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3509 N. Front St., Harrisburg, PA 17110-1438 • Phone: 717.234.2603 • Fax: 717.234-7030 • www.pacaweb.org

February 27, 2012

Mr. Thomas Callahan
Pennsylvania Department of Environmental Protection
Director, Bureau of Mining Programs
Rachel Carson State Office Building
P.O. Box 8461
Harrisburg, Pennsylvania 17105 - 8461

RE: Noncoal Mining Fees [25 PA. CODE CHAPTER 77]

Dear Mr. Callahan, *Tom*

The Pennsylvania Aggregates and Concrete Association ("PACA") are submitting additional comments to the Proposed Rulemaking on Noncoal Mining Fees as published in the *Pennsylvania Bulletin* on January 28, 2012. PACA had submitted a letter with comments on September 27, 2010 to the same Proposed Rulemaking on Noncoal Mining Fees published originally on August 28, 2010 in the *Pennsylvania Bulletin*.

PACA represents the broad interests of the aggregates industry in the Commonwealth and its members account for more than 80 percent of the total aggregates production in Pennsylvania.

General Comments

The reason for the proposed rulemaking is the erosion of general appropriation funds to support the Pennsylvania Department of Environmental Protection's ("DEP", "Department") noncoal regulatory/permitting programs starting with significant reductions in Fiscal Year 2009/2010 and continuing through the recently proposed 2012/2013 budget. The cost of implementing this program is valued at \$2.5 million per year and the burden of sustaining the DEP's noncoal activities has now shifted entirely to the industry through the proposed fees – the permit application fee and the administrative fee.

In short, the regulated now have to pay for the regulators. Yet another sign of the current mantra among our public officials to shift entirely the financial burden of a Commonwealth program to the regulated industry through the "user fee" model. Unlike many other industries that have abandoned the Commonwealth, we are incapable of "picking up and moving" as our aggregates operations have been in our communities for generations offering employment and a steady stream of tax dollars to both the local town halls and state coffers.

We believe today more than the fall of 2010 when the original proposed rulemaking was unveiled that the DEP senior management under the capable leadership of Secretary Michael Krancer has shown that the Department is willing to listen to the noncoal industry's concerns. At a meeting between key industry leaders and Secretary Krancer and his team in February 2012, the Department has agreed to find ways to minimize the permit review process by limiting the review time of materials submitted and stamped by Professional Engineers (P.E.) and Professional Geologists (P.G.). The noncoal industry applauds this initiative as it is in line with current DEP practices in the Oil and Gas program.

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Further, with the industry's and DEP's financial wellbeing further intertwined through this \$2.5 million per year relationship, we hope that the Department would consider the following options in the near future:

- a. Expedite the review process by minimizing comments to relevant items rather than create a string of communications on items truly immaterial to the permit application. Look at the big picture of a permit application rather than trying to "clock" the average 300 hours calculated by DEP to review a "Large Surface Mining Permit – Mining Below Water Table" at a cost of \$20,225 to the permittee.
- b. Measurement Tools. Invest the resources to create a transparent evaluation program by measuring the performance of the District Mining Offices in terms of the expedient processing of permit applications. Distribute to industry a report card by District Mining Office on those findings on an annual basis.
- c. Work with PACA to educate and better inform the industry on key challenges faced by the Department with permit applications. By working together, we can minimize the "wasted" time and resources to fix problems that continue to plague the permit process.
- d. Invest in building an electronic infrastructure to expedite the permit process either by submission of electronic documents or the creation of an electronic permit platform to simplify the permit approval.
- e. Consider the total workload of the Department's Noncoal Program beyond the District Mining Office silo concept. Are some District Mining Offices faced with a bigger backlog of permit applications and could other District Mining Offices assist to even the workload across the Commonwealth?
- f. Investigate a third-party review system to alleviate chronic work overload. PACA would work with the Department to configure a system of checks and balances to protect the interests of the Commonwealth.

Specific Comments

New Permits. We wish to see a more concise definition for the term "water table" in order to better understand how it is used to determine the "fee" in the proposed rulemaking. We speculate that it refers to those permits where mining is taking place in an environment which requires sustained pumping and thus necessitating groundwater modeling to determine the impacts on the groundwater resources within the zone of influence exerted by the quarry. We believe that it should not apply to those permits which will encounter small perched aquifers during the mining process and consequently does not require extensive modeling during the permitting process.

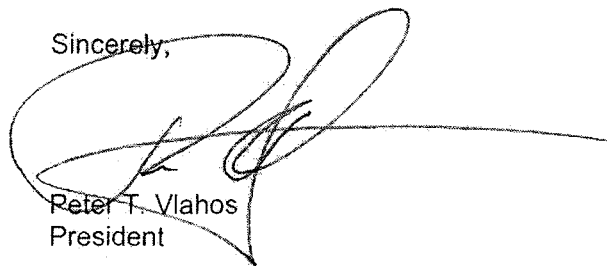
It is also important to note that most sand and gravel operations are conducted below the water table which do not require pumping of the groundwater and thus pose no interruption threat to the groundwater system. Based on that assumption, we believe that the sand and gravel permits should have a lesser rate apply to them in their application process.

In Conclusion

PACA recognizes the need for the implementation of a user fee to offset the eradication of general appropriation funds from the Commonwealth's budget for the management of the Noncoal Program. We are prepared to work closely with DEP to formulate a new business model that does not rely exclusively on the "Hours Clocked" model that is the backbone of the Department's argument for the proposed noncoal fee package. We believe that the Pennsylvania Department of Environmental Protection's Noncoal Program can get better by investing the right resources and personnel and could grow in the future by partnering with the industry to form a new partnership during this difficult economic environment for our state and nation.

We appreciate the continuing dialogue with the DEP management staff as we are all committed to an environmentally sound Pennsylvania for generations to come.

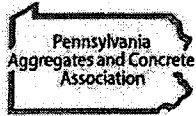
Sincerely,

A handwritten signature in black ink, appearing to read 'Peter T. Vlahos', with a long horizontal line extending to the right.

Peter T. Vlahos
President

Attachment: September 27, 2010 PACA Letter

cc: Paul I. Detwiler, III; PACA Chairman of the Board



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September 27, 2010

Environmental Quality Board
Rachel Carson State Office Building
16th Floor
400 Market Street
Harrisburg, Pennsylvania 17101-2301

RE: Amendments Proposed Under Sections 7(a) and 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act.

Dear Members of the Board:

The Pennsylvania Aggregates and Concrete Association ("PACA") are submitting comments to the Proposed Rulemaking on Noncoal Mining Fees as published in the *Pennsylvania Bulletin* on August 28, 2010. Our comments will address the Pennsylvania Department of Environmental Protection ("DEP") proposal to collect fees through the permit application fee and an annual administrative fee.

PACA represents the broad interests of the aggregates industry in the Commonwealth and its members account for more than 80 percent of the total aggregates production in Pennsylvania.

Annual Administrative Fee

According to the Proposed Rulemaking, DEP will assess an annual administration fee (ranging from \$200 to \$1,850 based on permit category) "for each permitted activity and facility" in order to cover "the cost of performing inspections of noncoal mining operations, compliance assistance and other compliance related activities, as well as tracking of required reporting and monitoring by permittees."

PACA is supportive of the reasonable Annual Administrative Fee schedule proposed with the understanding that the annual fee is tied to a location rather than a permit. It is important to note that there are mining facilities with more than a single permit for that location and the inspections of these multiple permits are done during the same visit. Therefore, the Annual Administration Fee should be assessed on per location basis rather than on the number of permits at that location.

Permit Application Fee

According to the Proposed Rulemaking, DEP will implement a permit application fee to "cover only the Department's cost to review noncoal mining permit applications." The Department acknowledges that the proposed fee schedule is based on the type of permit application submitted and it would range from \$1,600 (for a large Surface Mining Permit Major Amendment /not mining below the water table) to \$20,225 (for a large Surface Mining New Permit/mining below the water table).

PACA does not find the proposed fee schedule as reasonable. The fee schedule is based on a model which captures the cost of running the program on the basis of the time invested by DEP employees in reviewing and approving an "average" permit application. We can understand the logic of the financial model proposed, but we don't view it as suitable to achieving an overarching industry goal --- reviewing and approving permits in an expeditious and timely manner. Let the industry create new jobs and invest money in our local communities and the Commonwealth.

The industry is well aware of the circumstances that led to the permit fee decision by the Department. Unfortunately during these difficult economic times for our nation and the Commonwealth, the Legislature found it easier to cut DEP's budget and placed the onus back on the Department to create the revenue stream necessary to perform its mission. By the Department's own accord, this financial model has to generate \$2.5 million per year. The industry now is responsible for paying the entire annual \$2.5 million bill for DEP to manage the noncoal mining program. We don't believe that this is a fair solution to a funding decision made by the Legislature.

PACA's primary concern is the lack of accountability for a swift approval of permit applications because of the flawed model based on employee hours invested. DEP's own explanation to the industry at statewide meetings in the Spring of 2010 talked about the permit fee figures generated by formulas calculating the employee hours invested (nearly 300 hours according to DEP), the employee's overhead costs (health insurance, pension, etc.) and general administrative costs (office space, costs to light and heat the office, etc.).

What reasonable assurance does the industry have that permit applications would be processed in reasonable time when the DEP's "reasonable" fees are based on employee hours invested? It is counterintuitive to believe that the Department would fast track the application process because it would mean less employee hours which translates to less income to offset the management cost of the noncoal mining program.

PACA would support a reasonable increase in the permit fees as long as the Department is willing to discuss a new operating protocol based on a more timely performance and accountability rather than the current system of inflating employee hours by nitpicking applications. Please understand that there is a substantial investment already made by industry every time an application is forwarded to the Department for review. And every time an

DEP Noncoal Fees Comment Letter
September 27, 2010
Page 3

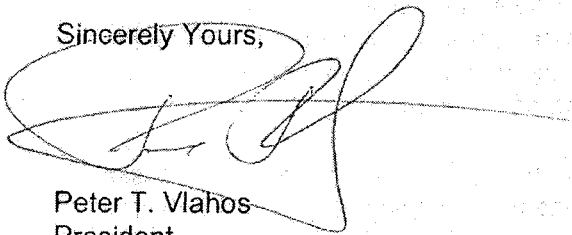
insignificant DEP comment is received, for example a DEP reviewer's request to change the color on a map, it costs us money and time. By finding a mutually agreed upon common sense approach, the industry would support DEP's funding program as long as it saves us money and time on every interaction with the Department.

One common sense suggestion is for the Department to recognize and accept the professional licensure of industry employees and consultants when reviewing permit applications. Why is the Department reluctant to accept work performed by a licensed Professional Engineer or a licensed Professional Geologist? The question remains whether a financial model proposed by the Department which relies on hours invested in reviewing and approving a permit would be open to the rapid processing of each and every application.

As unfair as this situation is for the Department to have to raise money in order to support its programs due to lack of funding by the General Assembly, we don't believe that it is reasonable for the industry to be 100% responsible for the management costs of the program, especially in light of a nonexistent advisory board for the noncoal mining program. Industry needs its voice to be heard in an official setting. Informal meetings with the Department are not enough. Needless to say, with the proposed three year review period recommended by the Department to analyze future costs, we anticipate that these fees will continue to rise to offset the salaries and benefits of employees for which industry has no say or recourse. Where is this going to end?

PACA recognizes the need for the implementation of a user's fee to offset the budget loss by the Department. We categorically disagree that the hours invested model would lead to a more effective and efficient noncoal mining program. We will support financially the work of the Department, but assurances are needed that industry would not be penalized today and in the future because more hours are needed to justify the operating costs of the noncoal mining program.

Sincerely Yours,



Peter T. Vlahos
President

cc: Mr. Wilbur Rohrer (Rohrer's Quarry, Inc.) PACA Chairman
Mr. Paul Detwiler, III (New Enterprise Stone & Lime Co., Inc.) PACA Vice Chairman
Mr. Michael Hawbaker (Glenn O. Hawbaker, Inc.) PACA Secretary/Treasurer