pressure or producing back pressure exceeds the **[hydrostatic]** pressure at the surface casing seat **[or]**, coal protective casing as calculated in subsection **[(b)] (c)**, the operator shall take action to prevent the migration of gas and other fluids from lower formations into fresh groundwater. To meet this standard, the operator may cement or install on a packer sufficient intermediate or production casing or take other actions approved by the Department. This section does not apply during testing for mechanical integrity in accordance with State or Federal requirements.

(e) Excess gas encountered during drilling, completion or stimulation shall be flared, captured or diverted away from the drilling rig in a manner that does not create a hazard to the public health or safety.

(f) Except for gas storage wells, the well must be equipped with a check valve to prevent backflow from the pipelines into the well.

§ 78.75a. Area of alternative methods.

(a) The Department may designate an area of alternative methods if the Department determines that well drilling requirements beyond those provided in this chapter are necessary to drill, operate or plug a well in a safe and environmentally protective manner.

(b) To establish an area of alternative methods, the Department will publish a notice in the *Pennsylvania Bulletin* of the proposed area of alternative methods and provide the public with an opportunity to comment on the proposal. After reviewing any comments received on the proposal, the Department will publish a final designation of the area and required alternative methods in the *Pennsylvania Bulletin*.

(c) Wells drilled within an area of alternative methods established under subsection (b) must meet the requirements specified by the Department unless the operator obtains approval from the Department to drill, operate or plug the well in a different manner that is at least as safe and protective of the environment as the requirements of the area of alternative methods.

§ 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 to the Department for approval by the Department** and **[shall]** submit proof of notification to the Department with the well permit application.

* * * * *

CASING AND CEMENTING

§ 78.81. General provisions.

* * * * *

[(c) Casing and cementing standards in §§ 78.83—78.85 (relating to surface and coal protective casing and cementing procedures; casing standards; and cement standards) apply to surface casing and coal protective casing but do not apply to production casing.]

§ 78.82. Use of conductor pipe.

If the operator installs conductor pipe in the well, the [operator may not remove the pipe.] following provisions apply:

- (1) The operator may not remove the pipe.
- (2) Conductor pipe shall be installed in a manner that prevents infiltration of surface water or fluids from the operation into groundwater.
- (3) Conductor pipe must be made of steel unless a different material is approved for use by the Department.

§ 78.83. Surface and coal protective casing and cementing procedures.

(a) For wells drilled, altered, reconditioned or recompleted after _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), surface casing or any casing functioning as a water protection casing may not be utilized as production casing unless one of the following applies:

- (1) In oil wells where the operator does not produce any gas generated by the well and the annulus between the surface casing and the production pipe is left open.
- (2) The operator demonstrates that the pressure in the well bore at the casing seat is no greater than the pressure permitted under § 78.73(c) (relating to general provision for well construction and operation) and demonstrates through a pressure test or other method approved by the Department that all gas and fluids will be contained within the well.

(b) If the well is to be equipped with threaded and coupled casing, the operator shall drill a hole so that the diameter is at least 1 inch greater than the outside diameter of the casing collar to be installed. If the well is to be equipped with plain-end welded casing, the operator shall drill a hole so that the diameter is at least 1 inch greater than the outside diameter of the [casing tube] centralizer band.

[(b)] (c) [Except as provided in subsection (c), the] The operator shall drill to approximately 50 feet below the deepest fresh groundwater or at least 50 feet into consolidated rock, whichever is deeper, and immediately set and permanently cement a string of surface casing to that depth. The surface hole shall be drilled using air, freshwater, or freshwater based drilling fluid. The surface casing seat shall be set in consolidated rock. When drilling a new well or re-drilling an existing well, the operator shall install at least one centralizer within 50 feet of the casing seat and then install a centralizer in intervals no greater than every 150 feet above the first centralizer.

[(c) If no fresh groundwater is being utilized as a source of drinking water within a 1,000-foot radius of the well, the operator may set and permanently cement a single string of surface casing through all

water zones, including fresh, brackish and salt water zones. Prior to penetrating zones known to contain, or likely containing, oil or gas, the operator shall install and permanently cement the string of casing in a manner that segregates the various waters.]

* * * * *

(f) If additional fresh groundwater is encountered in drilling below the permanently cemented surface casing, the operator shall protect the additional fresh groundwater by installing and cementing a subsequent string of casing or other procedures approved by the Department to completely isolate and protect fresh groundwater. The string of casing may also penetrate zones bearing salty or brackish water with cement in the annular space being used to segregate the various zones. Sufficient cement shall be used to cement the casing at least 20 feet into the permanently cemented surface casing.

(g) The operator shall set and cement a coal protective string of casing through workable coal seams. The base of the coal protective casing [shall] must be at least 30 feet below the lowest workable coal seam. The operator shall install at least two centralizers. One centralizer shall be within 50 feet of the casing seat and the second centralizer shall be within 100 feet of the surface.

(h) [When] Unless an alternative method has been approved by the Department in accordance with § 78.75 (relating to alternative methods), when a well is drilled through a coal seam at a location where the coal has been removed or when a well is drilled through a coal pillar, the operator shall drill to a depth of at least 30 feet but no more than 50 feet deeper than the bottom of the coal seam. The operator shall set and cement a coal protection string of casing to this depth. The operator shall equip the casing with a cement basket or other similar device above and as close to the top of the coal seam as practical. The bottom of the casing shall be equipped with an appropriate device designed to prevent deformation of the bottom of the casing. The interval from the bottom of the casing to the bottom of the coal seam shall be filled with cement either by the balance method or by the displacement method. Cement shall be placed on top of the basket between the wall of the hole and the outside of the casing by pumping from the surface. If the operator penetrates more than one coal seam from which the coal has been removed, the operator shall protect each seam with a separate string of casing that is set and cemented or with a single string of casing which is stage cemented so that each coal seam is protected as described in this subsection. The operator shall cement the well to isolate workable coal seams from each other.

* * * * *

(j) If it is anticipated that cement used to permanently cement the surface casing can not be circulated to the surface, a cement basket may be installed immediately above the depth of the [last] anticipated lost circulation zone. The casing shall be permanently cemented by the displacement method. Additional cement may be added above the cement basket, if necessary, by pumping through a pour string from the surface to fill the annular space.

§ 78.83a. Casing and cementing plan.

(a) The operator shall prepare and maintain a casing and cementing plan showing how the well

will be drilled and completed. The plan must demonstrate compliance with this subchapter and include the following information:

(1) The anticipated depth and thickness of any producing formation, expected pressures, and anticipated fresh groundwater zones.

(2) The diameter of the well bore.

(3) The casing type, whether the casing is new or used, depth, diameter, wall thickness and burst pressure rating.

(4) The cement type, yield, additives and estimated amount.

(5) The estimated location of centralizers.

(6) Alternative methods or materials as required by the Department as a condition of the well permit.

(b) The plan shall be available at the well site for review by the Department.

(c) Upon request, the operator shall provide a copy of the well specific casing and cementing plan to the Department for review and approval.

(d) Revisions to the plan made as a result of onsite modification shall be documented in the plan by the operator and be available for review by the Department.

§ 78.83b. Casing and cementing—lost circulation.

(a) If cement used to permanently cement the surface or coal protective casing is not circulated to the surface despite pumping a volume of cement equal to or greater than 120% of the calculated annular space, the operator shall notify the Department and meet one of the following requirements:

(1) Run an additional string of casing at least 50 feet deeper than the surface casing and cement the second string of casing back to the seat of the surface or coal protective casing and vent the annulus of the additional casing string to the atmosphere at all times unless closed for well testing or maintenance. Shut-in pressure on the casing seat of the second string of casing may not exceed the requirements of § 78.73(c) (relating to general provision for well construction and operation).

(2) If the additional string of casing is the production casing, the operator shall set the production casing on a packer in a competent formation below the surface casing seat, and vent the annulus of the production casing to the atmosphere at all times unless closed for well testing or maintenance.

(3) Run production casing at least to the top of the formation that is being produced and cement the production casing to the surface.

(4) Produce oil but not gas and leave the annulus between the surface casing and the production pipe open.

(b) If cement used to permanently cement the surface or coal protective casing is not circulated to the surface, the Department may require the operator to determine the amount of casing that was cemented by logging or other suitable method.

§ 78.83c. Intermediate and production casing.

(a) Except as provided in § 78.72 (relating to use of safety devices-blow-out prevention equipment),

intermediate and production casing shall be cemented according to this section.

(b) If the well is to be equipped with an intermediate casing, the casing shall be cemented from the casing seat to a point at least 500 feet above the seat. If any producing horizon is open to the well bore above the casing seat, the casing shall be cemented from the casing seat up to a point at least 500 feet above the top of the shallowest productive horizon, or to a point at least 200 feet above the shoe of the next shallower casing string that was set and cemented in the well. The intermediate casing may be perforated to produce gas or oil if a shoe test demonstrates a pressure gradient greater than 0.465 psi/ft multiplied by casing length in feet.

(c) Except as provided in § 78.83 (relating to surface and coal protective casing and cementing procedures), each well must be equipped with production casing. The production string may be set on a packer or cemented in place. If the production casing is cemented in place, cement shall be placed by the displacement method with sufficient cement to fill the annular space to the surface or to a point at least 500 feet above the production casing seat.

§ 78.84. Casing standards.

(a) The operator shall install casing that can withstand the effects of tension, and prevent leaks, burst and collapse during its installation, cementing and subsequent drilling and producing operations.

(b) [The operator shall equip the casing string with appropriate equipment to center the casing through the hole in fresh groundwater zones. This equipment is not required when existing hole conditions such as caving or crookedness might cause loss of the well or result in a defective cement job] Surface casing must be a string of new pipe with a pressure rating that is at least 20% greater than the anticipated maximum pressure to which the surface casing will be exposed.

(c) Used casing may be approved for use as surface, intermediate or production casing but shall be pressure tested after cementing and before continuation of drilling. A passing pressure test is holding the anticipated maximum pressure to which it will be exposed for 30 minutes with not more than a 10% decrease in pressure.

(d) New or used plain end casing, except when being used as drive pipe, conductor, or as a casing string prior to setting and cementing surface casing, that is welded together for use must meet the following requirements:

(1) The casing must pass a pressure test by holding the anticipated maximum pressure to which the casing will be exposed for 30 minutes with not more than a 10% decrease in pressure. The operator shall notify the Department at least 24 hours before conducting the test. The test results shall be entered on the drilling log.

(2) The casing shall be welded using at least three passes with the joint cleaned between each pass.

(3) The casing shall be welded by a person trained and certified in the applicable American Petroleum Institute's standard for welding casing and pipe or an equivalent training and certification

program as approved by the Department. A person with 10 or more years of experience welding casing as of _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*) who registers with the Department by _____ (*Editor's Note: The blank refers to a date 9 months after the effective date of adoption of this proposed rulemaking.*) is deemed to be certified.

[(c)] (e) When casing through a workable coal seam, the operator shall install coal protective casing that has a minimum wall thickness of 0.23 inches.

(f) Casing which is attached to a blow-out preventer with a pressure rating of greater than 3,000 psi shall be pressure tested. A passing pressure test must be holding 120% of the highest expected working pressure of the casing string being tested, for 30 minutes with not more than a 10% decrease. Certification of the pressure test shall be confirmed by entry and signature of the person performing the test on the driller's log.

§ 78.85. Cement standards.

(a) [The] When cementing surface casing, coal protective casing and intermediate casing when the intermediate casing is used in conjunction with the surface casing to isolate fresh groundwater, the operator shall use cement that [will resist degradation by chemical and physical conditions in the well] meets or exceeds the ASTM International C 150, Type I, II or III Standard or API Specification 10. The cement must also:

- (1) Secure the casing in the well bore.
- (2) Isolate the well bore from fresh groundwater.
- (3) Contain any pressure from drilling, completion and production.
- (4) Protect the casing from corrosion.
- (5) Resist degradation by the chemical and physical conditions in the well.
- (6) Prevent gas flow in the annulus.

(b) [The operator shall permit the cement to set to a minimum compressive strength of 350 pounds per square inch (psi) in accordance with the American Petroleum Institute's API Specification 10. The operator shall permit the cement to set for a minimum period of 8 hours prior to the resumption of actual drilling] After the casing cement is placed behind surface casing and intermediate casing when the intermediate casing is used in conjunction with the surface casing to isolate fresh groundwater, the operator shall permit the cement to set to a minimum designed compressive strength of 350 pounds per square inch (psi) at the casing seat.

(c) After the casing cement is placed and cementing operations are complete, the casing may not be disturbed for a minimum of 8 hours by one or more of the following:

- (1) Releasing pressure on the cement head, if float equipment check valves did not hold or float equipment was not equipped with check valves.
- (2) Nippling up on or in conjunction to the casing.

(3) Slacking off by the rig supporting the casing in the cement sheath.

(4) Running drill pipe, wireline, or other mechanical devices into or out of the wellbore.

[(c)] (d) Where special cement or additives are used, the operator may request approval from the Department to reduce the cement setting time specified in subsection [(b)] (c).

(e) The operator shall notify the Department a minimum of 1 day before cementing of the surface casing begins, unless the cementing operation begins within 72 hours of commencement of drilling.

(f) A copy of the cement job log shall be available at the well site for inspection by the Department during drilling operations. The cement job log shall be maintained by the operator after drilling operations for at least 5 years and be made available to the Department upon request.

OPERATING WELLS

§ 78.88. Mechanical integrity of operating wells.

(a) Except for wells regulated under Subchapter H (relating to underground gas storage), the operator shall inspect each operating well at least quarterly to ensure it is in compliance with the well construction and operating requirements of this chapter and the act. The results of the inspections shall be recorded and retained by the operator for at least 5 years and shall be available for review by the Department and the coal owner or operator.

(b) At a minimum, inspections must determine:

- (1) The well-head pressure or water level measurement.
- (2) The open flow on the annulus of the production casing or the annulus pressure if the annulus is shut in.
- (3) If there is evidence of gas escaping from the well and the amount escaping, using measurement or best estimate of quantity.

(4) If there is evidence of progressive corrosion, rusting or other signs of equipment deterioration.

(c) For structurally sound wells in compliance with § 78.73(c) (relating to general provision for well construction and operation), the operator shall follow the reporting schedule outlined in subsection (e).

(d) For wells exhibiting progressive corrosion, rusting or other signs of equipment deterioration that compromise the integrity of the well, or the well is not in compliance with § 78.73(c), the operator shall immediately notify the Department and take corrective actions to repair or replace defective equipment or casing or mitigate the excess pressure on the surface casing seat, coal protective casing seat or intermediate casing seat when the intermediate casing is used in conjunction with the surface casing to isolate fresh groundwater according to the following hierarchy:

- (1) The operator shall reduce the shut-in or producing back pressure on the casing seat to achieve compliance with § 78.73(c).
- (2) The operator shall retrofit the well by installing production casing to reduce the pressure on the casing seat to achieve compliance with § 78.73(c).

The annular space surrounding the production casing must be open to the atmosphere. The production casing shall be either cemented to the surface or installed on a permanent packer. The operator shall notify the Department at least 7 days prior to initiating the corrective measure.

(3) Additional mechanical integrity tests, including, but not limited to, pressure tests, may be required by the Department to demonstrate the integrity of the well.

(e) The operator shall submit an annual report to the Department identifying the compliance status of each well with the mechanical integrity requirements of this section. The report shall be submitted on forms prescribed by, and available from, the Department or in a similar manner approved by the Department.

§ 78.89. Gas migration response.

(a) When an operator or owner is notified of or otherwise made aware of a natural gas migration incident, the operator shall immediately notify the Department and, if so directed by the Department, conduct an investigation of the incident. The purpose of the investigation is to determine the nature of the incident, assess the potential for hazards to public health and safety, and mitigate any hazard posed by the levels of natural gas. The operator, in conjunction with the Department and local emergency response agencies, shall take measures necessary to ensure public health and safety.

(b) The investigation undertaken under subsection (a) must include, but not be limited to, the following:

(1) An interview with the complainant to obtain information about the complaint and to assess the reported problem.

(2) A field survey to assess the presence and concentrations of natural gas and aerial extent of the stray natural gas.

(3) Establishment of monitoring locations at potential sources, in potentially impacted structures, and the subsurface.

(c) If the level of natural gas is greater than 10% of the lower explosive limit of natural gas, the operator shall:

(1) Immediately notify the local emergency response agency, police and fire departments and the Department.

(2) Conduct an immediate field survey of the operator's adjacent oil or gas wells to assess the wells for mechanical integrity, defective casing or cementing, and excess pressures within any part of the well. The initial area of assessment must include wells within 2,500 feet and expanded to a greater distance if necessary as determined by the Department.

(3) Initiate mitigation controls, which may include remedial measures, access control, advisories, evacuation, signs and other actions.

(d) The operator shall take action to correct any defect in the oil and gas wells to mitigate the stray gas incident.

(e) The operator and owner shall report to the Department by phone within 12 hours after the

interview with the complainant and field survey of the natural gas levels. A follow-up report shall be filed in writing with the Department within 3 days of the complaint. This follow-up report must include the results of the investigation, monitoring results and measures taken by the operator to repair any defects at any of the adjacent oil and gas wells.

PLUGGING

§ 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] by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120% whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater. 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] 50 feet below the lowest stratum bearing or having borne oil, gas or water. At this point, there shall be placed a plug of cement, which [shall extend] extends for at least 50 feet above [that point] this stratum. [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 cement which] Each overlying formation bearing or having borne oil, gas or water shall be plugged with cement a minimum of 50 feet below this formation to a point 50 feet above this formation. The zone between cement plugs shall be filled with nonporous material. The cement plugs shall be placed in a manner that 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 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).

* * * * *

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

* * * * *

(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 by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120% whichever is greater. If this fails, an attempt shall be made to separate the casing by

cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater. 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 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).

* * * * *

§ 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] by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120% whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater.** 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] 50 feet below** the lowest stratum bearing or having borne oil, gas or water. At this point there shall be placed a plug of cement, which **[shall extend] extends** for at least 50 feet above **[that point] this stratum. [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 cement which]** Each overlying formation bearing or having borne oil, gas or water shall be plugged with cement a minimum of 50 feet below this formation to a point 50 feet above this formation. The zone between cement plugs shall be filled with nonporous material. The cement plugs shall be placed in a manner that 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).

* * * * *

(3) After it has been established that the surface casing or coal protective casing is free and can be retrieved, the surface or coal protective casing shall be retrieved **[and a] by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120% whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater.** A string of casing with an outside diameter of **[not less than] at least 4 1/2 inches** for gas wells, or **[not less than] at least 2 inches** for oil wells, shall be run to the top of the 100-foot plug described in paragraph (2) and cemented to the surface.

* * * * *

§ 78.94. Wells in noncoal areas—surface casing is not cemented or not present.

(a) The owner or operator shall plug a noncoal well, where the surface casing and production casing are not cemented, or is not present as follows:

(1) The retrievable production casing shall be removed **by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120% whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater.** 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] 50 feet below** the lowest stratum bearing or having borne oil, gas or water. At this point there shall be placed a plug of cement, which **[shall extend] extends** at least 50 feet above **[that point] this stratum. [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 cement. The hole shall be filled and plugged, with reference to each of the strata bearing or having borne oil, gas or water.]** Each overlying formation bearing or having borne oil, gas or water shall be plugged with cement a minimum of 50 feet below this formation to a point 50 feet above this formation. The zone between cement plugs shall be filled with nonporous material. The cement plugs shall be placed in a manner that will completely seal the hole. The operator may treat multiple strata as one stratum and plug as described in this paragraph with a single column of cement or other materials 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).

* * * * *

(3) After setting the uppermost 50-foot plug, the retrievable surface casing shall be removed **[and the] by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120% whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or**

other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater. The hole shall be filled from the top of the 50-foot plug to the surface with nonporous material other than gel. If the surface casing is not retrievable, the hole shall be filled from the top of the 50-foot plug to the surface with a noncementing material.

* * * * *

§ 78.95. Wells in noncoal areas—surface casing is cemented.

(a) The owner or operator shall plug a well, where the surface casing is cemented and the production casing is not cemented or not present, as follows:

(1) The retrievable production casing shall be removed [and the] by applying a pulling force at least equal to the casing weight plus 5,000 pounds or 120% whichever is greater. If this fails, an attempt shall be made to separate the casing by cutting, ripping, shooting or other method approved by the Department, and making a second attempt to remove the casing by exerting a pulling force equal to the casing weight plus 5,000 pounds or 120% of the casing weight, whichever is greater. 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] 50 feet below the lowest stratum bearing or having borne oil, gas or water. At this point there shall be placed a plug of cement, which [shall extend] extends for at least 50 feet above [that point] this stratum. [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 cement. The hole shall be filled and plugged, with reference to each of the strata bearing or having borne oil, gas or water.] Each overlying formation bearing or having borne oil, gas or water shall be plugged with cement a minimum of 50 feet below this formation to a point 50 feet above this formation. The zone between cement plugs shall be filled with nonporous material. The cement plugs shall be placed in a manner that will completely seal the hole. 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. When the production casing is not retrievable, the operator shall plug this portion of the well under § 78.91(d) (relating to general provisions).

* * * * *

§ 78.96. Marking the location of a plugged well.

(a) Upon the completion of plugging or replugging a well, the operator shall erect over the plugged well a permanent marker of concrete, metal [or metal and concrete], plastic or equally durable material. The marker [shall] must extend at least 4 feet above the ground surface and enough below the surface to make the marker permanent. Cement may be used to hold the marker in place provided the cement does not prevent inspection of the adequacy of the well plugging. The permit or registration number shall be stamped or cast or otherwise permanently affixed to the marker. In lieu of placing the marker above the ground

surface, the marker may be buried below plow depth and [shall] contain enough metal to be detected at the surface by conventional metal detectors.

Subchapter E. WELL REPORTING

§ 78.121. [Annual production report] Production reporting.

(a) The well operator shall submit an annual production and status report for each well on an individual basis, on or before [March 31] February 15 of each year. The operator of a well which produces gas from the Marcellus shale formation shall submit a production and status report for each well on an individual basis, on or before February 15 and August 15 of each year. Production shall be reported for the preceding calendar year or in the case of a Marcellus shale well, for the preceding 6 months. When the production data is not available to the operator on a well basis, the operator shall report production on the most well-specific basis available. The annual production report [shall] must include information on the amount and type of waste produced and the method of waste disposal or reuse. Waste information submitted to the Department in accordance with this subsection [shall] must satisfy the residual waste biennial reporting requirements of § 287.52 (relating to biennial report).

(b) The [annual] production report shall be submitted [on forms prescribed by, and available from, the Department or in a similar manner approved by the Department] electronically to the Department through its web site.

§ 78.122. Well record and completion report.

(a) For each well that is drilled or altered, the operator shall keep a detailed drillers log at the well site available for inspection until drilling is completed. Within 30 calendar days of cessation of drilling or altering a well, the well operator shall submit a well record to the Department on a form provided by the Department that includes the following information:

* * * * *

(9) A certification by the operator that the well has been constructed in accordance with this chapter and any permit conditions imposed by the Department.

(10) Drillers log that includes the name and depth of formations from the surface to total depth, depth of oil and gas producing zone, depth of fresh water and brines and source of information.

[(10)] (11) Other information required by the Department.

(b) Within 30 calendar days after completion of the well, the well operator shall submit a completion report to the Department on a form provided by the Department that includes the following information:

* * * * *

(6) Stimulation record, including pump rates, pressure, total volume and list of hydraulic fracturing chemicals used, the volume of water used and identification of water sources used pursuant to an approved water management plan.

(7) Actual open flow production and [rock] reservoir pressure.

(8) Open flow production and [rock] reservoir pressure, measured 24 hours after [treatment] completion.

* * * * *

[Pa.B. Doc. No. 10-1248. Filed for public inspection July 9, 2010, 9:00 a.m.]

STATE EMPLOYEES' RETIREMENT BOARD

[4 PA. CODE CH. 249]

Exemption from Execution; Assignment of Rights

The State Employees' Retirement Board (Board) proposes to rescind § 249.53 (relating to exemption from execution; assignment of rights) to read as set forth in Annex A. This section pertains to the exemption from execution and assignment of rights when a member becomes indebted to the State Employees' Credit Union.

A. Effective Date

The proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information, contact Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 787-9657; or Brian E. McDonough, Deputy Chief Counsel, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 783-7317. Information regarding submitting comments on this proposed rulemaking appears in Section H of this preamble.

C. Statutory Authority

This proposed rulemaking is being made under the authority of 71 Pa.C.S. §§ 5902(h) and 5953 (relating to administrative duties of the board; and taxation, attachment and assignment of funds).

D. Background and Purpose

This proposed rulemaking rescinds State Employees Credit Union payment language in § 249.53. The language is obsolete. Currently, credit unions do not meet the statutory requirements and it is unlikely that any new ones will. A corresponding statutory amendment is also being considered. The language concerning payment priority in the event of member indebtedness to the Commonwealth is included in the proposed comprehensive regulation on priority of payments from member benefits in § 247.11 (relating to priority of taxation, attachments and assignments of funds). See 38 Pa.B. 2062 (May 3, 2008).

E. Benefits, Costs and Compliance

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

Benefits

The rescission of § 249.53 will alleviate any confusion and prevent possible disputes with regard to conflicting demands on members' retirement benefits.

Costs

There are no costs to the Commonwealth, its citizens or State employees associated with this proposed rulemaking.

Compliance costs

The proposed rulemaking is not expected to impose additional compliance costs on State employees.

F. Sunset Review

A sunset review is not applicable.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 14, 2010, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House State Government Committee and the Senate Finance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Public Comments

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716. Comments submitted by facsimile will not be accepted. The Board must receive comments, suggestions or objections within 30 days of publication in the *Pennsylvania Bulletin*.

Electronic comments. Comments may be submitted electronically to the Board at rgentzel@state.pa.us and must be received by the Board within 30 days of publication in the *Pennsylvania Bulletin*. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

NICHOLAS J. MAIALE,
Chairperson

Fiscal Note: 31-13. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART X. STATE EMPLOYEES' RETIREMENT BOARD

CHAPTER 249. ADMINISTRATION, FUNDS, ACCOUNTS, GENERAL PROVISIONS

Subchapter E. GENERAL PROVISIONS

§ 249.53. [Exemption from execution; assignment of rights] (Reserved).

[(a) *General.* In the event any member, entitled to a benefit, has been determined, at the time this

benefit becomes payable, to be obligated to the Commonwealth for the repayment of money for any employment related reason, or to be obligated to the State Employees' Credit Union for the repayment of a loan not to exceed \$750 with interest, as provided in section 5953 of the code (relating to taxation, attachment and assignment of funds), the Board will cause to be paid from the member's account, upon his authorization, or upon certification of his agencies legal representative, the amount of indebtedness. The member, or his designated beneficiary, in the case of a deceased member, shall have the privilege of restoring the set off amount to his account within 30 days thereafter in a lump sum. Failing that, any benefit to which he would otherwise be entitled shall be withheld until an amount sufficient to satisfy the obligation has been accumulated, whereupon the annuity shall be payable to the member.

(b) *Debt priorities.* In the event a member is indebted, not only to the Commonwealth, but also the State Employees' Credit Union, under section 5953 of the code, payments to satisfy indebtedness to the Commonwealth shall be made in full before the Credit Union indebtedness is satisfied.

(c) *Effect of credit union payment.* In the event the Board is required to satisfy a credit union loan on behalf of an active member, as provided in section 5953(b)(2) of the code, the amount of the satisfaction will be automatically converted into an arrears liability of the member, which shall be restored in full by the defaulting member by lump sum or payroll deductions over a period not exceeding 1 year with statutory interest charged during the repayment period.]

[Pa.B. Doc. No. 10-1249. Filed for public inspection July 9, 2010, 9:00 a.m.]

SUSQUEHANNA RIVER BASIN COMMISSION

[25 PA. CODE CHS. 806 AND 808]
Review and Approval of Projects

This document contains proposed rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) to: Include subsidiary allocations for public water supply systems under the scope of withdrawals requiring review and approval; improve notice procedures for all project applications; clarify requirements for grandfathered projects increasing their withdrawals from an existing source or initiating a new withdrawal; refine the provisions governing transfer and re-issuance of approvals; clarify the Executive Director's authority to grant, deny, suspend, rescind, modify or condition an Approval by Rule; include decisional criteria for diversions into the basin; amend administrative appeal procedures to broaden available remedies and streamline the appeal process; and make other minor regulatory clarifications to the text of the regulations.

Dates: Comments on these proposed rules may be submitted to the Commission on or before August 10, 2010. The Commission has scheduled two public hearings on the proposed rules, to be held July 27, 2010, in

Binghamton, New York, and July 29, 2010, in Harrisburg, Pennsylvania. The locations of the public hearings are listed in the addresses section of this notice.

Addresses: Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391, or by email to rcairo@srbc.net.

The public hearings will be held on Tuesday, July 27, 2010, at 7:00 p.m., at the Holiday Inn Arena, 2-8 Hawley Street, Binghamton, New York 13901, and Thursday, July 29, 2010, at 10:00 a.m., at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

For Further Information Contact: Richard A. Cairo, General Counsel, telephone: 717-238-0423, ext. 306; fax: 717-238-2436; e-mail: rcairo@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's web site at www.srbc.net.

Supplementary Information

Background and Purpose of Amendments

When 18 CFR 806.4 was originally published as final at 71 FR 78570, December 29, 2006, updating and expanding the range of projects subject to Commission review and approval, a pre-existing regulatory provision was omitted inadvertently and this proposed rulemaking attempts to correct that omission. Specifically, 18 CFR § 806.4(a)(2) would be modified to indicate that the taking or removal of water by a public water supplier indirectly through another public water supply system or another water facility (aka, a subsidiary allocation) constitutes a withdrawal that is subject to review and approval.

An amendment to 18 CFR § 806.4(a)(2)(iv) will clarify that sponsors of grandfathered surface or groundwater withdrawal projects are required to submit applications for review and approval whenever the project will increase its withdrawal from an existing source, or initiate a withdrawal from a new source, or combination of sources. This clarification memorialized existing Commission policy under the current rule.

An amendment to 18 CFR § 806.4(c) will provide that sponsors of certain classes of projects undergoing a change of ownership, and thus triggering review and approval, would have 90 days from the date of ownership transfer to submit applications under the rule. The current rule requires submission of the application on or before the date of ownership change. This amendment is consistent with those recommended for transfers of approval under 18 CFR § 806.6, as discussed below.

The proposed amendments to 18 CFR § 806.6 are intended to clarify that certain approvals may be transferred or conditionally transferred administratively, rather than requiring full Commission action on such transfer requests. The existing phraseology authorizing transfers or conditional transfers of approval "without prior Commission review and approval" was misleading in that respect and is proposed to be deleted, along with other editorial changes intended to add more clarification to this section.

The existing rule also requires certain categories of approvals to initiate the transfer of approval process with the Commission on or before the date of ownership transfer, and yet other categories of approvals are allowed to initiate transfer applications within 90 days of the date

of ownership transfer. The proposed language would uniformly require all applications to be submitted within 90 days of the date of ownership transfer.

Another substantive change would break out situations where project sponsors with existing approvals undergo a name change and seek to have the approval changed to reflect the new name. Rather than being categorized as a transfer of approval, which is triggered by a change in ownership, a new subsection is added to more appropriately provide for "re-issuance" of such approvals to reflect the name change of the existing project sponsor.

An amendment is proposed to 18 CFR § 806.7 to clarify that existing language recognizing that agencies of the member jurisdictions exercise "review authority" over projects also regulated by the Commission is intended to mean and should be stated as "review and approval authority."

18 CFR § 806.15 currently sets notification requirements for project sponsors applying for approvals issued by the Commission under its standard docketing procedures, and for Approval by Rule (ABR) natural gas pad site approvals issued under 18 CFR § 806.22(f). However, ABRs issued under 18 CFR § 806.22(e) are subject to certain notification standards in that section which are inconsistent with the general notification requirements contained in 18 CFR § 806.15. Furthermore, there are also requirements contained in 18 CFR § 806.22(f) that are redundant with those contained in 18 CFR § 806.15 and are therefore unnecessary.

The proposed amendments to this section (and complementary ones proposed for 18 CFR §§ 806.22(e) and (f)) are intended to result in all notification requirements for all project approvals being consolidated into this section, including all those having general applicability and those that might be specific to certain classes of project applications.

With regard to specific requirements for certain classes, the proposed rulemaking would establish the following revised notification standards:

- For groundwater withdrawal applications, rather than just notifying landowners that are contiguous to the project site, notice would have to be given to all owners currently listed on the tax assessment rolls that are within one-half mile of the proposed withdrawal location.

- For surface water withdrawal applications, rather than just notifying landowners that are contiguous to the project site, notice would have to be given to all owners currently listed on the tax assessment rolls that are within one-half mile of the proposed withdrawal location and whose property borders the stream, river, lake or water body from which the withdrawal is proposed to be taken.

- For consumptive use applications involving a withdrawal, the applicable groundwater or surface water withdrawal requirements noted above would apply. For consumptive use applications that do not involve a withdrawal (such as those supplied by a public water supplier), newspaper notice in the area of the project would be required.

- For out-of-basin diversion applications, there would be additional newspaper notice required in the area outside the basin where the proposed use of the diverted water would occur.

- For into-basin diversion applications, there would be additional newspaper notice required in the area outside the basin where the withdrawal of water proposed for diversion is located.

- For applications to use public water supply a source for water in natural gas development operations, newspaper notice in the area served by the public water supply system would be required.

- For applications to use wastewater discharge as a source for water in natural gas development operations, newspaper notice would be required in all areas where such discharge water would be used for such development purposes.

In addition to the foregoing, the proposed amendments establish uniform proof of notification standards and would require project sponsors to maintain all proofs of notice for the duration of the approvals related to such notices.

The Approval by Rule (ABR) provisions contained in 18 CFR § 806.22 would be modified to clarify that the Executive Director has the authority not only to grant or deny such ABRs, but to "suspend, rescind, modify or condition" such approvals as well. Such authority was implied in the existing language and the existing policy of the Commission supports that interpretation. The proposed amendment is intended to provide that clarification. A second amendment would require all project sponsors seeking an ABR to satisfy the applicable notice requirements proposed for 18 CFR § 806.15, and noted above.

With regard to ABRs issued under 18 CFR § 806.22(f) for natural gas development projects, language is proposed for subsection (f)(12)(i) to clarify that project sponsors registering approved water withdrawals must record daily and report quarterly the quantity of water obtained from all registered sources. Additionally, subsection (f)(12)(ii) would be modified to delete "other reclaimed waters" as potential sources, thus limiting the class of approvable sources under this provision to public water supply systems and wastewater discharges.

The proposed amendments to 18 CFR § 806.24 would add certain decisional criteria for consideration by the Commission while acting on applications for into-basin diversions, similar to what now is provided for consideration in acting on out-of-basin diversion applications. Specifically, the proffered language would add criteria related to the potential introduction of invasive or exotic species that may be injurious to the water resources of the basin, and the extent to which the proposed diversion would satisfy all other applicable standards contained in subpart C of Part 806.

18 CFR § 806.35 currently indicates that project sponsors have an affirmative duty to pay fees established by the Commission. The proposed amendatory language would expand this to indicate that the purpose of such fees is to cover the Commission's costs of administering its regulatory program and any extraordinary costs associated with specific projects.

18 CFR § 808.2 currently establishes a procedure for the filing of administrative appeals to actions or decisions rendered by the Commission or the Executive Director. The broad terms of the current regulation have resulted in some abuse of the appeal process, including attempts to file appeals of determinations on requests for administrative appeals, appeals of stay request determinations and other extraneous or repetitive pleadings that frustrate the original purpose of providing the appropriate administrative review envisioned when this rule became effective in 2007. In short, this abuse has been enabled by the fact that there is no limitation on the type of

Commission actions that are eligible for appeal under this section, leaving any action of the Commission subject to this process.

Additionally, the current regulation does not contain provisions for handling appeals from administrative level "Access to Records" determinations. The new Access to Records Policy adopted by the Commission in 2009 (Policy No. 2009-02) provides for appeal of such decisions to the Commission. Finally, the current regulation does not specify the authority of an appointed hearing officer to admit or bar intervenor parties based on the principle of standing.

The proposed revisions to 18 CFR § 808.2 generally limit appeals to a single filing, and only to project determinations or records determinations. Executive Director determinations on requests for stay would not be appealable to the Commission and would stand until the time of the Commission proceeding on the appeal (unless overturned by a court of competent jurisdiction). Lastly, the appointed hearing officer is given authority to admit or bar intervenor parties based on the legal principle of standing.

List of Subjects in 18 CFR Parts 806 and 808

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR Parts 806 and 808 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

Subpart C—Standards for Review and Approval

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. In § 806.4, revise paragraphs (a)(2) introductory text, (a)(2)(iv), and (c) to read as follows:

§ 806.4. Projects requiring review and approval.

* * * * *

(a) * * *

(2) Withdrawals. Any project described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or 18 CFR part 801. The taking or removal of water by a public water supplier indirectly through another public water supply system or another water user's facilities shall constitute a withdrawal hereunder.

* * * * *

(iv) With respect to groundwater projects in existence prior to July 13, 1978, and surface water projects in existence prior to November 11, 1995, any project that will increase its withdrawal from any source, or initiate a withdrawal from a new source, or combination of sources, by a consecutive 30-day average of 100,000 gpd or more,

above that maximum consecutive 30-day amount which the project was withdrawing prior to the said applicable date.

* * * * *

(c) Any project that did not require Commission approval prior to January 1, 2007, and not otherwise exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v) or (a)(3)(iv) pursuant to paragraph (b) of this section, may be undertaken by a new project sponsor upon a change of ownership pending action by the Commission on an application submitted by such project sponsor requesting review and approval of the project, provided such application is submitted to the Commission in accordance with this part within 90 days of the date change of ownership occurs and the project features related to the source, withdrawal, diversion or consumptive use of water, or the nature or quantity of water withdrawal, diversion or consumptive use associated with the project do not change pending review of the application. For purposes of this paragraph, changes in the quantity of water withdrawal, diversion or consumptive use shall only relate to increases in quantity in excess of the quantity withdrawn, diverted or consumptively used prior to the change of ownership.

3. In § 806.6, revise paragraphs (a), (b) introductory text, (b)(1), (c) introductory text and (d) introductory text, and add paragraph (e) to read as follows:

§ 806.6. Transfer and re-issuance of approvals.

(a) An existing Commission project approval may be transferred or conditionally transferred to a new project sponsor upon a change of ownership of the project, subject to the provisions of paragraphs (b), (c) and (d) of this section, and the new project sponsor may only operate the project in accordance with and subject to the terms and conditions of the existing approval pending approval of the transfer, provided the new project sponsor notifies the Commission within 90 days from the date of the change of ownership, which notice shall be on a form and in a manner prescribed by the Commission and under which the new project sponsor certifies its intention to comply with all terms and conditions of the transferred approval and assume all other associated obligations.

(b) An existing Commission project approval for any of the following categories of projects may be conditionally transferred, subject to administrative approval by the Executive Director, upon a change of ownership and the new project sponsor may only operate such project in accordance with and subject to the terms and conditions of the transferred approval:

(1) A project undergoing a change of ownership as a result of a corporate reorganization where the project property is transferred to a corporation by one or more corporations solely in exchange for stock or securities of the transferee corporation, provided that immediately after the exchange the transferor corporation(s) own 80 percent of the voting stock and 80 percent of all other stock of the transferee corporation.

* * * * *

(c) An existing Commission approval of a project that satisfies the following conditions may be conditionally transferred and the project sponsor may only operate such project in accordance with and subject to the terms and conditions of the conditionally transferred approval, pending action by the Commission on the application submitted in accordance with paragraph (c)(3) of this section:

* * * * *

(d) An existing Commission project approval for any project not satisfying the requirements of paragraphs (b) or (c) of this section may be conditionally transferred and the project sponsor may only operate such project in accordance with and subject to the terms and conditions of the conditionally transferred approval, pending action by the Commission on an application the project sponsor shall submit to the Commission, provided that:

* * * * *

(e) An existing Commission project approval may be re-issued by the Executive Director at the request of a project sponsor undergoing a change of name, provided such change does not affect ownership or control of the project or project sponsor. The project sponsor may only continue to operate the project under the terms and conditions of the existing approval pending approval of its request for re-issuance, provided it submits its request to the Commission within 90 days from the date of the change, which notice shall be on a form and in a manner prescribed by the Commission, accompanied by the appropriate fee established therefore by the Commission.

4. In § 806.7, revise paragraph (a) to read as follows:

§ 806.7. Concurrent project review by member jurisdictions.

(a) The Commission recognizes that agencies of the member jurisdictions will exercise their review and approval authority and evaluate many proposed projects in the basin. The Commission will adopt procedures to assure compatibility between jurisdictional review and Commission review.

* * * * *

5. Revise § 806.15 to read as follows:

§ 806.15. Notice of application.

(a) The project sponsor shall, no later than 10 days after submission of an application to the Commission, notify the appropriate agency of the member state, each municipality in which the project is located, and the county planning agency of each county in which the project is located, that an application has been submitted to the Commission. The project sponsor shall also publish at least once in a newspaper of general circulation serving the area in which the project is located, a notice of the submission of the application no later than 10 days after the date of submission. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (e) of this section, if applicable. All notices required under this section shall contain a description of the project, its purpose, the requested quantity of water to be withdrawn obtained from for sources other than withdrawals or consumptively used, and the address, electronic mail address, and phone number of the project sponsor and the Commission.

(b) For withdrawal applications submitted pursuant to § 806.4 (a)(2), the project sponsor shall also provide the notice required under paragraph (a) of this section no later than 10 days after the date of its submission to each property owner listed on the tax assessment rolls of the county in which such property is located and identified as follows:

(1) For groundwater withdrawal applications, the owner of any property that is located within one-half mile of the proposed withdrawal location.

(2) For surface water withdrawal applications, the owner of any property that is riparian or littoral to the body of water from which the proposed withdrawal will be taken and is within one-half mile of the proposed withdrawal location.

(c) For projects involving a diversion of water out of the basin, the project sponsor shall also publish a notice of the submission of its application, within 10 days thereof, at least once in a newspaper of general circulation serving the area outside the basin where the project proposing to use the diverted water is located. For projects involving a diversion of water into the basin, the project sponsor shall also publish a notice of the submission of its application, within 10 days thereof, at least once in a newspaper of general circulation serving the area outside the basin where the withdrawal of water proposed for diversion is located.

(d) For applications submitted under § 806.22(f)(12)(ii) to use a public water supply source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in the area served by the public water supply.

(e) For applications submitted under § 806.22(f)(12)(ii) to use a wastewater discharge source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in each area within which the water obtained from such source will be used for natural gas development.

(f) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the notifications to agencies of member states, municipalities and county planning agencies required under paragraph (a) of this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of notice required hereunder for the duration of the approval related to such notices.

6. In § 806.22, revise paragraphs (e)(1)(i) introductory text, (e)(1)(i), (e)(1)(ii), (e)(6), (f)(3), (f)(9), and (f)(12)(i) and (f)(12)(ii) to read as follows:

§ 806.22. Standards for consumptive uses of water.

* * * * *

(e) * * *

(1) Except with respect to projects involving natural gas well development subject to the provisions of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply system, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule:

(i) Notification of Intent: No fewer than 90 days prior to the construction or implementation of a project or increase above a previously approved quantity of consumptive use, the project sponsor shall submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the applicable application fee, along with any required attachments.

(ii) Within 10 days after submittal of an NOI under paragraph (e)(1)(i) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

* * * * *

(6) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

* * * * *

(f) * * *

(3) Within 10 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

* * * * *

(9) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4 (a).

* * * * *

(12) The following additional sources of water may be utilized by a project sponsor in conjunction with an approval by rule issued pursuant to paragraph (f)(9) of this section:

(i) Water withdrawals or diversions approved by the Commission pursuant to § 806.4 (a) and issued to persons other than the project sponsor, provided any such source is approved for use in natural gas well development, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in a manner as prescribed by the Commission, and provides a copy of same to the appropriate agency of the member state. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s). The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered hereunder.

(ii) Sources of water other than those subject to paragraph (f)(12)(i) of this section, including public water supply or wastewater discharge, provided such sources are first approved by the Executive Director pursuant to this section. Any request to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s).

7. In § 806.24, add paragraph (c)(2), to read as follows
§ 806.24. Standards for diversions.

* * * * *

(c) * * *

(2) In deciding whether to approve a proposed diversion into the basin, the Commission shall also consider and the project sponsor shall provide information related to the following factors:

(i) Any adverse effects and cumulative adverse effects the project may have on the Susquehanna River Basin, or any portion thereof, as a result of the introduction or

potential introduction of invasive or exotic species that may be injurious to the water resources of the basin.

(ii) The extent to which the proposed diversion satisfies all other applicable standards set forth in subpart C of this part.

8. Revise § 806.35 to read as follows:

§ 806.35. Fees

Project sponsors shall have an affirmative duty to pay such fees as established by the Commission to cover its costs of administering the regulatory program established by this part, including any extraordinary costs associated with specific projects.

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearings

10. The authority citation for Part 808 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

11. In § 808.2, revise paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) to read as follows:

§ 808.2. Administrative appeals.

(a) A project sponsor or other person aggrieved by a final action or decision of the Commission or Executive Director on a project application or a records access determination made pursuant to Commission policy may file a written appeal requesting a hearing. Except with respect to project approvals or denials, such appeal shall be filed with the Commission within 30 days of the action or decision. In the case of a project approval or denial, such appeal shall be filed by a project sponsor within 30 days of receipt of actual notice, and by all others within 30 days of publication of notice of the action taken on the project in the Federal Register. In the case of records access determinations, such appeal shall be filed with the Commission within 30 days of receipt of actual notice of the determination.

(b) The appeal shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the appeal, and a statement setting forth the basis for objecting to or seeking review of the action or decision. Appeals omitting any of these elements will be considered incomplete and not considered by the Commission.

(c) Any request not filed on or before the applicable deadline established in paragraph (a) of this section hereof will be deemed untimely and such request for a hearing shall be considered denied unless the Commission otherwise authorizes it nunc pro tunc. Receipt of requests for hearings, pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Petitioners shall be limited to a single filing that shall set forth all matters and arguments in support thereof, including any ancillary motions or requests for relief. Issues not raised in this single filing shall be considered waived and filings may only be amended or supplemented upon leave of the Executive Director. Where the petitioner is appealing a final determination on a project application and is not the project sponsor, the

petitioner shall serve a copy of the appeal upon the project sponsor within five days of its filing.

(e) If granted, hearings shall be held not less than 20 days after notice appears in the Federal Register. Hearings may be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the Commission may designate.

(1) The petitioner may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected member state. The decision of the Executive Director on the request for stay shall not be appealable to the Commission under this section and shall remain in full force and effect until the Commission acts on the appeal.

(2) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

- (i) Irreparable harm to the petitioner.
- (ii) The likelihood that the petitioner will prevail.

(f) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, the case involves a determination by the Executive Director or staff which requires further action by the Commission, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing, the party seeking such hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule.

(g) If a hearing is granted, the Commission shall refer the matter for hearing to be held in accordance with § 808.3, and appoint a hearing officer.

(h) *Intervention.*

(1) A request for intervention may be filed with the Commission by persons other than the petitioner within 20 days of the publication of a notice of the granting of

such hearing in the Federal Register. The request for intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance. The hearing officer(s) shall determine whether the person requesting intervention has standing in the matter that would justify their admission as an intervener to the proceedings in accordance with federal case law.

(2) Interveners shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses.

* * * * *

Dated: June 22, 2010.

PAUL O. SWARTZ,
Executive Director

Fiscal Note: 72-8. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 25. ENVIRONMENTAL PROTECTION
PART IV. SUSQUEHANNA RIVER BASIN
COMMISSION
CHAPTER 806. REVIEW AND APPROVAL OF
PROJECTS

§ 806.1. Incorporation by reference.

The regulations and procedures for review of projects as set forth in 18 CFR Part 806 ([2009] 2010) (relating to review and approval of projects) are incorporated by reference and made part of this title.

CHAPTER 808. HEARINGS AND ENFORCEMENT
ACTIONS

§ 808.1. Incorporation by reference.

The regulations and procedures for hearings/enforcement actions as set forth in 18 CFR Part 808 ([2009] 2010) (relating to hearings and enforcement actions) are incorporated by reference and made part of this title.

[Pa.B. Doc. No. 10-1250. Filed for public inspection July 9, 2010, 9:00 a.m.]