

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 86]

Bonding, Civil Penalties and Areas Unsuitable for Mining

The Environmental Quality Board (Board) proposes to amend Chapter 86 (relating to surface and underground coal mining; general). The amendments are the result of the Department of Environmental Protection's (Department) Regulatory Basics Initiative to revise regulations which are more stringent than Federal law. These amendments affect the process for designating areas unsuitable for mining, bonding and civil penalties.

This proposal was adopted by the Board at its meeting of October 15, 1996.

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 Evan T. Shuster, Chief, Division of Monitoring and Compliance, Bureau of Mining and Reclamation, P. O. Box 8461, Room 203 Executive House, Harrisburg, PA 17105-8461 (717) 787-7846, or Joseph Pizarchik, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464 (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this Preamble. 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 proposal is available electronically through the Department's web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

These amendments are proposed under the rulemaking authority of the following acts: sections 4(d) and 4.2(a) of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(d) and 1396.4b(a)); sections 5(b) and 315(b) of the Clean Streams Law (35 P. S. §§ 691.5(b) and 691.315(b)); sections 3.2(a) and 6(a) of the Coal Refuse Disposal Control Act (52 P. S. §§ 30.53b(a) and 30.56(a)); section 7(b) of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7(b)); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20) which authorize the Board to adopt regulations necessary for the Department to perform its work.

D. Background and Purpose

In August of 1995, the Department began the Regulatory Basics Initiative to analyze regulations which were more stringent than Federal law and regulation. Regulations which are more stringent than Federal requirements are being proposed for revision, unless the Department determines that more stringent State requirements are appropriate and necessary. Under this initiative the Department solicited public input through a notice in the *Pennsylvania Bulletin* and the Department's web site. The amendments being proposed at this time are the result of suggestions from the public and the Department's own review of its regulations.

The proposed amendments were discussed with the Mining and Reclamation Advisory Board (MRAB). The MRAB recommended these regulations be amended at its meeting on October 3, 1996.

E. Summary of Regulatory Requirements

As explained in Section D of this Preamble, these regulations are proposed for amendment because they contain requirements which are more stringent than their Federal counterpart. A description of the changes and the Federal counterpart follows:

Pennsylvania

Federal

General Provisions

§ 86.1 Definitions

30 CFR 773.5

The definition of "related party" is revised to exclude persons who are not included in the definition of "owned or controlled" and "owns or controls" based on percentage of ownership. The Commonwealth's definitions of "owned or controlled and owns or controls" is revised to refer to the Federal criteria on percentage of ownership.

A definition of "willful violation" is added to make the Commonwealth's regulations comparable to the Federal language.

Criteria and Procedure for Designating Areas as Unsuitable for Surface Mining

§ 86.124(a)(6)

30 CFR 764.15(a)(6)

The current regulation allows for the submission of a petition to designate an area as unsuitable for mining to block issuance of a permit application if the petition for the same area is submitted prior to the close of the public comment period on the permit application. The proposed change gives the Department discretion to return a petition received after the first newspaper notice of the permit application has been published if the petition pertains to an area for which an administratively complete surface mining permit application has been filed.

Bond Amount

§ 86.152 Adjustments

30 CFR 800.15(b)(2)

This change requires the Department to notify the permittee and surety of a proposed bond adjustment and to allow for an informal conference.

Forms, Terms and Conditions

§ 86.156 Form of the bond

30 CFR 800.12

§ 86.160 Surety/collateral combination bond

The revised language lists self-bonds as an acceptable form of bond and allows self-bonds to be used in combination with other forms of bonds. The title of § 86.160 is revised accordingly. The change does not affect the requirements of § 86.159 which provides that the Department will not accept a self-bond covering long-term indeterminate liabilities.

Release of Bonds

§ 86.171(d) Procedures for seeking release of bond

30 CFR 800.40(b)

This amendment limits the Department's reason for delaying inspection of an operator's reclamation work to weather conditions.

Bond Forfeiture

§ 86.182 Procedures

30 CFR 800.50(a)(2)

This amendment requires the Department to notify the permittee and surety, if applicable, of its intent to forfeit and the conditions under which forfeiture can be avoided.

Civil Penalties

§ 86.193 Assessment of penalty 30 CFR 845.12

This section is revised to increase the dollar amount at which assessment of a civil penalty becomes mandatory and to delete certain mandatory civil penalties not found in Federal regulation.

§ 86.194(a) and (b) System for Assessment of Penalties 30 CFR 845.13

Subsection (a) is revised to correct a reference. Subsection (b) is revised to reflect, in part, the civil penalty amounts which would be calculated under the Federal system for determining civil penalties at 30 CFR 845.13. These amendments lower the amount of penalties generally assessed for seriousness and negligence, reduce the minimum penalty assessed for willful violations, require a credit be given for rapid speed of compliance, eliminate the penalty for slow compliance, and reduce the review period on previous violations from 2 years to 1 year. Not being changed is the Department's authority to assess up to the statutory maximum for a violation. The revisions also include a provision to allow the Department to revise a civil penalty for exceptional factors. Minor changes are made to clarify the language dealing with the cost to the Commonwealth.

§ 86.195 Penalties against corporate officers 30 CFR 846.18

This section is amended to provide for a stay and withdrawal of individual civil penalties under certain conditions.

§ 86.201 Procedures for assessment of civil penalties 30 CFR 845.17

This section is revised to allow an operator to submit additional information concerning a violation and to restrict the use of certain evidence in formal appeal proceedings.

§ 86.202 Appeal procedures 30 CFR 845.19

The title of this section is revised to reflect that § 86.202 establishes when a Department action becomes final. The regulations of the Environmental Hearing Board, §§ 1021.1—1021.124, establish the procedures for filing an appeal.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposal.

Benefits

These amendments are proposed in order to make the Commonwealth's coal mining regulations no more stringent than their Federal counterparts. The coal mining industry in this Commonwealth will benefit from these amendments through reduced civil penalties, by receiving prior notice of Department actions on bond adjustments and bond forfeiture and from having an opportunity to provide additional information concerning circumstances related to civil penalty assessments.

Compliance Costs

The proposed changes are primarily procedural and administrative in nature. They will impose no additional compliance costs on the regulated community.

Compliance Assistance Plan

Since coal mining regulation is an established program in this Commonwealth, compliance assistance will be limited to a simple effort to inform the industry of the specific changes in the program. This can be accomplished by mailing fact sheets directly to coal mine operators. If necessary, regional roundtable meetings with the industry will be arranged.

The Department also conducts informal public information workshops for organizations and persons who may be interested in petitioning to have an area declared unsuitable for mining. The workshops are available upon request and will be modified to describe the change to the petition process made by these amendments.

Paperwork Requirements

The proposed amendments will impose no additional paperwork on the regulated community. It will be necessary for the Department to revise several existing forms and technical guidance documents.

G. Sunset Review

These 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)), the Department submitted a copy of the proposed rulemaking on January 29, 1997, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor and the General Assembly before final publication of the regulations.

I. Public Comments

Written comments. Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments received by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by March 10, 1997. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by March 10, 1997 (within 30 days of publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us and must also be received by the Board by

March 10, 1997 (within 30 days of publication in the *Pennsylvania Bulletin*). A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

(Editor's Note: See 26 Pa.B. 5962 (December 14, 1996) for a recent amendment to § 86.124. It will be codified in the February 1997 issue of the Pennsylvania Code Reporter (MTS 267).)

Fiscal Note: 7-302. (1) the Surface Mining Conservation and Reclamation Fund; (2) Implementing Year 1995-96 is \$88,000; (3) 1st Succeeding Year 1996-97 is \$88,000; 2nd Succeeding Year 1997-98 is \$88,000; 3rd Succeeding Year 1998-99 is \$88,000; 4th Succeeding Year 1999-00 is \$88,000; 5th Succeeding Year 2000-01 is \$88,000; (4) Fiscal Year 1994-95 \$31,383,000; Fiscal Year 1993-94 \$29,196,000; Fiscal Year 1992-93 \$20,799,000; (7) Fines and Penalties; (8) recommends adoption.

These regulations may also result in increased litigation costs or cost savings, or both, to the Department of Environmental Protection which cannot be estimated at this time. Increased litigation costs may result from an increase in appeals to Department decisions. Cost savings may result from a reduction in petitions that would require Departmental study. At this time, it is not possible to predict what will happen in these two areas.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter A. GENERAL PROVISIONS

§ 86.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Owned or controlled [or] and owns or controls—One or a combination of the relationships specified in subparagraphs (i)—(iv):

* * * * *

(iii) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant coal mining activity is conducted:

* * * * *

(E) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record [10—50%] a percentage of the entity as established in the definition of “owned or controlled and owns

or controls” in 30 CFR 773.5 (relating to definitions).

* * * * *

Related party—A partner, associate, officer, director, shareholder, parent corporation, subsidiary corporation, affiliate or persons under common control with the applicant, contractor or subcontractor. **The term does not include persons who are excluded, based on a percentage of ownership, under the definition of “owned or controlled and owns or controls.”**

* * * * *

Willful violation—An act or omission which violates the acts, this chapter, Chapter 87, 88, 89 or 90, or a permit condition required by the acts, this chapter or Chapter 87, 88, 89 or 90, committed by a person who intends the result which actually occurs.

Subchapter D. AREAS UNSUITABLE FOR MINING CRITERIA AND PROCEDURES FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE MINING

§ 86.124. Procedures: initial processing, record-keeping and notification requirements.

(a) Within 30 days of receipt of a petition, the Department will notify the petitioner by certified mail whether or not the petition is complete as required by § 86.123 (relating to procedures: petitions). If the 30-day requirement of this subsection cannot be met due to the staff limitations of the Department, the Department may process the [petitions] petition in accordance with the priority system authorized by subsection (b)(2). Within this 30-day period, the Department will also notify an applicant with pending surface mining permit applications in the area covered by the petition.

* * * * *

(6) The Department [will not issue permits for surface mining activities in areas included within a] may determine not to process any petition for a designation under § 86.122 (relating to criteria for designating lands as unsuitable) [if the petition is received by the Department prior to the close of the public comment period for the permit, unless the permit applicant establishes prior substantial legal and financial commitments in a surface mining operation within the proposed permit area. A petition received after the close of the public comment period on a permit application relating to the same permit area will not prevent the Department from issuing a decision on that permit application. For the purpose of this section, “close of the public comment period” means at the close of a public hearing held on the permit, or, if no hearing is held, at the close of the comment period following public notice of the permit application] insofar as it pertains to an area for which an administratively complete surface mining operation permit application has been filed and the first newspaper notice has been published. Once a petition has been returned to the petitioner under this [subchapter,] section the Department may proceed to issue a decision on a permit application received for mining in the area included within the petition.

* * * * *

Subchapter F. BONDING AND INSURANCE REQUIREMENTS

AMOUNT AND DURATION OF LIABILITY

§ 86.152. Adjustments.

(a) The Department may require a permittee to deposit additional bonding if the methods of mining or operation change, standards of reclamation change or the cost of reclamation, restoration or abatement work changes. This requirement shall only be binding upon the permittee and does not compel a third party, including surety companies, to provide additional bond coverage.

* * * * *

(d) The Department will notify the permittee, the surety and any person with a property interest in collateral who has requested the notification, of any proposed adjustment to the bond amount. The Department will also provide the permittee an opportunity for an informal conference on the adjustment.

(Departmental Note: Another rulemaking package containing a subsection (d) to § 86.152 was approved by the Board as final rulemaking on November 19, 1996. Therefore, the subsection (d) which appears above will be designated as subsection (e) when this proposal is adopted.)

FORM, TERMS AND CONDITIONS OF BONDS AND INSURANCE

§ 86.156. Form of the bond.

(a) The Department will accept the following types of bonds:

* * * * *

(3) A self bond.

[(3)] (4) A combination [surety and collateral bond] of bonding instruments as provided in § 86.160 (relating to [surety/collateral] combination [bond] of bonding instruments), for coal surface mining activities.

[(4)] (5) ***

[(5)] (6) ***

* * * * *

§ 86.160. [Surety/collateral combination bond] Combination of bonding instruments.

A permittee for a coal mining activities permit may post a combination of surety, [and] collateral and self-bonds for the permit. A bond instrument shall be construed as part of the bond for the entire permit.

RELEASE OF BONDS

§ 86.171. Procedures for seeking release of bond.

* * * * *

(d) The Department will inspect and evaluate the reclamation work involved within 30 days after receiving a completed application for bond release, or as soon thereafter as [possible] weather conditions permit. The surface owner, agent or lessee shall be given notice of the inspection and may participate with the Department in making the bond release inspection.

* * * * *

BOND FORFEITURE

§ 86.182. Procedures.

(a) The Department will:

(1) Send written notification by mail to the permittee, and the surety on the bond of the Department's intent to forfeit the bond and the reasons for the forfeiture.

(2) Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. These conditions may include either of the following:

(i) Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that the party has the ability to satisfy the conditions.

(ii) Allowing a surety to complete the reclamation plan, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Surety liability will not be released until successful completion of reclamation under the terms of the permit, including applicable liability periods of § 86.151 (relating to period of liability).

[(a)] (b) ***

[(b)] (c) ***

[(c)] (d) ***

[(d)] (e) ***

[(e)] (f) ***

[(f)] (g) ***

**Subchapter G. CIVIL PENALTIES FOR COAL MINING ACTIVITIES
GENERAL PROVISIONS**

§ 86.193. Assessment of penalty.

* * * * *

(b) The Department will assess a civil penalty for each violation if the violation is assessable in an amount of [\$1,000] \$1,100 or more under the system for assessment described in § 86.194 (relating to system for assessment of penalties).

(c) The Department may assess a penalty for each violation which is assessable in an amount less than [\$1,000] \$1,100 under the system for assessment described in § 86.194.

[(d) When an operator conducts surface mining activities on an area for which the operator was not permitted to conduct the activities and in so doing violates § 86.102 (relating to areas where mining is prohibited or limited), the Department will assess a minimum civil penalty of \$5,000. If a civil penalty is assessed under this subsection, the Department is not required to assess a civil penalty under subsections (e) and (f).

(e) When an operator extracts coal or removes overburden or topsoil from an area for which the operator was not permitted to conduct these activities, the Department will assess a minimum civil penalty of \$2,000 per acre. For purposes of this

subsection, any part of an acre disturbed will be assessed the same as if the entire acre had been disturbed.

(f) When an operator conducts surface mining activities other than those described in subsection (e) on an area for which the operator was not permitted to conduct the activities, the Department will assess a minimum civil penalty of \$1,000 per acre. For purposes of this subsection, any part of an acre disturbed will be assessed the same as if the entire acre had been disturbed.

(g) The Department will also calculate a civil penalty under § 86.194 for the violations described in subsections (d)—(f). The Department will assess a civil penalty under § 86.194 instead of the subsections for these violations only if a civil penalty calculated under § 86.194 is greater in amount than the civil penalty calculated under this section.]

§ 86.194. System for assessment of penalties.

(a) The Department and, in event of appeal, the EHB, will use the system described in this section to determine the amount of the penalty and whether a mandatory penalty will be assessed as provided in § 86.193 [(b)] (relating to assessment of penalty). Unless otherwise indicated in this section, the penalty may be set at any amount from zero through the maximum amount specified in this section.

(b) Civil penalties will be assessed as follows:

(1) *Seriousness.* Up to [the statutory maximum] \$1,000 will be assessed based on the seriousness of the violation, including:

* * * * *

(vi) [Other relevant factors] An additional amount up to the statutory maximum may be assessed in extraordinary circumstances.

(2) *Culpability.* If the violation was caused, contributed to or allowed to continue due to negligence on the part of persons working on the exploration or surface mining site, a penalty of up to [\$1,500] \$240 will be assessed depending on the degree of negligence of the persons. If the violation was willful or the result of reckless conduct on the part of the person working on the exploration or surface mining site, a penalty of up to the statutory maximum but at least [\$2,000] \$250, will be assessed.

(3) *Speed of compliance.* A [penalty will be assessed or a] credit will be given of up to \$1,000 based on the person's attempt to achieve rapid compliance after the person knew or should have known of the violation. If the violation is abated within the time period in an abatement order, a [penalty will not be assessed] credit will not be given under this paragraph [. Otherwise, a penalty will be assessed if the violation is not abated within a reasonable time. If] unless the violation is abated in the shortest possible time, in which case a credit of up to \$1,000 will be given. The credit will be available to offset only civil penalties assessed for the specific violation at issue.

(4) *Cost to the Commonwealth.* A penalty of up to the statutory maximum may be assessed based on the costs expended by the Commonwealth as a result of the violation. The costs may include [, without limitation]:

(i) [The administrative] Administrative costs.

* * * * *

(6) *History of previous violations.* In determining a penalty for a violation, the Department will consider previous violations of the applicable laws for which the same person or municipality has been found to have been responsible in a prior adjudicated proceeding, agreement, consent order or decree which became final within the previous [2-year] 1-year period on the permit where the violation has occurred. The penalty otherwise assessable for each violation shall be increased by a factor of 5% for each previous violation. The total increase in assessment based on history of previous violation will not exceed \$1,000.

* * * * *

(f) *Revision of civil penalty.*

(1) The Department, upon its own initiative or upon written request received within 15 days of issuance of an order or cessation order, may revise a civil penalty calculated in accordance with the dollar limits in subsection (b), if the Department determines that, taking into account exceptional factors present in the particular case, the civil penalty is demonstrably unjust. The Department will not reduce the civil penalty on the basis of an argument that a reduction in civil penalty could be used to abate violations of the acts, this chapter, Chapter 87, 88, 89 or 90, or a condition of a permit or exploration approval. The basis for every revision of a civil penalty shall be fully explained and documented in the records of the case.

(2) If the Department revises the civil penalty, the Department will use the general criteria in subsection (b) to determine the appropriate civil penalty. When the Department has elected to revise a civil penalty, the Department will give a written explanation of the basis for the revised civil penalty to the person to whom the order was issued.

§ 86.195. Penalties against corporate officers.

* * * * *

(c) When the Department and the permittee or corporate officer have agreed in writing on a plan for the abatement of or compliance with the failure to abate order, the corporate officer may postpone payment until receiving a decision under § 86.203 (relating to final assessment and payment of penalty), or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

PROCEDURES

§ 86.201. Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice of violation or order, the person to whom it was issued may submit written information about the violation to the Department and to the inspector who issued the order. The Department will consider any information so submitted in determining the facts surrounding the violation and amount of the penalty.

[(a)] (b) ***

[(b)] (c) ***

[(c)] (d) ***

[(d)] (e) ***

(f) At formal review proceedings under § 86.202 (relating to final action) no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

[(e)] (g) ***

§ 86.202. [**Appeal procedures**] **Final action.**

* * * * *

[Pa.B. Doc. No. 97-186. Filed for public inspection February 7, 1997, 9:00 a.m.]

**[25 PA. CODE CH. 171]
Schools**

The Environmental Quality Board (Board) proposes to delete Chapter 171 (relating to schools), ending the Department's responsibility to inspect private and public schools for basic sanitation. This action is proposed to eliminate redundancy that currently exists with other State programs that provide for adequate sewage disposal, safe water supplies and food protection. The Department's administration of the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17); the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); and the Storage Tank and Spill Prevention Act (35 P. S. §§ 6020.101—6020.2105) ensures basic sanitation standards and public health standards are met at schools.

This proposal was adopted by the Board at its meeting of December 17, 1996.

A. Effective Date

This proposal will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Glenn Maurer, Director, Bureau of Water Supply and Community Health, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467 (717) 787-9035 or Pamela Bishop, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA, 17105-8464 (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this Preamble. 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 proposal is available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

The proposed rulemaking is being made under the authority of section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20) which delegates to the Board rulemaking authority.

D. Background and Purpose

The deletion of Chapter 171 would end the Department's inspection of sanitary conditions at private and public school buildings and grounds. The school program has significantly changed in the past 10 years. Specific

statutorily mandated State regulatory programs now require adequate sewage disposal, safe drinking water, solid waste disposal, safe food preparation and safe bathing places. To eliminate the overlapping of inspectional activities carried out by other State environmental health programs, the Department proposes to eliminate this duplicative program. The Department ensures basic sanitation standards and public health standards are met at schools through its administration of the Pennsylvania Sewage Facilities Act, The Clean Streams Law, the Pennsylvania Safe Drinking Water Act, the Solid Waste Management Act and the Pennsylvania Storage Tank and Spill Prevention Act.

E. Summary of Regulatory Changes

The existing regulations were identified as redundant and obsolete during a recent review of the Department's regulations. The review was directed by the Department's Regulatory Basic Initiative and Executive Order 1996-1 concerning Regulatory Review and Promulgation. This proposed rulemaking eliminates the regulatory authority to require compliance with basic environmental sanitation standards that are now addressed by more recent regulatory programs. This action eliminates redundant authority to regulate sewage disposal, safe drinking water, food protection, solid waste disposal and safe bathing places.

F. Benefits and Costs

Executive Order 1996-1 requires a cost/benefit analysis of the proposed deletion. Public and private schools will benefit from the deletion of these regulations. The elimination of the Department's school program reduces an unnecessary and redundant review and approval procedure of planned construction. There may be an undetermined costs savings associated with preparation and submission of school plans for the Department's review and approval. There are no compliance costs associated with this proposal.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed rulemaking on January 29, 1997, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed deletion, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed deletion, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor and the General Assembly before final publication of a regulation.

H. Public Comments

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed deletion to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor 400 Market Street, Harrisburg, PA 17101-2301.) Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board

by March 10, 1997 (within 30 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by March 10, 1997. The one page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us and must also be received by the Board by March 10, 1997 (within 30 days of publication in the *Pennsylvania Bulletin*). A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-305. No fiscal impact; (8) recommends adoption. The deletion of Chapter 171 will end the Department's redundant and duplicative activities associated with the inspection and oversight of basic sanitation in schools. These activities are funded through the Environmental Program Management Appropriation. The De-

partment will experience a reduction in administrative workload as a result of this deletion. Staff time saved as a result of this repeal will be redirected to other program activities funded by the Environmental Program Management Appropriation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE II. (Reserved)

CHAPTER 171. (Reserved)

§§ 171.1—171.16. (Reserved).

(Editor's Note: Chapter 171 is proposed to be deleted in its entirety. The current text of Chapter 171 appears at 25 Pa. Code pages 171-1 to 171-5, serial page numbers (219293) to (219294) and (217373) to (217375).)

[Pa.B. Doc. No. 97-187. Filed for public inspection February 7, 1997, 9:00 a.m.]