

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 77]

Noncoal Mining

The Environmental Quality Board (Board) by this order amends Chapter 77 (relating to noncoal mining). The amendments are the result of the Department of Environmental Protection's (Department) Regulatory Basics Initiative to review and revise regulations which impose disproportionate economic costs, which are obsolete or redundant, which are prescriptive or technology specific and which lack clarity.

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

A. Effective Date

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

B. Contact Persons

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C. Statutory Authority

These amendments are adopted under the rulemaking authority of the following acts: section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (Noncoal SMCRA) (52 P. S. § 3311(a)); section 5(b) of The Clean Streams Law (35 P. S. § 691.5(b)); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20) which authorizes the Board to adopt regulations necessary for the Department to perform its work.

D. Background and Summary

In August 1995, the Department announced the Regulatory Basics Initiative to revise regulations which impose disproportionate economic costs, which are obsolete or redundant, which are prescriptive or technology specific, and which lack clarity. In 1996, Governor Ridge issued Executive Order 1996-1 which directed executive agencies to conduct a similar review of existing regulations. Under these initiatives the Department solicited public input through a notice in the *Pennsylvania Bulletin* and the Department's Web site (<http://www.dep.state.pa.us>). The final amendments in this package are the result of suggestions from the public and the Department's own review of its regulations. Additionally, the Department has inserted, where appropriate, equivalent measures in standard international metric units.

A summary of the revisions to specific sections of the regulations is presented as follows:

§ 77.1. Definitions.

A definition for "general permit" has been added to this section.

§ 77.51 License requirement.

Section 77.51(b)(2) and (d) have been revised to cite section 5(e) of the Noncoal SMCRA which contains the insurance requirements for an operator's license.

§ 77.53 Suspension and revocation.

A cross reference has been corrected.

§ 77.54 Fees.

New language acknowledges that Noncoal SMCRA may establish alternate fees.

§ 77.108 Permit for small noncoal operations.

This section has undergone substantive changes. Small noncoal permits issued under this section are now individual permits rather than general permits. The yearly production limit has been raised from 2,000 tons (1,814 metric tons) per operator to 10,000 tons (9,070 metric tons) per site. As a result, individuals holding a large noncoal operator's license can make use of a small permit for a site producing no more than 10,000 tons (9,070 metric tons) a year.

A number of provisions have been added to ensure that the environment as well as the public's safety is protected. The maximum permit size is limited to 5 acres (2.02 hectares). No more than 1 acre of land can be affected and remain unreclaimed unless the Department approves an alternate plan for concurrent reclamation. Any blasting activity will be subject to the same standards applicable to larger noncoal mining operations. Additionally, these permits will be reviewed in accordance with the criteria applicable to larger operations.

Finally, operators are not required to publish in a local newspaper notices of applications for a permit or a bond release. The Department will continue to publish notices of decisions on applications and bond releases in the *Pennsylvania Bulletin*. The newspaper publication is unnecessary due to the minimal impacts associated with this mining activity. In addition, given the small bond amounts, the cost of requiring publication in newspapers of applications for bond release will make obtaining the bond release meaningless.

§ 77.109. Noncoal exploration activities.

The amendments to this section establish a simpler authorization process and less prescriptive performance standards. Amendments clarify when the Department might request other information the Department deems relevant to assure compliance with the environmental acts and establish a specific time period for regrading and revegetation after reclamation of the exploration site is completed.

§ 77.110. Permit waiver—oil and gas well site development.

The requirements of this section are obsolete and have been replaced with a reference to section 603.1 of the Oil and Gas Act (58 P. S. § 601.603).

§ 77.126. Criteria for permit approval or denial.

The language of this section has been modified for clarity, and to add a requirement that the Department find in writing that a permit application meets the

criteria for approval. A requirement that the application must demonstrate that the proposed mining activity will not threaten the existence of endangered or threatened species as determined by Federal and State law has been added. This requirement reflects the Department's current practice of not issuing a permit if a proposed mining activity threatens an endangered species.

§ 77.128. Permit terms.

The reasons for which the Department may grant an extension of time for commencement of mining activities are expanded to include conditions which are beyond the control of the permittee.

§ 77.142. Public notice of permit revision.

This section is revised to identify the specific types of permit revisions which are required to have public notice and, to be consistent with the requirements for surface mining, require public notice for the addition of mineral processing to underground mining activities.

§ 77.144. Transfer of permit.

The amendments replace a general requirement with a reference to specific regulatory requirements.

§ 77.164. Personal injury and property damage insurance information.

Section 77.164 has been revised to cite the specific section of the Noncoal SMCRA which contains the insurance requirements for an operator's license.

§ 77.165. Proof of publication.

This amendment allows the applicant to submit a copy of the weekly newspaper advertisements to the Department as proof of publication.

§ 77.204. Period of liability.

A general reference to Noncoal SMCRA and other environmental acts has been replaced with language from section 9(j) of the Noncoal SMCRA (52 P. S. § 3319(j)) which allows the Department to release a bond in whole or in part if the Department is satisfied that the reclamation covered by the bonds and required by Noncoal SMCRA has been accomplished.

§ 77.205. Bond adjustments.

A new provision requires the Department to notify the permittee, the surety and any person who has a property interest in a collateral bond of any proposed adjustment to the bond. The new requirement also provides the permittee with an opportunity for an informal conference to discuss the bond adjustment prior to any adjustment taking place.

§ 77.231. Terms and conditions for liability insurance.

Section 5(e) of the Noncoal SMCRA which contains the terms and conditions for liability insurance is now referenced by this section.

§ 77.241. Scope.

As amended, this section allows general permits to establish alternate procedures, criteria and schedules for bond release.

§ 77.242. Procedures for seeking release of bond.

The change to this section allows a longer period in which a permittee may submit proof of publication of bond release. In addition, the Department will consider an application for bond release to be incomplete if the proof of public notice is not received within 60 days of the filing of the application.

§ 77.243. Criteria and schedule for release of bond.

A vague standard for initial bond release is replaced by a reference to Chapter 102 (relating to erosion control) which deals with erosion control.

§ 77.401. Responsibilities.

This amendment allows the Department to waive any requirements for information on environmental resources for specific categories of mining if the information is not needed to evaluate potential impacts on the public and environment.

§ 77.403. Description of hydrology and geology—general requirements.

This section has been revised to require an applicant to submit the amount of information necessary to enable the Department to evaluate the impacts for the type of operation being proposed. This amendment also limits the authority of the Department to require modeling or other predictive techniques in a permit application to situations where the proposed mining activity has the potential to adversely impact water supplies, wetlands or waters of this Commonwealth and their affiliated uses.

§ 77.456. Reclamation information.

This amendment requires the timetable for reclamation activities to meet the requirements of § 77.595 (relating to concurrent reclamation).

§ 77.461. Dams, ponds, embankments and impoundments.

This section is revised to require submittal of information for assessing the design and hydrologic impact of a proposed structure only if the information is requested by the Department.

§ 77.502. Signs and markers.

The amendment to this section requires erection of the sign identifying the mining operation within 60 days of permit issuance.

§ 77.503. Casing and sealing of drilled holes.

Subsection (d) dealing with barriers around oil and gas wells is removed because the identical language is found in § 77.504 (relating to distance limitations and areas designated as unsuitable for mining). The phrase "Prevent to the maximum extent possible" has been replaced with "Minimize" with regard to disturbances to the hydrologic balance.

§ 77.504. Distance limitations and areas designated as unsuitable for mining.

A new subsection (e) provides that waivers to allow surface mining activities within 300 feet (91.44 meters) of an occupied dwelling or commercial or institutional building be knowingly made and be effective against subsequent purchases of the dwelling or building.

§ 77.527. Sedimentation controls.

This amendment allows for sediment controls other than ponds as long as the alternate controls prevent accelerated erosion and sedimentation.

§ 77.562. Preblasting surveys.

The revisions to this section replace a confusing and unenforceable standard for an exemption from the requirement to provide preblasting surveys with precise ground vibration levels in a graph. The amendments also

describe how the operator must monitor blasting for compliance with the graph and prohibit additional blasting, if vibration levels exceed the levels in the graph and preblasting surveys have not been offered.

§ 77.564. Surface blasting requirements.

The amended section clearly states that the maximum ground vibration limit does not apply at a structure owned by the permittee.

§ 77.572. Permit line setback.

This section has been rewritten to eliminate confusing language dealing with the distance of 25 feet (7.62 meters) that a highwall must be set back from the boundary of the permitted and bonded area.

§ 77.594. Final slopes.

This section is revised to allow the Department to require underwater safety benches in unconsolidated materials to be sloped at less than 35° from the horizontal if needed for safe exit from the impoundment.

§ 77.595. Concurrent reclamation.

The amendments to this section define more clearly what is required for concurrent reclamation.

Subchapter J. General permits.

This new subchapter authorizes the Department to develop general permits for categories of noncoal mining where the Department determines that the operations within that category are similar in nature and can be adequately regulated utilizing standard specifications and conditions. It describes the nature of a general permit and that the general permit is a substitute for individual permits. Subchapter J establishes the minimum contents of a general permit, the procedures for issuing a general permit and the requirements for operators wishing to register under the general permit. Finally, persons who operate under the general permit are required to maintain a mining operator's license and comply with the terms and conditions of the permit, the regulations and applicable laws.

E. Summary of Comments and Responses on the Proposed Rulemaking

The proposed rulemaking was published at 27 Pa.B. 875 (February 15, 1997). The public comment period expired on April 16, 1997. Public hearings on the proposed rulemaking were held on March 25, 1997, and March 31, 1997.

This document addresses comments received by the Board during the public comment period and from the Independent Regulatory Review Commission (IRRC). Written comments were received from nine commentators and IRRC. A detailed description of comments, along with responses, is contained in the Department's Comment and Response Document which is available from the Bureau of Mining and Reclamation at the address shown in Section B of this Preamble. A summary of the comments and responses on the proposed rulemaking is presented as follows.

§ 77.51. License requirement.

One commentator stated that § 77.51(b)(2) and (d) contain the language "when required by the act" and recommends the specific sections of the act be cited or the Board include the specific requirement in the regulation. The Board agrees that the language is vague and has revised § 77.51(b)(2) and (d) to cite section 5(e) of the act.

§ 77.102. Compliance with existing permits.

One commentator is opposed to the language of proposed § 77.102 granting the Department authority to require modification to existing approved and permitted mining and reclamation plans. The commentator stated that the current conditions of the existing permits provide the language and authority for the Department to assure reclamation will be completed. The Board agrees with the comment that the current conditions in permits issued prior to March 17, 1990, provide the language and authority for the Department to assure reclamation will be concurrent and completed. The Department has the authority under the Noncoal SMCRA and the permit conditions to adjust the bond requirements on overburden storage which could be used for concurrent reclamation. The Board has withdrawn the proposed amendments to § 77.102.

One commentator recommended that all quarries be reclaimed and that Federal and State funds be made available for municipalities to reclaim abandoned quarries. The Board agrees with the commentator that quarries should be reclaimed. Reclamation is required for all quarry areas affected since the effective date of the Noncoal SMCRA (January 1, 1972). However, there is no mechanism to provide State or Federal funding to municipalities to reclaim abandoned quarries.

Other commentators suggested that the proposed language be modified or that a cross section reference be made to applicable concurrent reclamation requirements. Another commentator stated that the proposed language might cause premature closing of some mining operations. With the withdrawal of the proposed amendment, other revisions will not be necessary.

§ 77.108. Permit for small noncoal operations.

Five commentators questioned the proposed increase in yearly tonnage for small noncoal operations from 2,000 tons per year per operator to 10,000 tons per year per site. One commentator states that the entities likely to make use of the increased tonnage limits will be new to the mining business, have limited knowledge or experience and may have a negative impact on the environment. Other commentators state that an increase in yearly tonnage limits will result in a larger cumulative environmental impact and could cause significant fish and wildlife impacts. Another commentator recommended the same level of environmental assessment and protection for threatened and endangered species and waters of this Commonwealth and their affiliated uses as presently provided for operations producing more than 2,000 tons per year.

In addition, concerns were expressed that the Department should explain why more stringent permit requirements are no longer needed for operations between 2,000 tons per year and 10,000 tons per year, specifically hydrology and geology descriptions, groundwater and surface water information, operational information, maps and plans required in Subchapters G and H (relating to information on environmental resources; and requirements for operation and reclamation plan). One commentator claimed that the Department had not provided an explanation on how it determined that waiving permit requirements under section 26(a) of the Noncoal SMCRA (52 P. S. § 3326(a)) will have an insignificant affect upon safety and protection of life, health, property and the environment. Proposed § 77.108(f) provided exemptions from newspaper notice for small noncoal permits and bond releases. The commentator recommended that the

Department provide newspaper notice or provide documentation of insignificant effects on safety, and the like.

The Board disagrees with the commentators that raising the tonnage limit for small noncoal operations from 2,000 tons (1,814 metric tons) per year to 10,000 tons (9,070 metric tons) per year will have a significant impact on safety and protection of life, health, property and the environment.

Noncoal operators which normally produce 10,000 tons (9,070 metric tons) per year or less are usually mining

shale, flagstone, topsoil or sand and gravel. These operations typically do not pump or encounter groundwater. In most cases the noncoal mineral is for local use.

Adverse environmental impacts, including significant impacts on fish and wildlife, will not occur due to the increased tonnage. The area excavated to remove 10,000 tons (9,070 metric tons) of material is very small. A typical shale operation with a 10 foot (3.05 meters) highwall will only need to excavate 0.27 acres (0.11 hectare) to remove 10,000 tons (9,070 metric tons). (See Table 1.)

Table 1
Tonnage vs. Area Affected (Excavation Area)*

Production Per Year		5 Foot (1.52 meters) Highwall		10 Foot (3.05 Meters) Highwall		20 Foot (6.10 Meters) Highwall	
Tons	(Metric Tons)	Acres	(hectare)	Acres	(hectare)	Acres	(hectare)
2,000	(1,814)	0.11	(0.04)	0.05	(0.02)	0.03	(0.01)
5,000	(4,535)	0.27	(0.11)	0.14	(0.06)	0.07	(0.03)
10,000	(9,970)	0.54	(0.22)	0.27	(0.11)	0.14	(0.16)

*Based on shale with a specific gravity of 2.72. Most other minerals mined in this Commonwealth will have a specific gravity within 10% of shale.

Under § 77.108(e)(4) reclamation must be conducted concurrently with mining operations on a one-for-one basis—1 acre (0.41 hectare) reclaimed for 1 acre (0.41 hectare) affected, unless the operator demonstrates, to the Department's satisfaction, an acceptable alternative for achieving concurrent reclamation. The majority of small noncoal operations which have been permitted since this regulation was adopted (March 17, 1990) have been limited to only 1 acre (0.41 hectare) of unreclaimed area at any time. It would take almost 2 years of excavation, with a 5 foot (1.52 meters) highwall, or approximately 3 1/2 years of excavation, with a 10 foot (3.05 meters) highwall, to produce a 1 acre excavation. The increase in tonnage from 2,000 tons (1,814 metric tons) to 10,000 tons (9,070 metric tons) per year will not increase the typical size of the area of earth disturbance for a small noncoal operation. The operation, in most situations, will only result in the mining operation being developed and reclaimed at a quicker pace. Thus the excavated and unreclaimed area of a small noncoal operation at any given time should not increase and thus not result in any increased impact to life, health, property or the environment from the rise in the tonnage figure.

The Board has retained the proposed 10,000 tons (9,070 metric tons) per year limit for small noncoal operations in § 77.108 for final rulemaking. The Board has added other provisions to limit the potential for increased impacts on the public and the environment. The language in § 77.108(e)(4) has been modified to make it clear that no more than 1 acre (0.41 hectare) of mineral extraction area may be unreclaimed unless an acceptable plan for concurrent reclamation is demonstrated. To contain the overall size of these operations, a new § 77.108(j) is added to limit the maximum permit acreage to 5 acres (2.02 hectare). In addition, subsection (e)(11) has been revised to require all blasting activity to conform to the same standards applicable to larger noncoal sites. These permits will also be reviewed in accordance with the criteria applicable to larger operations, including an assessment of potential impacts on threatened and endangered species.

As explained previously, the Department believes that there will be no significant effect on safety and the protection of life, health, property and the environment due to the increased tonnage limit. Therefore, the Department feels that there is no need to require public notice in a newspaper.

§ 77.109. Noncoal exploration activities.

The commentators recommend that § 77.109(b)(2) be revised to insert the word "approximate" before "...locations of drill holes, exploratory pits, trenches, and excavations" since it is not possible to project the exact location of each activity and that the area is already defined on the map. The Board agrees with the commentators that the word "approximate" should be inserted in § 77.109(b)(2). This section has been revised.

One commentator suggested that the requirement for the purpose of testing in proposed § 77.109(b)(5) be deleted since testing is necessary to determine the economic suitability of the material and needs no justification or explanation. The Board disagrees with the commentator regarding the need to identify the testing methods in § 77.109(b)(5). Different test methods require different amounts of material; therefore, the Department needs to know the test method so that it may determine the size of the exploration area and excavations which will be needed. The proposed language of § 77.109(b)(5) has been retained.

Two commentators suggested that the requirement to "avoid" disturbance of wetland areas be replaced by "minimize" disturbance of wetland areas in § 77.109(g)(3). The Board disagrees with the commentators regarding § 77.109(g)(3). The replacement of "Avoid" with "Minimize" would allow disturbance of wetlands which cannot be accomplished without a permit under Chapter 105 (relating to dam safety and waterway management). The phrase "Avoid disturbance of wetland areas" has been retained for final rulemaking.

One commentator recommended that the language of § 77.109(b)(7) which allows exploration by drilling methods to proceed 10 days after the information is submitted

to the Department, unless otherwise notified by the Department be deleted and more appropriately be included in § 77.109(c). The commentator also recommended that § 77.109(h) provide a specific time period requirement for revegetation. The Board agrees with the commentator that the requirements of § 77.109(b)(7) more appropriately belong in subsection (c). The appropriate language has been transferred. The Board also agrees with the commentator that § 77.109(h) should provide a specific time period for revegetation. This section has been revised to require regrading within 30 days after completion of exploration and to require revegetation within the first planting season after exploration is completed.

§ 77.110. Permit waiver—oil and gas well site development

One commentator recognized that the proposed language for § 77.110 clarifies that activities regulated by the Oil and Gas Act are not regulated as surface mining activities. The Board appreciates the commentator's support on the proposed language. The proposed language has been retained.

§ 77.164. Personal injury and property damage insurance information

One commentator stated that the proposed language "when required by the act" in § 77.164 is vague and recommends that the specific sections of the Noncoal SMCRA be cited. The Board agrees and has revised § 77.164 to cite section 5(e) of the Noncoal SMCRA.

§ 77.194. Requirement to file a certification of liability insurance

One commentator stated that the maximum yearly tonnage limit in § 77.194 should be made consistent with other tonnage limits elsewhere in the final-form regulations. They believed that the failure to make a tonnage change to § 77.194 was most likely an oversight. The failure to amend this section was not due to an oversight. The requirement to file a certification of liability insurance for operators who extract more than 2,000 tons (1,814 metric tons) of marketable minerals yearly is set by section 5(e) of the Noncoal SMCRA and cannot be changed by regulation.

§ 77.231. Terms and conditions for liability insurance

One commentator stated that the proposed language "when required by the act" in § 77.231(a) is vague and that the specific sections of the act be cited. The Board agrees and has revised § 77.231(a) to cite section 5(e) of the Noncoal SMCRA.

§ 77.403. Description of hydrology and geology—general requirements.

Three commentators suggested that proposed § 77.403(b) be modified to include "potential to adversely impact waters of this Commonwealth and their affiliated uses" and to protect wetlands. One commentator also recommended that the phrase "to the extent necessary for the type of noncoal operation for the Department to evaluate the impacts of the operation" in § 77.403(a) is not clear as to whether the "extent necessary" is relative to the type of noncoal operation or the amount of information required for the description of the geology and hydrology. The Board agrees with the commentators regarding the scope of the Department's authority to require modeling under § 77.403(b). This section has been revised to require modeling if needed to evaluate adverse impacts on waters of this Commonwealth and their affiliated uses, including wetlands. The Board

agrees and has revised § 77.403(a) to make it clear that the phrase "to the extent necessary" refers to the amount of information necessary to enable the Department to evaluate the impacts of the type of operation.

§ 77.456. Reclamation information

One commentator suggested that the current language of § 77.456 adequately addresses the issue of reclamation timetables for proposed mining operations. With reference to the introductory language of § 77.456, the Board agrees that the current language is adequate. The Board has retained the original introductory language of § 77.456. Nevertheless, the Board believes that the timetable requirements of § 77.456(l) should cross reference § 77.595 in order to make it clear that the operator is to plan for reclamation concurrent with the progress of the proposed operation to the greatest extent possible.

§ 77.504. Distance limitations and areas designated as unsuitable for mining.

One commentator suggested that language should be added stating that sites permitted and bonded prior to these amendments are exempt from subsequent distance limitations of § 77.504(a) established as unsuitable for mining. The Department assumes that the commentator is referring to setback distances for noncoal surface mining other than pit areas permitted and bonded prior to the enactment of the Noncoal SMCRA. Section 11(c) of the Noncoal SMCRA establishes distance limitations where surface mining activities are prohibited. The Noncoal SMCRA does not provide a broad exemption for surface mining operations which were permitted and bonded prior to the effective date of the Noncoal SMCRA. However, there are provisions under section 11(e) of the Noncoal SMCRA whereby the Department may, on a case-by-case basis, grant a waiver to operate within the distance limitations. Section 77.504(a) reflects these standards and cannot go beyond them.

§ 77.562. Preblasting surveys

Two commentators suggested that the following language be added to § 77.562(b): "If no blasting has taken place within 1-calendar year since the original or subsequent renotifications of the blasting schedule to the public and residents within 1,000 feet, the operator will offer preblast surveys at least 30 days before the resumption of blasting." The commentator felt that the word resumption needed a definitive timetable. The term "resumption of blasting" as used in the proposed regulation, does not refer to blasting when the operation has no need to conduct blasting for an expanded period of time. It was intended to refer to operations when blasting has been ceased by the Department because the operator did not conduct preblast surveys based on anticipated blasting levels, and subsequently has exceeded those levels. Section 77.562(b) has been rewritten to clearly tie the resumption of the blasting to the requirements of § 77.562(a)(3)(i). The language proposed by the commentators does not address the intent of this section.

§ 77.803. Nature of a general permit; substitution for individual applications and permits.

One commentator recommended that § 77.803 be modified to reflect that not all general permits will require registration by substituting the phrase "is authorized to operate under" for "may only use". The Board agrees that the phrase "is authorized to operate under" is more appropriate and has revised § 77.803(c) accordingly. Upon further reflection the Department has concluded that registration is a necessary tool for implementation of a general permit. Registration will, at a minimum, provide

the Department with basic information (such as, applicant, location, and qualifications). In addition the Department will be able to verify compliance with section 8 of the Noncoal SMCRA (32 P. S. § 3308) which requires an operator to demonstrate compliance with the Noncoal SMCRA and the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a).

§ 77.804. *Contents of general permits.*

One commentator recommended that § 77.804 state that each general permit will specify whether registration is required and when public notice in a newspaper will be required. The commentator also recommended that a time frame be included within which the Department will provide notification of applicant approval when registration is required. The commentator also questioned how the applicant will be notified of approval. The Board agrees that a time period for notification is appropriate and has revised § 77.804(6) to require written notice as to whether the registration has been approved.

The Board agrees that each general permit specify requirements, if any, for public notice. Section 77.804(8) has been modified accordingly. Registration requirements are addressed in the revisions to § 77.806.

§ 77.806. *Registration requirements.*

One commentator stated that proposed § 77.806(e) prohibits activities under a general permit until "notice of Department approval of registration" while other general permit programs administrated by the Department only require the applicant to register by providing specific information to the Department. The commentator also noted that the type of "notice of Department approval" is not specified nor is there a specific time for the Department to act on a request for registration.

The Board disagrees with the commentator that notice of approval of registration should not be required. The Department believes that notification is necessary to afford the Department the opportunity to ensure that the applicant is qualified to operate under the general permit and to allow for a compliance check. There are other Department General Permits which also require review and approval of registration (such as, NPDES General Permits).

Another commentator recommended that the word "applications" replace "requests" in § 77.806(c) to clarify registration requirements. The commentator also recommended that § 77.806(d), which deals primarily with initial requests for registration, would be more appropriate as a new § 77.807 titled "Change of Ownership" with proposed § 77.807 renumbered as § 77.808. The Board agrees with the commentator that § 77.806(d) is the only subsection that deals with a revision of an approved activity and would be more appropriate as a separate section. Section 77.806(d) has been deleted and the language restated as a new § 77.807 entitled "change of ownership." Section 77.807 (relating to compliance with permit conditions, regulations and laws) has been renumbered as § 77.808.

Subchapter J. General Permits—General Comment

One commentator opposed the implementation of this subchapter unless more specific limitations are imposed under general permits. These may include length of permit, maximum tonnage allowed, area of disturbance, bond rates, reclamation requirements and blasting. The commentator is concerned that the proposed wording will constitute a double standard between operators who are operating under a small or large noncoal permit and

those who would operate under a general permit. The Board disagrees with the commentator regarding specifics on limitations. The types of limitations suggested by the commentator will be addressed, when appropriate, within proposed individual general permits. When a general permit would apply to activities currently covered by an existing permit there is nothing in the regulations which would preclude the operator from obtaining a registration under the general permit.

F. *Benefits, Costs and Compliance*

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

Benefits

These amendments revise noncoal mining regulations which impose disproportionate economic costs, regulations which are obsolete or are redundant, regulations which are prescriptive or technology specific, and regulations which lack clarity. The noncoal mining industry, the Department and the public will benefit from these amendments.

Benefits to the general public cannot be quantified. They include more timely reclamation of highwalls which eliminates potential safety hazards and better documentation of Department decisions to issue permits through the requirement for the Department to provide written findings.

The benefits to the regulated community will primarily be a savings in permitting costs as follows:

	Site/yr.	Savings/ site	Savings
—Less prescriptive permit application requirements based on type of operation	20	\$2,000	\$40,000
—General Permit compared to large noncoal permit application	10	\$4,000	\$40,000
—Large noncoal operation obtaining small noncoal permits	10	\$3,000	\$30,000

The Department will benefit by a savings through a reduction in the time and effort to review permit applications as follows:

—Reduced review times with general permits:

10 large	110 hrs.	\$15/hr.	\$16,500	\$16,500
5 small	5 hrs.	\$15/hr.	\$1,500	\$1,500

—Review of hydrology/geology information based on reduced level of detail for certain types of noncoal operations.

—Large noncoal operations obtaining small noncoal permits.

Compliance Costs

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

Compliance Assistance Plan

Since noncoal mining regulations are an established program in this Commonwealth, compliance assistance will be limited to an effort to inform the industry of the specific changes in the program. This can be accomplished by mailing fact sheets directly to mine operators. If necessary, regional roundtable meetings with the industry will be arranged.

Paperwork Requirements

The amendments will result in decreased paperwork for the regulated community and the Department.

G. *Sunset Review*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 4, 1997, the Department submitted a copy of the proposed rulemaking to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

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

These final-form regulations were deemed approved by the House and Senate Environmental Resources and Energy Committees on November 25, 1997. IRRC met on December 4, 1997, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

I. *Findings of the Board*

The Board finds that:

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

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

(3) These amendments do not enlarge the purpose of the proposal published at 27 Pa.B. 875.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

J. *Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 77, are amended by amending §§ 77.1, 77.51, 77.53, 77.54, 77.108—77.110, 77.126, 77.128, 77.142, 77.144, 77.164, 77.165, 77.204, 77.205, 77.231, 77.241—77.243, 77.401, 77.403, 77.456, 77.461, 77.502—77.504, 77.527, 77.562, 77.564, 77.572, 77.594 and 77.595 and by adding §§ 77.801—77.807 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(*Editor's note:* The proposal to amend § 77.102 (relating to compliance with existing permits), included in the proposal at 27 Pa.B. 875, has been withdrawn by the Board.)

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and

the Office of Attorney General for review and approval as to legality and form as required by law.

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

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

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

JAMES M. SEIF,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6878 (December 27, 1997).)

Fiscal Note: Fiscal Note 7-303 remains valid for the final adoption of the subject regulations.

Annex A
TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE I. LAND RESOURCES
CHAPTER 77. NONCOAL MINING
Subchapter A. GENERAL PROVISIONS

§ 77.1. Definitions.

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

* * * * *

General permit—A permit that is used for any category of noncoal surface mining activities authorized by the act if the Department determines that the activities in the category are similar in nature and can be adequately regulated utilizing standardized specifications and conditions. A general permit shall specify the design, operating and monitoring requirements necessary to adequately protect life, health, property and the environment and under which the surface mining activities may be conducted.

* * * * *

Subchapter B. SURFACE MINING OPERATOR'S LICENSE

§ 77.51. License requirement.

(a) *Operator's license required.* A person who conducts noncoal surface mining as an operator within this Commonwealth shall first obtain a noncoal surface mining operator's license from the Department.

(b) *Noncoal surface mining operator's license application.* Application for license shall be made in writing on forms prepared and furnished by the Department and contain information pertaining to:

- (1) Identification of ownership.
- (2) Public liability insurance when required by section 5(e) of the act (52 P. S. § 3305(e)).
- (3) Compliance information.

(c) *Identification of ownership.* The application shall indicate whether the applicant is a corporation, partner-

ship, single proprietorship, association or other business entity. For business entities other than single proprietorships, the application shall contain the following information if applicable:

(1) The name and address of the applicant, including partners, associates, officers, parent or subsidiary corporations.

(2) The names under which an applicant listed in paragraph (1) previously operated a mining operation in this Commonwealth within 5 years preceding the date of application.

(d) *Public liability insurance.* When required by section 5(e) of the act, the applicant shall provide a certificate of insurance for the term of the license covering surface mining activities of the applicant in this Commonwealth under § 77.231 (relating to terms and conditions for liability insurance).

(e) *Refusal to issue or renew license.* The Department will not issue a noncoal surface mining operator's license or renew or amend a license if it finds, after investigation and an opportunity for informal hearing, that a person, partner, associate, officer, parent corporation or subsidiary corporation has been subject to a bond forfeiture under the act and environmental acts or has failed to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree under the act and environmental acts. The Department will not renew a license for an operator who uses the provisions for payment in lieu of bond unless the operator submits his annual payment with the license renewal application. A person who opposes the Department's decision on issuance or renewal of a license has the burden of proof.

(f) *License renewal requirements.*

(1) A person licensed as a noncoal surface mining operator shall renew the license annually according to the schedule established by the Department.

(2) Notice of license renewal and filing of an application for license renewal shall conform to the following:

(i) The Department will notify the licensee in writing at least 60 days prior to the expiration of the current license to renew the license. The applicant shall be responsible for filing a license renewal application prior to the expiration of the current license.

(ii) If the Department does not intend to renew a license, the Department will notify the licensee, a minimum of 60 days prior to expiration of the license. This section does not prevent the Department from not renewing the license for violations occurring or continuing within this 60-day period if the Department provides an opportunity for an informal hearing.

§ 77.53. Suspension and revocation.

(a) The Department may suspend or revoke a license for a reason listed in § 77.51(e) (relating to license requirement).

(b) If the Department intends to revoke or suspend a license, it will provide an opportunity for an informal hearing before suspending or revoking the license. The Department will notify the licensee of its intent to revoke or suspend a license and of the opportunity for an informal hearing at least 15 days prior to revoking or suspending the license unless the Department determines that a shorter period is in the public interest.

§ 77.54. Fees.

Unless otherwise established by the act, the following license fees apply:

(1) The initial and annual license renewal fee for persons mining 2,000 tons (1,814 metric tons) or less of marketable noncoal minerals is \$50.

(2) The initial application fee for persons mining more than 2,000 marketable tons of noncoal minerals per year is \$500, and the annual renewal license fee is \$300.

**Subchapter C. PERMITS AND PERMIT APPLICATIONS
GENERAL**

§ 77.108. Permit for small noncoal operations.

(a) A person who intends to conduct noncoal surface mining activities from which the total weight of mineral mined per year is less than 10,000 tons (9,070 metric tons), prior to conducting the activities, shall apply in writing for a small noncoal permit on forms furnished by the Department.

(b) In lieu of the application requirements of this subchapter and Subchapters G and H (relating to information on environmental resources; and requirements for operation and reclamation plan), an application for a small noncoal permit shall include the following:

* * * * *

(3) Information and documents required by § 77.163 (relating to right of entry).

* * * * *

(9) A United States Geological Survey topographical map or aerial photograph approved by the Department with the proposed permit area outlined.

* * * * *

(11) A notarized statement signed by the applicant stating that the yearly production from the proposed mining activity will not exceed 10,000 tons (9,070 metric tons).

(12) Other information the Department deems relevant.

* * * * *

(d) A person operating under this section shall comply with Subchapter B (relating to surface mining operator's license).

(e) In lieu of the requirements of Subchapter I (relating to environmental protection performance standards), this permit has the following conditions:

* * * * *

(3) The operating face of a bench may not exceed a height of 25 feet (7.62 meters). Multiple benching shall be developed as necessary.

(4) Reclamation shall be conducted concurrently with mining operations on a one for one basis—1 acre (0.41 hectare) reclaimed for each 1 acre (0.41 hectare) of area affected, with no more than 1 acre (0.41 hectare) of mineral extraction area unreclaimed at any time, unless the operator demonstrates, to the Department's satisfaction, acceptable alternate concurrent reclamation.

* * * * *

(7) The permittee shall identify this operation during its lifetime by constructing and maintaining a weather resistant sign with a minimum size of 2 feet by 3 feet

(60.96 centimeters by 91.44 centimeters) to be located immediately adjacent to the closest public highway, from which it shall be clearly visible, at the junction of that public highway with the access road to the operation. The sign shall be painted with a light background and show, in a contrasting color, the name of the permittee and the permit number under which the operation is being conducted. The letters and numbers shall be a minimum height of 1 1/2 inches (3.81 centimeters).

(8) Topsoil, as needed for reclamation, shall be conserved onsite for replacement on affected areas upon completion of mining and prior to revegetation. Topsoil in excess of that needed for reclamation, as demonstrated by the applicant, may be removed from the site.

(9) The permittee shall comply with the distance requirements of § 77.504 (relating to distance limitations and areas designated as unsuitable for mining).

(10) The permittee shall comply with other conditions the Department may require to assure compliance with the act and this title.

(11) Blasting shall conform to the requirements of §§ 77.561—77.565 (relating to use of explosives). If the blasting is conducted at a scale distance of 70 or greater, the blasting does not have to be seismographed and the permittee does not have to comply with § 77.562 and (relating to preblasting surveys and public notice of blasting schedule). Scale distance (D_s) shall be determined by the formula $W = (D/D_s)^2$ where W equals the maximum weight of explosives, in pounds, to be detonated in any 8 millisecond period or greater and D equals the distance, in feet, from the blast to the nearest dwelling, school, church, commercial or institutional building.

(f) The Department will publish its decision on a small noncoal permit application and a final bond release in the *Pennsylvania Bulletin*. Permit applications and bond releases under this section are exempt from the newspaper public notice requirements of section 10(a) of the act (52 P. S. § 3310(a)).

(g) It is unlawful for a person who has obtained a small noncoal surface mining permit to mine more than 10,000 tons (9,070 metric tons) in a 1-year period from a permit issued under this section.

(h) A person operating under a small noncoal permit shall submit a bond in accordance with the bond rates established by the Department. The minimum bond for a small noncoal permit is \$1,000.

(i) Bond release shall be based on the reclamation requirements under this section in lieu of §§ 77.241—77.243 (relating to release of bonds).

(j) The maximum permit area is 5 acres (2.02 hectares) for areas authorized for mining under this section.

(k) Small noncoal mining permits or general permit authorizations issued prior to January 31, 1998, remain valid if all mining activities remain within the area covered by the permit as of January 31, 1998, and if the total weight of mineral mined per year does not exceed 2,000 tons (1,814 metric tons).

(l) The Department may by agreement delegate to a conservation district one or more of its regulatory functions under the act for surface mining operators licensed to mine less than 2,000 tons (1,814 metric tons) of marketable minerals per year. A conservation district acting under a delegation agreement has the same powers

and duties otherwise vested in the Department to implement the act to the extent delegated by agreement.

(m) An application for a small noncoal permit shall be reviewed, approved or denied in accordance with § 77.126(a)(1)—(8) and (10) (relating to criteria for permit approval or denial).

§ 77.109. Noncoal exploration activities.

(a) A person who intends to conduct noncoal exploration outside an existing permit shall file with the Department a written notice of intention to explore for each exploration area at least 10 days prior to the start of exploration activities on forms provided by the Department.

(b) The notice shall include:

(1) The name, address and telephone number of the person seeking to explore.

(2) A map, at a scale of 1:24,000, of the exploration area showing the extent of the exploration area and approximate locations of drill holes, exploratory pits, trenches and excavations.

(3) A statement of the period of intended exploration.

(4) The method of exploration and types of equipment to be used.

(5) The purpose of testing.

(6) The amount of mineral needed for testing (if exploration is by test pit, trench or excavation).

(c) Exploration by drilling methods may proceed 10 days after the notice of intent to explore form is submitted to the Department unless notified otherwise by the Department to provide other information to assure compliance with the environmental acts (for example—the location of access roads) or if the area is located within the distance limitations of § 77.504 (relating to distance limitations and areas designated unsuitable for mining).

(d) The Department will, except as otherwise provided in § 77.124 (relating to public availability of information in permit applications), place the notices on public file and make them available for public inspection and copying during regular office hours at the established fee.

(e) A person who intends to conduct noncoal exploration operations in which noncoal minerals will be removed shall, prior to conducting the exploration, obtain a permit under this chapter. Prior to removal of minerals, the Department may waive the requirement for the permit to enable the testing and analysis of noncoal properties.

(f) A person who conducts noncoal exploration activities will observe the distance limitations under § 77.504 (relating to distance limitations and areas designated unsuitable for mining).

(g) Exploration activities shall be conducted to accomplish the following:

(1) To minimize environmental impacts on roadways and vegetation.

(2) To provide erosion controls for excavated areas, including access roads, in accordance with Chapter 102 (relating to erosion control).

(3) To avoid disturbance of wetland areas.

(h) The areas affected by the noncoal exploration shall be graded to approximate original contour when possible or restored to a slope not to exceed 35° unless approved by the Department under § 77.594(2)(v) (relating to final

slopes) within 30 days after completion of exploration, and will contain no depressions which will impound water. Drill holes shall be sealed under § 77.503 (relating to casing and sealing of drilled holes). The affected areas shall be revegetated within the first planting season after completion of exploration.

(i) Noncoal exploration activities shall be subject to the applicable inspection and enforcement provisions of the Department, and Subchapters E and F (relating to civil penalties for noncoal mining activities; and enforcement and inspection).

(j) Information will be made available to the public as follows.

(1) Except as provided in paragraph (2), information submitted to the Department under this section will be made available for public inspection and copying at the appropriate district mining office.

(2) Information which pertains only to the analysis of the chemical and physical properties of the mineral (except information regarding the mineral or elemental content that is potentially toxic to the environment) will be kept confidential and will not be made a matter of public record.

§ 77.110. Permit waiver—oil and gas well site development.

This chapter does not apply to a borrow area where minerals are extracted solely for the purpose of oil and gas well development, including access road construction, if the owner or operator of the well meets section 603.1 of the Oil and Gas Act (58 P. S. § 601.603).

REVIEW, PUBLIC PARTICIPATION, ITEMS AND CONDITIONS OF PERMIT APPLICATIONS

§ 77.126. Criteria for permit approval or denial.

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

(1) The permit application is accurate and complete and that the requirements of the act, the environmental acts and this chapter have been complied with.

(2) The applicant has demonstrated that the noncoal mining activities can be reasonably accomplished as required by the act and this chapter under the operation and reclamation plan contained in the application.

(3) The applicant has demonstrated that there is no presumptive evidence of potential pollution of the waters of this Commonwealth.

(4) The proposed permit area, as defined in § 77.1 (relating to definitions) for surface mining activities—unless the requirements of § 77.504 (relating to distance limitations and areas designated as unsuitable for mining) are demonstrated—is:

(i) Not within 100 feet (30.48 meters) of the outside right-of-way line of a public highway.

(ii) Not within 300 feet (91.44 meters) of an occupied dwelling house or commercial or industrial building unless released by the owner thereof.

(iii) Not within 100 feet (30.48 meters) of the bank of a perennial or intermittent stream.

(iv) Not within 300 feet (91.44 meters) of a public building, school or community or institutional building.

(v) Not within 100 feet (30.48 meters) of a cemetery.

(vi) Not within 300 feet (91.44 meters) of a public park.

(vii) Not within 125 feet (38.1 meters) of an oil or gas well.

(viii) Not within an area designated as unsuitable for noncoal surface mining activities under § 77.504.

(5) Prior to approval of the bond under Subchapter D (relating to bonding and insurance requirements), a right of entry has been obtained if required by law, from the landowners for the initial incremental bond phase parcel for land to be affected by the surface mining activities under § 77.163 (relating to right of entry).

(6) The applicant or related party, as indicated by past or continuing violations, has not shown a lack of ability or intention to comply with the act or the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31).

(7) A person other than the applicant, including an independent subcontractor, who is proposed to operate under the permit is listed in the application and is subject to approval by the Department prior to engaging in surface mining operations. The person is jointly and severally liable with the permittee for the violations of the act as the permittee is charged and in which the person participates.

(8) The applicant has submitted proof that a violation related to mining by the applicant or by a related party of one or more of the acts, rules, regulations, permits or licenses of the Department has been corrected or is in the process of being corrected to the satisfaction of the Department, whether or not the violation relates to an adjudicated proceeding, agreement, consent order, or decree, or which resulted in a cease order or civil penalty assessment.

(9) The proposed postmining land use of the permit area meets § 77.462 (relating to postmining land uses and alternative restoration).

(10) The proposed activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their known critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544), the Wild Resource Conservation Act (32 P. S. §§ 5301—5314), 30 Pa.C.S. (relating to the Fish and Boat Code) AND 34 Pa.C.S. (relating to the Game and Wildlife Code).

(11) The applicant has obtained a noncoal license.

(b) No incremental phase approval of the permit will be granted to conduct mining or reclamation operations, or permission to expand mining or reclamation operations within a permit area which has been limited to a portion or phase of the entire area until the applicant:

(1) Has filed with the Department a bond under § 77.193 (relating to requirement to file a bond).

(2) Has met the requirements of subsection (a)(5)—(8).

§ 77.128. Permit terms.

(a) A permit will be issued for the duration of the mining and reclamation operation except for the NPDES permit, which shall be renewed every 5 years.

(b) A permit will terminate if the permittee has not begun the noncoal mining activities covered by the permit within 3 years of the issuance of the permit. The Department may grant reasonable extensions of time for commencement of these activities upon receipt of a

written statement showing that the extensions of time are necessary if litigation precludes the commencement or threatens substantial economic loss to the permittee or if there are conditions beyond the control and without the fault or negligence of the permittee. Requests for extensions shall be submitted to the Department prior to expiration of the permit. If a permit has not been activated within 3 years or the permittee has not been granted an extension, the permittee may apply for a permit renewal.

(c) A permit renewal application shall be filed under § 77.143 (relating to permit renewals).

PERMIT REVIEWS, RENEWALS, REVISIONS AND TRANSFERS

§ 77.142. Public notice of permit revision.

A permit revision request is subject to the notice requirements of § 77.121 (relating to public notices of filing of permit applications) under the following circumstances:

- (1) For surface mining activities:
 - (i) Discharging to a different watershed or a change in water treatment facility design which would result in a change in effluent limits or additional discharge points.
 - (ii) The change of postmining land use.
 - (iii) A change in the type of reclamation (for example—approximate original contour, terrace, water impoundment or other alternative reclamation).
 - (iv) A physical change in the mine configuration. Physical changes include stream diversion structures, new or expanded haul road connections to a public highway, elimination of public highways and increases in approved pit depth.
 - (v) The addition of blasting to the operation.
 - (vi) The addition of mineral processing to the mining activity.
- (2) For underground mining activities:
 - (i) Discharging to a different watershed or a change in water treatment facility design which would result in a change in effluent limits or additional discharge points.
 - (ii) A physical change in the mine configuration. Physical changes include stream diversion structures, new or expanded haul road connections to a public highway, elimination of public highways and new openings.
 - (iii) A change to the postmining land use.
 - (iv) The addition of mineral processing to the mining activity.

§ 77.144. Transfer of permit.

- (a) A transfer, assignment or sale of the rights granted under a permit may not be made, except as provided in this section.
- (b) Permits may be reissued in a new name if there is no change in legal entity.
- (c) The Department may allow a permittee to transfer a permit to another operator if the successor operator:
 - (1) Is entitled to a permit under the environmental acts, the act, regulations adopted thereunder and the terms and conditions of permits issued thereunder.
 - (2) Assumes liability for reclamation, water pollution, planting and other responsibilities under the law, rules and regulations and the terms and conditions of the permit from the date of original issuance of the permit.

(3) Furnishes the Department with an appropriate bond in the amount specified by the Department under Subchapter D (relating to bonding and insurance requirements).

(4) Submits proof of publication as required by § 77.121 (relating to public notices of filing of permit applications).

(5) Submits additional information to enable the Department to determine that the applicant is able to operate the mine in a manner complying with the environmental acts.

REQUIREMENTS FOR LEGAL, FINANCIAL COMPLIANCE AND RELATED INFORMATION

§ 77.164. Personal injury and property damage insurance information.

An application for noncoal mining activities, when required by section 5(e) of the act (52 P.S. § 3305(e)), shall contain proof of liability insurance under § 77.231 (relating to terms and conditions for liability insurance).

§ 77.165. Proof of publication.

(a) An application shall contain an intent to publish noting that the advertisement requirement of § 77.121(a) (relating to public notices of filing of permit applications) is in the process of being satisfied. Prior to the issuance of the permit, and within 4 weeks after the last date of advertisement, the applicant shall submit a copy of the advertisements as required by § 77.121(a) or the original notarized proof of publication to the Department.

(b) Failure to submit the proof of publication under subsection (a) will result in the application not being complete and the Department will return the application to the applicant to start the process again.

Subchapter D. BONDING AND INSURANCE REQUIREMENTS

AMOUNT AND DURATION OF LIABILITY

§ 77.204. Period of liability.

(a) Liability under bonds posted for a noncoal mining activity shall continue for the duration of the mining activities and its reclamation as provided in the act, this chapter and the conditions of the permit for 5 years after completion of the mining and reclamation of the area, unless released in whole or in part prior thereto if the Department is satisfied that the reclamation covered by the bond has been accomplished as required by the act.

(b) The bond liability of the permittee shall include only those actions which the operator is obliged to take under the permit, including completion of the reclamation plan so that the land will be capable of supporting a postmining land use approved under § 77.653 (relating to postmining land use). Actions of third parties which are beyond the control and influence of the operator and for which the operator is not responsible under the permit need not be covered by the bond.

§ 77.205. Bond adjustments.

(a) The permittee shall deposit additional bond amounts upon notification by the Department if the existing bond does not meet the requirements of this subchapter for any reason, including, but not limited to, mining or operation changes, reclamation changes or changes in the cost of reclamation, restoration or abatement work.

(b) A permittee may request reduction of the required bond amount upon submission of evidence to the Depart-

ment proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the Department to complete the reclamation responsibilities and, therefore, warrants a reduction of the bond amount. The request will not be considered as a request for partial bond release under §§ 77.241—77.243 (relating to release of bonds).

(c) Periodically, after the date on which a bond was required to be submitted under this subchapter, the Department may determine the adequacy of bond amount requirements for mining operations and, if necessary, require additional bond amounts.

(d) The Department will notify the permittee, the surety and any person with a property interest in collateral who has requested notification of any proposed adjustment to the bond amount. The Department will also provide the permittee an opportunity for an informal conference on the proposed adjustment.

FORM, TERMS AND CONDITIONS OF BONDS AND INSURANCE

§ 77.231. Terms and conditions for liability insurance.

(a) A license applicant or licensee, when required by section 5(e) of the act (52 P. S. § 3305(e)), shall submit proof of liability insurance before a license is issued or renewed and before a permit is issued. The proof shall consist of a certificate issued by an insurance company authorized to do business in this Commonwealth, and the certificate may be filed at the time of license application and renewal thereof; or, otherwise annually filed with the Department certifying that the permittee has a public liability insurance policy in force covering the licensee's mining and reclamation operations in this Commonwealth.

(b) The insurance shall provide for personal injury and property damage protection in a total amount determined by the Department on a case by case basis, and adequate to compensate persons injured or property damaged as a result of the permittee's mining and reclamation operations and entitled to compensation under Pennsylvania law.

(c) If explosives are to be used by the permittee and loss, diminution in quantity or quality, contamination or interruption of public or private sources of water is possible as determined by the Department, the liability insurance shall include and the certificate shall provide a rider covering personal injury and property damage from these occurrences. The applicant may provide bond under subsection (i) in lieu of insurance to cover water supply loss, diminution, contamination or interruption.

(d) The insurance shall include a rider requiring that the insurer notify the Department whenever substantive changes are made in the policy, including termination or failure to renew.

(e) Minimum insurance coverage for bodily injury shall be \$300,000 per person and \$500,000 aggregate; and minimum insurance coverage for property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.

(f) The insurance coverage shall be maintained in full force for the duration of the permittee's mining and reclamation operation. The licensee shall submit annually proof of coverage. If a licensee fails to maintain the insurance, the Department will issue a notice of violation to the licensee requiring the licensee to submit proof of insurance coverage.

(g) Separate certificates of insurance may be submitted for general liability, blasting coverage and water loss coverage if the licensee is shown as the insured and not listed separately on the certificate as an additional insured.

(h) The certificate holder shall be solely the Department.

(i) Bond may be provided in lieu of liability insurance to cover replacements or restoration of water supplies as required under § 77.533 (relating to water rights and replacement).

(1) If the Department determines that the mining operation may affect a public or private water supply, the Department may require bond or additional insurance sufficient to replace the water supplies which could be affected as required under section 11(g) of the act (52 P. S. § 3311(g)).

(2) The bond shall be submitted on a form provided by the Department, and meet the requirements of this chapter.

RELEASE OF BONDS

§ 77.241. Scope.

Sections 77.242 and 77.243 (relating to procedures for seeking release of bond; and criteria and schedule for release of bond) set forth the procedures and criteria for release of bonds for mining and reclamation operations, unless otherwise specified by the terms and conditions of this chapter or by a general permit issued under this chapter.

§ 77.242. Procedures for seeking release of bond.

(a) *Release of bond.* The permittee may file an application with the Department for release of all or part of the bond liability applicable to a permit or designated phase of a permit area after reclamation, restoration and abatement work in a reclamation stage, as defined in § 77.243 (relating to criteria and schedule for release of bond), has been completed on the permit area or designated phase of a permit area, subject to the following conditions:

(1) Applications may be filed only at times or seasons that allow the Department to properly evaluate the reclamation operations reported to have been completed.

(2) Within 60 days after filing the application for release, the permittee shall submit proof of publication of the advertisement required by subsection (b). The proof of publication shall be considered part of the bond release application. If the proof of publication is not received within 60 days after filing the application for release of bond, the application will be considered incomplete and the Department may return the application with no further action.

(b) *Newspaper advertisement of application.* At the time of filing an application under this section, the permittee shall advertise the filing of the application in a newspaper of general circulation in the locality of the permit area. The advertisement shall:

(1) Be placed in the newspaper at least once a week for 4 consecutive weeks.

(2) Show the name of the permittee, including the number and date of issuance or renewal of the permit.

(3) Identify the location and the number of acres of the lands subject to the application.

(4) State the total amount of bond in effect for the permit area and the amount for which release is sought.

(5) Summarize the reclamation completed.

(c) *Surface landowners.* The application for bond release shall include copies of letters to the affected surface landowners notifying the surface landowners of the request for bond release.

(d) *Objections to proposed bond release.* Written objections to the proposed bond release and requests for a public hearing or an informal conference may be filed with the Department, by persons having an interest that is or may be adversely affected, within 30 days following the last advertisement of the filing of the application.

(e) *Inspection of reclamation work.* The Department will inspect and evaluate the reclamation work involved within 30 days after receiving a completed application for bond release, or as soon thereafter as possible.

(f) *Public hearing.* The Department will schedule a public hearing or informal conference if written objections are filed and a public hearing or informal conference is requested. The public hearing or informal conference shall be held in the locality of the permit area for which bond release is sought.

(1) Notice of a public hearing or informal conference shall be published in a newspaper of general circulation in the locality of the public hearing or informal conference, at least 2 weeks before the date of the public hearing or conference.

(2) The public hearing or informal conference will be held within 30 days from the date of the notice.

(3) An electronic or stenographic record may be made of the public hearing or informal conference and the record maintained for access by the parties, until final release of the bond, if requested in advance by a party in the public hearing or informal conference.

(g) *Review by Department.* Department review and decision will be as follows:

(1) The Department will consider, during inspection, evaluation and public hearing or informal conference decisions:

(i) Whether the permittee has met the criteria for release of the bond under § 77.243.

(ii) Whether the permittee has satisfactorily completed the requirements of the reclamation plan, or relevant portions thereof, and complied with the requirements of the act, this chapter and the conditions of the permit.

(iii) Whether pollution of surface and subsurface water is occurring or the continuance of present pollution, and the estimated cost of abating pollution.

(2) If a public hearing or informal conference has not been held under subsection (e), the Department will notify the permittee in writing of its decision to release or not to release all or part of the bond.

(3) If there has been a public hearing or informal conference held, the notification of the decision shall be made to the permittee, and other interested parties, within 30 days after conclusion of the public hearing or informal conference.

(4) The notice of the decision will state the reasons for the decision, recommend corrective actions necessary to secure the release and notify the permittee and interested parties of the right to file an appeal to the decision with the EHB an appeal shall be filed with the EHB under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and Chapter 1021 (relating to practice and procedures).

§ 77.243. Criteria and schedule for release of bond.

(a) A bond release or release from payment in lieu of a bond applicable to a permit area or designated phase of a permit area shall be released as follows:

(1) Up to 90% of the total amount of bond attributable to that portion of reclamation completed shall be released upon completion and approval by the Department for Reclamation Stage I.

(2) The balance shall be released for the entire permit area or designated phase of permit upon Department approval of Reclamation Stage II liability period.

(b) For the purposes of this section the following apply:

(1) Reclamation Stage I shall be deemed to have been completed when:

(i) The permittee completes backfilling, regrading and drainage control in accordance with the approved reclamation plan.

(ii) Topsoil has been replaced and revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met.

(iii) The lands have been stabilized to prevent accelerated erosion and sedimentation under Chapter 102 (relating to erosion control).

(iv) The permittee has successfully completed mining and reclamation operations in accordance with the approved reclamation plan, so that the land is capable of supporting postmining land use approved under § 77.653 (relating to postmining land use).

(v) The permittee has achieved compliance with the requirements of the environmental acts, this chapter and the conditions of the permits.

(2) Reclamation Stage II shall be deemed to be complete when the applicable liability period under § 77.204 (relating to period of liability) has expired.

(c) The Department will not release a bond amount deposited, or reduce the payment in lieu of bond if the release would reduce the total remaining amount of bond to an amount which would be insufficient for the Department to complete reclamation and to take measures that may be necessary to prevent adverse effects upon the environment or public health, safety or welfare under the environmental acts, the act, this chapter, the terms and conditions of the permits and orders of the Department.

(d) The publication of a Reclamation Stage I bond release request will be considered a request for final bond release for the purpose of public notice.

(e) The release of a bond by the Department does not constitute a waiver or release of other liability provided in law, nor does it abridge or alter rights of action or remedies of persons or municipalities existing in equity, or under criminal and civil common or statutory law.

Subchapter G. INFORMATION ON ENVIRONMENTAL RESOURCES

§ 77.401. Responsibilities.

A permit application shall contain a description of the existing premining resources within the proposed permit and adjacent area that may be affected by the proposed surface mining activities. The description shall include the information required in this subchapter. The Department may waive, wholly or in part, the requirements of this subchapter for any category of surface mining opera-

tion, if the Department determines that the requirement is not needed to evaluate impacts on public health and safety and the environment.

§ 77.403. Description of hydrology and geology—general requirements.

(a) To the extent necessary for the Department to evaluate the impacts of the type of noncoal operation, an application shall contain a description, under this section and §§ 77.404—77.407, of the geology, hydrology and water quality and quantity of surface waters and groundwaters within the general area, and water which will flow into or receive discharges of water from the general area. The information may be gathered from appropriate government agencies, if available.

(b) The use of modeling or other predictive techniques may be required by the Department as part of the permit application if the proposed mining activity has the potential to adversely impact water supplies, wetlands or waters of this Commonwealth and their affiliated uses.

Subchapter H. REQUIREMENTS FOR OPERATION AND RECLAMATION PLAN

§ 77.456. Reclamation information.

An application shall contain a plan for the reclamation of lands within the proposed permit area the following information:

(1) A timetable describing the steps to be taken in the reclamation plan and their relative sequence to each other to meet the requirements of § 77.595 (relating to concurrent reclamation).

(2) An estimate of the cost of reclamation of the proposed operation to be covered by a bond under Subchapter D (relating to bonding and insurance requirements), with supporting calculations for the estimates, under § 77.202 (relating to determination of bond amount).

(3) A plan for backfilling, soil stabilization, compacting and grading, or alternate land use with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area.

(4) A plan for removal, storage and redistribution of topsoil, subsoil and other material to meet the requirements of §§ 77.511—77.515 (relating to topsoil).

(5) A plan for revegetation as required in §§ 77.611—77.618 (relating to revegetation), including descriptions of the following:

- (i) The schedule of revegetation.
- (ii) The species and amounts per acre of seeds and seedlings to be used.
- (iii) The method to be used in planting and seeding.
- (iv) The mulching techniques, if required by the Department.
- (v) The irrigation, if appropriate, and pest and disease control measures, if any.
- (vi) The techniques proposed to be used to determine the success of revegetation as required in § 77.618 (relating to standards for successful revegetation).

(vii) A soil testing plan for determining nutrients and soil amendments as required by § 77.515 (relating to nutrients and soil amendments).

(6) A description of measures to be employed to ensure that debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of under

§ 77.596 (relating to covering coal and acid-forming and toxic-forming materials), and a description of the contingency plans which have been developed to preclude sustained combustion of the materials.

(7) A description, including appropriate cross sections and maps, of the measures to be used to plug, case or managed exploration holes, other bore holes, wells and other openings within the proposed permit area, under § 77.503 (relating to casing and sealing of drilled holes).

(8) When applicable, a description, including appropriate cross sections and maps of the measures to be used to close each underground mine opening under § 77.655 (relating to closing of underground openings).

§ 77.461. Dams, ponds, embankments and impoundments.

(a) An application shall contain a general plan and a design plan in the detail required by the Department for each temporary and permanent dam, pond, embankment or impoundment within the proposed permit area.

(b) The general plan shall contain the following:

- (1) A description, map and cross section of the structure and its location.
- (2) Preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure if requested by the Department.
- (3) A survey describing the potential effect on the structure from past underground mining operations if underground mining has occurred.

(c) The design plan for a structure shall:

- (1) Be prepared by, or under the direction of, and certified by a registered professional engineer or registered professional land surveyor.
- (2) Include design and construction requirements for each structure, including geotechnical information if requested by the Department.
- (3) Describe the operation and maintenance requirements for each structure.
- (4) Describe the timetable and plans to remove each structure, if appropriate.
- (5) Include a stability analysis if the structure is more than 15 feet (4.6 meters) in height as measured from the upstream toe of the embankment to the crest of the emergency spillway or has a storage volume of more than 50 acre feet (61.7 cubic meters).

(d) The design plan of sedimentation ponds shall include the information required by § 77.527 (relating to sedimentation ponds).

Subchapter I. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

GENERAL

§ 77.502. Signs and markers.

(a) The operator shall identify the operation for the duration of the surface mining activities by posting and maintaining a sign which will be clearly visible at the junction of each haul road and the public highway. The sign shall be constructed of a durable, weather resistant material and shall be of a minimum size of 2 feet by 3 feet (60.96 centimeters by 91.44 centimeters) with a light background and contrasting letters and numbers of a minimum height of 1 1/2 inches (3.81 centimeters) that may be easily seen and read. The sign shall show the

name of the operator conducting the surface mining activities, the telephone number of the operator and the identification number of the current permit authorizing noncoal mining activities. The sign shall be erected within 60 days after permit issuance.

(b) The operator shall erect perimeter markers where required by the Department.

(c) If blasting is conducted as part of the operation, the person who conducts the surface mining activities shall post and maintain signs and markers as required by § 77.564 (relating to surface blasting requirements).

§ 77.503. Casing and sealing of drilled holes.

(a) An exploration hole, other drill or borehole, well or other exposed underground opening—except for holes solely drilled and used for blasting—or other opening exposed during surface mining activities shall be cased, sealed or otherwise managed as approved by the Department if necessary to:

- (1) Prevent acid or other toxic drainage from entering groundwaters or surface waters.
 - (2) Minimize disturbance to the prevailing hydrologic balance.
 - (3) Ensure the safety of people, property, livestock, fish and wildlife, and machinery in the permit and adjacent area.
 - (4) Prevent groundwater and surface water from entering underground mine workings.
- (b) Use of a drilled hole, borehole or monitoring well as a water well shall meet § 77.532 (relating to surface water and groundwater monitoring).

(c) Gas and oil wells shall be sealed in accordance with the Oil and Gas Act (58 P. S. §§ 601.101—601.605).

§ 77.504. Distance limitations and areas designated as unsuitable for mining.

(a) Except as provided in subsection (b), a person may not conduct noncoal surface mining activities, other than borrow pits for highway construction purposes, as follows:

- (1) Within 100 feet (30.48 meters) of the outside line of right-of-way of a public highway.
- (2) Within 300 feet (91.44 meters) of an occupied dwelling house or commercial or industrial building, unless released by the owner thereof.
- (3) Within 300 feet (91.44 meters) of a public building, school, community or institutional building.
- (4) Within 300 feet (91.44 meters) of a public park.
- (5) Within 100 feet (30.48 meters) of a cemetery.
- (6) Within 100 feet (30.48 meters) of the bank of a perennial or intermittent stream.

(b) The Department may allow operators to operate within the distance limitations of subsection (a) if the operator demonstrates:

- (1) *Expansion of pits.* For opening or expansion of pits, that special circumstances warrant operations within the distance limitations, that the environment and the interests of the public and landowners affected thereby will be adequately protected and that there are no feasible or prudent alternatives to opening the pit within the distance limitations. Prior to allowing operations within the distance limitations, the operator shall give public notice of the application in two newspapers of general circulation in the area, once a week for 2 successive weeks, and shall give notice by mail to the municipality in which the

operation is located. If a person files an objection with the Department and requests a public hearing or informal conference in writing within 20 days of the last publication thereof, the Department will conduct a public hearing or informal conference.

(2) *Support areas.* For parts of surface mining activities other than opening or expansion of pits, that special circumstances warrant activities within the distance limitations, that the public health and safety will not be endangered, that the environment and the interests of the public and the landowners affected thereby will be adequately protected and that there are no feasible or prudent alternatives to conducting those aspects of the activity within the distance limitations.

(c) A solid barrier of undisturbed material, 125 feet (38.1 meters) in radius shall be maintained around oil and gas wells unless one of the following apply:

- (1) The well is sealed under the Oil and Gas Act (58 P. S. §§ 601.101—601.605) and regulations thereunder.
- (2) The Department approves, in writing, a lesser distance if the following apply:
 - (i) Access to the well is provided at all times.
 - (ii) The integrity of the well is maintained.
 - (iii) The well operator agrees in writing to the lesser distance.

(d) Areas to be affected within the 100-foot (30.48 meters) stream barrier shall meet the requirements of § 77.523 (relating to water obstructions and encroachments) in addition to subsection (b).

(e) When the surface mining activities would be conducted within 300 feet (91.44 meters) measured horizontally of an occupied dwelling or commercial or industrial building, the applicant shall submit with the application a written waiver from the owner of the dwelling or building, consenting to the activities within a closer distance of the dwelling or building as specified in the waiver. The waiver shall be:

- (1) Knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.
- (2) Effective against subsequent purchasers of the dwelling or building who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser shall be deemed to have constructive knowledge if the waiver was recorded at the office of the recorder of deeds in the county in which the dwelling or building is located or if the surface mining activities have proceeded to within the 300 foot (91.44 meters) limit prior to the date of purchase.

(f) The following areas are designated as unsuitable for all or certain types of noncoal surface mining activities:

- (1) The 203-acre tract of land located within Pequea Township, Lancaster County, as described on Lancaster County Tax Assessment Map 15K-8 as lot 7 and recorded in the Lancaster County Office for Recording of Deeds, Deed Book O-80, pages 437-438, except for the subdivision recorded in Subdivision Plan Book J-129, page 49. This tract is unsuitable for all types of surface mining activities.
- (2) The land area encompassed by the perimeter of an area extending 50 feet from the known horizontal extent of two cavern areas located in Haines Township, Centre County, described as follows: The rectangular tract of lands beginning at a point 170 feet due East of the

centerline of the entrance to Stover Cave No. 1; thence North 21 degrees West 190 feet to a point; thence South 69 degrees West 440 feet to a point; thence South 21 degrees East 190 feet to a point; thence North 69 degrees East 40 feet to the place of beginning. Containing 2 acres. Said tract of land is located on a tract of land owned by Raymond Decker described in Deed Book 476, page 1099, and a tract of land owned by Eli Hostetler, described in Deed Book 560, page 1068. This tract is unsuitable for all types of noncoal surface mining activities.

§ 77.527. Sedimentation controls.

(a) Surface drainage from the disturbed area, including areas which have been graded, seeded or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. The Department may waive the required use of sedimentation ponds when the person who conducts surface mining activities demonstrates to the satisfaction of the Department that alternate sediment control facilities will prevent accelerated erosion and sedimentation under Chapter 102 (relating to erosion control).

(b) Sedimentation ponds shall be constructed under this section and § 77.531 (relating to dams, ponds, embankments and impoundments—design, construction and maintenance), in appropriate locations before a disturbance of the area to be drained into the pond. Sedimentation ponds may not be located in a perennial stream. The Department will not authorize the location or placement of a sedimentation pond in an intermittent stream unless the requirements of Chapters 93, 102 and 105 (relating to water quality standards; erosion control; and dam safety and waterway management) and § 77.522 are met and approved as part of the postmining land use under §§ 77.530 and 77.653 (relating to impoundments; and postmining land use).

(c) Sedimentation ponds and controls and other treatment facilities shall be maintained until removal of the ponds and facilities is approved by the Department.

(d) Sedimentation ponds shall meet the requirements of Chapters 102 and 105, if applicable, and be designed to meet the effluent requirements of the permit.

USE OF EXPLOSIVES

§ 77.562. Preblasting surveys.

(a) Preblasting surveys will not be required if blasting is designed and conducted below the levels of blasting vibration shown on Figure #1 at the nearest dwelling, school, church, commercial or institutional building neither owned nor leased by the operator. If preblast surveys are not conducted, the operator shall provide a seismograph record including both the particle velocity time-history (wave form) and the particle velocity and vibration frequency levels for each blast.

(1) The vibration frequency shall be displayed and analyzed over the frequency range of 2 Hz through 100 Hz.

(2) The permittee shall obtain Department approval of the analytical method used to determine the predominant frequency before applying this alternative criterion.

(3) If an operator who has not offered preblasting surveys, blasts at a level exceeding the levels of vibration in Figure #1, no additional blasting may be conducted until one of the following applies:

(i) The operator meets the requirements of subsections (b)–(e).

(ii) The operator demonstrates that subsequent blasting will produce vibrations at levels below the levels of blasting vibration shown in Figure #1.

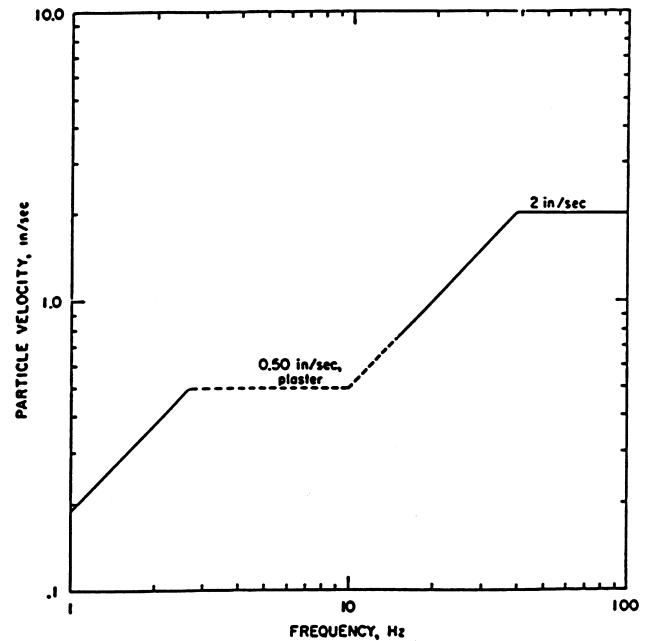


Figure #1.—Levels of blasting vibration using a combination of velocity and frequency.

(b) If the operator intends to conduct blasting at vibration levels exceeding the levels of vibration in figure #1 at the nearest dwelling, school, church, commercial or institutional building neither owned nor leased by the operator, the operator shall offer preblast surveys. At least 30 days before commencement of blasting or resumption of blasting in accordance with § 77.562(a)(3)(i) the operator shall notify, in writing, the residents or owners of dwellings or other structures located within 1,000 feet (304.8 meters) of the area where blasting will occur of their right to request a preblasting survey and how to request a preblasting survey. On the request to the Department or operator by a resident or owner of a dwelling or structure that is located within 1,000 feet (304.8 meters) of the area where blasting will occur, the operator shall promptly conduct a preblasting survey of the dwelling or structure. If a dwelling or structure is renovated or added to subsequent to a preblast survey, then, upon request by the resident or owner to the Department or operator, a survey of the additions and renovations shall be performed by the operator in accordance with this section. The operator shall provide the Department with a copy of the request.

(c) The survey shall determine the condition of the dwelling or structure and document preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines and wells and other water systems shall be limited to surface condition and readily available data. Preblasting conditions of wells and other water systems used for human, animal or agricultural purposes shall be ascertained to the extent possible regarding the quantity and quality of the water.

(d) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of special conditions or proposed adjustments to the blasting procedure which

should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided promptly to the person requesting the survey and to the Department.

(e) Required preblasting surveys requested more than 10 days before planned initiation of blasting shall be completed by the operator before the commencement of blasting.

§ 77.564. Surface blasting requirements.

* * * * *

(j) The maximum peak particle velocity limitation of subsection (i) does not apply at a structure owned by the permittee.

(k) When seismographs are not used to monitor peak particle velocity, the maximum weight of explosives to be detonated within any 8 millisecond or greater period may be determined by the formula $W = (d/50)^2$ where W equals the maximum weight of explosives, in pounds, that can be detonated in any 8 millisecond period or greater, and equals the distance, in feet, from the blast to the nearest dwelling, school, church, commercial or institutional building. The development of a modified scale-distance factor may be authorized by the Department on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. If the peak particle velocity will exceed .5 inch per second with the adjusted scale-distance, § 77.562(d) shall be complied with prior to blasting at the adjusted levels.

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OPERATIONS

§ 77.572. Permit line setback.

(a) Highwalls shall be set back from the boundary of the area covered by a bond under § 77.193 (relating to requirement to file bond). The setback shall be of sufficient width to accomplish the following:

- (1) Prevent possible slumping or failure at or beyond the perimeter of the permit area.
- (2) Allow for the development of final reclamation slopes.
- (b) The minimum setback distance shall be 25 feet (7.62 meters) in consolidated material, in unconsolidated material, the minimum setback distance shall be equal to the height of the exposed unconsolidated material unless otherwise approved by the Department.
- (c) The setback shall be shown on the cross sections.

BACKFILLING AND GRADING

§ 77.594. Final slopes.

Final slopes for reclamation of noncoal surface mines shall conform with the following requirements:

- (1) If there is sufficient overburden material to achieve approximate original contour and no alternative reclamation is approved under § 77.593 (relating to alternatives to contouring):
 - (i) The postmining slopes shall approximate the premining slopes or slopes approved by the Department based on consideration of soil, rock formation, climate or other characteristics of the area.
 - (ii) Final postmining slopes are not required to be uniform but shall approximate the general nature of the premining topography.

(2) If terracing is approved for postmining reclamation, the final overall slope shall be 35° or less unless otherwise approved under subparagraph (v).

(i) If a water impoundment is part of the reclamation, the slope shall extend to 50 feet (15.2 meters) below the post reclamation water level at a maximum slope of 35° to serve as a safety bench for safe exit from the impoundment. The underwater safety bench may be reduced to a lesser depth—a minimum 25-foot (7.6 meters) width shall be maintained in all cases—if the operator demonstrates to the Department's satisfaction that there will be an overflow at a defined elevation or that the seasonal water table fluctuation will not require a 50-foot (15.2 meters) depth. For purposes of safe exit from an impoundment in unconsolidated materials, the Department may require an underwater safety bench be sloped at less than 35° from the horizontal.

(ii) Benches developed below the lower level of the reclamation safety bench are not required to be restored.

(iii) Removal of benches below the safety bench requires approval from the Department in writing under § 77.573 (relating to stability analysis).

(iv) The Department may require a slope of less than 35° if stability concerns require a lesser slope.

(v) A slope greater than 35° may be approved if the operator demonstrates that the slope will not result in a safety or stability hazard and that one of the following exists:

(A) No practical alternative to a lesser slope exists, such as unusual geologic conditions.

(B) The slope area which is greater than 35° is offset by a lesser slope elsewhere at the site resulting in a more beneficial postmining land use as approved by the Department.

§ 77.595. Concurrent reclamation.

(a) Reclamation procedures, including backfilling, grading, topsoil replacement and revegetation of land that is disturbed by noncoal surface mining shall be kept concurrent with the progress of the proposed operation to the greatest extent possible in conformance with §§ 77.456, 77.592—77.594, this section, § 77.596 and the approved reclamation plan.

(b) If site conditions dictate that reclamation cannot begin until mineral extraction is terminated, the reasons for this delay shall be detailed in the reclamation plan required under § 77.456 (relating to reclamation information).

(c) Reclamation shall begin within 30 days of when mineral extraction is terminated, and be completed within the period specified in the approved reclamation plan.

(d) Mineral extraction is considered to be terminated when the permitted extent of the mineral reserves has been extracted.

Subchapter J. GENERAL PERMITS

Sec.	
77.801.	Scope.
77.802.	Authorization for general permits.
77.803.	Nature of a general permit; substitution for individual applications and permits.
77.804.	Contents of general permits.
77.805.	Procedure for issuance.
77.806.	Registration requirements.
77.807.	Compliance with permit conditions, regulations and laws.

§ 77.801. Scope.

This subchapter applies to the issuance of general permits by the Department under section 26(b) of the act (52 P. S. § 3326(b)).

§ 77.802. Authorization for general permits.

Under this subchapter, the Department may issue general permits for any category of noncoal surface mining activities if the Department determines the following:

- (1) The activities in the category are similar in nature.
- (2) The activities in the category can be adequately regulated utilizing standardized specifications and conditions.
- (3) The activities in the category, in the opinion of the Department, are more appropriately regulated under a general permit than under individual permits.

§ 77.803. Nature of a general permit; substitution for individual applications and permits.

(a) When the Department issues a general permit for a specified category of noncoal surface mining activities, persons who intend to conduct a noncoal surface mining activity in accordance with the specifications and conditions of the general permit may do so without obtaining an individual permit.

(b) The general permit sets forth the standardized specifications and conditions for design, operations and monitoring as are necessary to adequately protect life, health, property and the environment. The operator shall comply with the standardized specifications and conditions of the general permit in lieu of the requirements of Subchapters C, D, G, H and I.

(c) A person is authorized to operate under a general permit if the following apply:

- (1) Activities are conducted in accordance with the specifications, terms and conditions of the applicable general permit.
- (2) The operator of the noncoal surface mining activity complies with the registration requirements in the general permits, which have been established under § 77.806 (relating to registration requirements).

(d) The Department may amend, suspend, revoke, reissue or terminate any general permit or any individual registration authorized under this subchapter.

(e) Notwithstanding subsections (a)—(c), the Department may require an operator authorized by a general permit to apply for, and obtain, an individual permit when the operator is not in compliance with the conditions of the general permit.

§ 77.804. Contents of general permits.

A general permit at a minimum shall:

- (1) Describe the category of noncoal surface mining activities authorized by the general permit, including any exceptions to that authorization.
- (2) Specify the areas where the general permit is effective.
- (3) Set forth a set of standardized specifications or plans for the category of noncoal surface mining activities or a reference to specific criteria and requirements adopted by another Federal or State agency which ad-

equately regulate the category or particular aspects of this category.

(4) Set forth conditions governing the erosion controls, operations, reclamation, blasting, inspection and monitoring of the activities covered by the general permit as are necessary to assure compliance with the act and with other laws administered by the Department.

(5) Specify the registration requirements established under § 77.806 (relating to registration requirements).

(6) Specify the time period for the Department to give written notice as to whether the registration application has been approved.

(7) Set forth registration fees, if any, and bond requirements, if any, and procedures for release of bond for the category covered by the general permit.

(8) Indicate whether the applicant will be required to give public notice in a newspaper of the proposed registration.

§ 77.805. Procedure for issuance.

(a) The Department may issue or modify a general permit for a category of noncoal mining activities and in accordance with this section.

(b) At least 30 days prior to issuance of a general permit, the Department will publish notice in the *Pennsylvania Bulletin* of intent to issue a general permit, including the text of the proposed general permit and the locations where standardized plans may be reviewed.

(c) An opportunity shall be provided for interested members of the public and State agencies to provide written comments to the Department on a proposed general permit.

(d) The Department may hold a public hearing on a proposed general permit for the purposes of gathering information and comments.

(e) General permits issued by the Department will be published in the *Pennsylvania Bulletin* at least 30 days prior to the effective date of the permits, as required by section 26(b) of the act (52 P. S. § 3326(b)).

§ 77.806. Registration requirements.

(a) Registration requirements shall be set forth in each general permit.

(b) Registration applications at a minimum shall set forth:

(1) The name, address and surface mining operator's license number of the person responsible for the activities.

(2) The location of the activities.

(3) The name or number of the general permit being utilized for the activities.

(4) Information and documents to satisfy the requirement of § 77.163 (relating to right of entry).

(5) Identification of ownership interests in the property including rights to the minerals.

(6) The names and addresses of the owners of record of surface areas contiguous to any part of the area proposed for authorization to operate under a general permit.

(7) A description of the proposed noncoal surface mining activities that demonstrates that the operation would qualify to operate under the general permit.

(c) An applicant cannot conduct surface mining activities under a general permit until written notice of Department approval of registration.

§ 77.807. Change of ownership.

For an activity requiring registration under this section, an amended registration shall be filed if there is a change of ownership of the entity conducting the surface mining activities.

§ 77.808. Compliance with permit conditions, regulations and laws.

A person who operates under a general permit shall maintain a valid surface mining operator's license and comply with the specifications, terms and conditions of the general permit, applicable law and regulations.

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