

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 88 AND 90]

Coal Refuse Disposal Revisions

The Environmental Quality Board (Board) proposes to amend Chapters 88 and 90 (relating to anthracite coal; and coal refuse disposal). The proposed amendments are intended to implement the act of October 4, 2019 (P.L. 452, No. 74) (Act 74) and to address the differences between the Commonwealth's regulations and Federal regulations relating to temporary cessation at coal refuse disposal sites.

This proposal was adopted by the Board at its meeting of June 15, 2021.

A. *Effective Date*

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

B. *Contact Persons*

For further information contact Gregory Greenfield, Environmental Group Manager, Bureau of Mining Programs, P.O. Box 8461, 5th Floor, 400 Market Street, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5015, or Christopher Minott, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, 9th Floor, 400 Market Street, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in section J of this preamble. Persons with a disability may use the Pennsylvania Hamilton Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board," then navigate to the Board meeting of June 15, 2021).

C. *Statutory Authority*

This proposed rulemaking is created under the authority of section 5 of The Clean Streams Law (35 P.S. § 691.5), section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.4b(a)), section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b) and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to adopt rules and regulations necessary for the performance of the work of the Department.

D. *Background and Purpose*

Section 1 of Act 74 amended section 6.1 of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a) to conform with the regulations and standards for temporary cessation adopted by the United States Office of Surface Mining Reclamation and Enforcement under Federal law, namely the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (SMCRA) and regulations at 30 CFR 816.131 (relating to cessation of operations: Temporary). Previously, while Federal rules under SMCRA provided flexibility, the Commonwealth's Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66) had limited the temporary cessation of operations at a coal refuse disposal site to no more than 1 year. Act 74 removed the Commonwealth's 1-year limitation and

clarifies that any rules or regulations promulgated must be in conformance with Federal provisions on this subject. Act 74 also gave the Department an opportunity to promulgate regulations linking the status of operations generating coal refuse or related material to the coal refuse disposal area. The status of a coal refuse disposal site is directly related to the status of the source of the refuse and the proposed revisions will ensure that a change in status of one will result in a change in the status of the other. For example, when an underground coal mine is actively mining coal and sending the refuse material to a coal refuse disposal site, both facilities are considered active. If that underground coal mine is approved for temporary cessation, the coal refuse disposal site would also be approved for temporary cessation since no refuse material is being generated to be sent there. If mining was to begin again, both facilities would be considered active, whereas, if the mine was to permanently cease operations, the coal refuse disposal facility would be considered permanently ceased unless an alternative source of refuse material can be found.

The requirements for temporary cessation include a reference to a system to prevent precipitation from contacting the coal refuse. Act 74 also revised section 6.1 of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a) to include an enumerated list of the circumstances under which this system must be installed. Previously, the requirement was listed in paragraph form, which was somewhat unclear.

Other proposed changes to the regulations are a result of the Department's experiences with reviewing applications for the permitting of coal refuse disposal sites. Confusing or incorrect requirements in the regulations have resulted in applications being considered technically deficient and sent back to the permittee for corrections. The proposed clarifications will improve the quality of the applications and reduce the amount of correction letters sent to address these items. This includes the existing performance standards for terraces and surface water runoff at coal refuse disposal sites which, as written, have led to confusion on the purpose and intent. The terrace requirements are being revised to state that terraces must be constructed as they are needed to control erosion and prevent cascading failures of the final cap rather than just being an optional use. The use of the terms "off of the fill" and "adjacent to and above the fill" in this section are proposed to be amended to clarify the original intent and resolve the existing conflicts with other parts of the section.

The Department worked with the Mining and Reclamation Advisory Board (MRAB) to develop these proposed regulations. The MRAB is composed of two licensed bituminous surface mine operators, one licensed anthracite surface mine operator, four public members of the Citizens Advisory Council, one anthracite or one bituminous licensed professional engineer, one county conservation district representative, one majority party State senator, one minority party State senator, one majority party State representative and one minority party State representative. The proposed revisions were first mentioned at the January 23, 2020, MRAB meeting as part of the review of the current regulatory agenda. At the March 16, 2020, MRAB Regulation, Legislation and Technical (RLT) committee meeting, the draft language was reviewed and the MRAB RLT committee suggested changes to the language. A second meeting of the MRAB

RLT committee took place on May 18, 2020, to review the draft revised language resulting from the March 16, 2020, committee meeting. The Department reviewed the revised draft with the MRAB again at its meeting on July 16, 2020. A third meeting of the MRAB RLT committee took place on October 15, 2020, to review the revised draft and the committee recommended a minor revision to the permanent cessation section. At the MRAB meeting of October 22, 2020, the MRAB recommended that the Department proceed with this proposed rulemaking.

E. *Summary of Regulatory Requirements*

§ 88.310. *Coal refuse disposal: general requirements*

Subsection (k)(1) is proposed to be amended to individually enumerate the triggers for installation of the system to prevent precipitation from encountering the coal refuse to reflect the list of triggers included in Act 74. This proposed amendment includes the language in Act 74 which clarifies that there is not a 1-year upper limit on the length of temporary cessation.

§ 88.332. *Cessation of operations: temporary*

Act 74 amended section 6.1 of the Coal Refuse Disposal Control Act to conform with the regulations and standards for temporary cessation under Federal law. To be consistent with the Federal regulations at 30 CFR 816.131, subsection (a) is proposed to be amended, and the existing requirements for temporary cessation for anthracite coal refuse disposal sites are proposed to be amended as follows.

Proposed amendments to subsection (a), which are based on the Federal requirements, will address temporary cessation status of operations lasting 30 days or more and will require a notice to be submitted to the Department. The list of items that must be included in this notice are enumerated as paragraphs (1)–(4) and include the affected acres in the permit area; a description of the extent and kind of reclamation of the area; a description of the activities that will continue during the temporary cessation status; and a description of the status of the operation or operations that is the source of the coal refuse. Paragraphs (1)–(3) are based on the Federal regulations and are in the existing subsection (a). Paragraph (4) is proposed based on the language in Act 74 to provide for the connection of coal refuse or related material to the coal refuse disposal area. Act 74 removed the 1-year limitation on temporary cessation and that part of subsection (a) is proposed to be deleted.

Proposed amendments to subsection (b) address temporary cessation status of operations lasting 90 days or more and, in addition to the items required to be submitted in subsection (a), there are two additional items that must be included in the notice submitted to the Department. These items may be submitted at the same time as the subsection (a) notice or subsequent to that notice. These two additional items are enumerated as paragraphs (1) and (2) and include the confirmation that the current bond is adequate to complete reclamation and the timing of the installation of the phased system to prevent precipitation from contacting the refuse. The difference in requirements between subsections (a) and (b) ensures the operator does not need to address longer-term requirements if the temporary cessation will last less than 90 days. While this distinction is not found in the Federal requirements nor Act 74, it is proposed because the amendments will allow for an unlimited time for cessation. The confirmation that the bond amount is adequate to complete the reclamation of the site as it currently exists is necessary to assure that the site can be

fully reclaimed if the site ends up in bond forfeiture. The requirement for a schedule for the system to prevent precipitation from coming into contact with the refuse is proposed to assure that the potential water quality impacts of long-term cessation are mitigated. The existing statement about exemptions for a seasonal shutdown or labor strike is proposed to be deleted from this subsection as a justification for a longer temporary cessation is no longer needed since the upper time limit is proposed to be deleted.

Proposed amendments to subsection (c) include the obligation to comply with the environmental protection statutes or “acts” as defined in § 86.1 (relating to definitions) and Chapters 86–90, in addition to the provisions of the permit. Currently, subsection (c) only requires compliance with the provisions of the permit. The proposed amendments clarify that operators are required to submit a permit renewal while under temporary cessation.

Proposed subsection (d) states that temporary cessation status ends as a result of the resumption of coal refuse disposal operations and subsequent notices of temporary cessation status must include updated information that is outlined in § 88.332 (relating to cessation of operations: temporary).

Proposed subsection (e) states that temporary cessation status for the coal refuse disposal operation ends when an operation that is a source of the coal refuse resumes its operations or ends by permanent cessation.

Proposed subsection (f) states that temporary cessation status for the coal refuse disposal operation ends when the coal refuse disposal operation itself ends by permanent cessation as specified in § 88.333 (relating to cessation of operations: permanent).

§ 88.333. *Cessation of operations: permanent*

While neither the Federal regulations nor statute address this, subsection (b) is proposed to be added to this section to provide a trigger for when a temporary cessation has developed into a permanent cessation. This necessitates the lettering of the existing language as subsection (a). Proposed subsection (b) describes the circumstances that will terminate the temporary cessation status of a coal refuse disposal facility for noncompliance, listed as paragraphs (1)–(3). The three circumstances which will terminate the temporary cessation status are failure to comply with a final adjudicated proceeding through an act or omission which violates the acts defined in § 86.1 or Chapters 86–90; failure to comply with a permit condition required by the acts or Chapters 86–90; and failure to comply with a consent order and agreement or a consent order. The intent of this new subsection is to trigger the reclamation requirement for sites where chronic noncompliance exists and allows the Department to have the ability to begin reclamation, if necessary. In these cases, it is unlikely that the permittee will be able to meet their obligations to complete the required reclamation. The termination of temporary cessation status constitutes a final action of the Department and the Department will provide notice and an opportunity to appeal to the operator when this status changes and triggers the reclamation requirements.

§ 90.31. *General requirements*

The Act 74 amendments to the Coal Refuse Disposal Control Act provided for the Department to promulgate regulations to link operations generating coal refuse or related material to the coal refuse disposal area. Para-

graph (6) is proposed to require the description of the operations that will be the source of the coal refuse to be disposed of in the application for a coal refuse disposal permit. As plans change, this facility information can be updated to include other related facilities.

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

In response to Act 74, proposed amendments to subsection (b) add “as specified in the permit” as paragraph (1.1) to the list of triggers for the installation of the system for preventing precipitation from encountering coal refuse that will be installed to prevent adverse impacts to groundwater and surface water. Paragraph (2) is revised to update the reference to subsection (b) in § 90.167 (relating to cessation of operations: temporary) to reflect the proposed amendments to that section.

§ 90.122. Coal refuse disposal

Proposed amendments to subsection (h) parallel the language from Act 74 relating to when the system to prevent precipitation from encountering the coal refuse is to be implemented. Paragraphs (1)—(4) are proposed to be deleted and reserved and paragraphs (5)—(8) are proposed to be added to list the instances when an operator must install the system to prevent precipitation from contacting the coal refuse. These include when each phase of the operation reaches capacity; when specified in the permit; when an operator temporarily ceases operation for a period of 90 days or more; or when the operation permanently ceases. The construction and design requirements currently contained in paragraphs (1) and (3) of subsection (h) are moved to proposed subsection (h).

The Department observed confusion among applicants regarding the purpose of terraces at coal refuse disposal sites and the need for clarification in the regulations. Subsection (m) is proposed to be revised to require terraces to control erosion and enhance stability and make their use as roads optional. With the existing regulations, terraces are not required if the maximum overall completed out slopes in subsection (m) are not exceeded, but terraces are required to break up lengthy out slopes of very large coal refuse embankments to control erosion and prevent cascading failures of the final cap and soil on an entire embankment out slope. A proposed amendment will change the reference in this subsection from subsection (n) to (o) because terraces are needed to divert the drainage off of the fill and not as a diversion adjacent to or above the fill.

The Department’s experience with reviewing the applications for coal refuse disposal sites noted that part of the subsection referenced for diverting surface water runoff cannot be satisfied as written and the intent of the subsection is confusing. Subsection (n) is proposed to be amended to clarify the design requirements for diverting surface water runoff away from the fill. The reference to all subsections of § 90.104 (relating to hydrologic balance: diversions) are proposed to be amended by deleting the reference to § 90.104(b) as the design requirements of § 90.104(b) conflict with the hydraulic requirements in this section and the requirement to maintain diversion channels located above the refuse fills in perpetuity.

When reviewing coal refuse disposal site applications, the Department has observed that the applications often require technical deficiency letters due to confusion caused by incorrect or nonapplicable section references in

the existing regulations. Subsection (o) is proposed to be amended to require surface water runoff diverted off of the fill to be conveyed in channels in natural ground or suitable engineered fill. The reference to § 90.104 and § 90.105 (relating to stream channel diversions) is proposed to be deleted as they are confusing and conflict with the design requirements in this section. Diverted off the fill is a different function than a diversion channel located adjacent to or above the fill and § 90.105 is not related to the management of disposal area runoff.

§ 90.167. Cessation of operations: temporary

Act 74 amended section 6.1 of the Coal Refuse Disposal Control Act to conform with the regulations and standards for temporary cessation under Federal law. To be consistent with the Federal regulations at 30 CFR 816.131, subsection (a) is proposed to be amended, and the existing requirements for temporary cessation for bituminous coal refuse disposal sites are proposed to be amended as follows.

Proposed amendments to subsection (a), which are based on the Federal requirements, will address temporary cessation status of operations lasting 30 days or more and will require a notice to be submitted to the Department. The list of items that must be included in this notice are enumerated as paragraphs (1)—(4) and include the affected acres in the permit area; a description of the extent and kind of reclamation of the area; a description of the activities that will continue during the temporary cessation status; and a description of the status of the operation or operations that is the source of the coal refuse. Proposed paragraphs (1)—(3) are based on the Federal regulations and are in the existing subsection (a). Paragraph (4) is proposed to be added based on the language in Act 74 to provide for the connection of coal refuse or related material to the coal refuse disposal area.

Proposed amendments to subsection (b) address temporary cessation status of operations lasting 90 days or more and in addition to the items required to be submitted in subsection (a), there are two additional items that must be included in the notice submitted to the Department. These items may be submitted at the same time as the subsection (a) notice or subsequent to that notice. These two additional items are enumerated as paragraphs (1) and (2) and include the confirmation that the current bond is adequate to complete reclamation and the timing of the installation of the phased system to prevent precipitation from contacting the refuse. The difference in requirements between subsections (a) and (b) ensures the operator does not need to address longer-term requirements if the temporary cessation will last less than 90 days. While this distinction is not found in the Federal requirements nor Act 74, it is proposed because the amendments will allow for an unlimited time for cessation. The confirmation that the bond amount is adequate to complete the reclamation of the site as it currently exists is necessary to assure that the site can be fully reclaimed if the site ends up in bond forfeiture. The requirement for a schedule for the system to prevent precipitation from coming into contact with the refuse is proposed to assure that the potential water quality impacts of long-term cessation are mitigated. The existing statement about exemptions for a seasonal shutdown or labor strike is proposed to be deleted from this subsection as a justification for a longer temporary cessation is no longer needed since the upper time limit is proposed to be deleted.

Proposed amendments to subsection (c) include the obligation to comply with the environmental protection statutes or “acts” as defined in § 86.1 and Chapters 86—90, in addition to the provisions of the permit. Currently, subsection (c) only requires compliance with the provisions of the permit. The proposed amendments clarify that operators are required to submit a permit renewal while under temporary cessation.

Subsection (d) is proposed to be deleted and reserved since Act 74 removed the 1-year limitation on temporary cessation. The installation of the system preventing precipitation from contacting the coal refuse is proposed to be included in subsection (b), which addresses the requirements for temporary cessation of 90 days or more.

Proposed subsection (e) states that temporary cessation status ends as a result of the resumption of coal refuse disposal operations and any subsequent notices of temporary cessation status must include updated information that is outlined in § 90.167.

Proposed subsection (f) states that temporary cessation status for the coal refuse disposal operation ends when an operation that is a source of the coal refuse resumes its operations or ends by permanent cessation.

Proposed subsection (g) states that temporary cessation status for the coal refuse disposal operation ends when the coal refuse disposal operation itself ends by permanent cessation as specified in § 90.168 (relating to cessation of operations: permanent).

§ 90.168. Cessation of operations: permanent

While neither the Federal regulations nor statute address this, subsection (b) is proposed to be added to this section to provide a trigger for when a temporary cessation has developed into a permanent cessation. This necessitates the lettering of the existing language as subsection (a). Proposed subsection (b) describes the circumstances that will terminate the temporary cessation status of a coal refuse disposal facility for noncompliance, listed as paragraphs (1)—(3). The three circumstances which will terminate the temporary cessation status are failure to comply with a final adjudicated proceeding through an act or omission which violates the acts defined in § 86.1 or Chapters 86—90; failure to comply with a permit condition required by the acts or Chapters 86—90; and failure to comply with a consent order and agreement or a consent order. The intent of this new paragraph is to trigger the reclamation requirement for sites where chronic noncompliance exists and allows the Department to have the ability to begin reclamation, if necessary. In these cases, it is unlikely that the permittee will be able to meet their obligations to complete the required reclamation. The termination of temporary cessation status constitutes a final action of the Department and the Department will provide notice and an opportunity to appeal to the operator when this status changes and triggers the reclamation requirements.

§ 90.202. General requirements

Proposed amendments to subsection (b)(1) change the reference to a “coal preparation facility” to a “coal mining activity.” This change is proposed because not all coal refuse is the result of coal preparation. For example, some surface mines will take their refuse to a refuse disposal site. The existing language is also inconsistent with the language in section of 4.1 the Coal Refuse Disposal Control Act (52 P.S. § 30.54a).

F. Benefits, Costs and Compliance

Benefits

This proposed rulemaking will make the Department’s regulations consistent with State law and Federal regulations related to the operation of coal refuse disposal areas. This proposed rulemaking will clarify when an operator must install a system for preventing precipitation from encountering coal refuse, which will improve environmental protection by reducing the likelihood that precipitation will generate a pollutional discharge from the site. This proposed rulemaking will establish a relationship between the coal refuse disposal area and the source of the refuse, which will improve environmental protection by ensuring that disposal areas do not remain unreclaimed long after the source has ceased generating refuse. This proposed rulemaking is not expected to directly improve public health, although it may have an indirect public health benefit to the extent that it reduces the likelihood of pollutional discharges from coal refuse disposal areas.

Compliance costs

Existing and future permittees of coal refuse disposal sites will be required to comply with this proposed rulemaking. This proposed rulemaking will not create any new compliance costs and it is not expected to prevent or avoid costs. This proposed rulemaking will provide clearer requirements on the existing requirements which may avoid costs associated with navigating unclear requirements that could be inconsistently interpreted or applied.

Compliance assistance plan

Compliance assistance for this proposed rulemaking will be provided through the Department’s routine interaction with trade groups and individual applicants. No financial assistance will be necessary or provided.

Paperwork requirements

This proposed rulemaking does not require additional paperwork.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking incorporates the following pollution prevention incentives: it will clarify when an operator must install a system for preventing precipitation from encountering coal refuse, which will improve environmental protection by reducing the likelihood that precipitation will generate a pollutional discharge from the site; and require some relationship between the coal refuse disposal area and the source of the refuse, which will improve environmental protection by ensuring that disposal areas do not remain unreclaimed long after the source has ceased generating refuse.

H. *Sunset Review*

The Board is not establishing a sunset date for these regulations since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 20, 2021, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

J. *Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by December 6, 2021.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

K. *Public Hearings*

If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

PATRICK McDONNELL,
Chairperson

Fiscal Note: 7-565. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 88. ANTHRACITE COAL

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

§ 88.310. Coal refuse disposal: general requirements.

(a) Coal refuse shall be hauled or conveyed to and placed in designated disposal areas authorized for that purpose. The refuse shall be placed in a controlled manner to ensure the following:

(1) The land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) Stability of the disposal area.

(3) Leachate and surface runoff from the disposal area will not degrade surface waters or groundwaters or exceed the established effluent limitations.

(b) The disposal area shall be designed using recognized professional standards and approved by the Department. The design shall be certified by a registered professional engineer.

(c) Trees, grasses, shrubs and other organic materials shall be removed for a distance of 50 feet from the current disposal area concurrent with the placement of refuse.

(d) Slope protection shall be provided to minimize surface erosion at the site. The disturbed areas, including diversion ditches that are not rippedraped, shall be vegetated upon completion of construction.

(e) The coal refuse to be placed in the fill shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and ensure a long-term static safety factor of 1.5 and seismic safety factor of 1.2.

(f) The final configuration of the disposal shall be suitable for the approved postmining land uses.

(g) Terraces may be utilized to control erosion and enhance stability if approved by the Department.

(h) If the disposal area contains springs, natural or manmade water-courses or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(i) Coal refuse may be returned to underground mine workings, but only in accordance with a disposal program approved by the Department and the Mine Safety and Health Administration.

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

(k) The system to prevent precipitation from coming in contact with the coal refuse shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles and cross-sections approved in the permit and shall function to prevent precipitation from contacting the coal refuse. **The following apply:**

(1) The system shall be installed **[as phases of the disposal area reach capacity, as specified in the permit, when the operation temporarily ceases for a period in excess of 90 days (unless the Department approves a longer period, not to exceed 1 year) or when the operation permanently ceases.] :**

(i) as phases reach capacity;

(ii) as specified in the permit;

(iii) when the operation temporarily ceases for a period in excess of 90 days unless the Department approves an operator's request for a longer period for installation of the system; or

(iv) when the operation permanently ceases.

(2) The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 88.330 (relating to revegetation: standards for successful revegetation) and for prevention of erosion. **§ 88.332. Cessation of operations: temporary.**

(a) **[As soon as it is known that the operation will temporarily cease for more than 30 days, the operator shall submit a notice of intention, in writing, to temporarily cease the operation. The notice shall include a statement of the exact number of acres which will have been affected in the permit area, the extent and kind of reclamation of those areas, and identification of the backfilling, regrading, revegetation, monitoring and water treatment activities that will continue during the temporary cessation. The system for preventing precipitation from contacting the coal refuse shall be installed when the temporary cessation exceeds 90 days. The Department may approve a longer period, not to exceed 1 year, consistent with section 6.1(i) of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a(i)).] Before temporary cessation status of operations for a period of 30 days or more, an operator shall submit to the Department a notice of intention to temporarily cease operations. The notice shall include all of the following:**

(1) A statement of the exact number of acres affected in the permit area.

(2) A description of the extent and kind of reclamation of the areas.

(3) Identification of the backfilling, regrading, revegetation, environmental monitoring and water treatment activities that will continue during the temporary cessation status.

(4) A description of the status of all operations that are a source of the coal refuse.

(b) [Temporary cessation of an operation may not exceed 90 days unless the Department approves a longer period for reasons of seasonal shutdown or labor strike.] Before temporary cessation status of operations for a period of 90 days or more, an operator shall submit to the Department a notice that may be included in, or submitted subsequent to, the notice required under subsection (a), that includes all of the following:

(1) Confirmation that the current bond under the permit is sufficient to complete the reclamation of the coal refuse area.

(2) The timing of the installation of the phased system to prevent precipitation from contacting the refuse.

(c) [Temporary cessation does not relieve the operator of the obligation to comply with any provisions of the permit.] Temporary cessation status of operations does not relieve the operator of the obligations to comply with the acts as defined in § 86.1 (relating to definitions), this chapter or Chapters 86, 87, 89 or 90 or the approved permit, including the obligation to submit an application for permit renewal at least 180 days before the expiration of the existing permit. The Department may enforce these obligations during the temporary cessation status of operations.

(d) Temporary cessation status of a coal refuse disposal operation ends with the resumption of operations at that site. Any subsequent notices of temporary cessation status following resumption of coal refuse operations must include updated information outlined in this section.

(e) Temporary cessation status of a coal refuse disposal operation ends with the resumption of operations at a source of the coal refuse or by permanent cessation at all sources of the coal refuse.

(f) Temporary cessation status of a coal refuse disposal operation ends with the permanent cessation of operations as specified in § 88.333 (relating to cessation of operations: permanent).

§ 88.333. Cessation of operations: permanent.

(a) Operations that are permanently ceased shall be backfilled or closed or otherwise permanently reclaimed in accordance with this chapter and the permit. All underground openings, equipment, structures or other facilities not required for monitoring, unless approved by the Department as suitable for the postmining land use, shall be removed and the affected land reclaimed.

(b) Unless coal refuse disposal operations resume as specified in § 88.332(d) or (e) (relating to cessation of operations: temporary), termination of temporary cessation status will place the mining operation in permanent cessation status and subject to the provisions of subsection (a). Temporary cessation status will terminate for operations that fail to comply with any of the following:

(1) A final adjudicated proceeding as defined under § 86.355(e) (relating to criteria for approval of application) as a result of an act or omission which

violates the acts as defined in § 86.1 (relating to definitions), this chapter or Chapters 86, 87, 89 or 90.

(2) A permit condition required by the acts, this chapter or Chapters 86, 87, 89 or 90.

(3) A consent order and agreement or a consent order.

CHAPTER 90. COAL REFUSE DISPOSAL

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

§ 90.31. General requirements.

An application shall contain a description of the coal refuse disposal activities proposed to be conducted during the life of the coal refuse disposal operations within the proposed permit area, including, at a minimum, the following:

(1) A narrative description of the type and method of coal refuse disposal procedures and proposed engineering techniques and the major equipment to be used during operations.

(2) A narrative explaining the construction, modification, use, maintenance and removal of the following facilities and structures, unless retention of the facility or structure is necessary for postdisposal land use as specified in § 90.166 (relating to postdisposal land use):

- (i) Dams, embankments and other impoundments.
- (ii) Overburden and topsoil handling and storage areas.
- (iii) Coal removal, handling, storage, cleaning, processing and transportation areas and structures.
- (iv) Spoil, coal refuse, mine development waste and noncoal waste removal, handling, storage, transportation and disposal areas and structures.
- (v) Mine facilities.
- (vi) Water and air pollution control facilities.
- (vii) Erosion and sediment control facilities.

(3) A description of the measures to be employed to ensure that all debris, potential acid-forming and potential toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with this chapter and a description of the contingency plans which have been developed to preclude combustion of the materials.

(4) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, line or manage exploration holes, other boreholes, wells and other openings within the proposed permit area.

(5) A demonstration that the notification requirements of § 86.31(e) (relating to public notices of filing of permit application) have been satisfied.

(6) A description of the operations that are proposed to be the source or sources of the coal refuse to be disposed of at the coal refuse disposal facility and the types of refuse to be disposed.

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

(a) The application shall include a description of the system that will be installed to prevent adverse impacts to groundwater and surface water. The description shall

include maps, plans and other information necessary to evaluate the design of the system.

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

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

(1.1) As specified in the permit.

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

(3) When the operation permanently ceases.

(c) The Department's technical guidance Document Number 563-2112-656, titled *Liners—Impoundments, Stockpiles, and Coal Refuse Disposal Areas*, shall be used as guidance for designing coal refuse disposal sites incorporating earthen, admixed or synthetic liners or caps for preventing adverse impacts to groundwater and surface water and for preventing precipitation from contacting coal refuse.

(d) The application shall include a description of the measures to be taken to ensure the long-term functionality of the systems described in subsections (a) and (b). The description shall address the site's susceptibility to mine subsidence and the potential impacts of mine subsidence on the systems described in subsections (a) and (b). The description shall also address the potential for deterioration of components of the systems described in subsections (a) and (b) due to other physical or chemical processes including but not limited to attack from sulfate-laden or acidic groundwater and/or leachate.

Subchapter D. PERFORMANCE STANDARD FOR COAL REFUSE DISPOSAL

§ 90.122. Coal refuse disposal.

(a) Coal refuse shall be transported and placed in designated disposal areas approved by the Department for this purpose. These areas shall be within the permit area. The coal refuse disposal area shall be designed, constructed and maintained to ensure:

(1) The leachate and surface runoff from the permit area will not degrade surface water or groundwater or exceed the effluent limitations of § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices).

(2) Prevention of combustion.

(3) Prevention of public health hazards.

(4) Stability of the fill.

(5) The land mass designated as the coal refuse disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(b) The fill shall be designed using recognized professional standards, certified by a qualified registered professional engineer, and approved by the Department.

(c) The foundation and abutment of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigations and laboratory testing of foundation materials and coal refuse shall be performed to determine the design requirements for stability of the facility. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(d) The coal refuse disposal fill shall be designed to attain a minimum long-term static factor of safety of 1.5 and a minimum seismic factor of safety of 1.2, based upon data obtained from subsurface exploration, geotechnical testing, foundation design, fill design and accepted engineering analyses.

(e) When the average slope of coal refuse disposal area exceeds [1v:2.h-36%] 1v:2.8h—36%, or lesser slopes as may be designated by the Department based on local conditions, key way cuts, or excavation into stable bedrock or bedrock toe buttresses shall be constructed to stabilize the fill. When the toe of the fill rests on a downslope, stability analysis shall be performed in accordance with § 90.39 (relating to ponds, impoundments, banks, dams, embankments, piles and fills) to determine the size of rock toe buttresses and key way cuts.

(f) If the disposal area contains springs, natural or manmade watercourses, or wet-weather seeps, the Department may approve an underdrain/subdrainage system, consisting of durable rock or other materials, designed and placed in a manner that prevents infiltration of the water into the fill material and ensures continued free drainage from the wet areas.

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

(h) **[When a phase of the coal refuse disposal area reaches capacity, the operator shall install a system to prevent precipitation from coming in contact with the coal refuse in the completed phase.] The operator shall install a system to prevent precipitation from coming in contact with the coal refuse. The system shall be constructed in accordance with the design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit, and designed to allow for revegetation of the site in accordance with the standard of success under § 90.159 (relating to revegetation: standards for successful revegetation) and for the prevention of erosion:**

(1) **[The system shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit.] (Reserved).**

(2) **[During normal coal refuse disposal, the system is not required to prevent precipitation from coming in contact with the coal refuse being placed in phases of the operation that have not reached capacity.] (Reserved).**

(3) **[The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 90.159 (relating to**

revegetation: standards for successful revegetation) and for the prevention of erosion.] (Reserved).

(4) **[If the operator temporarily ceases operation of the coal refuse disposal area for a period in excess of 90 days (unless the Department, for reasons of labor strike or business necessity, approves a longer period not to exceed 1 year) unless the Department approves an operator's request for a longer period, or when the operation permanently ceases, the operator shall install the system for preventing precipitation from contacting the coal refuse.] (Reserved).**

(5) as phases reach capacity;

(6) as specified in the permit;

(7) if the operator temporarily ceases operation of the coal refuse disposal area for a period in excess of 90 days, unless the Department approves an operator's request for a longer period for the installation of the system; or

(8) when the operation permanently ceases.

(i) An underdrain/subdrainage system for the fill shall be designed in accordance with the following:

(1) It shall include an underdrain system which will ensure continued free drainage of anticipated seepage from precipitation and from spring or wet-weather seeps, and meet the following:

(i) Anticipated discharges from springs and seeps due to precipitation shall be based on records or field investigation or both, to determine seasonal variation. The design of the underdrain system shall be based on maximum anticipated discharges.

(ii) Granular material used for the drainage system shall be nondegradable, nonacid-forming or nontoxic-forming rock free of clay, and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not flake in water.

(2) The underdrain system shall be designed to be installed along the natural drainage system; extend from toe to head of fill; and contain lateral drains to each area of potential drainage or seepage.

(3) A filter system to ensure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(j) The final configuration of the fill shall be suitable for the post disposal land use approved under § 90.165 (relating to prime farmland: revegetation), except that no depression or impoundment may be allowed on the completed fill. New coal refuse disposal piles and area of piles active since May 17, 1973, shall blend into the local surroundings. Unless otherwise approved by the Department, the fill may not be designed to exceed the approximate elevation of the surrounding ridgeline.

(k) The maximum overall completed slope of the coal refuse disposal pile measured from toe of the fill to crest of upper terrace may not exceed 33% or 18 degrees.

(l) The top surface of the completed fill shall be graded so that the final slope after settlement will be no steeper than 1v:20h—5.0% toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill may not be allowed to flow over the outside of the fill.

(m) Terraces [may] must be utilized to control erosion [,] and enhance stability, [or] and may be utilized for roads included in postmining land use.

(1) The slope of the outslope between terraces may not exceed [1v:2h-50A4%] 1v:2h—50A4%. The vertical distance between terraces may not exceed 50 feet.

(2) To control surface runoff, each terrace bench will be a minimum of 20 feet wide, shall be graded to a slope of 1v:20h—5.0% toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bank and the toe of the next higher outslope.

(3) Terrace ditches shall have a maximum 5.0% slope toward the channels specified in subsection [(n)] (o) unless steeper slopes are necessary in conjunction with approved roads.

(n) [Surface water runoff from the areas adjacent to and above the fill may not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designated to pass safely the peak runoff from a 100-year precipitation event. Diversion design shall comply with § 90.104 (relating to hydrologic balance: diversions).] Surface water runoff from areas adjacent to and above the fill shall be diverted away from the fill in stabilized channels which are designed to safely pass the peak runoff from a 100-year precipitation event. Diversion channels shall also comply with § 90.104(a) and (c)—(h) (relating to hydrologic balance: diversions).

(o) [Surface water runoff from the fill shall be diverted off the fill to properly designated channels which will pass safely the peak runoff from a 100-year precipitation event. Diversion design shall comply with § 90.104 and § 90.105 (relating to stream channel diversions).] Surface water runoff from the fill shall be collected and conveyed in properly designed channels constructed in natural ground or engineered fill of inert material along the periphery of the fill. The channels must safely pass the peak runoff from a 100-year precipitation event.

(p) Slope protection shall be provided to minimize surface erosion at the site. Disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(q) Coal refuse shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as approved by the Department in lifts no greater than 2 feet, or less, as required or approved by the Department, as the design to:

- (1) Achieve the densities designed to ensure mass stability.
- (2) Prevent mass movement.
- (3) Avoid contamination of the rock underdrain.
- (4) Prevent formation of voids.

(r) Vegetative and organic materials shall be removed from the area where coal refuse is disposed of, and for a distance of 50 feet from the perimeter of the area where coal refuse is disposed, the topsoil shall be removed, segregated and stored or replaced as provided in §§ 90.96—90.100. If approved by the Department, organic material may be used a mulch or may be included in the

topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

§ 90.167. Cessation of operations: temporary.

(a) [As soon as it is known that the operation will temporarily cease for more than 30 days, the operator shall submit a notice of intention, in writing, to temporarily cease the operation. The notice shall include a statement of the exact number of acres that will have been affected in the permit area, the extent and kind of reclamation of those areas, and identification of the disposal, regrading, revegetation, monitoring and water treatment activities which will continue during the temporary cessation.] Before temporary cessation status of operations for a period of 30 days or more, an operator shall submit to the Department a notice of intention to temporarily cease operations. The notice shall include all of the following:

(1) A statement of the exact number of acres affected in the permit area.

(2) A description of the extent and kind of reclamation of the areas.

(3) Identification of the backfilling, regrading, revegetation, environmental monitoring and water treatment activities that will continue during the temporary cessation status.

(4) A description of the status of all operations that are a source of the coal refuse.

(b) [Temporary cessation of an operation may not exceed 90 days unless the Department approves a longer period for reasons of seasonal shutdown or labor strike.] Before temporary cessation status of operations for a period of 90 days or more, an operator shall submit to the Department a notice that may be included in, or submitted subsequent to, the notice required under subsection (a) and shall include all of the following:

(1) Confirmation that the current bond under the permit is sufficient to complete the reclamation of the coal refuse area.

(2) The timing of the installation of the phased system to prevent precipitation from contacting the refuse.

(c) [Temporary cessation does not relieve the operator of the obligation to comply with any provisions of the permit.] Temporary cessation status of operations does not relieve the operator of the obligations to comply with the acts as defined in § 86.1 (relating to definitions), this chapter or Chapters 86, 87, 88 or 89 or the approved permit, including the obligation to submit an application for permit renewal at least 180 days before the expiration of the existing permit. The Department may enforce these obligations during the temporary cessation status of operations.

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

(e) Temporary cessation status of a coal refuse disposal operation ends with the resumption of operations at that site. Any subsequent notices of temporary cessation status following resumption of coal refuse operations must include updated information outlined in this section.

(f) Temporary cessation status of a coal refuse disposal operation ends with the resumption of operations at a source of the coal refuse or by permanent cessation at all sources of the coal refuse.

(g) Temporary cessation status of a coal refuse disposal operation ends with the permanent cessation of operations as specified in § 90.168 (relating to cessation of operations: permanent).

§ 90.168. Cessation of operations: permanent.

(a) Operations that are permanently ceased shall be backfilled or closed or otherwise permanently reclaimed in accordance with this chapter and the permit. All underground openings, equipment, structures or other facilities not required for monitoring, unless approved by the Department as suitable for the postmining land use, shall be removed and the affected land reclaimed.

(b) Unless coal refuse disposal operations resume as specified in § 90.167(e) or (f) (relating to cessation of operations: temporary), termination of temporary cessation status will place the mining operation in permanent cessation status and subject to the provisions of subsection (a). Temporary cessation status will terminate for operations that fail to comply with any of the following:

(1) A final adjudicated proceeding as defined under § 86.355(e) (relating to criteria for approval of application) as a result of an act or omission which violates the acts as defined in § 86.1 (relating to definitions), this chapter or Chapters 86, 87, 88 or 89.

(2) A permit condition required by the acts, this chapter or Chapters 86, 87, 88 or 89.

(3) A consent order and agreement or a consent order.

Subchapter E. SITE SELECTION

§ 90.202. General requirements.

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

(b) The applicant is required to determine whether the search area contains a preferred site.

(1) For a new coal refuse disposal area that will support an existing coal [**preparation facility**] **mining activity**, the applicant shall examine the geographic area within a 1-mile radius of the existing coal [**preparation facility**] **mining activity**.

(2) For a proposed coal refuse disposal area that will support a proposed coal preparation facility, the applicant shall examine a 25-square mile geographic area encompassing the proposed coal preparation facility. In defining the 25-square mile area, consideration shall be given to environmental, technical, transportation, economic and social factors where applicable.

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

(d) The Department will not approve a site proposed by the applicant for coal refuse disposal activities when the Department finds that the adverse environmental impacts of using the site for coal refuse disposal activities would clearly outweigh the public benefits.

(e) Except on preferred sites, the Department will not approve coal refuse disposal on or within any of the following areas:

(1) Prime farmlands.

(2) An exceptional value watershed as defined under Chapter 93 (relating to water quality standards).

(3) Sites known to contain threatened or endangered animals listed exclusively under the Commonwealth's protection programs.

(4) An area that is hydrologically connected to and contributes at least 5% of the drainage to wetlands designated as exceptional value under Chapter 105 (relating to dam safety and waterway management) unless a larger percentage contribution is authorized by the Department after consultation with the Fish and Boat Commission.

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

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

(7) Sites known to contain Federally listed threatened or endangered plants or animals. At preferred sites known to contain Federally listed threatened or endangered species, approval will be granted only when the Department concludes and the United States Fish and Wildlife Service concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the take of Federally listed threatened or endangered species in violation of section 9 of the Endangered Species Act of 1973 (16 U.S.C.A. § 1538).

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

[Pa.B. Doc. No. 21-1836. Filed for public inspection November 5, 2021, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Regarding Depreciation Reporting and Capital Planning for Crude Oil, Gasoline or Petroleum Products Transportation Pipelines 52 Pa. Code Chapter 73

Public Meeting held
October 7, 2021

Commissioners Present: Gladys Brown Dutrieuille, Chairperson, Statement, Dissenting; John F. Coleman, Jr., Vice Chairperson; Ralph V. Yanora

*Rulemaking Regarding Depreciation Reporting and
Capital Planning for Crude Oil, Gasoline or Petroleum
Products Transportation Pipelines 52 Pa. Code Chapter
73; Docket Number: L-2019-3010270*

Order

By the Commission:

Before the Pennsylvania Public Utility Commission (Commission) for disposition is a rulemaking on proposed amendments to our public utility reporting regulations at 52 Pa. Code §§ 73.1, 73.3, 73.5, and 73.7 providing for annual depreciation reporting, service life study reporting, and capital investment reporting. The existing regulations at Chapter 73 currently apply to electric service, gas service, and water service public utilities. In a prior Order, the Commission had proposed to require crude oil, gasoline, and petroleum products transportation pipeline public utilities to file annual depreciation reports, service life study reports, and capital investment plan reports in accordance with the provisions established in 52 Pa. Code Chapter 73. For the reasons expressed in this Order, we discontinue this rulemaking consistent with this Order.

Background

At Public Meeting held June 13, 2019, the Commission adopted a Notice of Proposed Rulemaking Order (NOPR) to seek comments on proposed amendments to our public utility reporting regulations at 52 Pa. Code §§ 73.1, 73.3, 73.5, and 73.7 providing for annual depreciation reporting, service life study reporting, and capital investment reporting. The existing regulations at 52 Pa. Code §§ 73.1—73.9 currently apply to electric service, gas service, and water service public utilities, but are silent about crude oil, gasoline, and petroleum products transportation pipeline public utilities. The Commission proposed to require crude oil, gasoline, and petroleum products transportation pipeline public utilities to file Annual Depreciation Reports, Service Life Study Reports, and Capital Investment Plan Reports in accordance with the provisions established in 52 Pa. Code Chapter 73.

The NOPR and the notice requesting comments from interested parties were published October 5, 2019, in the *Pennsylvania Bulletin*, at 49 Pa.B. 5702—5704. The Commission received comments from the Independent Regulatory Review Commission (IRRC), Sunoco Pipeline, LP (Sunoco), Laurel Pipeline Company, LP (Laurel), The Association of Oil Pipelines (AOPL), the County of Chester (Chester County), West Whiteland Township (West Whiteland), the East Goshen Township Board of Supervisors (East Goshen), and two individuals, Susan Hubickey and Trevor Salla. This order addresses the comments received and sets forth a final rulemaking amending our regulations at 52 Pa. Code §§ 73.1, 73.3, 73.5, and 73.7.

The Public Utility Code gives the Commission broad authority and responsibility to ensure that the rates charged by public utilities are just and reasonable and that the service provided by public utilities to their customers and the public is safe, efficient, and adequate. 66 Pa.C.S. §§ 1301 and 1501. To accomplish these objectives, Section 501(b) grants the Commission the administrative authority to supervise and regulate all public utilities doing business within the Commonwealth of Pennsylvania and to make regulations necessary to exercise its powers. 66 Pa.C.S. § 501(b). Additionally, the Commission may require a public utility “to file periodical reports at such times, and in such form, and of such content” as the Commission may prescribe, including information concerning the valuation of its property. 66 Pa.C.S. §§ 504—506. The Public Utility Code, in pertinent part, defines a “public utility” as:

Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for . . . [t]ransporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

66 Pa.C.S. § 102. Consequently, the Commission has the authority under the Public Utility Code to require crude oil, gasoline, and petroleum products transportation pipeline public utilities to comply with the reporting provisions of Chapter 73.

In stating its purpose for promulgating the Chapter 73 regulations, the Commission determined that regular reporting of a public utility’s depreciation practices and capital planning is necessary to determine whether a public utility will be capable of providing safe, efficient, and adequate service currently and in the future. See 38 Pa.B. 4685 (Sept. 17, 1994); Rulemaking Re Public Utility Depreciation Practices and Capital Planning, Docket L-00920062 (Order entered July 22, 1994). The Commission also reasoned that it could not properly evaluate the justness and reasonableness of a public utility’s rates and rate structure without examining a company’s earnings and depreciation practices. However, the original rulemaking did not address the rationale for excluding petroleum transportation pipeline companies from the reporting requirements. At this time, the industry’s growth within the Commonwealth justifies including crude oil, gasoline, and petroleum products transportation pipeline public utilities in the list of entities required to comply with the depreciation and capital planning reporting provisions of Chapter 73. Submission of these reports ensures the Commission receives the information necessary to fulfill the duties imposed upon it by the Public Utility Code.

Comments:

IRRC:

The IRRC’s comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b), and further directs the Commission to respond to all comments received from us or any other source pursuant to Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)). The IRRC notes that two pipelines have submitted comments (Laurel and Sunoco) stating that the new reporting requirements will impose significant costs and points out that this assertion conflicts with the Commission’s cost estimate for the regulated community found in Question # 19 of the Regulatory Analysis Form (RAF), wherein the Commission acknowledged some ad-

ministrative costs, but did not anticipate any significant cost to the regulated community. IRRRC requested the Commission work with the commentators to gain a better understanding of how the new reporting requirements will financially impact pipelines and to include the findings in the RAF submitted with the final-form rulemaking. IRRRC also noted that Sunoco and Laurel question the usefulness of the reports and what the Commission will do with the information gathered. For each of the three reports to be filed by the pipelines, IRRRC asks the Commission to describe the type of information that will be collected and how that information will be used to improve safety, efficiency and adequacy of service. IRRRC Comments at 1.

Sunoco:

With regard to annual depreciation reporting, Sunoco commented that the proposed required annual depreciation reporting will come at a substantial cost to pipeline utilities while providing the Commission with little to no benefit, given the nature of pipelines versus fixed distribution utilities and the type of sophisticated producer customers served by pipelines who are not residential or small business customers. Sunoco Comments at 2. For traditional fixed utilities, the costs of these reports ultimately would be borne by ratepayers. *Id.* Sunoco maintains that because it cannot recover these costs through rates, the money would be better spent on maintaining and investing in infrastructure. Sunoco Comments at 2, 4.

Moreover, Sunoco asserts that reporting on depreciation provides no useful information regarding whether an asset is safe and adequate to provide service, because depreciation is a tax, ratemaking, and accounting concept, and has no bearing on whether such an asset can safely continue to be used and useful in utility service under PHMSA regulations. Sunoco Comments at 2.

Finally, Sunoco comments that hazardous liquid transportation pipelines provide service to a group of sophisticated customers that in most instances have competitive alternatives to the utility service provided, unlike other fixed utilities that serve other customers classes that do not have these same resources or level of sophistication regarding ratemaking. The ratemaking concerns applicable to other fixed utilities are simply different from hazardous liquid transportation pipelines. Moreover, depreciation for ratemaking purposes is a concept applicable to rate base rate of return ratemaking, however, alternative ratemaking is now an option the Legislature saw as a potential need for utilities and their customers in Pennsylvania to move away from traditional rate base rate of return. See 66 Pa.C.S. § 1330. In other words, Sunoco opines, if a hazardous liquid pipeline utility gains approval for alternative rate mechanisms that may not rely upon depreciation concepts, these reports will be wholly useless at great cost and no benefit. Sunoco Comments at 2-3.

Regarding the service life study reporting requirement, Sunoco comments that these reports require hazardous liquid pipelines to analyze their infrastructure in a way that is wholly inconsistent with federal pipeline safety law and regulations. More specifically, requiring hazardous liquid transportation pipelines to create and file service life study reports, as specified in 52 Pa. Code § 73.5, is inconsistent with the federally mandated requirements for the safe operation, maintenance, inspection, replacement, testing, monitoring and repair that hazardous liquid transportation pipelines apply to their facilities. Sunoco opines that the service life study report would require the utility to average and estimate service

life or average remaining life of utility facilities, but that the concept that a pipeline has a finite life is wholly inconsistent with the federal statutory and regulatory scheme. Instead, federal law and regulations require that pipelines operate, inspect, maintain and repair their pipelines, including through integrity management programs. This entails ongoing monitoring, inspection, and evaluation of facilities to determine what repairs are necessary on what timeline and which to prioritize to keep facilities safe and fit for service, potentially infinitely. Sunoco Comments at 3.

Finally, with regard to the capital investment plan reporting requirement, Sunoco submits that requiring a capital investment plan report comes at significant time and cost with little regulatory benefit. The capital investment plan report is a five-year outlook report on major planned expansion, modification or other alteration of utility facilities. See 52 Pa. Code § 73.8. Sunoco states that a five-year report provides no additional relevant and timely information that Sunoco is not already required to provide on a timelier basis through the construction notification requirements in 52 Pa. Code § 59.38, which requires notification and information 30 days prior to starting major construction of utility facilities. In the unique pipeline industry, project opportunities often arise quickly and, in any event, predicting projects and the capital required on a five-year horizon would include significant speculation of future demand for pipeline transportation and estimating capital costs. Moreover, Sunoco continues, when and if projects arise, initial plans and any alteration are within the utility's "managerial discretion," which is a legal principle that provides that it is up to a utility's management to determine how and when to orient its planned facilities to provide adequate and reasonably continuous service. Sunoco questions the need for a projection report that may not remain accurate for very long, nor provides information that is more useful than that already being submitted under 52 Pa. Code § 59.38. Sunoco Comments at 4.

In its response to the Commission's data requests, Sunoco estimated that the costs of preparing the reports would be \$65,000 for the Annual Depreciation Study, \$125,000 for the Service Life Study, and \$345,000 for the Capital Investment Plan. These costs will recur each time a report is due (annually for the depreciation study and every five years for the service life study and capital investment plan). Moreover, Sunoco estimates an approximate 3% yearly increases in costs for each report, which is based on the consumer price index. These costs reflect both internal and external costs and were calculated by listing necessary tasks to complete each report, number of hours for each task, and hourly rate for each person performing the task. Sunoco noted that it has extensive pipeline infrastructure throughout the state that drives these costs. Finally, regarding financial impact, the total amount, \$535,000 represents an approximately 2% of year-to-date 2020 weighted average of Commission tariffed rates. This was calculated by taking the estimated total report cost per intra-state barrel movement divided into weighted average tariffed rate from Twin Oaks, Delaware County origin to points in Pennsylvania destinations. Sunoco DR-1 at 1.

Laurel Pipeline:

Laurel generally comments that these additional reporting requirements will increase regulatory compliance costs for hazardous liquids pipelines, without apparent benefit to consumers or the industry. In addition, Laurel

proposed that, should the reports ultimately be required, the frequency at which certain of the requested reports are required by the Commission should be consistent with analogous federal reporting requirements. Specifically, regarding annual depreciation reports, Laurel explains that hazardous liquid pipelines are not currently required to prepare and submit depreciation reports to the Commission on an annual basis, and that, therefore, this additional reporting requirement will require hazardous liquid pipelines to incur additional costs. Laurel comments that it is unclear how these additional reports would be used by the Commission, and thus the benefit of the proposed change is not apparent. Laurel Comments at 2.

Regarding service life study reports, Laurel requests the Commission consider current PHMSA regulations and integrity programs put in place to ensure the safety in the operation and maintenance of hazardous liquid pipelines. Laurel submits that age should not be used to determine a pipeline's viability, rather, the integrity management program that has been regulated under PHMSA's integrity management requirements should be used as the basis to determine a pipeline's viability. Laurel Comments at 2-3.

In addition, Laurel questions the need to perform a service life study every five years. Instead, consistent with existing federal requirements under the Federal Energy Regulatory Commission's (FERC) regulations, Laurel would propose that service life studies be completed at the direction of the Commission or "when a carrier believes any rate prescribed by the Commission is no longer applicable." See 18 C.F.R. § 352, Instruction 1-8(b)(2). By allowing hazardous liquids pipelines to complete these studies "as needed," consistent with existing federal requirements, certain of the additional costs associated with complying with this proposed amendment would be avoided. Laurel Comments at 3.

With respect to the proposed amendment to require hazardous liquids pipelines to submit capital investment plan reports every five years under 52 Pa. Code § 73.7, Laurel submits that the proposed amendment should clarify the manner in which capital incurred for projects that cross state lines should be reported. Petroleum products pipeline projects regularly include interstate and intrastate aspects, i.e., origins and destinations that can be used for intrastate service or interstate service. However, the proposed regulation does not clarify how such projects should be included in a report. Laurel suggests further guidance under the Section 73.2 Definitions, which outlines the report criteria for joint projects (providing both inter and intrastate transportation services), may be needed to address how joint projects are addressed by the report. Id.

Moreover, in the proposed rulemaking, the Commission indicated that Chapter 73 was adopted, in part, because the Commission determined "regular reporting of a public utility's depreciation practices and capital planning is necessary to determine whether a public utility will be capable of providing safe, efficient, and adequate service currently and in the future." See NOPR, p. 2 (citing 38 Pa.B. 4685 (Sept. 17, 1994); Rulemaking Re Public Utility Depreciation Practices and Capital Planning, Docket L-00920062 (Order entered July 22, 1994)). In this regard, as the Commission does not have jurisdiction over the rates charged for interstate service, Laurel submits that the Commission should clarify how it will use information related to interstate service, if such information is to be included in the reports. Laurel Comments at 4.

Lastly, Laurel submits that it is important to recognize hazardous liquids pipelines are regulated as common carriers rather than public utilities at the federal level. Under this mode of regulation, "[m]any constraints commonly associated with utility-type regulation. . . were not imposed on oil pipelines." Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, 65 F.E.R.C. ¶61,109 (Oct. 22, 1993). Courts have interpreted this as reflecting a Congressional intent to allow market forces "freer play" within the industry, than for other common carriers or for public utilities. Laurel submits that, by considering requiring hazardous liquids pipelines to disclose commercially and competitively sensitive information regarding capital investment strategies, the Commission's proposed amendments may conflict with the market forces driving the hazardous liquids pipelines industry. This would be especially true if the Commission were to require hazardous liquids pipelines to include information related to interstate service projects to be included in a Section 73.7 capital investment plan. Id.

In its response to the Commission's data requests, Laurel estimated that if the requirements proposed in the NOPR were adopted, and it were required to prepare and submit these studies on the timeframes proposed by the Commission, it would incur approximately: (1) \$25,000 to \$30,000 in additional annual costs to prepare and submit the contemplated Annual Depreciation Report; (2) \$35,000 to \$45,000 in additional costs every five years to prepare and submit the contemplated Service Life Study; and (3) \$25,000 to \$30,000 in additional costs every five years to prepare and submit the contemplated Capital Investment Plan Report. In sum, Laurel estimates it would incur approximately \$185,000 to \$225,000 in additional costs every five years, in order to comply with all the proposed reporting requirements. Laurel's estimate is based upon the extent of miles of pipeline facilities that it owns and operates in Pennsylvania, which would be subject to these reporting requirements. Laurel DR-1 at 1.

AOPL:

Generally, the AOPL agrees with the comments filed by Laurel and Sunoco but adds that it is particularly concerned about the imposition of utility reporting obligations on pipelines that are unneeded, would fail to benefit customers or the industry, and are not fitting for an industry that operates in a vastly different marketplace than traditional utilities. Further, the AOPL echoes concerns expressed in the comments with any suggestion that the useful life of an oil pipeline is limited by its number of years in service, as the extent to which an oil pipeline is depreciated does not bear upon whether the pipeline can continue to provide safe, efficient and adequate service. Moreover, PHMSA has an extensive regulatory framework that ensures the safety of oil pipelines. Because PHMSA comprehensively occupies the field of pipeline safety regulation, PHMSA's regulations would legally preempt any state regulatory requirement that is inconsistent, or incompatible, with federal pipeline safety laws. AOPL Comments at 1-2.

Chester County:

Chester County supports the proposed regulations which will increase pipeline operation transparency and will help to ensure that crude oil, gasoline and petroleum products transportation pipeline public utilities are financially fit to complete the needed short and long-term maintenance for these public utilities to continue to operate safely throughout the Commonwealth. Chester County opines that there is no valid reason to exclude crude oil, gasoline and petroleum products transportation

pipeline public utilities from the mandatory reporting requirement for other regulated public utilities. Comments of Chester County at 1.

West Whiteland:

West Whiteland comments that it has been ground zero for problems associated with Energy Transfer's Mariner East pipelines that are in operation and under construction, and requests that the proposed amendments include a requirement that the reports, particularly the life studies, be publicly available. West Whiteland recognizes that there are security risks to pipelines but argues that the excessive secrecy surrounding many of Energy Transfer's plans has created challenges for local officials and added to public suspicion about the safety of the pipelines. Comments of West Whiteland at 1.

East Goshen:

East Goshen notes that the Mariner East pipeline project runs the entire length of East Goshen Township, and the project has had a profound impact on the quality of life of the Township's 18,233 residents. Therefore, East Goshen strongly supports any and all regulatory efforts to make pipeline operators more accountable to both the Commonwealth and its residents. Comments of East Goshen at 1.

Susan Hubickey and Trevor Salla:

The comments of Ms. Hubickey relate to pipeline conversion, construction techniques and horizontal directional drilling, protection of public and private water wells and supplies, and land agents and eminent domain. While filed under the current Docket No. L-2019-3010270, we believe that these comments were intended to address a companion Commission proceeding Hazardous Liquid Public Utility Safety Standards, 52 Pa. Code Chapter 59, at PUC Docket No. L-2019-3010267. Nevertheless, the concerns raised in these comments are legitimate safety concerns that will be addressed both in this case, and in our companion case.

Disposition

To begin with, we note that we are closing this rulemaking without adopting the proposed changes. However, as explained below, we will continue to review the propriety of requiring crude oil, gasoline, and petroleum products transportation pipeline public utilities to file service life studies in the open rulemaking proceeding at Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59, Docket No. L-2019-3010267.

Depreciation and Capital Investment Plan Reports:

With respect to the financial impact on pipeline utilities, the Commission sent data requests both to Sunoco and Laurel on September 15, 2020, and received responses on October 15, 2020, and October 16, 2020, respectively. The data requests asked Sunoco and Laurel to provide more information regarding the fiscal impact this proposed rulemaking will have on each company.

Upon further discussion with the interested bureaus within the Commission, it was determined that the Annual Depreciation Report and the Capital Investment Plan Report are reports generally required of fixed utilities for the purposes of determining base rates, which do not apply to pipeline public utilities. Moreover, the Commission already receives from pipeline public utilities notification of proposed major construction, reconstruction or maintenance of plant at least 30 days prior to the commencement of work. Major construction, reconstruction

or maintenance is defined for this reporting as a single project involving an expenditure in excess of \$300,000 or 10% of the cost of the utility's plant in service, whichever is less, pursuant to 52 Pa. Code § 59.38. Accordingly, the Commission agrees with the commenters that the Annual Depreciation Report is not a report that would assist in determining whether a pipeline public utility will be capable of providing safe, efficient, and adequate service currently and in the future, and that the Capital Investment Plan Report requirements are satisfied by the existing filings being provided to the Commission under 52 Pa. Code § 59.38.

Service Life Study Report:

Several commentors asserted that mandating a reoccurring service life study requirement for all pipelines would be inconsistent or incompatible with the Federal regulations of the PHMSA and, therefore, would be preempted. The Commission participates as a certified state in the federal pipeline safety program administered by PHMSA under 49 U.S.C. § 60105(a). The Commission has incorporated 49 CFR Part 195 in its regulations, in part, to comport with the requirements of PHMSA's pipeline safety program. Participating certified states must adopt the minimum federal pipeline safety standards and are permitted to adopt additional, more stringent regulations, so long as they are compatible with the minimum federal pipeline safety standards.

While we have a reasonable basis for believing we have jurisdiction to move forward, the risk of federal preemption should not be casually dismissed. PHMSA recently directed the Commission to modify its regulations on customer-owned gas service lines due to a potential conflict with federal rules.¹ Before the Independent Regulatory Review Commission will give final approval, the Commission must demonstrate that it has the legal authority to promulgate a final rule, and that a proposed rule is not in conflict with some other regulation or statute. It would not be in the public interest to move forward now, only to have to withdraw or modify the rulemaking, thereby significantly delaying implementation because of a preemption issue. If the Commission needs to move quickly and decisively to protect the public, there should be no ambiguity about our jurisdiction or authority that might impede our ability to act.

Fortunately, the Commission has the option to obtain assistance from the nation's leading expert on the question of federal pipeline safety preemption. PHMSA itself provides a process for state regulators to request interpretative guidance on pipeline safety issues.² It would be wise for the Commission to ask PHMSA to verify that a service life study requirement is compatible with PHMSA standards, and to review our proposed regulatory language for any needed clarifications or suggestions for improvement.

Should PHMSA find that our proposed amendments are compatible with its regulations, a service life study will be incorporated into our pending pipeline safety rulemaking on changes to Chapter 59 of the Commission's regulations.³ These two proceedings involve overlapping legal and policy issues, and it would be appropriate to locate a study requirement in Chapter 59.⁴ Chapter 59 is

¹ Request for Comments on Implementation of Potential Amendments to 52 Pa. Code § 59.34 Relating to Leakage Surveys of Customer-Owned Service Lines, Docket No. L-2020-3019417 (Order issued August 5, 2021).

² See 49 C.F.R. § 190.11(b) Availability of informal guidance and interpretive assistance.

³ Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59, Docket No. L-2019-3010267 (Notice of Proposed Rulemaking Order entered August 19, 2021).

⁴ 52 Pa. Code § 59.1, et seq.

the primary location of our gas and pipeline safety regulations, and PHMSA's requirements are already incorporated into Section 59.33(b). PHMSA's interpretative guidance on this issue and the comments received at this docket may be incorporated by reference at that proceeding, and the Commission may utilize an advance notice of final rulemaking if additional comment on this issue is necessary. In the meantime, the Commission will continue to implement all service life study requirements that have been approved as part of resolutions of enforcement actions brought by Commission staff. The safety of public utility infrastructure is of utmost importance to the Commission, and we will continue to diligently monitor and enforce compliance with all the laws of the Commonwealth within our jurisdiction; *Therefore,*

It Is Ordered That:

1. The Law Bureau prepare appropriate correspondence to PHMSA for the Commission's review and approval within thirty days of the entry of this Order.

2. A copy of this Order be served on all crude oil, gasoline, and petroleum products transportation pipeline public utilities, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission's Bureau of Investigation and Enforcement.

3. The instant rulemaking at Rulemaking Regarding Depreciation Reporting and Capital Planning for Crude Oil, Gasoline, or Petroleum Products Transportation Pipelines 52 Pa. Code Chapter 73, Docket No. L-2019-3010270 be marked closed.

4. A copy of this Order be entered at Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59, Docket No. L-2019-3010267.

5. The Law Bureau shall deposit this Order with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

6. The Commission shall provide notice to the Office of Attorney General, the Governor's Budget Office, the Legislative Standing Committees, and the Independent Regulatory Review Commission that this rulemaking has been closed.

ROSEMARY CHIAVETTA,
Secretary

ORDER ADOPTED: October 7, 2021

ORDER ENTERED: October 22, 2021

Statement of Chairperson Gladys Brown Dutrieuille

Before the Commission for disposition is a Final Rulemaking Order on proposed amendments to our public utility reporting regulations at 52 Pa. Code §§ 73.1, 73.3, 73.5, and 73.7. At the outset of this docket the Commission proposed to require crude oil, gasoline, and petroleum products transportation pipeline public utilities to file depreciation reports, service life study reports, and capital investment plan reports.

Numerous parties filed comments in response to this proposed rulemaking. A number of pipeline operators question the value and legality of these three additional reporting requirements. Conversely, various individuals and municipalities filed comments supporting these additional reporting requirements noting their potential to better instill safe and reliable service through accountability and transparency.

Upon review and consideration of their respective costs and benefits I believe that the proposal to add depreciation and capital investment reporting are not necessary. Depreciation reports are beneficial to determine the validity and accuracy of base rates. However, pipeline utilities operate in a manner more akin to a 'common carrier' and are not directly analogous to fixed utilities with base rates. As such, this information is of minimal value. Second, the Commission already receives major construction and maintenance reports from pipeline utilities pursuant to our regulations at 52 Pa. Code § 59.38, thus minimalizing the benefits of the proposed capital investment reporting requirement.

However, I do believe that the proposal to require service life study reporting is in the interest of the public, and I contend this regulatory package should proceed with inclusion of this requirement. I submit that service life study reports can bear upon whether a pipeline can continue to provide safe, efficient, and adequate service. While service life may be extended indefinitely through proper adherence to a Pipeline and Hazardous Materials Safety Administration (PHMSA) integrity management plan, this does not mean that segments of pipelines or other pipeline facilities do not wear out or develop leaks. Public safety and transparency are of paramount importance, and I believe that periodic service life study reporting is step towards achieving these goals.

Several pipelines contend that a service life study reporting requirements is preempted by the PHMSA regulations. I disagree. I contend that such reporting is not inconsistent nor incompatible with Federal regulations but rather a complementary requirement of Pennsylvania necessarily promulgated in response to the burgeoning pipeline industry in the Commonwealth.

The information conveyed pursuant to this proposal will enhance the Commission's ability to appraise that status of pipelines thereby helping to ensure the prudent and safe operations of said pipelines.

For these reasons, I support the issuance of a final rulemaking adopting a service life study reporting requirement and removing the proposed depreciation and capital investment reporting requirements.

Date: October 7, 2021

GLADYS BROWN DUTRIEUILLE,
Chairperson

[Pa.B. Doc. No. 21-1837. Filed for public inspection November 5, 2021, 9:00 a.m.]