

**Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapters 77, 87, 88, and 89
NOTICE OF PROPOSED RULEMAKING**

Preamble

The Environmental Quality Board (Board) proposes to amend 25 *Pa. Code*, §§ 77.1 (relating to definitions), 77.564(b)(relating to surface blasting requirements), 87.1(relating to definitions), 87.124(b)(relating to use of explosives: general requirements), 87.126(b)(2)(ii) (relating to use of explosives: public notice of blasting schedule), 87.127(a) and (f)(1)(relating to use of explosives: surface blasting requirements), 88.1(relating to definitions), 88.135(a) and (f)(1)(relating to blasting: surface blasting requirements), 88.493(7)(i)relating to minimum environmental protection standards), 89.1(relating to definitions), and 89.62(relating to use of explosives) as set forth in Annex A attached hereto.

These amendments clarify that the use of explosives in connection with the construction of an entry for an underground coalmine is surface mining activity subject to the applicable requirements in Chapters 87 or 88. In addition, the amendments make more flexible the timing requirements applicable to the use of explosives for constructing entries to a coal and industrial mineral underground mines. Finally, the requirements for protective measures to be taken when surface coalmine blasting is in proximity to a public highway are made more flexible.

A. Effective Date

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

B. Contact Persons

For further information contact Joseph Pizarchik, Director, Bureau of Mining and Reclamation, P.O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5015, or Marc A. Roda, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464 Rachel Carson State Office Building, Harrisburg, PA 17105-8464 (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

This proposed rulemaking is being made under the authority of Section 4.2 of the Surface Mining Conservation and Reclamation Act (“SMCRA”) and Section 11(e) of the Noncoal Surface Mining Conservation and Reclamation Act (“NCSMCRA”) (52 P.S. §§ 1396.4b and 3311(e)), which direct the Department to promulgate regulations concerning the handling and use of explosives at coal and noncoal surface mine sites as well as the licensing of blasters; and §§ 1917-A and 1920-A of the Administrative Code of 1929, 71 P.S. § 510-20. Sections 1917-A and 1920-A of the Administrative Code of 1929 authorize the Board to adopt regulations to prevent the occurrence of a nuisance and to promulgate such rules and regulations as are necessary for the proper work of the Department.

D. Background and Purpose

The purpose of this proposed rulemaking is to amend the regulations relating to the use of explosives used in connection with the development of an entry for an underground mine to ensure that these regulations both protect the public and miners. The SMCRA and the NCSMCRA broadly define surface mining activities to include all activities conducted on the surface that are incidental to the establishment or operation of an underground mine. These activities include, *inter alia*, the construction of the entire entry, *i.e.* from the surface to the coal seam or mineral strata being or to be mined. *See* 52 P.S. §§ 1396.3 and 3303 (relating to definitions). The Regulations found in chapters 77 (relating to noncoal mining), 87 (relating to bituminous surface mining) and 88 (relating to anthracite surface mining) concerning the use of explosives at a strip mine, quarry or other noncoal surface mine apply equally to the use of explosives used in connection with surface activities that are incidental to underground mining. *See* § 88.493(7) (relating to minimum environmental protection performance standards), and § 89.62 (relating to use of explosives), and § 77.561 (relating to general requirements).

These regulations are for the protection of persons and property outside the permit area as well as persons at the mine site. They address issues such as peak particle velocity, air blasts, preblast surveys, timing of blasts, and measures to be taken to protect traffic on nearby highways.

Until recently, strict enforcement of these regulations has been unnecessary because entries to underground mines have been in remote locations so that the blasting activity needed to construct the entry did not pose a threat to the public. With entries now being located closer to areas of habitation, strict enforcement becomes more important. On the other hand more flexibility is needed in some respects. The requirements relating to the timing of blasts, when applied to all entry development blasting, poses a significant risk to mine workers without significantly protecting the rest of the public. In addition, barricading a highway, as required by § 87.127 and 88.135 is not always the appropriate method for protecting the public from mine blasting near that highway.

The Mining Reclamation and Advisory Board at its meeting of ____, recommended that these proposed amendments should be published as proposed rulemaking. The Department also discussed these proposed amendments with the underground anthracite, bituminous and

industrial mineral mining roundtables. These groups are open to representatives from the underground anthracite, bituminous and industrial mineral mining industries and act as a forum for the Department to discuss mine safety issues. Each roundtable reviewed and discussed these proposed amendments at their meetings of ____, ____, and ____ respectively. Each group has recommended that the proposed amendments be published as proposed rulemaking.

E. **Summary of Regulatory Requirements**

1. *Definitions*

For clarity it is proposed to add definitions for the terms “blasting” and “entry blasting” to §§ 77.1, 87.1, 88.1, and 89.5 (relating to definitions). The existing regulations relating to the use of explosives use the term “blasts” or “blasting”. While this term has not been defined its meaning is generally understood. As explained below, the proposed amendments, *inter alia*, establish more flexible timing and public notice requirements for entry blasting. Therefore it is useful to define what is blasting in general and then what is entry blasting.

2. *Applicability.*

The regulations found at § 88.493(7)(i)(relating to minimum environmental protection performance standards) and § 89.62 (relating to use of explosives) will be amended to explicitly require that all entry blasting is subject to the use of explosive regulations for anthracite and bituminous surface coal mines. The existing regulations could be construed as only explicitly requiring the initial rounds needed for entry development to be subject to the surface mining explosives regulations and leaving the Department the discretionary authority to subject subsequent rounds to the explosives regulations.

3. *Timing of Entry Blasting.*

Currently all blasting must be conducted during the daylight hours, *See* §§ 77. 564(b) (relating to surface blasting requirements), 87.127(a) (relating to use of explosives: surface blasting), and 88.135(a) (relating to blasting: surface blasting requirements). These regulations will be amended to only require the first two entry blasts to occur during day light hours. Subsequent entry blasting can be conducted any time during the day. However, the Department has the authority to limit the timing of these subsequent blasts if necessary.

Restricting blasting to the daylight hours minimizes the nuisance caused by blasting to persons living or working near the mine site. However, restricting all entry blasting to the day light hours increases the mineworkers’ risk of injury. Once started, mine entry development needs to proceed as expeditiously as possible. During development, the walls of the mine entry are most subject to deterioration. As a result, there is an increased risk that the entry wall will fail resulting in a rock fall, which can injure or entrap miners. Therefore, entry development needs to proceed on a round-the-clock work schedule. It is difficult, at best, to predict ahead of time when it will be necessary to use a blast to either break rock or bring down rocks hanging on the entry walls. Therefore, allowing entry blasting after the second blast to occur at any time

balances the need to protect the public from blasting with the need to expeditiously develop the mine entry.

The published schedule for bituminous surface blasting must be in time periods of four hours or less. *See* § 87.126(b)(2)(ii)(relating to use of explosives: public notice of blasting schedule). This requirement is not appropriate for entry blasting after the second blast. As explained above, for the safety of the mineworkers, there is a need to proceed with entry development as expeditiously as possible. It is difficult, at best, to predict a head of time when it will be necessary to use a blast to either break rock or bring down rocks hanging on the entry walls. Therefore, this section will be amended to have the blast schedule identify this scheduling flexibility.

4. *Blasting Near Highways*

Currently, barricades are to be erected when blasting is within 1,000 feet of the mine entrance or public highway. *See* § 87.127(f)(1)(relating to use of explosives: surface blasting) and § 88.135(f)(1)(relating to blasting: surface blasting requirements). These subsections will be amended to be identical to the requirement in § 77.564(g)(1)(relating to surface blasting requirements.) That precautionary measures are to be taken when blasting is within 8,000 feet of a public highway.

The requirement for barricades is unnecessarily inflexible. In administering blasting at noncoal surface mines and construction projects, the Department has learned that there are precautionary measures, other than barricades, that protect the public. In some circumstances, barricading the highway can create more risks than it guards against. In addition, in the Department's experience, from the noncoal surface mining and construction blasting programs, a distance limitation of 8,000 feet is sufficient.

5. *Technical Correction*

Section 87.124(b)(relating to use of explosives: general requirements) requires all blasts using more than 5 pounds of explosives or blasting agents to be conducted in accordance with a published blasting schedule. However, the cross reference is to § 87.127(relating to use of explosives: surface blasting requirements) rather than § 87.126(relating to use of explosives: public notice of blasting schedule). This cross-reference has been corrected.

F. Benefits, Costs and Compliance

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

Benefits

The approximately 1,500 coal and industrial mineral surface mines authorized to conduct blasting will benefit. In addition, if any of the approximately 65 underground coal and industrial mineral mines need a new surface entrance, then those mines will also benefit from these proposed regulations. In the past 5 years approximately 15 shaft entries have been developed.

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Costs

This proposed amendment will not impose additional costs because the affect of this amendment is increased flexibility.

Compliance Assistance Plan

Compliance assistance will be provided by the mine and explosives inspectors.

Paperwork Requirements

This proposed amendment has no affect on existing paperwork requirements.

G. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

H. Regulatory Review

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

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria, which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor, and the General Assembly before final publication of the regulation.

I. Public Comments

Written Comments - Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by (blank) (within 30 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by (blank) (within 30 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments - Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us and must also be received by the Board by _____, 19___. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within two workings, the comments should be retransmitted to ensure receipt.

J. Public Hearings

Due to the minor and non-controversial nature of these amendments, no public hearings have been scheduled.

BY:

Kathleen A. McGinty
Secretary
Environmental Quality Board