

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Department of Environmental Protection		RECEIVED 2007 AUG 16 PM 2:59
(2) I.D. Number (Governor's Office Use) #7-414		INDEPENDENT REGULATORY REVIEW COMMISSION IRRC Number: 2632
(3) Short Title (Proposed Rule) 25 PA Code, Chapter 209A Surface Mining		
(4) PA Code Cite 25 PA Code Chapter 209, Coal Mines.	(5) Agency Contacts & Telephone Numbers Primary Contact: Michele Tate, 783-8727 Secondary Contact: Kelly Jean Heffner, 783-8727	
(6) Type of Rulemaking (Check One) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor
(8) Briefly explain the regulation in clear and nontechnical language. This proposed regulation is an extensive rewrite of 25 PA Code Chapter 209. This rulemaking renames Chapter 209 Coal Mines to 209A Surface Mining, deletes and reserves the existing provisions and incorporates by reference selected health and safety standards for surface mines promulgated by the U.S. Department of Labor, Mine Safety and Health Administration ("MSHA").		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. 1. Section 4.2 of the Surface Mining Conservation and Reclamation Act ("SMCRA") and Section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act ("NCSMCRA") (52 P.S. §§ 1396.4b and 3311(a)), which direct the Department to promulgate regulations for the health and safety of those persons engaged in the work of surface mining and for the protection of the general public; and 2. Sections 1917-A and 1920-A of the Administrative Code of 1929, 71 P.S. § 510-20. Sections 1917-A and 1920-A of the Administrative Code of 1929 authorize the Board to adopt regulations to prevent the occurrence of a nuisance and to promulgate such rules and regulations as are necessary for the proper work of the Department.		

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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.

No.

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

The Department's surface mine safety program is implemented through routine inspections. As part of the mine inspection, the inspector will identify unsafe conditions and work with the operator to correct those conditions before an accident can occur. The inspector's ability to identify and correct unsafe conditions is hampered by the inadequacy of the surface mining safety regulations, Chapter 209 (relating to coal mines). The provisions of Subchapter A (relating to general safety in bituminous coal strip mines) are antiquated and differ from safety requirements established by MSHA. This difference in standards is a source of conflict and jeopardizes safety at bituminous surface mines. The provisions of Subchapter B (relating to explosives in anthracite strip mines) are not only out of date, but are also redundant. The use, storage and handling of explosives at anthracite surface mines is addressed by provisions found in Chapter 88 (relating to anthracite mines) and Chapter 211 (relating to the use, storage and handling of explosives.) There are no regulations specifying safety standards for surface industrial mineral mines. Finally, this proposed rulemaking implements the Rendell Administration's initiative that the Department develop a "world class mine safety program."

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

Failure to update surface coal mining safety regulations and to promulgate surface industrial mineral safety regulations will continue to subject mine workers to a level of risk to suffer lost-time or fatal accidents.

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

Surface mine employees (approximately 7,175 surface mine employees) will benefit by the prevention of lost-time and fatal accidents. The mining industry (approximately 2,900 operations) will benefit by having fewer workman compensation claims.

(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.)

No one will be adversely affected by the proposed regulations. Federal regulations already require the mining industry to meet these proposed standards.

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(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.)

All coal and noncoal surface mining permittees (approximately 2,900 mines) will be required to comply with this proposed regulation.

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

Interested permittees helped identify the concepts in these proposed regulations. In addition, the Department held 13 informational meetings attended by operators/management, consultants, and miners. This proposal was presented to the Mining Reclamation Advisory Board ("MRAB") at its meeting of January 25, 2007.

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

These proposed regulations are the same as MSHA standards currently applicable to mining permittees. This will minimize any increased cost. A small administrative cost is expected for sending information to the Department.

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

There will not be any costs or savings to local governments associated with this proposal.

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

No additional costs.

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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
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	500,000	500,000	500,000	500,000	500,000	500,000
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	500,000	500,000	500,000	500,000	500,000	500,000
COSTS:	0	0	0	0	0	0
Regulated Community	5,800	5,800	5,800	5,800	5,800	5,800
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	5,800	5,800	5,800	5,800	5,800	5,800
REVENUE LOSSES:	0	0	0	0	0	0
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	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.

The savings was estimated grossly based on the idea that accidents will be prevented by raising the profile of surface mine safety. The costs include lost time and production. An additional incalculable cost savings is the reduced risk for injury or death.

Since the mining industry must meet the equivalent MSHA regulations there should be minimal increased cost to comply. It is estimated that it will cost about \$20 per mine site to comply with the administrative requirements (postage and copying). With an estimated 2,900 mine sites this results in a cost of \$5,800.

The proposed amendments will not change the Department's costs for regulating the mining industry. As described above, these proposed regulations will not impose costs on the regulated community. Local governments are not subject to these regulations.

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

Program	FY-3 (FY 2003)	FY-2 (FY 2004)	FY-1 (FY 2005)	Current FY (FY 2006)
Environmental Protection Operations (#160-10381)	\$76,393,000	\$85,898,000	\$87,897,000	\$89,847,000
Environmental Program Management (#161-10382)	\$43,679,000	\$37,594,000	\$37,049,000	\$36,868,000

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

The Benefit of the regulation will be increased safety at mine sites by enhancing the effectiveness of the safety inspection without a minimal increase in costs because the industry already is required by MSHA to comply with these standards. There will be no increased costs to the Commonwealth because DEP inspectors are already on the mine sites making environmental inspections.

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

The Department is currently trying to reduce lost-time and fatal accidents through a compliance assistance approach. However, as explained above, lost-time and fatal accidents are still unacceptably high in Pennsylvania. In working with the mine operators, the inspectors need a set of reasonable, enforceable, regulations they can site and when necessary enforce.

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

There were two rejected schemes. First, the Department rejected the concept of rewriting chapter 209 with its own regulations, because of the potential for confusion and conflict, with safety regulations promulgated by MSHA. The Department also rejected the concept of adopting by reference all of the MSHA regulations for surface coal and metal and nonmetal mines. Many of the MSHA regulations are not applicable to Pennsylvania mines or appropriate for enforcement by DEP.

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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 regulation.

Yes. The auger mining regulations establish minimum requirements for using benches to stabilize the highwall and thereby protect workers from falling rock. The MSHA regulations do not contain specific requirements for using benches to stabilize a highwall. This is because the MSHA regulations apply nationally to a variety of different geologic conditions. The use of benches to stabilize the highwall is to be described in the ground control plan, required by 30 CFR § 77.1000 (relating to ground control plan). In Pennsylvania, the geologic conditions in the Bituminous Coal Field are such that strata are near horizontal and the rock types are limited to a few types. Because of this, the geologic conditions are generally predictable making it reasonable to specify minimum benching standards that can be varied on a case-by-case basis, to ensure highwall stability.

Auger mining in the anthracite coal fields is uncommon. Subsection c describes the requirements for auger mining in the anthracite coal fields, where the geology is complex.

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

The MSHA regulations are applied to all surface coal and noncoal mining operations nationwide. The only difference is the minor cost of the possible need for additional safety benches for auger mining on a site-specific basis. Most other states have a separate program for enforcing safety and environmental regulations. Some times there is a conflict with achieving both in those other states. In Pennsylvania we will use the same inspector to accomplish both safety and environmental inspections. This will save staff costs, travel costs and eliminate confusing direction from more than one inspector.

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

No.

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

No.

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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.

These proposed regulations establish two paperwork requirements. First, there is a requirement to submit to the Department copies of the documentation in support of a request to MSHA for a modification of a health and safety standard that has been incorporated by reference into these regulations. Second, there is the requirement to submit to the Department the same accident reports submitted to MSHA. The only cost to the operator is the cost of copying and mailing these documents to the Department.

The permittee must notify the Department by telephone when an accident, as defined in the regulations, occurs.

(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.

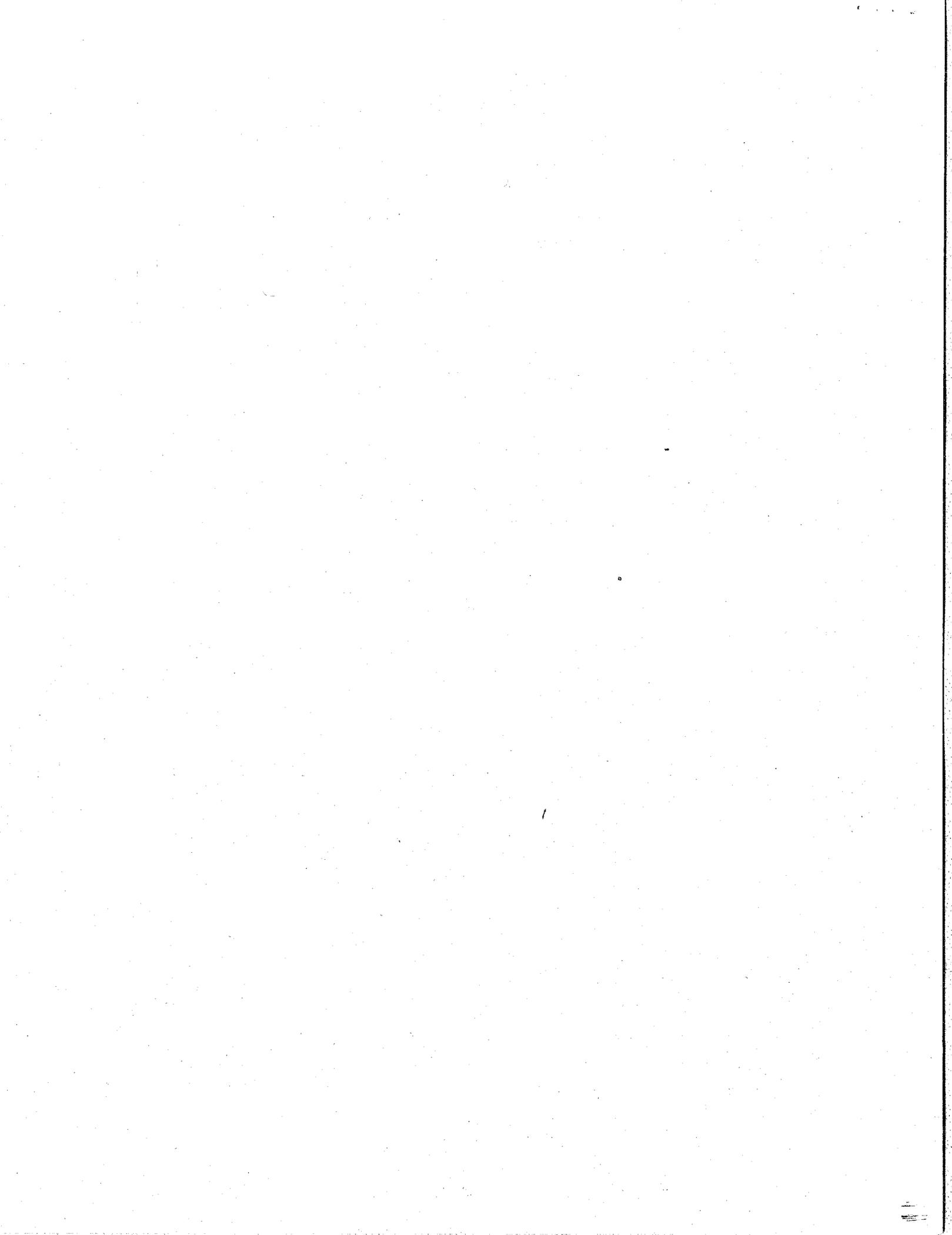
None

(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?

These proposed regulations will go in to effect upon publication as final regulations.

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

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



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Copy below is hereby approved as to form and legality.
Attorney General

By: Amy M. Elliott
(Deputy Attorney General)

AUG 03 2007
DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

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correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-414

DATE OF ADOPTION May 16, 2007

BY Kathleen A. McGinty

TITLE KATHLEEN A. MCGINTY
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY Andrew C. Clark
JUN 12 2007
DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)

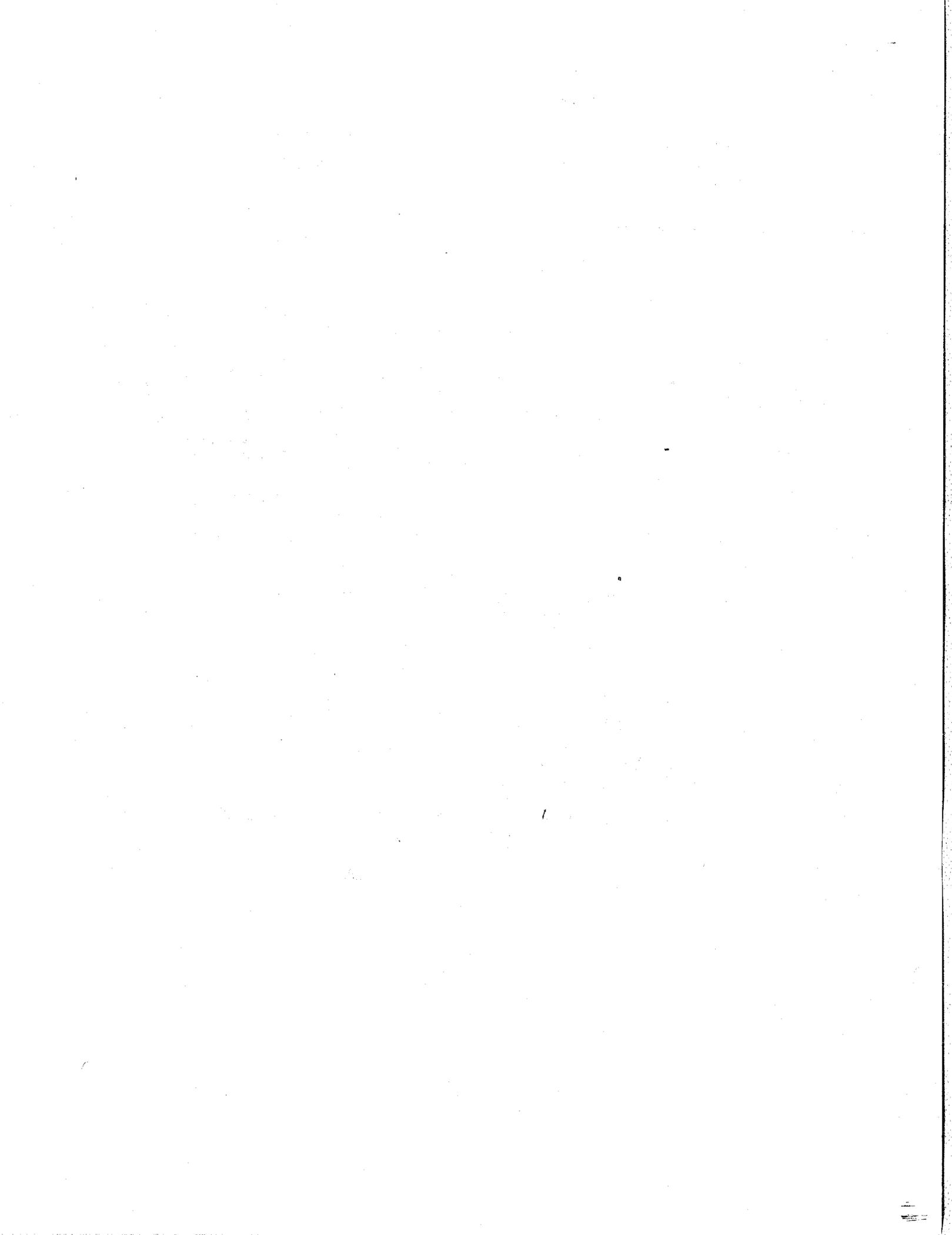
Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Chapters 209A Surface Mining Subchapter A Surface Coal Mines

25 Pa. Code, Chapter 209A, Coal Mines



**Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
25 Pa. Code Chapter 209
Coal Mines**

Preamble

The Environmental Quality Board (Board) proposes to amend Chapter 209 (relating to coal mines) to read as set forth in Annex A. The proposed amendments revoke existing, antiquated anthracite and bituminous safety regulations and replace them with selected federal safety regulations that will be adopted by reference. In addition, selected federal safety regulations for industrial mineral mines will be adopted by reference. Finally, the chapter is renamed to "Surface Mining" to reflect its broader scope.

This proposal was adopted by the Board at its meeting of May 16, 2007.

A. Effective Date

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

B. Contact Persons

For further information contact Joseph G. Pizarchik, Director, Bureau of Mining and Reclamation, P.O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103, or Marc Roda, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

The amendments are proposed under the authority of:

1. Section 4.2 of the Surface Mining Conservation and Reclamation Act ("SMCRA") and Section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act ("NSMCRA") (52 P.S. §§ 1396.4b and 3311(a), which authorize the Department to

promulgate regulations for the health and safety of those persons engaged in surface mining and for the protection of the general public.

2. Section 2(f) of the General Safety law (43 P.S. § 25-2(f)), which requires, *inter alia*, operators of surface industrial mineral mines to adopt measures to protect persons working therein.

3. Sections 1917-A and 1920-A of the Administrative Code of 1929, 71 P.S. §§ 510-17 and 510-20. Sections 1917-A and 1920-A of the Administrative Code of 1929 authorize the Board to adopt regulations to prevent the occurrence of a nuisance and to promulgate such rules and regulations as are necessary for the proper work of the Department.

D. Background and Purpose

The Department's surface mine safety program is implemented through the surface mining conservation inspectors. As part of the mine inspection, the Inspector will identify unsafe conditions and work with the operator to correct those conditions before an accident can occur. The inspector's ability to identify and correct unsafe conditions is hampered by the inadequacy of the surface mining safety regulations, Chapter 209 (relating to coal mines). The provisions of Subchapter A (relating to general safety in bituminous strip mines) are antiquated and differ from safety requirements established by the U.S. Department of Labor, Mine Safety and Health Administration ("MSHA"). This difference in standards is a source of confusion and jeopardizes safety at bituminous surface mines. Other than for blasting, there are no Department safety regulations for anthracite surface mines. The provisions of Subchapter B (relating to explosives in anthracite strip mines) are not only out of date, but also redundant. The use, storage and handling of explosives at anthracite surface mines is addressed by provisions found in Chapter 88 (relating to anthracite mines) and Chapter 211 (relating to the use, storage and handling of explosives). There are no Department regulations specifying safety standards for surface industrial mineral mines.

This proposed rulemaking implements the Rendell Administration's initiative that the Department develop a "world class mine safety program." To implement this initiative it is proposed to rewrite chapter 209 by deleting the existing provisions and adopting new standards for coal and industrial mineral surface mines. For the most part, the proposed regulations adopt by reference MSHA safety standards contained in 30 CFR Part 56 (relating to health and safety standards for metal and non metal mines) and 77 (relating to health and safety standards for surface coal mines and surface work areas of underground coal mines). By adopting the MSHA standards, the Department's safety standards are modernized and additional costs on operators are minimized. Finally, by eliminating inconsistencies between the Department's standards and the MSHA standards, the possibility for confusion in the field is minimized.

In proposing these amendments, the Department's goal is to provide the most improved safety at Pennsylvania surface mines in the most cost effective and the least intrusive manner. The provisions of the MSHA regulations adopted by these regulations are those that address the most significant risk to surface miners in Pennsylvania.

In 1999, the Pennsylvania State University (PSU) published a report entitled "Safety Conditions in Small Surface Bituminous Coal Mines in Pennsylvania." This report analyzed MSHA safety records for 1991 through 1996. The report's findings verify that the Department has selected the appropriate areas to emphasize for safety improvement.

Most of the MSHA violations identified by the PSU study fall within the substantive areas to be covered by these regulations. The substantive areas identified by the study are:

- Failure to maintain machinery or equipment in safe operating condition
- Operation of equipment, which is not in a safe operating condition
- Neglect in housekeeping
- Fire hazards and failure to maintain fire-fighting equipment.

Even though the Department is not adopting all of the MSHA health and safety standards, the Department's inspectors will assist the operators in ensuring compliance with the MSHA regulations. If a Pennsylvania inspector observes a violation of a MSHA safety regulation that Pennsylvania has not adopted, the Pennsylvania inspector will, as part of the Department's compliance assistance program, point out the condition and explain that it is a violation of a MSHA regulation and needs to be addressed.

On most surface mine sites, the Department conducts inspections more frequently than MSHA. Effective safety programs rely on the principles of prevention and providing constant reminders of hazards to avoid complacency. With the proposed regulations in place, the higher awareness provided by the Department's inspections will help prevent accidents and result in a safer work environment at Pennsylvania's surface mines.

Interested permittees helped identify the concepts in these proposed regulations. In addition, the Department held 13 informational meetings attended by operators/management, consultants, and miners. The following concerns and recommendations were discussed at these informational meetings:

1. The potential for the Department's interpretation or enforcement of a health or safety standard being inconsistent with MSHA's interpretation or enforcement of the same health or safety standard.
2. DEP should notify MSHA of violations, or vice versa for the purpose of assessing penalties.
3. The Department's inspectors should be adequately trained in the MSHA health and safety standards prior to commencing enforcement.

4. If the surface mining safety regulations are to be upgraded, then adopting by reference the MSHA safety regulations is preferred to creating Pennsylvania's own regulations.
5. DEP should use proactive compliance assistance with emphasis on preventing accidents, and DEP should use existing enforcement procedures rather than creating new ones or adopting MSHA's enforcement procedures.
6. Accidents often result from conditions that may not be present or noticeable during the course of a routine DEP inspection. Therefore, DEP should focus on outreach and training in addition to inspection and enforcement. DEP should develop an outreach program that emphasizes hazard recognition and is pertinent to specific jobs performed within a mine, *e.g.*, training workers who frequently work near highwalls to recognize signs of highwall instability.

At its meeting of January 25, 2007, the Mining and Reclamation Advisory Board ("MRAB") considered this proposed rulemaking, as it applies to surface coal mining. The MRAB unanimously recommended that the Department move forward with the regulations.

E. Summary of Regulatory Requirements

This proposal will rename Chapter 209 as "209A Surface Mining", delete the existing provisions and adopt three new subchapters. These Subchapters are:

1. A (relating to surface coal mines).
 2. B (relating to surface noncoal mines).
 3. C (relating to miscellaneous provisions).
- I. Subchapter A. Surface Coal Mines.

This subchapter specifies the safety standards applicable to surface mining activities as defined in the SMCRA. *See* § 209A.1 (relating to applicability). Tying this subchapter's applicability to surface mining activities as defined in the SMCRA ensures consistency in the scope of the safety and environmental programs.

a. § 209A.2. Definitions.

The definitions for active workings, berm, and roll protection found in 30 CFR § 77.2 (relating to definitions) are incorporated herein by reference. Out of all the terms defined in 30 CFR § 77.2, only these three terms are used in the provisions in 30 CFR Part 77 that are incorporated by reference into Subchapter A.

Not found in 30 CFR Part 77 is the term "competent person." Some of the MSHA regulations adopted by reference address specified duties, *e.g.* pre-shift inspections, to be performed by a person possessing a certificate of qualification. Rather than creating a

certification program, the Department is requiring these duties to be performed by a competent person. See § 209A.13 (relating to competent person).

b. § 209A.3. Surface Installations.

Nine of the regulations in 30 CFR part 77 Subpart C (relating to surface installations) are incorporated by reference into Subchapter A. These regulations address the following issues:

1. General requirements.
2. Safeguards to protect persons below overhead work areas.
3. Protection to prevent persons from falling in openings in surface work areas.
4. The installation and maintenance of travelways in work areas.
5. The installation and maintenance of ladders.
6. Illuminating the work area.
7. Storing materials at the surface installation.
8. Surge and storage piles.
9. Hoisting of materials.

c. § 209A.4. Safeguards for mechanical equipment.

Seven of the regulations in 30 CFR Part 77 Subpart E (relating to safeguards for mechanical equipment) are incorporated by reference into Subchapter A. These regulations address the following issues:

1. Falling object protective structures on mobile equipment.
2. Roll over protective structures on mobile equipment.
3. The incorporation by reference of non MSHA publications.
4. The operation and maintenance of equipment.
5. Safeguards for persons working on or around raised equipment.
6. The operation of shovels, draglines and tractors.
7. Warning devices on mobile equipment.

d. § 209A.5. Electrical equipment general.

Two of the regulations in 30 CFR Part 77 Subpart F (relating to electrical equipment general) are incorporated by reference into Subchapter A. These regulations address the following issues:

1. De-energizing electrical equipment prior to repair.
2. Repairing electrical distribution circuits and equipment.

e. § 209A.6. Trailing cables.

The requirement that trailing cables are to be protected to prevent damage from mobile equipment in 30 CFR Part 77.604 (relating to protection of trailing cables) is incorporated by reference into Subchapter A.

f. § 209A.7. Surface high-voltage distribution.

Three of the regulations in 30 CFR Part 77 Subpart I (relating to high-voltage distribution) are incorporated by reference into Subchapter A. These regulations address the following issues:

1. The clearance above the ground of high-voltage distribution lines.
2. The minimum distance that booms and masts are to be from high-voltage lines.
3. Precautions to be taken when moving equipment in proximity to high-voltage lines.

g. § 209A.8. Ground Control.

Nine of the regulations in 30 CFR Part 77 Subpart K (relating to ground control) are incorporated by reference into Subchapter A. These regulations address the following issues:

1. The removal of loose material from highwalls.
2. Preventing of spoil material entering the pit.
3. The use of benches to stabilize a highwall.
4. The inspection and maintenance of highwalls, banks, benches and sloping terrain.
5. The removal of loose rock from highwalls.
6. Persons working at highwalls.
7. The inspection of drilling equipment.
8. The movement of drilling equipment.
9. The operation of drilling equipment.

h. § 209A.9. Fire protection.

Ten of the regulations in 30 CFR Part 77 Subpart L (relating to fire protection) are incorporated by reference into Subchapter A. These regulations address the following issues:

1. The posting of signs warning against smoking or open flames.
2. The storage of flammable liquids.
3. The accumulation of combustible materials.
4. The fueling of internal combustion engines.
5. The provision of firefighting equipment.
6. The type and capacity of fire fighting equipment
7. The location of fire fighting equipment
8. The examination and maintenance of fire fighting equipment.

9. Placing fire extinguishers where welding, cutting or soldering is occurring.
10. The safeguards to be taken when welding, cutting or soldering.
 - i. § 209A.10. Auger mining.

Subsection (a) incorporates by reference into Subchapter A four of the regulations in 30 CFR Part 77 Subpart P (relating to auger mining). These regulations address the following issues:

1. Preventing the auger mining from posing a hazard to an adjacent underground mine.
2. Inspection of mining operation.
3. Safeguards to protect workers from falling rock.
4. Operation of auger equipment.

Subsection (b) establishes minimum requirements for using benches to stabilize the highwall. The Department has the authority, on a case-by-case basis, to require more stringent benching requirements. Also, on a case-by-case basis, operators can request the Department to approve less stringent benching requirements.

The MSHA regulations do not contain specific requirements for using benches to stabilize a highwall. This is because the MSHA regulations apply nationally to a variety of different geologic conditions. The use of benches to stabilize the highwall is to be described in the ground control plan, required by 30 CFR § 77.1000 (relating to ground control plan). In Pennsylvania, the geologic conditions in the Bituminous Coal Field are such that strata are near horizontal and the rock types are limited to a few types. Because of this, the geologic conditions are generally predictable making it reasonable to specify minimum benching standards that can be varied on a case-by-case basis, to ensure highwall stability.

Auger mining in the anthracite coal fields is uncommon. Subsection c describes the requirements for auger mining in the anthracite coal fields, where the geology is complex.

- j. § 209A.11. Loading and haulage.

Four of the regulations in 30 CFR Part 77 Subpart Q (relating to loading and haulage) are incorporated by reference into Subchapter A. These regulations address the following issues:

1. General requirements.
2. Installation of safeguards on haulage and loading equipment.
3. Operation of loading and haulage equipment.
4. Safeguards at dumping facilities.

- k. § 209A.12. Miscellaneous.

Six of the regulations in 30 CFR part 77 Subpart R (relating to miscellaneous) are incorporated by reference into Subchapter A. These regulations address the following issues:

1. Communications in work areas.
2. Emergency communications.
3. First aid equipment.
4. The use of protective clothing.
5. Prohibition against smoking.
6. Daily inspection of surface coal mines.

II. Subchapter B. Surface Noncoal Mines.

This Subchapter applies to "surface mines" as defined in the NSMCRA. *See* § 209A.21 (relating to applicability). Tying this Subchapter's applicability to the definition for surface mine in the NSMCRA ensures that the safety and environmental programs apply to the same facilities.

a. § 209A.22. Definitions.

This section adopts by reference the seven terms defined in 30 CFR § 56.2 (relating to definitions) that are used in the MSHA regulations adopted by reference into Subchapter B. These terms are:

1. Competent person.
2. Face or bank.
3. Flammable.
4. Multi purpose dry fire extinguisher.
5. Roll protection.
6. Scaling.
7. Working place.

b. § 209A.23. Ground control.

Seven of the regulations in 30 CFR Part 56 Subpart B (relating to ground control) are incorporated by reference into Subchapter B. These regulations address the following issues:

1. The definition of travelway.
2. The stability of walls, banks and slopes.
3. The perimeter of the pit or quarry wall.
4. The correction of hazardous conditions.
5. The location for performing scaling.
6. The examination of ground stability conditions.
7. The movement of persons between equipment and highwalls or banks.

c. § 209A.24. Fire prevention and control.

Four of the regulations in 30 CFR Part 56 Subpart C (relating to fire prevention and control) and incorporated by reference into Subchapter B. These regulations address the following issues:

1. Restrictions on where smoking or the use of open flames can occur.
2. Precautions to be taken when fueling internal combustion engines.
3. General requirements for fire fighting equipment.
4. Firefighting equipment on self-propelled equipment.

d. § 209A.25. Drilling and rotary jet piercing.

Ten of the regulations in 30 CFR Part 56 Subpart F (relating to drilling and rotary jet piercing) are incorporated by reference into Subchapter B. These regulations address the following issues:

1. The maintenance of defective equipment.
2. The inspection of drilling areas.
3. Persons working on a drill mast.
4. Working around augers and drill stems.
5. Moving the drill.
6. Supervision of drill helper by drill operator.
7. Tending drills in operation.
8. Securing loose objects on masts or drill platforms.
9. Restrictions on where persons may be positioned while drilling.
10. Restrictions on drilling where there is a possibility of intersecting a hole containing explosives.

e. § 209A.26. Loading, hauling and dumping.

Seventeen of the regulations in 30 CFR Part 56 Subpart H (relating to loading, hauling and dumping) are incorporated by reference into Subchapter B. These regulations address the following issues:

1. Definitions of terms specific to Subpart H and that are used in regulations incorporated by reference into this section.
2. Traffic control.
3. Controlling mobile equipment.
4. Loading and hauling large rocks.
5. The design and construction of berms and guardrails.
6. Dumpsite restraints.

7. The construction of ramps and dumping facilities.
8. Unstable ground at dumpsites.
9. Using spotters to direct trucks at dumpsites.
10. Devices for warning drivers of mobile equipment of hazards due to restricted clearances.
11. Safeguards for persons working around draw holes.
12. The maintenance of roadways.
13. The shaping of stockpiles and muck pile faces to prevent hazards.
14. Controlling dust to prevent hazardous conditions due to low visibility.
15. Notifying the operator of self-propelled equipment that someone is either getting on or off that equipment.
16. Traveling beneath suspended loads.
17. Persons getting on or off moving equipment.

f. § 209A.27. Electricity.

Three of the regulations in 30 CFR Part 56 Subpart K (relating to Electricity) are incorporated by reference into Subpart B. These regulations address the following issues:

1. Ensuring that power conductors will not be damaged if they are run over by mobile equipment.
2. Measures to be taken to ensure that electrical equipment is de-energized and remains de-energized while being worked on.
3. Precautions to be taken while moving equipment near high-voltage power lines.

g. § 209A.28. Machinery and equipment.

Seventeen of the regulations in 30 CFR Part 56 Subpart M (relating to Machinery and equipment) are incorporated by reference into Subchapter B. These regulations address the following issues:

1. Definitions of terms that are specific to Subpart M and that are used in regulations adopted by reference into this section.
2. Examining for, correcting and recording safety defects in machinery and equipment.
3. The maintenance of operator's stations, including windows, on self-propelled mobile equipment.
4. Procedures to be followed when repairing or maintaining machinery or equipment.
5. Falling object protection structures on self-propelled mobile equipment.
6. The use of guards to protect persons from moving machine parts.
7. The construction and maintenance of guards.
8. Using roll over protective structures and seat belts on certain types of equipment.

9. Seat belts for haulage trucks.
10. Horns and backup alarms.
11. Sounding an audible warning before starting equipment.
12. The safe lubrication of machinery.
13. The proper use of machinery, equipment and tools.
14. Immobilizing the moving parts on mobile equipment.
15. Safeguards for unattended parked mobile equipment.
16. Restrictions on moving dippers, buckets, loading booms, or suspended loads over operator's stations on self-propelled mobile equipment.
17. Securing raised equipment when someone is working near it.

h. § 209A.29. Personal protection.

Eight of the regulations in 30 CFR Part 56 Subpart N (relating to personal protection) are incorporated by reference into Subchapter B. These regulations address the following issues:

1. First aid materials.
2. Hard hats.
3. Protective footwear.
4. Eye protection.
5. The use of safety belts and lines.
6. Protective equipment and clothing for hazards and irritants.
7. Protective equipment or clothing for welding, cutting, or working with molten metal.
8. Life jackets and belts.

i. § 209A.30. Materials storage and handling.

Three of the regulations in 30 CFR Part 56 Subpart O (relating to materials storage and handling) are incorporated by reference into Subchapter B. These regulations address the following issues:

1. Taglines, hitches and slings.
2. Keeping persons clear of suspended loads.
3. Clearing the drop area before dropping materials.

j. § 209A.31. Illumination.

The requirement to illuminate surface working areas found in 30 CFR § 56.17001 (relating to illumination of surface work areas) is incorporated by reference into Subchapter B.

k. § 209A.32. Safety Programs.

Three of the regulations in 30 CFR Part 56 Subpart Q (relating to safety programs) are incorporated by reference into Subchapter B. These regulations address the following issues:

1. Examination of working places.
2. Provision of an emergency communication system.
3. Prohibitions on working alone.

1. § 209A.33. Miscellaneous provisions.

Two of the regulations in 30 CFR Part 56 Subpart S (relating to Miscellaneous provisions) are incorporated by reference into this Subchapter. These regulations address the following issues:

1. Housekeeping requirements.
2. The use of barricades and warning signs to protect persons from hazards that are not immediately obvious.

III. Subchapter C Miscellaneous Provisions

The regulations in this subchapter apply to both surface coal mining activities as defined in the SMCRA and surface mines as defined in the NSMCRA. (*See* § 209A.41) (relating to applicability).

- a. § 209A.42. Accidents

§ 209A.42 (relating to accident reporting) addresses accident-reporting requirements. The types of events constituting an accident are defined in subsection (a). These definitions are taken from 30 CFR § 50.1 (relating to definitions). Subsection (b) requires the operator to notify the Department within one hour of the occurrence of an accident. Finally, subsection (c) requires the operator to submit to the Department a copy of the accident reports submitted to MSHA.

- b. § 209A.43. Alternative standards.

§ 209A.43 (relating to alternative standards) establishes the mechanism by which the Department adopts a mine specific modification of the MSHA standards that have been incorporated by reference into this Chapter. For modifications approved when these regulations become effective, the operator must notify the Department of the MSHA approval. For modifications requested after the effective date of these regulations, the operator must:

1. Give the Department a copy of the Petition and all supporting materials when they are submitted to MSHA.
2. Notify the Department of the MSHA approval.

c. § 209A.44. Access to records.

§ 209A.44. (relating to access to records), gives the Department access to review and copy all documents required by MSHA.

F. Benefits, Costs and Compliance

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

Compliance Costs

The proposed changes will impose no additional compliance costs on the regulated community. Pennsylvania surface mines must already comply with these federal safety regulations. In fact, the implementation of these regulations should result in cost savings in that accidents will be prevented.

Compliance Assistance Plan

The Department will explain to each job foreman the changes in Pennsylvania regulations.

Paperwork Requirements

These regulations establish two paperwork requirements. First, there is a requirement to submit to the Department copies of the documentation in support of a request to MSHA for a modification of a health and safety standard that has been incorporated by reference into these regulations. Second, there is the requirement to submit to the Department the same accident reports submitted to MSHA. The only cost to the operator is the cost of copying and mailing these documents to the Department.

G. Pollution Prevention

The rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multi-media pollution prevention approach of existing requirements in 25 Pa. Code.

H. 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.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 16, 2007, the Department submitted a copy of the proposed rulemaking 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.

Under Section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that 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 final-form regulations.

J. Public Comments

Written Comments - Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 1, 2007. 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 October 1, 2007. 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@state.pa.us and must also be received by the Board by October 1, 2007. 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.

KATHLEEN A. MCGINTY
Chairperson
Environmental Quality Board

(Editor's Note: As part of this proposal, the Board is deleting the existing text of Chapter 209, which currently appears at Pennsylvania Code pages ___ through, serial numbers ___ to ___. The following text is new and is printed in regular type to enhance readability.)

TITLE 25. ENVIRONMENTAL PROTECTION
PART I DEPARTMENT OF ENVIRONMENTAL PROTECTION
SUBPART D. ENVIRONMENTAL HEALTH AND SAFETY
ARTICLE IV. OCCUPATIONAL HEALTH AND SAFETY

Chapter 209A Surface Mining
Subchapter A Surface Coal Mines

§209A.1. Applicability.

This Subchapter applies to surface mining activities as defined in Section 3 of the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, *as amended*, 52 P.S. §§1396.1-1396.19a.

§209A.2. Definitions.

The following terms when used in this Subchapter shall have the meaning given to them by this section, unless the context clearly indicates otherwise:

(1) The meanings for the terms active workings, berm, and roll protection contained in 30 CFR §77.2(a, d and w) (relating to definitions) are incorporated herein by reference.

(2) Competent person – A person having abilities and experience that fully qualify him to perform the duty to which he is assigned.

§209A.3. Surface Installations.

The following provisions of 30 CFR Part 77 Subpart C (relating to surface installations) are incorporated herein by reference:

- (1) §77.200 (relating to surface installations; general).
- (2) §77.203 (relating to use of material or equipment overhead; safeguards).
- (3) §77.204 (relating to openings in surface installations; safeguards).
- (4) §77.205 (relating to travelways at surface installations).
- (5) §77.206 (relating to ladders; construction; installation and maintenance).

- (6) §77.207 (relating to illumination).
- (7) §77.208 (relating to storage of materials).
- (8) §77.209 (relating to surge and storage piles).
- (9) §77.210 (relating to hoisting of materials).

§209A.4. Safeguards for mechanical equipment.

The following provisions of 30 CFR Part 77 Subpart E (relating to safeguards for mechanical equipment) are incorporated herein by reference:

- (1) §77.403 (relating to mobile equipment; falling object protective structures (FOPS)).
- (2) §77.403-1 (relating to mobile equipment; rollover protective structures (ROPS)).
- (3) §77.403-2 (relating to incorporation by reference).
- (4) §77.404 (relating to machinery and equipment; operation and maintenance).
- (5) §77.405 (relating to performing work from a raised position; safeguards).
- (6) §77.409 (relating to shovels, draglines, and tractors).
- (7) §77.410 (relating to mobile equipment; automatic warning devices).

§209A.5. Electrical equipment general.

The following provisions of 30 CFR Part 77 Subpart F (relating to electrical equipment general) are incorporated herein by reference:

- (1) §77.500 (relating to electric power circuits and electric equipment; deenergization).
- (2) §77.501 (relating to electric distribution circuits and equipment; repair).

§209A.6. Trailing Cables.

30 CFR §77.604 (relating to protection of trailing cables) is incorporated herein by reference.

§209A.7. Surface high-voltage distribution.

The following provisions of 30 CFR part 77 Subpart I (relating to surface high-voltage distribution) are incorporated by reference:

- (1) §77.807-1 (relating to high-voltage powerlines; clearances above ground).
- (2) §77.807-2 (relating to booms and masts; minimum distance from high-voltage lines).
- (3) §77.807-3 (relating to movement of equipment; minimum distance from high-voltage lines).

§209A.8. Ground Control.

The following provisions of 30 CFR Part 77 Subpart K (relating to ground control) are incorporated herein by reference:

- (1) §77.1001 (relating to stripping; loose material).
- (2) §77.1002 (relating to box cuts; spoil material placement).
- (3) §77.1003 (relating to benches).
- (4) §77.1004 (relating to ground control; inspection and maintenance; general).
- (5) §77.1005 (relating to scaling highwalls; general).
- (6) §77.1006 (relating to highwalls; men working).
- (7) §77.1007 (relating to drilling; general).
- (8) §77.1008 (relating to relocation of drills; safeguards).
- (9) §77.1009 (relating to drill; operation).

§209A.9. Fire protection.

The following provisions of 30 CFR Part 77 Subpart L (relating to fire protection) is incorporated herein by reference:

- (1) §77.1102 (relating to warning signs; smoking and open flame).
- (2) §77.1103 (relating to flammable liquids; storage).
- (3) §77.1104 (relating to accumulations of combustible materials).

- (4) §77.1105 (relating to internal combustion engines; fueling).
- (5) §77.1108 (relating to firefighting equipment; requirements; general).
- (6) §77.1108-1 (relating to type and capacity of firefighting equipment).
- (7) §77.1109 (c, d, and e) (relating to quantity and location of firefighting equipment).
- (8) §77.1110 (relating to examination and maintenance of firefighting equipment).
- (9) §77.1111 (relating to welding, cutting, soldering; use of fire extinguisher).
- (10) §77.1112(a) (relating to welding, cutting, or soldering with arc or flame; safeguards).

§209A.10. Auger mining.

(a) The following provisions of 30 CFR Part 77 Subpart P (relating to auger mining) are incorporated herein by reference:

- (1) §77.1500 (relating to auger mining; planning).
 - (2) §77.1501 (relating to auger mining; inspections).
 - (3) §77.1503 (relating to augering equipment; overhead protection).
 - (4) §77.1504 (relating to auger equipment; operation).
- (b) At a minimum, a highwall proposed for auger mining of bituminous coal shall be benched at the base of each overlying coal seam. In addition, if the height of the highwall, either between two coal seams or to the surface if there is no overlying coal seam, exceeds 60 feet, the highwall shall be benched at no more than 50 feet above the bottom coal seam. Additional benches may be required in order to ensure the stability of the highwall. The Department of Environmental Protection may authorize alternative bench locations if the operator demonstrates that the alternative locations are at least as effective at ensuring the highwall stability as otherwise required by this section. In making this demonstration the operator, at a minimum, shall take into account geologic, seasonal, and weather conditions; presence of ground water, and any other factor that may affect the stability of the highwall.
- (c) For auger mining in the anthracite coal fields, if the height of the overburden above the auger area exceeds 60 feet, the overburden shall be

benched at no more than 50 feet above the coal seam being augered. Additional benches may be required in order to ensure the stability of the overburden above the auger area. The Department of Environmental Protection may authorize alternative bench locations if the operator demonstrates that the alternative locations are at least as effective at ensuring the stability as otherwise required by this section. In making this demonstration the operator, at a minimum, shall take into account geologic, seasonal, and weather conditions; presence of ground water, and any other factor that may affect the stability of the overburden above the coal seam being augered.

§209A.11. Loading and haulage.

The following provisions of 30 CFR Part 77 Subpart Q (relating to loading and haulage) are incorporated herein by reference:

- (1) §77.1600 (relating to loading and haulage; general).
- (2) §77.1605(a, b, d, k and l) (relating to loading and haulage equipment; installations).
- (3) §77.1607((a)-(u), (x), and (bb)-(ee)) (relating to loading and haulage equipment; operation).
- (4) §77.1608 (relating to dumping facilities).

§209A.12. Miscellaneous.

The following provisions of 30 CFR Part 77 Subpart R (relating to miscellaneous) are incorporated herein by reference:

- (1) §77.1700 (relating to communications in work areas).
- (2) §77.1701 (relating to emergency communications; requirements).
- (3) §77.1707 (relating to first aid equipment; location; minimum requirements).
- (4) §77.1710 (relating to protective clothing; requirements).
- (5) §77.1711 (relating to smoking prohibition).
- (6) §77.1713 (relating to daily inspection of surface coal mine; certified person; reports of inspection).

§209A.13. Competent person.

Any provision of 30 CFR Part 77 incorporated herein by reference, in this subchapter, requiring that a duty be carried out by a certified person is amended to require that duty to be carried out by a competent person.

Subchapter B Surface Noncoal Mines

§209A.21. Applicability.

This Subchapter applies to surface mining as defined in Section 3 of the Noncoal Surface Mining Conservation and Reclamation Act, Act of December 19, 1980 P.L. 1093, No. 219, *as amended*, 52 P.S. §§3301-3326.

§209A.22. Definitions.

The following terms when used in this Subchapter shall have the meaning given to them in 30 CFR §56.2 (relating to definitions), unless the context clearly indicates otherwise:

- (1) berm
- (2) competent person.
- (3) face or bank.
- (4) flammable.
- (5) mobile equipment
- (6) multipurpose dry-chemical fire extinguisher.
- (7) roll protection.
- (8) scaling.
- (9) working place.

§209A.23. Ground control.

The following provisions of 30 CFR Part 56 Subpart B (relating to ground control) are incorporated herein by reference:

- (1) §56.3000 (relating to definitions) in so far as it defines "travelway."
- (2) §56.3130 (relating to wall, bank and slope stability).
- (3) §56.3131 (relating to pit or quarry wall perimeter).

- (4) §56.3200 (relating to correction of hazardous conditions).
- (5) §56.3201 (relating to location for performing scaling).
- (6) §56.3401 (relating to examination of ground conditions).
- (7) §56.3430 (relating to activity between machinery or equipment and the highwall or bank).

§209A.24. Fire prevention and control.

The following provisions of 30 CFR Part 56 Subpart C (relating to fire prevention and control) are incorporated herein by reference:

- (1) §56.4100 (relating to smoking and use of open flames).
- (2) §56.4103 (relating to fueling internal combustion engines).
- (3) §56.4200 (relating to general requirements).
- (4) §56.4230 (relating to self-propelled equipment).

§209A.25. Drilling and rotary jet piercing.

The following provisions of 30 CFR Part 56 Subpart F (relating to drilling and rotary jet piercing) are incorporated herein by reference:

- (1) §56.7002 (relating to equipment defects).
- (2) §56.7003 (relating to drill area inspection).
- (3) §56.7004 (relating to drill mast).
- (4) §56.7005 (relating to augers and drill stems).
- (5) §56.7008 (relating to moving the drill).
- (6) §56.7009 (relating to drill helpers).
- (7) §56.7012 (relating to tending drills in operation).
- (8) §56.7051 (relating to loose objects on the mast or drill platform).
- (9) §56.7052 (relating to drilling positions).
- (10) §56.7055 (relating to intersecting holes).

§209A.26. Loading, Hauling and Dumping.

The following provisions of 30 CFR part 56 Subpart H (relating to loading, hauling and dumping) are incorporated herein by reference:

- (1) §56.9100 (relating to traffic control).
- (2) §56.9101 (relating to operating speeds and control of equipment).
- (3) §56.9202 (relating to loading and hauling large rocks).
- (4) §56.9300 (relating to berms or guardrails).
- (5) §56.9301 (relating to dump site restraints).
- (6) §56.9303 (relating to construction of ramps and dumping facilities).
- (7) §56.9304 (relating to unstable ground).
- (8) §56.9305 (relating to truck spotters).
- (9) §56.9306 (relating to warning devices for restricted clearances).
- (10) §56.9312 (relating to working around draw holes).
- (11) §56.9313 (relating to roadway maintenance).
- (12) §56.9314 (relating to trimming stockpile and muckpile faces).
- (13) §56.9315 (relating to dust control).
- (14) §56.9316 (relating to notifying the equipment operator).
- (15) §56.9317 (relating to suspended loads).
- (16) §56.9318 (relating to getting on or off moving equipment).

§209A.27. Electricity.

The following provisions of 30 CFR Part 56 Subpart K (relating to electricity) are incorporated herein by reference:

- (1) §56.12005 (relating to protection of power conductors from mobile equipment).

(2) §56.12016 (relating to work on electrically-powered equipment).

(3) §56.12071 (relating to movement or operation of equipment near high-voltage power lines).

§209A.28. Machinery and equipment.

The following provisions of 30 CFR Part 56 Subpart M (relating to machinery and equipment) are incorporated herein by reference.

(1) §56.14000 (relating to definitions).

(2) §56.14100 (relating to safety defects; examination, correction and records).

(3) §56.14103 (relating to operators stations).

(4) §56.14105 (relating to procedures during repairs or maintenance).

(5) §56.14106 (relating to falling object protection).

(6) §56.14107 (relating to moving machine parts).

(7) §56.14112 (relating to construction and maintenance of guards).

(8) §56.14130 (relating to roll-over protective structures (ROPS) and seat belts).

(9) §56.14131 (relating to seat belts for haulage trucks).

(10) §56.14132 (relating to horns and backup alarms).

(11) §56.14200 (relating to warnings prior to starting or moving equipment).

(12) §56.14204 (relating to machinery lubrication).

(13) §56.14205 (relating to machinery, equipment, and tools).

(14) §56.14206 (relating to securing movable parts).

(15) §56.14207 (relating to parking procedures for unattended equipment).

(16) §56.14210 (relating to movement of dippers, buckets, loading booms, or suspended loads).

(17) §56.14211 (relating to blocking equipment in a raised position).

§209A.29. Personal protection.

The following provisions of 30 CFR Part 56 Subpart N (relating to personal protection) are incorporated herein by reference:

- (1) §56.15001 (relating to first-aid materials).
- (2) §56.15002 (relating to hard hats).
- (3) § 56.15003 (relating to protective footwear).
- (4) §56.15004 (relating to eye protection).
- (5) §56.15005 (relating to safety belts and lines).
- (6) §56.15006 (relating to protective equipment and clothing for hazards and irritants).
- (7) § 56.15007 (relating to protective equipment or clothing for welding, cutting, or working with molten metal).
- (8) §56.15020 (relating to life jackets and belts).

§209A.30. Materials Storage and Handling.

The following provisions of 30 CFR part 56 Subpart O (relating to materials storage and handling) are incorporated herein by reference:

- (1) §56.16007 (relating to taglines, hitches, and slings).
- (2) §56.16009 (relating to suspended loads).
- (3) §56.16010 (relating to dropping materials from overhead).

§209A.31. Illumination.

The provisions of 30 CFR §56.17001 (relating to illumination of surface working areas) are incorporated herein by reference.

§209A.32. Safety programs.

The following provisions of 30 CFR part 56 Subpart Q (relating to Safety programs) are incorporated herein by reference:

- (1) §56.18002 (relating to examination of working places).

- (2) §56.18013 (relating to emergency communications system).
- (3) §56.18020 (relating to working alone).

§209A.33. Miscellaneous.

The following provisions of 30 CFR Part 56 Subpart S (relating to miscellaneous) are incorporated herein by reference:

- (1) § 56.20003 (relating to housekeeping).
- (2) §56.20011 (relating to barricades and warning signs).

Subchapter C Miscellaneous provisions

§209A.41. Applicability.

This Subchapter applies to surface mining activities as defined in Section 3 of the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, *as amended*, 52 P.S. §§1396.1-1396.19a and to surface mining as defined in Section 3 of the Noncoal Surface Mining Conservation and Reclamation Act, Act of December 19, 1980 P.L. 1093, No. 219, *as amended*, 52 P.S. §§3301-3326.

§209A.42. Accident Reporting.

(a) Unless the context clearly indicates otherwise, as used in this Subchapter an accident is an incident that results in:

- (1) A death of an individual at a mine.
- (2) An injury to a miner which occurs at a mine for which medical treatment is administered, or which results in loss of consciousness, inability to perform all job duties on any day after an injury, temporary assignment to other duties, or transfer to another job.
- (3) An entrapment of an individual for more than thirty minutes.
- (4) An unplanned inundation of a mine by a liquid or gas.
- (5) An unplanned ignition or explosion of gas or dust.
- (6) An unplanned mine fire not extinguished within 30 minutes of discovery.
- (7) An unplanned ignition or explosion of a blasting agent or an explosive.
- (8) A failure of an impoundment, highwall, low wall, pile, or bank or, an unstable condition at an impoundment, highwall, low wall, pile, or bank

which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area.

(9) Death or bodily injury to an individual not at the mine.

(b) In the event of an accident occurring at a mine, an operator shall notify the Department no later than within one hour of discovery of the accident.

(c) In the event of an accident occurring at a mine, an operator shall send to the Department a copy of the completed Mine Accident, Injury and Illness Report Form 7000-1 required by 30 CFR § 50.20 (relating to preparation and submission of MSHA Report Form 7000-1--Mine Accident, Injury, and Illness Report)

§209A.43. Alternative standards.

(a) If, as of ____ [the effective date of this amendment], the United States Department of Labor, Mine Safety and Health Administration ("MSHA") has adopted a mine specific modification of a safety and health standard incorporated by reference in this Chapter for a mine in the Commonwealth of Pennsylvania, then that mine specific modified safety and health standard shall be adopted by the Department of Environmental Protection if the operator submits to the Department's District Mining Office with jurisdiction for the mine a copy of MSHA's adoption of the modification.

(b) If, after ____ [the effective date of this amendment], MSHA adopts a mine specific modification of a safety and health standard incorporated by reference in this Chapter for a mine located in the Commonwealth of Pennsylvania, then that mine specific modified safety and health standard shall be adopted by the Department of Environmental Protection if the operator:

(1) Provides the Department's District Mining Office with jurisdiction for the mine with a copy of the petition and a copy of all supporting materials submitted to MSHA, upon submission to MSHA,

(2) Submits to the Department's District Mining Office with jurisdiction for the mine a copy of the MSHA approval of the modified safety and health standard.

§ 209A.44. Access to Records.

The Department shall have access to review and copy all maps, plans, notifications, reports, training records, program descriptions or other materials prepared to comply with the requirements of 30 CFR parts 50 (relating to notification, investigation, reports and records of accidents, injuries, employment, and coal production in mines); 56 (relating to safety and health standards--surface metal and nonmetal mines; and 77 (relating to mandatory safety standards, surface coal mines and surface work areas of underground coal mines).



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

August 16, 2007

Policy Office

717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
14th Floor, 333 Market Street
Harrisburg, PA 17101

Re: Proposed Rulemakings: 25 Pa. Code, Chapter 209A Surface Mining,
Subchapter A Surface Coal Mines and
25 Pa. Code, Chapter 109, Safe Drinking Water

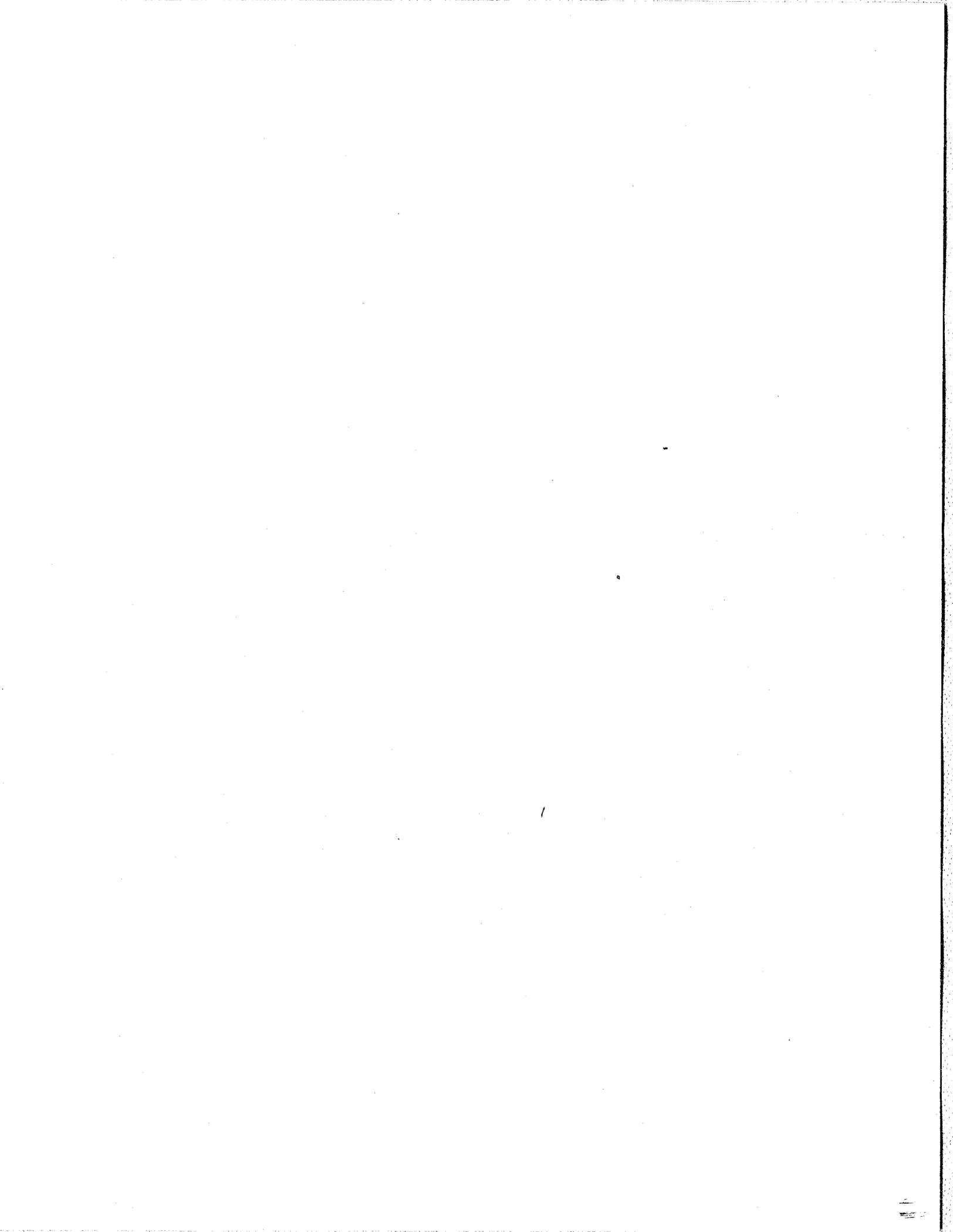
Dear Mr. Kaufman:

Enclosed are copies of two proposed rulemakings for review and comment by the Independent Regulatory Review Commission (Commission) pursuant to Section 5(a) of the Regulatory Review Act. The proposals are scheduled for publication as proposed rulemakings in the *Pennsylvania Bulletin* on September 1, 2007, each with a 30-day public comment period. The Environmental Quality Board (EQB) adopted the proposed amendments to 25 Pa. Code, Chapter 209A on May 16, 2007, and the amendments to 25 Pa. Code, Chapter 109 on June 19, 2007.

The proposed Chapter 209A rulemaking updates the safety requirements in Chapter 209 (relating to coal mines) to be consistent with the federal Mine Safety and Health Administration (MSHA) regulations. The current provisions of Chapter 209, Subchapter A (relating to general safety in bituminous coal strip mines) are antiquated and differ from safety requirements established by the U.S. Department of Labor, Mine Safety and Health Administration (MSHA). This difference in standards is a source of conflict and jeopardizes safety at bituminous surface mines. The provisions of Chapter 209, Subchapter B (relating to explosives in anthracite strip mines) are not only out of date, but are also redundant since applicable provisions are found in Chapter 88 (relating to anthracite mines) and Chapter 211 (relating to the use, storage and handling of explosives).

This proposed rulemaking encompasses an extensive rewrite of 25 Pa. Code Chapter 209. This rulemaking renames Chapter 209 Coal Mines to 209A Surface Mining, deletes and reserves the existing provisions and incorporates selected health and safety standards for surface mines promulgated by MSHA.

Interested permittees helped identify the concepts included in the proposed regulations. In addition, the Department held 13 informational meetings on the draft proposed regulations, which were attended by operators/management, consultants, and miners. At its meeting of



January 25, 2007, the Mining and Reclamation Advisory Board (MRAB) considered the proposed rulemaking, as it applies to surface coal mining. The MRAB unanimously recommended that the Department move forward with the regulations.

The proposed Chapter 109 rulemaking amends the Department's Safe Drinking Water regulations through a general update to accomplish the four following goals: 1.) Incorporate necessary federal requirements needed to obtain and/or maintain primary enforcement authority (primacy) for the Phase II/IIB/V Rule, Filter Backwash Recycling Rule (FBRR), Lead and Copper Rule (LCR), and the Radionuclide (RAD) Rule; 2.) Amend several sections to improve data quality and streamline the reporting process, including mandatory electronic reporting via the Department's secure web application called the Drinking Water Electronic Lab Reporting (DWELR) system; 3.) Ensure consistency with analytical, monitoring and training requirements associated with Operator Certification and Environmental Laboratory Accreditation regulations; and 4.) Clarify how the Department determines compliance with the Maximum Contaminant Levels (MCLs).

The draft proposed amendments were submitted to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on November 17, 2005. TAC provided several comments and recommendations, which the Department addressed in the proposed rulemaking.

The Department will provide the Commission with the assistance required to facilitate a thorough review of these proposals. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendations or suggestions submitted by the Commission, as well as the Committees and public commentators, prior to final adoption of these regulations.

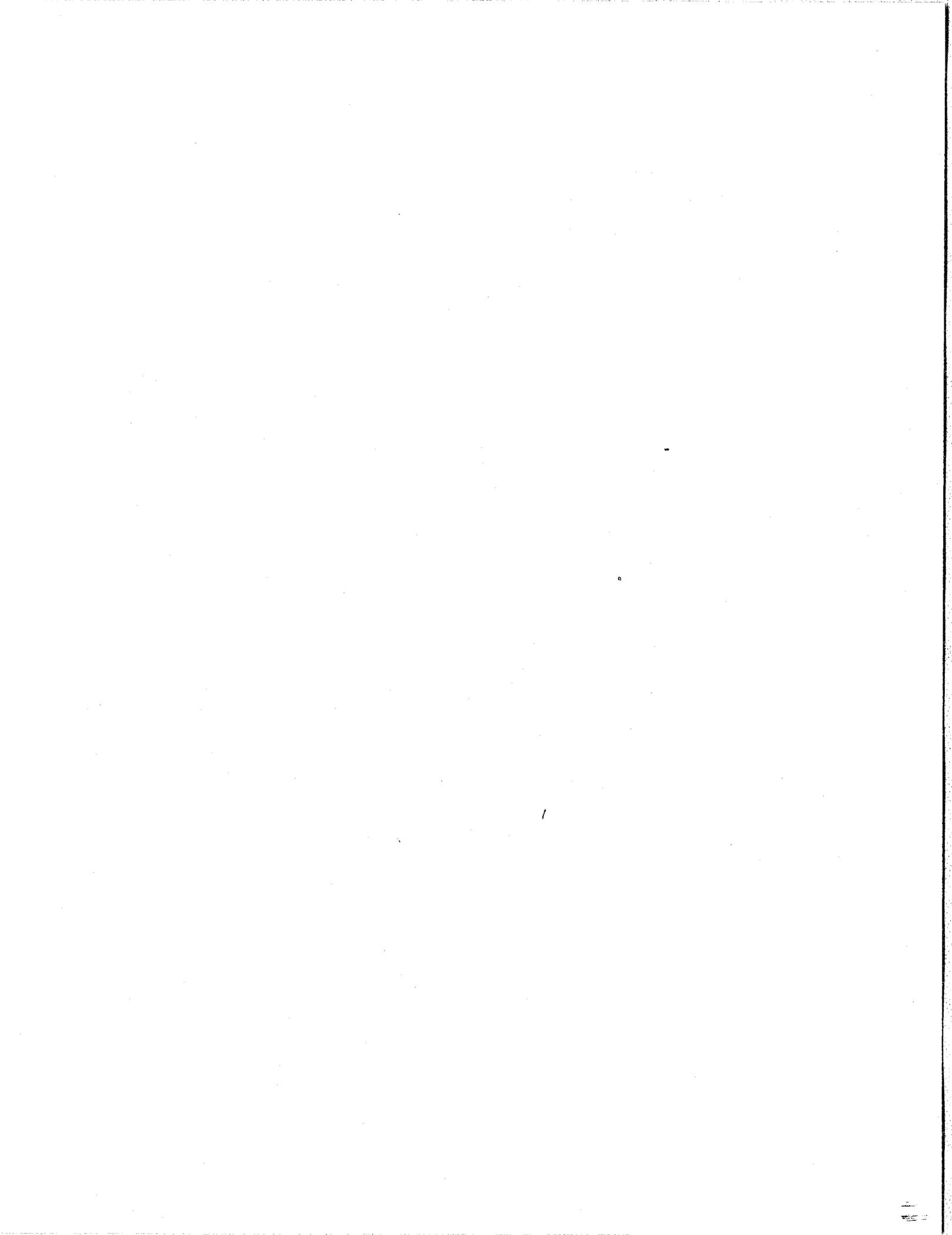
Please contact me at the number above if you have any questions or need additional information.

Sincerely,



Michele L. Tate
Regulatory Coordinator

Enclosures





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

I.D. NUMBER: 7- 414
SUBJECT: Surface Mining
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- 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 Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2007 AUG 16 PM 3:00
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/16/07	<i>D. Neuf</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/16/07	<i>Juanita H. Fair</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/16/07	<i>D. Castelli</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8.16.07	<i>M. Zull</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/16/07	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
8/16/07	<i>C. Lu...</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

