

CHAPTER 77. NONCOAL MINING

Subchap.	Sec.
A. GENERAL PROVISIONS .....	77.1
B. SURFACE MINING OPERATOR'S LICENSE .....	77.41
C. PERMITS AND PERMIT APPLICATIONS .....	77.101
D. BONDING AND INSURANCE REQUIREMENTS .....	77.191
E. CIVIL PENALTIES FOR NONCOAL MINING ACTIVITIES .....	77.291
F. ENFORCEMENT AND INSPECTION .....	77.351
G. INFORMATION ON ENVIRONMENTAL RESOURCES .....	77.401
H. REQUIREMENTS FOR OPERATION AND RECLAMATION PLAN .....	77.451
I. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS .....	77.501
J. GENERAL PERMITS .....	77.801

Authority

The provisions of this Chapter 77 amended under section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3311(a)); sections 5(a) and (b) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(a) and (b) and 691.402); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

Source

The provisions of this Chapter 77 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726, unless otherwise noted.

**(Editor's Note:** On April 16, 1990, the general permit for small noncoal surface mining operations (those operations where less than 2,000 tons of noncoal minerals are extracted by surface mining in a given year), became effective because of the operation of section 26(b) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3326(b)). See 20 Pa.B. 2746 (May 26, 1990).)

Cross References

This chapter cited in 25 Pa. Code § 86.1 (relating to definitions); 25 Pa. Code § 86.5 (relating to extraction of coal incidental to noncoal surface mining); 25 Pa. Code § 92a.2 (relating to definitions); 25 Pa. Code § 92a.11 (relating to other chapters applicable); 25 Pa. Code § 92a.12 (relating to treatment requirements); 25 Pa. Code § 211.102 (relating to scope); and 25 Pa. Code § 287.2 (relating to scope).

Subchapter A. GENERAL PROVISIONS

77.1.	Definitions.
77.2.	Scope.
77.3.	Relationship to coal mining.
77.11.	[Reserved].
77.12.	[Reserved].
77.13.	[Reserved].
77.14.	[Reserved].
77.15.	[Reserved].
77.16.	[Reserved].
77.17.	[Reserved].
77.21.	[Reserved].
77.22.	[Reserved].
77.23.	[Reserved].
77.24.	[Reserved].
77.25.	[Reserved].
77.26.	[Reserved].

**§ 77.1. Definitions.**

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

*AOC—Approximate original contour*—Contouring as defined in this section.

*Acid drainage*—Water with a pH of less than 6 in which total acidity exceeds total alkalinity.

*Acid-forming materials*—Earth materials that contain sulfide minerals or other materials, which, if exposed to air, water or weathering processes, form acids that may create acid drainage.

*Act*—The Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326).

*Active operation*—An operation in which a minimum of 500 tons of minerals for commercial purposes have been removed in the preceding calendar year.

*Adjacent area*—Land located outside the permit area within 1,000 feet.

*Annual administration fee*—A nonrefundable filing fee assessed on an annual basis for the cost to the Department of inspecting a permitted activity or facility to administer the permit.

*Applicant*—A person who seeks to obtain a permit from the Department to conduct noncoal mining activities under this chapter.

*Application*—The documents and other information filed with the Department for the issuance of a permit.

*Aquifer*—A zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use.

*Blast*—A detonation of explosives.

*Blasting*—The detonation of explosives.

*Bond*—An instrument by which a permittee assures faithful performance of the requirements of the environmental acts and the act and applicable regulations promulgated thereunder.

*Common use roads*—Existing roadways that normally are utilized by two or more operators, agencies or persons for access, safety, fire protection and other common purposes.

*Compaction*—Increasing the bulk density of a material by reducing the voids between the particles which is generally accomplished by controlled placement and mechanical effort, such as from repeated application of wheel, track or roller loads from heavy equipment.

*Complete application*—An application for a permit which contains an application form properly completed, signed and witnessed, a filing fee, proof of publication, the standard reports or forms required by the Department to process a permit and which demonstrates compliance with applicable laws and regulations.

*Contouring*—Reclamation of the land affected to approximate original contour so that it closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the

surrounding terrain with no highwall, spoil piles or depressions to accumulate water and with adequate provision for drainage.

*Degree*—The inclination from the horizontal.

*Disturbed area*—An area where vegetation, topsoil or overburden is removed or upon which topsoil, spoil or noncoal waste is placed by surface mining activities. Areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by Subchapter D (relating to bonding and insurance requirements) is released.

*Diversion*—A channel, embankment or other manmade structure constructed at a controlled slope to divert water from one area to another.

*Embankment*—An artificial deposit of material that is raised above the natural surface of the land and used to contain, divert or store water; support roads or railways; or for similar purposes.

*Environmental acts*—The term includes the following:

- (i) The Administrative Code of 1929 (71 P. S. §§ 51—720.13).
- (ii) The Air Pollution Control Act (35 P. S. §§ 4001—4015).
- (iii) The Clean Streams Law (35 P. S. §§ 691.1—691.1001).
- (iv) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).
- (v) The Pennsylvania Solid Waste Management Act (repealed) and Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).
- (vi) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19b).

*Ephemeral stream*—A water conveyance which lacks substrates associated with flowing waters and flows only in direct response to precipitation in the immediate watershed or in response to melting snowpack and which is always above the local water table.

*Fugitive dust*—Particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface noncoal mining activities, or both. During surface noncoal mining activities the term may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, processing facilities and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported or redistributed.

*General area*—The topographic and groundwater basin, with respect to hydrology, surrounding a permit area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and groundwater zones.

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

adequately protect life, health, property and the environment and under which the surface mining activities may be conducted.

*Ground cover*—The area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

*Groundwater*—Subsurface waters of the Commonwealth.

*Haul road*—Roads that are planned, designed, located, constructed, utilized and maintained for the life of the surface mine activities for the transportation of equipment, fuel, personnel, noncoal and other operating resources from a public highway or common use road to points within the surface mine or between principal operations on the mine site, or both. The term does not include roads within the pit.

*Highwall*—The face of exposed overburden and mineral in an open cut of a surface mining operation or for entry to underground mining activities.

*Hydrologic balance*—The relationship between the quality and quantity of water inflow to, water outflow from and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake or reservoir. The term includes the dynamic relationships among precipitation, runoff, evaporation and changes in groundwater and surface water storage.

*Impoundment*—A closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment or waste.

*Intermittent stream*—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

*Land use*—Specific uses or management-related activities. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department. The term includes the following:

(i) *Commerical forestland*—Land used and managed primarily for the long term production of wood, wood fiber or wood derived products. The term includes land used for facilities in support of forest harvest and management operations which is adjacent to, or an integral part of, these operations.

(ii) *Cropland*—Land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar agromonic and horticultural crops. The term includes land used for facilities in support of cropland farmland operations which is adjacent to, or an integral part of, these operations.

(iii) *Developed water resources*—Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control and water supply.

(iv) *Fish and wildlife habitat*—Land and water used wholly or partially for the production, protection or management of species of fish or wildlife.

(v) *Forestland*—Land used for the long term production of wood, wood fiber or wood derived products; watershed protection; site stabilization and for the production, protection and management of species of fish and wildlife. The term includes land used for facilities in support of forestry and watershed management operations which is adjacent to, or an integral part of, these operations.

(vi) *Industrial/commercial land*—Land used for the following:

(A) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long term storage of lumber and wood processing, chemical manufacturing, petroleum refining and fabricated metal products manufacture. The term includes land used for facilities in support of these operations which is adjacent to, or an integral part of, that operation. Support facilities include, but are not limited to, rail, road and other transportation facilities.

(B) Retail or trade of goods or services, including hotels, motels, stores, restaurants and other commercial establishments. The term includes land used for facilities in support of commercial operations. Support facilities include parking, storage or shipping facilities.

(vii) *Pastureland or land occasionally cut for hay*—Land used primarily for the long term production of adopted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. The term includes land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to, or an integral part of, these operations.

(viii) *Recreation*—Land used for developed recreation facilities, such as parks, camps and amusement areas, and for other undeveloped recreational uses.

(ix) *Residential*—Single- and multiple-family housing, mobile home parks and other residential lodgings. The term includes land use for facilities in support of residential operations which is adjacent to, or an integral part of, these operations. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(x) *Solid waste disposal area*—An area permitted for use for the disposal of solid waste under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

(xi) *Unmanaged natural habitat*—Land which does not require a specific management plan after the reclamation and revegetation have been accomplished.

(xii) *Unmanaged water impoundment*—An impoundment which does not require a specific management plan after reclamation and revegetation have been accomplished.

*Landowner*—The person or municipality in whom legal title to the land is vested.

*Large noncoal permit*—A mining permit that authorizes the extraction of greater than 10,000 tons per year of noncoal materials.

*Major permit revision*—A revision to a permit that requires public notice.

*Mine opening blasting*—Blasting conducted for the purpose of constructing a shaft, slope, drift or tunnel mine opening for an underground mine, either operating or under development, from the surface down to the point where the mine opening connects with the mineral strata to be or being extracted.

*Minor permit revision*—A revision to a permit that does not require public notice.

*Mulch*—Vegetation residue or other suitable materials that are placed on the soil surface to aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for seed germination and plant growth.

*Municipality*—A county, city, borough, incorporated town, township, institution, school district or an authority created by one or more of the foregoing.

*NPDES*—National Pollutant Discharge Elimination System.

*Noncoal exploration*—The field gathering of surface or subsurface geologic, physical or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality of overburden and mineral of an area or the gathering of environmental data, where the activities substantially disturb the area, to establish the conditions of an area before beginning noncoal mining activities under this chapter.

*Noncoal minerals*—An aggregate or mass of mineral matter, whether or not coherent, that is extracted by surface mining. The term includes, but is not limited to, limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vemiculite and clay. The term does not include peat, anthracite or bituminous coal or coal refuse, except as provided in section 4 of the act (52 P. S. § 3304).

*Noncoal surface mining activities*—The extraction of minerals from the earth, from waste or stockpiles or from pits or from banks by removing the strata or material that overlies or is above or between them or otherwise exposing and retrieving them from the surface. The term includes strip mining, auger mining, dredging, quarrying and leaching and the surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and activities related thereto. The term does not include mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. The term does not include the following:

(i) The extraction of minerals by a landowner for the landowner's non-commercial use from land owned or leased by the landowner.

(ii) The extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes of the Department of Transportation or the extraction of minerals under construction contracts with the Department if the work is performed under a bond, contract and specifications that substantially provide for and require reclamation of the area affected in the manner provided by the act.

(iii) The handling, processing or storage of slag on the premises of a manufacturer as a part of the manufacturing process.

(iv) Dredging operations that are carried out in the rivers and streams of this Commonwealth and in Lake Erie.

(v) The extraction, handling, processing or storing of minerals from a building construction excavation on the site of the construction if the minerals removed are incidental to the building construction excavation, regardless of the commercial value of the minerals. For purposes of this section, the minerals removed are incidental if the excavator demonstrates that:

(A) Extraction, handling, processing or storing are conducted concurrently with construction.

(B) The area mined is limited to the area necessary to construction.

(C) The construction is reasonably related to the use proposed for the site.

(vi) The removal and sale of noncoal materials from retail outlets.

*Noxious plants*—Species that have been included on the official State list of noxious plants for the Commonwealth under the Noxious Weed Control Law (3 P. S. §§ 255.1—255.11).

*Occupied dwelling*—A permanent building or mobile home that has become part of the real estate and currently is being used on a regular or temporary basis for human habitation.

*Operator*—A person or municipality engaged in a noncoal surface mining as a principal as distinguished from an agent or independent contractor. If more than one person is engaged in noncoal mining activities in a single operation, they shall be deemed jointly and severally responsible for compliance with the environmental acts and the act.

*Overburden*—The strata or material overlying a noncoal deposit or in between noncoal deposits in its natural state and material before or after its removal by surface mining.

*Perennial stream*—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting a benthic macroinvertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by a United States Standard No. 30

sieve (28 meshes per inch, .595 mm openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.

*Permanent diversion*—A diversion which is to remain after surface noncoal mining activities are completed which has been approved for retention by the Department.

*Permit*—A permit issued by the Department to conduct noncoal mining activities.

*Permit application fee*—A nonrefundable filing fee due at the time of submission of an application. The permit application fee is required for an application to be considered complete.

*Permit area*—

(i) For noncoal surface mining activities: the area of land and water within the boundaries of the permit which is designated on the permit application maps, as approved by the Department. The term includes an area which is or will be affected by the surface noncoal mining activities during the term of the permit.

(ii) For the surface effects of noncoal underground mining activities: the area which is designated on the permit application maps as approved by the Department. The term includes a surface area which is or will be affected by the underground noncoal mining activities.

*Permit status*—An indicator of the level of progress of mining activity at a permitted facility. Permit statuses are as follows:

(i) *Not started*. Mine sites where the mining permit has been issued, but mining activities have not begun,

(ii) *Active*. Mine sites that do not qualify for inactive status, not started status or released status,

(iii) *Inactive*. Mine sites where mineral extraction activity has been completed but final bond release has not been completed,

(iv) *Released*. Mine sites where the final bond release has been completed.

*Permittee*—A person holding, or required to hold by the act and the environmental acts, a permit issued by the Department to conduct noncoal mining activities.

*Person*—A natural person, partnership, association, corporation or municipality; or an agency, instrumentality or entity of Federal or State government.

*Precipitation event*—A quantity of water resulting from drizzle, rain, snow, sleet or hail in a limited period of time. The term may be expressed in terms of recurrence interval. The term also includes the quantity of water emanating from snow cover as snow melt in a limited period of time.

*Property*—Real or personal property.

*Public highway*—A road designated as a public highway under the laws of the jurisdiction in which it is located and which is maintained by public funds.

*Public park*—A park area formally designated as a public park by statute or otherwise dedicated or designated by a governmental agency or nonprofit organization for long-term, public recreational use, whether or not the use is limited to certain times or days, and which is part of the public domain for future generations, including land which is leased, severed or held open to the public for that long-term use.

*Reclamation*—Actions taken to reclaim the area affected by surface mining activities as required by this chapter.

*Recurrence interval*—The interval of time in which a precipitation event is expected, on the average, to occur once. For example, the 10-year, 24-hour precipitation event expected to occur on the average once in 10 years.

*Related party*—A partner, associate, officer, parent corporation, subsidiary corporation, affiliate or person by or under common control with the applicant, contractor or subcontractor.

*Sedimentation pond*—A primary sediment control structure, including, but not limited to, a barrier, dam or excavated depression which detains water runoff to allow sediment to settle out. The term does not include secondary sedimentation control structures, such as straw dikes, riprap check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that secondary sedimentation structures drain to a sedimentation pond.

*Slope*—Average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (for example, 1v:5h). The term may also be expressed as a percent or in degrees.

*Small noncoal permit*—A mining permit that authorizes the extraction of up to 10,000 tons of noncoal minerals per year.

*Soil horizons*—Contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are as follows:

(i) *A horizon*—The uppermost mineral layer, often called the surface soil or topsoil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble salts and soil elements is typically the greatest.

(ii) *B horizon*—The layer that typically is immediately beneath the A horizon and often called the subsoil. The middle layer commonly contains more clay, iron or aluminum than the A or C horizon.

(iii) *C horizon*—The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity and closely resembles the parent material.

*Spoil*—Overburden and reject material that has been removed during surface noncoal mining operations.

*Spoil pile*—The overburden and reject minerals as piled or deposited in surface mining.

*Stabilize*—To reduce movement of soil, spoil piles or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

*Stratum (Strata)*—A section of geologic formation that consists of approximately the same kind of rock material throughout and may consist of an indefinite number of beds.

*Terracing*—Grading where the steepest contour of the highwall is not greater than 35 degrees from the horizontal, with the table portion of the restored area a nearly level plain without depressions to hold water and with adequate provision for drainage, unless otherwise approved by the Department.

*Topsoil*—The A soil horizon layer of the three major soil horizons.

*Toxic-forming materials*—Earth material or waste, which, if acted upon by air, water, weathering or microbiological processes, is likely to produce chemical or physical conditions in soils or water that are detrimental to biota or water uses.

*Underground noncoal mining activities*—An operation whereby noncoal minerals are extracted from beneath the surface by means of shafts, tunnels, adits or other mine openings, including underground construction, operation and reclamation of mine openings; underground mining, hauling, pumping and blasting; in situ processing, and other subsurface activities in connection with the mine.

*Violation notice*—A written notification from a Commonwealth governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading or other written communication.

*Waters of the Commonwealth*—Rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, dammed water, ponds, springs and other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

#### Authority

The provisions of this § 77.1 amended under sections 7(a) and 11 of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3307(a) and 3311); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20); section 5 of The Clean Streams Law (35 P. S. § 691.5); and sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b).

#### Source

The provisions of this § 77.1 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473; amended March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4838; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619; amended August 8, 2008, effective August 9, 2008, 38 Pa.B. 4355; amended October 12, 2012, effective October 13, 2012, 42 Pa.B. 6536; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (363924) to (363933).

**Notes of Decisions***Noncoal Surface Mining*

Where activity within the definition of noncoal surface mining is undertaken simply to make land more attractive to potential purchasers, that activity is not concurrent with and incidental to the construction of a building. *Linde Enters. v. Department of Environmental Protection*, 692 A.2d 645 (Pa. Cmwlth. 1997); appeal denied by 700 A.2d 445 (Pa. 1997).

**Cross References**

This section cited in 25 Pa. Code § 77.101 (relating to general requirements for permits); 25 Pa. Code § 77.126 (relating to criteria for permit approval or denial); and 25 Pa. Code § 287.2 (relating to scope).

**§ 77.2. Scope.**

This chapter specifies rules for noncoal surface mining activities and the surface effects of noncoal underground mining.

**Source**

The provisions of this § 77.2 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473; amended March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial pages (62356) to (62357).

**§ 77.3. Relationship to coal mining.**

(a) Mining activities will be deemed to be noncoal mining activities if the extraction of coal is incidental to the extraction of other minerals and the coal extracted does not exceed 16 2/3% of the tonnage of materials removed for purposes of commercial use or sale. Coal extraction is incidental when the coal is geologically located above the mineral to be mined and is extracted in order to mine the principal mineral.

(b) The incidental extraction of coal under subsection (a) shall conform to § 86.5 (relating to extraction of coal incidental to noncoal surface mining).

**Authority**

The provisions of this § 77.3 amended under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); sections 4 and 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3304 and 3311(a)); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 77.3 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended December 15, 1995, effective December 16, 1995, 25 Pa.B. 5821. Immediately preceding text appears at serial page (198658).

**§ 77.11. [Reserved].****Source**

The provisions of this § 77.11 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial page (62357).

**§ 77.12. [Reserved].****Source**

The provisions of this § 77.12 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial pages (62357) to (62358).

**§ 77.13. [Reserved].****Source**

The provisions of this § 77.13 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial page (62358).

**§ 77.14. [Reserved].****Source**

The provisions of this § 77.14 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial page (62359).

**§ 77.15. [Reserved].****Source**

The provisions of this § 77.15 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial page (62359).

**§ 77.16. [Reserved].****Source**

The provisions of this § 77.16 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial page (62360).

**§ 77.17. [Reserved].****Source**

The provisions of this § 77.17 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial page (62360).

**§ 77.21. [Reserved].****Source**

The provisions of this § 77.21 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial pages (62360) to (62361).

**§ 77.22. [Reserved].****Source**

The provisions of this § 77.22 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial page (62361).

**§ 77.23. [Reserved].****Source**

The provisions of this § 77.23 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial page (62361).

**§ 77.24. [Reserved].****Source**

The provisions of this § 77.24 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial page (62361).

**§ 77.25. [Reserved].****Source**

The provisions of this § 77.25 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial page (62361).

**§ 77.26. [Reserved].****Source**

The provisions of this § 77.26 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2473. Immediately preceding text appears at serial page (62361).

**Subchapter B. SURFACE MINING OPERATOR'S  
LICENSE**

Sec.	
77.41.	[Reserved].
77.42.	[Reserved].
77.51.	License requirement.
77.52.	Informal hearing.
77.53.	Suspension and revocation.
77.54.	Fees.
77.55.	[Reserved].
77.56.	[Reserved].
77.57.	[Reserved].
77.61.	[Reserved].
77.62.	[Reserved].
77.63.	[Reserved].
77.64.	[Reserved].
77.65.	[Reserved].
77.66.	[Reserved].
77.67.	[Reserved].
77.71.	[Reserved].
77.72.	[Reserved].
77.81.	[Reserved].
77.82.	[Reserved].
77.83.	[Reserved].
77.84.	[Reserved].
77.85.	[Reserved].
77.86.	[Reserved].
77.91.	[Reserved].
77.92.	[Reserved].

**Cross References**

This subchapter cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.110 (relating to permit waiver—oil and gas well site development); 25 Pa. Code § 77.111 (relating to permit waiver—solid waste sites); and 25 Pa. Code § 77.227 (relating to payment in lieu of bond (PILB)).

**§ 77.41. [Reserved].****Source**

The provisions of this § 77.41 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (62363).

**§ 77.42. [Reserved].****Source**

The provisions of this § 77.42 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (62363).

**§ 77.51. License requirement.**

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

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

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

(c) *Identification of ownership.* The application shall indicate whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For business entities other than single proprietorships, the application shall contain the following information if applicable:

- (1) The name and address of the applicant, including partners, associates, officers, parent or subsidiary corporations.
- (2) The names under which an applicant listed in paragraph (1) previously operated a mining operation in this Commonwealth within 5 years preceding the date of application.

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

(e) *Refusal to issue or renew license.* The Department will not issue a noncoal surface mining operator's license or renew or amend a license if it finds, after investigation and an opportunity for informal hearing, that a person, partner, associate, officer, parent corporation or subsidiary corporation has been subject to a bond forfeiture under the act and environmental acts or has failed to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree under the act and environmental acts. The Department will not renew a license for an operator who uses the provisions for payment in lieu of bond unless the operator submits his annual payment with the license renewal application. The Department will not renew a noncoal mining operator's license for an applicant who has not made full payment of the annual administration fee required under § 77.106(f) (relating to fees). A person who opposes the Department's decision on issuance or renewal of a license has the burden of proof.

(f) *License renewal requirements.*

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

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

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

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

**Authority**

The provisions of this § 77.51 amended under section 7(a) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3307(a)).

**Source**

The provisions of this § 77.51 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382; amended March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619; amended October 12, 2013, effective October 13, 2013, 42 Pa.B. 6536. Immediately preceding text appears at serial pages (313454) to (313455).

**Cross References**

This section cited in 25 Pa. Code § 77.53 (relating to suspension and revocation).

**§ 77.52. Informal hearing.**

(a) Prior to the final action of not issuing, renewing or amending a license, the Department will notify the applicant in writing of the intention not to issue, renew or amend the license, and of the opportunity to an informal hearing.

(b) If the applicant chooses to request an informal hearing, the applicant shall, within 15 days of receipt of notice under subsection (a), request in writing that the Department hold an informal hearing to provide the applicant with an opportunity to discuss informally the Department's intention not to issue or renew the license.

(c) If the applicant chooses to request an informal hearing under this section, the license shall remain in effect until the Department has made its decision after the informal hearing.

**Source**

The provisions of this § 77.52 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382; amended March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (62364).

**§ 77.53. Suspension and revocation.**

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

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

**Source**

The provisions of this § 77.53 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382; amended March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (198664).

**§ 77.54. Fees.**

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

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

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

**Source**

The provisions of this § 77.54 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382; amended March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (198664).

**§ 77.55. [Reserved].****Source**

The provisions of this § 77.55 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (62366).

**§ 77.56. [Reserved].****Source**

The provisions of this § 77.56 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (62366).

**§ 77.57. [Reserved].****Source**

The provisions of this § 77.57 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (62367).

**§ 77.61. [Reserved].****Source**

The provisions of this § 77.61 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (62367).

**§ 77.62. [Reserved].****Source**

The provisions of this § 77.62 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (62367).

**§ 77.63. [Reserved].****Source**

The provisions of this § 77.63 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial pages (62367) to (62368).

**§ 77.64. [Reserved].****Source**

The provisions of this § 77.64 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (62368).

**§ 77.65. [Reserved].****Source**

The provisions of this § 77.65 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (62368).

**§ 77.66. [Reserved].****Source**

The provisions of this § 77.66 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial pages (62368) to (62369).

**§ 77.67. [Reserved].****Source**

The provisions of this § 77.67 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (62369).

**§ 77.71. [Reserved].****Source**

The provisions of this § 77.71 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial pages (62369) to (62370).

**§ 77.72. [Reserved].****Source**

The provisions of this § 77.72 adopted August 20, 1971, effective August 21, 1971, 1 Pa.B. 1726; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1971, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial pages (62370) to (62371).

**§ 77.81. [Reserved].****Source**

The provisions of this § 77.81 adopted December 25, 1971, effective January 1, 1972, 1 Pa.B. 2344; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (71979).

**§ 77.82. [Reserved].****Source**

The provisions of this § 77.82 adopted December 25, 1971, effective August 21, 1972, 1 Pa.B. 2344; amended December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial pages (71979) to (71980).

**§ 77.83. [Reserved].****Source**

The provisions of this § 77.83 adopted December 25, 1971, effective January 1, 1972, 1 Pa.B. 2344; amended December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (71980).

**§ 77.84. [Reserved].****Source**

The provisions of this § 77.84 adopted December 25, 1971, effective January 1, 1972, 1 Pa.B. 2344; amended December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial pages (71980) and (75513).

**§ 77.85. [Reserved].****Source**

The provisions of this § 77.85 adopted December 25, 1971, effective January 1, 1972, 1 Pa.B. 2344; amended December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (75513).

**§ 77.86. [Reserved].****Source**

The provisions of this § 77.86 adopted December 25, 1971, effective January 1, 1972, 1 Pa.B. 2344; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial pages (75513) to (75514).

**§ 77.91. [Reserved].****Source**

The provisions of this § 77.91 adopted August 25, 1972, effective August 26, 1972, 2 Pa.B. 1607; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1981, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial page (62374).

**§ 77.92. [Reserved].****Source**

The provisions of this § 77.92 adopted August 25, 1972, effective August 26, 1972, 2 Pa.B. 1607; reserved December 19, 1980, effective December 20, 1980, 10 Pa.B. 4789; noted May 22, 1981, 11 Pa.B. 1801; republished June 5, 1981, effective August 21, 1981, 11 Pa.B. 1927; reserved July 30, 1982, effective July 31, 1982, 12 Pa.B. 2382. Immediately preceding text appears at serial pages (62375) to (62379).

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

- Sec.
- 77.101. General requirements for permits.
  - 77.102. Compliance with existing permits.
  - 77.103. Permit application filing deadlines.
  - 77.104. Permit applications—general requirements.
  - 77.105. Application contents.
  - 77.106. Fees.
  - 77.107. Verification of application.
  - 77.108. Permit for small noncoal operations.
  - 77.109. Noncoal exploration activities.
  - 77.110. Permit waiver—oil and gas well site development.
  - 77.111. Permit waiver—solid waste sites.
  - 77.112. Permit waiver—stabilization of highwalls in existence on January 1, 1972.

**REVIEW, PUBLIC PARTICIPATION, ITEMS AND  
CONDITIONS OF PERMIT APPLICATIONS**

- 77.121. Public notices of filing of permit applications.
- 77.122. Opportunity for submission of written comments or objections on the permit application.
- 77.123. Public hearings—informal conferences.
- 77.124. Public availability of information in permit applications.
- 77.125. Review of permit applications.
- 77.126. Criteria for permit approval or denial.
- 77.127. Final permit action.
- 77.128. Permit terms.
- 77.129. Conditions of permits—general and right of entry.
- 77.130. Conditions of permits—environment, public health and safety.
- 77.131. Progress report.

**PERMIT REVIEWS, RENEWALS, REVISIONS  
AND TRANSFERS**

- 77.141. Permit revisions.
- 77.142. Public notice of permit revision.
- 77.143. Permit renewals.
- 77.144. Transfer of permit.
- 77.145. Reservation of rights.

**REQUIREMENTS FOR LEGAL, FINANCIAL COMPLIANCE  
AND RELATED INFORMATION**

- 77.161. Responsibilities.
- 77.162. Identification of interests.

- 77.163. Right of entry.
- 77.164. Personal injury and property damage insurance information.
- 77.165. Proof of publication.
- 77.171. [Reserved].
- 77.172. [Reserved].
- 77.173. [Reserved].
- 77.174. [Reserved].
- 77.175. [Reserved].
- 77.176. [Reserved].
- 77.177. [Reserved].
- 77.178. [Reserved].
- 77.179. [Reserved].
- 77.180. [Reserved].
- 77.181. [Reserved].
- 77.182. [Reserved].

#### **Cross References**

This subchapter cited in 25 Pa. Code § 77.803 (relating to nature of a general permit; substitution for individual applications and permits).

### **GENERAL**

#### **§ 77.101. General requirements for permits.**

(a) A person may not conduct noncoal mining activities or allow a discharge from a mine into the waters of this Commonwealth without first obtaining a permit. It will be presumed that the extraction of noncoal minerals is surface mining activity unless it can be demonstrated, with clear and convincing evidence, to the satisfaction of the Department, that the activities fit within one or more of the exceptions to the definition of noncoal surface mining activities in § 77.1 (relating to definitions), or as provided in § 77.102 (relating to compliance with existing permits).

(b) Noncoal surface mining permits will be issued only to a licensed noncoal operator.

#### **Source**

The provisions of this § 77.101 adopted June 29, 1973, effective June 30, 1973, 3 Pa.B. 1203; amended April 25, 1975, effective May 12, 1975, 5 Pa.B. 977; amended March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (19690).

#### **§ 77.102. Compliance with existing permits.**

A person may conduct noncoal mining activities under permits issued by the Department prior to March 17, 1990, under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31) or the act and in compliance with the terms and con-

ditions of the permit except for the requirements of §§ 77.504 and 77.561 (relating to distance limitations and areas designated as unsuitable for mining; and general requirements).

**Source**

The provisions of this § 77.102 adopted June 29, 1973, effective June 30, 1973, 3 Pa.B. 1203; amended April 25, 1975, effective May 12, 1975, 5 Pa.B. 977; amended March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial pages (19690) to (19693) and (123437) to (123438).

**Cross References**

This section cited in 25 Pa. Code § 77.101 (relating to general requirements for permits).

**§ 77.103. Permit application filing deadlines.**

A person who expects to conduct new noncoal mining activities shall file a complete application for a permit for noncoal mining activities a minimum of 180 days prior to the anticipated starting date of the activities or a shorter period of time as determined by the Department.

**Source**

The provisions of this § 77.103 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.105 (relating to application contents).

**§ 77.104. Permit applications—general requirements.**

(a) Application for a permit under this chapter shall be submitted to the Department, in writing, upon forms furnished by the Department.

(b) An application for a permit shall be accompanied by information, maps, plans, specifications, design analyses, test reports and other data as may be required by the Department to determine compliance with the standards, requirements or purposes of this chapter.

(c) Information on the application shall be current, presented clearly and concisely and supported by appropriate references to technical and other written material available to the Department.

**Source**

The provisions of this § 77.104 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.105. Application contents.**

Permit applications under § 77.103 (relating to permit application filing deadlines) shall be complete administratively and include the applicable information required under this chapter.

**Source**

The provisions of this § 77.105 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.106. Fees.**

(a) A permit application for noncoal mining activities shall be accompanied by a nonrefundable payment for the permit application fee payable to the “Commonwealth of Pennsylvania.” The applicable permit application fee amount is specified in subsection (e). For purposes of this subsection, permit applications include all of the applications listed in subsection (e).

(b) The Department will assess an annual administration fee for each permitted activity and facility. For licensed mine operators, this annual administration fee will be assessed annually, will be collected as part of the mine operator’s license renewal application and will include the appropriate annual administration fee for each of the licensee’s permitted facilities. If the permittee is not required to maintain a mining license, a notice of the annual administration fee will be sent to the permittee for all of the permittee’s permitted facilities and the fee must be paid within 30 days of receipt of the notice. The applicable fee amounts are specified in subsection (f).

(c) Fees collected under this section and all enforcement cost recovery funds will be deposited in the Noncoal Surface Mining Conservation and Reclamation Fund. The fees collected under this section will be used by the department for the purposes specified by the act.

(d) At least every 3 years, the Department will recommend regulatory changes to the fees in this section to the EQB to address any disparity between the program income generated by the fees and program costs. The regulatory amendment will be based upon an evaluation of the program fees income and the Department’s costs of administering the program.

(e) The permit application fee schedule is as follows:

(1) <i>New permits</i>	<i>Fee</i>
Large Surface Mining Permit—Groundwater Pumping	
Authorized	\$20,225
Large Surface Mining Permit—No Groundwater Pumping	\$13,500
Small Surface Mining Permit	\$525
Underground Mining Permit	\$20,225
(2) <i>Major amendments</i>	<i>Fee</i>
Large Surface Mining Permit—Groundwater Pumping	
Authorized	\$3,850
Large Surface Mining Permit—No Groundwater Pumping	\$1,600
Underground Mining Permit	\$2,650
(3) <i>Minor Amendments</i>	<i>Fee</i>
Large Surface Mining Permit	\$700
Small Surface Mining Permit	\$175

(4) <i>Transfers</i>	<i>Fee</i>
Large Surface Mining Permit	\$900
Underground Mining Permit	\$900
(5) <i>Other Actions</i>	<i>Fee</i>
Bonding Increment	\$450
Completion Report Application	\$600
Blast Plan	\$475
Notice of Intent to Explore	\$60
Pre-applications	\$3,375

(f) The annual administration fee schedule will be as follows:

<i>Permit Category—Permit Status</i>	<i>Annual Fee</i>
Large Surface Mining Permit—Active	\$1,450
Large Surface Mining Permit—Active with Blasting	\$1,850
Small Surface Mining Permit—Active	\$200
Small Surface Mining Permit—Active with Blasting	\$300
Underground Mining Permit—Active	\$1,450
General Permit	\$200
All Permits—Not Started	\$100
All Permits—Inactive	\$100

#### **Authority**

The provisions of this § 77.106 amended under section 7(a) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3307(a)).

#### **Source**

The provisions of this § 77.106 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended October 12, 2012, effective October 13, 2012, except that the annual administration fee under subsection (b) is effective January 1, 2013, and applied to all mining licenses being renewed which have an expiration date occurring on or after January 1, 2013, 42 Pa.B. 6536. Immediately preceding text appears at serial page (240708).

#### **Cross References**

This section cited in 25 Pa. Code § 77.51 (relating to license requirement); and 25 Pa. Code § 77.126 (relating to criteria for permit approval or denial).

### **§ 77.107. Verification of application.**

Applications for permits shall be verified by a responsible official of the applicant with a statement that the information contained in the application is true to the best of the official's information and belief, and attested by a notary public or district justice.

77-24.1

**Source**

The provisions of this § 77.107 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.108. Permit for small noncoal operations.**

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

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

- (1) The name and business address of the applicant.
- (2) An identification of ownership interests.
- (3) Information and documents required by § 77.163 (relating to right of entry).
- (4) The type of surface mine and the type of mineral.
- (5) An explanation on how fugitive dust will be controlled.
- (6) The type of reclamation and revegetation.
- (7) The type of erosion and sediment controls.
- (8) The depth to groundwater, if available.
- (9) A United States Geological Survey topographical map or aerial photograph approved by the Department with the proposed permit area outlined.
- (10) The estimated production for the year.

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

(12) Other information the Department deems relevant.

(c) The areas affected by the extraction of noncoal minerals shall be graded and restored to a slope not to exceed 35° unless approved by the Department under § 77.594(2)(v) (relating to final slopes), and will contain no depressions which will impound water. The affected areas will be revegetated to provide a quick germinating, fast-growing, effective and permanent vegetative cover of the same seasonal variety native to the land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area. Introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. Vegetative cover is considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the land use, when compared with the utility of naturally-occurring vegetation during each season of the year.

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

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

(1) Erosion and sedimentation control facilities shall be constructed and maintained as necessary to insure compliance with Chapter 102 (relating to erosion and sediment control).

(2) The active mining area may not exceed that necessary to meet the stated production as determined by geologic conditions at the site and the nature of the material mined.

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

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

(5) The outer limits of the area approved by this permit are to be field marked for the duration of the mining activity.

(6) The permittee shall comply with the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations of the Department related to air resources, including, but not limited to, §§ 123.1 and 123.2 (relating to prohibition of certain fugitive emissions; and fugitive particulate matter) which prohibit the emission of fugitive particulate matter. These prohibitions apply to all aspects of the mining operations including, but not limited to, use of roadways and operation of trucks.

(7) The permittee shall identify this operation during its lifetime by constructing and maintaining a weather resistant sign with a minimum size of 2 feet by 3 feet (60.96 centimeters by 91.44 centimeters) to be located immediately adjacent to the closest public highway, from which it shall be clearly visible, at the junction of that public highway with the access road to the operation. The sign shall be painted with a light background and show, in a contrasting color, the name of the permittee and the permit number under which the operation is being conducted. The letters and numbers shall be a minimum height of 1 1/2 inches (3.81 centimeters).

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

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

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

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

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

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

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

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

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

(k) Small noncoal mining permits or general permit authorizations issued prior to January 31, 1998, remain valid if all mining activities remain within the

area covered by the permit as of January 31, 1998, and if the total weight of mineral mined per year does not exceed 2,000 tons (1,814 metric tons).

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

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

#### Source

The provisions of this § 77.108 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198672) to (198674).

### § 77.109. Noncoal exploration activities.

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

(b) The notice shall include:

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

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

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

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

(5) The purpose of testing.

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

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

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

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

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

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

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

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

(3) To avoid disturbance of wetland areas.

(h) The areas affected by the noncoal exploration shall be graded to approximate original contour when possible or restored to a slope not to exceed 35° unless approved by the Department under § 77.594(2)(v) (relating to final slopes) within 30 days after completion of exploration, and will contain no depressions which will impound water. Drill holes shall be sealed under § 77.503 (relating to casing and sealing of drilled holes). The affected areas shall be revegetated within the first planting season after completion of exploration.

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

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

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

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

#### Source

The provisions of this § 77.109 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198674) to (198677).

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

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

**Source**

The provisions of this § 77.110 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (198678).

**§ 77.111. Permit waiver—solid waste sites.**

As used in this section the term “borrow area” means an area where minerals are extracted solely for the purpose of solid waste site development. The noncoal surface mining permit requirements of the act and this chapter do not apply to the extraction of noncoal minerals within the permit area of a valid solid waste permit issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) where the solid waste permittee demonstrates to the Department’s satisfaction that the following exist:

- (1) The noncoal minerals will be used solely for purposes necessary to comply with solid waste permit requirements.
- (2) The solid waste permittee maintains a valid noncoal surface mining operator’s license prior to the extraction of the noncoal minerals under Subchapter B (relating to surface mining operator’s license).
- (3) Noncoal mineral extraction in the borrow area will be conducted in accordance with an erosion and sedimentation control plan or permit implemented under Chapter 102 (relating to erosion and sediment control).
- (4) The areas affected by the extraction of noncoal minerals shall be graded and restored to a slope not to exceed 35°, and will contain no depressions which will impound water. The affected areas will be revegetated to provide a quick germinating, fast-growing, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal to the extent of cover to the natural vegetation of the area. Introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. Vegetative cover shall be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the land use, when compared with the utility of naturally-occurring vegetation during each season of the year.
- (5) The reclamation of the borrow area will commence within 10 days of the last extraction of noncoal minerals and will be completed within 30 days. Planting shall be completed by the first normal period for favorable planting.

**Source**

The provisions of this § 77.111 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.112. Permit waiver—stabilization of highwalls in existence on January 1, 1972.**

The noncoal surface mining permit requirements of the act and this chapter do not apply to the stabilization of highwalls in existence on January 1, 1972, if the operator demonstrates, to the Department's satisfaction, that the following conditions have been met:

- (1) The highwall was in existence on January 1, 1972.
- (2) The operator does not affect, or intend to affect, the highwall as part of the mining operation.
- (3) Neither the operator, nor a related party, has reclamation responsibility for the highwall.
- (4) The highwall presents an immediate or potential safety hazard to persons working below the highwall, or to persons or property beyond the highwall, or to the public.
- (5) The amount of materials removed from the highwall in the stabilization operation is only that necessary to achieve stabilization.
- (6) The operator has submitted a plan to the Department which includes the location of the highwall, demonstrates that the plan will result in stabilization of the highwall, provides a description of the work to be performed and sets forth a timetable for completing the work.
- (7) The Department has approved the plan described in paragraph (6), in writing.
- (8) The work to be performed is in accordance with the approved plan, and timetable. Stabilization work may not occur under this section until the Department has approved the plan.
- (9) Coal is not removed or encountered.

**Source**

The provisions of this § 77.112 adopted October 11, 1991, effective October 12, 1991, 21 Pa.B. 4838.

**REVIEW, PUBLIC PARTICIPATION, ITEMS AND  
CONDITIONS OF PERMIT APPLICATIONS**

**§ 77.121. Public notices of filing of permit applications.**

(a) At the time of filing an application with the Department, an applicant for a permit, transfer, renewal or revision under § 77.142 (relating to public notice of permit revision) shall place an advertisement in a local newspaper of general circulation in the locality of the proposed noncoal mining activities once a week for 4-consecutive weeks. The advertisement shall contain the following information:

- (1) The name and business address of the applicant.
- (2) The township and county in which the operation is located.

- (3) The receiving stream.
- (4) A map or description which shall:
  - (i) Clearly show or describe towns, rivers, streams or other bodies of water, local landmarks and other information, including routes, streets or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area.
  - (ii) Clearly show or describe the exact location and boundaries of the proposed permit area, and the receiving stream.
  - (iii) State the name of the United States Geological Survey 7.5 minute quadrangle map which contains the area shown or described.
  - (iv) If a map is used, indicate the north point.
- (5) The location where a copy of the application is available for public inspection under subsection (b).
- (6) The name and address of the Department's appropriate District or Regional Office to which written comments, objections or requests for public hearings or informal conferences on the application may be directed.
- (7) If an applicant seeks to open or expand a pit within 100 feet of the outside line of right-of-way of a public highway; within 300 feet of an occupied dwelling house or commercial or industrial building, unless released by the owner thereof; within 300 feet of a public building, school or community or institutional building; within 300 feet of a public park; or within 100 feet of a cemetery or the bank of a perennial or intermittent stream, the applicant shall give public notice under § 77.504(b)(1) (relating to distance limitations and areas designated as unsuitable for mining).
- (b) No later than the first date of the newspaper advertisement under subsection (a), the applicant shall file a complete copy of the application except as provided under § 77.124(a) (relating to public availability of information in permit applications) for the public to copy and inspect at a public office approved by the Department in the county where the noncoal mining activities are to occur.
- (c) During the public notification period, the applicant shall notify each property owner within the proposed permit area, by registered mail, of the proposed permit except for surface landowners who have a completed Consent of Landowner form submitted with the application.
- (d) Upon receipt of a complete application, the Department will publish notice of the proposed activities in the *Pennsylvania Bulletin*.
- (e) Upon receipt of a complete application, the Department will notify:
  - (1) By registered mail, the city, borough, incorporated town or township in which the activities are located.
  - (2) Federal, State and local government agencies with jurisdiction over or an interest in the area of the proposed activities.
- (f) The content of the notice shall include:
  - (1) The application number.
  - (2) The name and business address of the applicant.

- (3) The township and county in which the operation is located.
- (4) The receiving streams.
- (5) A brief description of the operation and the location.
- (6) The location where a copy of the application may be inspected.
- (7) Where comments on the application may be submitted.

#### Source

The provisions of this § 77.121 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.122 (relating to opportunity for submission of written comments or objections on the permit application); 25 Pa. Code § 77.123 (relating to public hearings—informal conferences); 25 Pa. Code § 77.142 (relating to public notice of permit revision); 25 Pa. Code § 77.143 (relating to permit renewals); 25 Pa. Code § 77.144 (relating to transfer of permit); 25 Pa. Code § 77.165 (relating to proof of publication); 25 Pa. Code § 86.1 (relating to definitions); and 25 Pa. Code § 86.5 (relating to extraction of coal incidental to noncoal surface mining).

### § 77.122. Opportunity for submission of written comments or objections on the permit application.

(a) Written comments or objections on the permit application or application for permit revision may be submitted to the Department within 30 days after the last publication of the newspaper advertisement placed by the applicant under § 77.121(a) (relating to public notices of filing of permit applications) by a person having an interest that is, or may be, adversely affected.

(b) The Department will immediately transmit the comments or objections received under this section to the applicant.

#### Source

The provisions of this § 77.122 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 86.1 (relating to definitions); and 25 Pa. Code § 86.5 (relating to extraction of coal incidental to noncoal surface mining).

### § 77.123. Public hearings—informal conferences.

(a) A person having an interest that is, or may be, adversely affected may request in writing that the Department hold a public hearing or an informal conference on an application for a permit. The request shall:

- (1) Briefly summarize the issues to be raised by the requestor at the public hearing or informal conference.

- (2) Be filed with the Department within 30 days after the last publication of the newspaper advertisement placed by the applicant under § 77.121(a) (relating to public notices of filing of permit applications) or within 30 days of receipt of notice by the public entities to whom notification is provided under § 77.121(d).
- (b) Except as provided in subsection (c), if a public hearing or an informal conference is requested under subsection (a), the Department will hold a public hearing or an informal conference within 60 days following the receipt of the request. The public hearing or informal conference will be conducted as follows:
- (1) The public hearing or informal conference shall be held in the locality of the proposed mining operation.
  - (2) The date, time and location of the public hearing or informal conference shall be advertised by the Department in a newspaper of general circulation in the locality of the proposed mine at least 2 weeks prior to the scheduled public hearing or informal conference.
  - (3) The public hearing or informal conference shall be conducted by a representative of the Department who may accept oral or written statements and other relevant information from a party to the public hearing or informal conference.
- (c) If the parties requesting the public hearing or informal conference agree to withdraw their request, the public hearing or informal conference need not be held.
- (d) Informal conferences held under § 77.504 (relating to distance limitations and areas designated as unsuitable for mining) may be used by the Department as the public hearing or informal conference required under proposed uses or relocation of public highways.
- (e) The Department will give its findings of the public hearing or informal conference to the permit applicant and to each person who is a party to the public hearing or informal conference within 60 days of the public hearings or informal conference.
- (f) Within 60 days of the public hearing or informal conference, the Department will notify the applicant of its decision to approve or disapprove or of its intent to disapprove subject to the submission of additional information.

**Source**

The provisions of this § 77.123 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.124. Public availability of information in permit applications.**

- (a) Information contained in permit applications on file with the Department will be open, upon request, for public inspection at reasonable times. Information in permit applications which pertains only to the analysis of the chemical and physical properties of the mineral to be mined—excepting information regarding

mineral or elemental contents which are potentially toxic in the environment—will be kept confidential and not be made a matter of public record.

(b) Confidential information shall be clearly identified by the applicant and submitted under separate cover but concurrently with other portions of the application.

**Source**

The provisions of this § 77.124 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.109 (relating to noncoal exploration activities); and 25 Pa. Code § 77.121 (relating to public notices of filing of permit applications).

**§ 77.125. Review of permit applications.**

(a) The Department will review the complete application, written comments, written objections and records of a public hearing or informal conference.

(b) If the Department decides to approve the application, it will require that the applicant file the performance bond under Subchapter D (relating to bonding and insurance requirements) before the permit is issued.

**Source**

The provisions of this § 77.125 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.126. Criteria for permit approval or denial.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The applicant or related party, as indicated by past or continuing violations, has not shown a lack of ability or intention to comply with the act or the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19b).

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

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

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

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

(11) The applicant has obtained a noncoal license.

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

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

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

(c) A permit, permit renewal or revised permit application will not be approved unless the applicant has made full payment of the permit application fee required under § 77.106(e) (relating to fees) and the annual administration fee required under § 77.106(f) for all of the applicant's permitted mining facilities.

#### Authority

The provisions of this § 77.126 amended under section 7(a) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3307(a)); section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### Source

The provisions of this § 77.126 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended September 30, 1994, effective October 1, 1994, 24 Pa.B. 4887; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619; amended October 12, 2012, effective October 13, 2012, 42 Pa.B. 6536; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (240718) and (363949) to (363950).

#### Notes of Decisions

##### *Interpretation*

The Department of Environmental Protection's interpretations of its own regulations are entitled to deference. Its interpretation that an applicant need demonstrate that there is no evidence that presumptively indicates pollution will occur, is reasonable and will not be disturbed by the court. *Birdsboro v. Department of Environmental Protection*, 795 A.2d 444 (Pa. Cmwlth. 2002).

#### Cross References

This section cited in 25 Pa. Code § 77.108 (relating to permits for small noncoal operations); and 25 Pa. Code § 77.144 (relating to transfer of permit).

### § 77.127. Final permit action.

(a) The Department will notify the permit applicant of its decision to approve or disapprove or of its intent to disapprove unless the applicant submits additional information, within a stated time, to resolve deficiencies according to the following time limits:

(1) If an informal conference or public hearing has not been held, notice will be within a reasonable time not to exceed 60 days of the close of the public comment period.

(2) If a public hearing or informal conference has been held, notice will be within 60 days of the public hearing or informal conference.

(b) Simultaneously with the final action on a permit application, the Department will:

(1) Issue notice of its decision to the applicant and each person who filed a written objection or comment on the application.

(2) Publish its decision in the *Pennsylvania Bulletin* and within 10 days after the granting of a permit, issue notice to the local government officials of each township or municipality in which the activities are located.

#### Source

The provisions of this § 77.127 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1647.

**Cross References**

This section cited in 25 Pa. Code § 77.141 (relating to permit revisions).

**§ 77.128. Permit terms.**

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

(b) A permit will terminate if the permittee has not begun the noncoal mining activities covered by the permit within 3 years of the issuance of the permit. The Department may grant reasonable extensions of time for commencement of these activities upon receipt of a written statement showing that the extensions of time are necessary if litigation precludes the commencement or threatens substantial economic loss to the permittee or if there are conditions beyond the control and without the fault or negligence of the permittee. Requests for extensions shall be submitted to the Department prior to expiration of the permit. If a permit has not been activated within 3 years or the permittee has not been granted an extension, the permittee may apply for a permit renewal.

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

**Source**

The provisions of this § 77.128 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1647; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (228210).

**§ 77.129. Conditions of permits—general and right of entry.**

A permit issued by the Department will, at a minimum, ensure and contain the following conditions:

(1) Except to the extent that the Department otherwise directs in the permit that specific actions be taken, the permittee shall conduct noncoal mining activities as described in the approved application.

(2) The permittee shall allow the authorized representatives of the Commonwealth, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have access to the areas in which noncoal mining activities will or are being conducted.

(3) The permittee shall conduct noncoal mining activities only on the lands specifically approved in the permit for which a bond has been filed with the Department under Subchapter D (relating to bonding and insurance requirements).

**Source**

The provisions of this § 77.129 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1647.

**§ 77.130. Conditions of permits—environmental, public health and safety.**

A permit issued by the Department will ensure and contain specific conditions requiring that the permittee:

- (1) Take all possible steps to prevent adverse impact, resulting from non-compliance with the terms or conditions of the permit, on the environment or public health and safety, including:
  - (i) An accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance.
  - (ii) A warning immediately after learning of noncompliance to persons whose health and safety is in imminent danger due to the noncompliance.
- (2) Dispose of solids, sludges, filter backwash or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner which prevents violation of an applicable State or Federal law. The permittee shall conduct the activities in accordance with measures specified in the permit that are necessary to prevent environmental harm or harm to the health or safety of the public.

**Source**

The provisions of this § 77.130 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.131. Progress report.**

Within 90 days after commencement of surface mining operations and each year thereafter, unless modified or waived by the Department for cause, the operator shall file in triplicate an operations and progress report with the Department, on a form prescribed and furnished by Department. The following information shall be included:

- (1) The name and permit number of the operation.
- (2) The location of the operation as to county and township and with reference to the nearest public highway.
- (3) A description of the tracts.
- (4) The name and address of the landowner or an authorized representative.
- (5) An annual report of the type and quantity of mineral produced, number of employes and days worked.
- (6) A report of fatal and nonfatal accidents for the previous year.
- (7) The current status of the reclamation work performed in the pursuit of the approved reclamation plan.
- (8) Other or further information the Department may reasonably require.

**Source**

The provisions of this § 77.131 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**PERMIT REVIEWS, RENEWALS, REVISIONS  
AND TRANSFERS**

**§ 77.141. Permit revisions.**

(a) A revision to a permit shall be obtained for a change to the noncoal mining activities, as defined by the Department, set forth in the application.

(b) The permittee shall submit the application for permit revisions which require public notification to the Department at least 180 days before undertaking the change. In emergency situations, the Department may waive the 180-day requirement.

(c) An application for revision shall be complete and contain the following information:

(1) The permittee's name and address and permit number.

(2) A description of the proposed revisions, including appropriate maps, plans and application to demonstrate that the proposed revision complies with the acts, the environmental acts and this chapter.

(d) The Department will approve or disapprove the complete application for revision under § 77.127 (relating to final permit action).

(e) Revisions to change permit boundaries for needed support facilities may be considered by the Department.

(f) The addition of acreage for mineral extraction shall be considered as an application for a new permit, except if the Department deems the area to be an insignificant boundary correction.

**Source**

The provisions of this § 77.141 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.142. Public notice of permit revision.**

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

(1) For surface mining activities:

(i) Discharging to a different watershed or a change in water treatment facility design which would result in a change in effluent limits or additional discharge points.

(ii) The change of postmining land use.

(iii) A change in the type of reclamation (for example—approximate original contour, terrace, water impoundment or other alternative reclamation).

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

#### Source

The provisions of this § 77.142 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198688) and (234459).

#### Cross References

This section cited in 25 Pa. Code § 77.121 (relating to public notices of filing of permit applications).

### § 77.143. Permit renewals.

(a) *NPDES permit renewals.* An application for renewal of an NPDES permit shall be filed with the Department at least 180 days before the expiration date of the NPDES permit in question. A renewal application shall be filed in the format required by the Department.

(b) *Mine permit renewals—general requirements.*

(1) A valid, existing permit issued by the Department will carry with it the presumption of successive renewals upon expiration of the term of the permit. Successive renewals will be available only for areas which were specifically approved by the Department on the application for the existing permit.

(2) A permit renewal will not be available for extending the acreage of the operation beyond the boundaries of the permit area approved under the existing permit. Addition of acreage to the operation will be considered a new application. A request for permit revision may accompany a request for renewal and shall be supported with the information required for application as described in this chapter.

(3) A complete application for renewal of a permit, as established in this chapter, shall be filed with the Department at least 180 days before the expiration date of the particular permit in question. A renewal application shall be filed in the format required by the Department.

(4) An application for renewal is subject to the requirements of public notification and participation of § 77.121 (relating to public notices of filing of permit applications).

(5) A permit renewal shall be for a term not to exceed the period of the original permit.

(6) Unless the Department finds that the permit should not be renewed under paragraph (7), it will issue a permit renewal after finding that the requirements of this chapter and the requirements of public participation and notification are satisfied.

(7) A permit will not be renewed if the Department finds that one of the following applies:

(i) The requested renewal substantially jeopardizes the operator's continuing ability to comply with the act, the environmental acts, this title and the regulatory program on existing permit areas.

(ii) The operator has failed to provide evidence that a bond required to be in effect for the activities will continue in full force and effect for the proposed period of renewal, as well as additional bond the Department might require.

(iii) Additional revised or updated information required by the Department has not been provided by the applicant.

(8) The Department will send copies of its decision to the applicant, persons who filed objections or comments to the renewal and to persons who were parties to an informal conference held on the permit renewal.

#### Source

The provisions of this § 77.143 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.128 (relating to permit items).

### § 77.144. Transfer of permit.

(a) A transfer, assignment or sale of the rights granted under a permit may not be made, except as provided in this section.

(b) Permits may be reissued in a new name if there is no change in legal entity.

(c) The Department may allow a permittee to transfer a permit to another operator if the successor operator:

(1) Meets the requirements of § 77.126(a)(6)—(9) (relating to criteria for permit approval or denial).

(2) Assumes liability for reclamation, water pollution, planting and other responsibilities under the law, rules and regulations and the terms and conditions of the permit from the date of original issuance of the permit.

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

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

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

#### Source

The provisions of this § 77.144 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619; corrected February 13, 1998, effective January 31, 1998, 28 Pa.B. 801. Immediately preceding text appears at serial pages (234460) to (234461) and (198691).

#### Cross References

This section cited in 25 Pa. Code § 77.230 (relating to transfer of permits).

### § 77.145. Reservation of rights.

Department approval of transfer, including, but not limited to, permit transfer does not limit the original permittee's responsibility, liability, duty or obligation under the law unless release is approved by the Secretary. If one operator succeeds another at an uncompleted operation, by sale, assignment, lease or otherwise, the Secretary may release the first operator from liability under the act as to that particular operation if both operators have complied with the requirements of the act and this chapter, and the successor operator assumes as part of his obligation under the act, liability for grading, planting and reclamation on the land affected by the former operator.

#### Source

The provisions of this § 77.145 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

## REQUIREMENTS FOR LEGAL, FINANCIAL COMPLIANCE AND RELATED INFORMATION

### § 77.161. Responsibilities.

As part of each application for a permit, the applicant shall provide relevant information on the ownership of persons who will be conducting the noncoal mining activities, the compliance status and history of the persons, the ownership and control of the property to be affected by the operations and other information related to the noncoal mining activities. At a minimum, the information required by §§ 77.162—77.165 shall be included.

**Source**

The provisions of this § 77.161 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.162. Identification of interests.**

(a) An application shall contain the following information if the information is different from that provided with the license application:

- (1) The names and addresses of:
  - (i) The permit applicant, including his telephone number.
  - (ii) The legal or equitable owners of record of the mineral to be mined and areas to be affected by surface operations and facilities.
  - (iii) The contractor, if the contractor is a person different from the applicant, including his telephone number.
  - (iv) The resident agent of the applicant who will accept service of process, including his telephone number.
- (2) The names and addresses of the owners of record of surface areas contiguous to any part of the proposed permit area.
- (3) The name of the proposed mine and the Mine Safety and Health Administration identification number for the mine and sections, if any.

(b) An application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association, joint venture or government agency, or other business entity. For business other than single proprietorships, the application shall contain the following information, if applicable:

- (1) The name and address of the applicant, including partners, associates, officers or parent or subsidiary corporations.
- (2) The names under which the applicant listed in paragraph (1) previously operated a mining operation in this Commonwealth within the 5 years preceding the date of application.

(c) If an applicant identified under subsection (a) is a business entity, other than a single proprietor, the application shall contain the names and addresses of the respective partners, associates, officers or parent or subsidiary corporations.

**Source**

The provisions of this § 77.162 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.161 (relating to responsibilities).

**§ 77.163. Right of entry.**

(a) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and commence noncoal mining activities within the permit area and whether that right is subject to pending court litigation.

(b) The application shall provide, for lands within the permit area, the following:

(1) If the permit application is based upon leases in existence on or before January 1, 1972, the application for permit shall include, upon a form prescribed and furnished by the Department, a notice of the existence of the lease and a description of the chain of title.

(2) If the permit application is based on documents other than leases in existence on or before January 1, 1972, the application shall include upon a form prepared by the Department, the written consent of the landowner to entry upon land to be affected by the operation and by the Commonwealth and its authorized agents, prior to the initiation of surface mining operations, during surface mining operations, and for a period of 5 years after the operation is completed or abandoned for the purpose of reclamation, planting and inspection or for the construction of any pollution abatement facilities as may be deemed necessary by the Department for the purposes of the act and regulations promulgated thereto.

(c) For purposes of this section, the term "lease" means an agreement in which the surface landowner is the lessor and the applicant is the lessee or the assignee of the lessee.

(d) Forms submitted under subsection (b) shall be deemed to be recordable documents, and prior to the initiation of noncoal mining activities under the permit, the forms shall be recorded by the applicant at the office of the recorder of deeds in the county in which the area to be affected under the permit is situated.

(e) The information required in subsections (a) and (b) shall be made part of the permit application prior to the approval of the bond under Subchapter D (relating to bonding and insurance requirements).

#### Source

The provisions of this § 77.163 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.126 (relating to criteria for permit approval or denial); 25 Pa. Code § 77.161 (relating to responsibilities); and 25 Pa. Code § 77.806 (relating to registration requirements).

### § 77.164. Personal injury and property damage insurance information.

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

#### Source

The provisions of this § 77.164 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (198693).

**Cross References**

This section cited in 25 Pa. Code § 77.161 (relating to responsibilities).

**§ 77.165. Proof of publication.**

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

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

**Source**

The provisions of this § 77.165 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198693) to (198694).

**Cross References**

This section cited in 25 Pa. Code § 77.161 (relating to responsibilities).

**§ 77.171. [Reserved].****Source**

The provisions of this § 77.171 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (62384).

**§ 77.172. [Reserved].****Source**

The provisions of this § 77.172 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial pages (62384) to (62385).

**§ 77.173. [Reserved].****Source**

The provisions of this § 77.173 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (62385).

**§ 77.174. [Reserved].****Source**

The provisions of this § 77.174 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (62386).

**§ 77.175. [Reserved].****Source**

The provisions of this § 77.175 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (62386).

**§ 77.176. [Reserved].****Source**

The provisions of this § 77.176 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (62386).

**§ 77.177. [Reserved].****Source**

The provisions of this § 77.177 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (62387).

**§ 77.178. [Reserved].****Source**

The provisions of this § 77.178 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial pages (62387) to (62388).

**§ 77.179. [Reserved].****Source**

The provisions of this § 77.179 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial pages (62388) to (62389).

**§ 77.180. [Reserved].****Source**

The provisions of this § 77.180 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (62389).

**§ 77.181. [Reserved].****Source**

The provisions of this § 77.181 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial pages (62389) and (138797).

**§ 77.182. [Reserved].****Source**

The provisions of this § 77.182 adopted July 31, 1981, effective August 1, 1981, 11 Pa.B. 2680; reserved March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643. Immediately preceding text appears at serial page (138797).

**Subchapter D. BONDING AND INSURANCE REQUIREMENTS****GENERAL PROVISIONS**

## Sec.

- 77.191. Scope.
- 77.192. Definitions.
- 77.193. Requirement to file a bond.
- 77.194. Requirement to file a certification of liability insurance.
- 77.195. Department responsibilities.

**AMOUNT AND DURATION OF LIABILITY**

- 77.201. Scope.
- 77.202. Determination of bond amount.
- 77.203. Minimum amount of bond.
- 77.204. Period of liability.
- 77.205. Bond adjustments.

**FORMS, TERMS AND CONDITIONS OF BONDS  
AND INSURANCE**

- 77.221. Scope.
- 77.222. Form of the bond.
- 77.223. Special terms and conditions for surety bonds.
- 77.224. Special terms and conditions for collateral bonds.
- 77.225. Surety/collateral combination bond.
- 77.226. Phased deposits of collateral.
- 77.227. Payment in lieu of bond (PILB).
- 77.228. Failure to maintain proper bond.
- 77.229. Replacement of bonds.
- 77.230. Transfer of permits.
- 77.231. Terms and conditions for liability insurance.

**RELEASE OF BONDS**

- 77.241. Scope.  
77.242. Procedures for seeking release of bond.  
77.243. Criteria and schedule for release of bond.

**BOND FORFEITURE**

- 77.251. Scope.  
77.252. General.  
77.253. Procedures.  
77.254. Preservation of remedies.

**Cross References**

This subchapter cited in 25 Pa. Code § 77.1 (relating to definitions); 25 Pa. Code § 77.125 (relating to review of permit applications); 25 Pa. Code § 77.126 (relating to criteria for permit approval or denial); 25 Pa. Code § 77.129 (relating to condition of permits—general and right of entry); 25 Pa. Code § 77.144 (relating to transfer of permit); 25 Pa. Code § 77.163 (relating to right of entry); 25 Pa. Code § 77.454 (relating to maps and plans); 25 Pa. Code § 77.456 (relating to reclamation information); and 25 Pa. Code § 77.803 (relating to nature of a general permit; substitution for individual applications and permits).

**GENERAL PROVISIONS****§ 77.191. Scope.**

This subchapter sets forth the minimum requirements for demonstrating sufficient financial responsibility for mining and reclamation operations by providing for bond guarantees for the operations and minimum standards for insurance protection for personal injury and property damage to third parties arising out of the operations.

**Source**

The provisions of this § 77.191 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.192. Definitions.**

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

*Cash*—The term includes, when used in regard to bond requirements, negotiable certificates of deposit.

*Collateral bond*—A penal bond agreement in a sum certain, payable to the Department, executed by the operator, and which is supported by the deposit with the Department of cash, negotiable bonds of the United States, the Commonwealth, the Turnpike Commission, the General State Authority, the State Public School Building Authority, or a Commonwealth municipality, or Pennsylvania bank or banking institution, automatically renewable and assignable

certificates of deposit or irrevocable and stand-by Commonwealth bank or banking institution letters of credit.

*Long term facility*—A processing plant located within the permit area, mine drainage facility, refuse area or other structure and facility associated with surface or underground mining which will be an active mine operation for at least 10 years.

*Long term mine*—An underground mine which will be in active operation for at least 10 years, or a surface mine in which the mineral to be removed exceeds the amount of overburden by a ratio of at least 4:1 and which will be in active operation for at least 10 years.

*Surety bond*—A penal bond agreement in a sum certain payable to the Department, executed by the operator and a corporation licensed to do business as a surety in this Commonwealth and approved by the Department, and which is supported by the guarantee of payment on the bond by the surety.

#### Source

The provisions of this § 77.192 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

### § 77.193. Requirement to file a bond.

(a) A new, revised or renewed permit to conduct mining or reclamation operations, or permission to expand mining or reclamation operations within a permit area which has been limited to a portion or phase of the entire permit area will not be issued by the Department before the applicant for the permit or phase approval has filed with the Department a bond upon a form provided by the Department payable to the Department, and the bond has been approved by the Department. The bond will be conditioned upon the faithful performance of the requirements of the act, the environmental acts, this title, orders of the Department, the reclamation plan and the conditions of the permit. The amount, duration, form, conditions and terms of the bond shall conform to the requirements of this chapter.

(b) An operator may not disturb surface acreage or extend operations prior to receipt of approval from the Department of a bond and issuance of a permit or incremental phase approval covering the surface acreage to be affected.

(c) Liability on the bond shall be limited to the specific bonded area except where there are adverse hydrologic impacts. When there are adverse hydrologic impacts the Department will not release liability for a bonded area which is, in the Department's best conservative judgment, hydrologically connected to the adverse hydrologic impact.

(d) The Department may allow the bond liability for parts of a highwall to be transferred to a subsequent bonded area in relation to the progress of the highwall. The transfer of liability will not be considered a bond release.

**Source**

The provisions of this § 77.193 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.126 (relating to criteria for permit approval or denial); and 25 Pa. Code § 77.572 (relating to permit line setback).

**§ 77.194. Requirement to file a certification of liability insurance.**

An applicant for a permit who extracted more than 2000 tons of marketable minerals in the previous year or plans to do so in the current year shall submit proof to the Department of liability insurance coverage for its mining and reclamation operations issued by an insurance company authorized to do business in this Commonwealth. The amount, duration, form, conditions, terms and method of proof of insurance coverage shall conform to § 77.231 (relating to terms and conditions for liability insurance).

**Source**

The provisions of this § 77.194 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.195. Department responsibilities.**

- (a) The Department will prescribe and furnish the forms for filing bonds.
- (b) The Department will prescribe terms and conditions for bonds and insurance.
- (c) The Department will establish bonding amount rate guidelines based on the estimated cost to the Department for completing the reclamation requirements of the permittee under the act, this chapter and the conditions of the permit. The guidelines shall be reviewed and, if necessary, revised by the Department annually to reflect the current cost of reclamation to the Department. The Department may consider fees, or other sources of money paid by the permittee and dedicated for reclamation of defaulted permit areas in determining bonding guidelines.
- (d) The Department will determine the amount of the bond required for the permit areas, including adjustments to the initial amount from time to time as land acreages in the permit area are revised, costs to the Department of reclamation change or when other relevant conditions change, according to the minimum requirements of § 77.202 (relating to determination of bond amount).
- (e) A bond shall be reviewed for legality and form according to established procedures.
- (f) The Department will release the permittee from bond and insurance requirements as provided in §§ 77.241—77.243 (relating to release of bonds).
- (g) The Department will cause a bond to be forfeited as provided in §§ 77.251—77.254 (relating to bond forfeiture).

**Source**

The provisions of this § 77.195 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**AMOUNT AND DURATION OF LIABILITY****§ 77.201. Scope.**

Sections 77.202—77.205 set forth the minimum requirements for determining the amounts and time periods of liability for bonds for mining and reclamation operations.

**Source**

The provisions of this § 77.201 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.226 (relating to phased deposits of collateral).

**§ 77.202. Determination of bond amount.**

The standard applied by the Department in determining the amount of bond shall be the estimated cost to the Department if it had to complete the reclamation, restoration and abatement work required under the act, this chapter and the conditions of the permit. The bond rate shall be based on the maximum disturbed unrestored area which will exist at one time, and shall be in accordance with the bond schedule as published by the Department or the Secretary.

**Source**

The provisions of this § 77.202 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.195 (relating to Department responsibilities); 25 Pa. Code § 77.201 (relating to scope); 25 Pa. Code § 77.226 (relating to phased deposits of collateral); and 25 Pa. Code § 77.456 (relating to reclamation information).

**§ 77.203. Minimum amount of bond.**

The minimum amount of bond, except as provided under general permits, shall be \$5000 for the entire permit area, including additional acreage permit revisions.

**Source**

The provisions of this § 77.203 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.201 (relating to scope); 25 Pa. Code § 77.226 (relating to phased deposits of collateral).

**§ 77.204. Period of liability.**

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

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

**Source**

The provisions of this § 77.204 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198700) to (198701).

**Cross References**

This section cited in 25 Pa. Code § 77.201 (relating to scope); 25 Pa. Code § 77.226 (relating to phased deposits of collateral); and 25 Pa. Code § 77.243 (relating to criteria and schedule for release of bond).

**§ 77.205. Bond adjustments.**

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

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

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

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

**Source**

The provisions of this § 77.205 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (198701).

**Cross References**

This section cited in 25 Pa. Code § 77.201 (relating to scope); 25 Pa. Code § 77.226 (relating to phased deposits of collateral); and 25 Pa. Code § 77.228 (relating to failure to maintain proper bond).

**FORM, TERMS AND CONDITIONS OF BONDS  
AND INSURANCE****§ 77.221. Scope.**

Sections 77.222—77.231 establish the minimum standards for the form of the bond for mining and reclamation activities, and the terms and conditions applicable to bonds and liability insurance.

**Source**

The provisions of this § 77.221 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.222. Form of the bond.**

(a) The Department will accept the following types of bonds:

- (1) A surety bond.
- (2) A collateral bond.
- (3) For long term mines and long term facilities, a phased deposit of collateral bond under § 77.226 (relating to phased deposits of collateral).
- (4) Payment in lieu of bond under § 77.227 (relating to payment in lieu of bond (PILB)).

(b) A person submitting a bond shall comply with Department guidelines establishing minimum criteria for execution and completion of the bond forms and related documents and on calculation of total bond liability.

**Source**

The provisions of this § 77.222 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.221 (relating to scope).

**§ 77.223. Special terms and conditions for surety bonds.**

A surety bond is subject to the following conditions:

- (1) The Department will not accept the bond of a surety company which has failed or delayed in making payment on a forfeited surety bond.

(2) The Department will not accept the bond of a surety company unless the bond is not cancellable by the surety at any time for any reason, including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability.

(3) The Department will not accept a single bond in excess of a surety company's maximum single obligation as provided by The Insurance Company Law of 1921 (40 P. S. §§ 341—991), unless the surety company satisfies that statute for exceeding that limit.

(4) The Department will provide in the bond that the amount shall be confessed to judgment upon forfeiture.

(5) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(6) The Department will accept only the bond of a surety authorized to do business in this Commonwealth, when the surety bond is signed by an appropriate official of the surety as determined by the Department. When the principal place of business of the surety is outside of this Commonwealth, the surety bond shall be signed by an authorized resident agent of the surety.

(7) The bond shall provide that liability on the bond will not be impaired nor affected by a renewal or extension of the time for performance, or a forbearance or delay, in declaring or enforcing forfeiture of the bond. The surety has no right to cover or perform the principal's obligation on the bond, although the Department may allow the surety to do so in lieu of enforcing the forfeiture or collecting the bond. A forbearance of delay does not affect the obligations under the bond.

#### Source

The provisions of this § 77.223 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.221 (relating to scope).

### § 77.224. Special terms and conditions for collateral bonds.

(a) The Department will obtain and keep in custody collateral deposited by the permittee until authorized for release or replacement as provided in this subchapter.

(b) A collateral bond pledging negotiable government securities is subject to the following conditions:

(1) The Department may determine the current market value of government securities for the purpose of establishing the value of the securities for bond deposit.

(2) The current market value shall be at least equal to the amount of the required bond amount.

(3) The Department may periodically revalue the securities and may require additional amounts if the current market value is insufficient to satisfy the bond amount requirements for the facility.

(4) The operator may request and receive the interest accruing on governmental securities with the Department as the interest becomes due. The Department will not make interest payments for postforfeiture interest, accruing during appeals, and after resolution of the appeals, when the forfeiture is adjudicated, decided or settled in favor of the Commonwealth.

(c) A collateral bond pledging certificates of deposit is subject to the following conditions:

- (1) The Department will require that certificates of deposit be assigned to the Department, in writing, and that the assignment be recorded upon the books of the bank issuing the certificates.
  - (2) The Department will not accept an individual certificate of deposit for a denomination in excess of \$100,000, or the maximum insurable amount as determined by the FDIC and FSLIC.
  - (3) The Department will require the banks issuing the certificates of deposit to waive rights of setoff or liens which they have or might have against the certificates.
  - (4) The Department will accept only automatically renewable certificates of deposit.
  - (5) The Department will require the permittee to deposit sufficient amounts of certificates of deposit, to assure that the Department will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond required by this subchapter.
  - (6) The Department will accept only certificates of deposit from banks or banking institutions licensed or chartered to do business in this Commonwealth.
  - (7) The permittee will not be entitled to interest accruing after forfeiture is declared by the Department, unless the forfeiture declaration is ruled invalid by a court having jurisdiction over the Department, and the ruling is final.
- (d) A collateral bond pledging a letter of credit is subject to the following conditions:
- (1) The letter of credit shall be a stand-by letter of credit issued by a Federally-insured or equivalently protected bank or banking institution, chartered or authorized to do business in this Commonwealth.
  - (2) A letter of credit shall be irrevocable. The Department may accept a letter of credit which is irrevocable for a term of 1 year if:
    - (i) The letter of credit is automatically renewable for additional terms unless the bank gives at least 90 days prior written notice to the Department and the permittee of its intent to terminate the credit at the end of the current term.
    - (ii) The Department has the right to draw upon the credit before the end of its term and to convert it into a cash collateral bond, if the permittee fails to replace the letter of credit with other acceptable bond within 30 days of the bank's notice to terminate the credit.
  - (3) The letter of credit shall name the Department as the beneficiary and shall be payable to the Department under § 77.253(a)(1) (relating to procedures).
  - (4) A letter of credit shall be subject to the most recent edition of the *Uniform Customs and Practices for Documentary Credits*, published by the International Chamber of Commerce, and the laws of the Commonwealth, including 13 Pa.C.S. §§ 1101—9507 (relating to Uniform Commercial Code).

(5) The Department will not accept letters of credit from a bank that has failed to make or delayed in making payment on a defaulted letter of credit.

(e) Collateral shall be in the name of the permittee, and shall be pledged and assigned to the Department free and clear of rights or claims. The pledge or assignment shall vest in the Department a property interest in the collateral which shall remain until release under the terms of this chapter, and may not be affected by the bankruptcy, insolvency or other financial incapacity of the operator. The Department will insure that ownership rights to collateral deposited are established to make the collateral readily available upon forfeiture. The Department may require proof of ownership, and other means such as secondary agreements, as it deems necessary to meet the requirements of this chapter.

**Source**

The provisions of this § 77.224 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.221 (relating to scope).

**§ 77.225. Surety/collateral combination bond.**

A permittee for surface mining activities may post a combination of surety and collateral bonds for a permit or designated phase of a permit.

**Source**

The provisions of this § 77.225 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.221 (relating to scope).

**§ 77.226. Phased deposits of collateral.**

(a) A permittee for a long term mining operation or facility may post a collateral bond for a permit area in compliance with the following requirements:

(1) The permittee shall submit a collateral bond to the Department.

(2) The permittee shall deposit \$10,000 or 25%, whichever is greater, of the total amount of bond determined under §§ 77.201—77.205 (relating to amount and duration of liability) in approved collateral with the Department.

(3) The permittee shall submit a schedule agreeing to deposit a minimum of 10% of the remaining amount of bond, in approved collateral in each of the next 10 years or in a proportion so that final payment is made by the date required by the Department. The entire bond amount shall be submitted by the operator no later than the actual or expected completion of operations at the mine or the facility. Annual payments become due on the anniversary date of the issuance of the permit, unless otherwise established by the Department. Payments shall be accompanied by appropriate bond documents required by the Department.

(4) The Department may require additional bonding if the Department determines that a higher bond amount is necessary. The increase in the total bond amount required shall proportionately increase the remaining annual payments. The operator shall submit a new schedule within 30 days of notice by the Department of the increase in the total bond amount due.

(5) The operator shall deposit the full amount of the bond required for the facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department may make the demand when the Department determines that the purposes of this section, this chapter or the act have not been met, including, but not limited to, when one of the following occurs:

(i) The operator has failed to make a deposit of bond amount when required according to the schedule for the deposit.

(ii) The operator has violated the requirements of the act, this chapter, the terms or conditions of the permit or orders of the Department.

(iii) The actual or expected completion of operations of the mine or the facility will occur prior to the expiration of the 10-year period determined under this section.

(6) The Department may not accept phased deposit of collateral as bond for a facility when it determines that the purposes of this section, this chapter or the act have not been met, including one of the following circumstances:

(i) The operator has failed to pay the Department when due, permit fees, fines, penalties or other payments; or has failed to deposit bond amounts with the Department when due.

(ii) The operator has indicated a pattern or history of violations of applicable statutes, this chapter, the terms and conditions of the permit, or orders of the Department, even if later corrected, which demonstrate a lack of ability or intention to comply with mining operation requirements.

#### Source

The provisions of this § 77.226 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.221 (relating to scope); 25 Pa. Code § 77.222 (relating to form of the bond); and 25 Pa. Code § 77.228 (relating to failure to maintain proper bond).

### § 77.227. Payment in lieu of bond (PILB).

(a) In lieu of the bond otherwise required in this subchapter, an operator may elect to pay to the Department a payment as provided in this section. A person may not make a payment under this section, unless that person demonstrates to the Department's satisfaction the following:

(1) The operator is unable to post a collateral bond otherwise required by this chapter. The operator shall demonstrate inability to post a collateral bond

by an earnings test established by the Department. The operator will be deemed to be unable to post a collateral bond when the earnings test demonstrates the operator's earnings after taxes, minus the amount of the collateral bond, are zero or less.

(2) The operator is unable to obtain a surety bond otherwise required under this chapter by submitting letters of rejection from three surety companies licensed to do business in this Commonwealth, or one letter of rejection from a broker indicating rejection from the three sureties.

(3) The operator is unable to obtain a self-bond allowed under this chapter. The operator may not convert collateral or surety bonds to payment in lieu of bonds.

(4) The operator's past history of compliance with environmental laws does not indicate a lack of intention or ability to comply with financial responsibility requirements, including regular payments to the Department under the payment in lieu of bond provisions of this chapter and the operator is in compliance with the act.

(b) In administering the payment in lieu of bond provisions of this chapter, the Department will require the operator to submit the following:

(1) A financial test on a form approved by the Department and prepared in conformance with generally accepted accounting principles. The financial statements used to prepare the financial test shall be from the operator's latest completed fiscal year.

(2) A report, prepared by an independent certified public accountant in conformity with generally accepted accounting principles, containing the accountant's audit or review opinion on the financial statements for the latest completed fiscal year.

(3) After initial submission of the information required by this section, updated information shall be submitted by the operator with the license renewal applications provided for in Subchapter B (relating to surface mining operator's license). The operator shall meet the requirements of this section relating to eligibility to make payments in lieu of bond for each succeeding fiscal year.

(4) Other information deemed necessary by the Department to determine the operator's eligibility to make payments in lieu of bond. Failure of the operator to provide information requested by the Department shall render the operator ineligible to make payments in lieu of bond.

(c) An adverse or disclaimer of opinion expressed by the independent certified public accountant in his report shall render the operator ineligible to make payments in lieu of bond. The Department may determine the operator ineligible to make payments in lieu of bonds on the basis of other qualifications expressed by the independent certified public accountant in the report.

(d) If an operator is a subsidiary corporation, both the parent and the subsidiary corporation shall satisfy the financial eligibility requirements of this section

by relying on its parent corporation. In this case, the parent corporation shall meet the eligibility, reporting and payment requirements of this section.

(e) If an operator, a parent corporation or an independent certified public accountant submits false information in the financial test or other information required by this section, the operator or parent corporation shall be ineligible to make payments in lieu of bond. In addition, the operator or parent corporation and the independent certified public accountant are subject to 18 Pa.C.S. §§ 4903 and 4904 (relating to false swearing; and unsworn falsification to authorities).

(f) An operator's payment in lieu of bond obligations is subject to the following requirements:

(1) Annual payments will be 4.75% of the total bond amount required.

(2) The first payment is due upon receipt of notice from the Department of its approval of the operator's application for payment in lieu of bond. Annual payments due thereafter shall be paid with each license renewal application for the applicable license year.

(3) Payment made under this section, upon determination by the Department of the operator's eligibility to make payments in lieu of bond, are not refundable and will be deposited into the Noncoal Surface Mining Conservation and Reclamation Fund to be used only for reclamation purposes. If, under the operator's application for a license renewal, the operator has made payment under this section and, after submission of the information required by subsections (a) and (b) has been determined by the Department to be ineligible to make payments in lieu of bond, the operator is entitled to a refund of the payment after submitting to the Department acceptable surety or collateral bond.

(4) The Department may annually adjust the amount to insure that there are sufficient funds in this account to reclaim sites for which bonds posted under this subsection were forfeited.

(g) If the Department determines that the operator's activities are of a type that bonds otherwise required to be posted by the operator would be forfeited, the Department will declare the payment in lieu of bond forfeited and notify the operator according to the procedures in §§ 77.251—77.254 (relating to bond forfeiture). The declaration of forfeiture by the Department has the same force and effect on the operator as a bond forfeiture under §§ 77.251—77.254, including loss of mining license.

(h) The Department's declaration of forfeiture under this section does not excuse the operator from meeting the requirements of this chapter or other requirements under the act.

(i) The applicant shall compare the information from the financial statements with the information on the financial test and assure that the financial test accurately represents the information contained in the financial statements.

#### Source

The provisions of this § 77.227 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.221 (relating to scope); and 25 Pa. Code § 77.222 (relating to form of the bond).

**§ 77.228. Failure to maintain proper bond.**

(a) If a permittee fails to post promptly additional bond required under § 77.205(a) (relating to adjustments) or fails to make timely deposits of bond according to the schedule submitted under § 77.226 (relating to phased deposits of collateral), the Department will issue a notice of violation to the permittee, and if the permittee fails to show satisfactory compliance, the Department will issue a cessation order for the permittee's permit areas and thereafter may take appropriate actions.

(b) The permittee shall, at all times, maintain a bond in an amount and with sufficient guarantee as provided by this chapter. If a surety company who has provided surety bonds, or a bank who has provided letters of credit or certificates of deposit for a permittee, enters into bankruptcy or liquidation, or has its license suspended or revoked, or for another reason indicates an inability or unwillingness to provide an adequate financial guarantee of the obligations under the bond or instrument, the Department will issue a notice of violation to the permittee requiring that affected permits be rebonded according to the requirements of this subchapter. If the permittee fails to correct the violation within the prescribed period for correction, the Department will issue a cessation order for the permittee's permit areas and thereafter may take appropriate actions.

**Source**

The provisions of this § 77.228 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.221 (relating to scope).

**§ 77.229. Replacement of bonds.**

(a) The Department may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability which has accrued against the permittee on the permit area is transferred to the replacement bonds.

(b) The Department will not release existing bonds until the permittee has submitted, and the Department has approved, acceptable replacement bonds. A replacement of bonds under this section does not constitute a release of bond under §§ 77.241—77.243 (relating to release of bonds).

(c) In lieu of bond—state bonding—arrangements made before March 17, 1990, may be continued if the permit is in existence on March 17, 1990, and continues in force and the annual payments required to be made are made by the permittee.

**Source**

The provisions of this § 77.229 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.221 (relating to scope).

**§ 77.230. Transfer of permits.**

Before a permit is transferred as provided in § 77.144 (relating to transfer of permit), the succeeding operator shall post a bond in an appropriate amount determined by the Department under this subchapter. The bond may not be for less than the amount of the bond on deposit with the Department, in the succeeding operator's name, assuming accrued liability for the permit area.

**Source**

The provisions of this § 77.230 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.221 (relating to scope).

**§ 77.231. Terms and conditions for liability insurance.**

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

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

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

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

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

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

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

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

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

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

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

#### Source

The provisions of this § 77.231 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198710) to (198711).

#### Cross References

This section cited in 25 Pa. Code § 77.51 (relating to license requirement); 25 Pa. Code § 77.164 (relating to personal injury and property damage insurance information); 25 Pa. Code § 77.194 (relating to requirement to file a certification of liability insurance); and 25 Pa. Code § 77.221 (relating to scope).

### RELEASE OF BONDS

#### § 77.241. Scope.

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

**Source**

The provisions of this § 77.241 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198711) to (198712).

**Cross References**

This section cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.195 (relating to Department responsibilities); 25 Pa. Code § 77.205 (relating to bond adjustments); 25 Pa. Code § 77.229 (relating to replacement of bonds); 25 Pa. Code § 77.253 (relating to procedures); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

**§ 77.242. Procedures for seeking release of bond.**

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

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

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

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

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

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

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

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

(5) Summarize the reclamation completed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The notice of the decision will state the reasons for the decision, recommend corrective actions necessary to secure the release and notify the per-

mittee and interested parties of the right to file an appeal to the decision with the EHB. An appeal shall be filed with the EHB under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and Chapter 1021 (relating to practice and procedures).

#### Source

The provisions of this § 77.242 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198712) to (198714).

#### Cross References

This section cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.195 (relating to Department responsibilities); 25 Pa. Code § 77.205 (relating to bond adjustments); 25 Pa. Code § 77.229 (relating to replacement of bonds); 25 Pa. Code § 77.241 (relating to scope); 25 Pa. Code § 77.253 (relating to procedures); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

### § 77.243. Criteria and schedule for release of bond.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Source

The provisions of this § 77.243 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198714) to (198715).

#### Cross References

This section cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.195 (relating to Department responsibilities); 25 Pa. Code § 77.205 (relating to bond adjustments); 25 Pa. Code § 77.229 (relating to replacement bonds); 25 Pa. Code § 77.241 (relating to scope); 25 Pa. Code § 77.242 (relating to procedures for seeking release of bond); 25 Pa. Code § 77.253 (relating to procedures); and 25 Pa. Code § 92a.76 (relating to cessation of discharge).

### BOND FORFEITURE

#### § 77.251. Scope.

Sections 77.252—77.254 (relating to general; procedures; and preservation of remedies) set forth the procedures and criteria for the forfeiture of bond as a result of the permittee's failure to meet the conditions upon the bond.

#### Source

The provisions of this § 77.251 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.195 (relating to Department responsibilities); and 25 Pa. Code § 77.227 (relating to payment in lieu of bond (PILB)).

#### § 77.252. General.

(a) The Department will forfeit the bond, or make an equivalent declaration for payment in lieu of bond for a permit if it determines that one of the following applies:

- (1) The permittee has violated and continues to violate terms or conditions of the bond.
  - (2) The permittee has failed and continues to fail to conduct the mining or reclamation operations in accordance with the act, this chapter or the conditions of the permit.
  - (3) The permittee has abandoned the permit area.
  - (4) The permits for the area under the bond have been revoked, and the permittee has failed to complete the reclamation, abatement and revegetation required by the act, this chapter and the conditions of the permit.
  - (5) The permittee has failed to comply with a compliance schedule in an adjudicated proceeding, consent order or agreement approved by the Department.
  - (6) The permittee has become insolvent, or has a receiver appointed by the court; or a creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials and facilities at the permit area or on the collateral pledged to the Department; and the permittee cannot demonstrate or prove the ability to continue to operate in compliance with the environmental acts, the act, this chapter and the conditions of the permit.
  - (7) The permittee has failed to make payment in lieu of bond.
- (b) If the operator fails or refuses to comply with a provision of the act for which liability has been charged on the bond, the Department will declare the bond forfeited.
- (c) Upon certification of surety bond forfeiture by the Department, the Office of Attorney General will promptly collect the bond and pay the proceeds into the fund. Where the operator deposited cash or securities as collateral, the Department will sell the collateral and pay the proceeds into the fund or direct the State Treasurer to pay the proceeds into that fund.

#### Source

The provisions of this § 77.252 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.195 (relating to Department responsibilities); 25 Pa. Code § 77.227 (relating to payment in lieu of bond (PILB)); and 25 Pa. Code § 77.251 (relating to scope).

### § 77.253. Procedures.

- (a) If forfeiture of the bond is required, the Department will:
- (1) Send written notification by registered or certified mail to the permittee, the surety on the bond and the bank issuing a letter of credit of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the permittee and surety of the right to appeal to the EHB under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law).

(3) Proceed to collect on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this section, if timely appeal under Chapter 1021 (relating to practice and procedures) is not filed, or if an appeal is filed, and if the appeal is unsuccessful.

(b) The written determination to forfeit the bond, including the reasons for forfeiture, will be a final decision by the Department.

(c) The Department will forfeit a bond deposited for a permit area, including designated phases of a permit area and amended permit areas, except for a portion of bond which has been released as provided in §§ 77.241—77.243 (relating to release of bonds).



(d) If the Department declares a collateral bond forfeited, it will pay, or direct the State Treasurer to pay, the collateral funds into the Noncoal Surface Mining Conservation and Reclamation Fund. If upon proper demand and presentation, the banking institution or other person or municipality which issued the collateral refuses to pay the Department the proceeds of a collateral undertaking, such as a certificate of deposit, letter of credit or government negotiable bond, the Department will take appropriate steps to collect the proceeds.

(e) If the Department declares a surety bond forfeited, it will certify the same to the Office of Attorney General which will enforce and collect the amount forfeited and pay it into the Noncoal Surface Mining Conservation and Reclamation Fund.

(f) Funds received from the forfeiture of bonds, both surety and collateral, will be expended by the Secretary for reclaiming and planting the area of land affected by the operation upon which liability was charged on the bond, if the Secretary determines the expenditure to be reasonable, necessary and physically possible. Funds received from the forfeited bonds in excess of the amount that is required to reclaim and plant the area of land affected by the operation upon which liability was charged, and funds received from bond forfeitures where reclamation and planting is determined to be unreasonable, unnecessary or physically impossible, may be used by the Secretary for a purpose provided by law.

(g) The Department's declaration of forfeiture under this section does not excuse the operator from meeting the requirements of this chapter or other requirements under the act.

#### Source

The provisions of this § 77.253 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.195 (relating to Department responsibilities); 25 Pa. Code § 77.224 (relating to special terms and conditions for collateral bonds); 25 Pa. Code § 77.227 (relating to payment in lieu of bond (PILB)); and 25 Pa. Code § 77.251 (relating to scope).

### § 77.254. Preservation of remedies.

(a) Remedies provided in law for violation of the act, the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19b), The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66), the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21), regulations thereunder or the conditions of the permits, are expressly preserved.

(b) Nothing in this subchapter is an exclusive penalty or remedy for violations of law. Action taken under this subchapter does not waive or impair other remedies or penalties provided in law.

**Authority**

The provisions of this § 77.254 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 77.254 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended August 21, 2015, effective August 22, 2015, 45 Pa.B. 4904. Immediately preceding text appears at serial pages (198717) to (198718).

**Cross References**

This section cited in 25 Pa. Code § 77.195 (relating to Department responsibilities); 25 Pa. Code § 77.227 (relating to payment in lieu of bond (PILB)); and 25 Pa. Code § 77.251 (relating to scope).

**Subchapter E. CIVIL PENALTIES FOR NONCOAL  
MINING ACTIVITIES****GENERAL PROVISIONS**

Sec.	
77.291.	Applicability.
77.292.	Assessments.
77.293.	Penalties.
77.294.	System for assessment of penalties.

**PROCEDURES**

77.301.	Procedures for assessment of civil penalties.
77.302.	Appeal procedures.
77.303.	Final assessment and payment of penalty.

**Cross References**

This subchapter cited in 25 Pa. Code § 77.109 (relating to noncoal exploration activities).

**GENERAL PROVISIONS****§ 77.291. Applicability.**

This subchapter is applicable to assessments of civil penalties under the environmental acts and the act.

**Source**

The provisions of this § 77.291 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.292 (relating to assessments).

**§ 77.292. Assessments.**

The Department will review each violation which is or may be subject to imposition of a civil penalty under the applicable provisions of law in § 77.291 (relating to applicability). The purpose of this review is to determine whether a civil penalty will be assessed and the amount of the penalty, and whether a separate penalty will be assessed for each day of a continuing violation.

**Source**

The provisions of this § 77.292 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.293. Penalties.**

(a) *Cessation order.* The Department will assess a civil penalty of up to \$5,000 per day for each violation which leads to a cessation order. If a violation involves a failure to correct within the period prescribed for its correction, a violation for which a cessation order or other abatement order has been issued, a civil penalty of at least \$750 will be assessed for each day the violation continues beyond the period prescribed for its correction.

(b) *Civil penalty.*

(1) The Department may assess a civil penalty of up to \$1000 per day for each violation, unless the operator demonstrates with clear and convincing evidence that the violations:

- (i) Result in no environmental damage.
- (ii) Result in no injury to persons or property.
- (iii) Are corrected within the required time prescribed for its abatement.

(2) If the violation involves a failure to correct within the period prescribed for its correction, a violation for which a cessation order or other abatement order was not issued, a civil penalty of at least \$250 will be assessed for each day the violation continues beyond the period prescribed for its correction.

**Source**

The provisions of this § 77.293 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.294 (relating to system for assessment of penalties).

**§ 77.294. System for assessment of penalties.**

(a) The Department and, in event of appeal, the EHB, will use the system described in this section to determine the amount of the penalty, and, whether a mandatory penalty will be assessed as provided in § 77.293(b) (relating to penalties). Unless otherwise indicated, the penalty may be set at an amount from zero up to the maximum amount specified in this subchapter.

(b) Civil penalties will be assessed based upon the following criteria:

- (1) The seriousness of the violation as to environmental impact, public health and safety factors and damage to property.
  - (2) The culpability of the operator in causing or allowing the violation to occur and the operator's history of violations during the prior 2 years.
  - (3) The speed of compliance exhibited by the operator once notified that a violation exists.
  - (4) The costs to the Commonwealth to investigate and correct the violation.
  - (5) The savings to the operator if the violation resulted in economic benefit.
- (c) Whenever a violation is included as a basis for an administrative order requiring the cessation of a mining operation, and if the violation has not been abated within the abatement period set in the order, a civil penalty of at least \$750 will be assessed for each day during which the failure continues. If the person to whom the order was issued files an appeal with respect to the violation, the abatement period shall be extended, if suspension of the abatement requirement is ordered in a supersedeas order issued by the EHB under §§ 1021.76—1021.78 (relating to general; contents of petition for supersedeas; and circumstances affecting grant or denial). In this case, the period permitted for abatement will not end until the date on which the EHB issues a final adjudication with respect to the violation in question or otherwise revokes the supersedeas order.
- (d) If the system described in this section yields a penalty in excess of the statutory maximum for a violation, the maximum penalty shall be imposed for that violation. Separate violations occurring on the same day may each be assessed a penalty of up to the maximum. If violations are attributed to two or more persons, a penalty of up to the statutory maximum may be assessed against each person.

#### Source

The provisions of this § 77.294 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

### PROCEDURES

#### § 77.301. Procedures for assessment of civil penalties.

- (a) *Initial review.* When the Department determines that a civil penalty will be assessed, it will make an initial review of the violation and will serve a copy of the results of the initial review, including the civil penalty computations, on the party responsible for the violation. The service will be by registered mail within 30 days of the Department's knowledge of the violation.
- (b) *Assessment conference.* Upon written request of the person to whom the results of the initial review were sent, the Department will arrange an assessment conference to discuss the results of the initial review, if the request is received within 15 days of the date the results of the initial review were received. The

Department may upon its own motion arrange for an assessment conference to discuss the results of the initial review.

(c) *Department representative.*

(1) The Department will assign a representative to hold the assessment conference. The assessment conference will not be governed by requirements for formal adjudicatory hearings, and it may be held at the convenience of the parties.

(2) The Department will consider relevant information on the violation. After the conference is held, the Department may do one of the following:

(i) Settle the issues, in which case a settlement agreement will be prepared and signed by appropriate representatives of the Department and the person assessed.

(ii) Affirm, raise, lower or vacate the penalty.

(3) The Department representative may terminate the assessment conference when the representative determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(d) *Service.* The Department will serve a copy of the civil penalty assessment on the person responsible for a violation as follows:

(1) Upon the failure of the assessed party to timely request an assessment conference on the results of the initial review.

(2) Upon the completion of an assessment conference, or upon review of timely submitted information for review by the Department, if the Department does not decide to vacate the penalty. The service will be by registered or certified mail, or by personal service. If the mail is tendered at the address of the assessed person set forth in the sign required under § 77.502 (relating to signs and markers), or at an address at which that person is in fact located, and the person refuses to accept delivery of or to collect the mail, the requirements of this paragraph will be deemed to have been complied with upon that tender.

**Source**

The provisions of this § 77.301 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.302. Appeal procedures.**

(a) The person charged with a violation may contest the penalty assessment by filing an appeal with the EHB including with the appeal an amount equal to the assessed penalty—to be held in escrow as provided in subsection (b) within 30 days from receipt of the assessment. Payment under this section shall be cash in the form of certified check, treasurer's check, bank check or cashier's check. In the alternative, a person may file with the appeal an appeal bond in the amount of the assessed civil penalty, the bond shall be executed by a surety who is licensed to do business in this Commonwealth and is otherwise satisfactory to the Department.

(b) The EHB will transfer funds submitted under subsection (a) to the Office of the Comptroller of the Department which will hold them in escrow pending completion of the administrative and judicial review process, at which time it will disburse the funds under § 77.303 (relating to final assessment and payment of penalty).

(c) An appeal from a penalty assessment will not be deemed to be perfected unless a properly executed appeal bond or cash equal to the full amount of the assessed penalty is received by the EHB within 30 days of appellant's receipt of the assessment or reassessment.

(d) A person may challenge either the fact of the violation or the amount of the penalty once an appeal of that issue has been perfected. In either challenge, the appellant will be bound as actions of the Department which have become final under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514). A final action includes a compliance order which has become final, even though the order addresses the same violation for which a civil penalty is assessed.

#### Source

The provisions of this § 77.302 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.303 (relating to final assessment and payment of penalty).

### § 77.303. Final assessment and payment of penalty.

(a) If the person to whom an assessment is issued fails to file an appeal as provided in § 77.302 (relating to appeal procedures), the assessment shall become final and the penalty assessed shall become due upon expiration of the time allowed to file the appeal.

(b) If a party requests judicial review of an adjudication of the EHB, the initial penalty assessed shall continue to be held in escrow until completion of the review. Otherwise, subject to subsection (c), the escrowed funds shall be transferred to the Department in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review process results in an order reducing or eliminating the proposed penalty assessed under this chapter, the Department will within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest accumulated by the escrow deposit.

#### Source

The provisions of this § 77.303 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.302 (relating to appeal procedures).

**Subchapter F. ENFORCEMENT AND INSPECTION**

- Sec.  
77.351. Enforcement.  
77.352. Inspection authorization.  
77.353. Inspection—general.

**Cross References**

This subchapter cited in 25 Pa. Code § 77.109 (relating to noncoal exploration activities).

**§ 77.351. Enforcement.**

Violations once identified by a State inspector or other appropriate official shall be corrected in a reasonable time, not to exceed 90 days, as prescribed by the Department. Additional time to achieve compliance may be granted if additional time is necessary to achieve the standards in the environmental acts and the act and regulations promulgated thereunder. The additional time may not be granted for reasons of financial hardship but only when additional time is essential for the achievement of the standards of environmental protection set forth in the environmental acts and the act and regulations thereunder. The utilization of this provision by the Department will not limit the Department from initiating another proceeding, penalty action or other action available to it under the environmental acts and the act and regulations thereunder. Other action may be initiated regardless of a violator's compliance with this section.

**Source**

The provisions of this § 77.351 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.352. Inspection authorization.**

- (a) The Department and its agents and employees will:
- (1) Have access to, and require the production of, books and papers, documents and physical evidence pertinent to a matter under investigation.
  - (2) Enter a building, property, premises or place where noncoal mining activities are conducted for the purpose of making an investigation or inspection as may be necessary to ascertain the compliance or noncompliance by a person with the environmental acts and the act and regulations thereunder.
- (b) The Department, its employees and agents intend to conduct inspections of the noncoal mines twice a year. The provisions of this subsection are subject to the availability of personnel and financial resources. This subsection does not create a duty by the Department to conduct a minimum number of inspections per year at a facility, create a right in a person or municipality to a minimum number of inspections per year by the Department at a facility or sets a maximum number of inspections.
- (c) The Department, its employees and agents may conduct additional inspections, including follow-up inspections, of noncoal mines and activities related to

public health, safety, welfare or the environment; compliance with the act, the environmental acts, this title, the terms or conditions of a permit; or a requirement of an order.

(d) The Department, its employes and agents may also conduct inspections of noncoal mines and activities whenever a person or municipality presents information to the Department which gives the Department reason to believe that a person or municipality:

(1) Is in violation of a requirement of the act, this chapter or a permit issued thereunder.

(2) May have violated an environmental protection act listed in section 7(c)(9) of the act (52 P. S. §§ 3307(c)(9)) or a condition of a permit or a regulation issued under those acts.

**Source**

The provisions of this § 77.352 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.353. Inspection—general.**

Whenever a Department inspection determines that there is a violation of the act, the environmental acts, the regulations thereunder, a permit or Department approval, the Department will notify the alleged violator either by copy of the inspection report, notice of violation or through Department order or other enforcement document. The failure of the Department to issue a notice of a violation is not evidence of the absence of a violation. The notices, documents or records will be available for public inspection at the appropriate Department district office. If the operation is active and personnel are onsite, a copy of the inspection report will be left at the site.

**Source**

The provisions of this § 77.353 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Subchapter G. INFORMATION ON ENVIRONMENTAL  
RESOURCES**

- Sec.  
77.401. Responsibilities.  
77.402. General environmental resource information.  
77.403. Description of hydrology and geology—general requirements.  
77.404. Geology description.  
77.405. Groundwater information.  
77.406. Surface water information.  
77.407. Alternative water supply information.  
77.408. Vegetation information.  
77.409. Land use information.  
77.410. Maps, cross sections and related information.

**Cross References**

This subchapter cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); and 25 Pa. Code § 77.803 (relating to nature of a general permit; substitution for individual applications and permits).

**§ 77.401. Responsibilities.**

A permit application shall contain a description of the existing premining resources within the proposed permit and adjacent area that may be affected by the proposed surface mining activities. The description shall include the information required in this subchapter. The Department may waive, wholly or in part, the requirements of this subchapter for any category of surface mining operation, if the Department determines that the requirement is not needed to evaluate impacts on public health and safety and the environment.

**Source**

The provisions of this § 77.401 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (234463).

**§ 77.402. General environmental resource information.**

An application shall describe and identify the location and extent of the proposed surface mining activities for which a permit is being sought and an identification of the size and relative sequence of the proposed noncoal mining activities.

**Source**

The provisions of this § 77.402 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

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

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

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

**Source**

The provisions of this § 77.403 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (234463).

**§ 77.404. Geology description.**

An application shall contain a description of the geology within the proposed permit and adjacent area down to and including the first aquifer system that may be affected below the lowest mineral extraction level, including the following:

- (1) The stratigraphy and results of test borings or equivalent information from the proposed permit area identifying the location of subsurface water if encountered, lithologic and physical characteristics, and thickness of each stratum and the surface elevation of the drill holes.
- (2) The structure within the proposed permit and its relation to the structure of the general area.
- (3) A chemical analysis of the mineral and overburden with identification of horizons which contain potential acid-forming, toxic-forming or alkalinity producing material when deemed appropriate by the Department.
- (4) Identification and status of other mining within or adjacent to the proposed permit area.
- (5) Other analysis or information that the Department deems relevant for evaluation of the impact of the proposed activities on the hydrologic balance.

**Source**

The provisions of this § 77.404 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.403 (relating to description of hydrology and geology—general requirements).

**§ 77.405. Groundwater information.**

(a) The application shall contain a description of the groundwater hydrology for the proposed permit and general area, including:

- (1) The depths to groundwater in the area.
  - (2) The uses of the groundwater.
  - (3) The chemical characteristics of groundwaters in the area including a description of known groundwater quality problems.
- (b) If requested by the Department, the application shall contain additional information which describes the storage and discharge characteristics of the

groundwater for the permit and adjacent area and the quality and quantity of groundwater, according to the parameters and in the detail required by the Department.

**Source**

The provisions of this § 77.405 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.403 (relating to description of hydrology and geology—general requirements).

**§ 77.406. Surface water information.**

(a) An application shall contain a description of the surface waters, including the name of the watershed which will receive water discharges, the location of surface water bodies, such as streams, lakes, ponds and springs, deep mine discharges and seeps, the location of a water discharge into a surface body of water and descriptions of surface drainage systems within the proposed permit and general area.

(b) Surface water information shall include the following:

(1) The surface elevations and rate of flow of springs, seeps and mine discharges located within areas that may be impacted by the proposed mining. For underground mines the information required by this section shall be provided for the area over the proposed mine.

(2) Minimum, maximum and average discharge conditions which identify critical low flow and peak discharge rates of streams when requested by the Department.

(3) Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or groundwater from the proposed permit area, showing, if applicable:

- (i) pH in standard units.
- (ii) Other data the Department determines is relevant.

**Source**

The provisions of this § 77.406 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.403 (relating to description of hydrology and geology—general requirements).

**§ 77.407. Alternative water supply information.**

The application shall identify the extent to which the proposed surface mining activities may result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent area for domestic, agricultural, industrial or other legitimate use. If contamination, dimi-

nution or interruption may result, the description shall identify the means to restore or replace the affected water supply under § 77.533 (relating to water rights and replacement).

**Source**

The provisions of this § 77.407 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.403 (relating to description of hydrology and geology—general requirements).

**§ 77.408. Vegetation information.**

When the postmining land use requires, an application shall contain a description of the extent of cover, in percent groundcover, of the natural vegetation within the proposed permit area. When the postmining land use is wildlife habitat, the description shall include information adequate to establish the stocking standards of § 77.618(b)(2) (relating to standards for successful revegetation). When requested by the Department, the application shall contain a map or aerial photograph that delineates existing vegetation types and a description of the plant communities within the proposed permit and adjacent area.

**Source**

The provisions of this § 77.408 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.409. Land use information.**

An application shall contain a statement and map of the uses, condition, capability and productivity of the land within the proposed permit area, including:

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. Land use shall be in terms of specific land use or management activity. A statement of type of vegetation or cover is not adequate.

(2) A narrative of land capability and productivity, which analyzes the land-use description under paragraph (1) in conjunction with other environmental resources information required under this subchapter. The productivity of the proposed permit area before mining shall be expressed as average yield of food, fiber, forage or wood products from the lands. The productivity shall be determined by yield data or estimates for similar sites based on current data from the United States Department of Agriculture or the Department of Agriculture.

**Source**

The provisions of this § 77.409 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.410. Maps, cross sections and related information.**

(a) An application shall contain maps and plans of the proposed permit area and within 1,000 feet of the permit area, except as otherwise designated by the Department, showing the following:

- (1) The boundaries and names of present owners of record of land, both surface and subsurface, the owners of record for adjacent surface areas and the boundaries of the land within the proposed permit area which the applicant has the legal right to enter and begin noncoal mining activities.
- (2) The boundaries of the land to be affected.
- (3) The location, names of the owners and present occupants and the current use of buildings on and within 1,000 feet of the perimeter of the proposed permit area.
- (4) The location and names of public highways, railroads, utility lines and other surface and subsurface manmade features.
- (5) The location and name of current public and private surface water supplies that have intakes on the receiving stream within 10 miles downstream of the proposed permit area, public water supplies on or within 1/2 mile of the affected area, and private water supplies on or within 1,000 feet of the proposed permit area.
- (6) The location and elevation of monitoring stations, springs, wells and sinkholes.
- (7) The distance limitations designated under § 77.504 (relating to distance limitations and areas designated as unsuitable for mining).
- (8) The boundaries of a public park.
- (9) A public or private cemetery located in or within 1,000 feet of the permit area.
- (10) The drainage area above and below the proposed permit area and the location of surface water bodies, such as streams, wetlands, lakes, ponds, springs, constructed or natural drains and irrigation ditches within the permit and adjacent areas.
- (11) The municipality or township and county.
- (12) The elevation and location of test borings and core samplings.
- (13) The location and extent of existing or previously deep or surfaced-mined areas.
- (14) The location and areal extent of existing areas of spoil, waste, noncoal waste disposal, dams, embankments and other water treatment and air pollution control facilities within the proposed permit area.
- (15) The location of gas and oil wells within the proposed permit area.
- (16) If applicable, coal crop lines, rider seams and strike and dip of the coal.

(17) Other information the Department deems relevant.

(b) Maps, plans and cross sections required by this section shall be on a scale satisfactory to the Department. The maps or plans and cross sections shall be prepared and certified by a registered professional engineer, or a registered professional land surveyor with assistance from experts in related fields.

#### Source

The provisions of this § 77.410 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

### Subchapter H. REQUIREMENTS FOR OPERATION AND RECLAMATION PLAN

Sec.

- 77.451. Requirements.
- 77.452. Operational information.
- 77.453. Blasting plan.
- 77.454. Maps and plans.
- 77.455. Air pollution control plan.
- 77.456. Reclamation information.
- 77.457. Protection of hydrologic balance.
- 77.458. Erosion and sedimentation control plan.
- 77.459. Stream diversions, water obstructions and encroachments.
- 77.460. Diversions.
- 77.461. Dams, ponds, embankments and impoundments.
- 77.462. Postmining land uses and alternative restoration.
- 77.463. Surface mining near underground mining.
- 77.464. Protection of public parks and historic places.
- 77.465. Public highways.
- 77.466. Haul roads.

#### Cross References

This subchapter cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations).

#### § 77.451. Requirements.

As part of a permit application, the applicant shall provide a description of the surface mining activities in the detail required by the Department showing the manner in which this chapter will be met. The description shall include, at a minimum, the information required in this subchapter.

**Source**

The provisions of this § 77.451 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.452. Operational information.**

An application shall contain a description of the noncoal mining activities proposed to be conducted within the proposed permit area, including the following:

- (1) A description of the type and method of noncoal mining procedures and anticipated annual production.
- (2) A description or explanation of the construction, modification, use, maintenance and removal of the following facilities, unless retention of the facilities is approved for postmining land use under § 77.653 (relating to postmining land use):
  - (i) Impoundments.
  - (ii) Overburden, topsoil and noncoal waste storage areas.
  - (iii) Mineral removal, handling, storage, cleaning and transportation areas and other support facilities.
  - (iv) Water and air pollution control facilities.
  - (v) Erosion control facilities.
- (3) A description or explanation of the relative sequence of surface mining activities and the estimated life of the mine.

**Source**

The provisions of this § 77.452 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.453. Blasting plan.**

(a) An application for proposed blasting shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with §§ 77.561—77.565 (relating to use of explosives) and including the following:

- (1) Drilling patterns, including size, number, depths and spacing of holes.
- (2) Charge and packing of holes.
- (3) Types of initiation and detonation controls.
- (4) Sequence and timing of firing holes.
- (5) Scaled distance.

(b) Persons responsible for blasting operations at a blasting site shall be familiar with the blasting plan and site-specific performance standards.

**Source**

The provisions of this § 77.453 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.564 (relating to surface blasting requirements).

**§ 77.454. Maps and plans.**

(a) An application shall contain maps and plans of the proposed permit area and areas within 1000 feet, except as otherwise designated by the Department, showing the following:

- (1) The boundaries of lands to be affected by the proposed operation and the relative sequence of mining and reclamation.
- (2) Buildings, utility corridors and facilities which will be used in the operation.
- (3) Areas of land for which a bond will be posted under Subchapter D (relating to bonding and insurance requirements).
- (4) Mineral storage, processing and loading areas.
- (5) Overburden, topsoil, waste and noncoal waste storage areas.
- (6) Water diversion, collection, conveyance, sedimentation and erosion control, treatment, storage and discharge facilities to be used.
- (7) Air pollution collection and control facilities, if required.
- (8) Waste disposal facilities relating to processing or pollution control.
- (9) Explosive storage and handling facilities.
- (10) The location of each sedimentation pond and permanent water impoundment.

(b) An application for an underground mine shall contain maps and plans as described in subsection (a) and the following:

- (1) The proposed extent of the underground mine workings.
- (2) Existing and proposed openings to the mine.
- (3) Existing underground and surface mines within 1000 feet of the proposed underground mine.

(c) Maps, plans and cross sections required by this section shall be on a scale satisfactory to the Department, but in no event less than 1:25,000 and in a manner satisfactory to the Department. The maps or plans and cross sections shall be prepared and certified by a registered professional engineer, or registered professional land surveyor.

**Source**

The provisions of this § 77.454 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.455. Air pollution control plan.**

The description shall include an air pollution control plan which includes the following:

- (1) A plan for fugitive dust control practices, as required under § 77.575 (relating to air resources protection), and if applicable, how the requirements of Chapters 123 and 127 (relating to standards for contaminants; and construction, modification, reactivation and operation of sources) will be met.

(2) If requested by the Department, an air quality control monitoring program to provide sufficient data to evaluate the effectiveness of the air pollution control plan.

**Source**

The provisions of this § 77.455 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.456. Reclamation information.**

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

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

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

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

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

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

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

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

(6) A description of measures to be employed to ensure that debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of under § 77.596 (relating to covering coal and acid-forming and toxic-forming materials), and a description of the contingency plans which have been developed to preclude sustained combustion of the materials.

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

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

#### Source

The provisions of this § 77.456 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (228211).

#### Cross References

This section cited in 25 Pa. Code § 77.611 (relating to general requirements); and 25 Pa. Code § 77.595 (relating to concurrent reclamation).

### § 77.457. Protection of hydrologic balance.

(a) An application shall contain a description, with appropriate maps and cross sections of the measures to be taken during and after the proposed noncoal mining activities under Subchapter I (relating to environmental protection performance standards), to ensure the protection of the quality and quantity of surface water and groundwater, both within the proposed permit and adjacent areas, from the adverse effects of the proposed noncoal mining activities, and the rights of present users of surface water and groundwater along with a determination of the hydrologic consequences of the proposed noncoal mining activities.

(b) An application shall also contain the following in the detail required by the Department:

(1) A plan for the control, under Subchapter I, of surface water and groundwater drainage into, through and out of the proposed permit and adjacent area.

(2) A plan for the treatment, under Subchapter I, if necessary, of surface water and groundwater drainage from the area to be disturbed by the proposed activities to meet the effluent standards under § 77.522 (relating to effluent standards).

(3) A plan for the collection, recording and reporting of groundwater and surface water quality and quantity data under § 77.532 (relating to surface water and groundwater monitoring).

(4) A determination of the probable effects on the surface water and groundwater of the proposed mining activities, on the proposed permit and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface water and groundwater systems, including the parameters the Department deems relevant.

#### Source

The provisions of this § 77.457 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Notes of Decisions

##### *Description of Protection*

Under subsection (a)(2) of 25 Pa. Code § 77.126, the Department of Environmental Resources may not issue a permit unless the permit application had affirmatively demonstrated that the proposed noncoal surface mining activities can reasonably be accomplished under the operation and reclamation plan contained in the application. Among the information to be included in the operation and reclamation plan was a description of the measures to be taken during and after mining to ensure protection of the rights of present users of surface and groundwater under subsection (a) of this regulation. *Plumstead Township v. Department of Environmental Resources*, 1995 EHB 741.

##### *Evidence*

Evidence was sufficient to calculate the probable effects on the surrounding area. *Plumstead Township v. Department of Environmental Resources*, 1995 EHB 741.

##### *Permit Application Contents*

An applicant for a quarry mining permit must provide detailed information concerning the hydrogeology beneath the site and adjacent areas. Under subsection (a) of this regulation, an application for a noncoal surface mining permit must contain: a description of the measures to be taken to ensure the protection of the quantity and quality of surface and groundwater within and adjacent to the permit area; and a determination of the hydrologic consequences of the proposed mining activities. Furthermore, under subsections (b)(1) and (4), an application must also include: a plan to control surface and groundwater drainage into, through, and out of the permit and adjacent areas; and a determination of the probable effects of mining activities on the hydrologic regime and the quantity and quality of water in surface and groundwater systems. *Plumstead Township v. Department of Environmental Resources*, 1995 EHB 897.

#### **§ 77.458. Erosion and sedimentation control plan.**

An application shall contain the necessary information to demonstrate how the proposed sediment control measures for the surface mining and reclamation operation will meet the requirements of Chapter 102 (relating to erosion and sediment control) and the additional sediment control requirements of § 77.525 (relating to sediment control measures).

#### Source

The provisions of this § 77.458 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.459. Stream diversions, water obstructions and encroachments.**

An application shall contain the necessary information to demonstrate how each proposed water obstruction and encroachment will meet the requirements of Chapter 105 (relating to dam safety and waterway management) and § 77.523 (relating to water obstructions and encroachments).

**Source**

The provisions of this § 77.459 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.460. Diversions.**

An application shall show the manner in which the applicant plans to divert water from entering the operation under § 77.524 (relating to diversions and conveyance).

**Source**

The provisions of this § 77.460 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.461. Dams, ponds, embankments and impoundments.**

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

(b) The general plan shall contain the following:

(1) A description, map and cross section of the structure and its location.

(2) Preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure if requested by the Department.

(3) A survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.

(c) The design plan for a structure shall:

(1) Be prepared by, or under the direction of, and certified by a registered professional engineer or registered professional land surveyor.

(2) Include design and construction requirements for each structure, including geotechnical information if requested by the Department.

(3) Describe the operation and maintenance requirements for each structure.

(4) Describe the timetable and plans to remove each structure, if appropriate.

(5) Include a stability analysis if the structure is more than 15 feet (4.6 meters) in height as measured from the upstream toe of the embankment to the crest of the emergency spillway or has a storage volume of more than 50 acre feet (61.7 cubic meters).

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

**Source**

The provisions of this § 77.461 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (198735).

**§ 77.462. Postmining land uses and alternative restoration.**

(a) An application shall contain a description and a map showing the proposed use, following reclamation of the land within the proposed permit area.

(b) An application shall contain one of the following:

(1) A description of the operator's plans to restore the area to be affected by surface mining to approximate original contour. The statement shall demonstrate that the operation will restore the affected land to a condition capable of supporting the uses it was capable of supporting prior to mining or higher or better uses.

(2) A description of the operator's plans to achieve an alternative to approximate original contouring. The applicant shall:

(i) Show that the alternative to contouring is likely to be achieved.

(ii) Show that the alternative to contouring poses no actual or potential threat to public health or safety, or of water diminution, interruption, contamination or pollution.

(iii) Do one of the following:

(A) Describe the postmining land use and show that:

(I) The proposed postmining land use is compatible with adjacent land use and consistent with applicable land use policies, plans and programs and Federal, State and local law.

(II) The proposed operation will be long term.

(III) The ratio of mineral deposit to overburden is such that AOC backfilling cannot be achieved.

(B) Do the following:

(I) Show that the alternative to contouring:

(-a-) Will improve the watershed of the area.

(-b-) Will leave no highwalls.

(-c-) Has been approved by the landowner in a notarized written statement.

(-d-) Will restore the land to a condition of supporting uses equal to or higher and better than the premining uses.

(II) Describe the postmining land use and demonstrate that the proposed postmining land use has been designed and certified by a registered professional engineer in conformance with professional standards to assure the stability, drainage and configuration necessary for the intended use of the site.

**Source**

The provisions of this § 77.462 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.126 (relating to criteria for permit approval or denial); 25 Pa. Code § 77.632 (relating to restoration); and 25 Pa. Code § 77.653 (relating to postmining land use).

**§ 77.463. Surface mining near underground mining.**

For surface mining activities within the proposed permit area to be conducted within 500 feet to a point of either an active or abandoned underground mine, the application shall describe the measures to be used to comply with §§ 77.561—77.565 (relating to use of explosives).

**Source**

The provisions of this § 77.463 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.464. Protection of public parks and historic places.**

For public parks or historic places that may be adversely affected by the proposed operations, an application shall describe the measures to be used to minimize or prevent these impacts and meet the requirements of this title.

**Source**

The provisions of this § 77.464 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.465. Public highways.**

If the applicant proposes to relocate a public highway, or conduct surface mining activities within 100 feet of the right-of-way of a public highway, except where the mine access joins that right-of-way, the application shall include a description and necessary drawings, approved by the Department of Transportation or the municipality having jurisdiction over the highway. If approval is not received from the governmental agency having jurisdiction over the public highway, a request to conduct mining activities within 100 feet of the right-of-way of the public highway shall be submitted under § 77.504(b) (relating to distance limitations).

**Source**

The provisions of this § 77.465 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.466. Haul roads.**

For each haul road or other transportation facility, the application shall contain a description of the road or facility and appropriate maps, plans, cross sections and specifications to demonstrate compliance with §§ 77.631 and 77.632 (relating to general requirements; and restoration).

**Source**

The provisions of this § 77.466 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Subchapter I. ENVIRONMENTAL PROTECTION  
PERFORMANCE STANDARDS**

**GENERAL**

- Sec.  
77.501. Requirements.  
77.502. Signs and markers.  
77.503. Casing and sealing of drilled holes.  
77.504. Distance limitations and areas designated as unsuitable for mining.

**TOPSOIL**

- 77.511. General requirements.  
77.512. Removal.  
77.513. Storage.  
77.514. Redistribution.  
77.515. Nutrients and soil amendments.

**HYDROLOGIC BALANCE**

- 77.521. General requirements.  
77.522. Effluent standards.  
77.523. Water obstructions and encroachments.  
77.524. Diversions and conveyance.  
77.525. Sediment control measures.  
77.526. Treatment facilities.  
77.527. Sedimentation controls.  
77.528. Discharge structures.  
77.529. Acid-forming and toxic-forming spoil.  
77.530. Impoundments.  
77.531. Dams, ponds, embankments and impoundments—design, construction and maintenance.  
77.532. Surface water and groundwater monitoring.  
77.533. Water rights and replacement.  
77.534. Discharge of water into an underground mine.  
77.535. Permanent postmining renovation of sedimentation ponds, diversions, impoundments and treatment facilities.

**PROTECTION OF UNDERGROUND MINING**

- 77.551. Restriction.

**USE OF EXPLOSIVES**

- 77.561. General requirements.
- 77.562. Preblasting surveys.
- 77.563. Public notice of blasting schedule.
- 77.564. Surface blasting requirements.
- 77.565. Records of blasting operations.

**OPERATIONS**

- 77.571. Bench development.
- 77.572. Permit line setback.
- 77.573. Stability analysis.
- 77.574. Disposal of solid wastes.
- 77.575. Air resources protection.

**BACKFILLING AND GRADING**

- 77.591. General.
- 77.592. Approximate original contour.
- 77.593. Alternatives to contouring.
- 77.594. Final slopes.
- 77.595. Concurrent reclamation.
- 77.596. Covering coal and acid-forming and toxic-forming materials.

**REVEGETATION**

- 77.611. General requirements.
- 77.612. Timing.
- 77.613. Introduced species.
- 77.614. Agriculture crops.
- 77.615. Species.
- 77.616. Seedbed preparation.
- 77.617. Mulching.
- 77.618. Standards for successful revegetation.

**HAUL ROADS**

- 77.631. General requirements.
- 77.632. Restoration.
- 77.633. Common use roads.

**CESSATION AND COMPLETION OF MINING**

- 77.651. Temporary cessation.
- 77.652. Permanent.
- 77.653. Postmining land use.
- 77.654. Cleanup.
- 77.655. Closing of underground mine openings.

**Cross References**

This subchapter cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.457 (relating to protection of hydrologic balance); and 25 Pa. Code § 78a.67 (relating to borrow pits).

**GENERAL****§ 77.501. Requirements.**

A person who conducts noncoal mining activities shall comply with the performance standards and design requirements of this subchapter.

**Source**

The provisions of this § 77.501 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.502. Signs and markers.**

(a) The operator shall identify the operation for the duration of the surface mining activities by posting and maintaining a sign which will be clearly visible at the junction of each haul road and the public highway. The sign shall be constructed of a durable, weather resistant material and shall be of a minimum size of 2 feet by 3 feet (60.96 centimeters by 91.44 centimeters) with a light background and contrasting letters and numbers of a minimum height of 1 1/2 inches (3.81 centimeters) that may be easily seen and read. The sign shall show the name of the operator conducting the surface mining activities, the telephone number of the operator and the identification number of the current permit authorizing noncoal mining activities. The sign shall be erected within 60 days after permit issuance.

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

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

**Source**

The provisions of this § 77.502 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (198740).

**Cross References**

This section cited in 25 Pa. Code § 77.301 (relating to procedures for assessment of civil penalties).

**§ 77.503. Casing and sealing of drilled holes.**

(a) An exploration hole, other drill or borehole, well or other exposed underground opening—except for holes solely drilled and used for blasting—or other

opening exposed during surface mining activities shall be cased, sealed or otherwise managed as approved by the Department if necessary to:

- (1) Prevent acid or other toxic drainage from entering groundwaters or surface waters.
  - (2) Minimize disturbance to the prevailing hydrologic balance.
  - (3) Ensure the safety of people, property, livestock, fish and wildlife, and machinery in the permit and adjacent area.
  - (4) Prevent groundwater and surface water from entering underground mine workings.
- (b) Use of a drilled hole, borehole or monitoring well as a water well shall meet § 77.532 (relating to surface water and groundwater monitoring).
- (c) Gas and oil wells shall be sealed in accordance with the Oil and Gas Act (58 P.S. §§ 601.101—601.605).

#### Source

The provisions of this § 77.503 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198740) to (198741).

#### Cross References

This section cited in 25 Pa. Code § 77.109 (relating to noncoal exploration activities); and 25 Pa. Code § 77.456 (relating to reclamation information).

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

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

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

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

- (1) *Expansion of pits.* For opening or expansion of pits, that special circumstances warrant operations within the distance limitations, that the environment and the interests of the public and landowners affected thereby will be adequately protected and that there are no feasible or prudent alternatives to

opening the pit within the distance limitations. Prior to allowing operations within the distance limitations, the operator shall give public notice of the application in two newspapers of general circulation in the area, once a week for 2 successive weeks, and shall give notice by mail to the municipality in which the operation is located. If a person files an objection with the Department and requests a public hearing or informal conference in writing within 20 days of the last publication thereof, the Department will conduct a public hearing or informal conference.

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

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

(1) The well is sealed under the Oil and Gas Act (58 P. S. §§ 601.101—601.605) and regulations thereunder.

(2) The Department approves, in writing, a lesser distance if the following apply:

(i) Access to the well is provided at all times.

(ii) The integrity of the well is maintained.

(iii) The well operator agrees in writing to the lesser distance.

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

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

(1) Knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(2) Effective against subsequent purchasers of the dwelling or building who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser shall be deemed to have constructive knowledge if the waiver was recorded at the office of the recorder of deeds in the county in which the dwelling or building is located or if the surface mining activities have proceeded to within the 300 foot (91.44 meters) limit prior to the date of purchase.

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

(1) The 203-acre tract of land located within Pequea Township, Lancaster County, as described on Lancaster County Tax Assessment Map 15K-8 as lot 7 and recorded in the Lancaster County Office for Recording of Deeds, Deed Book O-80, pages 437-438, except for the subdivision recorded in Subdivision Plan Book J-129, page 49. This tract is unsuitable for all types of surface mining activities.

(2) The land area encompassed by the perimeter of an area extending 50 feet from the known horizontal extent of two cavern areas located in Haines Township, Centre County, described as follows: The rectangular tract of lands beginning at a point 170 feet due East of the centerline of the entrance to Stover Cave No. 1; thence North 21 degrees West 190 feet to a point; thence South 69 degrees West 440 feet to a point; thence South 21 degrees East 190 feet to a point; thence North 69 degrees East 40 feet to the place of beginning. Containing 2 acres. Said tract of land is located on a tract of land owned by Raymond Decker described in Deed Book 476, page 1099, and a tract of land owned by Eli Hostetler, described in Deed Book 560, page 1068. This tract is unsuitable for all types of noncoal surface mining activities.

#### Authority

The provisions of this § 77.504 amended under sections 5 and 315(i)(2) and (j)—(n) of The Clean Streams Law (35 P. S. §§ 691.5 and 691.315(i)(2) and (j)—(n)); and sections 1920-A and 1930-A of The Administrative Code of 1929 (71 P. S. §§ 510-20 and 510-30).

#### Source

The provisions of this § 77.504 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended September 30, 1994, effective October 1, 1994, 24 Pa.B. 4887; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198741) to (198743).

#### Cross References

This section cited in 25 Pa. Code § 77.102 (relating to compliance with existing permits); 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.109 (relating to noncoal exploration activities); 25 Pa. Code § 77.121 (relating to public notices of filing of permit applications); 25 Pa. Code § 77.123 (relating to public hearings—informal conferences); 25 Pa. Code § 77.126 (relating to criteria for permit approval or denial); 25 Pa. Code § 77.410 (relating to maps, cross sections and related information); 25 Pa. Code § 77.465 (relating to public highways); and 25 Pa. Code § 77.631 (relating to general requirements).

**TOPSOIL****§ 77.511. General requirements.**

Topsoil and, if necessary, suitable subsoil shall be separately removed, segregated and conserved as necessary for reclamation. Topsoil in excess of that needed for reclamation, as demonstrated by the applicant, may be removed from the site.

**Source**

The provisions of this § 77.511 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information); and 25 Pa. Code § 77.513 (relating to storage).

**§ 77.512. Removal.**

(a) Topsoil shall be removed from the areas to be disturbed, including the haul road area in a separate layer prior to drilling—except exploratory drilling—blasting, mining or other surface disturbance.

(b) On areas that have been previously affected by mining and which have no available topsoil or subsoil, sufficient material best suited to support vegetation shall be segregated, conserved and redistributed as the final surface layer.

(c) If topsoil is less than 12 inches, a 12-inch layer which includes the topsoil and the unconsolidated materials immediately below the topsoil shall be removed, segregated, conserved and replaced as the final surface soil layer. If the topsoil and the unconsolidated material measure less than 12 inches, the topsoil and unconsolidated material shall be removed, segregated, conserved and replaced as the final surface soil layer.

(d) The B horizon and portions of the C horizon, or other underlying layers demonstrated to have qualities for comparable root development, shall be segregated and replaced as subsoil if either of these is necessary to ensure soil productivity consistent with the approved postmining land use.

**Source**

The provisions of this § 77.512 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information); and 25 Pa. Code § 77.513 (relating to storage).

**§ 77.513. Storage.**

(a) Topsoil and other materials removed under §§ 77.511 and 77.512 (relating to general requirements; and removal) shall be stockpiled and selectively placed on a stable area within the permit area and located where the material,

unless approved by the Department, will not be moved or otherwise disturbed by the mining activities until required for redistribution on the regraded area.

(b) Stockpiled material shall be protected from wind and water erosion, unnecessary compaction and contaminants which lessen the capability of the materials to support vegetation when redistributed. Protective measures shall be accomplished by one of the following methods:

- (1) An effective cover of nonnoxious, quick-growing annual and perennial plants seeded or planted as soon as weather and planting conditions permit.
- (2) Other methods demonstrated to, and approved by, the Department to provide equal protection.

#### Source

The provisions of this § 77.513 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information).

### § 77.514. Redistribution.

(a) Prior to redistribution of topsoil or other material, the regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration.

(b) Topsoil and other materials shall be redistributed in a manner that:

- (1) Achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, contours and surface water drainage system.
- (2) Prevents excess compaction of the topsoil and other materials.
- (3) Protects the topsoil and other materials from wind and water erosion.

#### Source

The provisions of this § 77.514 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information).

### § 77.515. Nutrients and soil amendments.

(a) Nutrients and soil amendments in the amounts determined by soil tests shall be applied to the surface soil layer so that it supports the approved postmining land use and meets the revegetation requirements of §§ 77.611—77.618 (relating to revegetation).

(b) Soil tests shall be performed using standard methods approved by the Department. Results of a soil test shall be submitted to the Department.

(c) Agricultural or granular limestone used for neutralizing soil acidity shall be of sufficient fineness so that a minimum of 95% will pass through a 20 mesh

sieve and shall contain sufficient calcium and magnesium to be equivalent to at least 89% calcium carbonate. An alternative material of equivalent neutralizing effect may be employed.

**Source**

The provisions of this § 77.515 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information).

**HYDROLOGIC BALANCE**

**§ 77.521. General requirements.**

(a) Noncoal mining activities shall be planned and conducted to minimize disturbances to the prevailing hydrologic balance in the permit and adjacent areas.

(b) Changes in water quality and quantity, the depth to groundwater and the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(c) The operator shall conduct the noncoal mining activities to prevent water pollution and, if necessary, operate and maintain the necessary water treatment facilities until applicable treatment requirements and effluent limitations established under § 77.522 (relating to effluent standards) are achieved and maintained.

**Source**

The provisions of this § 77.521 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.522. Effluent standards.**

(a) At a minimum, the discharge of water from areas disturbed by noncoal mining activities shall comply with the following limitations:

- (1) pH 6—9.
- (2) Other parameters the Department may require.

(b) In addition to subsection (a), the discharge of water from areas disturbed by mining activities shall comply with this title.

**Source**

The provisions of this § 77.522 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.457 (relating to protection of hydrologic balance); 25 Pa. Code § 77.521 (relating to general requirements); 25 Pa. Code § 77.526 (relating to treatment facilities); 25 Pa. Code § 77.529 (relating to acid-forming and toxic-forming spoil); and 25 Pa. Code § 77.530 (relating to impoundments).

**§ 77.523. Water obstructions and encroachments.**

A water obstruction or encroachment shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

**Source**

The provisions of this § 77.523 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.459 (relating to stream diversions, water obstructions and encroachments); and 25 Pa. Code § 77.504 (relating to distance limitations and areas designated as unsuitable for mining).

**§ 77.524. Diversions and conveyance.**

(a) Overland flow, shallow groundwater flow from undisturbed areas and flow in ephemeral streams shall be diverted away from disturbed areas by means of temporary or permanent diversions to prevent water from draining into the operation, to minimize erosion, to reduce the volume of water to be treated and to prevent or remove from contact with acid-forming or toxic-forming materials.

(b) Diversions shall be designed, constructed and maintained using current engineering practices to pass safely the peak runoff from a precipitation event with a 2-year recurrence interval for temporary diversions and 10-year recurrence interval for permanent diversion. If necessary to protect public health and safety or prevent pollution, a larger event shall be used.

(c) A diversion may not be located in a way that increases the potential for landslides or other offsite damage.

(d) When no longer needed, the diversion shall be regraded to blend with the natural contours and drainage pattern, and revegetated under § 77.611 (relating to general requirements).

**Source**

The provisions of this § 77.524 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.460 (relating to diversions).

**§ 77.525. Sediment control measures.**

Appropriate sediment control measures shall be designed, constructed and maintained under Chapter 102 (relating to erosion and sediment control).

**Source**

The provisions of this § 77.525 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.458 (relating to erosion and sedimentation control plan); and 25 Pa. Code § 77.631 (relating to general requirements).

**§ 77.526. Treatment facilities.**

(a) At a minimum, facilities and measures for treating discharges from disturbed areas shall be designed, constructed and maintained to treat the runoff from a 10-year, 24-hour precipitation event and groundwater contribution. Treatment facilities for process water shall be adequate to treat the total volume of process water plus additional water contribution to the system. Facilities and measures for treating discharges shall be based on good engineering design.

(b) The design, construction and maintenance of a treatment facility does not relieve an operator of the responsibility to comply with effluent standards as provided for in § 77.522 (relating to effluent standards).

**Source**

The provisions of this § 77.526 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.527. Sedimentation controls.**

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

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

as part of the postmining land use under §§ 77.530 and 77.653 (relating to impoundments; and postmining land use).

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

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

#### Source

The provisions of this § 77.527 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (203637) to (203638).

#### Cross References

This section cited in 25 Pa. Code § 77.461 (relating to dams, ponds, embankments and impoundments).

### § 77.528. Discharge structures.

Discharge from dams, ponds, embankments, impoundments and diversions shall be controlled by energy dissipators, riprap channels or other devices where necessary to reduce erosion, to prevent deepening or enlargement of stream channels and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering-design procedures.

#### Source

The provisions of this § 77.528 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

### § 77.529. Acid-forming and toxic-forming spoil.

If applicable, drainage from acid-forming and toxic-forming spoil into ground-water and surface water shall be avoided by the following:

- (1) Identifying, burying and treating, if necessary, spoil that may adversely affect water quality if not treated or buried.
- (2) Preventing water from coming into contact with acid-forming and toxic-forming spoil under § 77.596 (relating to covering coal and acid-forming and toxic-forming materials) and other measures as required by the Department.
- (3) Temporary storage of the spoil may be approved by the Department upon a finding that storage will not result in a risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and

contact with surface water. Discharge shall be collected and treated to conform to § 77.522 (relating to effluent standards).

**Source**

The provisions of this § 77.529 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.530. Impoundments.**

A permanent impoundment may be authorized by the Department upon the basis of the following demonstration:

- (1) The quality of the impounded water shall be suitable on a permanent basis for its intended use, and discharge of water from the impoundment will not degrade the quality of receiving waters to less than the water-quality standards established under § 77.522 (relating to effluent standards).
- (2) The level of water shall be sufficiently stable to support the intended use.
- (3) Adequate safety shall be provided.
- (4) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses.
- (5) The size of the impoundment will be adequate for its intended purposes.
- (6) The impoundment will be suitable for the approved postmining land use.

**Source**

The provisions of this § 77.530 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.527 (relating to sedimentation ponds).

**§ 77.531. Dams, ponds, embankments and impoundments—design, construction and maintenance.**

(a) Dams, ponds, embankments and impoundments shall be designed, constructed and maintained in accordance with the Soil Conservation Service Engineering Standard # 350 “Pond” and if applicable, Chapter 105 (relating to dam safety and waterway management).

(b) A facility under subsection (a) shall be designed and certified to the Department by a qualified registered professional engineer, if required by Chapter 105, or qualified registered land surveyor.

**Source**

The provisions of this § 77.531 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.527 (relating to sedimentation ponds).

**§ 77.532. Surface water and groundwater monitoring.**

(a) When noncoal mining activities may affect groundwater supplies which serve as water supply sources, groundwater quantity, quality and levels shall be monitored in a manner approved by the Department. Monitoring shall include sufficient measurements and chemical analyses from a sufficient number of wells or other sources to adequately reflect changes in groundwater quantity and quality resulting from mining activities.

(b) The operator shall, when requested by the Department, conduct additional hydrologic tests, including, but not limited to, drilling, infiltration tests, aquifer tests, chemical and mineralogical analyses of overburden and spoil, and shall submit the results to the Department to demonstrate compliance with this section and § 77.533 (relating to water rights and replacement).

(c) In addition to the monitoring and reporting requirements established by the Department under Chapter 92 (relating to National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance), surface water shall be monitored to accurately measure and record the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters when requested by the Department. The Department will approve the nature of data, frequency of collection, reporting requirements and the duration of the monitoring programs.

**Source**

The provisions of this § 77.532 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.457 (relating to protection of hydrologic balance); and 25 Pa. Code § 77.503 (relating to casing and sealing of drilled holes).

**§ 77.533. Water rights and replacement.**

The operator of a noncoal mine which affects by surface mining activities a public or private water supply by contamination, interruption or diminution shall restore or replace the affected water supply with an alternate source of water, adequate in quantity and quality for the purpose served by the supply. For the purpose of this section, the term "water supply" includes an existing source of water or facility or system for the supply of water for human consumption, for agricultural, industrial or other uses.

**Source**

The provisions of this § 77.533 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.231 (relating to terms and conditions for liability issuance); 25 Pa. Code § 77.407 (relating to alternative water supply information); and 25 Pa. Code § 77.532 (relating to surface water and groundwater monitoring).

**§ 77.534. Discharge of water into an underground mine.**

Surface water and groundwater from noncoal mining activities may not be diverted or otherwise discharged into underground coal mine workings or into an underground noncoal mine unless approved as part of the underground mine permit under Chapter 89 (relating to underground mining of coal and coal preparation facilities).

**Source**

The provisions of this § 77.534 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.535. Permanent postmining renovation of sedimentation ponds, diversions, impoundments and treatment facilities.**

At the completion of surface mining activities, the permittee shall renovate the sedimentation ponds, diversions, impoundments and treatment facilities that are to remain after mining to meet criteria specified for permanent structures.

**Source**

The provisions of this § 77.535 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**PROTECTION OF UNDERGROUND MINING****§ 77.551. Restriction.**

Noncoal surface mining activities may not be conducted closer than 500 feet to any point of either an active or abandoned underground mine except to the extent that the nature, timing and sequence of the operations that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Department and the Mine Safety and Health Administration or by the Department in the case of an abandoned underground mine within 500 feet.

**Source**

The provisions of this § 77.551 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**USE OF EXPLOSIVES****§ 77.561. General requirements.**

(a) A person who conducts surface mining activities shall comply with this chapter and applicable State and Federal laws in the use of explosives.

(b) Blasting operations shall be conducted by or under the supervision of a competent blaster licensed and operating in compliance with Chapter 210 (relating to blasters' licenses).

(c) Blasting operations shall be conducted in compliance with Chapter 211 (relating to storage, handling and use of explosives), except if modified by §§ 77.562 and 77.563 (relating to preblasting surveys; and public notice of blasting schedule).

(d) The use of explosives for the purpose of blasting in connection with surface mining, which has been approved under a permit issued prior to March 17, 1990 shall be undertaken under the conditions of the permit and Chapters 210 and 211 in lieu of the requirements of §§ 77.562—77.565.

#### Source

The provisions of this § 77.561 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.102 (relating to compliance with existing permits); 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.453 (relating to blasting plan); and 25 Pa. Code § 77.463 (relating to surface mining near underground mining).

### § 77.562. Preblasting surveys.

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

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

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

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

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

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

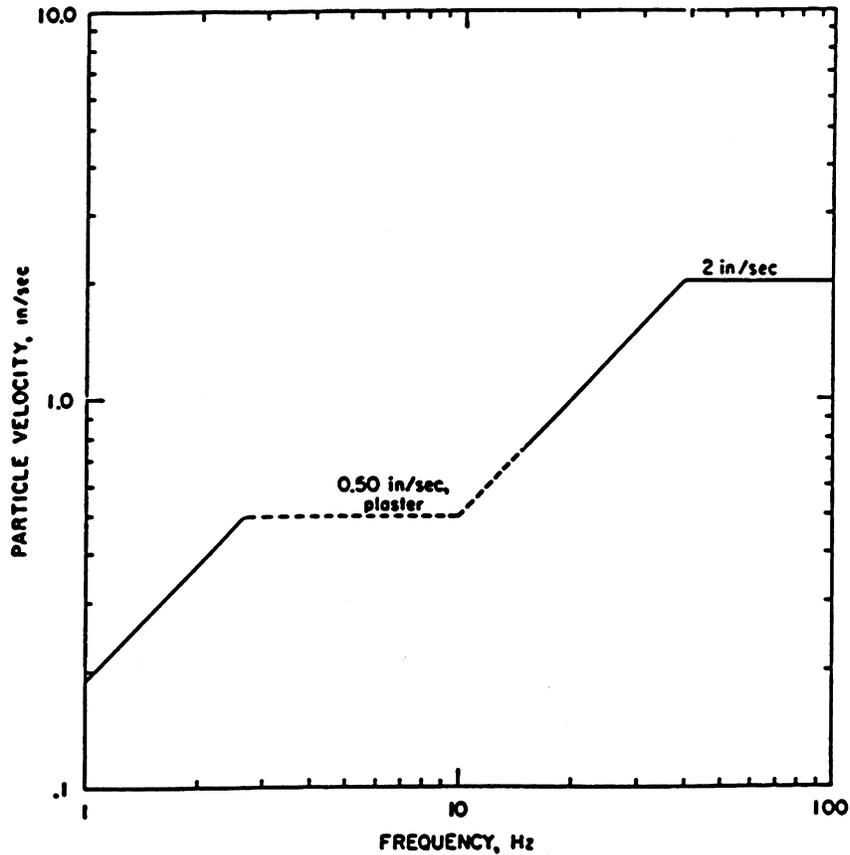


Figure #1.—Levels of blasting vibration using a combination of velocity and frequency.

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

dwelling or structure that is located within 1,000 feet (304.8 meters) of the area where blasting will occur, the operator shall promptly conduct a preblasting survey of the dwelling or structure. If a dwelling or structure is renovated or added to subsequent to a preblast survey, then, upon request by the resident or owner to the Department or operator, a survey of the additions and renovations shall be performed by the operator in accordance with this section. The operator shall provide the Department with a copy of the request.

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

(d) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided promptly to the person requesting the survey and to the Department.

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

#### Source

The provisions of this § 77.562 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198752) to (198753).

#### Cross References

This section cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.453 (relating to blasting agent); 25 Pa. Code § 77.463 (relating to surface mining near underground mining); 25 Pa. Code § 77.561 (relating to general requirements); and 25 Pa. Code § 77.564 (relating to surface blasting requirements).

### § 77.563. Public notice of blasting schedule.

(a) *Blasting schedule publication.*

(1) Copies of the schedule shall be distributed by mail to local governments and to public utilities within 1000 feet of the blasting area.

(2) A person who conducts surface mining activities shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site at least 10 days before beginning a blasting program in which blasts that use more than 5 pounds of explosive or blasting agents are detonated.

(3) The person who conducts the surface mining activities shall republish the schedule at least every 12 months.

- (b) *Blasting schedule.* The blasting schedule shall include the following:
- (1) An identification of the bonded areas in which blasting will take place.
  - (2) The days and time periods when explosives are to be detonated.
  - (3) The methods to be used to control access to the blasting area.
  - (4) The types of audible warnings and all-clear signals to be used before and after blasting.
  - (5) A description of possible emergency situations that might prevent blasting at times announced in the blasting schedule, such as rain, lightning, other atmospheric conditions or operator or public safety which may require unscheduled detonation.
- (c) *Public notice of changes to blasting schedule.*
- (1) The person who conducts the surface mining activities shall prepare a revised blasting schedule before blasting in areas or at times not in a previous schedule.
  - (2) The blasting schedule shall be revised, published and distributed in accordance with this section. Advice on requesting a preblast survey need not be provided to parties advised in the original distribution under subsection (a)(1).

**Source**

The provisions of this § 77.563 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.453 (relating to blasting plan); 25 Pa. Code § 77.463 (relating to surface mining near underground mining); 25 Pa. Code § 77.561 (relating to general requirements); and 25 Pa. Code § 77.564 (relating to surface blasting requirements).

**§ 77.564. Surface blasting requirements.**

- (a) The Department will not permit blasting to be conducted until the following requirements have been met:
- (1) The blasting plan, under § 77.453 (relating to blasting plan), approved by the Department and the approved blasting plan is returned to the operator.
  - (2) Notification of completion of the requested preblasting surveys required under § 77.562 (relating to preblasting survey) is received by the Department.
  - (3) A copy of the proof of publication of each blasting schedule, in accordance with § 77.563 (relating to public notice of blasting schedule), is received by the Department.
- (b) Blasting shall be conducted between sunrise and sunset, at times announced in the blasting schedule, except that mine opening blasting conducted after the second blast, for that mine opening, may be conducted at any time of the day or night as necessary to maintain stability of the mine opening to protect the health and safety of mine workers. For mine opening blasting conducted after the second blast, for that mine opening, the Department may approve ground or airblast vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in sub-

sections (f) and (i) if consented to, in writing, by the affected building owner and lessee, if leased to another party.

(c) The Department may specify more restrictive time periods, airblast or ground vibration limits, based on public requests or other relevant information, according to the need to adequately protect the public from the adverse affects of ground vibration, airblast or safety hazards.

(d) Warning and all-clear signals shall be different in pattern, audible within 1000 feet of the blast, sounded before and after each blast. Persons who work within the permit area shall be notified of the meaning of the signals through appropriate instructions. A person who conducts blasting incident to noncoal mining activities shall:

(1) Give sufficient warning that persons approaching the blast area may be warned of the danger and be given ample time to retreat a safe distance from the blast area when a blast is about to be initiated.

(2) Erect signs at least 500 feet from the blast area reading—BLAST AREA—SHUT OFF ALL TWO-WAY RADIOS—when electric blasting operations are located near highways or other public ways. The letters of these signs shall be at least 4 inches in height on a contrasting background.

(3) Place at the entrances to the permit area from public highways conspicuous signs which state “Warning. Explosives in Use” and which clearly explain the blast warning and all-clear signals that are in use.

(e) Access to an area possibly subject to flyrock from blasting shall be controlled to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the person who conducts the surface mining activities has reasonably determined that:

(1) Unusual circumstances, such as imminent slides or undetonated charges, do not exist.

(2) Access to and travel in or through the area can be safely resumed.

(f) Airblasts shall be controlled so that they do not exceed 133 dBL at a dwelling, public building, school, church or commercial or institutional structure, unless the structure is owned by the person who conducts the surface mining activities and is not leased to another person. The lessee may sign a waiver relieving the operator from meeting the airblast limitations of this subsection.

(1) *Exceptions.* The Department may specify lower maximum allowable airblast levels than those in this subsection for use in the vicinity of a specific blasting operation, if necessary.

(2) *Monitoring.* The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The Department may require an airblast measurement of a blast, and may specify the location of the requirements.

(g) Blasting requirements are as follows:

- (1) Blasting operations may not be conducted within 800 feet of a public highway, unless precautionary measures are taken to safeguard the public.
- (2) When a blast is about to be fired within 200 feet of a pipeline, the operator shall exercise caution as may be needed for the protection of the pipeline. The operator shall notify the owner of the line of the operator's intention to blast, giving a description of the precautionary measures that will be taken.
- (3) When blasting is to be done within 1,000 feet of schools or public buildings, it shall be done only during the time approved by the Department. Prior to the blasts, the operator or foreman in charge of the blasting operation shall, within 24 hours prior to the blast, notify persons within this area that a blast is to be detonated. Approval of the method of notification shall be obtained from the Department prior to commencing the blasting.
- (4) Blasting may not be done within 300 feet of an occupied dwelling or other structure designated by the Department unless prior written consent of the property owner has been obtained.
- (5) Blasting shall be conducted in a manner to protect the public from fly-rock.
- (6) Notwithstanding other regulations, blasting, whether of overburden or of mineral, may not be done or performed in a manner and under circumstances or conditions that debris is ejected into the air, constituting a hazard or danger or to do harm or damage to persons or property in the area of the blasting.
- (7) When explosives are being loaded in drill holes in preparation for a shot, work within a radius of 50 feet of the blast area, except for the work being accomplished by the persons engaged in the blasting operation, shall cease, and machinery, other than machinery necessary to the blasting operation, within the confines of this area shall be brought to a complete rest. After inspection of the blast area by the Department, the Department may establish an alternate distance limitation.
- (8) When a shot is about to be set off or fired, machinery within a radius of 500 feet, or a lesser distance specified by the Department, shall be brought to a complete rest, work shall cease within the confines of this area and workmen shall retreat to a safe location. This paragraph shall apply when the blaster first begins to wire the shot.
- (h) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on an underground mine, and to protect, to the maximum extent possible, the hydrologic balance.
- (i) In blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity may not exceed 2.0 inches per second at the location of a dwelling, public building, school, church or commercial or institutional building or other structure designated by the Department. The maximum peak particle velocity shall be the largest of three measurements. The Department may reduce the maximum peak particle velocity allowed, if it determines that a

lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors.

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

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

(l) When a seismograph is required to monitor the peak particle velocity, a seismographic record shall be obtained for each blast.

(m) The use of a formula to determine maximum weight of explosives per delay for blasting operations at a particular site may be approved by the Department if the peak particle velocity of 2 inches per second required in this section would not be exceeded.

(n) The Department may require a seismographic record of blasts and may specify the location at which the measurements are taken.

#### Authority

The provisions of this § 77.564 amended under section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3311(a)); and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20).

#### Source

The provisions of this § 77.564 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4838; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619; amended August 8, 2008, effective August 9, 2008, 38 Pa.B. 4355. Immediately preceding text appears at serial pages (240781) to (240784).

#### Cross References

This section cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.453 (relating to blasting plan); 25 Pa. Code § 77.463 (relating to surface mining near underground mining); and 25 Pa. Code § 77.502 (relating to signs and markers).

### § 77.565. Records of blasting operations.

A record of each blast shall be retained for at least 3 years and shall be available for inspection by the Department. Seismographic reports, if applicable, shall be made a part of that record. The record shall include the following data:

- (1) The name of the operator conducting the blast and the permit number.

- (2) The location, date and time of the blast.
- (3) The name, signature and license number of the blaster-in-charge.
- (4) The direction and distance, in feet, to the nearest dwelling, school, church or commercial or institutional building and the property name meeting one of the following conditions:
  - (i) It is not located in the permit area.
  - (ii) It is not owned or leased by the person who conducts the surface mining activities.
- (5) Weather conditions, including temperatures, wind direction and approximate velocity.
- (6) The type of material blasted.
- (7) The number of holes, burden and spacing.
- (8) The diameter and depth of holes.
- (9) The types of explosives used.
- (10) The total weight of explosives used.
- (11) The maximum weight of explosives detonated per delay interval.
- (12) The maximum number of holes detonated per delay interval.
- (13) The initiation system.
- (14) The type and length of stemming.
- (15) Mats or other protections used.
- (16) The type of delay detonator and delay periods used.
- (17) The sketch of the delay pattern.
- (18) The number of persons in the blasting crew.
- (19) The seismographic and airblast records, when required, including the type of instrument, sensitivity and calibration signal of the gain setting and certification of annual calibration and the following:
  - (i) The seismographic or airblast level reading, or both, including exact location of the seismograph, its distance from the blast and the name of the property.
  - (ii) The name of the person taking the seismograph reading.
  - (iii) The name of person and firm analyzing the seismographic record.
- (20) The reasons and conditions for an unscheduled blast.
- (21) The total number of blasting caps used.

#### Source

The provisions of this § 77.565 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.453 (relating to blasting plan); and 25 Pa. Code § 77.463 (relating to surface mining near underground mining).

**OPERATIONS****§ 77.571. Bench development.**

The height of the working face on a bench shall be limited as follows:

(1) The maximum height of the working face of a bench in consolidated material—other than thin seam operation which will be returned to AOC—may not exceed 50 feet except as follows:

(i) If topography influences the height of the uppermost face, the high-wall may be developed to 65 feet.

(ii) If geologic or safety considerations require the development of a lower working face height.

(2) The Department may grant a waiver to develop a greater height on the working face if a stability analysis shows the proposed face to be stable and the applicant demonstrates with clear and convincing evidence that there is no practical alternative to developing a greater height. The stability analysis shall be performed under § 77.573 (relating to stability analysis).

(3) The maximum height of the working face of a bench in unconsolidated material shall be 25 feet. The Department may grant a waiver to develop a greater height to the working face based on the type of equipment to be used and a field assessment by the Department on the stability of the face.

(4) The minimum width for a horizontal bench between successive working faces shall be 25 feet.

(5) The Department may impose lower working face heights on the working face if the working face is a potential threat to health or safety.

**Source**

The provisions of this § 77.571 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.573 (relating to stability analysis).

**§ 77.572. Permit line setback.**

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

(1) Prevent possible slumping or failure at or beyond the perimeter of the permit area.

(2) Allow for the development of final reclamation slopes.

(b) The minimum setback distance shall be 25 feet (7.62 meters) in consolidated material, in unconsolidated material, the minimum setback distance shall be equal to the height of the exposed unconsolidated material unless otherwise approved by the Department.

(c) The setback shall be shown on the cross sections.

**Source**

The provisions of this § 77.572 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (198759).

**§ 77.573. Stability analysis.**

An operator shall provide a stability analysis whenever he requests a waiver to develop a working face greater than 50 feet in consolidated rock under § 77.571(2) (relating to bench development) or a waiver to remove lower benches on the final working face, other than the removal of benches as part of the reclamation slope. The stability analysis shall include, at a minimum:

- (1) A stereo net analysis, or acceptable equivalent analysis, of the geologic structure of the working face on which the proposal is submitted.
- (2) Identification of manmade features within a distance equivalent to three times the maximum proposed depth of the pit measured from the maximum lateral extent of the final working face.
- (3) Other stability related information the Department may request.

**Source**

The provisions of this § 77.573 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.571 (relating to bench development); and 25 Pa. Code § 77.594 (relating to final slopes).

**§ 77.574. Disposal of solid wastes.**

Solid wastes, including grease, lubricants, paints, flammable liquids, garbage and other hazardous wastes shall be disposed or stored temporarily in accordance with Article VII (relating to hazardous waste management). Storage shall be of a type that fires are prevented and the area remains stable and suitable for reclamation and revegetation.

**Source**

The provisions of this § 77.574 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.575. Air resources protection.**

Air pollution control measures shall be planned and employed as an integral part of the surface mining activities and shall meet the following requirements:

- (1) If processing facilities are to be used at the mining site, the facilities shall meet the requirements of Chapters 123 and 127 (relating to standards for contaminants; and construction, modification, reactivation and operation of sources).
- (2) Fugitive dust control measures shall demonstrate compliance with Chapters 121, 123, 127 and 129.

**Source**

The provisions of this § 77.575 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.455 (relating to air pollution control plan).

**BACKFILLING AND GRADING****§ 77.591. General.**

Areas disturbed after January 1, 1972 by the operation shall be reclaimed by contouring, except terracing may be utilized if the operator demonstrates that operation has extracted quantities of minerals so that contouring cannot be achieved with the remaining overburden and waste material. Other alternatives to contouring or terracing may be approved under section 7(c)(2)(ii) or (iii) of the act (52 P. S. § 3307(c)(2)(ii) or (iii)).

**Source**

The provisions of this § 77.591 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.592. Approximate original contour.**

If a noncoal surface mine site is proposed to be restored to approximate original contour, the applicant shall demonstrate that the operation will restore the land affected to a condition capable of supporting the uses it was capable of supporting prior to mining or to a higher or better use.

**Source**

The provisions of this § 77.592 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.595 (relating to concurrent reclamation).

**§ 77.593. Alternatives to contouring.**

Alternative reclamation to approximate original contour may be authorized as follows:

(1) The applicant shall demonstrate that the proposed operation will be carried out over a substantial period of time and that the volume of mineral to be removed is large compared to the overburden to restore the area to approximate original contour. The applicant shall provide a description of the alternative and demonstrate that:

- (i) The alternative to contouring is likely to be achieved.
- (ii) The alternative poses no actual or potential threat to public health or safety.
- (iii) The alternative poses no actual or potential threat to water diminution, contamination, interruption or pollution.

(iv) The alternative is consistent with applicable land use policies, plans and programs.

(v) The alternative is consistent with Federal, State or local law.

(vi) The alternative is capable of supporting the highest or best use it can reasonably support after mining and reclamation is completed.

(2) If the applicant does not meet the requirements of subsection (a), an alternative to contouring may be authorized if the applicant demonstrates that the operation will either restore the land affected to a condition capable of supporting the uses it was capable of supporting prior to mining or to a higher or better use. The applicant shall demonstrate that:

(i) The alternative is acceptable to the landowner.

(ii) Highwalls will not remain after mining.

(iii) The watershed of the area will be improved.

(iv) The proposed use has been designed and certified by a registered professional engineer to assure the stability, drainage and configuration necessary for the intended use of the site.

(v) A demonstration that the alternative to contouring is likely to be achieved or that the alternative poses no actual or potential threat to public health or safety or of water diminution, interruption, contamination or pollution.

#### Source

The provisions of this § 77.593 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.594 (relating to final slopes); and 25 Pa. Code § 77.595 (relating to concurrent reclamation).

### § 77.594. Final slopes.

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

(1) If there is sufficient overburden material to achieve approximate original contour and no alternative reclamation is approved under § 77.593 (relating to alternatives to contouring):

(i) The postmining slopes shall approximate the premining slopes or slopes approved by the Department based on consideration of soil, rock formation, climate or other characteristics of the area.

(ii) Final postmining slopes are not required to be uniform but shall approximate the general nature of the premining topography.

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

(i) If a water impoundment is part of the reclamation, the slope shall extend to 50 feet (15.2 meters) below the post reclamation water level at a

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

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

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

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

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

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

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

#### Source

The provisions of this § 77.594 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial pages (198762) to (198763).

#### Cross References

This section cited in 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.109 (relating to noncoal exploration activities); and 25 Pa. Code § 77.595 (relating to concurrent reclamation).

### § 77.595. Concurrent reclamation.

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

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

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

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

#### Source

The provisions of this § 77.595 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643; amended January 30, 1998, effective January 31, 1998, 28 Pa.B. 619. Immediately preceding text appears at serial page (198763).

#### Cross References

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information).

### § 77.596. Covering coal and acid-forming and toxic-forming materials.

In applicable areas, unless otherwise approved by the Department, exposed coal seams, acid-forming material, toxic-forming materials and combustible materials other than coal refuse shall be handled as follows:

(1) The material shall be buried at least 10 feet above the groundwater table and placed at a minimum of 5 feet above the pit floor. A layer of the material may not exceed 24 inches and shall be compacted. A top layer of non-toxic spoil—minimum thickness of 4 feet—shall be compacted over the material.

(2) If necessary, the materials shall be treated to prevent water pollution and combustion and minimize adverse effects on plant growth and land uses.

(3) If it is necessary to protect against upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth or otherwise to meet local conditions, the Department will specify thicker amounts of cover using nontoxic material, or special compaction and isolation from groundwater contact.

#### Source

The provisions of this § 77.596 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information); 25 Pa. Code § 77.529 (relating to acid-forming and toxic-forming spoil); and 25 Pa. Code § 77.595 (relating to concurrent reclamation).

## REVEGETATION

### § 77.611. General requirements.

(a) Revegetation, if required, shall provide for a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in

extent of cover to the natural vegetation of the area. Introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. Vegetative cover shall be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared with the utility of naturally-occurring vegetation during each season of the year.

(b) Revegetation when required shall provide a quick germinating, fast-growing vegetative cover capable of stabilizing the soil surface from erosion.

(c) Revegetation shall be completed in compliance with the plans submitted under § 77.456 (relating to reclamation information) as approved by the Department in the permit and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

#### Source

The provisions of this § 77.611 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

#### Cross References

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information); 25 Pa. Code § 77.515 (relating to nutrients and soil amendments); 25 Pa. Code § 77.524 (relating to diversions and conveyance); 25 Pa. Code § 77.614 (relating to agriculture crops); and 25 Pa. Code § 77.632 (relating to restoration).

### § 77.612. Timing.

(a) Disturbed areas shall be seeded and planted when weather and planting conditions permit, but the seeding and planting of disturbed areas shall be performed no later than the first full normal period for favorable planting after backfilling and grading.

(1) The normal periods for favorable planting are:

(i) Early spring until May 30, and August 10 until September 15 for permanent herbaceous species.

(ii) Early spring until May 20 for woody species.

(2) The periods in paragraph (1) may be extended by the Department when abnormal weather conditions or excessive soil moisture conditions exist which prohibit seeding and planting prior to the end of the first normal period for favorable planting after backfilling and grading or when weather conditions allow for favorable planting outside the normal periods.

(b) When necessary to effectively control erosion, the disturbed area shall be seeded and planted as contemporaneously as practicable with the completion of backfilling and grading with a temporary cover of small grain, grasses or legumes or otherwise protected from erosion until a permanent cover is established.

**Source**

The provisions of this § 77.612 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information); and 25 Pa. Code § 77.515 (relating to nutrients and soil amendments).

**§ 77.613. Introduced species.**

The use of introduced species will be allowed if the species meet the requirements of applicable State and Federal seed or introduced species statutes and are not poisonous or noxious.

**Source**

The provisions of this § 77.613 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information); and 25 Pa. Code § 77.515 (relating to nutrients and soil amendments).

**§ 77.614. Agriculture crops.**

When the approved postmining land use is cropland, the planting of agriculture crops normally grown in the general locality of the permit area will satisfy the revegetation requirements of § 77.611 (relating to general requirements). If planting of the crop will be delayed, a temporary cover of annual or perennial grasses or small grains shall be established.

**Source**

The provisions of this § 77.614 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information); and 25 Pa. Code § 77.515 (relating to nutrients and soil amendments).

**§ 77.615. Species.**

(a) Species, rates and techniques of seeding and planting shall be adequate to achieve the standards for successful revegetation of § 77.618 (relating to standards for successful revegetation).

(b) Legume seed shall be inoculated or treated with the specific inoculate for that seed, and the seed shall be seeded within 24 hours after inoculation or treatment.

(c) A single tree or shrub species may not comprise more than 50% of the total number of seedlings planted unless alternative silviculture practices are approved.

(d) When the approved postmining land use is wildlife habitat, unless alternative plans are approved or required by the Department, a minimum of 75% of

the land affected shall be planted with a mixture of woody species which provides a diverse plant community. The remaining affected area shall be planted to an approved herbaceous cover. The configuration and species composition of the cover types shall be established in accordance with guidelines established by appropriate State wildlife agencies.

**Source**

The provisions of this § 77.615 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information); and 25 Pa. Code § 77.515 (relating to nutrients and soil amendments).

**§ 77.616. Seedbed preparation.**

(a) The soil surface shall be prepared by disking or harrowing. If soil conditions or steep slopes prohibit these practices, the soil surface shall be scarified by a mechanical method which will loosen the surface material. Scarification will not be required if seeding is done immediately following final grading when the soil is still loose.

(b) Disking or harrowing shall be accomplished following or along the contours of slopes.

(c) Topsoil shall be disked or harrowed to a depth of at least 3 inches prior to seeding.

**Source**

The provisions of this § 77.616 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information); and 25 Pa. Code § 77.515 (relating to nutrients and soil amendments).

**§ 77.617. Mulching.**

(a) Mulch shall be applied to regraded and topsoiled areas at rates adequate to control erosion, promote germination of seeds and increase the moisture retention of the soil, unless one of the following requirements are met:

(1) Seeding can be accomplished using a conventional agricultural farm drill.

(2) The approved postmining land use is for agricultural row crops.

(3) Annual grasses or small grains will be seeded immediately following final grading resulting in a quick vegetative cover which will provide adequate soil erosion control.

(4) The permittee can demonstrate that alternative procedures will achieve the standards for revegetation success of § 77.618 (relating to standards for successful revegetation).

(b) When required by the Department, mulches shall be mechanically or chemically anchored to the soil surface.

(c) Chemical soil stabilizers may be used alone or in combination with appropriate mulches.

**Source**

The provisions of this § 77.617 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information); and 25 Pa. Code § 77.515 (relating to nutrients and soil amendments).

**§ 77.618. Standards for successful revegetation.**

(a) When the approved postmining land use is cropland:

(1) The standards for successful revegetation shall be based upon crop productivity or yield.

(2) The approved standard shall be the average yields per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture Soil Conservation Service.

(3) The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last two consecutive growing seasons of the 5-year responsibility period established in § 77.615 (relating to species). Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

(b) When the approved postmining land use is other than cropland:

(1) The standards for successful revegetation shall be determined by ground cover.

(2) The approved standard shall be the percent ground cover of the vegetation which exists on the proposed area to be affected by surface mining activities. The Department will not approve less than a minimum of 70% ground cover of permanent plant species with not more than 1% of the area having less than 30% ground cover with no single or contiguous area having less than 30% ground cover exceeding 3000 square feet. When woody species are planted in mixture with herbaceous species, these standards shall be met and a minimum of 400 woody plants per acre shall be established unless alternate plans are approved or required by the Department. On slopes greater than 20 degrees, the minimum number of woody plants shall be 600 per acre.

(3) The percent of ground cover of the mined area shall meet the standards of paragraph (2) to qualify for Reclamation Stage I and Reclamation Stage II approval.

(4) For purposes of this subsection, the term "herbaceous species" means grasses, legumes and nonleguminous forbs. The term "woody plants" means woody shrubs, trees and vines.

**Source**

The provisions of this § 77.618 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.408 (relating to vegetation information); 25 Pa. Code § 77.456 (relating to reclamation information); 25 Pa. Code § 77.515 (relating to nutrients and soil amendments); 25 Pa. Code § 77.615 (relating to species); and 25 Pa. Code § 77.617 (relating to mulching).

**HAUL ROADS****§ 77.631. General requirements.**

(a) A haul road shall be designed, constructed and maintained to prevent erosion to the maximum extent possible and to prevent contributions of sediment to streams or runoff outside the affected area; air and water pollution; and offsite damage. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored under § 77.632 (relating to restoration) unless retention of the road and its maintenance plan is approved as part of the postmining land use.

(b) The haul road may not be located in or within 100 feet of a perennial or intermittent stream except under § 77.504 (relating to distance limitations). A crossing of a perennial or intermittent stream shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachment or water obstruction shall meet the requirement of Chapter 105 (relating to dam safety and waterway management).

(c) A road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 10-year precipitation event or larger event if required by the Department. The drainage system shall include appropriate sediment control measures as required by § 77.525 (relating to sediment control measures).

(d) Roads shall be constructed on stable areas that avoid wet or unstable soils.

(e) Disturbed areas adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion.

(f) Acid-forming or toxic-forming material may not be used for surfacing or construction of a road.

**Source**

The provisions of this § 77.631 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.466 (relating to haul roads).

**§ 77.632. Restoration.**

Unless the Department approves retention of a road as suitable for the approved postmining land use under § 77.462 (relating to postmining land uses and alternative restoration) immediately after the road is no longer needed for the associated surface mining activities the following requirements shall be met:

- (1) The road shall be physically closed to vehicular traffic.
- (2) The road and adjacent slopes shall be regraded to blend with the natural contours and drainage pattern.
- (3) Bridges and culverts shall be removed.
- (4) Cross drains, dikes and water bars shall be constructed to minimize erosion.
- (5) Disturbed areas shall be revegetated under § 77.611 (relating to general requirements).
- (6) Excess material and debris shall be disposed of in a manner approved by the Department.

**Source**

The provisions of this § 77.632 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.466 (relating to haul roads); and 25 Pa. Code § 77.631 (relating to general requirements).

**§ 77.633. Common use roads.**

(a) Operators using common use roads to service their permit areas shall be responsible for maintaining the roads in a stable and safe condition throughout the life of the permit.

(b) Common use roads do not require bonding or restoration by the operator; however, the bond on the permit area may not be released until the common use road is left in a condition equal to the condition of the road before operations began.

**Source**

The provisions of this § 77.633 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**CESSATION AND COMPLETION OF MINING****§ 77.651. Temporary cessation.**

(a) *General rule.* Except with the express written approval of the Department as provided in subsection (b), the operator shall maintain mining and reclamation equipment on the site at all times, shall conduct an active operation and shall conduct surface mining operations on the site on a regular and continuous basis.

(b) *Application for temporary cessation.* Before temporary cessation of operations, the operator shall submit a written application to the Department,

including a statement of the number of acres that have been affected, the reason for cessation, the date on which temporary cessation is anticipated and the date on which the operator anticipates that operations will resume. Except as provided in subsection (c), the Department will not approve the temporary cessation of an operation for a period exceeding 90 days unless the cessation is due to seasonal shutdown or labor strikes.

(c) *Operations producing highway or construction aggregates.* For operations producing highway or construction aggregates if the temporary cessation is due to the absence of a current regional market for the mineral being mined, temporary cessation may not exceed 5 years.

(d) *Cessation not a release of obligations.* Temporary cessation does not relieve the operator of the obligation to comply with the act, this chapter, the conditions of the permit, including, but not limited to, compliance with applicable environmental protection performance standards.

**Source**

The provisions of this § 77.651 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.652. Permanent.**

Operations that are permanently ceased shall be backfilled or closed or otherwise permanently reclaimed in accordance with this chapter and the permit. 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.

**Source**

The provisions of this § 77.652 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.653. Postmining land use.**

Prior to the release of land from permit area under § 77.462 (relating to postmining land uses and alternative restoration), affected areas shall be restored in the manner specified in the permit application or amended application.

**Source**

The provisions of this § 77.653 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.204 (relating to period of liability); 25 Pa. Code § 77.243 (relating to criteria and schedule for release of bond); 25 Pa. Code § 77.452 (relating to operational information); and 25 Pa. Code § 77.527 (relating to sedimentation ponds).

**§ 77.654. Cleanup.**

Upon completion of mining, the operator shall remove and cleanup temporary unused structures, facilities, equipment, machines, tools, parts or other materials, property, debris or junk that were used in or resulted from the surface mining activity.

**Source**

The provisions of this § 77.654 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**§ 77.655. Closing of underground mine openings.****(a) Mine openings.**

(1) Upon completion of mining, a mine opening, except those approved for water monitoring or otherwise managed in a manner approved by the Department, shall be closed:

- (i) To prevent degradation of surface waters and groundwaters.
- (ii) To assist in returning the groundwater as near to its premining level as possible.
- (iii) To assist in returning the hydrologic balance as near to its premining condition as possible to prevent access to underground workings.
- (iv) To ensure the safety of people.

(2) Prior to closing a mine opening, the plan for the closing shall be approved by the Department.

**(b) Inactive mine openings.** During operation of a mine, a mine opening that becomes inactive and has no further use shall be immediately closed under subsection (a).

**(c) Temporarily inactive mine openings.** Temporarily inactive mine openings shall be closed to ensure the safety of people, livestock, fish and wildlife.

**Source**

The provisions of this § 77.655 adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1643.

**Cross References**

This section cited in 25 Pa. Code § 77.456 (relating to reclamation information).

**Subchapter J. GENERAL PERMITS**

Sec.

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

**Source**

The provisions of this Subchapter J adopted January 30, 1998, effective January 31, 1998, 28 Pa.B. 619, unless otherwise noted.

**§ 77.801. Scope.**

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

**§ 77.802. Authorization for general permits.**

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

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

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

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

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

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

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

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

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

**§ 77.804. Contents of general permits.**

A general permit at a minimum shall:

- (1) Describe the category of noncoal surface mining activities authorized by the general permit, including any exceptions to that authorization.
- (2) Specify the areas where the general permit is effective.
- (3) Set forth a set of standardized specifications or plans for the category of noncoal surface mining activities or a reference to specific criteria and requirements adopted by another Federal or State agency which adequately regulate the category or particular aspects of this category.
- (4) Set forth conditions governing the erosion controls, operations, reclamation, blasting, inspection and monitoring of the activities covered by the general permit as are necessary to assure compliance with the act and with other laws administered by the Department.
- (5) Specify the registration requirements established under § 77.806 (relating to registration requirements).
- (6) Specify the time period for the Department to give written notice as to whether the registration application has been approved.
- (7) Set forth registration fees, if any, and bond requirements, if any, and procedures for release of bond for the category covered by the general permit.
- (8) Indicate whether the applicant will be required to give public notice in a newspaper of the proposed registration.

**§ 77.805. Procedure for issuance.**

- (a) The Department may issue or modify a general permit for a category of noncoal mining activities and in accordance with this section.
- (b) At least 30 days prior to issuance of a general permit, the Department will publish notice in the *Pennsylvania Bulletin* of intent to issue a general permit, including the text of the proposed general permit and the locations where standardized plans may be reviewed.
- (c) An opportunity shall be provided for interested members of the public and State agencies to provide written comments to the Department on a proposed general permit.
- (d) The Department may hold a public hearing on a proposed general permit for the purposes of gathering information and comments.
- (e) General permits issued by the Department will be published in the *Pennsylvania Bulletin* at least 30 days prior to the effective date of the permits, as required by section 26(b) of the act (52 P. S. § 3326(b)).

**§ 77.806. Registration requirements.**

- (a) Registration requirements shall be set forth in each general permit.
- (b) Registration applications at a minimum shall set forth:

- (1) The name, address and surface mining operator's license number of the person responsible for the activities.
  - (2) The location of the activities.
  - (3) The name or number of the general permit being utilized for the activities.
  - (4) Information and documents to satisfy the requirement of § 77.163 (relating to right of entry).
  - (5) Identification of ownership interests in the property including rights to the minerals.
  - (6) The names and addresses of the owners of record of surface areas contiguous to any part of the area proposed for authorization to operate under a general permit.
  - (7) A description of the proposed noncoal surface mining activities that demonstrates that the operation would qualify to operate under the general permit.
- (c) An applicant cannot conduct surface mining activities under a general permit until written notice of Department approval of registration.

**Cross References**

This section cited in 25 Pa. Code § 77.804 (relating to contents of general permits).

**§ 77.807. Change of ownership.**

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

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

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

[Next page is 78-1.]