

# Regulatory Analysis Form

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**McGinley**

REGISTRATION

98 FEB -2 PM 4:04

INDUSTRIAL DEVELOPMENT  
REVIEW COMMISSION

(1) Agency

Environmental Protection

(2) I.D. Number (Governor's Office Use)

7-331

IRRC Number: 1924

(3) Short Title

Surface and Underground Coal Mining:  
General Provisions and Areas Unsuitable for Mining

(4) PA Code Cite

25 PA Code Chapter 86

(5) Agency Contacts & Telephone Numbers

Primary Contact: Sharon Freeman, 783-1303

Secondary Contact: Barbara Sexton, 783-1303

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

This proposed regulation amends provisions dealing with definitions and procedures for designating areas unsuitable for mining which were found to be more stringent than federal law, lack clarity or impose disproportionate costs on the regulated community.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

These amendments are proposed under the authority of the following provisions of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1-19a); Section 4.2(a), 52 P.S. § 1396.4b(a), which promotes general rulemaking authority; Section 4.5, 52 P.S. §§ 1396.4e, which provides for the designation of an area as unsuitable for all or certain types of surface mining operations; and under the following provisions of the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51-66); Section 3.2(a), 52 P.S. § 30.53b(a), which authorizes the adoption of rules and regulations; Section 6.1, 52 P.S. § 30.56a, which provides for the designation of an area as unsuitable for all or certain types of coal refuse disposal operations; and under the following provisions of the Clean Streams Law (35 P.S. §§ 691.1-1001); Section 5, 35 P.S. § 691.5, which authorizes the adoption of rules and regulations, Section 315(h)-(o), 35 P.S. § 691.315(h)-(o), which provides for the designation of an area as unsuitable for all or certain types of surface mining operations; and under Section 1920-A of the Administrative Code of 1929, 71 P.S. § 510-20, which authorizes the adoption of regulations necessary for the Department of Environmental Protection (Department) to perform its work.

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- (10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

These regulations are being proposed for revision under the Department's Regulatory Basics Initiative, which were found to be more stringent than federal requirements, lack clarity or impose disproportionate costs on the regulated community.

- (11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulations being amended were found to contain requirements which were more stringent than federal law, lack clarity or impose disproportionate costs on the regulated community.

The proposed revisions will assure that these particular regulations will not contribute to putting Pennsylvania's coal industry at a competitive disadvantage and eliminate confusion concerning the regulatory requirements. The public interest will be served by earlier involvement in the decisionmaking process and through expanded opportunity to express their concerns to the Department.

- (12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Non-regulation is not an option in order for the Commonwealth to continue to maintain primary jurisdiction over coal mining under the federal Surface Mining Control and Reclamation Act.

- (13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Pennsylvania's 700 coal mining operators and the general public could benefit from the proposed amendments. Each year the Department receives an average of three requests from individuals or groups to have areas designated as unsuitable for mining. Each of these requests may affect several coal operators and several hundred citizens. Benefits include greater flexibility and opportunity for public input. Additionally, regulatory requirements will be more consistent with federal requirements.

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- (14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

The proposed amendments are not expected to produce any adverse impacts on the regulated community.

- (15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Anyone who might file a petition to have an area designated unsuitable for mining and any person who has an interest within the petition area will be affected by these amendments. Each year the Department receives an average of three requests from individuals or other groups to have areas designated as unsuitable for mining. Each of these requests may affect several mine operators and several hundred citizens.

- (16) Describe the communications with and inputs from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Through the Regulatory Basics Initiative, public comments and suggestions were solicited by notice in the *Pennsylvania Bulletin* and on the Department's web site. Input was received from the Pennsylvania Coal Association and from the Mining and Reclamation Advisory Board.

- (17) Provide a specific estimate of the cost and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

These amendments are not expected to impose any additional costs on the regulated community.

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- (18) Provide a specific estimate of the cost and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments will not be affected by these regulations.

- (19) Provide a specific estimate of the cost and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

There will be no additional costs to state government resulting from these amendments. Although there may be some savings in time required to read and understand the program requirements associated with the clarification of the regulatory language the savings are not quantifiable.

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(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	N/A	---	---	---	---	---
State Governments	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
<b>COSTS:</b>						
Regulated Community	0	0	0	0	0	0
Local Government	N/A	---	---	---	---	---
State Governments	0	0	0	0	0	0
Total Cost	0	0	0	0	0	0
<b>REVENUE LOSSES:</b>						
Regulated Community	0	0	0	0	0	0
Local Government	N/A	---	---	---	---	---
State Governments	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

Although there may be some savings associated with the clarification of regulatory language and as a result of adoption of less stringent federal requirements, there is insufficient data to determine specific dollar amounts.

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 94/95	FY-2 95/96	FY-1 96/97	Current FY 97/98
Coal Mining	22,322,959	21,393,173	14,160,074 as of June 30, 1997	*Current data not available

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and cost.

No additional costs should result from these changes. The coal industry may experience some cost savings, as outlined in #20. The principal benefit of these amendments, however, is that the revised requirements will be no more stringent than federal law, will provide for more timely decisionmaking and will be more easily understood by the regulated community and the general public. The change will also benefit the public from involvement in the decisionmaking process and opportunity for expressing concerns.

(22) Describe the nonregulatory alternative considered and the cost associated with those alternatives. Provide the reasons for their dismissal.

No non-regulatory alternatives were considered since the Department must maintain regulations which are equivalent to the corresponding federal regulations in order to retain primary regulatory authority over coal mining in Pennsylvania.

(23) Describe alternative regulatory schemes considered and the cost associated with those schemes. Provide the reasons for their dismissal.

Consideration was given to changing the process for making decisions concerning designation of areas as unsuitable for mining from the present Environmental Quality Board legislative rulemaking process to a Department decision process. This change was not proposed because it would reduce public participation in the decision making process.

Consideration was also given to retaining the existing regulatory language. The changes proposed offer clarification of language with no reductions in public participation or environmental protection.

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- (24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The proposed changes to these regulations are no more stringent than federal standards.

- (25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Since these amendments are based on federal standards, the regulations are expected to be no more stringent than those of other states. These amendments will not put Pennsylvania at a competitive disadvantage.

- (26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulations being amended are 25 PA Code §§ 86.1, 86.101-86.103, 86.121, and 86.123-86.130 which pertain to surface and underground coal mining. Regulations of other state agencies will not be affected.

- (27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings have been scheduled on these proposed amendments.

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- (28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The amendments will require minor revisions to a few existing forms and technical guidances.

- (29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Due to the nature and purpose of these changes, no special provisions are needed.

- (30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking. A specific date cannot be predicted. No new permits, licenses or other approvals will be required by these regulations.

- (31) Provide the schedule for continual review of the regulation.

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



FACE SHEET  
 FOR FILING DOCUMENTS  
 WITH THE LEGISLATIVE REFERENCE BUREAU  
 (Pursuant to Commonwealth Documents Law)

08 FEB -2 PM 4:04

INDEPENDENT AGENCY  
 REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p><i>Cristina S. ...</i>        (DEPUTY ATTORNEY GENERAL)</p> <p>JAN 21 1998</p> <p>DATE OF APPROVAL</p> <p>Check if applicable by not approved. Objections scheduled.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>DEPARTMENT OF ENVIRONMENTAL PROTECTION        ENVIRONMENTAL QUALITY BOARD</p> <p>(AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. 7-331</p> <p>DATE OF ADOPTION:</p> <p>BY: <i>James M. Seif</i></p> <p>TITLE: JAMES M. SEIF, CHAIRMAN        (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p><i>R. E. Grimaldi</i></p> <p>10/21/97        DATE OF APPROVAL</p> <p>(Deputy General Counsel)        (Chief Counsel, Independent Agency)        (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF  
 PROPOSED RULEMAKING  
 DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 ENVIRONMENTAL QUALITY BOARD

General Provisions and Areas Unsuitable for Mining  
 25 Pa. Code, Chapter 86

**Annex A**

**Title 25. Environmental Protection**

**Part I. Department of Environmental Protection**

**Subpart C. Protection of Natural Resources**

**Article I. Land Resources**

**Chapter 86. Surface and Underground Coal Mining: General**

**Subchapter A. General Provisions**

§86.1. Definitions.

\* \* \* \* \*

ADMINISTRATIVELY COMPLETE APPLICATION - AN APPLICATION FOR A PERMIT WHICH CONTAINS COMPLETED FORMS, STANDARD REPORTS AND INFORMATION ADDRESSING EACH APPLICATION REQUIREMENT OF THE DEPARTMENT WHICH HAVE BEEN PROPERLY SIGNED AND WITNESSED, A FILING FEE AND PROOF OF PUBLICATION NECESSARY FOR THE DEPARTMENT TO INITIATE PROCESSING AND PUBLIC REVIEW.

\* \* \* \* \*

[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 statutes and regulations.]

\* \* \* \* \*

*Valid existing rights* - [Includes the following:

(i) Except for haul roads and activities enumerated in subparagraph (iii), property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the applicant to produce minerals by a surface mining operation. The person proposing to conduct surface mining operations on the lands shall hold current State and Federal permits necessary to conduct the operations on those lands and either have held those permits on August 3, 1977, or had made by that date a complete application for the permits, variances and approvals required by the Department.

(ii) For haul roads, the term includes:

(A) A recorded right-of-way, recorded easement, or a permit for a haul road recorded as of August 3, 1977.

(B) Another road in existence as of August 3, 1977.

(iii) Coal preparation activities, and their associated haul roads, which were not subject to this chapter and Chapters 87-90 prior to August 25, 1989, were in existence on or before July 6, 1984, and were operating in compliance with applicable laws prior to that date.

(iv) Interpretation of the terms of the document relied upon to establish valid existing right shall be based upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right and that the document has been signed by the surface owner.

(v) The term does not include the mere expectation of a right to conduct surface mining operations or the right to conduct underground coal mining.]

RIGHTS WHICH EXIST PURSUANT TO THE DEFINITION OF VALID EXISTING RIGHTS IN 30 C.F.R. CHAPTER VII, SUBCHAPTER F, SECTION 761.5 (RELATING TO AREAS UNSUITABLE FOR MINING).

\* \* \* \* \*

**Subchapter D. AREAS UNSUITABLE FOR MINING**

§86.101. Definitions.

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

\* \* \* \* \*

*Fragile lands* - Geographic areas containing natural, ecologic, scientific or esthetic resources that could be SIGNIFICANTLY damaged or destroyed by surface mining OPERATIONS. Examples include, but are not limited to, valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, PALEONTOLOGICAL SITES, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and

esthetic features, areas of recreational value due to high environmental quality and [buffer zones adjacent to the boundaries of] areas where surface mining operations are prohibited under section 4.5(h) of the Surface Mining Conservation and Reclamation Act (52 P.S. §1396.4e(h)).

*Historic lands* - [Historic or cultural districts, places, structures or objects, including archaeological and paleontological sites, National Historic Landmark sites, sites listed] AREAS CONTAINING HISTORIC, CULTURAL OR SCIENTIFIC RESOURCES. EXAMPLES OF HISTORIC LANDS INCLUDE ARCHAEOLOGICAL SITES, PROPERTIES LISTED ON or eligible for listing on a State or National Register of Historic Places, NATIONAL HISTORIC LANDMARKS, [sites] PROPERTIES having religious or cultural significance to [native] NATIVE Americans or religious groups[ or sites], AND PROPERTIES for which historic designation is pending.

\* \* \* \* \*

*Public building* - A structure that is owned OR LEASED [by a public agency or used principally] AND PRINCIPALLY USED BY A GOVERNMENT AGENCY for public business[, ] OR meetings [or other group gatherings].

*Public park* - An area OR PORTION OF AN AREA dedicated or designated by a Federal, State or local agency PRIMARILY for public recreational use, whether or not the use is limited to certain times or days, including land leased, reserved or held open to the public because of that use. [For the purposes of this subchapter, local agency shall include nonprofit organizations owning lands which are dedicated or designated for public recreational use.]

\* \* \* \* \*

*Renewable resource lands* - [Aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands]. AREAS WHICH CONTRIBUTE SIGNIFICANTLY TO THE LONG-RANGE PRODUCTIVITY OF WATER SUPPLY OR OF FOOD OR FIBER PRODUCTS, SUCH LANDS TO INCLUDE AQUIFERS AND AQUIFER RECHARGE AREAS.

*Significant recreational, timber, economic or other values incompatible with surface mining OPERATIONS* - Significant values which could be damaged by, and are not capable of existing together with, surface mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on [offsite] OTHER AFFECTED areas which could be affected by mining. Values to be evaluated for their importance include:

\* \* \* \* \*

*Surface mining operations* -- The extraction of coal from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip and auger mining, dredging, quarrying and leaching and surface activity connected with surface or underground coal mining, including, but not limited to, exploration, site preparation, entry, tunnel, slope, drift, shaft and borehole drilling and construction and activities related thereto, coal refuse disposal, coal processing and preparation facilities and activities involved in or related to underground coal mining which are conducted on the surface of the land, produce changes in the land surface, or disturbs the surface[, air] or water resources of the area.

§ 86.102. Areas where mining is prohibited or limited.

Subject to valid existing rights as defined in §86.1 (relating to definitions), surface mining operations except those which existed on August 3, 1977, are not permitted:

(1) On lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic River Act (16 U.S.C.A. § 1276(a)) OR STUDY RIVERS OR STUDY RIVER CORRIDORS AS ESTABLISHED IN ANY GUIDELINES PURSUANT TO THAT ACT and National Recreation Areas designated by act of Congress.

\* \* \* \* \*

(3) Which will adversely affect a publicly-owned park or a place included [on or eligible for inclusion] on the National Register of Historic Places, unless approved jointly by the Department and the Federal, State or local governmental agency with jurisdiction over the park or places.

(4) On lands within the State park system. Surface mining activities may be permitted if THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES AND the Department [finds] FIND that significant land and water conservation benefits will result when re-mining of previously mined land is proposed.

(5) On lands within State forest picnic areas, State forest natural areas and State forest wild areas. Surface mining operations may be permitted on State forest lands other than picnic areas, natural areas and

wild areas, if the DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES AND THE Department [finds] FIND that one or more of the following apply:

(i) There will be no significant adverse impact to natural resources including timber, water, wildlife, recreational and aesthetic values.

(ii) Significant land and water conservation benefits will result when re-mining of previously mined lands is proposed.

(6) On lands within the game land system of this Commonwealth. Surface mining operations may be permitted by the Department if the Game Commission consents and finds that one or more of the following apply:

(i) There will be no significant long-term adverse impacts to aquatic or terrestrial wildlife populations and their habitats.

(ii) Significant wildlife habitat and land and water conservation benefits will result when re-mining of previously mined lands is proposed.

(7) On lands within the authorized boundaries of Pennsylvania Scenic River Systems which have been legislatively designated as such under the Pennsylvania Scenic Rivers Act (32 P.S. §§ 820.21 - 820.29). Surface mining operations may be permitted if the DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES AND THE Department [finds] FIND that significant land and water conservation benefits will result when re-mining of previously mined lands is proposed, [or when the Department finds] AND that the surface mining operation is consistent with the Scenic Rivers System designation and will not adversely affect the values which the designation is designed to protect.

(8) Within 100 feet (30.48 METERS) measured horizontally of the outside right-of-way line of a public road, except:

\* \* \* \* \*

(ii) When the Department, with concurrence of the agency with jurisdiction over the road, allows the public road to be relocated or the area affected to be within 100 feet (30.48 METERS) of the road, after the following:

\* \* \* \* \*

(9) Within 300 feet (91.44 METERS) measured horizontally from an occupied dwelling, unless ONE OR MORE OF the FOLLOWING EXIST:

(i) THE only part of the surface mining operations which is within 300 feet (91.44 METERS) of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling. [or unless the current]

(ii) THE owner thereof has provided a written waiver BY LEASE, DEED OR OTHER CONVEYANCE CLARIFYING THAT THE OWNER AND SIGNATORY HAD THE LEGAL RIGHT TO DENY SURFACE MINING OPERATIONS AND KNOWINGLY WAIVED THAT RIGHT AND [consenting] CONSENTED to surface mining operations closer than 300 feet (91.44 METERS) OF THE DWELLING AS SPECIFIED. [The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner.]

(A) A VALID WAIVER SHALL REMAIN IN EFFECT AGAINST SUBSEQUENT OWNERS WHO HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE EXISTING WAIVER AT THE TIME OF PURCHASE.

(B) SUBSEQUENT OWNERS SHALL BE DEEMED TO HAVE CONSTRUCTIVE KNOWLEDGE IF THE WAIVER HAS BEEN PROPERLY FILED IN PUBLIC PROPERTY RECORDS OR IF THE SURFACE MINING OPERATIONS HAVE PROCEEDED TO WITHIN THE 300 FOOT (91.44 METERS) LIMIT PRIOR TO THE DATE OF PURCHASE.

(10) Within 300 feet (91.44 METERS) measured horizontally of a public building, school, church, community or institutional building or public park.

(11) Within 100 feet (30.48 METERS) measured horizontally of a cemetery. CEMETERIES MAY BE RELOCATED PURSUANT TO THE REQUIREMENTS OF THE ACT OF APRIL 18, 1877, P.L. 54 (9 P.S. §§41-52).

(12) Within 100 feet (30.48 METERS) measured horizontally of the bank of a perennial or intermittent stream. The Department may grant a variance from this distance requirement if the operator demonstrates beyond a reasonable doubt that there will be no adverse hydrologic impacts, water quality impacts or other environmental resources impacts as a result of the variance. The variance will be issued as a written order specifying the methods and techniques that shall be employed to prevent adverse impacts. Prior to granting a

variance, the operator is required to give public notice of application thereof in two newspapers of general circulation in the area once a week for 2 successive weeks. If a person files an exception to the proposed variance within 20 days of the last publication thereof, the Department will conduct a public hearing with respect thereto. The Department will also consider information or comments submitted by the Fish and Boat Commission prior to taking action on a variance request.

§86.103. Procedures.

\* \* \* \* \*

(c) If the proposed surface mining operations are to be conducted within 100 feet (30.48 METERS) measured horizontally of the outside right-of-way line of a public road -- except where mine access road or haulage roads join the right-of-way line -- or if the applicant proposes to relocate a public road, the Department will:

\* \* \* \* \*

(d) When the proposed surface mining operations would be conducted within 300 feet (91.44 METERS) measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver [from the current owner of the dwelling, consenting to the surface mining operations within a closer distance of the dwelling] as specified in [the waiver. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner] SECTION 86.102(9) (RELATING TO AREAS WHERE MINING IS PROHIBITED OR LIMITED).

(e) When the proposed surface mining operations [may] WILL adversely affect a [public] PUBLICLY OWNED park or a place included on the National Register of Historic Places, the Department will transmit to the Federal, State or local agencies with jurisdiction over, or a statutory or regulatory responsibility for, the park or [historic] place, a copy of the completed permit application containing the following:

\* \* \* \* \*

(2) A notice to the appropriate agency that it shall respond within 30 days from receipt of the request.

(A) UPON REQUEST BY THE APPROPRIATE AGENCY A 30-DAY EXTENSION MAY BE GRANTED.



(B) FAILURE TO OBJECT WITHIN THE COMMENT PERIOD SHALL CONSTITUTE AN APPROVAL OF THE PROPOSED PERMIT BY THAT AGENCY.

\* \* \* \* \*

CRITERIA AND PROCEDURES FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE MINING

§ 86.121. Areas [designated] EXEMPT FROM DESIGNATION AS unsuitable for surface mining operations.

[(a)] The requirements of this section and §§ 86.122--86.129 do not apply to [permit] areas on which [surface mining operations were being conducted on August 3, 1977, or are being conducted under a permit issued under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1 - 1396.19a), or if substantial legal and financial commitments as defined by the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior under section 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. § 1272) if the surface mining operations were in existence prior to January 4, 1977.

(b) Permits for surface mining operations will not be issued in areas designated unsuitable under this subchapter. The permits may be issued in areas where the applicant has prior substantial legal and financial commitments in a surface mining operations if the applicant establishes the existence of the commitments to the satisfaction of the Department. In considering the permit applications in designated areas, the Department will impose terms and conditions to preserve and protect the applicable values and uses of the area.];

(1) SURFACE MINING OPERATIONS WERE BEING CONDUCTED ON AUGUST 3, 1977.

(2) SURFACE MINING OPERATIONS HAVE BEEN AUTHORIZED BY A VALID PERMIT ISSUED UNDER THE SURFACE MINING CONSERVATION AND RECLAMATION ACT (52 P.S. §§1396.1 - 1396.19A), THE COAL REFUSE DISPOSAL CONTROL ACT (52 P.S. §§30.51 - 66), THE CLEAN STREAMS LAW (35 P.S. §§691.1 - 1001), AND THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT (52 P.S. §§1406.1-1406.21).

(3) A PERSON ESTABLISHES THAT SUBSTANTIAL LEGAL AND FINANCIAL COMMITMENTS IN SURFACE MINING OPERATIONS WERE IN EXISTENCE PRIOR TO JANUARY 4, 1977.

§86.123. Procedures: petitions.

\* \* \* \* \*

(c) The petitioner shall provide the following information [to the Department's Bureau of Mining and Reclamation (Bureau)] on forms developed by [that Bureau] THE DEPARTMENT:

\* \* \* \* \*

(5) Identification of the petitioner's interest which is or may be adversely affected. A PERSON HAVING AN INTEREST WHICH IS OR MAY BE ADVERSELY AFFECTED MUST DEMONSTRATE AN "INJURY IN FACT" BY DESCRIBING THE INJURY TO THE SPECIFIC AFFECTED INTEREST AND DEMONSTRATING HOW THEY ARE AMONG THE INJURED.

\* \* \* \* \*

§ 86.124. Procedures: initial processing, recordkeeping and notification requirements.

(a) Within 30 days of receipt of a petition, the Department will notify the petitioner by certified mail whether or not the petition is complete as required by § 86.123 (relating to procedures: petitions). If the 30-day requirement of this subsection cannot be met due to the staff limitations of the Department, the Department may process the petitions in accordance with the priority system authorized by subsection (b)(2). Within this 30-day period, the Department will also notify an applicant with pending surface mining operation permit applications in the area covered by the petition.

\* \* \* \* \*

(2) The Department may reject petitions for designations or terminations of designations which are frivolous. A FRIVOLOUS PETITION IS ONE IN WHICH THE ALLEGATIONS OF HARM LACK SERIOUS MERIT. Once the requirements of § 86.123 are met[, no party may bear a burden of proof, but] each accepted petition shall be considered and acted upon by the Department under the procedures of this part.

\* \* \* \* \*

(c) Until 3 days before the [EQB] DEPARTMENT holds a hearing under § 86.125 (relating to procedures: hearing requirements), a person may become an intervenor in the proceeding by filing allegations of facts DESCRIBING HOW THE DESIGNATION DETERMINATION DIRECTLY AFFECTS THE INTERVENOR, supporting evidence, a short statement identifying the petition to which the allegations pertain, a request for intervenor status, and name, address and telephone number.

(d) Beginning immediately after a complete petition is filed, the Department will compile and maintain a record consisting of documents relating to the petition filed with or prepared by the Department. The Department will make the record available for public inspection[,] free of charge, and copying at reasonable cost, during normal business hours at the [Bureau of Mining and Reclamation] DEPARTMENT'S district MINING office in the county or multicounty area in which the land petitioned is located, and at the main office of the Department.

\* \* \* \* \*

(f) The Department will prepare a recommendation [in the form of a proposed rulemaking] on each complete petition received under this section and submit it to the EQB [as a proposed regulation under this section] WITHIN 12 MONTHS OF RECEIPT OF THE COMPLETE PETITION.

§ 86.125. Procedures: hearing requirements.

(a) Within 10 months of the receipt of a complete petition, the [EQB] DEPARTMENT will hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held.

(b) The hearing shall be legislative and fact-finding in nature, without cross examination of witnesses. [The EQB will make a verbatim transcript of the hearing].

(c) NO PERSON SHALL BEAR THE BURDEN OF PROOF OR PERSUASION.

(d) A VERBATIM TRANSCRIPT OF THE HEARING WILL BE MADE AND INCLUDED IN THE PUBLIC RECORD.

[(b)](e) The [EQB] DEPARTMENT will give notice of the date, time and location of the hearing BY FIRST CLASS MAIL POSTMARKED NOT LESS THAN 30 DAYS BEFORE THE SCHEDULED HEARING to:

- (1) Local, State and Federal agencies which may have an interest in the decision on the petition.
- (2) [The petitioner and the intervenors.]

[(3) A person with] PERSONS KNOWN TO THE DEPARTMENT TO HAVE an ownership or other interest [made known to the Department] in the area covered by the petition.

[(4) Notice of the hearing shall be sent by first class mail and postmarked not less than 30 days before the scheduled date of the hearing.]

(f) THE DEPARTMENT WILL GIVE NOTICE OF THE DATE, TIME AND LOCATION OF THE HEARING BY CERTIFIED MAIL POSTMARKED NOT LESS THAN 30 DAYS BEFORE THE SCHEDULED HEARING TO THE PETITIONER AND TO THE INTERVENORS.

[(c)](g) The [EQB] DEPARTMENT will notify the general public of the date, time and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement [must] WILL begin between 4 and 5 weeks before the scheduled date of the public hearing.

[(d)](h) The [EQB] DEPARTMENT may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

[(e)](i) [The EQB will receive and consider written] WRITTEN comments on the petition WILL BE RECEIVED AND CONSIDERED 15 days after the conclusion of the public hearing OR AS OTHERWISE ESTABLISHED BY THE DEPARTMENT. If a hearing will not be held on a petition, the comments may be received and considered for 45 days following publication of a notice that there will be no public hearing.

(j) Within 60 days of the close of the public comment period, the [EQB] DEPARTMENT will [make a final decision] PREPARE A RECOMMENDATION TO THE EQB, INCLUDING A STATEMENT OF THE REASONS FOR THE RECOMMENDATION AND PROVIDE WRITTEN NOTICE OF ITS RECOMMENDATION TO THE PETITIONER AND INTERVENORS.

[(f)](k) In the event that all petitioners and intervenors so stipulate, the petition may be withdrawn from consideration prior to the hearing.

§ 86.126. Procedures: decision.

(a) In DECIDING WHETHER TO DESIGNATE AN AREA AS UNSUITABLE FOR SURFACE MINING OPERATIONS [reaching its decision on the proposed rule], the EQB will consider:

\* \* \* \* \*

(b) [A final written decision in the form of a regulation will be issued by the EQB within 60 days following the public hearing, including a statement of reasons for the decision]. The EQB will promptly send the REGULATORY decision by certified mail to the petitioner, intervenors, and to the [Regional Director of the] Office of Surface Mining Reclamation and Enforcement, and shall deposit and publish its REGULATORY decision as [a regulation in the manner] required by the act of July 31, 1968 (P.L. 769, No. 240) (45 P. S. §§1102, 1201--1208 and 1602); 45 Pa.C.S. §§501--907[; and Sections 3 and 4 of the act of July 9, 1976 (P.L. 877, No. 160) (45 Pa.Sp. Pamph. 84 page 35)].

§ 86.127. [Data base] DATABASE and inventory system requirements.

(a) The Department will expeditiously develop a [data base] DATABASE and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The Department will include in the system information relevant to the criteria in §86.122 (relating to criteria for designating lands as unsuitable), including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Office, the Fish and Boat Commission, the Department of Conservation and Natural Resources' Scenic Rivers Program, the Game Commission, [the Department of Community Affairs,] private conservancies and the agency administering section 127 of the Clean Air Act (42 U.S.C.A. §7470).

(c) The Department will review and update the [data base] DATABASE and inventory system as information becomes available:

\* \* \* \* \*

§86.128. Public information.

The Department will:

(1) Make the information and [data base] DATABASE system developed under § 86.127 (relating to [data base] DATABASE and inventory system requirements) available to the public for inspection free of charge and for copying at reasonable cost during established office hours.

\* \* \* \* \*

§86.129. Coal exploration ON AREAS DESIGNATED AS UNSUITABLE FOR SURFACE MINING OPERATIONS.

[The submission of a petition to designate an area unsuitable for all or certain types of surface mining operations or designation]

(a) DESIGNATION of an area as unsuitable for all or certain types of surface mining operations under this chapter does not prohibit coal exploration operations in the area.

(b) Coal exploration may [not] be conducted on an area designated as unsuitable for surface mining operations [or where a petition to designate an area unsuitable for surface mining operations has been received by the Department] in accordance with this chapter [unless the exploration is] IF THE FOLLOWING EXIST:

(1) THE EXPLORATION IS consistent with the designation, [or the purposes of the submitted petition and will]

(2) THE EXPLORATION WILL be conducted to preserve and protect the applicable values and uses of the area IN ACCORDANCE WITH THE REQUIREMENTS OF SUBCHAPTER E (RELATING TO COAL EXPLORATION), [Exploration may not be conducted unless] AND the Department has [been notified in advance and has] issued written approval for the exploration [under §86.133(f) (relating to general requirements). Approval will not be issued unless the person seeking the approval has described the nature and extent of the proposed operation, and has described in detail the measures to be employed to prevent adverse effects].

§86.130. Areas designated as unsuitable for mining.

\* \* \* \* \*

(b) The following is a list of descriptions of areas which are unsuitable for all or certain types of surface mining operations and where all or certain types of surface mining operations will not be permitted:

(1) The tract of approximately 233 acres (APPROXIMATELY 94.29 HECTARES) in Blacklick Township, Cambria County, described as follows:

Beginning at the northwest corner of the land owned by the Griffithtown Water Association and proceeding to the southwest corner, then easterly towards the southeast

corner of the property and continuing in the same easterly direction to a point located 100 feet horizontal distance west of the Lower Freeport outcrop; then continuing in a southerly direction, remaining 100 feet (30.48 METERS) from and paralleling the Lower Freeport outcrop as the outcrop proceeds easterly to intersect the 2,040 foot (621.79 METER) elevation contour; then along a straight line extending in a northeasterly direction intersecting the 2,282-foot (695.55 METER) elevation point and continuing to US 422; then west along US 422 to an intersection formed by a road, driveway or farmlane approaching US 422 from the north and located approximately 1.86 miles east (APPROXIMATELY 2.99 KILOMETERS) of the junction of US 422 and Pa. Route 271 in Belsano; then continuing southwesterly in a straight line to the northwest corner of the Griffithtown Water Association property.

(2) The surface area overlying surface mineable coal reserves in a tract of approximately 11,200 acres (APPROXIMATELY 4,532 HECTARES) in Rush Township, Centre County, which tract is described as follows:

The surface water drainage basin of Cold Stream upstream from the mouth of Tomtit Run, including the surface water drainage basins of all tributaries to Cold Stream upstream from and including Tomtit Run except for the surface water drainage of a tributary known locally as Big Spring Run that enters Cold Stream from the west approximately 500 feet (APPROXIMATELY 152.4 METERS) upstream from the Stony Point Road (Township Road 600) bridge over Cold Stream.

(3) The tract of approximately 119 acres (APPROXIMATELY 48.16 HECTARES) in Logan Township, Blair County and Gallitzin Township, Cambria County within the Mill Run watershed, that is underlain by surface mineable coal reserves, and that has not been previously disturbed by surface or deep mining. The tract is more particularly described as follows:

Beginning at the summit of a hill in the northwest corner of the Mill Run-Little Laurel Run watershed divide, southwest of the village of Buckhorn on or near the Cambria-Blair County line, and being at the eastern edge of the previously surface mined area; then along the watershed divide in a northeasterly direction for a distance of approximately 2,500 feet (APPROXIMATELY 762 METERS) to the point of intersection of the watershed divide with the Mercer coal seam outcrop; then proceeding in a southeasterly and southerly direction along the Mercer coal outcrop, and running roughly parallel to and 100 to 200 feet (30.48 TO 60.96 METERS) easterly of the old Loudon deep mine railroad grade, for a distance of approximately

5,500 feet (APPROXIMATELY 1.68 KILOMETERS) to the northern terminus of the Louden deep mine, then proceeding westerly and northwesterly along the edge of the Louden deep mine, exclusive of an approximately 2-acre (APPROXIMATELY 0.81 HECTARES) ungraded surface mine, to its intersection with the toe of spoil of the previously surface mined area; then in a northwesterly direction along the spoil banks remaining from previous surface mining activity a distance of approximately 3,800 feet (APPROXIMATELY 1.16 KILOMETERS) to the summit of the hill, being the place of beginning.

(4) The surface mineable coal reserves in a tract of approximately 5,600 acres (APPROXIMATELY 2,266.32 HECTARES) in Rush, Centre County, which tract is the surface water drainage basin of Black Bear Run.

\* \* \* \* \*

(9) The tract of approximately 525 acres (APPROXIMATELY 212.46 HECTARES) in Elder Township, Cambria County, described as follows:

Beginning at the northern edge of a raw water storage tank located approximately 2,000 feet (APPROXIMATELY 609.60 METERS) south of Township Route 551 and 2,150 feet (655.32 METERS) west of State Route 36; then proceeding in a northeasterly direction, intersecting the Borough of Hastings Water Authority access road at a point approximately 1,450 feet (APPROXIMATELY 441.96 METERS) from the access road's junction with Township Route 551; then continuing due north, intersecting Township Route 551 at a property, fence or tree line located approximately 1,250 feet (APPROXIMATELY 381 METERS) west of the junction of Township Route 551 and State Route 36; then north along the property, fence or tree line to a point located on Legislative Route 221 approximately 1,100 feet (APPROXIMATELY 335.28 METERS) west of State Route 36 in St. Boniface; then continuing in a southeasterly direction to the junction of State Route 36 and Legislative Route 11056; then along Legislative Route 11056 to a point approximately 1,300 feet (APPROXIMATELY 396.24 METERS) east of State Route 36; then continuing south along a property, fence or tree line to another property, fence or tree line that is approximately 475 feet (APPROXIMATELY 144.78 METERS) south of Legislative Route 11056; then 575 feet (175.26 METERS) due west along this property, fence or tree line to a point located approximately 350 feet (APPROXIMATELY 106.68 METERS) east of State Route 36; then due south to meet State Route 36 at its junction with a private road,



driveway or farm lane approaching State Route 36 from the east, located approximately 950 feet (APPROXIMATELY 289.56 METERS) south of the junction of Township Route 551 and State Route 36; then south along State Route 36 for approximately 900 feet (APPROXIMATELY 274.32 METERS) to a tree, fence or property line; then along the line, intersecting the Laurel Hill anticline axis at a point approximately 1,575 feet (APPROXIMATELY 480.06 METERS) due east of State Route 36; then south along the anticlinal axis (which trends approximately N 40° E) intersecting State Route 36 approximately 625 feet (APPROXIMATELY 190.5 METERS) north of the junction of Legislative Routes 221 and 11077 and intersecting Legislative Route 11076 approximately 600 feet (APPROXIMATELY 182.88 METERS) north of its junction with Legislative Routes 221 and 11067 for 6,800 feet (2,072.64 METERS) to a point approximating the edge of an Upper Kittanning underground coal mine complex known as the Pardee No. 29; then continuing in the same southwesterly direction to a point located 200 feet (60.96 METERS) horizontal distance southwest of the Pardee No. 29 Mine complex; then proceeding in a northerly direction remaining 200 feet (60.96 METERS) from and paralleling the edge of the Pardee No. 29 Mine complex for approximately 4,250 feet (APPROXIMATELY 1,295.4 METERS) to a point that is approximately 200 feet (APPROXIMATELY 61.96 METERS) horizontal distance west of the Upper Kittanning coal outcrop (intersecting an unnamed tributary to a farm pond located approximately 3,300 feet (APPROXIMATELY 1,005.84 METERS) due south of Township Route 551 and 3,300 feet (1,005.84 METERS) due west of State Route 36); then continuing north, remaining 200 feet (60.96 METERS) from and parallel to the coal outcrop to a property, fence or tree line located approximately 1,820 feet (APPROXIMATELY 554.74 METERS) south of Township Route 551; then due east along the line to the northwest corner of the land owned by the Borough of Hastings; then returning to the point of origin.

(10) The tract of 527 acres (213.28 HECTARES) of surface mineable coal reserves in the southern surface water drainage basin of North Fork Tangascootack Creek watershed. The 527 acres (213.28 HECTARES) encompass the Mercer coal crop line to the southern watershed divide of the North Fork Tangascootack Creek watershed, which tract is located in Bald Eagle, Grugan and Beech Creek Townships, Clinton County.

\* \* \* \* \*

(12) The surface mineable coal reserves in the surface water drainage basins of Rankin Hollow Run and the East Fork Brewster Hollow Run, tributaries of Sixmile Run, upstream of the water supplies for the

Coaldale Borough-Six Mile Run Area Water Corporation. The two tracts, totaling approximately 525 acres (APPROXIMATELY 212.47 HECTARES), are located in Broad Top Township, Bedford County.

(13) The surface mineable coal reserves of the Lower Kittanning, Clarion and Mercer coals in the surface water drainage basin of Bells Gap Run, which tract is located in Antis and Logan Townships, Blair County and Dean and Reade Townships, Cambria County; except that the surface mineable coal reserves of the three designated seams are not designated unsuitable for surface mining operations in the following areas:

(i) A tract of approximately 41 acres (APPROXIMATELY 16.59 HECTARES) of abandoned mine lands located northwest of the town of Highland Fling, said tract being described as follows:

Beginning at the point where Township Route 502 intersects the surface water drainage divide between Tubb Run and Brubaker Run approximately 750 feet (APPROXIMATELY 228.6 METERS) northwest of the intersection of Township Route 502 and State Route 1016; then proceeding due east, to a point on State Route 1016 approximately 475 feet (APPROXIMATELY 144.78 METERS) north-northeast of the intersection of State Route 1016 and Township Route 502; then continuing to a point approximately 2,250 feet (APPROXIMATELY 685.8 METERS) north along State Route 1016; then due west to a point on the surface water drainage divide between Tubb Run and Brubaker Run approximately 2,800 feet (APPROXIMATELY 853.44 METERS) north-northwest of the intersection of Township Route 502 and State Route 1016; then in a southerly direction along the said surface water drainage divide to the point of origin.

(ii) The permit areas of Cambria Coal Company SMP #11783035, Cambria Coal Company SMP #11823006, Swistock Associates Coal Corp. MDP #4278BC10, E. P. Bender Coal Co. SMP #11793025, and Benjamin Coal Company MDP #4278SM2, in accordance with §86.121(a) (relating to areas designated unsuitable for mining).

(14) The surface mineable coal reserves within the Goss Run watershed upstream of the Brisbin Dam, including a small tract of land within the watershed of the West Tributary to Goss Run, a total of approximately 555 acres (APPROXIMATELY 224.61 HECTARES), are designated unsuitable for all types of surface mining operations. This includes a land area beginning at the breast of the Brisbin Dam, thence due southwest to Pa. Route 153, thence north along the centerline of Pa. Route 153 to the intersection of Pa. Route 153 with township route T-657, thence north along the watershed divide between the Brisbin Dam drainage and the West Tributary drainage to a point at the intersection of the Goss Run and Little Beaver Run watershed divide, thence southwest

along the Goss Run and Little Beaver Run watershed divide to a point at the intersection of the Brisbin Dam drainage divide, thence southwest along the Brisbin Dam drainage divide to the point of beginning; except that the surface mineable coal reserves are not designated unsuitable for surface mining operations in the following areas:

The permit areas of the James I. Cowfer Contracting, Inc. SMP 17663037 and James I. Cowfer Contracting, Inc. SMP 17820152, in accordance with §86.121(a).

\* \* \* \* \*

(17) All types of surface mining operations within a tract of 450 acres (182.12 HECTARES) located in Slippery Rock and Wayne Townships, Lawrence County described as follows:

Beginning at the intersection of Township Road T-347 and Township Road 5-472; then in a northerly direction following Township Road T-472 for a distance of approximately 4,800 feet (APPROXIMATELY 1,643.04 METERS) to the Wayne Township and Slippery Rock Township boundary line; then in a westerly direction following the township line for a distance of approximately 800 feet (APPROXIMATELY 243.84 METERS) to the southwest corner of a land parcel owned, or formerly owned, by Edris Ann Thalgott; then in a northerly direction following the Edris Ann Thalgott property line for a distance of approximately 2,050 feet (APPROXIMATELY 624.84 METERS) to the southwest corner of a land parcel owned, or formerly owned, by Lois Mackey; then following the Lois Mackey property line in a northerly direction for a distance of approximately 950 feet (APPROXIMATELY 289.56 METERS) to the intersection of the Lois Mackey property line with State Road SR2024; then in an easterly direction following State Road SR 2024 for a distance of approximately 2,100 feet (APPROXIMATELY 640.08 METERS) to the intersection with the southwest corner of a land parcel owned, or formerly owned, by Dale Mackey; then in a northerly direction following the Dale Mackey property line for a distance of approximately 1,650 feet (APPROXIMATELY 502.92 METERS) to the northwest corner of the Dale Mackey property; then in an easterly direction following the Dale Mackey property line for a distance of approximately 600 feet (APPROXIMATELY 182.88 METERS) to the northeast corner of the Dale Mackey property; then following the Dale Mackey property line in a southerly direction for a distance of approximately 1,250 feet (APPROXIMATELY 381.00 METERS) to the Dale Mackey property line intersection with the northeast corner of a land parcel owned, or formerly owned, by Richard E. Michaels; then following the Richard E. Michaels property line in a southerly direction for a distance of approximately 250 feet (APPROXIMATELY 76.20 METERS) to the Richard E. Michaels property line intersection with State Road SR 2024; then following Township Road T-478 in a southerly direction for a distance of approximately 7,200 feet (APPROXIMATELY 2,194.56 METERS) to the intersection of Township Road T-478 with Township Road T-347; then in a westerly direction following Township Road T-347 for a distance of approximately 2,000 feet (APPROXIMATELY 609.60 METERS) to the point of origin.

## SUBCHAPTER F—AREAS UNSUITABLE FOR MINING

### PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

Sec.

761.1 Scope.

761.3 Authority.

761.5 Definitions.

761.11 Areas where mining is prohibited or limited.

761.12 Procedures.

AUTHORITY: 30 U.S.C. 1201 et seq.

SOURCE: 48 FR 41348, Sept. 14, 1983, unless otherwise noted.

§ 761.1 Scope.

This part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations in section 632(e) of the Act for those types of operations on certain Federal, public and private lands.

§ 761.3 Authority.

The State regulatory authority or the Secretary is authorized by section 632(e) of the Act (30 U.S.C. 1272(e)) to prohibit or limit surface coal mining operations on or near certain private, Federal, and other public lands, subject to valid existing rights and except for those operations which existed on August 3, 1977.

§ 761.5 Definitions.

For the purposes of this part—

*Cemetery* means any area of land where human bodies are interred.

*Community or institutional building* means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

*Occupied dwelling* means any building that is currently being used on a regu-

lar or temporary basis for human habitation.

*Public building* means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

*Public park* means an area, or portion of an area, dedicated or designated by any Federal, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

*Public road* means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) for which there is substantial (more than incidental) public use; and (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

*Publicly-owned park* means a public park that is owned by a Federal, State or local governmental entity.

*Significant forest cover* means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of Agriculture shall decide on a case-by-case basis whether the forest cover is significant within those national forests west of the 100th meridian.

*Significant recreational, timber, economic, or other values incompatible with surface coal mining operations* means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber manager and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) Scenic, historic, archeologic, scientific, fish, wildlife, plants or cultural interests.

*Surface coal mining operations which exist on the date of enactment means all surface coal mining operations which were being conducted on August 3, 1977.*

*Surface operations and impacts incident to an underground coal mine means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in section 701(22) of the Act and the definition of surface coal mining operations appearing in § 700.6 of this chapter.*

*Valid existing rights means:*

(a) Except for haul roads, that a person possesses valid existing rights for an area protected under section 622(e) of the Act on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution;

(b) For haul roads,

(1) A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or

(2) Any other road in existence as of August 3, 1977;

(1) A person possesses valid existing rights if the person proposing to conduct surface coal mining operations can demonstrate that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation which existed on August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the surface coal mining operation as a whole economically viable;

(d) Where an area comes under the protection of section 622(e) of the Act after August 3, 1977, valid existing rights shall be found if—

(1) On the date the protection comes into existence, a validly authorized surface coal mining operation exists on that area; or

(2) The prohibition caused by section 622(e) of the Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution.

(e) Interpretation of the terms of the document relied upon to establish the rights to which the standard of paragraphs (a) and (d) of this section applies shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable State law exists, upon the usage and custom at the time and place it came into existence.

(4) PR 4194, Sept. 14, 1983, as amended at 62 FR 4261, Feb. 10, 1997; 56 FR 6534, Dec. 17, 1991)

REPEAL NOTE: At 61 FR 4180, Nov. 20, 1996 in § 761.1:

1. The definition of significant recreational, timber, economic, or other values incompatible with surface coal mining operations was suspended insofar as the listed values are evaluated for compatibility solely in terms of reestablishability; and

2. Paragraphs (a) and (c) of the definition of valid existing rights were suspended, and paragraph (d)(2) was suspended insofar as it incorporates the takings test of paragraph (a).

§ 761.11 Areas where mining is prohibited or limited.

Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, including study rivers designated under section 6(e) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(e)) or study rivers or study river corridors as established in any guidelines pursuant

(1) The owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet; or

(2) The part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;

(f) Within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

(g) Within 100 feet, measured horizontally, of a cemetery; cemeteries may be relocated if authorized by applicable State law or regulations.

(h) There will be no surface coal mining, permitting, licensing or exploration of Federal lands in the National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas, unless called for by Acts of Congress.

(4) PR 4194, Sept. 14, 1983, as amended at 61 FR 2591, July 18, 1996; 51 FR 2638, July 23, 1986; 52 FR 1261, Feb. 10, 1987)

REPEAL NOTE: At 61 PR 4180, Nov. 20, 1996, paragraph (b) of § 761.11 was suspended.

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to that Act, and National Recreation Areas designated by Act of Congress.

(b) On any Federal lands within the boundaries of any national forest: *Provided, however,* That surface coal mining operations may be permitted on such lands, if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations; and

(1) Surface operations and impacts are incident to an underground coal mine; or

(2) The Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those national forests west of the 100th meridian, that surface coal mining operations comply with the Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. 528-631), the Federal Coal Leasing Amendments Act of 1976 (Pub. L. 94-377, 30 U.S.C. 201 et seq.), the National Forest Management Act of 1976 (90 Stat. 2949), and the provisions of the Act. No surface coal mining operation may be permitted within the boundaries of the Custer National Forest;

(c) On any lands where mining will adversely affect any publicly owned park or any places included in the National Register of Historic Places, unless jointly approved by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place;

(d) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except—

(1) Where mine access roads or haulage roads join such right-of-way line; or

(2) Where the regulatory authority or the appropriate public road authority, pursuant to being designated as the responsible agency by the regulatory authority, allows the public road to be relocated, closed, or the area affected to be within 100 feet of such road, after—

(i) Public notice and opportunity for a public hearing in accordance with § 761.12(d); and

(ii) Making a written finding that the interests of the affected public and landowners will be protected;

(e) Within 300 feet, measured horizontally, of any occupied dwelling, except when—

(1) The owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet; or

(2) The part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;

(f) Within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

(g) Within 100 feet, measured horizontally, of a cemetery; cemeteries may be relocated if authorized by applicable State law or regulations.

(h) There will be no surface coal mining, permitting, licensing or exploration of Federal lands in the National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas, unless called for by Acts of Congress.

(4) PR 4194, Sept. 14, 1983, as amended at 61 FR 2591, July 18, 1996; 51 FR 2638, July 23, 1986; 52 FR 1261, Feb. 10, 1987)

REPEAL NOTE: At 61 PR 4180, Nov. 20, 1996, paragraph (b) of § 761.11 was suspended.

§ 761.12 Procedures.

(a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the regulatory authority shall review the application to determine whether surface coal mining operations are limited or prohibited under § 761.11 on the lands which would be disturbed by the proposed operations.

(b)(1) Where the proposed operation would be located on any lands listed in § 761.11 (a), (f), or (g), the regulatory authority shall reject the application if the applicant has no valid existing rights for the area, or if the operation did not exist on August 3, 1977.

(2) If the regulatory authority is unable to determine whether the proposed operation is located within the boundaries of any of the lands in § 761.11 (a) or closer than the limits provided in § 761.11 (f) and (g), the regulatory authority shall transmit a copy of the relevant portions of the permit application to the appropriate Federal,

(1) The owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet; or

(2) The part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;

(f) Within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

(g) Within 100 feet, measured horizontally, of a cemetery; cemeteries may be relocated if authorized by applicable State law or regulations.

(h) There will be no surface coal mining, permitting, licensing or exploration of Federal lands in the National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas, unless called for by Acts of Congress.

(4) PR 4194, Sept. 14, 1983, as amended at 61 FR 2591, July 18, 1996; 51 FR 2638, July 23, 1986; 52 FR 1261, Feb. 10, 1987)

REPEAL NOTE: At 61 PR 4180, Nov. 20, 1996, paragraph (b) of § 761.11 was suspended.

State, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The regulatory authority, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional 30 days. If no response is received within 90-day period or within the extended period granted, the regulatory authority may make the necessary determination based on the information it has available.

(o) Where the proposed operation would include Federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under § 761.11(b), the applicant shall submit a permit application to the Director for processing under subchapter D of this chapter. Before acting on the permit application, the Director shall ensure that the Secretary's determination has been received and the findings required by section 522(e)(2) of the Act have been made.

(d) Where the mining operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in § 761.11(d)(2)) or where the applicant proposes to relocate or close any public road, the regulatory authority or public road authority designated by the regulatory authority shall—

- (1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;
- (2) Provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;
- (3) If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a

newspaper of general circulation in the affected locale at least 2 weeks prior to the hearing; and

(4) Make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operation. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the regulatory authority or public road authority determines that the interests of the public and affected landowners will be protected.

(e)(X) Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

(2) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.

(3)(X) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

(ii) A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if the mining has proceeded to within the 300-foot limit prior to the date of purchase.

(X1) Where the regulatory authority determines that the proposed surface coal mining operation will adversely affect any publicly owned park or place included in the National Register of Historic Places, the regulatory au-

thority shall transmit to the Federal, State, or local agency with jurisdiction over the park or place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The regulatory authority, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days or the extended period granted shall constitute an approval of the proposed permit.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(g) If the regulatory authority determines that the proposed surface coal mining operation is not prohibited under section 522(e) of the Act and this part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to part 762, 764 or 769 of this chapter.

(h) A determination by the regulatory authority that a person holds or does not hold valid existing rights or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under §§ 776.11 and 776.13 of this chapter.

(48 FR 4134, Sept. 14, 1983, as amended at 52 FR 4261, Feb. 10, 1987)

**PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS**

- Sec. 762.1 Scope.
- 762.4 Responsibility.
- 762.5 Definitions.
- 762.11 Criteria for designating lands as unsuitable.
- 762.12 Additional criteria.
- 762.13 Land exempt from designation as unsuitable for surface coal mining operations.
- 762.14 Exploration on land designated as unsuitable for surface coal mining operations.

**Authority:** Pub. L. 96-47, 50 U.S.C. 1201 et seq., and Pub. L. 100-3.

**Source:** 48 FR 4136, Sept. 14, 1983, unless otherwise noted.

**§ 762.1 Scope.**

This part establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations.

**§ 762.4 Responsibility.**

The regulatory authority or OSM shall use the criteria in this part for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

**§ 762.5 Definitions.**

For purposes of this part:

*Fragile lands* means areas containing natural, ecologic, scientific, or esthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

*Historic lands* means areas containing historic, cultural, or scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

*Natural hazard lands* means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

Renewable resource lands means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber production, such lands to include aquifers and aquifer recharge areas.

Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. Costs of acquiring the coal in place, or the right to mine it alone without other significant investments, as described above, are not sufficient to constitute substantial legal and financial commitments.

(46 FR 4130, Sept. 14, 1983, as amended at 53 FR 1796, May 19, 1987; 53 FR 2664, July 13, 1988)

§ 762.11 Criteria for designating lands as unminable.

(a) Upon petition an area shall be designated as unminable for all or certain types of surface coal mining operations, if the regulatory authority determines that reclamation is not technologically and economically feasible under the Act, this chapter or an approved State program.

(b) Upon petition an area may be (but is not required to be) designated as unminable for certain types of surface coal mining operations, if the operations will—

- (1) Be incompatible with existing State or local land use plans or programs;

(2) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;

(3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

§ 762.12 Additional criteria.

(a) A State regulatory authority may establish additional or more stringent criteria for determining whether lands within the State should be designated as unminable for coal mining operations. Such criteria shall be approved pursuant to subchapter O of this chapter.

(b) The Secretary may establish additional criteria for determining whether Federal lands should be designated as unminable for surface mining operations.

(c) Additional criteria will be determined to be more stringent on the basis of whether they provide for greater protection of the public health, safety and welfare or the environment, such that areas beyond those specified in the criteria of this part would be designated as unminable for surface coal mining operations.

§ 762.13 Land exempt from designation as unminable for surface coal mining operations.

The requirements of this part do not apply to—

(a) Lands on which surface coal mining operations were being conducted on the date of enactment of the Act;

(b) Lands covered by a permit issued under the Act; or

(c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

§ 762.14 Exploration on land designated as unminable for surface coal mining operations.

Designation of any area as unminable for all or certain types of surface coal mining operations pursuant to section 822 of the Act and regulations of this subchapter does not prohibit coal exploration operations in the area. If conducted in accordance with the Act, this chapter, any approved State or Federal program, and other applicable requirements, exploration operations on any lands designated unminable for surface coal mining operations must be approved by the regulatory authority under part 772 of this chapter, to ensure that exploration does not interfere with any value for which the area has

been designated unminable for surface coal mining.

PART 764—STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Sec.

764.1 Scope.

764.10 Information collection.

764.11 General process requirements.

764.12 Petitions.

764.13 Initial processing, recordkeeping, and notification requirements.

764.14 Hearing requirements.

764.15 Data base and inventory system requirements.

764.16 Public information.

764.17 Regulatory authority responsibility for implementation.

764.18 Authority: 30 U.S.C. 1201 et seq. and Pub. L. 100-54.

SOURCE: 48 FR 4130, Sept. 14, 1983, unless otherwise noted.

§ 764.10 Scope.

This part establishes minimum procedures and standards to be included in each approved State program for designating non-Federal and non-Indian lands in a State as unminable for all or certain types of surface coal mining operations and for terminating designations.

§ 764.10 Information collection.

The information collection requirements contained in §§ 764.21 and 764.25(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0030. The information required in § 764.21 is necessary to allow the regulatory authority to develop a data base and inventory system to evaluate whether reclamation is feasible in areas covered by petition. The information required in § 764.25(b) is necessary to allow the regulatory authority to determine, when a permit application is filed, whether it includes any areas designated as unminable for surface coal mining.

§ 764.11 General process requirements.

Each State shall establish a process enabling objective decisions to be made on which, if any, land areas of the

State are unminable for all or certain types of surface coal mining operations. These decisions shall be based on competent, scientifically sound data and other relevant information. This process shall include the requirements listed in this part.

§ 764.13 Petitions.

(a) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unminable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

(b) Designation. The regulatory authority shall determine what information must be provided by the petitioner to have an area designated as unminable for surface coal mining operations.

(1) At a minimum, a complete petition for designation shall include—

- (i) The petitioner's name, address, telephone number, and notarized signature;

- (ii) Identification of the petitioned areas, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area;
- (iii) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;
- (iv) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interests; and
- (v) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unminable for all or certain types of surface coal mining operations, pursuant to specific criteria of sections 822(a) (2) and (3) of the Act, as

suming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interest to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned areas.

(2) The regulatory authority may request that the petitioner provide other supplementary information which is readily available.

(c) Termination. The regulatory authority shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for termination shall include—  
(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;

(iii) An identification of the petitioner's interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) Allegations of facts covering all areas for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined. For areas previously

and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be maintained on the following bases:

(A) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in § 762.11(b) of this chapter;

(B) Reclamation now being technologically and economically feasible if the designation was based on the criteria found in § 762.11(e) of this chapter; or

(C) Resources or conditions not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in § 762.11(b) of this chapter.

(2) The State regulatory authority may request that the petitioner provide other supplementary information which is readily available.

**§ 764.16 Initial processing, record-keeping, and notification requirements.**

(a)(1) Within 30 days of receipt of a petition, the regulatory authority shall notify the petitioner by certified mail whether the petition is complete under § 764.13 (b) or (c). Complete, for a designation or termination petition, means that the information required under § 764.13 (b) or (c) has been provided.

(2) The regulatory authority shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the regulatory authority finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(3) If the regulatory authority determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of § 764.13(a), it shall return the petition

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to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the regulatory authority shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations. If the petition does not contain such material, the regulatory authority may choose not to consider the petition and may return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

(5) The regulatory authority shall notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.

(6) The regulatory authority may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the regulatory authority may issue a decision on a complete and accurate permit application and shall inform the petitioner why the regulatory authority cannot consider the part of the petition pertaining to the proposed permit area.

(b)(1) Promptly after a petition is received, the regulatory authority shall notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in any official State register of public notices. The regulatory authority shall make copies of the petition available to the public and shall provide copies of the petition to other interested governmental agencies, intervenors, persons with an ownership interest in the property, and other persons known to the regulatory authority to have an interest in the property. Proper notice to persons with

an ownership interest of record in the property shall comply with the requirements of applicable State law.

(2) Promptly after the determination that a petition is complete, the regulatory authority shall request submissions from the general public of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State register of public notices.

(3) Until three days before the regulatory authority holds a hearing under § 764.17, any person may intervene in the proceeding by filing allegations of facts describing how the designation determination directly affects the intervenor, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

(4) Beginning from the date a petition is filed, the regulatory authority shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the regulatory authority. The regulatory authority shall make the record available to the public for inspection free of charge and for copying at reasonable cost during all normal hours at the main office of the regulatory authority. The regulatory authority shall also maintain information at or near the area in which the petitioned land is located and make this information available to the public for inspection free of charge and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

(5) FR 4131, Sept. 14, 1993, as amended at 52 FR 4923, 4924, Dec. 30, 1987.

**§ 764.17 Hearing requirements.**

(a) Within 10 months after receipt of a complete petition, the regulatory authority shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The regulatory authority may subpoena witnesses as necessary. The hearing may be conducted with cross-



examination of expert witnesses only. A record of the hearing shall be made and preserved according to State law. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by the regulatory authority in its decision on the petition.

(b)(1) The regulatory authority shall give notice of the date, time, and location of the hearing to:

(1) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(11) The petitioner and the intervenors; and

(111) Any person known by the regulatory authority to have a property interest in the petitioned area. Proper notice to persons with an ownership interest of record shall comply with the requirements of applicable State law.

(2) Notice of the hearing shall be sent by certified mail to petitioners and intervenors, and by regular mail to government agencies and property owners involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

(3) The regulatory authority shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 3 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the public hearing. The consecutive weekly advertisement must begin between 4 and 8 weeks before the scheduled date of the public hearing.

(4) The regulatory authority may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(5) Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

(7) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

§ 764.19 Decision.

(a) In reaching its decision, the regulatory authority shall use—

(1) The information contained in the data base and inventory system;

(2) Information provided by other governmental agencies;

(3) The detailed statement when it is prepared under § 764.17(c); and

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the regulatory authority, including a statement of reasons, within 90 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The regulatory authority shall simultaneously send the decision by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the proceeding.

(c) The decision of the State regulatory authority with respect to a petition, or the failure of the regulatory authority to act within the time limits set forth in this section, shall be subject to judicial review by a court of competent jurisdiction in accordance with State law under section 826(c) of the Act and § 77b.13 of this chapter. All relevant portions of the data base, inventory system, and public comments received during the public comment period set by the regulatory authority shall be considered and included in the record of the administrative proceeding.

§ 764.21 Data base and inventory system requirements.

(a) The regulatory authority shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The regulatory authority shall include in the system information relevant to the criteria in § 762.11 of this chapter, including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Officer,

Surface Mining Reclamation and Enforcement, Interior and the agency administering section 127 of the Clean Air Act, as amended (42 U.S.C. 1470 *et seq.*).

(c) The regulatory authority shall add to the data base and inventory system information—

(1) On potential coal resources of the State, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the regulatory authority to prepare the statements required by § 764.17(e); and

(2) That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

§ 764.23 Public information.

The regulatory authority shall:

(a) Make the information in the data base and inventory system developed under § 764.21 available to the public for inspection free of charge and for copying at reasonable cost, except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the regulatory authority determines that the disclosure of such information would create a risk of destruction or harm to such properties;

(b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

§ 764.25 Regulatory authority responsibility for implementation.

(a) The regulatory authority shall not issue permits which are inconsistent with designations made pursuant to part 761, 762, or 764 of this chapter.

(b) The regulatory authority shall maintain a map or other unified and cumulative record of areas designated unsuitable for all or certain types of surface coal mining operations.

(c) The regulatory authority shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting

**NOTICE OF PROPOSED RULEMAKING**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**ENVIRONMENTAL QUALITY BOARD**  
**(25 PA CODE, CHAPTER 86)**  
**SURFACE AND UNDERGROUND COAL MINING: GENERAL**

**PREAMBLE**

The Environmental Quality Board (Board) by this order amends 25 Pa. Code, Chapter 86 (relating to surface and underground coal mining: general). The amendments are the result of the Department of Environmental Protection's Regulatory Basics Initiative and Executive Order 1996-1, which directed the Department to revise regulations which are more stringent than federal law, unless there is a compelling state interest; lack clarity; and which impose disproportionate costs on the regulated community.

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

**A. Effective Date**

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

**B. Contact Persons**

For further information, contact David C. Hogeman, Chief, Division of Environmental Analysis and Support, Bureau of Mining and Reclamation, Room 213 Executive House, P.O. Box 8461, Harrisburg, PA 17105-8461, 717-787-4761, or Joseph Pizarchik, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, 9th Floor, Harrisburg, PA 17105-8464, 717-787-7060. Information regarding submitting comments on this proposal appears in Section I of this Preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Website (<http://www.dep.state.pa.us>).

**C. Statutory Authority**

These amendments are proposed under the authority of the following provisions of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1-19a); Section 4.2(a), 52 P.S. § 1396.4b(a), which provides general rulemaking authority, Section 4.5, 52 P.S. § 1396.4e, which provides for the

designation of an area as unsuitable for all or certain types of surface mining operations; and under the following provisions of the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51-66); Section 3.2(a), 52 P.S. § 30.53b(a), which authorizes the adoption of rules and regulations, Section 6.1, 52 P.S. § 30.56a, which provides for the designation of an area as unsuitable for all or certain types of coal refuse disposal operations; and under the following provisions of the Clean Streams Law (35 P.S. §§ 691.1-1001); Section 5, 35 P.S. § 691.5, which authorizes the adoption of rules and regulations, Section 315(h)-(o), 35 P.S. § 691.315(h)-(o), which provides for the designation of an area as unsuitable for all or certain types of surface mining operations; and under Sections 1920-A and 1930-A of the Administrative Code of 1929, 71 P.S. §§ 510-20 and 510-30, which authorizes the adoption of regulations necessary for the Department to perform its work.

**D. Background and Purpose**

These amendments are the result of the Department's Regulatory Basics Initiative, which was initiated in August 1995, and Governor Ridge's Executive Order 1996-1 dated February 6, 1996. Under both of these initiatives, the Department was directed to review its existing regulations to ensure that they were consistent with several rulemaking directives. The Department has solicited public input concerning its existing regulations. Comments received by the Department, and the Department's own review of its existing regulations, have identified a number of provisions which need to be revised. These are contained in this rulemaking package.

In August of 1995, the Department began the Regulatory Basics Initiative to analyze regulations which were more stringent than federal law and regulations, lacked clarity, and imposed disproportionate costs on the regulated community. Regulations which are more stringent than federal requirements are proposed for revision, unless justified by a compelling and articulable Pennsylvania interest or required by state law.

As a result of this review, the Department developed two alternative proposals for consideration and presented them to the Mining and Reclamation Advisory Board (MRAB) at its meeting of October 3, 1996.

The first of these alternatives, in addition to providing clarity and changing those regulations found to be more stringent than federal requirements, would have changed the existing EQB rulemaking process to a Department decision-making process. The existing rulemaking process involves substantial administrative and technical effort and requires 19 to 27 months to reach a final decision. This process does not allow a final regulatory decision on a designation to be made within 12 months. This "adjudicatory" version provided for a public hearing early in the petition review process, reduced the time necessary to make a final decision on the petition by approximately one year and would have subjected Department decisions to review by the Environmental Hearing Board.

The second alternative, which is the subject of this proposed rulemaking, would retain the existing EQB rulemaking process. Although this process does require additional time to reach a final decision, it also provides a more significant level of public participation in decisions concerning the designation of areas as unsuitable for mining, in keeping with this administration's objective to improve public access to information and decision making in the Department. Under this approach the Department makes a final recommendation to the Board within 12 months of the receipt of a complete petition.

Numerous changes to the regulatory language in Section 86.1 and Sections 86.101-86.130 are being proposed to provide clarity and to enhance the consistency with the language used in federal regulations. Sections 86.102(9), 86.103(e) and 86.129 are being changed because they were found to be more stringent than federal requirements. Metric equivalences have also been incorporated where appropriate.

Under the Regulatory Basics Initiative, the Department solicited public input through a notice in the *Pennsylvania Bulletin* at 25 P.S. 3343 (August 19, 1995) and the Department's Website (<http://www.dep.state.pa.us>). The amendments proposed are the result of suggestions from the public and the Department's own review of its regulations.

The proposed amendments were discussed with the Mining and Reclamation Advisory Board (MRAB) at its meeting of October 3, 1996. The MRAB recommended that the Board consider an adjudicatory decision-making process for proposed rulemaking.

#### **E. Summary of Amendments**

Numerous nonsubstantive changes have been made throughout these regulations to correct references to agency names, typographical errors and to clarify language and add metric equivalences where appropriate. Substantive changes are described below by section.

##### **§ 86.1. Definitions.**

The proposed changes would add a definition for "Administratively complete application" as it is defined by federal regulations in 30 CFR Section 701.5 (relating to permanent regulatory program: definitions) and would delete the definition for "complete application." This change will provide clarification of the mine permit application requirements consistent with the context in which the term is used in the Department's coal mining regulations.

The proposed changes would also replace the definition of “valid existing rights” with a reference to the term defined by federal regulations in 30 CFR Section 761.5 (relating to areas unsuitable for mining). This change is consistent with state statutory requirements. 52 P.S. 1396.4e. The Office of Surface Mining Reclamation and Enforcement (OSMRE) is considering revisions to this definition in response to court rulings, and a reference to the federal requirements will avoid the need for future rulemaking if changes are implemented by OSMRE.

§ 86.101. Definitions.

The definitions of “fragile lands”, “historic lands”, “public building”, “public park”, “renewable resource lands”, “significant recreational, timber, economic or other values incompatible with surface mining”, and “surface mining operations”, are being changed for clarification consistent with the language used in federal regulations in 30 CFR Section 700.5 (relating to general: definitions), Section 701.5 (relating to permanent regulatory program: definitions), Section 761.5 (relating to areas unsuitable for mining: definitions), and Section 762.5 (relating to criteria for designating areas as unsuitable for surface coal mining operations: definitions).

§ 86.102. Areas where mining is prohibited or limited.

§ 86.102(1) is being changed to be consistent with 30 CFR Section 761.11 (relating to areas where mining is prohibited or limited) by providing a prohibition of mining on Wild and Scenic Rivers or study river corridors established in any guidelines pursuant to the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)).

§ 86.102(3) is being changed to delete the prohibition of mining for sites which are eligible for listing, but not listed, on the National Register of Historic Places. This change is consistent with 30 CFR Section 761.11(c) (relating to areas where mining is prohibited or limited).

§ 86.102(4), (5) and (7) are being changed to add the Department of Conservation and Natural Resources as approving authority for mine permit actions on certain Commonwealth property consistent with the responsibility assigned to that agency.

§ 86.102(9) was found to be more restrictive than federal counterpart regulations in 30 CFR Section 761.11(e) (relating to mining restrictions within 300 feet of an occupied dwelling). The proposed changes would provide that a valid waiver of the mining restriction by a property owner would remain in effect against subsequent owners who had actual or constructive knowledge of the existing waiver. This change is consistent with the federal requirements.

§ 86.102(11) is being changed to provide clarification that cemeteries, which serve as barriers to mining, may be moved in accordance with applicable law. The change is consistent with federal requirements in 30 CFR Section 761.11(g).

§ 86.103. Procedures.

§ 86.103(d) is being changed in order to be consistent with the proposed changes concerning mining restrictions within 300 feet of an occupied dwelling in § 86.102(9) (relating to areas where mining is prohibited or limited).

§ 86.103(e) was found to be more stringent than federal requirements concerning notification where proposed surface mining would adversely affect a publicly owned park. This proposed change will make the state requirement consistent with federal requirements in 30 CFR Section 761.12(f) (relating to procedures).

§ 86.121. Areas designated unsuitable for mining.

This section is being clarified to be consistent with the federal language in 30 CFR Section 762.13 (relating to land exempt from designation as unsuitable for surface coal mining operations).

§ 86.123. Procedures: petitions.

§ 86.123(c)(5) is being clarified to be consistent with federal language in 30 CFR Section 764.13(a) (relating to petitions: right to petition) which requires a demonstration of an "injury in fact" to determine that a petitioner has an interest that could be adversely affected.

§ 86.124. Procedures: initial processing, record keeping and notification requirements.

§ 86.124(a)(2) is being changed to provide clarification that a frivolous petition is one in which the allegations of harm resulting from mining do not have serious merit. This change is consistent with the language of federal regulations in 30 CFR Section 764.15(a)(3) (relating to initial processing, recordkeeping and notification requirements).

§ 86.124(c) is being changed to include a requirement that intervenors describe how they are directly affected.

§86.124(f) is being changed to provide that the Department will prepare a recommendation within 12 months of the receipt of a complete petition.

§ 86.125. Procedures: hearing requirements.

§86.125 (a)-(i) is being changed to provide clarification that is the Department's responsibility to conduct public hearings on petitions and to provide notice of the hearings to the public, the petitioner and intervenors.

§86.125 (j) provides clarification that within 60 days of the close of the public comment period on a petition, the Department will prepare a recommendation to the EQB and will provide written notice of its recommendation to the petitioner and intervenors.

§ 86.126. Procedures: decision.

The changes to this section would provide clarification of the decision making process for those cases where the EQB determines that an area under petition should not be designated as an area unsuitable for mining. These changes are consistent with the federal requirements in 30 CFR Section 764.17 (relating to hearing requirements), Section 764.19 (relating to decision), Section 764.23 (relating to public information), and Section 764.25 (relating to regulatory authority responsibility for implementation).

§ 86.127. Database and inventory system requirements.

This section contains several minor stylistic and format changes.

§ 86.128. Public information.

The purpose of the changes to this section is to correct language format and agency citations.

§ 86.129. Coal exploration.

This section was found to be more stringent than federal requirements because of restrictions on exploration activities within areas under petition for designation as unsuitable for mining, which are not contained in the federal regulations. The proposed changes make this section consistent with the federal requirements in 30 CFR Section 762.14 (relating to exploration on land designated as unsuitable for surface coal mining operations).

§86.130. Areas Designated as Unsuitable for Mining.

This section contains numerous minor changes that provide metric measurements for existing designations.

**F. Benefits, Costs and Compliance**

Executive Order 1996-1 requires a cost/benefit analysis of these proposed regulations.

Benefits

These amendments are proposed in order to reduce unnecessary requirements, provide clarity, eliminate redundant or outdated requirements or eliminate state requirements more stringent than their federal counterparts, where there is no compelling state interest in being more stringent.

The coal mining industry, the public and state government could see savings in the form of reduced time necessary to read and interpret regulations.

Compliance

The proposed changes are procedural and administrative in nature. They will impose no additional compliance costs on the regulated community. The Department conducts public information workshops for persons or organizations who may be interested in having an area designated unsuitable for mining. These workshops will be modified to describe the changes to the designation process made by these amendments.

Coal mine operators who may be affected by a request to designate an area as unsuitable for mining are identified by the Department when a petition is received and are notified of the regulatory requirements, in writing.

Costs

The proposed amendments will impose no additional costs or paperwork requirements on the regulated community. These amendments may reduce the time necessary to read and interpret regulations resulting in potential savings to the regulated community and state government.



**G. Sunset Review**

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

**H. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), the Department submitted a copy of the proposed amendment on Feb. 2, 1998 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

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

**I. Public Comments**

Written Comments -- Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (Express Mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments received by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 15, 1998 (within 60 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by April 15, 1998 (within 60 days of publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments -- Comments may be submitted electronically to the Board at RegComments@A.1.dep.state.pa.us and must also be received by the Board by April 15, 1998. A subject heading of the proposal, and a return name and address, must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within two working days, the comments should be retransmitted to ensure receipt.

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**JAMES M. SEIF**  
**Chairman**  
**Environmental Quality Board**



Pennsylvania Department of Environmental Protection

**Rachel Carson State Office Building**

**P.O. Box 2063**

**Harrisburg, PA 17105-2063**

**February 2, 1998**

**The Secretary**

**Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14th Floor, Harristown II  
Harrisburg, PA 17101**

**RE: Proposed Rulemaking: General Provisions and Areas Unsuitable for Mining (#7-331)**

**Dear Bob:**

Enclosed is a copy of a proposed regulation for review by the Independent Regulatory Review Commission pursuant to the Regulatory Review Act. Section 5(b)(3) of the Act provides that the Commission shall have 30 calendar days from the closing date of the public comment period to notify the Department of any objections.

The Department of Environmental Protection will provide the Commission with any assistance it may require to facilitate the review of this proposed regulation. If you have any questions regarding this proposal, please contact Sharon Freeman, Regulatory Coordinator, at 783-1303.

Sincerely,

**James M. Seif  
Secretary**

**Enclosure**

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 7-331  
SUBJECT: General Provisions and Areas Unsuitable for Mining  
AGENCY: Department of Environmental Protection

RECEIVED  
98 FEB -2 PM 4: 04  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

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**TYPE OF REGULATION**

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolloed Regulation
  - a.  With Revisions
  - b.  Without Revisions

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**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
<u>2/2/98</u>	<u>Yori Comp</u>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY
<u>2-2-98</u>	<u>Shavita L. Melle</u>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY
<u>2/2/98</u>	<u>Kim C. Garner</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
<u>2/2/98</u>	<u>Cynthia</u>	LEGISLATIVE REFERENCE BUREAU

January 23, 1998