

PADEP Issues Final Guidance on Remining of Areas with Preexisting Pollution Discharges

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On December 10, 2021, the Pennsylvania Department of Environmental Protection (PADEP) published final technical guidance on remining of areas with preexisting pollution discharges. See PADEP, TGD No. 563-2112-613, “Remining of Areas with Pre-Existing Pollution Discharges” (Dec. 10, 2021). The purpose of this guidance is to identify and explain the requirements necessary to qualify for the remining protections found under subchapter F of 25 Pa. Code ch. 87, subchapter G of 25 Pa. Code ch. 88, and subchapter F of 25 Pa. Code ch. 90 (collectively, Subchapter F/G). This guidance explains the obligations of a mine operator during the remining activity, the procedures to be followed to modify a remining permit to account for changes in groundwater flow patterns and/or new discharges, and how to qualify for bond release.

The guidance document first identifies and explains conditions that must be met to qualify for Subchapter F/G permit authorization. For a Subchapter F/G permit to be issued, the proposed mining and reclamation activities should exhibit a significant potential to abate or reduce the pollution load from the preexisting discharges of previous surface mining. Remining protections under Subchapter F/G do not apply to underground mining permits. To be eligible, applicants for Subchapter F/G permits must have no existing legal responsibility for treatment of the discharges or for reclaiming the proposed pollution abatement area. The water quality must be indicative of mine drainage pollution and the discharges must be from mining activities that have been abandoned prior to the remining permit application. The discharges must also be hydrologically connected to the permit area and to the proposed pollution abatement area intended to reduce the pollution load.

The guidance document then explains the requirements of the Pollution Abatement Plans that are included in applications for authorization under Subchapter F/G. These Pollution Abatement Plans should describe the anticipated impact on the preexisting pollution discharges, which may include effects on infiltration, evapotranspiration, water quality improvements, and any other anticipated pollution reduction benefits resulting from implementation of the abatement plan. The Pollution Abatement Plan is then incorporated into the permit as an effluent limit; the best management practices (BMPs) that comprise the Pollution Abatement Plan are the permit's narrative effluent limits and the numerical limits are determined by a baseline dataset and are represented by the trigger values.

The guidance provides that the protections under Subchapter F/G can be applied in three ways in a tiered manner:

(1) collect data to establish a baseline pollution load at individual points and hydrologic units, (2) sample at designated in- stream monitoring points to establish an instream baseline concentration, or (3) through BMPs only. Applicants should justify why they cannot use option 1 in order to use option 2, and to use option 3, they must justify why they cannot use options 1 and 2. If individual, discrete points can be monitored, the Tier 1 option is likely the appropriate option. The guidance then outlines the steps that operators must take following trigger exceedances.

Finally, the guidance document describes the procedures for modifying Subchapter F/G permits and the permit baselines, and the standards to qualify for bond release.

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