

Comments of the Independent Regulatory Review Commission



Environmental Quality Board Regulation #7-532 (IRRC #3217)

Federal Office of Surface Mining Reclamation and Enforcement Program Consistency Rule

December 24, 2018

We submit for your consideration the following comments on the proposed rulemaking published in the October 27, 2018 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (Board) to respond to all comments received from us or any other source.

1. Section 86.31. Public notices of filing of permit applications. – Protection of the public health, safety and welfare; Reasonableness of the regulation.

In the Preamble, the Board states that Paragraph (c)(1) “requires notification by registered mail to the municipality where mining is proposed.” In the Annex, we note that the Board is deleting the phrase “by registered mail, the city, borough, incorporated town or township” [Emphasis added.] and replacing that with “the municipality.” The Board states in the Preamble that it is making this change because notification by registered mail is not required by the federal rules and the amended regulation will be consistent with federal regulations. The Board also states that this proposal will allow for electronic notice “in cases where it is appropriate.” We have several concerns. First, existing Section 86.1 (relating to definitions) defines “municipality” as “a county, city, borough, town, township, school district, institution or an authority created by any one or more of the foregoing.” Is it the Board’s intent to expand the notification requirement to all of these entities? Second, the Pennsylvania State Association of Township Supervisors comments that this notification is too important not to be sent by registered mail. We note that Pennsylvania is permitted to be more stringent than the federal rules, and ask the Board to explain the reasonableness of not requiring notification by registered mail for proposed mining activities. Finally, in what circumstances is electronic notice appropriate? If electronic notification is kept in the final regulation, we ask the Board to set standards for when its use is appropriate. Also, we ask the Board to explain how the notification requirements in the final regulation adequately protect public health, safety and welfare.

2. Regulatory Analysis Form (RAF)

In response to RAF Question #10 the Board states: “Tables in sections 87.103, 88.93, 88.188, 88.293, 89.53, and 90.103 currently use outdated climatological data from the early 1980s. The

proposed regulation replaces these tables with a general reference to data available from the National Oceanic and Atmospheric Administration (NOAA). NOAA's data is currently available online through its precipitation and storm event tool, which provides a more accurate account of storm events and, generally, lower precipitation levels." However, in response to RAF Question #28, the Board states that data is not the basis for the proposed regulatory amendments. In the Preamble and RAF to the final regulation, the Board should amend its response to Question #28 to note that data is the basis for the change to climatological data in the sections listed in response to RAF Question #10. The Board should also restate the reason for the change and include a link to the information on the NOAA website.

Further, with reference to the sections listed in response to RAF Question #10, the actual language of the change in each of those sections states ". . . shall be determined by reference to data provided by the National Oceanic Atmospheric Administration or equivalent resources." What are "equivalent resources?"