

# EQB Publishes Proposed Amendments to Anthracite Coal and Coal Refuse Disposal Regulations

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On November 6, 2021, the Pennsylvania Environmental Quality Board (EQB) issued proposed amendments to 25 Pa. Code chs. 88 (Anthracite Coal) and 90 (Coal Refuse Disposal). See Coal Refuse Disposal Revisions, 51 Pa. Bull. 6914 (proposed Nov. 6, 2021). The proposed amendments are intended to implement Pennsylvania's 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 proposal was adopted by the EQB at its meeting on June 15, 2021. On January 5, 2022, the EQB received a letter from Pennsylvania's Independent Regulatory Review Commission (IRRC) indicating that the IRRC has no objections, comments, or recommendations on the proposed rule. See Letter from David Sumner, Exec. Dir., IRRC, to Hon. Patrick McDonnell, Chairman, EQB (Jan. 5, 2022). The amendments will go into effect upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

## Changes Proposed Pursuant to Act 74

Act 74 amended section 6.1 of the Coal Refuse Disposal Control Act (CRDA), 52 Pa. Stat. § 30.56a, to remove the commonwealth's one-year limitation on the temporary cessation of operations at a coal refuse disposal site. The Pennsylvania Department of Environmental Protection (PADEP) has proposed to incorporate this amendment at 25 Pa. Code § 88.310(k)(1).

Pursuant to Act 74's amendment of section 6.1 of the CRDA, PADEP also proposes to amend 25 Pa. Code § 90.167(a) to address temporary cessation status of operations lasting 30 days or more and will require a notice to be submitted to PADEP. This notice must 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.

Act 74 also allowed PADEP to promulgate regulations that will link the status of operations generating coal refuse to the coal refuse disposal area. For example, under these new regulations, when an underground coal mine is approved for temporary cessation, the coal refuse disposal site associated with that mine would also be approved for temporary cessation because no refuse material is being generated to be sent there. Where a coal refuse disposal site receives material from more than one mine, the coal refuse disposal site's temporary cessation status ends with the resumption of operations at any of its source mines, or with permanent cessation at all source mines. PADEP has proposed to incorporate these amendments at sections 88.332(d)–(f) and 90.167(e)–(g).

Act 74 also revised section 6.1 of the CRDA to include an enumerated list of the circumstances under which an operator must install a system to prevent precipitation from contacting the coal refuse. These instances include when phases reach capacity, when specified in the permit, when an operator temporarily ceases operation for a period in excess of 90 days unless PADEP approves an operator's request for a longer period, or when the operation permanently ceases. PADEP proposed changes to section 90.122(h) to parallel Act 74's language.

## Other Changes Proposed by PADEP

PADEP further proposed an amendment to section 88.333(b) that would provide a trigger for when temporary cessation becomes permanent cessation. The three circumstances that will terminate the temporary cessation status are failure to comply with a final adjudicated proceeding through an act or omission that violates the acts defined in section 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. A similar provision is not found in the federal requirements or in Act 74.

PADEP has also proposed clarifications to regulations that will settle confusion for applicants for coal refuse site permits. One such clarification is amending the existing performance standards for terraces and surface water runoff at coal refuse disposal sites 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. This proposed change is found at section 90.122(m).

PADEP has also proposed amendments to sections 88.332(b) and 90.167(b) that address a temporary cessation status of operations lasting 90 days or more. These amendments require operators to submit to PADEP a confirmation that the current bond is adequate to complete reclamation and to describe the timing of the installation of the “phased system” to prevent precipitation from contacting the refuse.

Comments on the proposed amendments were due in early December 2021 and the EQB received comments from two parties, the Center for Coalfield Justice and the Pennsylvania Coal Alliance. Comments on the proposed rule can be found at

<https://www.ahs.dep.pa.gov/eComment/ViewComments.aspx?enc=DN064MT8R38NKyiRv2iU7MXT16ZFzbg>

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