



May 4, 2021

*Submitted electronically thru eComment*

**Re: Non-coal Mining Clarifications and Corrections, 25 PA.Code Ch.77, 51 PaB.1519, March 20, 2021**

Delaware Riverkeeper Network provides the following comments and context for consideration regarding the Chapter 77 revisions proposed for final rule-making.

The purpose states that Chapter 77 was finalized in 1990 to implement the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. § 3311(a)). Since 1990, the Department's experience implementing the noncoal mining regulatory program has highlighted several issues that necessitate clarification of the regulations in Chapter 77. PADEP asserts many of the proposed revisions are administrative in nature. It is noted that the Pennsylvania Dept. of Environmental Protection (PADEP) worked with the Aggregate Advisory Board, created by Act 137 of 2014 under Governor Corbett to develop these proposed regulations. A list of the current serving members is located here:

<https://files.dep.state.pa.us/Mining/BureauOfMiningPrograms/BMPPortalFiles/AAB/Membership%20List.pdf>

**DRN Comment:** Will PADEP please clarify from the aggregate advisory list which member serving on the board is from the county conservation district?

**Summary Information for Context**

According to the Feb 2020 Aggregate Advisory minutes<sup>1</sup>, between 2014 and 2019, the ranges for various application types included the following:

- Licenses: between 1,204 (2015) and 1,098 (2018), with 981 for 2019.
- Large Facilities (New): between 11 (2015) and 4 (2016), with 6 for 2019.
- Small Facilities (New): between 51 (2016) and 32 (2018), with 27 for 2019.
- NPDES (New): between 33 (2018) and 13 (2016), with 24 for 2019.
- NPDES (Renewal): between 88 (2016) and 50 (2014), with 46 for 2019.
- Pre-Applications: between 8 (2014) and 2 (2016), with 7 for 2019.

<sup>1</sup>[https://files.dep.state.pa.us/Mining/BureauOfMiningPrograms/BMPPortalFiles/AAB/Agendas\\_and\\_Handouts/2020/May\\_6/Aggregate%20Advisory%20Board%20Meeting%20Minutes%20\(Draft\)%20\(02-05-2020\).pdf](https://files.dep.state.pa.us/Mining/BureauOfMiningPrograms/BMPPortalFiles/AAB/Agendas_and_Handouts/2020/May_6/Aggregate%20Advisory%20Board%20Meeting%20Minutes%20(Draft)%20(02-05-2020).pdf) Accessed May 4, 2021.

As of December 6, 2019, Draft NPDES permits (58 of which were non-coal) were sent to the US EPA. **The EPA has commented or objected on 423 of these permits, 10 of which were non coal.**

**DRN comment:** Where is the summary data for these EPA rejections housed for review by the public to better understand the extent of concerns with these NPDES permits?

Aggregate advisory notes state there is a PA map of Noncoal Sites Requiring Reclamation that require reclamation and that this map is available among the Board handouts. **DRN Comment:** Is this map of noncoal sites available electronically for public review or posted on a website? If not, please consider adding it so that the public has more readily available data and maps to help better understand the extent of impacts and engage in the permitting and public review process. The Department has developed helpful monitoring maps and online tools to assist in other programs – for example the water quality standards and benthic monitoring mapping and the 303d listings. Providing this summary information and maps for mining in the state using story maps and other interactive mapping would be helpful to the public.

### **DRN Comments on Proposed Rule Making**

Due to time constraints, DRN was not able to review the text of Chapter 77 in full and only focused on reading the information provided in the PA Bulletin by PADEP to provide this input.

#### **77.1 Definitions**

Will PADEP please clarify why “insignificant boundary correction” is being allowed and how PADEP defines “insignificant”? Is it based on acreages of expansion of a quarry? Is it based on changes in mining depth? Is a boundary change insignificant if its not expansion into a stream or wetland or riparian buffer? Since this term is being used to determine if there is a requirement for a “major permit revision”, this term on its face is concerning. Is this possibly just a paper work change versus a change on the ground with the actual mine? Please clarify and define parameters for a revision being deemed “insignificant”.

Noxious and invasive plants continue to plague our natural resources and impacts from mines with disruption of soils certainly can lead to colonization of these invasive plants both during the life of the mine and after reclamation. An update to ensure all plants are included would be a good change and it should be noted that recently the state of Delaware updated their noxious weed lists and this type of update would also benefit the Commonwealth’s natural resources.

#### **77.51 License requirement**

Measures to ensure complete details pertaining to company ownerships and LLC’s is an important change. DRN would suggest that DEP request for the following (2) a longer period than 5 years (in yellow below) preceding the data of application to have a broader view of the applicant’s history with mines especially considering the long life of a mine.

*(2) The names under which an applicant listed in paragraph (1) previously operated a mining operation in this Commonwealth **within 5 years** preceding the date of application.*

All LLC’s, subsidiaries, and related companies or bankrupt or closed companies should also be tracked to ensure a complete history of the applicant’s record over time.

### **77.108 – Transfers and public notice**

To ensure public notice is adequate, DRN would suggest that transfers and small permits both not be exempt from public notice in a newspaper. In general, DRN believes more public notice both in newspapers and also electronically are critical to providing adequate notice for the public to engage in the process especially in light of the impacts and long life and operation of these mines.

Page 2 - Non coal surface mining --- excludes mining via mining via subsurface shafts and tunnels---so why is there reference to underground mining activities at p. 12 77.142(a)(2)? Please clarify why also excludes dredging in streams, rivers, and Lake Erie. But would include Manor and Van Sciver Lakes?

p. 6. Words "and attained use, if higher than designated use" should be added to designated use and water quality in 77.109(e)(2). PADEP routinely ignores attained use in making a determination, despite the requirements of 25 Pa Code Chapter 93. Thorough monitoring should be required to ensure the proper uses are reflected before any permit is issued.

Why must exploration avoid only wetlands, but not streams, ponds, springs, etc., per 77.109(g)(3)?

p. 7 Public information---available only at district mining office. 77.109(j)(1). All permit application information upon request should be available to the public electronically once permitting is done online. Previous discussion anticipates electronic permitting, but availability to public is not noticed. In the electronic age it is critical these documents are readily available online to the public for better public engagement and review.

p. 11 What about effects on other environmental features than hydrologic balance---streams, wetlands, etc., at 77.141(e)(1)?

p. 12 No public notice is required to delete from permit (and thus presumably from reclamation obligations) any lands disturbed only by exploratory drilling per 77.142(c). That appears to invite abuse, inasmuch as grading typically is associated with exploration of mineral resources.

p. 18 Water quality monitoring MAY be required over and above any NPDES requirements per 77.532(c).

Thank you for your time and consideration of our comments.

Sincerely,

Maya K. van Rossum  
the Delaware Riverkeeper