

Regulatory Analysis Form

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REGULATORY
REVIEW COMMISSION

(1) Agency
Environmental Protection

(2) I.D. Number (Governor's Office Use)
#7-367

IRRC Number: 2207

(3) Short Title
Coal Mine Permits/Road Requirements

(4) PA Code Cite
25 Pa. Code
Chapters 86 – 88 and 90

(5) Agency Contacts & Telephone Numbers
Primary Contact: Sharon Trostle, 783-8727
Secondary Contact: John Hines, 783-8727

(6) Type of Rulemaking (Check One)
 Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(6) Is a 120-Day Emergency Certification Attached?
 No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

These regulations amend existing provisions relating to the criteria for approval/denial of coal mine permits and to requirements concerning haul roads and access roads for coal surface mines and coal refuse disposal operations. The changes to the regulations for permit approval/denial reflect the Department's long-standing practice of authorizing coal mining activities only on land covered by the mine operator's bond. The changes to the haul road and access road regulations involve deleting the requirement for a road maintenance plan for a road to be retained (upon completion of mining and reclamation activities) as part of the postmining land use and including a requirement that haul roads and access roads used in conjunction with coal refuse disposal activities must be designed, constructed and maintained to control or prevent erosion.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

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). Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510.20). Environmental Hearing Board Decision of Peter Blose vs. Commonwealth of Pennsylvania, Department of Environmental Protection, and Seven Sisters Mining Company, Inc. EHB Docket No. 98-034-R.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulations have federal counterparts and the changes are being made so they are consistent with and no more stringent than the federal requirements.

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

The current regulations are inadequate because they establish requirements more stringent than federal requirements with no basis for having a more stringent requirement. Also, the current regulations need to be clarified to reflect current procedures for approval/denial of coal mining permits consistent with federal requirements.

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

Non-regulation is not an option for the Commonwealth of Pennsylvania to continue to maintain primary jurisdiction under the Federal Surface Mining Control and Reclamation Act.

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

Pennsylvania's 600 coal mine operators will benefit from these amendments. The mine operator will benefit by having the required public notice for a specific type of mining activity proposed in a barrier area addressed with their initial public notice of the proposed mining operation. The benefit to the operator is avoiding the costs to prepare and publicize a permit revision should the specific type of activity proposed in a barrier area (after permit issuance) require public notice (relates to changes to 25 Pa. Code §86.37 concerning approval/denial of permit applications and requirements regarding barrier areas). The cost savings are not easily quantified because of the inability to estimate or predict with much degree of accuracy the number of permit applications that would be submitted that would require this public notice. Mine operators will also benefit by reduction in costs of preparing maintenance plans for mining roads to remain following mining and reclamation. The Department will benefit by reduction in the amount of staff time needed to review the road maintenance plans.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

The amended regulations are not expected to result in any adverse impacts upon the regulated community or the public. Deleting the requirements for a maintenance plan for roads to remain following completion of mining and reclamation could be perceived as having an adverse effect on the environment. However, no such adverse effect would occur because equivalent regulatory requirements would apply to the landowners who requested that the road remain after mining was completed.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Approximately 600 coal mine operators will be affected by these amendments. The operators would include anthracite and bituminous surface mine operators and coal refuse disposal operators.

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

The Mining and Reclamation Advisory Board (MRAB) provided input in the development of the amended regulations. The MRAB is the Department's advisory board for the purpose of developing coal mining regulations. The final-form rulemaking was reviewed and discussed with the MRAB at its meeting on October 25, 2001.

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

The amendments will not impose any additional costs on the regulated community. There will be a potential savings to the regulated community of approximately \$47,750 per year. These savings are described in more detail in Section 20a.

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

The amendments are not expected to impose any additional costs or savings on local government.

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

The amendments are not expected to impose any additional costs on state government. An estimated savings to state government at approximately \$19,100 per year would be anticipated based on less staff time needed to review postmining road maintenance plans. These savings are described in more detail in Section 20a.

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	47,750	47,750	47,750	47,750	47,750
Local Government	0	0	0	0	0	0
State Governments	0	19,100	19,100	19,100	19,100	19,100
Total Savings	0	66,850	66,850	66,850	66,850	66,850
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Governments	0	0	0	0	0	0
Total Cost	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Governments	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

The cost savings to the regulated community is based upon eliminating the requirement for coal surface mines and coal refuse disposal operators needing to provide maintenance plans for haul roads and/or access roads to remain following mining and reclamation for use by the landowner. The estimated annual savings of \$47,750 is based on an estimated 25% of the current 715 coal surface mines and 49 coal refuse disposal operations needing maintenance plans for roads to remain following mining and reclamation, with the mine operators' estimated costs of \$250 for having a maintenance plan prepared (25% of 764 total mining operations times \$250 per maintenance plan).

The cost savings to state government results from a reduction in Department staff time necessary to review and approve maintenance plans. The estimated annual savings of \$19,100 is based on the review of 191 maintenance plans (i.e., 25% of 764 total mining operations) at a cost of \$100 for the review of each plan.

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

Program	FY-3	FY-2	FY-1	Current FY
Coal Mining				
Federal OSM \$\$	\$10,396,000	\$10,911,000	\$10,400,000	\$10,604,000
State Match \$\$	\$12,148,000	\$12,694,000	\$10,400,000	\$10,604,000

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

No additional costs are anticipated as a result of these regulation changes. The regulated community and the Department will experience some cost savings as discussed in Sections 19 and 20.

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

No nonregulatory alternatives were considered. Pennsylvania's regulations must be as effective as federal regulations in order to maintain primary jurisdiction over coal mining under the Federal Surface Mining Control and Reclamation Act.

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

No alternative regulatory schemes were considered since the Department must maintain regulations which are equivalent to the corresponding federal regulations in order to retain primary jurisdiction over coal mining under the Federal Surface Mining Control And Reclamation Act.

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

The amendments to the regulations are no more stringent than federal requirements.

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

States having coal mining must maintain a coal mining regulatory program that conforms with federal requirements. States that do not maintain such a program are regulated directly under the Federal Surface Mining Control and Reclamation Act. As a result, these regulations are expected to be no more stringent than those of other states with coal mining. These amendments eliminate a competitive disadvantage that currently exists.

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

These regulations amend existing Department regulations and will not affect existing or proposed regulations of other state agencies.

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

No public hearings or informational meetings were scheduled.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The amendments will change existing paperwork requirements by eliminating the requirement for providing a maintenance plan for mining roads that remain as part of the postmining land use.

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

The amendments must conform with federal requirements and no special provisions have been developed beyond what are afforded in federal regulations.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations will go into effect upon publication in the Pennsylvania Bulletin as final rulemaking. Publication is anticipated during calendar year 2002. No new permits, licenses or other approvals will be required by these regulations.

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

The regulations will be revised, as needed, in accordance with the Sunset Review Schedule published by the Department.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
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LEGISLATIVE REGULATORY
REVIEW COMMISSION

#2207

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

(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
copy not approved. Objections
attached.

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. #7-367

DATE OF ADOPTION: _____

BY: David E Hess

TITLE: DAVID E. HESS, CHAIRMAN
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality. Executive or Independ-
ent Agency

BY: [Signature]

2/22/02
DATE OF APPROVAL

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

Check if applicable. No Attorney Gen-
eral approval or objection within 30
days after submission.

ORDER ADOPTING REGULATIONS

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

COAL MINE PERMITS/ROAD REQUIREMENTS

25 Pa. Code, Chapters 86-88 and 90

**Notice of Final Rulemaking
Department of Environmental Protection
Environmental Quality Board
25 Pa. Code Chapters 86-88 and 90
Coal Mine Permits/Road Requirements**

Preamble

The Environmental Quality Board (Board) by this order amends Chapters 86-88 and 90 (relating to anthracite and bituminous surface mining and coal refuse disposal) to read as set forth in Annex A. The amendments address criteria for approval/denial of coal mine permits and performance standards concerning roads used in conjunction with coal surface mines and coal refuse disposal operations.

This order was adopted by the Board at its meeting of February 19, 2002.

A. Effective Date

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

B. Contact Persons

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

C. Statutory Authority

The amendments are adopted under the authority of Section 4.2 of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P.S. § 1396.4b(a)); Section 3.2 of the Coal Refuse Disposal Control Act (CRDCA) (52 P.S. § 30.53b); and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

D. Background and Summary

These regulations amend existing provisions relating to criteria for approval/denial of coal mine permits and performance standards concerning haul roads and access roads used in conjunction with coal surface mines and coal refuse disposal operations. Approximately 600 operators of anthracite and bituminous surface mines and coal refuse disposal operations

will be affected by this regulation. This rulemaking is necessary to clarify the existing regulations and to make the regulations consistent with Federal regulations.

During the surface coal mining permit application approval process under § 86.37 (relating to criteria for permit approval or denial), it is established practice for a mining permit applicant to submit a permit application that included a mining plan for the entire permit area. Any necessary waiver approvals related to distance limitations (such as waiver for mining activities within 300 feet of an occupied dwelling) were typically included in the mining plan for the initial bonding increment. The mining permit applicant would provide bonding to cover the initial increment of mining, and the Department, in issuing the mining permit, authorized mining activities only for that initial increment. When the permittee provided bonding for subsequent increments to be mined and obtained the necessary waiver approvals for that increment, the Department authorized mining activities for that specific increment.

The Environmental Hearing Board (EHB) in *Peter Blose vs. DEP and Seven Sisters Mining Company, Inc.* (No. 98-034-R) held that this established practice was contrary to § 86.37(a)(2) and (a)(5), and that the Department may not approve a permit if any coal mining activities are proposed within 300 feet of an occupied dwelling located on the entire permit area if the waiver for allowing mining activities had not been obtained.

The regulatory change under § 86.37(a)(5) allows the Department to continue to review and approve mining permits following those procedures in place prior to the EHB's decision in *Blose*. These procedures, while still fully protective of occupied dwellings, have the additional benefits of ensuring that both the amount of bond calculated to ensure proper reclamation of the site and all erosion and sedimentation plans are as current as possible.

Sections 87.160(a), 88.138(a), 88.231(a), 88.335(a), and 90.134(a) are changed by deleting the requirement for a road maintenance plan for roads to be retained (upon completion of the mining and reclamation activities) as part of the postmining land use. This requirement for a road maintenance plan is deleted because it is more stringent than the corresponding Federal requirements, and because, as a practical matter, is unnecessary since the landowner has agreed to be responsible for any future maintenance of the road. Therefore, the Board deleted this requirement because it is unnecessary.

Section 90.134(a) is also changed to include a requirement that haul roads and access roads used in conjunction with coal refuse disposal activities must be designed, constructed, and maintained to control or prevent erosion. This amendment addresses a condition placed on Pennsylvania's approved coal mining regulatory program by the Federal Office of Surface Mining. The amendment makes this specific requirement consistent with the requirements for other coal mining operations.

These regulatory changes were reviewed and discussed with the Mining and Reclamation Advisory Board (MRAB), the Department's advisory body for regulations pertaining to the surface mining of coal. A draft of the proposed rulemaking was reviewed and discussed with the MRAB at its meeting on April 26, 2001. The MRAB supported the proposed rulemaking. The MRAB reviewed and concurred with the final rulemaking at its meeting on October 25, 2001.

E. Summary of Comments and Responses on the Proposed Rulemaking

The Board approved publication of the proposed amendments at its July 17, 2001 meeting. The proposed amendments were published in the *Pennsylvania Bulletin* on August 18, 2001. A 30-day public comment period was provided. The Pennsylvania Coal Association, which was the only party that provided comments, expressed support for the amendment. No further changes have been made to these regulations from the proposed amendments as published in the August 18, 2001, *Pennsylvania Bulletin*.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

Benefits

The coal mining industry and the Department will benefit from these amendments. In the case of amendments to § 86.37, a permit applicant would benefit by avoiding the costs to prepare and publicize a permit revision should the specific types of activities proposed in barrier areas after permit issuance require public notice. The cost savings for that would not be easily quantifiable because of the inability to estimate or predict with much degree of accuracy the number of proposals that would be submitted that require public notice. In the case of amendments to §§ 87.160, 88.138, 88.231, 88.335 and 90.134, a permittee would benefit by reduction in costs of preparing maintenance plans for mining roads to be retained (upon completion of the mining and reclamation activities) as part of the postmining land use. The Department will benefit by reduction in the amount of staff time needed to review the plans. The estimated cost savings related to deleting the requirement for road maintenance plans is \$47,750 annually for the industry and \$19,100 annually for the Department.

Compliance Costs

The amendments will impose no additional compliance costs on the regulated community.

Compliance Assistance Plan

The Department will provide written notification of the changes to the coal mining industry.

Paperwork Requirements

These amendments will not result in additional paperwork. Paperwork will be reduced by eliminating the requirement for providing a maintenance plan for mining roads that remain as part of the postmining land use.

G. Sunset Review

These final-form regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 26, 2002, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate and House Environmental Resources and Energy Committees.

Under Section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with a copy of the comments as well as other information. The Committees and IRRC did not submit comments. In preparing these final-form regulations, the Department has considered the comments received.

Under Section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d) on April 15, 2002, these final-form regulations were deemed approved by the House and Senate Committees. Under Section 5.1(e) of the Regulatory Review Act, IRRC met on April 25, 2002, and approved the final-form regulations.

I. Findings of the Board

The Board finds that:

- (1) Public notice of the 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), and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) These final-form regulations do not enlarge the purpose of the proposed amendments as published in the August 18, 2001, *Pennsylvania Bulletin*.
- (4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

J. Order of the Board

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

- (a) The regulations of the Department, 25 Pa. Code Chapters 86-88 and 90, are amended by amending §§ 86.37, 87.160, 88.138, 88.231, 88.335 and 90.134 to read as set forth in Annex A.
- (b) The Chairperson shall submit this order and Annex A 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 order and Annex A to 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 order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

DAVID E. HESS
Chairman
Environmental Quality Board

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND

COAL MINING: GENERAL

Subchapter B. PERMITS

**REVIEW, PUBLIC PARTICIPATION AND APPROVAL, DISAPPROVAL
OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS**

§ 86.37. Criteria for permit approval or denial.

(a) A permit or revised permit application will not be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of the information in the application or from information otherwise available, which is documented in the approval, and made available to the applicant, that the following apply:

- (1) The permit application is accurate and complete and that the requirements of the acts and this chapter have been complied with.
- (2) The applicant has demonstrated that the coal mining activities can be feasibly accomplished as required by the act and this chapter under the operation and reclamation plan contained in the application.
- (3) The applicant has demonstrated that there is no presumptive evidence of potential pollution of the waters of this Commonwealth.

(4) The assessment of the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance as described in § 87.69, § 88.49, § 89.36 or § 90.35 has been made by the Department, and the activities proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(5) **[The proposed permit area] The area covered by the operator's bond and upon which the operator proposes to conduct surface mining activities within the boundary of the proposed surface or coal mining activities permit** is not one of the following:

(i) Included within an area designated unsuitable for mining under Subchapter D (relating to areas unsuitable for mining).

(ii) Within an area which has been included in a petition for designation under § 86.124(a)(6) (relating to procedures: initial processing, recordkeeping and notification requirements).

(iii) On lands subject to the prohibitions or limitations of Subchapter D.

(iv) Within 100 feet (30.48 meters) of the outside right-of-way line of any public road, except as provided for in Subchapter D.

(v) Within 300 feet (91.44 meters) from any occupied dwelling, except as provided for in Subchapter D.

(vi) Within 100 feet (30.48 meters) of a stream, except as provided for in § 86.102 (relating to areas where mining is prohibited or limited).

(6) The proposed activities will not adversely affect any publicly owned parks or places included on the National Register of Historic Places, except as provided for in Subchapter D. The effect of the proposed coal mining activities on properties listed on or eligible for listing on the National Register of Historic Places has been taken into account by the Department. This finding may be supported in part by inclusion of appropriate permit conditions or operational plan changes to protect historic resources, or a documented decision that no additional protective measures are necessary.

(7) Prior to approval of the bond under Subchapter F (relating to bonding and insurance requirements), a right of entry has been obtained from the landowner for each parcel of land to be affected by the coal mining activities in accordance with § 86.64 (relating to right of entry).

(8) The applicant has submitted proof that a violation related to the mining of coal by the applicant, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of “owned or controlled” or “owns or controls” in § 86.1 (relating to definitions) or by a related party of the acts, a rule, regulation, permit or license of the Department has been corrected or is in the process of being corrected to the satisfaction of the Department, whether or not the violation relates to an adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. A permit issued under this paragraph on the basis that a violation is in the process of being corrected or pending the outcome of an appeal, and the appropriate regulatory authority program having jurisdiction over the violation provides for a stay of execution of the abatement procedure or a court of competent jurisdiction has issued a supersedeas providing that relief, will be issued conditionally.

(9) A statement from the applicant that all reclamation fees required by 30 CFR Part 870 (relating to abandoned mine reclamation fees) have been paid.

(10) There are no past or continuing violations which show the applicant's, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls" in § 86.1, lack of ability or intention to comply with the acts or the regulations promulgated thereunder, whether or not the violation relates to an adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. If the Department makes a finding that the applicant or the operator specified in the application or a person who owns or controls the applicant or operator or a person owned or controlled by the applicant or operator, has demonstrated a pattern of willful violations of the acts of a nature and duration and with resulting irreparable damage to the environment as to indicate an intent not to comply with the acts, a permit will not be issued.

(11) The applicant has submitted proof that a violation by the applicant or by a person owned or controlled by the applicant or by a person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls" in § 86.1, of a law, rule or regulation of the United States or a state—other than the law of the Commonwealth—law, rule or regulation pertaining to air or water environmental protection enacted under Federal law, has been corrected or is in the process of being satisfactorily corrected. A permit issued under this paragraph on the basis that a violation is in the process of being corrected or pending the outcome of an appeal, and the appropriate regulatory authority program having jurisdiction over the violation provides for a stay of execution of the abatement procedure or a court of competent jurisdiction has issued a supersedeas providing that relief, will be issued conditionally.

(12) The applicant shall submit the bond required under Subchapter F prior to the issuance of the permit.

(13) The applicant has satisfied the requirements of § 87.53, § 88.32, § 88.491(k), § 89.121 or § 90.22.

(14) The proposed postmining land use of the permit area meets the requirements of § 87.159, § 88.89, § 88.183, § 88.289, § 88.493, § 89.88 or § 90.166.

(15) The proposed activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544).

(16) A statement from the applicant that State and Federal final civil penalty assessments have been paid. Final civil penalty assessments are civil penalty assessments which have not been appealed within 30 days of assessment or appealed civil penalty assessments which have been adjudicated by the EHB or other applicable judicial forum. For purposes of this subsection, civil penalty assessments include State and Federal civil penalty assessments related to coal mining activities which are assessed by one of the following:

(i) The Department under the authority of the acts.

(ii) The Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) under the authority of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328).

(iii) A State regulatory authority which has been granted primary jurisdiction by OSMRE to implement the Federal coal mining regulatory program within its boundaries.

(b) An incremental phase approval of the permit will not be granted to conduct mining or reclamation operations or to expand mining or reclamation operations within a permit area if the Department has already issued an incremental phase approval for the area to another permittee, except for an area used for access or haul roads. An incremental phase approval of the permit will not be granted to conduct mining or reclamation operations, or permission to expand mining or reclamation operations within a permit area which has been limited to a portion or phase of the entire area until the applicant:

(1) Has filed with the Department a bond in accordance with § 86.143 (relating to requirements to file a bond).

(2) Meets the requirements of subsection (a)(7)-(9).

(c) After an application is approved, but before the permit is issued, the Department will reconsider its decision to approve the application, based on the compliance review required by subsection (a)(8), (10) and (11) in light of new information submitted under §§ 86.62(d) and 86.63(c) (relating to identification of interests; and compliance information).

CHAPTER 87. SURFACE MINING OF COAL

Subchapter E. SURFACE COAL MINES: MINIMUM

ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 87.160. Haul roads and access roads.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; **[and]** flooding; and damage to public or private property. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, in accordance with current, prudent engineering practices and necessary design criteria established by the Department. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 87.166 (relating to haul roads and access roads: restoration) unless retention of the road **[and its maintenance plan]** is approved as part of the postmining land use.

(b) The haul or access road may not be located in or within 100 feet (30.48 meters) of a perennial or intermittent stream except in accordance with § 86.102 (relating to areas where mining is prohibited or limited). A crossing of a perennial or intermittent stream shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachment or water obstruction shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

(c) Each road shall have a drainage system that is compatible with the natural drainage system, is structurally stable, and which will pass safely the peak flow from a 10-year, 24-hour precipitation event or larger event if required by the Department. The drainage system shall include a sloped or crowned road surface, cross drains or culverts, stabilized ditches, erosion-resistant surfacing, sediment traps and other appropriate sediment control measures as required by § 87.106 (relating to hydrologic balance: sediment control measures).

- (d) Roads shall be constructed on stable areas that avoid wet or unstable soils.
- (e) Prior to the construction of the road, topsoil shall be removed, stored on a stable site and protected against erosion and compaction until restoration of the haul road.
- (f) Disturbed areas adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion.
- (g) Haul roads shall be surfaced with material sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. Acid or toxic-forming material may not be used for surfacing or construction of a road except where the road is within the confines of a coal refuse disposal or reprocessing area and the effluent meets the requirements of § 87.102 (relating to hydrologic balance: effluent standards).
- (h) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired or reclaimed as soon as practicable after the damage has occurred.
- (i) Haul roads and roads approved as part of the postmining land use shall be certified by a qualified registered professional engineer or qualified registered land surveyor that the roads have been constructed or reconstructed as designed in accordance with the approved plan.

CHAPTER 88. ANTHRACITE COAL

Subchapter B. SURFACE ANTHRACITE COAL MINES: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 88.138. Haul roads and access roads: general.

- (a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; flooding; and damage

to public or private property. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 88.144 (relating to haul roads and access roads: restoration) unless retention of the road **[and its maintenance plan]** is approved as part of the postmining land use.

(b) The haul road may not be located in or within 100 feet (30.48 meters) of a perennial or intermittent stream except in accordance with § 86.102 (relating to areas where mining is prohibited or limited). Any crossing of a perennial or intermittent stream shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachment or water obstruction shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

(c) Each road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 10-year precipitation event or larger event if required by the Department. The drainage system shall include sloped or crowned road surfaces, cross drains or culverts, stabilized ditches, erosion resistant surfacing, sediment traps and other appropriate sediment control measures as required by § 88.96 (relating to hydrologic balance: sediment control measures).

(d) Roads shall be constructed on stable areas that avoid wet or unstable soils.

(e) Prior to the construction of the road, all topsoil shall be removed, stored on a stable site and protected against erosion and compaction until restoration of the haul road.

(f) Any disturbed area adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion.

(g) Acid-forming or toxic-forming material may not be used for surfacing or construction of a road except where the road is within the confines of a road refuse disposal or reprocessing area and the effluent meets the requirements of § 88.92 (relating to hydrologic balance: effluent standards).

**Subchapter C. ANTHRACITE BANK REMOVAL AND
RECLAMATION: MINIMUM ENVIRONMENTAL PROTECTION
PERFORMANCE STANDARDS**

§ 88.231. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; flooding; and damage to public or private property. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 88.237 (relating to haul roads and access roads: restoration) unless retention of the road **[and its maintenance plan]** is approved as part of the postmining land use.

(b) The haul road may not be located in or within 100 feet (30.48 meters) of a perennial or intermittent stream except in accordance with § 86.102 (relating to areas where mining is prohibited or limited). Any crossing of a perennial or intermittent stream shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachments or water obstructions comply with Chapter 105 (relating to dam safety and waterway management).

(c) Each road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 10-year precipitation event or larger event if required by the Department. The drainage system shall include sloped or crowned road surfaces, cross drains or culverts, stabilized ditches, erosion

resistant surfacing, sediment traps and other appropriate sediment control measures as required by § 88.191 (relating to hydrologic balance: sediment control measures).

(d) Roads shall be constructed on stable areas that avoid wet or unstable soils.

(e) Prior to the construction of the road, all topsoil shall be removed, stored on a stable site and protected against erosion and compaction until restoration of the haul road.

(f) Any disturbed area adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion.

(g) Acid-forming or toxic-forming material may not be used for surfacing or construction of a road except where the road is within the confines of a coal refuse disposal or reprocessing area and the effluent meets the requirements of § 88.187 (relating to hydrologic balance: effluent standards).

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

§ 88.335. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent erosion and contributions of sediment to streams or runoff outside the affected area; air and water pollution; damage to fish and wildlife or their habitat; flooding; and damage to public or private property. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 88.341 (relating to haul roads and access roads: restoration) unless retention of the road **[and its maintenance plan]** is approved as part of the postmining land use.

(b) The haul road may not be located in or within 100 feet of a perennial or intermittent stream except in accordance with § 86.102 (relating to areas where mining is prohibited or limited). Any crossing of a perennial or intermittent stream shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachment or water obstruction shall meet the requirement of Chapter 105 (relating to dam safety and waterway management).

(c) Each road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 10-year precipitation event or larger event if required by the Department. The drainage system shall include sloped or crowned road surface, cross drains or culverts, stabilized ditches, erosion resistant surfacing, sediment traps and other appropriate control measures as required by § 88.296 (relating to hydrologic balance: sediment control measures).

(d) Roads shall be constructed on stable areas that avoid wet or unsuitable soils.

(e) Prior to the construction of the road, all topsoil shall be removed, stored on a stable site and protected against erosion and compaction until restoration of the haul road.

(f) Any disturbed area adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion.

(g) Acid or toxic-forming material may not be used for surfacing or construction of a road except where the road is within the confines of a coal refuse disposal or reprocessing area and the effluent meets the requirements of § 88.292 (relating to hydrologic balance: effluent standards).

CHAPTER 90. COAL REFUSE DISPOSAL

Subchapter D. PERFORMANCE STANDARDS FOR COAL

REFUSE DISPOSAL

§ 90.134. Haul roads and access roads: general.

(a) Haul roads and access roads shall be designed, constructed and maintained to control or prevent: **erosion and** contributions of sediment to streams or runoff outside the affected area; flooding; air and water pollution; damage to fish and wildlife or their habitat; and damage to public or private property. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, in accordance with current, prudent engineering practices, and necessary design criteria established by the Department. Upon completion of the associated surface mining activities, the area disturbed by the road shall be restored in accordance with § 90.140 (relating to haul roads and access roads: restoration), unless retention of the road **[and its maintenance plan are] is** approved as part of the postmining land use.

(b) The haul road or access roads may not be located in or within 100 feet (30.48 meters) of a perennial or intermittent stream except in accordance with § 86.102 (relating to areas where mining is prohibited or limited). Crossing of a perennial or intermittent stream shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachment or water obstruction shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

(c) Each road shall have a drainage system that is compatible with the natural drainage system, structurally stable and will pass safely the peak flow from a 10-year, 24-hour precipitation event, or larger event if required by the Department. The drainage system shall include sloped or crowned road surface, cross drains or culverts, stabilized ditches, erosion-resistant surfacing, sediment traps and other appropriate sediment control measures as required by § 90.106 (relating to hydrologic balance: erosion and sedimentation control).

(d) Roads shall be constructed on stable areas that avoid wet or unstable soils.

(e) Prior to the construction of the road, all topsoil shall be removed, stored on a stable site and protected against erosion and compaction until restoration of the haul road.

(f) Disturbed areas adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion.

(g) Haul roads shall be surfaced with material sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. Acid or toxic-forming material may not be used for surfacing or construction of a road except when the road is within the confines of a coal refuse disposal or reprocessing area, and the effluent meets the requirements of § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices).

(h) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired or reclaimed as soon as practicable after the damage has occurred.

(i) Haul roads and roads approved as part of the postmining land use shall be certified by a qualified registered professional engineer or qualified registered land surveyor that

the roads have been constructed or reconstructed as designed in accordance with the approved plan.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

COMMENT AND RESPONSE DOCUMENT

COAL MINING: COAL MINE PERMITS/ROAD REQUIREMENTS

25 PA CODE CHAPTERS 86-88 AND 90

EQB DOCKET NO. 7-367

February 19, 2002

**Bureau of Mining and Reclamation
Department of Environmental Protection
P.O. Box 8461
Harrisburg, PA 17105-8461**

LIST OF COMMENTATORS

ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
1	Mr. Michael G. Young Director of Regulatory Affairs Pennsylvania Coal Association 212 North Third Street, Suite 102 Harrisburg, PA 17101	17101	S		

(Commentator provided one-page Summary of Comments – see attached copy of the Summary.)

COMMENTS AND RESPONSES

CHAPTER 86. SURFACE AND UNDERGROUND MINING OF COAL: GENERAL

§86.37 Criteria for Permit Approval or Denial

Comment: The Pennsylvania Coal Association supports the proposed regulatory amendment, which is necessary to the efficient permitting of surface coal mining operations.

Response: The Department agrees that the regulatory amendment is necessary for the efficient permitting of surface coal mining operations.

CHAPTER 87. SURFACE MINING OF COAL CHAPTER 88. ANTHRACITE COAL CHAPTER 90. COAL REFUSE DISPOSAL

§87.160(a), 88.138(a), 88.231(a), 88.335(a) and 90.134(a) Haul Roads and Access Roads

Comment: The Pennsylvania Coal Association supports these proposed amendments, which are consistent with federal law and requirements. The amendments will simply reflect the current responsibilities for maintenance of roads which remain as part of the postmining land use, with the consent of the surface landowner.

Response: The Department agrees. Since the landowners agreed to these roads being retained upon completion of the mining and reclamation, the landowners will be responsible for maintaining those roads.



Pennsylvania Coal Association

212 North Third Street • Suite 102 • Harrisburg, PA 17101

GEORGE ELLIS
President

September 18, 2001

(717) 233-7900
(800) COAL NOW (PA Only)
(717) 231-7610 Fax

Environmental Quality Board
P.O. Box 8477
Rachel Carson State Office Building
Harrisburg, PA 17105-8477

Re: *Comments and One-Page Summary of Pennsylvania Coal Association: Notice of Proposed Rulemaking: Coal Mine Permits/Road Requirements, 25 Pa. Code Chapters 86-88 and 90, Pennsylvania Bulletin, August 18, 2001*

Members of the Board:

Thank you for giving the Pennsylvania Coal Association (PCA) an opportunity to submit written comments on above-referenced Notice of Proposed Rulemaking (the "Proposed Rulemaking"). PCA represents 28 bituminous coal producers and 88 associate member companies who work with and support the mining industry. Our members are directly and substantially interested in the subject matter of the proposed rulemaking.

PCA submits these written comments in response to the above-referenced Notice of Proposed Rulemaking. We ask that our single page of comments be distributed to Board members in lieu of a one-page summary.

Proposed Amendment to 25 Pa. Code §86.37, Criteria for Permit Approval or Denial

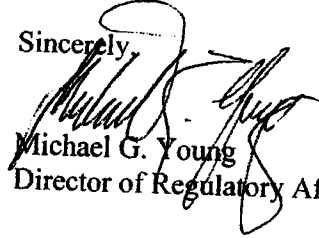
PCA supports the proposed regulatory amendment, which is necessary to the efficient permitting of surface coal mining operations. The Mining and Reclamation Advisory Board has recommended approval of the proposed regulatory change. Additionally, the federal Office of Surface Mining Reclamation and Enforcement reviewed the proposed language and had input in the development of the revision.

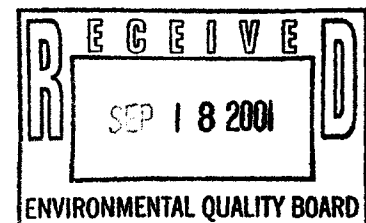
Proposed Amendments to 25 Pa. Code §§87.160(a), 88.138(a), 88.231(a), 88.335(a) and 90.134(a), Haul Roads and Access Roads.

PCA also supports these proposed amendments, which are consistent with federal law and requirements. The amendment will simply reflect the current responsibilities for maintenance of roads which remain as part of the postmining land use, with the consent of the surface landowner.

Thank you for considering these comments. We would like a copy of the final form rulemaking when it is available.

Sincerely,


Michael G. Young
Director of Regulatory Affairs





Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

March 26, 2002

The Secretary

Phone: 717-787-2814

E-Mail: DavidHess@state.pa.us

Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown #2
333 Market Street
Harrisburg, PA 17120

RE: Final Rulemaking: Coal Mine Permits/Road Requirements (#7-367)

Dear Bob:

Pursuant to Section 5.1(a) of the Regulatory Review Act, enclosed is a copy of a final-form regulation for review by the Commission. This final rulemaking was approved by the Environmental Quality Board (EQB) on February 19, 2002.

This final rulemaking amends Chapters 86-88 and 90 relating to criteria for approval/denial of coal mine permits and performance standards for haul roads and access roads used in conjunction with coal surface mines and coal refuse disposal operations. The amendments relating to permits reflect the mining program's long-standing practice of authorizing coal mining activities only on lands covered by the mine operator's bond. The revision will make § 86.37 consistent with the federal requirements.

The changes concerning performance standards delete in five sections the requirement to retain maintenance plans for haul roads and access roads as part of the postmining land use. Also, § 90.134 requires that roads used in conjunction with coal refuse disposal activities must be designed, constructed and maintained to control erosion.

The EQB approved the proposed rulemaking on July 17, 2001, and published it with a 30-day public comment period on August 18, 2001. The Pennsylvania Coal Association expressed support for the proposal and was the only commentator. As a result, no changes have been made in the final rulemaking.

The Mining & Reclamation Advisory Board (MRAB) reviewed and endorsed the final rulemaking on October 25, 2001.

Mr. Robert E. Nyce

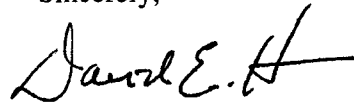
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March 26, 2002

The Department will provide the Commission with any assistance required to facilitate a thorough review of this final-form regulation. Section 5.1(e) of the Act provides that the Commission shall, within ten days after the expiration of the committee review period, approve or disapprove the final-form regulation.

For additional information, please contact Sharon Trostle, Regulatory Coordinator, at 787-4526.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Hess". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David E. Hess
Secretary

Enclosures

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

I.D. NUMBER: 7-367
 SUBJECT: Coal Mine Permits/Road Requirements
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

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

RECEIVED
 2002 MAR 26 PM 1:53
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/22/02		HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3-26-02		SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3-26-02		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU