Mountain Watershed Association
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May 4, 2021

Submitted via email: RegComments@pa.gov

Environmental Quality Board
Rachel Carson State Office Building
16th Floor, 400 Market Street
Harrisburg, PA 17101-2301

Re: Comments on Noncoal Mining 25 Pa. Code Chapter 77: Noncoal Mining Clarifications and Corrections -- 51 Pa.B. 1519

To Whom It May Concern:

Mountain Watershed Association, home of the Youghiogheny Riverkeeper, respectfully submits this comment on Noncoal Mining Clarifications and Corrections -- 51 Pa.B. 1519. As a non-profit environmental organization with more than 2,500 members in the Southwest Pennsylvania region, Mountain Watershed Association (MWA) works to protect, preserve, and restore the Greater Youghiogheny and Indian Creek Watersheds. Many of our members are regularly impacted by quarrying activities and MWA believes these communities deserve the utmost regulatory protections.

Proposed Rule Changes, To Which Mountain Watershed Association Are Opposed:

1. For excavation, the proposed language will require a permit or permit waiver. If less than 20 tons are excavated, no detailed information needs to be submitted to the Pennsylvania Department of Environmental Protection (DEP). And if greater than 20 tons is proposed to be excavated, detailed information must be submitted to DEP, along with justification for why more than 20 tons must be excavated. With justification and approval, up to 1,000 tons can be removed. However, this means that 20-1000 tons can be excavated without a mining permit and its related regulatory and compliance controls. Excavation and removal of even a few pounds of materials can cause irreparable impacts to streams, wetlands, and ecosystems. Any amount of excavation and removal should be covered by the same regulation and compliance controls as all other noncoal mining activity.

2. The new rule change proposes to allow excavation cuts and pits, including those resulting from exploration blasting, to remain unreclaimed. Previously, all excavation cuts and exploration high walls had to be reclaimed to less than a 35 degree slope. Now, there will be situations that could result in, for example, small children falling off an unreclaimed of 10 foot high (or more) exploratory highwall. The reason stated for change: is that now only 1,000 tons will be excavated. This is an unacceptable justification for creating such a dangerous risk to communities surrounding the project sites.

3. MWA opposes the proposed change to time limits for activating a mining permit. The existing language states that this activation period is 3 years. However, we strongly believe that this activation time should remain what it is--5 years. Currently, if an operator cannot, or will not, start mining by five years, they can request an extension or reapply for a permit renewal for the same operation. The reason stated for this change is that 5 years better coincides with the 5 year limit of a NPDES permit. However, surface coal mining permits also have 5 year NPDES permits and must activate mining within 3 years of the permit being issued or the permit is revoked.[1]

   Extending the period for beginning operations creates the dangerous scenario in which changes to local environmental or hydrological conditions have occurred since the permit was issued. Any of those new, and potentially very significant, changes would not be covered or enforced by the issued permit. The practice of obtaining permits and then waiting several years to start mining is so that the operator can wait for the market price of the mined material to increase. Companies will often get several permits and then not act on them. This is known as permit hoarding. The limit of a three year start time was introduced years ago, for coal and noncoal, in order to try and stop this. Expanding this limit would walk back those protections and negate the regulations earlier intent.

4. Notably, a new major revision will allow operators to be able to add additional support acreage to an existing permit as a major revision. Currently, this is done by an additional permit. However, this new revision means that the DEP's standard for review of additional support acreage will now be for a revision, not a new permit. This is a potential problem because in MWA's experience, revisions and permit modifications are

[1] "A permit shall terminate if the permittee has not begun the coal mining activities covered by the permit within 3 years of the issuance of the permit. However, the Department may grant reasonable extensions of time for commencement of these activities upon receipt of a written statement showing that the extensions of time are necessary if litigation precludes the commencement or threatens substantial economic loss to the permittee or if there are conditions beyond the control and without the fault or negligence of the permittee. Requests for extensions shall be submitted to the Department prior to expiration of the permit." (25 Pa. Code § 86. § 86.40 (b))

reviewed using less stringent standards and issued more frequently than an original permit application. MWA does not support this change since it is likely to lead to increased amounts of support acreage that have less stringent requirements for management than is currently the case. This more intensive safeguard is necessary because support acreage that holds rock, debris, waste, and other minerals, often creates sediment pollution in local waterways. This potential hazard could be catastrophic and should be regulated with the most stringent standards in order to prevent increased pollution and loss of aquatic habitat.

5. MWA opposes the proposed rule change that will expand the time period before a Civil Penalty is assessed from 30 days to 45 days. We also oppose the proposal to change the trigger date for a penalty being assessed from the date of the Department's knowledge of the violation to when the Notice of Violation was served on the operator.

   The change from 30 to 45 days–and the change of the start date for when a Civil Penalty will be issued–will ultimately make it much easier for an operator to have committed a serious violation without any consequences. This is because it extends the time period for an operator to commit a violation and attempt to remedy it before an NOV or Civil Penalty would attach to the operator's record. This creates additional repercussions because when an operator has outstanding violations, they would normally experience a block for issuing future permits. However, with this proposed change, an operator could have outstanding violations and could continue to receive new permits.

   The stated reason for change is that the Department does not always know when a violation was noticed. The Department's knowledge of a violation is first noticed because it is reported by the mine inspector and entered into DEP tracking records. An inspector will typically tell an operator that he has a week or two to fix the violation before he issues a Notice of Violation. Once a Notice of Violation is issued, the operator currently has 30 days to comply before a civil penalty is assessed.

   Changing the trigger date from 30 to 45 days to after a Notice of Violation was *issued*, and to when the violation was first *noticed* by the inspector (and included in the inspection report as required by DEP) is too lenient and will allow the operator extra weeks or more to keep his compliance record clean, when it is not.

6. The proposed rule change 77.164 1(2) will allow higher decibel blasts as an alternative. The current rule allows for an alternative of a lower decibel blast. The rule change is a 180 degree flip, from allowing lower blasts to higher decibel blasts. Many members of our community have been impacted by blasting activity at coal and noncoal surface mining sites. Higher decibel blasts increase the chances of property damage due to blasting that could create more of a disruption and more unsafe scenarios in our

communities. The lower blasting limits must remain unchanged in order to prevent potential bodily injury and property damage.

7. The PA Bulletin notice publish date will be changed from after the date of receipt of the permit application to the date after the permit is accepted by DEP. This will effectively shorten the time period that the public has to prepare and submit questions and comments to DEP about the permit application. The time period for public involvement and the public's opportunity to inquire about the application will be shortened, possibly by months. This is an unacceptable limitation to the public's right to notice and comment of these permits.

   The proposed rule will mean that a public hearing or informal conference must be held within 60 days after the close of the public comment period. No longer will a public hearing or informal conference be held based upon the date of the public request for a hearing or conference. In addition, only one hearing or informal conference meeting will be held by DEP, no matter if different groups or organizations request a hearing or conference based on totally different issues with the permit. This, too, is an unacceptable limitation to the public's right to participate in the regulatory process.

   Deleted from the new rule is the requirement for a DEP report on the findings of the public hearing to be completed 60 days after the hearing date. If the proposed changes are adopted, there will be no deadline for the issuance of a DEP report on a public hearing -- except that it will be issued before or on the same day of the Department's decision on the permit application. This could then lead to a situation in which the public has no time to read or respond to the DEP's report because it is issued at the same time as the permit. The DEP will essentially say to the public "Here's your report" and to the operator "Here's your permit." This negates the purposes of such reports and eliminates the ability of the public to meaningfully engage with this regulatory process.

Proposed Rule Changes That MWA Supports

1. With the proposed changes, the name of local government now will be required in public notice in newspaper. This could make it easier for the general readership of the newspaper to know approximately where the permit will be located and would create more effective notice for the public and increases their ability to meaningfully engage in the permitting and regulatory processes.

2. The Certificate of Deposit for collateral bonds will no longer have a maximum limit of $100,000. There will be no limit to the dollar amount required. This creates the possibility of increasing the collateral bonds to amounts that more accurately reflect the

millions of dollars in potential damage that might occur from these operations. Instead of simply deflecting the private operators damages on to the taxpayers.

3. Public notice will now be required for any lateral or vertical change in operational mining plans, as this will require a major revision to the permit. This would be if the quarry operator decides to mine deeper or to mine laterally into acres that were permitted as adjacent surface support areas. This also creates more effective notice for the public and increases their ability to meaningfully engage in the permitting and regulatory processes.

MWA greatly appreciates the opportunity to comment and thanks the Board for its consideration.

Sincerely,

Melissa W. Marshall, Esq.
Community Advocate
Mountain Watershed Association