

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF MINING PROGRAMS**

**DOCUMENT NUMBER:** 563-2111-101

**TITLE:** Noncommercial Exemption from Requirements of the Noncoal SMCRA

**EFFECTIVE DATE:** October 30, 1997

**AUTHORITY:** Noncoal Surface Mining Conservation and Reclamation Act (Noncoal SMCRA), Section 3; 25 Pa. Code Chapter 77, §77.1

**POLICY:**

The Department will establish guidelines to define the qualifications for a noncommercial exemption from the requirements of the Noncoal SMCRA.

**PURPOSE:**

This policy provides for consistent evaluations regarding the qualifications for a noncommercial exemption from the definition of surface mining under the Noncoal SMCRA.

**APPLICABILITY:**

This guidance applies to activities where noncoal minerals are extracted under the noncommercial exemption to the definition of surface mining under the Noncoal SMCRA.

**DISCLAIMER:**

The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures shall affect more stringent regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give these rules that weight or deference. This document establishes the framework, within which the Department will exercise its administrative discretion in the future. The Department reserves the discretion to deviate from this policy statement if circumstances warrant.

**PAGE LENGTH:** 6

**LOCATION:** Vol. 12, Tab 104 (BMP PGM Section VIII, Part 1, Subpart 1)

## **TECHNICAL GUIDANCE:**

### **BACKGROUND**

The Noncoal Surface Mining Conservation and Reclamation Act (Act 219) contains an exemption from the definition of “surface mining” for the extraction of minerals by a landowner for his own noncommercial use from land owned or leased by him. There are many cases where noncoal minerals will be excavated by a landowner from property owned or leased by him for his own noncommercial use. Under such conditions, a permit under Noncoal SMCRA would not be required.

Although an activity which is covered under the noncommercial exemption will not require a permit, license, or bond under the Noncoal SMCRA, the activity may be required to have either an earth disturbance plan or permit under the Clean Streams Law and 25 Pa. Code Chapter 102.

### **PROCEDURE**

#### **A. GENERAL CONSIDERATIONS**

The Department may disapprove an exemption to “surface mining” if it has reason to believe that the excavation of the noncoal minerals under a noncommercial use is being used as a subterfuge to avoid obtaining a surface mining permit for a site in which the major purpose for the excavation is to obtain noncoal minerals for the purposes of selling, bartering, or exchanging these minerals. Those sites not requiring a permit under Noncoal SMCRA may fall under the regulation of the Division of Conservation Districts and Nutrient Management.

#### **B. SPECIFIC CONSIDERATIONS**

In order to be entitled to the noncommercial use exemption, all of the following conditions must be met by persons seeking the exemption:

1. The use of the noncoal material must be noncommercial - A use is considered noncommercial where noncoal material is not sold, bartered, exchanged or used to facilitate future commercial gain by the landowner (or lessee) and is used solely by the landowner (or lessee).

Where the excavation of noncoal materials occurs on land which is leased, the Department does not concern itself with the terms of a lease agreement between a lessor and a lessee or with the terms of any agreement between the lessee and the lessee’s agent. The Department’s primary interest is whether the noncoal materials are ultimately used for commercial gain.

2. Persons eligible for the exemption - A person is eligible for the exemption if he is a landowner who extracts noncoal minerals from land either owned or leased by him. Work may be performed for the landowner by an authorized agent or servant of an eligible landowner who acts in the name of the landowner, on behalf of the landowner, with the landowner’s written permission.

3. Places eligible for exemption - Noncoal mineral extraction must occur on land either owned or leased by an eligible landowner. Minerals extracted pursuant to the exemption may only be relocated and used on land owned or leased by the eligible landowner.

#### **C. ACTIVITIES CONSIDERED TO BE NONCOMMERCIAL EXEMPTIONS**

The following uses will be considered noncommercial use exemptions:

1. Agricultural uses - The extraction of noncoal minerals by a farmer from land he owns or leases, which he uses as part of his normal farming operation. The farmer must not sell, barter or exchange the minerals to facilitate commercial gain for purposes other than conducting normal farming activities.
2. Solid waste permit development - Borrow areas for solid waste permit development activities that are located on lands owned or leased by the solid waste operator (permittee) are exempt from the Noncoal SMCRA as long as the noncoal minerals extracted are not sold, bartered, exchanged or used for activities other than those covered by a permit issued pursuant to the Solid Waste Management Act. These borrow areas will be addressed under the solid waste program.

Borrow areas for solid waste development which do not qualify for a noncommercial exemption or a permit waiver under §77.111 would require a permit, license, and bond under the Noncoal SMCRA.

3. Government agencies - The extraction of noncoal minerals by a government agency (county, township, public utility, etc.) from land owned or leased by the agency for their own use where the minerals are not sold, bartered, or used to facilitate commercial gain.

#### **D. EXAMPLES OF SITUATIONS REGARDING POSSIBLE NONCOMMERCIAL USE EXEMPTION**

The following are examples of several types of situations that have or may occur regarding a potential “noncommercial use exemption”. Some of these situations may qualify for a “building construction exemption” (See Guidance Document 563-2111-102).

Situation	Qualified for Non-Commercial Use Exemption?
1. Noncoal materials are excavated and marketed (sold, bartered or exchanged) from a lessor's site in order to level an area controlled by the lessee for future development.	No
2. Noncoal materials are excavated by a contractor from land leased by the contractor to meet a contract obligation.	No
3. Noncoal materials are excavated from land owned or leased by a government agency (county, township, public utility) and used for the purposes of that government agency (road build-ing, construction purposes). The excavation, material trans-port, and construction are carried out by an agent for the government agency.	Yes
4. A government agency or its agent would sell, barter, or exchange any of the noncoal material from a site owned or leased by the agency.	No
5. Noncoal materials are excavated from land leased by a developer to be used for fill at a housing development.	No
6. Noncoal materials are excavated from land by a contractor for no charge in exchange for excavating the site.	No
7. Noncoal materials are excavated from land owned or leased by a farmer for agricultural uses (normal farming operations).	Yes

#### **E. PERMITS, LICENSES, BONDS**

If an excavation activity does not qualify for an exemption under the noncommercial use exemption or other exemption (i.e., building construction), the person doing the excavation (whether landowner or lessee) must obtain a small noncoal or a large noncoal permit, license and bond as appropriate to the site. Those excavation activities requiring a surface mine permit must comply with the distance limitation requirements of §77.504 unless granted a waiver under that section.

#### **F. ACTIVITIES NOT CONSIDERED TO BE NONCOAL MINING**

The following activities, which often involve demolition or maintenance of existing facilities, are not considered to be encompassed within the definition of noncoal surface mining.

1. The demolition and removal of stone walls.
2. The removal and marketing of sediment from sediment ponds and drainage swales, in order to maintain such facilities.
3. The removal of noncoal materials from facilities constructed to comply with Chapter 102 or other facilities to comply with a valid DEP permit.

4. Regrading of land (cut and fill operations) during which the noncoal materials are not removed from the site for sale or stockpiled for purposes of future sale.

## **G. COMPLIANCE**

1. When the District Mining Office (DMO) or Mine Conservation Inspector receives a complaint or notice that someone without a surface mining permit is excavating noncoal minerals and the minerals are being moved off site, the appropriate technical or inspection staff member will conduct a field investigation of the excavation activities to determine if the activity qualifies for a noncommercial use exemption or other exemption under the Noncoal SMCRA. An inspection report will be filed with the DMO.
2. In the cases where no surface mining permit is required, the DMO will inform the excavator that he should contact the County Conservation District regarding the requirement to have either an earth disturbance plan or permit under the Clean Streams Law. If no surface mining permit is required, the DMO will give notice to the County Conservation District that a determination has been made that the site is not regulated under the Noncoal SMCRA (see sample letter in Appendix I.) No further action is required unless site actions would change the eligibility for the exemption.
3. If a permit is required, the DMO staff will cease the removal of noncoal minerals from the site and will take appropriate action, as necessary, to achieve compliance with the permitting requirements.
4. Failure of the landowner or his agent to comply with any of the qualifications under B. SPECIFIC CONSIDERATIONS at any time removes the noncommercial use status and may result in the requirement to obtain a surface mining permit, license and bond to continue operations and may result in necessary enforcement actions.
5. Any complaints received regarding site excavation that the Department has determined does not require a surface mining permit should be referred to the appropriate County Conservation District.

Excavation sites which were approved as a noncommercial use exemption by the Department, or met the requirements noted in this guidance may continue to operate under a noncommercial use exemption as long as only the properties (lessee and lessor) involved prior to the effective date of this guidance are involved. Any new properties or leases involved must meet the requirements of this guidance.

APPENDICES: Appendix I - Sample Notice

**APPENDIX I  
SAMPLE NOTICE**

**Commonwealth of Pennsylvania  
Department of Environmental Protection  
Date**

SUBJECT: Notice of Earth Disturbance Activity

TO: County Conservation District  
\_\_\_\_\_ County

FROM: \_\_\_\_\_ District Office

This office has determined that the earth disturbance activities described below do not qualify as noncoal surface mining activities under the Noncoal Surface Mining Conservation and Reclamation Act (Noncoal SMCRA) and are therefore not regulated by this office.

The earth disturbance activity meets the following exemption under the Noncoal SMCRA:

☒ Noncommercial Use Exemption

The term "surface mining" does not include: The extraction of minerals by a landowner for his own noncommercial use from land owned or leased by him.

☐ Building Construction Exemption

The term "surface mining" does not include: The extraction, handling, processing or storing of minerals from any building construction excavation on the site of the construction where the minerals removed are incidental to the building construction excavation, regardless of the commercial value of the minerals.

This earth disturbance may require an Earth Disturbance Permit or plan subject to your review.

(Description and location of earth disturbance activity.) \_\_\_\_\_

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cc: MCI  
File