

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p><i>(All Comments submitted on this regulation will appear on IRRC's website)</i></p>		<p><b>INDEPENDENT REGULATORY REVIEW COMMISSION RECEIVED</b></p> <p>JUN 16 2022</p> <p>Independent Regulatory Review Commission</p> <p>IRRC Number: 3318</p>	
<p>(1) Agency:</p> <p>Department of Environmental Protection</p>			
<p>(2) Agency Number: 7</p> <p>Identification Number: 565</p>			
<p>(3) PA Code Cite: 25 Pa. Code Chapters 88 and 90</p>			
<p>(4) Short Title: Coal Refuse Disposal Revisions</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Laura Griffin, 717.783.8727, laurgriffi@pa.gov                  Secondary Contact: Kate Cole, 717.783.8727, kacole@pa.gov</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation  <input checked="" type="checkbox"/> Final Regulation  <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;  <input type="checkbox"/> Certification by the Governor  <input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The final-form rulemaking implements Act 74 of 2019 which resolves the differences between the Commonwealth's regulations and Federal regulations relating to temporary cessation of operations at coal refuse disposal sites. Implementing Act 74 allows the Department to promulgate regulations linking the status of operations generating coal refuse or related material to the coal refuse disposal area. This final-form rulemaking also clarifies several items related to the design of coal refuse disposal sites.</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>The final-form rulemaking is created under the authority of Section 5 of the Clean Streams Law (35 P.S. § 691.5); Section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.4b(a)); Section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Environmental Quality Board (Board) to adopt rules and regulations necessary for the performance of the work of the Department.</p>			
<p>(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.</p> <p><b><i>Required Consistency of the Commonwealth's Mining Program with Federal Law</i></b>                  For the Commonwealth to maintain primary regulatory authority over coal mining activities in Pennsylvania, the Commonwealth must maintain a Federally approved State Program in accordance with the requirements of The Federal Surface Mining Control and Reclamation Act of 1977</p>			

(30 U.S.C.A. §§ 1201—1328) (Federal SMCRA), and with “rules and regulations consistent with regulations issued by the Secretary”. See 30 U.S.C.A. § 1253(a)(1) and (7).

Act 74 of 2019 (Act 74) amended Section 6.1 of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a) to align the requirements for temporary cessation with the Federal requirements. Previously, while Federal rules under Federal SMCRA provided flexibility, Pennsylvania’s Coal Refuse Disposal Control Act had limited the temporary cessation of operations at a coal refuse disposal site to no more than 1 year. Act 74 removed Pennsylvania’s 1-year limitation and clarified that any rules or regulations promulgated must be consistent with Federal provisions on this subject. Act 74 also gave the Department an opportunity to promulgate regulations that would link the status of operations generating coal refuse or related material to the coal refuse disposal area. The status of a coal refuse disposal site is directly related to the status of the refuse source, and the revisions will ensure that a change in status of one will result in a change in the status of the other. For example, when an underground coal mine is actively mining coal and sending the refuse material to a coal refuse disposal site, both facilities are considered active. If that underground coal mine is approved to temporarily cease operations, the coal refuse disposal site would also be approved for temporary cessation because no refuse material is being generated to be sent there. If mining was to recommence, both facilities would be considered active, whereas, if the mine was to permanently cease operations, the coal refuse disposal facility would be considered permanently ceased unless an alternative source of refuse material can be found.

The requirements for temporary cessation of operations include a reference to a system to prevent precipitation from contacting the coal refuse (see 52 P.S. § 30.56a). Act 74 also revised Section 6.1 to include an enumerated list of the circumstances under which this system must be installed. Previously, the requirement was listed in paragraph form which was somewhat unclear.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Previously, Pennsylvania’s Coal Refuse Disposal Control Act (CRDCA) (52 P.S. § 30.56a) had limited the duration of temporary cessation of operations at coal refuse disposal sites to no more than one year. While the Federal rules under Federal SMCRA allowed for flexibility when it came to temporary cessation status. Act 74 of 2019 amended Section 6.1 of the CRDCA to remove Pennsylvania’s one-year limitation and mandated that any rules or regulations promulgated must be consistent with the Federal provisions on this subject. The State requirements for temporary cessation include a reference to a system to prevent precipitation from contacting the coal refuse. The Act 74 revision to Section 6.1 of the CRDCA resulted in an enumerated list of the circumstances under which this system must be installed. The regulatory revisions include an enumerated list which replaced the requirements previously specified in paragraph form.

Act 74 also gave the Department the opportunity to promulgate regulations which would link the status of operations generating coal refuse or related material to the coal refuse disposal area. The status of a coal refuse disposal site is directly related to the status of the source of the refuse and the revisions ensure that a change in status of one will result in a change in the status of the other. This will ensure that if the status of the refuse source changes, then the status of the coal refuse disposal area would also change and trigger certain requirements under that status.

During the review process for a proposed coal refuse disposal site, the Department provides a technical review of the application and identifies any missing or incomplete information, or other issue in the form

of a technical deficiency letter. Several common issues resulted from the ambiguity or incorrect subsection references in the regulations. The final-form rulemaking clarifies the intent of the subsection, as in the case of terraces, and resolves incorrect subsection references, as in the case for diverting surface water off the fill.

There are currently 41 coal refuse disposal permits among 23 different operations in various stages of operation who will benefit directly from this final-form rulemaking. Of those 41 sites, there are 29 permits with an "Active" status, 11 permits with an "Under Reclamation" status, one permit with an "approved cessation" status, and one permit with a "not started" status. All permits with these four permit status categories will be required to meet the requirements of the final-form rulemaking. A coal refuse disposal site contains the reject coal material from a coal mining operation and in many cases a new one is only needed if a new underground mine is opened. An underground mine and a coal refuse disposal site both require extensive planning and permitting as well as the upfront financial costs, so it is normal for the Department to only permit one new coal refuse disposal site every few years.

All existing and future permittees of coal refuse disposal sites will benefit from the improved clarity of the requirements for coal refuse disposal sites as a result of the final regulations. Citizens of the Commonwealth who reside in the vicinity of coal refuse disposal sites will also benefit from the reduced likelihood that precipitation will generate a pollutional discharge from the site as a result of the clarifications of when an operator must install a system for preventing precipitation from coming into contact with the coal refuse.

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

No, the standards in the final regulation are not more stringent than Federal standards. The statutory language changes as a result of Act 74 ensure that any regulations regarding temporary cessations are consistent with the Federal standards. It also allowed the Department to promulgate regulations that link the status of operations generating the coal refuse to the coal refuse disposal area. While this provision is not present in the Federal regulations, Federal regulations for coal mining are inherently broad given the various geographic and geologic conditions that comprise the 36 coal-producing states.

Pennsylvania has more specific requirements in the existing regulations when it comes to coal refuse disposal sites. For example, the site selection process of a coal refuse disposal permit is unique to Pennsylvania. The CRDCA and the existing regulations established a two-step process for the permitting of coal refuse disposal sites. The first step includes a pre-application site selection process which is intended to steer applicants to areas previously disturbed by mining. In the absence of previously disturbed sites, the site selection process requires an evaluation of nearby candidate sites with the goal of choosing the site that results in minimal adverse impacts. Following the Department's approval of the applicant's site selection, the applicant proceeds to the second step which involves the preparation and submittal of a permit application. It is also worth noting that any promulgated regulations must also be approved by the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) to become part of the approved program.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

As a result of the Federal requirements, all coal mining states with primacy must have regulations that are at least as stringent as the Federal regulations to maintain their primacy. Therefore, the final regulations should be comparable to those of other coal mining states and should not affect Pennsylvania's ability to compete with other states. Competition amongst states is more dependent on the quality and accessibility of coal resources reflecting the current and future demands of the coal market. The purpose of both Federal SMCRA and Pennsylvania's laws is to balance the protection of the environment with the energy needs of the nation.

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

The final-form rulemaking will not affect the Department's existing or proposed regulations or those of other Commonwealth agencies as it is specific to coal refuse disposal sites which are not regulated by other agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department consulted with the Mining and Reclamation Advisory Board (MRAB) and the Pennsylvania Coal Alliance (PCA) to develop these final regulations. The MRAB is composed of two licensed bituminous surface mine operators, one licensed anthracite surface mine operator, four public members of the Citizens Advisory Council, one anthracite or one bituminous licensed professional engineer, one county conservation district representative, and one majority party State senator, one minority party State senator, one majority party State representative, and one minority party State representative. The revisions were first mentioned at the January 23, 2020 MRAB meeting as part of the review of the current regulatory agenda. At the March 16, 2020 MRAB Regulation, Legislation, and Technical (RLT) committee meeting, the draft language was reviewed, and the committee suggested changes to the language. A second meeting of the MRAB RLT committee took place on May 18, 2020 to review the draft revised language resulting from the March 16, 2020 committee meeting. The Department reviewed the revised draft with the MRAB again at its meeting on July 16, 2020. A third meeting of the MRAB RLT committee took place on October 15, 2020 to review the revised draft and the committee recommended a minor revision to the permanent cessation section. At the MRAB meeting of October 22, 2020 the MRAB recommended that the Department proceed with the proposed rulemaking. After reviewing the two comments submitted during the 30-day public comment period, no substantive changes were made to the proposed regulatory language. The only change to the regulation was to update the title of a technical guidance document referenced in the regulation. The draft final regulation was presented to the MRAB at its meeting on January 20, 2022, where the MRAB recommended that the Department proceed with the final-form rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Currently, there are 41 active and unreclaimed coal refuse disposal permits among 23 different operators throughout Pennsylvania. Except for one operator, all operators are considered small businesses. The final regulations, which would apply to all existing and future permittees of coal refuse disposal sites, will provide clearer requirements during the permitting process as well as the requirements during operation of a coal refuse disposal site. Under the existing regulations, inconsistent interpretation or application of requirements has caused confusion amongst the regulated community and has resulted in costly corrections and multiple submissions of permit applications as well as addressing violations cited during inspections. The final regulations are expected to clarify requirements and eliminate inconsistent interpretation or application of the regulations.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All existing and future permittees of coal refuse disposal sites will be required to comply with the final regulations. 22 of the 23 operators who currently hold coal refuse disposal permits qualify as small businesses.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

All existing and future permittees of coal refuse disposal sites will be required to comply with the final regulations. This final-form rulemaking will not create new compliance costs and it is not expected to prevent or avoid costs. The final-form rulemaking clarifies the existing requirements and prevent inconsistent interpretation or application of the requirements. The Federal and State regulations apply to all coal mine operators regardless of size.

The final-form rulemaking will align the Department's regulations with State law and Federal regulations related to the operator of coal refuse disposal areas. The final-form rulemaking clarifies when an operator must install a system for preventing precipitation from encountering coal refuse, which will improve environmental protection by reducing the likelihood that precipitation will generate a polluttional discharge from the site. The final-form rulemaking also establishes a relationship between the coal refuse disposal area and the source of the refuse, which will improve environmental protection by ensuring that disposal areas do not remain unreclaimed long after the source has ceased generating refuse. This final-form rulemaking is not expected to directly improve public health, although it may have an indirect public health benefit to the extent that it reduces the likelihood of polluttional discharges from coal refuse disposal areas.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The final-form regulations are a result of statutory changes which will bring the State regulations into alignment with the Federal requirements. State regulations must be at least as stringent as the Federal regulations to maintain primacy over the coal mining program in Pennsylvania. The final-form rulemaking provides clearer direction on the existing requirements which may avoid costs associated with navigating requirements that could be inconsistently interpreted or applied. A potential cost benefit

would be reducing the likelihood that precipitation will generate a perpetual pollutional discharge from the site because the final regulations clarify when the operator must install the precipitation prevention system.

(19) 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. Explain how the dollar estimates were derived.

All existing and future permittees of coal refuse disposal sites will be required to comply with the final regulations. The final-form rulemaking will not create any new compliance costs and it is not expected to prevent or avoid costs. The final-form rulemaking provides clarity on the existing requirements which may avoid costs associated with navigating unclear requirements that could be inconsistently interpreted or applied. The final-form rulemaking also clarifies the requirements for installing a system that prevents precipitation from coming into contact with the coal refuse. This may be a potential cost benefit as it reduces the likelihood that precipitation will generate a pollutional discharge from the site that would result in costly post-mining treatment.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no compliance costs or savings for local governments associated with this rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking contains no implementation costs or savings for State government, as most of the regulatory changes reflect existing law and Department policy predicated largely on Federal standards. Some of the revisions made in the regulations may reduce the amount of staff time dedicated to issuing deficiency letters and resolving deficiency issues among operators because the application expectations will be clearer.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional legal, accounting, or consulting procedures, or additional reporting, recordkeeping or other paperwork are required to implement this regulation.

(22a) Are forms required for implementation of the regulation?

No forms are required for implementation of the regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

No forms are required for implementation of the regulation.

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

	<b>Current FY 2021-22</b>	<b>FY +1 2022-23</b>	<b>FY +2 2023-24</b>	<b>FY +3 2024-25</b>	<b>FY +4 2025-26</b>	<b>FY +5 2026-27</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Savings</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>						
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Revenue Losses</b>	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3 2019</b>	<b>FY -2 2020</b>	<b>FY -1 2021</b>	<b>Current FY 2022</b>
Coal Mining Program	\$24,225,013 (Final)	\$25,589,243 (Final)	\$26,691,566 (Budget for FY 2021)	\$27,978,460 (Budget for FY 2022)
	Note: this is based on the Title V grant expenditures on a Federal FY basis.	Note: this is based on the Title V grant expenditures on a Federal FY basis.	Note: this is based on the Title V grant expenditures on a Federal FY basis.	Note: this is based on the Title V grant expenditures on a Federal FY basis.

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.

22 of the 23 coal refuse disposal operators in Pennsylvania qualify as small businesses.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

There are no projected reporting, recordkeeping, or other administrative costs anticipated for compliance with the final-form rulemaking.

- (c) A statement of probable effect on impacted small businesses.

All existing and future permittees of coal refuse disposal sites will be required to comply with the final-form regulations. The Federal and State regulations apply to all coal mine operators regardless of size as the potential environmental impacts caused by one group is the same as those caused by another. Of the 23 operators who currently have coal refuse disposal permits, except for one operator, all the other operators qualify as a small business. The final-form rulemaking will not create any new compliance costs and it is not expected to prevent or avoid costs for any member of the regulated community, including small businesses. By providing clarity on the existing requirements, small businesses may avoid costs associated with navigating unclear requirements that could be inconsistently interpreted or applied. Clarification of the requirements for installing a system that prevents precipitation from coming into contact with the coal refuse may be a potential cost benefit as it reduces the likelihood that precipitation will generate a pollutional discharge from the site that would result in costly postmining treatment.

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The final-form regulations are a result of statutory changes which will bring the State regulations into alignment with the Federal requirements. State regulations must be at least as stringent as the Federal regulations to maintain primacy over the coal mining program in Pennsylvania. Being that these changes are statutory requirements, any alternative that would be less intrusive or less costly would not be complying with State and Federal law.

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

This final-form rulemaking is not anticipated to affect any one particular entity. The final-form regulations are a result of changes to the CRDCA which will bring the State regulations into alignment with the Federal requirements. State regulations must be at least as stringent as the Federal regulations therefore establishing less stringent requirements for specific groups is not feasible. The potential environmental impacts caused by any type of group or persons is the same, therefore, the Federal and State regulations apply to all coal mine operators.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The sections of this rulemaking regarding temporary cessation were substantially revised prior to adoption of the proposed rulemaking because of interactions with the MRAB RLT committee and stakeholders, such as the Pennsylvania Coal Alliance (PCA). In the original version of the proposed regulation, when the operation was expected to be under a temporary cessation status for a period of more than 30 days, the operator would need to complete all the steps now separated into subsections (§ 88.332(a) and (b) and § 90.167(a) and (b)). An operator also would have been required to complete a cost estimate of the cost for the Department to complete the reclamation. After presenting the proposed regulation to the MRAB RLT committee at the March 16, 2020 meeting, there were some concerns expressed over the items required anytime an operation would undergo temporary cessation for a period of more than 30 days and the financial burden an operator would undertake in performing the cost estimate requirement. The proposed regulation was rewritten to separate the required items for an operation that will be under temporary cessation for 30 days or more and those for 90 days or more. The cost estimate requirement was also replaced with a confirmation that the bond is sufficient for the Department to complete the reclamation if necessary.

An additional substantial change that took place following an MRAB RLT committee meeting regarded the consequences for an operation that fails to comply with the regulations or the permit while under temporary cessation status. Earlier revisions included a requirement in §§ 88.332 and 90.167 that if an operator failed to comply with the regulations of Chapters 86-90 or the approved permit while under approved temporary cessation status, the mining operation would be placed into permanent cessation status. There were concerns expressed by both the MRAB RLT committee and PCA that any violation, no matter how minor, would trigger the permanent cessation status. Concern about placement of a provision dealing with permanent cessation in the temporary cessation subsection was also expressed. As a result, the Department revised the proposed provision to further explain what actions would lead to permanent cessation and moved the entire provision into the permanent cessation subsections of Chapters 88 and 90.

Both revisions alleviated the concerns of the MRAB and stakeholders such as PCA, resulting in a recommendation from the MRAB to proceed with the proposed rulemaking on October 22, 2020. The provisions are unchanged from the proposed to final-form rulemaking.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

For the Commonwealth to maintain primary regulatory authority over coal mining activities in Pennsylvania, the Commonwealth must maintain a Federally approved State program in accordance with the requirements of Federal SMCRA of 1977, and with “rules and regulations consistent with regulations issued by the Secretary”. See 30 U.S.C.A. § 1253(a)(1) and (7).

The final regulations are a result of changes to the CRDCA which will bring the State regulations into alignment with the Federal requirements. State regulations must be at least as stringent as the Federal regulations. Therefore, establishing less stringent requirements for some businesses is not feasible. The Federal and State regulations apply to all coal mine operators regardless of size.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this regulation. Existing Federal and State legal requirements provided the foundational basis for this rulemaking.

(29) Include a schedule for review of the regulation including:

- |   |   |
|---|---|
| A. The length of the public comment period:   | <u>30 Days</u>  |
| B. The date or dates on which any public meetings or hearings will be held:                   | <u>None held</u>  |
| C. The expected date of delivery of the final-form regulation:                                | <u>Quarter 2, 2022</u>  |
| D. The expected effective date of the final-form regulation:                                  | <u>Upon publication in the <i>Pennsylvania Bulletin</i> and approval of the Program Amendment by OSMRE.</u> |
| E. The expected date by which compliance with the final-form regulation will be required:     | <u>Upon publication in the <i>Pennsylvania Bulletin</i> and approval of the Program Amendment by OSMRE.</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u>  |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

CDL-1

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**JUN 16 2022**

**Independent Regulatory  
Review Commission**

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

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-565

DATE OF ADOPTION May 18, 2022

BY 

TITLE **PATRICK MCDONNELL  
CHAIRPERSON**

EXECUTIVE OFFICER CHAIRPERSON OR SECRETARY

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

BY 

6/14/2022

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 FINAL RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**Coal Refuse Disposal Revisions**

**25 Pa. Code Chapters 88 and 90**

**FINAL-FORM RULEMAKING  
ENVIRONMENTAL QUALITY BOARD  
[ 25 PA. CODE CHS. 88 AND 90 ]**

**Coal Refuse Disposal Revisions**

The Environmental Quality Board (Board) amends Chapters 88 and 90 (relating to anthracite coal; and coal refuse disposal). The amendments are intended to implement the act of October 4, 2019 (P.L. 452, No. 74) (Act 74) and to address the differences between the Commonwealth's regulations and Federal regulations relating to temporary cessation at coal refuse disposal sites.

This final-form rulemaking was adopted by the Board at its meeting of May 18, 2022.

*A. Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and approval by the Office of Surface Mining Reclamation and Enforcement.

*B. Contact Persons*

For further information contact Gregory Greenfield, Environmental Group Manager, Bureau of Mining Programs, P.O. Box 8461, 5th Floor, 400 Market Street, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5015, or Christopher Minott, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, 9th Floor, 400 Market Street, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania Hamilton Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.dep.pa.gov](http://www.dep.pa.gov) (Select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of May 18, 2022).

*C. Statutory Authority*

The final-form rulemaking is authorized under section 5 of the Clean Streams Law (35 P.S. § 691.5); section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.4b(a)); section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to adopt rules and regulations necessary for the performance of the work of the Department.

*D. Background and Purpose*

Section 1 of Act 74 amended section 6.1 of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a) to conform with the regulations and standards for temporary cessation adopted by the United States Office of Surface Mining Reclamation and Enforcement under Federal law, namely the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (SMCRA) and regulations at 30 CFR 816.131 (relating to cessation of operations: Temporary). Previously, while Federal rules under SMCRA provided flexibility, the Commonwealth's Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66) had limited the temporary cessation of

operations at a coal refuse disposal site to no more than 1 year. Act 74 removed the Commonwealth's 1-year limitation and clarified that any rules or regulations promulgated must be in conformance with Federal provisions on this subject. Act 74 also gave the Department an opportunity to promulgate regulations linking the status of operations generating coal refuse or related material to the coal refuse disposal area. The status of a coal refuse disposal site is directly related to the status of the source of the refuse and the revisions will ensure that a change in status of one will result in a change in the status of the other. For example, when an underground coal mine is actively mining coal and sending the refuse material to a coal refuse disposal site, both facilities are considered active. If that underground coal mine is approved for temporary cessation, the coal refuse disposal site would also be approved for temporary cessation since no refuse material is being generated to be sent there. If mining was to begin again, both facilities would be considered active, whereas, if the mine was to permanently cease operations, the coal refuse disposal facility would be considered permanently ceased unless an alternative source of refuse material can be found.

The requirements for temporary cessation include a reference to a system to prevent precipitation from contacting the coal refuse. Act 74 also revised section 6.1 of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a) to include an enumerated list of the circumstances under which this system must be installed. Previously, the requirement was listed in paragraph form, which was somewhat unclear.

Other changes to the regulations are a result of the Department's experiences with reviewing applications for the permitting of coal refuse disposal sites. Confusing or incorrect requirements in the regulations have resulted in applications being considered technically deficient and sent back to the permittee for corrections. The clarifications will improve the quality of the applications and reduce the amount of correction letters sent to address these items. This includes the existing performance standards for terraces and surface water runoff at coal refuse disposal sites which, as written, have led to confusion on the purpose and intent. The terrace requirements are revised to state that terraces must be constructed as they are needed to control erosion and prevent cascading failures of the final cap rather than just being an optional use. The use of the terms "off of the fill" and "adjacent to and above the fill" in this section were amended to clarify the original intent and resolve the existing conflicts with other parts of the section.

The Department worked with the Mining and Reclamation Advisory Board (MRAB) to develop these regulations. The MRAB is composed of two licensed bituminous surface mine operators, one licensed anthracite surface mine operator, four public members of the Citizens Advisory Council, one anthracite or one bituminous licensed professional engineer, one county conservation district representative, one majority party State senator, one minority party State senator, one majority party State representative and one minority party State representative. The revisions were first mentioned at the January 23, 2020, MRAB meeting as part of the review of the current regulatory agenda. At the March 16, 2020, MRAB Regulation, Legislation and Technical (RLT) committee meeting, the draft language was reviewed and the MRAB RLT committee suggested changes to the language. A second meeting of the MRAB RLT committee took place on May 18, 2020, to review the draft revised language resulting from the March 16, 2020, committee meeting. The Department reviewed the revised draft with the MRAB again at its meeting on July 16, 2020. A third meeting of the MRAB RLT committee took place on

October 15, 2020, to review the revised draft and the committee recommended a minor revision to the permanent cessation section. At the MRAB meeting of October 22, 2020, the MRAB recommended that the Department proceed with the proposed rulemaking. At the MRAB meeting of January 20, 2022, the MRAB recommended that the Department proceed with the final-form rulemaking.

*E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking*

*§ 88.310. Coal refuse disposal: general requirements*

Subsection (k)(1) is amended to individually enumerate the triggers for installation of the system to prevent precipitation from encountering the coal refuse to reflect the list of triggers included in Act 74. This amendment includes the language in Act 74 which clarifies that there is not a 1-year upper limit on the length of temporary cessation.

No changes were made to this section from proposed rulemaking to final-form rulemaking.

*§ 88.332. Cessation of operations: temporary*

Act 74 amended section 6.1 of the Coal Refuse Disposal Control Act to conform with the regulations and standards for temporary cessation under Federal law. To be consistent with the Federal regulations at 30 CFR 816.131, subsection (a) is amended, and the existing requirements for temporary cessation for anthracite coal refuse disposal sites are amended as follows.

Amendments to subsection (a), which are based on the Federal requirements, address temporary cessation status of operations lasting 30 days or more and will require a notice to be submitted to the Department. The list of items that must be included in this notice are enumerated as paragraphs (1)—(4) and include the affected acres in the permit area; a description of the extent and kind of reclamation of the area; a description of the activities that will continue during the temporary cessation status; and a description of the status of the operation or operations that is the source of the coal refuse. Paragraphs (1)—(3) are based on the Federal regulations and are in the existing subsection (a). Paragraph (4) is based on the language in Act 74 to provide for the connection of coal refuse or related material to the coal refuse disposal area. Act 74 removed the 1-year limitation on temporary cessation and that part of subsection (a) is deleted.

Amendments to subsection (b) address temporary cessation status of operations lasting 90 days or more and, in addition to the items required to be submitted in subsection (a), there are two additional items that must be included in the notice submitted to the Department. These items may be submitted at the same time as the subsection (a) notice or subsequent to that notice. These two additional items are enumerated as paragraphs (1) and (2) and include the confirmation that the current bond is adequate to complete reclamation and the timing of the installation of the phased system to prevent precipitation from contacting the refuse. The difference in requirements between subsections (a) and (b) ensures the operator does not need to address longer-term requirements if the temporary cessation will last less than 90 days. While this distinction is neither found in the Federal requirements nor Act 74, it has been addressed

here because the amendments now allow for an unlimited time for cessation. The confirmation that the bond amount is adequate to complete the reclamation of the site as it currently exists is necessary to assure that the site can be fully reclaimed if the site ends up in bond forfeiture. The requirement for a schedule for the system to prevent precipitation from coming into contact with the refuse is to assure that the potential water quality impacts of long-term cessation are mitigated. The existing statement about exemptions for a seasonal shutdown or labor strike is deleted from this subsection as a justification for a longer temporary cessation is no longer needed since the upper one-year time limit is deleted.

Amendments to subsection (c) include the obligation to comply with the environmental protection statutes or "acts" as defined in § 86.1 (relating to definitions) and Chapters 86-90, in addition to the provisions of the permit. Previously, subsection (c) only required compliance with the provisions of the permit. The amendments clarify that operators are required to submit a permit renewal while under temporary cessation.

Subsection (d) states that temporary cessation status ends as a result of the resumption of coal refuse disposal operations and subsequent notices of temporary cessation status must include updated information that is outlined in § 88.332 (relating to cessation of operations: temporary).

Subsection (e) states that temporary cessation status for the coal refuse disposal operation ends when an operation that is a source of the coal refuse resumes its operations or ends by permanent cessation.

Subsection (f) states that temporary cessation status for the coal refuse disposal operation ends when the coal refuse disposal operation itself ends by permanent cessation as specified in § 88.333 (relating to cessation of operations: permanent).

No changes were made to this section from proposed rulemaking to final-form rulemaking.

#### *§ 88.333. Cessation of operations: permanent*

While neither the Federal regulations nor statute address this, subsection (b) is added to this section to provide a trigger for when a temporary cessation has developed into a permanent cessation. This necessitates the lettering of the existing language as subsection (a). Subsection (b) describes the circumstances that will terminate the temporary cessation status of a coal refuse disposal facility for noncompliance, listed as paragraphs (1)—(3). The three circumstances which will terminate the temporary cessation status are failure to comply with a final adjudicated proceeding through an act or omission which violates the acts defined in § 86.1 or Chapters 86—90; failure to comply with a permit condition required by the acts or Chapters 86—90; and failure to comply with a consent order and agreement or a consent order. The intent of this new subsection is to trigger the reclamation requirement for sites where chronic noncompliance exists and allows the Department to have the ability to begin reclamation, if necessary. In these cases, it is unlikely that the permittee will be able to meet their obligations to complete the required reclamation. The termination of temporary cessation status constitutes a final action of the Department and the Department will provide notice and an opportunity to appeal to the operator when this status changes and triggers the reclamation requirements.

No changes were made to this section from proposed rulemaking to final-form rulemaking.

*§ 90.31. General requirements*

The Act 74 amendments to the Coal Refuse Disposal Control Act provided for the Department to promulgate regulations to link operations generating coal refuse or related material to the coal refuse disposal area. Paragraph (6) requires the description of the operations that will be the source of the coal refuse to be disposed of in the application for a coal refuse disposal permit. As plans change, this facility information can be updated to include other related facilities.

No changes were made to this section from proposed rulemaking to final-form rulemaking.

*§ 90.50. Design criteria: groundwater and surface water protection system*

In response to Act 74, amendments to subsection (b) add "as specified in the permit" as paragraph (1.1) to the list of triggers for the installation of the system for preventing precipitation from encountering coal refuse that will be installed to prevent adverse impacts to groundwater and surface water. Paragraph (2) is revised to update the reference to subsection (b) in § 90.167 (relating to cessation of operations: temporary) to reflect the amendments to that section.

Subsection (c) is amended in this final-form rulemaking to update the title of technical guidance Document Number 563-2112-656, which was revised on July 17, 2021, to "Linings and Caps for Coal Refuse Disposal Areas."

*§ 90.122. Coal refuse disposal*

Amendments to subsection (h) parallel the language from Act 74 relating to when the system to prevent precipitation from encountering the coal refuse is to be implemented. Paragraphs (1)—(4) were deleted and reserved and paragraphs (5)—(8) were added to list the instances when an operator must install the system to prevent precipitation from contacting the coal refuse. These include when each phase of the operation reaches capacity; when specified in the permit; when an operator temporarily ceases operation for a period of 90 days or more; or when the operation permanently ceases. The construction and design requirements currently contained in paragraphs (1) and (3) of subsection (h) are moved to subsection (h).

The Department observed confusion among applicants regarding the purpose of terraces at coal refuse disposal sites and the need for clarification in the regulations. Subsection (m) is revised to require terraces to control erosion and enhance stability and make their use as roads optional. Previously, terraces were not required if the maximum overall completed out slopes in subsection (m) are not exceeded, but terraces are required to break up lengthy out slopes of very large coal refuse embankments to control erosion and prevent cascading failures of the final cap and soil on an entire embankment out slope. An amendment changed the reference in this subsection from subsection (n) to (o) because terraces are needed to divert the drainage off of the fill and not as a diversion adjacent to or above the fill.

The Department's experience with reviewing the applications for coal refuse disposal sites noted that part of the subsection referenced for diverting surface water runoff cannot be satisfied as written and the intent of the subsection is confusing. Subsection (n) is amended to clarify the design requirements for diverting surface water runoff away from the fill. The reference to all subsections of § 90.104 (relating to hydrologic balance: diversions) are amended by deleting the reference to § 90.104(b) as the design requirements of § 90.104(b) conflict with the hydraulic requirements in this section and the requirement to maintain diversion channels located above the refuse fills in perpetuity.

When reviewing coal refuse disposal site applications, the Department has observed that the applications often require technical deficiency letters due to confusion caused by incorrect or nonapplicable section references in the existing regulations. Subsection (o) is amended to require surface water runoff diverted off of the fill to be conveyed in channels in natural ground or suitable engineered fill. The reference to § 90.104 and § 90.105 (relating to stream channel diversions) has been deleted as they were confusing and conflicted with the design requirements in this section. Diverted off the fill is a different function than a diversion channel located adjacent to or above the fill and § 90.105 is not related to the management of disposal area runoff.

No changes were made to this section from proposed rulemaking to final-form rulemaking.

*§ 90.167. Cessation of operations: temporary*

Act 74 amended section 6.1 of the Coal Refuse Disposal Control Act to conform with the regulations and standards for temporary cessation under Federal law. To be consistent with the Federal regulations at 30 CFR 816.131, subsection (a) is amended, and the existing requirements for temporary cessation for bituminous coal refuse disposal sites are amended as follows.

Amendments to subsection (a), which are based on the Federal requirements, address temporary cessation status of operations lasting 30 days or more and will require a notice to be submitted to the Department. The list of items that must be included in this notice are enumerated as paragraphs (1)—(4) and include the affected acres in the permit area; a description of the extent and kind of reclamation of the area; a description of the activities that will continue during the temporary cessation status; and a description of the status of the operation or operations that is the source of the coal refuse. Paragraphs (1)—(3) are based on the Federal regulations and are in the existing subsection (a). Paragraph (4) is added based on the language in Act 74 to provide for the connection of coal refuse or related material to the coal refuse disposal area.

Amendments to subsection (b) address temporary cessation status of operations lasting 90 days or more and in addition to the items required to be submitted in subsection (a), there are two additional items that must be included in the notice submitted to the Department. These items may be submitted at the same time as the subsection (a) notice or subsequent to that notice. These two additional items are enumerated as paragraphs (1) and (2) and include the confirmation that the current bond is adequate to complete reclamation and the timing of the installation of the phased system to prevent precipitation from contacting the refuse. The difference in requirements between subsections (a) and (b) ensures the operator does not need to

address longer-term requirements if the temporary cessation will last less than 90 days. While this distinction is neither found in the Federal requirements nor Act 74, it has been addressed here because the amendments now allow for an unlimited time for cessation. The confirmation that the bond amount is adequate to complete the reclamation of the site as it currently exists is necessary to assure that the site can be fully reclaimed if the site ends up in bond forfeiture. The requirement for a schedule for the system to prevent precipitation from coming into contact with the refuse is to assure that the potential water quality impacts of long-term cessation are mitigated. The existing statement about exemptions for a seasonal shutdown or labor strike is deleted from this subsection as a justification for a longer temporary cessation is no longer needed since the upper time limit is deleted.

Amendments to subsection (c) include the obligation to comply with the environmental protection statutes or "acts" as defined in § 86.1 and Chapters 86—90, in addition to the provisions of the permit. Previously, subsection (c) only required compliance with the provisions of the permit. The amendments clarify that operators are required to submit a permit renewal while under temporary cessation.

Subsection (d) is deleted and reserved since Act 74 removed the one-year limitation on temporary cessation. The installation of the system preventing precipitation from contacting the coal refuse is included in subsection (b), which addresses the requirements for temporary cessation of 90 days or more.

Subsection (e) states that temporary cessation status ends as a result of the resumption of coal refuse disposal operations and any subsequent notices of temporary cessation status must include updated information that is outlined in § 90.167.

Subsection (f) states that temporary cessation status for the coal refuse disposal operation ends when an operation that is a source of the coal refuse resumes its operations or ends by permanent cessation.

Subsection (g) states that temporary cessation status for the coal refuse disposal operation ends when the coal refuse disposal operation itself ends by permanent cessation as specified in § 90.168 (relating to cessation of operations: permanent).

No changes were made to this section from proposed rulemaking to final-form rulemaking.

#### *§ 90.168. Cessation of operations: permanent*

While neither the Federal regulations nor statute address this, subsection (b) is added to this section to provide a trigger for when a temporary cessation has developed into a permanent cessation. This necessitates the lettering of the existing language as subsection (a). Subsection (b) describes the circumstances that will terminate the temporary cessation status of a coal refuse disposal facility for noncompliance, listed as paragraphs (1)—(3). The three circumstances which will terminate the temporary cessation status are failure to comply with a final adjudicated proceeding through an act or omission which violates the acts defined in § 86.1 or Chapters 86—90; failure to comply with a permit condition required by the acts or Chapters 86—90; and

failure to comply with a consent order and agreement or a consent order. The intent of this new paragraph is to trigger the reclamation requirement for sites where chronic noncompliance exists and allows the Department to have the ability to begin reclamation, if necessary. In these cases, it is unlikely that the permittee will be able to meet their obligations to complete the required reclamation. The termination of temporary cessation status constitutes a final action of the Department and the Department will provide notice and an opportunity to appeal to the operator when this status changes and triggers the reclamation requirements.

No changes were made to this section from proposed rulemaking to final-form rulemaking.

#### *§ 90.202. General requirements*

Amendments to subsection (b)(1) changed the reference from a "coal preparation facility" to a "coal mining activity." This change was made because not all coal refuse is the result of coal preparation. For example, some surface mines will take their refuse to a refuse disposal site. The existing language is also inconsistent with the language in section 4.1 of the Coal Refuse Disposal Control Act (52 P.S. § 30.54a).

No changes were made to this section from proposed rulemaking to final-form rulemaking.

#### *F. Summary of Comments and Responses on the Proposed Rulemaking*

Two comments were submitted to the Department during the public comment period. Aside from general support for the proposed rulemaking, none of the comments specifically addressed any particular aspects of the rulemaking. No changes or modifications are made to the regulation in response to comments.

One commentator suggested a change to the proposed rulemaking to require the Department to publish a notice in the *Pennsylvania Bulletin* when the status of a coal refuse disposal site changes. The Board notes that there are hundreds of mine sites currently permitted in the Commonwealth and an individual site's status can change frequently throughout the year. Due to the frequency of these changes and the timing of the formal publication process, notifying the public of these changes through the *Pennsylvania Bulletin* would be both inefficient and untimely. The Board suggests a more effective method for the public to access the real-time status of any permitted operation, as well as other relevant information on permitted mining activities, is through the Department's database, Environmental Facilities Application Compliance Tracking System, known as eFACTS, available at <https://www.ahs.dep.pa.gov/eComment/>.

#### *G. Benefits, Costs and Compliance*

##### *Benefits*

This final-form rulemaking makes the Department's regulations consistent with State law and Federal regulations related to the operation of coal refuse disposal areas. This final-form rulemaking clarifies when an operator must install a system for preventing precipitation from encountering coal refuse, which will improve environmental protection by reducing the

likelihood that precipitation will generate a pollutional discharge from the site. This final-form rulemaking establishes a relationship between the coal refuse disposal area and the source of the refuse, which will improve environmental protection by ensuring that disposal areas do not remain unreclaimed long after the source has ceased generating refuse. This final-form rulemaking is not expected to directly improve public health, although it may have an indirect public health benefit to the extent that it reduces the likelihood of pollutional discharges from coal refuse disposal areas.

#### *Compliance costs*

Existing and future permittees of coal refuse disposal sites are required to comply with this final-form rulemaking, which does not create any new compliance costs and it is not expected to prevent or avoid costs. This final-form rulemaking clarifies the existing requirements which may avoid costs associated with navigating unclear requirements that could be inconsistently interpreted or applied.

#### *Compliance assistance plan*

Compliance assistance for this final-form rulemaking will be provided through the Department's routine interaction with trade groups and individual applicants. No financial assistance will be necessary or provided.

#### *Paperwork requirements*

This final-form rulemaking does not require additional paperwork.

#### *H. Pollution Prevention (if applicable)*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final-form rulemaking incorporates the following pollution prevention incentives: it clarifies when an operator must install a system for preventing precipitation from encountering coal refuse, which will improve environmental protection by reducing the likelihood that precipitation will generate a pollutional discharge from the site; and requires some relationship between the coal refuse disposal area and the source of the refuse, which will improve environmental protection by ensuring that disposal areas do not remain unreclaimed long after the source has ceased generating refuse.

#### *I. Sunset Review*

The Board is not establishing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

#### *J. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 20, 2021, the Department submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 6914 (November 6, 2021), and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on DATE, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on DATE and approved the final-form rulemaking.

#### *K. Findings of the Board*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 51 Pa.B. 6914 (November 6, 2021).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

#### *L. Order of the Board*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 88 and 90, are amended to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this final-form regulation to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form regulation to the IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this final-form regulation and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PATRICK McDONNELL,  
*Chairperson*

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE I. LAND RESOURCES**

**CHAPTER 88. ANTHRACITE COAL**

**Subchapter D. ANTHRACITE REFUSE DISPOSAL: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS**

**§ 88.310. Coal refuse disposal: general requirements.**

(a) Coal refuse shall be hauled or conveyed to and placed in designated disposal areas authorized for that purpose. The refuse shall be placed in a controlled manner to ensure the following:

(1) The land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) Stability of the disposal area.

(3) Leachate and surface runoff from the disposal area will not degrade surface waters or groundwaters or exceed the established effluent limitations.

(b) The disposal area shall be designed using recognized professional standards and approved by the Department. The design shall be certified by a registered professional engineer.

(c) Trees, grasses, shrubs and other organic materials shall be removed for a distance of 50 feet from the current disposal area concurrent with the placement of refuse.

(d) Slope protection shall be provided to minimize surface erosion at the site. The disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(e) The coal refuse to be placed in the fill shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and ensure a long-term static safety factor of 1.5 and seismic safety factor of 1.2.

(f) The final configuration of the disposal shall be suitable for the approved postmining land uses.

(g) Terraces may be utilized to control erosion and enhance stability if approved by the Department.

(h) If the disposal area contains springs, natural or manmade water-courses or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(i) Coal refuse may be returned to underground mine workings, but only in accordance with a disposal program approved by the Department and the Mine Safety and Health Administration.

(j) The system to prevent adverse impacts to the surface water and groundwater shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit and shall function to prevent adverse impacts to surface water and groundwater.

(k) The system to prevent precipitation from coming in contact with the coal refuse shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles and cross-sections approved in the permit and shall function to prevent precipitation from contacting the coal refuse. **The following apply:**

(1) The system shall be installed **[as phases of the disposal area reach capacity, as specified in the permit, when the operation temporarily ceases for a period in excess of 90 days (unless the Department approves a longer period, not to exceed 1 year) or when the operation permanently ceases.] :**

**(i) as phases reach capacity;**

**(ii) as specified in the permit;**

**(iii) when the operation temporarily ceases for a period in excess of 90 days unless the Department approves an operator's request for a longer period for installation of the system; or**

**(iv) when the operation permanently ceases.**

(2) The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 88.330 (relating to revegetation: standards for successful revegetation) and for prevention of erosion.

**§ 88.332. Cessation of operations: temporary.**

(a) **[As soon as it is known that the operation will temporarily cease for more than 30 days, the operator shall submit a notice of intention, in writing, to temporarily cease the operation. The notice shall include a statement of the exact number of acres which will have been affected in the permit area, the extent and kind of reclamation of those areas,**

and identification of the backfilling, regrading, revegetation, monitoring and water treatment activities that will continue during the temporary cessation. The system for preventing precipitation from contacting the coal refuse shall be installed when the temporary cessation exceeds 90 days. The Department may approve a longer period, not to exceed 1 year, consistent with section 6.1(i) of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a(i)).] Before temporary cessation status of operations for a period of 30 days or more, an operator shall submit to the Department a notice of intention to temporarily cease operations. The notice shall include all of the following:

(1) A statement of the exact number of acres affected in the permit area.

(2) A description of the extent and kind of reclamation of the areas.

(3) Identification of the backfilling, regrading, revegetation, environmental monitoring and water treatment activities that will continue during the temporary cessation status.

(4) A description of the status of all operations that are a source of the coal refuse.

(b) [Temporary cessation of an operation may not exceed 90 days unless the Department approves a longer period for reasons of seasonal shutdown or labor strike.] Before temporary cessation status of operations for a period of 90 days or more, an operator shall submit to the Department a notice that may be included in, or submitted subsequent to, the notice required under subsection (a), that includes all of the following:

(1) Confirmation that the current bond under the permit is sufficient to complete the reclamation of the coal refuse area.

(2) The timing of the installation of the phased system to prevent precipitation from contacting the refuse.

(c) [Temporary cessation does not relieve the operator of the obligation to comply with any provisions of the permit.] Temporary cessation status of operations does not relieve the operator of the obligations to comply with the acts as defined in § 86.1 (relating to definitions), this chapter or Chapters 86, 87, 89 or 90 or the approved permit, including the obligation to submit an application for permit renewal at least 180 days before the expiration of the existing permit. The Department may enforce these obligations during the temporary cessation status of operations.

(d) Temporary cessation status of a coal refuse disposal operation ends with the resumption of operations at that site. Any subsequent notices of temporary cessation status following resumption of coal refuse operations must include updated information outlined in this section.

(e) Temporary cessation status of a coal refuse disposal operation ends with the resumption of operations at a source of the coal refuse or by permanent cessation at all sources of the coal refuse.

**(f) Temporary cessation status of a coal refuse disposal operation ends with the permanent cessation of operations as specified in § 88.333 (relating to cessation of operations: permanent).**

**§ 88.333. Cessation of operations: permanent.**

**(a)** Operations that are permanently ceased shall be backfilled or closed or otherwise permanently reclaimed in accordance with this chapter and the permit. All underground openings, equipment, structures or other facilities not required for monitoring, unless approved by the Department as suitable for the postmining land use, shall be removed and the affected land reclaimed.

**(b) Unless coal refuse disposal operations resume as specified in § 88.332(d) or (e) (relating to cessation of operations: temporary), termination of temporary cessation status will place the mining operation in permanent cessation status and subject to the provisions of subsection (a). Temporary cessation status will terminate for operations that fail to comply with any of the following:**

**(1) A final adjudicated proceeding as defined under § 86.355(e) (relating to criteria for approval of application) as a result of an act or omission which violates the acts as defined in § 86.1 (relating to definitions), this chapter or Chapters 86, 87, 89 or 90.**

**(2) A permit condition required by the acts, this chapter or Chapters 86, 87, 89 or 90.**

**(3) A consent order and agreement or a consent order.**

**CHAPTER 90. COAL REFUSE DISPOSAL**

**Subchapter C. MINIMUM OPERATION AND RECLAMATION PLAN INFORMATION  
REQUIRED IN APPLICATIONS FOR COAL REFUSE DISPOSAL**

**§ 90.31. General requirements.**

An application shall contain a description of the coal refuse disposal activities proposed to be conducted during the life of the coal refuse disposal operations within the proposed permit area, including, at a minimum, the following:

**(1)** A narrative description of the type and method of coal refuse disposal procedures and proposed engineering techniques and the major equipment to be used during operations.

**(2)** A narrative explaining the construction, modification, use, maintenance and removal of the following facilities and structures, unless retention of the facility or structure is necessary for postdisposal land use as specified in § 90.166 (relating to postdisposal land use):

**(i)** Dams, embankments and other impoundments.

- (ii) Overburden and topsoil handling and storage areas.
- (iii) Coal removal, handling, storage, cleaning, processing and transportation areas and structures.
- (iv) Spoil, coal refuse, mine development waste and noncoal waste removal, handling, storage, transportation and disposal areas and structures.
- (v) Mine facilities.
- (vi) Water and air pollution control facilities.
- (vii) Erosion and sediment control facilities.

(3) A description of the measures to be employed to ensure that all debris, potential acid-forming and potential toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with this chapter and a description of the contingency plans which have been developed to preclude combustion of the materials.

(4) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, line or manage exploration holes, other boreholes, wells and other openings within the proposed permit area.

(5) A demonstration that the notification requirements of § 86.31(e) (relating to public notices of filing of permit application) have been satisfied.

**(6) A description of the operations that are proposed to be the source or sources of the coal refuse to be disposed of at the coal refuse disposal facility and the types of refuse to be disposed.**

**§ 90.50. Design criteria: groundwater and surface water protection system.**

(a) The application shall include a description of the system that will be installed to prevent adverse impacts to groundwater and surface water. The description shall include maps, plans and other information necessary to evaluate the design of the system.

(b) The application shall include a description of the system that will be installed to prevent precipitation from coming into contact with the coal refuse. The description shall include maps, plans and other information necessary to evaluate the design of the system. The coal refuse disposal operation shall be designed in phases to minimize the amount of time the entire coal refuse area is exposed to precipitation prior to the installation of the system to prevent precipitation from contacting the coal refuse. The application shall describe the design of the system for preventing precipitation from contacting coal refuse and how the system will be installed in accordance with the following:

(1) During routine coal refuse disposal as phases of the coal refuse disposal area reach capacity.

**(1.1) As specified in the permit.**

(2) During periods of temporary cessation as directed under [§ 90.167(d)] § 90.167(b) (relating to cessation of operations: temporary).

(3) When the operation permanently ceases.

(c) The Department's technical guidance Document Number 563-2112-656, titled ~~*Liners—Impoundments, Stockpiles, and Coal Refuse Disposal Areas*~~ **LINERS AND CAPS FOR COAL REFUSE DISPOSAL AREAS**, shall be used as guidance for designing coal refuse disposal sites incorporating earthen, admixed or synthetic liners or caps for preventing adverse impacts to groundwater and surface water and for preventing precipitation from contacting coal refuse.

(d) The application shall include a description of the measures to be taken to ensure the long-term functionality of the systems described in subsections (a) and (b). The description shall address the site's susceptibility to mine subsidence and the potential impacts of mine subsidence on the systems described in subsections (a) and (b). The description shall also address the potential for deterioration of components of the systems described in subsections (a) and (b) due to other physical or chemical processes including but not limited to attack from sulfate-laden or acidic groundwater and/or leachate.

**Subchapter D. PERFORMANCE STANDARD FOR COAL REFUSE DISPOSAL**

**§ 90.122. Coal refuse disposal.**

(a) Coal refuse shall be transported and placed in designated disposal areas approved by the Department for this purpose. These areas shall be within the permit area. The coal refuse disposal area shall be designed, constructed and maintained to ensure:

(1) The leachate and surface runoff from the permit area will not degrade surface water or groundwater or exceed the effluent limitations of § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices).

(2) Prevention of combustion.

(3) Prevention of public health hazards.

(4) Stability of the fill.

(5) The land mass designated as the coal refuse disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(b) The fill shall be designed using recognized professional standards, certified by a qualified registered professional engineer, and approved by the Department.

(c) The foundation and abutment of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigations and laboratory testing of foundation materials and coal refuse shall be performed to determine the design requirements for stability of the facility. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(d) The coal refuse disposal fill shall be designed to attain a minimum long-term static factor of safety of 1.5 and a minimum seismic factor of safety of 1.2, based upon data obtained from subsurface exploration, geotechnical testing, foundation design, fill design and accepted engineering analyses.

(e) When the average slope of coal refuse disposal area exceeds [~~lv:2.h-36%~~] lv:2.8h—36%, or lesser slopes as may be designated by the Department based on local conditions, key way cuts, or excavation into stable bedrock or bedrock toe buttresses shall be constructed to stabilize the fill. When the toe of the fill rests on a downslope, stability analysis shall be performed in accordance with § 90.39 (relating to ponds, impoundments, banks, dams, embankments, piles and fills) to determine the size of rock toe buttresses and key way cuts.

(f) If the disposal area contains springs, natural or manmade watercourses, or wet-weather seeps, the Department may approve an underdrain/subdrainage system, consisting of durable rock or other materials, designed and placed in a manner that prevents infiltration of the water into the fill material and ensures continued free drainage from the wet areas.

(g) The disposal area shall be provided with a system to prevent adverse impacts to the surface water and groundwater. The system shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit and shall function to prevent adverse impacts to surface water and groundwater.

(h) **[When a phase of the coal refuse disposal area reaches capacity, the operator shall install a system to prevent precipitation from coming in contact with the coal refuse in the completed phase.] The operator shall install a system to prevent precipitation from coming in contact with the coal refuse. The system shall be constructed in accordance with the design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit, and designed to allow for revegetation of the site in accordance with the standard of success under § 90.159 (relating to revegetation: standards for successful revegetation) and for the prevention of erosion:**

(1) **[The system shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit.] (Reserved).**

(2) [During normal coal refuse disposal, the system is not required to prevent precipitation from coming in contact with the coal refuse being placed in phases of the operation that have not reached capacity.] (Reserved).

(3) [The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 90.159 (relating to revegetation: standards for successful revegetation) and for the prevention of erosion.] (Reserved).

(4) [If the operator temporarily ceases operation of the coal refuse disposal area for a period in excess of 90 days (unless the Department, for reasons of labor strike or business necessity, approves a longer period not to exceed 1 year) unless the Department approves an operator's request for a longer period, or when the operation permanently ceases, the operator shall install the system for preventing precipitation from contacting the coal refuse.] (Reserved).

(5) as phases reach capacity;

(6) as specified in the permit;

(7) if the operator temporarily ceases operation of the coal refuse disposal area for a period in excess of 90 days, unless the Department approves an operator's request for a longer period for the installation of the system; or

(8) when the operation permanently ceases.

(i) An underdrain/subdrainage system for the fill shall be designed in accordance with the following:

(1) It shall include an underdrain system which will ensure continued free drainage of anticipated seepage from precipitation and from spring or wet-weather seeps, and meet the following:

(i) Anticipated discharges from springs and seeps due to precipitation shall be based on records or field investigation or both, to determine seasonal variation. The design of the underdrain system shall be based on maximum anticipated discharges.

(ii) Granular material used for the drainage system shall be nondegradable, nonacid-forming or nontoxic-forming rock free of clay, and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not flake in water.

(2) The underdrain system shall be designed to be installed along the natural drainage system; extend from toe to head of fill; and contain lateral drains to each area of potential drainage or seepage.

(3) A filter system to ensure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(j) The final configuration of the fill shall be suitable for the post disposal land use approved under § 90.165 (relating to prime farmland: revegetation), except that no depression or impoundment may be allowed on the completed fill. New coal refuse disposal piles and area of piles active since May 17, 1973, shall blend into the local surroundings. Unless otherwise approved by the Department, the fill may not be designed to exceed the approximate elevation of the surrounding ridgeline.

(k) The maximum overall completed slope of the coal refuse disposal pile measured from toe of the fill to crest of upper terrace may not exceed 33% or 18 degrees.

(l) The top surface of the completed fill shall be graded so that the final slope after settlement will be no steeper than 1v:20h—5.0% toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill may not be allowed to flow over the outslope of the fill.

(m) Terraces **[may] must** be utilized to control erosion **[,] and** enhance stability, **[or] and may be utilized** for roads included in postmining land use.

(1) The slope of the outslope between terraces may not exceed **[1v:2h-50A4%] 1v:2h—50A4%**. The vertical distance between terraces may not exceed 50 feet.

(2) To control surface runoff, each terrace bench will be a minimum of 20 feet wide, shall be graded to a slope of 1v:20h—5.0% toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bank and the toe of the next higher outslope.

(3) Terrace ditches shall have a maximum 5.0% slope toward the channels specified in subsection **[(n)] (o)** unless steeper slopes are necessary in conjunction with approved roads.

(n) **[Surface water runoff from the areas adjacent to and above the fill may not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designated to pass safely the peak runoff from a 100-year precipitation event. Diversion design shall comply with § 90.104 (relating to hydrologic balance: diversions).] Surface water runoff from areas adjacent to and above the fill shall be diverted away from the fill in stabilized channels which are designed to safely pass the peak runoff from a 100-year precipitation event. Diversion channels shall also comply with § 90.104(a) and (c)—(h) (relating to hydrologic balance: diversions).**

(o) **[Surface water runoff from the fill shall be diverted off the fill to properly designated channels which will pass safely the peak runoff from a 100-year precipitation event. Diversion design shall comply with § 90.104 and § 90.105 (relating to stream channel diversions).] Surface water runoff from the fill shall be collected and conveyed in properly designed channels constructed in natural ground or engineered fill of inert material along the periphery of the fill. The channels must safely pass the peak runoff from a 100-year precipitation event.**

(p) Slope protection shall be provided to minimize surface erosion at the site. Disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(q) Coal refuse shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as approved by the Department in lifts no greater than 2 feet, or less, as required or approved by the Department, as the design to:

- (1) Achieve the densities designed to ensure mass stability.
- (2) Prevent mass movement.
- (3) Avoid contamination of the rock underdrain.
- (4) Prevent formation of voids.

(r) Vegetative and organic materials shall be removed from the area where coal refuse is disposed of, and for a distance of 50 feet from the perimeter of the area where coal refuse is disposed, the topsoil shall be removed, segregated and stored or replaced as provided in §§ 90.96—90.100. If approved by the Department, organic material may be used a mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

**§ 90.167. Cessation of operations: temporary.**

(a) [As soon as it is known that the operation will temporarily cease for more than 30 days, the operator shall submit a notice of intention, in writing, to temporarily cease the operation. The notice shall include a statement of the exact number of acres that will have been affected in the permit area, the extent and kind of reclamation of those areas, and identification of the disposal, regrading, revegetation, monitoring and water treatment activities which will continue during the temporary cessation.] Before temporary cessation status of operations for a period of 30 days or more, an operator shall submit to the Department a notice of intention to temporarily cease operations. The notice shall include all of the following:

- (1) A statement of the exact number of acres affected in the permit area.
- (2) A description of the extent and kind of reclamation of the areas.
- (3) Identification of the backfilling, regrading, revegetation, environmental monitoring and water treatment activities that will continue during the temporary cessation status.
- (4) A description of the status of all operations that are a source of the coal refuse.

(b) [Temporary cessation of an operation may not exceed 90 days unless the Department approves a longer period for reasons of seasonal shutdown or labor strike.] Before

**temporary cessation status of operations for a period of 90 days or more, an operator shall submit to the Department a notice that may be included in, or submitted subsequent to, the notice required under subsection (a) and shall include all of the following:**

**(1) Confirmation that the current bond under the permit is sufficient to complete the reclamation of the coal refuse area.**

**(2) The timing of the installation of the phased system to prevent precipitation from contacting the refuse.**

**(c) [Temporary cessation does not relieve the operator of the obligation to comply with any provisions of the permit.] Temporary cessation status of operations does not relieve the operator of the obligations to comply with the acts as defined in § 86.1 (relating to definitions), this chapter or Chapters 86, 87, 88 or 89 or the approved permit, including the obligation to submit an application for permit renewal at least 180 days before the expiration of the existing permit. The Department may enforce these obligations during the temporary cessation status of operations.**

**(d) [The operator shall install the system for preventing precipitation from contacting the coal refuse when the temporary cessation exceeds 90 days. The Department may approve a longer period, not to exceed 1 year, for reasons of a labor strike or business necessity.] (Reserved).**

**(e) Temporary cessation status of a coal refuse disposal operation ends with the resumption of operations at that site. Any subsequent notices of temporary cessation status following resumption of coal refuse operations must include updated information outlined in this section.**

**(f) Temporary cessation status of a coal refuse disposal operation ends with the resumption of operations at a source of the coal refuse or by permanent cessation at all sources of the coal refuse.**

**(g) Temporary cessation status of a coal refuse disposal operation ends with the permanent cessation of operations as specified in § 90.168 (relating to cessation of operations: permanent).**

#### **§ 90.168. Cessation of operations: permanent.**

**(a)** Operations that are permanently ceased shall be backfilled or closed or otherwise permanently reclaimed in accordance with this chapter and the permit. All underground openings, equipment, structures or other facilities not required for monitoring, unless approved by the Department as suitable for the postmining land use, shall be removed and the affected land reclaimed.

**(b) Unless coal refuse disposal operations resume as specified in § 90.167(e) or (f) (relating to cessation of operations: temporary), termination of temporary cessation status**

**will place the mining operation in permanent cessation status and subject to the provisions of subsection (a). Temporary cessation status will terminate for operations that fail to comply with any of the following:**

**(1) A final adjudicated proceeding as defined under § 86.355(e) (relating to criteria for approval of application) as a result of an act or omission which violates the acts as defined in § 86.1 (relating to definitions), this chapter or Chapters 86, 87, 88 or 89.**

**(2) A permit condition required by the acts, this chapter or Chapters 86, 87, 88 or 89.**

**(3) A consent order and agreement or a consent order.**

### **Subchapter E. SITE SELECTION**

#### **§ 90.202. General requirements.**

(a) A preferred site shall be used for coal refuse disposal unless the applicant demonstrates to the Department that an alternate site is more suitable based upon engineering, geology, economics, transportation systems, and social factors and is not adverse to the public interest.

(b) The applicant is required to determine whether the search area contains a preferred site.

(1) For a new coal refuse disposal area that will support an existing coal [preparation facility] mining activity, the applicant shall examine the geographic area within a 1-mile radius of the existing coal [preparation facility] mining activity.

(2) For a proposed coal refuse disposal area that will support a proposed coal preparation facility, the applicant shall examine a 25-square mile geographic area encompassing the proposed coal preparation facility. In defining the 25-square mile area, consideration shall be given to environmental, technical, transportation, economic and social factors where applicable.

(c) If there are no preferred sites located within the search area, the applicant shall conduct a comparative analysis of the potential coal refuse disposal sites in accordance with § 90.204(b) (relating to proposing an alternate site).

(d) The Department will not approve a site proposed by the applicant for coal refuse disposal activities when the Department finds that the adverse environmental impacts of using the site for coal refuse disposal activities would clearly outweigh the public benefits.

(e) Except on preferred sites, the Department will not approve coal refuse disposal on or within any of the following areas:

(1) Prime farmlands.

(2) An exceptional value watershed as defined under Chapter 93 (relating to water quality standards).

(3) Sites known to contain threatened or endangered animals listed exclusively under the Commonwealth's protection programs.

(4) An area that is hydrologically connected to and contributes at least 5% of the drainage to wetlands designated as exceptional value under Chapter 105 (relating to dam safety and waterway management) unless a larger percentage contribution is authorized by the Department after consultation with the Fish and Boat Commission.

(5) A watershed less than 4 square miles in area upstream of the intake of a public water supply.

(6) A watershed less than 4 square miles in area upstream of the upstream limit of a public recreational impoundment.

(7) Sites known to contain Federally listed threatened or endangered plants or animals. At preferred sites known to contain Federally listed threatened or endangered species, approval will be granted only when the Department concludes and the United States Fish and Wildlife Service concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the take of Federally listed threatened or endangered species in violation of section 9 of the Endangered Species Act of 1973 (16 U.S.C.A. § 1538).

(f) As part of the site selection process, an applicant may request approval for more than one site. The Department will evaluate each site proposed for coal refuse disposal and, if the Department finds that a proposed site meets the requirements of this subchapter, it will designate it as an approved site. The applicant will then have the option of choosing a selected site from among the approved sites and submitting an application for coal refuse disposal for that site.



**pennsylvania**  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

# **COMMENT AND RESPONSE DOCUMENT**

## **Coal Refuse Disposal Revisions**

25 Pa. Code Chapters 88 and 90  
51 Pa.B. 6914 (November 6, 2021)  
Environmental Quality Board Regulation #7-565  
(Independent Regulatory Review Commission #3318)

## Copies of Comments

Copies of all comments received by the Board are posted on the Department's e-Comment website at <https://www.ahs.dep.pa.gov/eComment/>. Additionally, copies of all comments are available on IRRC's website at <http://www.irrc.state.pa.us> by searching for Regulation # 7-565 or IRRC # 3318.

## List of Commentators

Name/Affiliation/Address
Rachel Gleason Pennsylvania Coal Alliance 202 N. 3 <sup>rd</sup> Street, Suite 203 Harrisburg, PA 17101
Sarah Winner Center for Coalfield Justice 14 E. Beau Street, PO Box 4023 Washington, PA 15301

## COMMENTS AND RESPONSES

### General Comment

- Comment:** The industry trade organization thanked the Department and the Bureau of Mining Programs for working with the Mining and Reclamation Advisory Board (MRAB), through both the Legislative, Technical and Regulatory Committee and the full Board, to develop the proposed rulemaking.

**Response:** The Department acknowledges this comment.

- Comment:** The Commentator recognizes the current market challenges faced by the coal industry and understands the limited purpose of this rulemaking. We also recognize that refuse disposal is a temporary use of land; so reclamation must take place once operations have stopped to ensure that the site can be used in an economically productive way after mining. The Commentator supports proposed subsection (b) to Section 90.168, which provides a trigger for when a temporary cessation becomes a permanent cessation. The Department's critical obligation under the Coal Refuse Disposal Act (and SMCRA) as the coal industry declines is to ensure that the applicable performance standards are enforced, ensure that inactive sites are reclaimed as quickly as possible, and ensure that water pollution is treated. The Department must use its authority to prevent operators from functionally abandoning their permits (the operator has stopped producing coal and is not conducting reclamation) when the coal market declines to ensure that coalfield communities are not left with the burden of un-reclaimed or poorly reclaimed coal refuse disposal sites.

**Response:** The Department acknowledges this comment.

**Public Notice**

3. **Comment:** The Commentator believes that dependable access to information about industry's existing and proposed environmental activities is critical to the ability to coalfield residents to know what environmental risks they may face or are currently facing in their communities. Temporary cessation of operations constitutes a change to the planned course of mining and reclamation. These changes should be made transparent. Upon receipt of a complete notice of intent to temporarily cease operations, the Department should publish notice of the temporary cessation in the *Pennsylvania Bulletin*.

**Response:** The Department acknowledges the importance of transparency and strives to provide as much information publicly when feasible. Currently, there are several hundred mine sites currently permitted in the Commonwealth and an individual site's status can change frequently throughout the year. Due to the nature and frequency of these changes and the timing of the formal publication process, notifying the public of these changes through the *Pennsylvania Bulletin* would be both impracticable and untimely. A more effective method for the public to access the real-time status of any permitted operation, as well as other relevant information on permitted mining activities, is through the Department's database, Environmental Facilities Application Compliance Tracking System, known as eFACTS, available at <https://www.ahs.dep.pa.gov/eComment/>.



June 16, 2022

David Sumner  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17120

Re: Final Rulemaking: Coal Refuse Disposal Revisions (#7-565 / IRRC # 3318)

Dear Mr. Sumner:

Pursuant to Section 5.1(a) of the Regulatory Review Act (RRA), please find enclosed the Coal Refuse Disposal Revisions final-form rulemaking for review by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (Board) adopted this rulemaking on May 18, 2022.

The Board adopted the proposed rulemaking at its meeting on June 15, 2021. On November 6, 2021, the proposed rulemaking was published in the *Pennsylvania Bulletin* at 51 Pa.B. 6914, for a 30-day public comment period, which closed on December 6, 2021. The Department received two written comments. The Board provided the Environmental Resources and Energy Committees and IRRC with copies of all comments received in compliance with Section 5(c) of the RRA.

The Department will provide assistance as necessary to facilitate IRRC's review of the enclosed rulemaking under Section 5.1(e) of the Regulatory Review Act.

Please contact me by e-mail at [laurgriffi@pa.gov](mailto:laurgriffi@pa.gov) or by telephone at 717.772.3277 if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Laura E. Griffin".

Laura Griffin  
Regulatory Coordinator

Enclosures

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

I.D. NUMBER: 7-565  
 SUBJECT: Coal Refuse Disposal Revisions  
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION, Environmental Quality Board

**TYPE OF REGULATION**

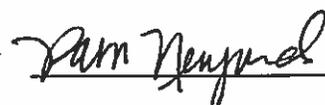
- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolerated Regulation
  - a.  With Revisions
  - b.  Without Revisions

**RECEIVED**

JUN 16 2022

Independent Regulatory  
 Review Commission

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
6/16/22		Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Representative Daryl Metcalfe
6/16/22		Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Representative Greg Vitali
6/16/22	electronic submittal	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Gene Yaw
6/16/22	electronic submittal	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Carolyn Comitta
_____	_____	INDEPENDENT REGULATORY REVIEW COMMISSION David Sumner ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

## Kathy Cooper

---

**From:** Eyster, Emily <Emily.Eyster@pasenate.com>  
**Sent:** Thursday, June 16, 2022 10:08 AM  
**To:** Griffin, Laura; Troutman, Nick  
**Cc:** Chalfant, Brian; Reiley, Robert A.; Kauffman, Gregory; Hartman, Michael  
**Subject:** Re: Delivery of Final Rulemaking - Coal Refuse Disposal Revisions (7-565)

Received. Thank you!

Emily Eyster  
Legislative Director, Office of Senator Carolyn T. Comitta  
Executive Director, Senate Environmental Resources and Energy Committee  
Cell: (717) 756-4702  
Phone: (717) 787-5709  
[www.pasenatorcomitta.com](http://www.pasenatorcomitta.com)

**RECEIVED**

JUN 16 2022

Independent Regulatory  
Review Commission

---

**From:** Griffin, Laura <laurgriffi@pa.gov>  
**Sent:** Thursday, June 16, 2022 10:01:56 AM  
**To:** Eyster, Emily <Emily.Eyster@pasenate.com>; Troutman, Nick <ntroutman@pasen.gov>  
**Cc:** Chalfant, Brian <bchalfant@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Kauffman, Gregory <grekauffma@pa.gov>; Hartman, Michael <michael.hartman@pasenate.com>  
**Subject:** Delivery of Final Rulemaking - Coal Refuse Disposal Revisions (7-565)

■ EXTERNAL EMAIL ■

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Good morning,

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find attached the Coal Refuse Disposal Revisions final rulemaking (#7-565) for review by the Senate Environmental Resources and Energy Committee.

Also attached is the transmittal sheet showing delivery to the House Environmental Resources and Energy Committee this morning.

Please confirm receipt of this rulemaking by replying to all recipients.

Thank you,  
Laura

**Laura Griffin** | Regulatory Coordinator  
*she/her/hers*  
Department of Environmental Protection | Policy Office  
Rachel Carson State Office Building

400 Market Street | Harrisburg, PA  
Phone: 717.772.3277 | Fax: 717.783.8926  
Email: [laurgriffi@pa.gov](mailto:laurgriffi@pa.gov)  
[www.dep.pa.gov](http://www.dep.pa.gov)

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## Kathy Cooper

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**From:** Troutman, Nick <ntroutman@pasen.gov>  
**Sent:** Thursday, June 16, 2022 11:05 AM  
**To:** Griffin, Laura; Eyster, Emily  
**Cc:** Chalfant, Brian; Reiley, Robert A.; Kauffman, Gregory; Hartman, Michael  
**Subject:** RE: Delivery of Final Rulemaking - Coal Refuse Disposal Revisions (7-565)

Received by Chairman Yaw. Thanks Laura

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**From:** Griffin, Laura <laurgriffi@pa.gov>  
**Sent:** Thursday, June 16, 2022 10:02 AM  
**To:** Eyster, Emily <Emily.Eyster@pasenate.com>; Troutman, Nick <ntroutman@pasen.gov>  
**Cc:** Chalfant, Brian <bchalfant@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Kauffman, Gregory <grekauffma@pa.gov>; michael.hartman@pasenate.com  
**Subject:** Delivery of Final Rulemaking - Coal Refuse Disposal Revisions (7-565)  
**Importance:** High

Ⓢ CAUTION : External Email Ⓢ

Good morning,

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Please confirm receipt of this rulemaking by replying to all recipients.

Thank you,  
Laura

**Laura Griffin** | Regulatory Coordinator  
*she/her/hers*  
Department of Environmental Protection | Policy Office  
Rachel Carson State Office Building  
400 Market Street | Harrisburg, PA  
Phone: 717.772.3277 | Fax: 717.783.8926  
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