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JOHN F. MIZNER, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL
LESLIE A. LEWIS JOHNSON, DEPUTY CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 1, 2006

Honorable Kathleen A. McGinty, Chairperson
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-400 (IRRC #2560)
Environmental Quality Board
Mine Opening Blasting

Dear Chairperson McGinty:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee
Honorable William F. Adolph, Jr., Majority Chairman, House Environmental Resources and Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation #7-400 (IRRC #2560)

Mine Opening Blasting

November 1, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the September 2, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board to respond to all comments received from us or any other source.

1. Surface mining blasting and blaster licensing. – Consistency with statutes; Economic impact.

Surface mining blasting

In the Preamble, the EQB explains that the Mining and Reclamation Advisory Board "deadlocked on whether certain changes should be made to affirm mine opening blasting is surface mining blasting." The Pennsylvania Coal Association (PCA) submitted extensive comment in support of its belief that the EQB lacks legal authority "to apply surface blasting regulations to blasting at coal mine shaft and slope construction operations subsequent to the first two blasts." In response to these concerns, the EQB needs to fully explain its authority to regulate coal mine shaft and slope construction.

Blaster licensing

PCA also commented that "there is no legal authority for DEP to require blasters for the underground blasts to obtain licenses under 25 Pa. Code Chapter 210." The EQB needs to fully explain its authority to require coal mine blasters to be licensed.

Costs and/or savings to the regulated community

In response to Regulatory Analysis Form question #17, the EQB states that "this proposed amendment does not impose any additional costs on the regulated community." PCA takes issue with this statement. PCA states the regulations will not provide more flexibility and will result in significant cost increases. The EQB needs to respond to PCA's concerns.

2. Exception to the requirement to conduct blasting between sunrise and sunset. – Protection of the public welfare; Economic impact; Reasonableness; Clarity.

The EQB is proposing similar amendments to Sections 77.564(b), 87.127(a) and 88.135(a).

Under existing regulation, blasting must be conducted between sunrise and sunset. An exception is proposed in each of these sections to allow blasting around the clock, after the second blast. We have the following concerns with the amendment to each of these sections.

“Blasting conducted after the second blast”

The exception is limited to “blasting conducted after the second blast.” However, these sections are not clear regarding what constitutes a “blast” and therefore when this exception applies. The regulations should either specify or cross-reference what constitutes a blast.

“As necessary to maintain stability of the mine opening”

It is not clear what criteria will be used to evaluate the stability of the mine opening. As written, it appears this exception could be invoked in virtually any circumstance and could supersede the blasting schedule. What stabilization measures would the blaster have to attempt before determining that stability cannot be maintained? The regulation should specify what stability criteria must be unattainable to trigger the exception.

“If consented to, in writing, by the affected building owner and lessee”

We have five questions. First, what information must be provided to the owner or lessee in relation to a proposal to use less stringent vibration limits than those specified in the regulation? Second, will this information be in writing? Third, if the blasting results in damage to the property, would this consent negate private insurance coverage? Fourth, will the owner or lessee be informed that the blaster takes full responsibility for any damage? Finally, who could the owner and lessee contact if they have questions on the information given to them? Given that the building owner and lessee are not likely to be experts on the effects of blasting, the regulation should indicate what information the building owner and lessee must be given before giving written consent to less stringent vibration limits, and should specify that the blaster has strict liability for damages. The EQB should also consider developing a standard consent form that includes this information.

3. Deletion of “excessive noise.” – Protection of the public health.

The EQB is proposing to amend Sections 77.564(c) and 87.127(b). The Preamble states that “rather than protecting against noise, these sections will now protect against the adverse effects of the ground or air vibrations caused by the blast.” We have two concerns.

First, the language added to these provisions will state “...to adequately protect the public from the adverse affects [*sic*] of vibration or safety hazards.” We recommend that the amended language state “ground or air vibrations” consistent with the Preamble.

Second, the EQB is proposing to delete the phrase “excessive noise” from Sections 77.564(c) and 87.127(b). Excessive noise can be an “adverse affects [*sic*] of vibration.” The EQB should explain why excessive noise no longer needs to be directly considered.

4. Surface blasting requirements. – Reasonableness.

Sections 87.127(f)(1) and 88.135(f)(1) will be amended to state:

The operator may use an alternative measure to this requirement if the operator demonstrates, to the Department's satisfaction, that the alternative measure is at least as effective at protecting persons and property from the adverse affects [*sic*] of a blast.

The amendments include a list of alternative measures. We have two concerns. First, we recommend that the operator's request and Department approval be in writing. Second, would local government or residents be given notice and the opportunity to participate in this decision?

Facsimile Cover Sheet



Phone: (717) 783-5417
Fax #: (717) 783-2664
irrc@irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Debra L. Failor
Agency: Department of Environmental Protection
Phone: 7-2814
Fax: 705-4980
Date: November 1, 2006
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Environmental Protection's regulation #7-400 (IRRC #2560). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Debra L. Failor* Date: 11/1/06