

Public Comments

Noncoal Mining Clarifications and Corrections—51 Pa.B. 1519

Commenter

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Comments

1. On Saturday, March 20, 2021, the Environmental Quality Board (EQB) published a Proposed Rulemaking, 51 Pa.B. 1519, entitled Noncoal Mining Clarifications and Corrections.
2. The Proposed Rulemaking implicates noise pollution especially in proposed Section 77.564.
3. In Part G, the EQB recognizes the Federal Pollution Prevention Act applies but concludes “[t]his proposed rulemaking has minimal impact on pollution prevention since it is predominantly administrative, focused on updating regulations to reflect current requirements, amendments to Commonwealth statutes and references to citations, names and data sources.”
4. The Federal Clean Air Act through the Noise Control Act and Quiet Communities Act identifies noise as a federally recognized pollutant linked to significant, adverse, health effects.
5. The Federal Pollution Prevention Act generally requires abatement of pollution. That Act defines a “source reduction” as “any practice which ... reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions)”
42 U.S.C. § 13102(5)(A) .

6. The Department of Environmental Protection constitutes a government entity.
7. Federal Constitutional law generally bars government taking of private real property interests from one private party and conveying the private property interest to another private party. *Kelo v. City of New London*, 545 US 469 (2005).
8. Federal and Pennsylvania Constitutional law recognize a fundamental private property right to the quiet-enjoyment of real property. E.g., *Munn v. People of State of Illinois*, 94 U.S. 113, 145 (U.S.,1876). See also, e.g., *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926); *Robinson Tp., Washington County v. Com.*, 83 A.3d 901, 1001, 623 Pa. 564, 729 (Pa., 2013); *In re Realen Valley Forge Greenes Associates*, 838 A.2d 718, 728, 576 Pa. 115, 132 (Pa., 2003).
9. Federal and Pennsylvania Constitutional law require “The doctrine that each one must so use his own [property] as not to injure his neighbor—*sic utere tuo ut alienum non laedas*—is the rule by which every member of society must possess and enjoy his property; and all legislation essential to secure this common and equal enjoyment is a legitimate exercise of State authority....” *Munn v. People of State of Illinois*, 94 U.S. 113, 145 (U.S.,1876). Pennsylvania reiterates this fundamental Constitutional principle: “A property owner is obliged to utilize his property in a manner that will not harm others in the use of their property....” *In re Realen Valley Forge Greenes Associates*, 838 A.2d 718, 728, 576 Pa. 115, 132 (Pa.,2003).
10. Decibels used for sound-level measurement operate on a logarithmic scale. Thus, apparently small decibel-measurement changes represent large changes in perceived sound-level (“loudness”) and sound emissions. Every 6dB upward change **doubles** sound-level intensity.
11. Scientific studies, the U.S. Congress, the CDC, the WHO, and many world, governmental entities recognize noise as serious pollution and link noise to a host of adverse, non-hearing-loss-related, health effects such as diabetes,

cardiovascular disease, early death, birth defects, ulcers, colitis, migraine headaches, increased blood pressure, increased heart rates, sleep deprivation, neuroticism, heart attack, elevated cholesterol, neuropsychological disturbances, stress, psychiatric disorders, psychological annoyance, and learning impairment in children. Children and vulnerable populations may be more adversely affected by noise.

Objections

12. The Commenter objects to the conclusion that the Proposed Rulemaking “has minimal impact on pollution prevention.”
13. The Commenter objects that permitting any upward departure from the current 133dB maximum airblast sound-level to an unknown maximum a) meets Constitutional requirements or b) as a matter of law can constitute a “minimal impact,” adequate “sound reduction,” or adequate pollution prevention as an unknown.
14. The Commenter objects that allowing a lessor-owner to merely request of a lessee a signed waiver to the airblast requirements, without the lessor-owner first notifying the lessee of the numerous adverse health effects linked to noise, a) protects public health, b) mitigates pollution, or c) meets Constitutional requirements.

Suggestions

15. Revise § 77.564(f)(2) to read: “The Department may specify lower maximum allowable airblast levels than those in this subsection for use in the vicinity of a specific blasting operation.”
16. Add § 77.564(f)(4) to read: “Notwithstanding the airblast level specified in this section, the person who conducts the surface mining activities shall actively minimize and abate noise from airblasts to minimize noise pollution on properties not owned by the person who conducts the surface mining activities.”

17. Revise § 77.564(f) to read "Airblasts shall be controlled so that they do not exceed the airblast level specified in this subsection at a dwelling, public building, school, church or commercial or institutional structure, unless the structure is owned by the person who conducts the surface mining activities and is not leased to another person. After providing written notice to the lessee of the adverse health effects linked to noise and allowing the lessee to revoke informed consent at any time, and providing proof of such written notice to the Department upon request, the lessor may may obtain written, informed consent and waiver from lessee relieving the operator from meeting the airblast limitations of this subsection."
18. Add § 77.564(f)(5) to read: "Affected owners or lessees of properties not owned by the person who conducts the surface mining activities, including government entities, may directly petition Department to specify lower maximum allowable airblast levels than those in this subsection for use in the vicinity of a specific blasting operation."