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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

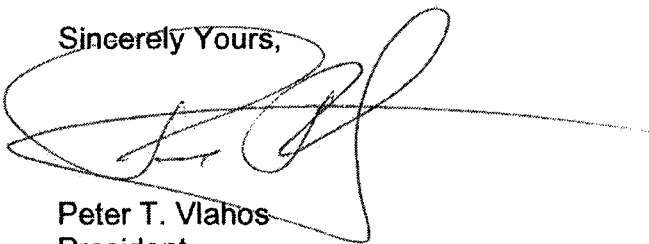
insignificant DEP comment is received, for example a DEP reviewer's request to change the color on a map, it costs us money and time. By finding a mutually agreed upon common sense approach, the industry would support DEP's funding program as long as it saves us money and time on every interaction with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

A handwritten signature in black ink, appearing to read "Peter T. Vlahos", written over a horizontal line.

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

Cooper, Kathy

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From: Peter Vlahos [peter@pacaweb.org]
Sent: Monday, September 27, 2010 5:05 PM
To: EP, RegComments
Cc: Peter Vlahos
Subject: PACA Comments to DEP Noncoal Fees Proposal
Attachments: DEP Noncoal Fees Comment Letter.pdf

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Importance: High

Members of the Environmental Quality Board,


Attached please find the comments from the Pennsylvania Aggregates and Concrete Association to the proposed DEP Noncoal Fees.

Please don't hesitate to contact me with any questions.

Best Regards,

Peter T. Vlahos
President

Peter T. Vlahos | Pennsylvania Aggregates and Concrete Association & Pennsylvania Concrete Promotion Council | 3509 North Front Street | Harrisburg, PA 17110
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