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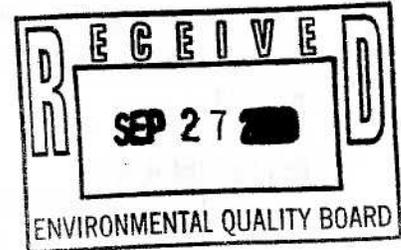
Pennsylvania Coal Association

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September 27, 2006

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RE: Proposed Mine Opening Blasting Regulations

To Whom It May Concern:

The Pennsylvania Coal Association (PCA) submits the following comments on the proposed final Mine Opening Blasting Regulations that were published in the *Pennsylvania Bulletin* for public comment on September 2, 2006.

PCA is a trade association organized and operating under the laws of Pennsylvania representing producers of bituminous coal in Pennsylvania. PCA members produce about 70% of the approximately 70 million tons of bituminous coal mined in Pennsylvania annually, with approximately 75% of total bituminous coal production from underground mines. PCA members produce coal by both underground and surface mining methods. PCA also has approximately 90 associate members who work with, support and depend upon the mining industry. Because PCA represents producers of bituminous coal, its comments are directed to the proposed regulations that would apply to underground blasting in connection with construction of shafts and slopes for bituminous coal mines. Underground blasting for the purpose of these comments does not include the initial two blasts that would be conducted at or near the surface. Specifically, these comments apply to the proposed amendments to 25 Pa. Code Sections 87.1, 87.127(a), 89.5, 89.62, 210.11, 210.12, and 210.17(a).

Introduction

Underground bituminous coal mine seams are typically 200 to 600 feet below the surface. Shafts and slopes are used to transport miners and materials into and out of underground mines and to transport coal out of the mines. Shafts are also used to ventilate underground coal mines.

Via the proposed regulatory amendments concerning mine opening blasting, DEP is attempting to apply surface blasting regulations to blasting at coal mine shaft and slope construction operations subsequent to the first two blasts, which DEP lacks legal authority to do because (1) the proposed regulations will violate Executive Order 1996-1

and/or (2) such blasting is not a surface mining activity as defined in the Section 3 of the Surface Mining Conservation and Reclamation Act (Pa. SMCRA). 52 P.S. §1396.3. Also, because shaft and slope construction does not fall within the scope of the definition of "surface mining activities" in Pa. SMCRA (other than activities on the surface and the first two blasts at shaft and slope construction activities), there is no legal authority for DEP to require blasters for the underground blasts to obtain licenses under 25 Pa. Code Chapter 210. Finally, DEP failed to conduct a proper analysis of the benefits and costs of the proposed regulatory amendments that pertain to underground blasting at shaft and slope construction operations because DEP's conclusions are based on the incorrect premise that currently the surface blasting regulations are applicable to such underground blasting.

Background

In 1977, Congress passed the Federal Surface Mining Control and Reclamation Act, 30 U.S.C. 1201, et seq. (Federal SMCRA), to set national standards for regulation of the impacts of surface coal mining operations. Federal SMCRA was based in large part on Pa. SMCRA as it existed at that time. Under Federal SMCRA, the states are able to obtain primary authority to regulate surface coal mining activities by developing a state regulatory program that is at least as stringent as the federal program. 30 U.S.C. §1253. This is referred to as obtaining "primacy." The Federal Office of Surface Mining Reclamation and Enforcement (OSM) promulgated federal regulations to implement Federal SMCRA and which served as guides for the states in adopting state regulatory programs. The federal regulation which deals with blasting at shaft and slope construction operations is 30 CFR 817.61, which was adopted on March 13, 1979. 30 CFR 817.61(a) provides:

§817.61 Use of explosives: General requirements

(a) Sections 817.61 – 817.68 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

In the preamble to 30 CFR 817.61, OSM made it clear that the Federal SMCRA surface mining blasting regulations were not intended to apply to blasting conducted in shaft and slope construction activities other than the initial blast or two. See, 44 Fed. Reg. at 15269 (March 13, 1979), a copy of which is attached. The following two quotes from the preamble demonstrate OSM's intent:

Numerous commenters have pointed out an obvious ambiguity in the proposed blasting regulations for underground mining. Although proposed Section 87.65(a) stated that the provisions of that Section applied only to blasting conducted on the surface, that distinction was not made for the rest of Sections 817.61 – 817.68 [OSM's regulations for surface blasting incidental to underground coal mining]. Adoption of alternative two clarified the Office's [OSM's] intent not to regulate blasting performed underground, because this activity is adequately controlled by MSHA [the Federal Mine Safety and Health Administration].

One commenter pointed out that MSHA's proposed rule, Section 77.1308(i), will allow blasting at night in slopes and shafts at underground operations except for the initial rounds on the surface. The Office [OSM] finds no conflict with MSHA's proposed rule, as the Office [OSM] does not regulate blasting under Part 817 inside underground mine workings. Initial rounds of slopes and shafts have been provided for in final Section 817.61(a) which regulates surface blasting for underground mining.

44 Fed. Reg. 15269 (March 13, 1979).

Pennsylvania's regulatory program was conditionally approved on July 31, 1982. 47 Fed. Reg. 33,050-83 (1982). One of the state underground coal mining regulations that became effective on July 31, 1982, when the state regulatory program was approved is 25 Pa. Code §89.62. Section 89.62 has not been amended since it initially became effective. It provides:

§ 89.62. Use of explosives.

Each person who conducts surface blasting activities incident to underground mining activities, including but not limited to initial rounds of slopes and shafts, shall conduct the activities in compliance with Chapter 87 (relating to surface mining of coal).

25 Pa. Code §89.62 is substantively equivalent to 30 CFR 817.61(a). When the provisions of Chapter 89 including 25 Pa. Code §89.62 were adopted by the EQB, there was no discussion of Section 89.62 in the preamble to the regulations. The state regulations were adopted as part of Pennsylvania's effort to develop a state coal mining regulatory program as stringent as the federal regulatory program, but also to retain preexisting state law to the maximum extent possible. See, Section 17 of the Act of October 10, 1980, P.L. 835, No. 155, which was part of the 1980 amendments to Pa. SMCRA directed at obtaining primacy and which is quoted at page 5 below. Given that there was no discussion of Section 89.62 in the preamble to the state regulations, it is logical to assume that the state regulation was intended to conform to the federal regulation and to assume that the state was aware of OSM's explanation that the scope of its regulation was to limit application of surface blasting regulations to only the initial few blasts at the surface for shaft and slope construction blasting.

The Proposed Regulations Will Violate Executive Order 1996-1

Executive Order 1996-1 is codified at 4 Pa. Code §§ 1.371 to 1.382. It deals with regulatory review and promulgation. Section 1.371(5) provides:

(5) If Federal regulations exist, regulations of the Commonwealth may not exceed Federal standards unless justified by a compelling and articulable Pennsylvania interest or required by State law.

The proposed amendments that would make the surface mining blasting regulations applicable to all blasting at coal mine shaft and slope construction operations violate the standard expressed in 25 Pa. Code § 1.371(5) because they exceed the corresponding federal standards and DEP has not demonstrated that application of the surface blasting regulations to underground blasting at shaft and slope construction operations is justified by a compelling and articulable Pennsylvania interest or compelled by state law.

Application of the surface blasting regulations to underground blasting at shaft and slope construction operations is clearly not compelled by state law. From 1982 until early 2005, DEP regulated underground blasting at shaft and slope construction operations as an underground mining activity and such operations were inspected and regulated by DEP Bureau of Deep Mine Safety inspectors under authority of the Pennsylvania Bituminous Coal Mine Act, 52 P.S. § 701-101, et seq. DEP admits in the Background and Purpose section of the preamble that “until recently” it did not apply the current surface mining blasting regulations to more than the initial two mine opening blasts. However, as discussed below, DEP has “recently” changed its interpretation of the definition of “surface mining activities” in Section 3 of Pa. SMCRA, 52 P.S. § 1396.3, to support its “recent” decision to apply surface blasting regulations to underground blasting at shaft and slope construction operations.

DEP also admits in the Background and Purpose section of the preamble that “mine opening construction is subject to the requirements of the Underground Coal and Industrial Minerals Mine Safety Acts” (which for bituminous underground mines is the Pennsylvania Bituminous Coal Mine Act). Indeed, blasting in shafts and slopes is specifically addressed in the Pennsylvania Bituminous Coal Mine Act. See, for example, 52 P.S. §§ 701-103(4) and (6) (defining “bituminous coal mines” and “mine” to include shafts and slopes and excluding “strip” or surface mines from the definition of “mine”); §701-260 (providing that blasting in gassy mines must be conducted by a certified “shot firer” or by certain other certified personnel); and §701-290(1)(4) (providing responsibilities for the person in charge of shaft or slope construction, including the method of detonating blasts). The same provisions also support the logical conclusion that shaft and slope construction operations that are conducted hundreds of feet beneath the natural land surface are underground mining activities; not surface mining activities as DEP contends based upon its recently revised interpretation of the definition of “surface mining activities”. Further support that shaft and slope construction operations that are conducted beneath the natural land surface are underground mining activities is evident from subsections 701-223A(k) and (n) of the Pennsylvania Bituminous Coal Mine Act, 52 P.S. §701-223A(k) and (n), which provide for establishment of conditions for use of diesel powered equipment in shaft and slope construction operations based on recommendations of the Technical Advisory Committee for Diesel-Powered Equipment and provide that the powers and duties of the advisory committee are limited to matters regarding the use of diesel-powered equipment in underground coal mines. (If shaft and slope construction were not subject to regulation under the Pennsylvania Bituminous Coal Mine Act, the Committee would not have any authority to recommend conditions for use of diesel powered equipment in such operations.)

Instead of state law requiring application of the surface blasting regulations to underground blasting at shaft and slope construction operations, state law requires that the surface blasting regulations should not be applied to such operations. When Pa. SMCRA was amended in 1980 as part of the Commonwealth's development of a coal mining regulatory program designed to obtain primacy, the General Assembly expressed its intent to limit changes in state law to the extent necessary to obtain primacy.

It is hereby determined that it is in the public interest for Pennsylvania to secure primary jurisdiction over the enforcement and administration of Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, and that the General Assembly should amend this act in order to obtain approval of the Pennsylvania program by the United States Department of Interior. It is the intent of this act preserve existing Pennsylvania law to the maximum extent possible.

Act of October 10, 1980, P.L. 835, No. 155, §17.

As discussed above, OSM's regulations do not require that surface blasting regulations be applied to underground blasting in shaft and slope construction operations. Furthermore, at one of the Mining and Reclamation Advisory Board meetings where DEP presented the proposed regulations to that Board for their consideration, George Rieger, Chief of the Pittsburgh Field Division of OSM, informed DEP and the Board that there is no federal requirement for state regulatory programs to apply surface blasting regulations to blasting at shaft and slope construction operations, other than the initial blasts at the surface. Because application of the surface blasting regulations to underground blasting at shaft and slope construction operations is not a primacy requirement, to impose such a requirement would be contrary to the intent of the General Assembly expressed in the 1980 amendments to Pa. SMCRA.

There also is no compelling and articulable Pennsylvania interest in applying the surface mining blasting regulations to underground blasting at shaft and slope construction operations. The reasons that DEP provides in the preamble of the regulations for applying the surface blasting regulations to underground blasting at slope and shaft construction operations are to protect the public and to protect the miners working in the shaft and slope construction operations.

DEP has not demonstrated that its proposed regulations are necessary to protect the public. From at least 1982 until the spring of 2005, underground blasting for shaft and slope construction for bituminous underground mines was regulated as an underground mining activity under the Pennsylvania Bituminous Coal Mine Act. PCA is not aware of any incident where blasting at such operations resulted in harm to the public or damage to any dwellings or other structures. Injury to the public or to structures in the vicinity of shaft or slope construction operations is highly unlikely from blasting after the initial blasts at the surface because very minimal amounts of explosives are used in such operations and because the blast is confined in the shaft or slope. DEP has not identified in the preamble any incidents of injury to the public or damage to any structures resulting

from underground blasting at shaft or slope construction operations. Indeed, DEP changed its position from regulating such blasting as an underground mining activity to desiring to regulate it as a surface mining activity based upon complaints of one property owner near one shaft construction operation. It is our understanding that those complaints primarily concerned objections that the blasting frightened the property owner's horse. DEP does not provide any justification for its change of position in the preamble to its regulations other than to state that mine openings (shafts and slopes) are now being closer to areas of habitation. However, DEP provides no actual data to support this claim. Clearly, based upon the record that exists, DEP has not established that there is a compelling and articulable Pennsylvania interest in applying the surface blasting regulations to underground blasting at shaft and slope construction operations.

DEP has not established that its proposed regulations are necessary to protect miners. The miner safety issue that is addressed is the fact that DEP is going to amend its existing surface blasting regulation that requires all blasting to be conducted during daylight hours to allow underground blasting at shaft and slope construction operations to be conducted around the clock (because of deterioration of the sides of the shaft or slope as described in the preamble), subject to case-by-case limitations. However, there are no time limits on underground blasting in shafts or slopes regulated under the Pennsylvania Bituminous Coal Mine Act. Thus, the miner safety which DEP contends the proposed regulations will provide already exists when blasting is regulated under the Pennsylvania Bituminous Coal Mine Act.

It is clear that the proposed regulations will violate Executive Order 1996-1. Therefore, the Environmental Quality Board should not approve the proposed amendments to 25 Pa. Code Sections 87.1, 87.127(a), 89.5, 89.62, 210.11, 210.12, and 210.17(a).

Underground Blasting at Shafts and Slopes of Bituminous Coal Mines is not a Surface Mining Activity as Defined in the Section 3 of Pa. SMCRA

As discussed above, shaft and slope construction, including underground blasting conducted in connection therewith, is regulated under the Pennsylvania Bituminous Coal Mine Act. Despite decades of regulating the underground activities associated with shaft and slope construction as underground mining activities, DEP has recently changed its position and now contends that such activities are both surface and underground mining activities. DEP's new position is based on a new interpretation of the definition of "surface mining activities" in Section 3 of Pa. SMCRA.

Pa. SMCRA and the Pennsylvania Bituminous Coal Mine Act must be read together because they both regulate bituminous coal mining. Pa. SMCRA regulates surface bituminous coal mining activities and the Pennsylvania Bituminous Coal Mine Act regulates underground bituminous coal mining operations. Thus, in construing the scope of the definition of "surface mining activities" in Section 3 of Pa. SMCRA consideration must be given to the definition of "mine" in Section 3 of the Pennsylvania Bituminous Coal Mine Act.

The relevant portion of the definition “surface mining activities” in Pa. SMCRA provides:

“Surface mining activities” shall mean 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, auger mining, dredging, quarrying and leaching, and all surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and activities related thereto, but not including those portions of mining operations carried out beneath the surface by means of shafts, tunnels, of other underground mine openings....

52 P.S. § 1396.3. (Emphasis added.) (In 1992, the defined term was changed from “surface mining” to “surface mining activities” and “extraction of minerals” was changed to “extraction of coal.” See, the Act of Dec. 18, 1992, P.L. 1384, No. 173, §2. Otherwise, the definition is the same as it was when Pa. SMCRA was amended in 1980 as part of the statutory amendments to obtain primacy.

The definition of “mine” in Section 3 of the Pennsylvania Bituminous Coal Mine Act provides:

“Mine” includes the shafts, slopes, drifts, or inclined planes connected with excavations penetrating coal stratum or strata, which excavations are ventilated by one general air current, or divisions thereof, and connected by a method of transportation over which coal may be delivered to one or more points outside the mine, when such is operated by one operator. The term “mine” shall not include any strip mine.

52 P.S. § 701-103(6). (Emphasis added.)

Under the definition of “mine” in the Pennsylvania Bituminous Coal Mine Act a “mine” does not include a strip (or surface) mine and a “mine” includes shafts and slopes. Historically, DEP has regulated shaft and slope construction operations under the Pennsylvania Bituminous Coal Mine Act and DEP has not indicated that it intends to deviate from this historical practice. The definition of “surface mining activities” in Pa. SMCRA, by its plain language, applies only to surface activities connected with underground mining, including surface activities connected with shaft and slope construction. In the definition of “surface mining activities,” shaft construction and slope construction are listed as types of underground mining activities for which the surface activities connected therewith are regulated as surface mining activities. It is a misconstruction of the definition to contend that the surface activities connected with underground mining means underground activities associated with shaft and slope construction. Such a construction ignores the plain language of the definition. Also, there are obvious surface mining activities connected with shaft and slope construction,

such as road construction, excavation for site preparation, the initial one or two blasts at the surface for shaft and slope construction operations, surface placement of materials removed from the shaft or slope, and reclamation of the areas that are disturbed on the surface. These are the types of surface activities connected with shaft and slope construction that are intended to be covered by the definition of "surface mining activities" in Pa. SMCRA. DEP's new interpretation that activities conducted in shafts and slopes hundreds of feet below the land surface are surface activities connected with underground mining defies logic.

Because underground blasting at shafts and slopes is not a "surface mining activity" as defined in Pa. SMCRA, DEP lacks statutory authority to apply its surface blasting regulations to such blasting. Therefore, the Environmental Quality Board should not approve the proposed amendments to 25 Pa. Code Sections 87.1, 87.127(a), 89.5, 89.62, 210.11, 210.12, and 210.17(a).

Proposed Amendments to 25 Pa. Code Chapter 210

As explained above, only surface activities connected with shaft and slope construction fall within the scope of the definition of "surface mining activities" in Pa. SMCRA. Therefore, other than the first two blasts which are detonated at or near the surface, blasting at shaft and slope construction operations are not covered by Pa. SMCRA. Instead, underground blasting for shaft and slope construction is regulated only under the Pennsylvania Bituminous Coal Mine Act. Currently, DEP does not have rulemaking authority under the Pennsylvania Bituminous Coal Mine Act. (In PCA's opinion, this is the primary reason DEP is attempting to extend the definition of "surface mining activities" in Pa. SMCRA to underground blasting at shafts and slopes.) Because DEP does not have authority to promulgate regulations under the Pennsylvania Bituminous Coal Mine Act and because underground blasting at shafts and slopes to bituminous coal mines is regulated only under the Pennsylvania Bituminous Coal Mine Act, DEP has no authority to require licensing of such blasters under the Chapter 210 regulations. Instead, these blasters are supposed to be shot firers certified by DEP under the authority of the Pennsylvania Bituminous Coal Mine Act. See, 52 P.S. § 701-260.

Benefits and Costs Conclusions

With respect to the proposed regulatory amendments that would make the surface blasting regulations applicable to underground blasting at shaft and slope construction operations, DEP's brief discussions of the potential benefits and costs of the proposed regulations are based on an incorrect premise. It is clear from the brief discussions of the potential benefits and costs that DEP's conclusions are based upon a comparison of the proposed amended regulations to DEP's current incorrect interpretation that the definition of "surface mining activities" includes underground blasting at shaft and slope construction operations, an interpretation that was only "recently" adopted by DEP. Because DEP's interpretation of the scope of the definition of "surface mining activities" is incorrect, the proper comparison should have been to compare the costs of underground blasting at shaft and slope construction operations under the proposed regulations to the costs with only the first one or two blasts regulated under the surface blasting regulations. Because of the number and complexity of the surface blasting

regulations as compared to the applicable provisions of the Pennsylvania Bituminous Coal Mine Act identified above, it is readily apparent that the proposed regulations will not provide more flexibility to operators engaged in shaft and slope construction operations, and it is equally obvious that the proposed regulations will result in significant cost increases.

PCA appreciates the opportunity to submit these comments. Please contact the undersigned if you have any questions regarding these comments.

Sincerely,



Stanley R. Geary
Director of Regulatory Affairs

Enclosure

CC: Senator Mary Jo White
Senator Raphael Musto
Representative William F. Adolph, Jr.
Representative Camille George
Independent Regulatory Review Commission

is reopened for mining to recover the remaining coal.

The authority for this Section is found in Sections 102, 201, 501, 503, 504, 510, and 516 of the Act.

Discussion of specific language and alternative language to require fixed percentages of coal recovery are in the preamble discussion of Section 816.59 to which the reader is referred for a discussion of issues relevant to this Section.

One comment was received suggesting that specific percentages of coal recovery be required. This comment was rejected for the reasons explained in the preamble to Section 816.59.

One commenter suggested that OSM should not promulgate a standard for coal recovery of underground mining, on the grounds that the Act did not authorize Federal coal recovery standards for deep mines, citing Section 517(a) of the Act limiting inspections to strip mines. OSM has rejected this suggestion on the basis that Section 515(b)(1) itself, and as applied through Section 516(b)(10), requires coal recovery standards for deep mines. Moreover, OSM feels that Section 517(a) of the Act authorizes inspections of underground mines. Section 517(a) authorizes inspection of "surface coal mining and reclamation operations." This phrase is defined by Section 701(28) of the Act and Section 700.5 of these regulations to include the surface effects of underground mining. The amount of coal recovered has an effect on the surface in that maximum recovery can preclude the need to re-disturb the surface at a future date, a primary objective of this Section of the regulations. Maximum recovery from an underground mine may be a smaller percentage of the total coal than would be recovered using surface mining methods if such methods were feasible for the specific site.

It is understood that the operator must strike a balance between this requirement to maximize coal recovery and the requirements of Sections 817.121-126 dealing with subsidence control. Both the coal recovery plan and subsidence damage control plan must be approved by the regulatory authority.

§ 817.61-817.68 Use of explosives.

These Sections are promulgated under the authority of Sections 102, 201, 501, 503, 504, 507, 510, 515, 516, and 719 of the Act. Most of the provisions of these regulations are substantially identical to the blasting performance standards regulations for surface mining activities (Sections 816.61-816.68). To that extent, the reader is referred to the appropriate portions of the preamble for Part 816, which contains the rationale, in general, for parts of Sections 817.61-817.68

which are not specifically discussed in the preamble to Part 817.

§ 817.61 Use of explosives: General requirements.

Numerous comments were received which pertained specifically to Section 817.61. As a result of these comments, the following alternatives were considered and alternatives two, three and four were adopted by the Office.

1. Retain the wording of Section 817.61(a) as proposed.

2. Revise Section 817.61 to restrict Section 817.61-817.68 to only surface blasting activities incident to underground mining, including construction of initial rounds of slopes and shafts. As a result of such an addition, portions of Section 817.65(a) of the proposed regulations would become unnecessary.

3. Delete reference in Section 817.61(a) to Sections 816.61-816.68.

4. Delete Section 817.61 of the proposed regulations, which required a blasting schedule for surface blasting incident to underground mining.

Alternative 2—Numerous commenters have pointed out an obvious ambiguity in the proposed blasting regulations for underground mining. Although proposed Section 817.65(a) stated that the provisions of that Section applied only to blasting conducted on the surface, that distinction was not made for the rest of Sections 817.61-817.68. Adoption of alternative two clarified the Office's intent not to regulate blasting performed underground, because this activity is adequately controlled by MSHA. By adding Section 817.61(a) to the final rules, proposed Section 817.65(a) was made unnecessary and was changed in the final rules.

Alternative 3—In response to comments that underground mining activities should not be subject to all requirements of Sections 816.61-816.68, the Office revised Section 817.61(a) so that the final rules require underground mining activities to comply only with Sections 817.61-817.68, which have been appropriately tailored solely for those activities.

Alternative 4—Several commenters objected to the requirement of the proposed rules for a blasting schedule for surface blasting incident to underground mining. The Office agrees because it was not the intent of Congress to require a blasting schedule for this type of blasting. Section 817.65(a), requiring a 24 hour notification for blasts of this type, is adequate protection for the public, given the limited frequency and duration of surface blasting associated with underground mining activities.

One commenter pointed out that MSHA's proposed rule, Section 77.1308(d), will allow blasting at night

in slopes and shafts at underground operations except for the initial rounds on the surface. The Office finds no conflict with MSHA's proposed rule, as the Office does not regulate blasting under Part 817 inside underground mine workings. Initial rounds of slopes and shafts have been provided for in final Section 817.61(a) which regulates surface blasting for underground mining.

§ 817.62 Use of explosives: Preblasting survey.

A few commenters recommended limiting the area in which preblast surveys are required for surface blasting associated with underground mining to a one-half mile radius from the blasting activities, as provided for in Section 516(b)(15) of the Act. The Office accepted these comments, because there was no apparent basis to expand the area for mandatory preblast surveys from surface mining (one-half mile) for underground mines (any portion of the mine).

§ 817.65 Use of explosives: Surface blasting requirements.

(1) Several comments were received concerning the 24 hour notice required for surface blasting in support of underground mining in the proposed rules. As a result of these comments the following alternatives were considered and alternative 2 was adopted—

1. Retain the wording as published in the proposed regulations.

2. Modify Section 817.65(b) by inserting "approximately" in front of "24 hours" and inserting "surface" in front of "blasting event."

3. Change the Section to require a notice at least 10 days, but not more than 20 days, prior to blasting.

4. Delete the Section.

Alternative 2. One commenter objected that the notice of blasting was required to be given exactly 24 hours prior to blasting. As this would not be necessary or practical if there are a large number of surrounding residents to be notified, the word "approximately" has been added to qualify the advance notice requirement.

Alternative 4. The same commenter also questioned the Office's authority to promulgate blasting regulations for underground mines, because blasting is not one of the subjects listed in Section 516(d) of the Act. However, Section 516(b)(10) of the Act makes all of the performance standards of Section 515 of the Act applicable to "other surface impacts" not specified in Section 516(b) of the Act, thereby incorporating, by reference, Section 515(b)(15) of the Act. Further, Section 516(d) of the Act makes the permit application requirements of Title V of the Act applicable to underground mining. Under the permit application

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One Page Summary of Comments of the Pennsylvania Coal Association

PCA's is opposed to the proposed regulations to the extent they would apply to underground blasting at underground bituminous coal mine shaft and slope construction operations. Historically, DEP regulated such underground blasting as an underground mining activity under the Pennsylvania Bituminous Coal Mine Act. Recently, DEP developed a new interpretation of the definition of "surface mining activities" in the Surface Mining Conservation and Reclamation Act (Pa. SMCRA) to include underground blasting at shaft and slope construction operations. Without this new interpretation of the definition of "surface mining activities" DEP could not apply the surface blasting regulations to underground blasting at shaft and slope construction operations because DEP does not have rulemaking authority under the Pennsylvania Bituminous Coal Mine Act.

As discussed in detail in PCA's comments, the plain language of the definition of "surface mining activities" in Pa. SMCRA limits the scope of surface mining activities to surface activities incident to shaft and slope construction. Therefore, underground blasting (deeper than the first one or two blasts at or near the surface) is not a surface mining activity within the scope of Pa. SMCRA and is not subject to the surface blasting regulations.

To the extent the proposed regulations apply to underground blasting at underground coal mine shaft and slope construction operations, they violate Executive Order 1996-1, which prohibits the Commonwealth from adopting state regulations that are more stringent than federal regulations unless justified by a compelling and articulable Pennsylvania interest or required by state law. As discussed in detail in PCA's comments, the applicable federal regulations do not apply surface blasting regulations to underground blasting at shaft and slope construction operations. Furthermore, application of the state surface blasting regulations to this activity is not compelled by a state interest, nor is it required by state law.

Because underground blasting at underground coal mine shaft and slope construction operations is not within the scope of the definition of "surface mining activities" in Pa. SMCRA, the activity is regulated only under the Pennsylvania Bituminous Coal Mine Act under which there is no rulemaking authority. Therefore, there is no statutory authority for the proposed amendments to the regulations at 25 Pa. Code Sections 210.11, 210.12 and 210.217(a).

DEP's conclusions regarding the costs and benefits of the proposed regulations is based on the incorrect premise that DEP currently has authority to regulate underground blasting at shaft and slope construction operations under Pa. SMCRA.

Each of the foregoing issues is addressed in detail in PCA's comments.

