

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

2012 MAY 21 PM 4:35

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(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: Department of Environmental Protection

(2) Agency Number:

Identification Number: #7-460

IRRC Number: 2864

(3) PA Code Cite: 25 Pa. Code Chapter 77

(4) Short Title: Noncoal Mining Fees

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Michele Tate, 783-8727, 400 Market St., 16th floor, RCSOB, Harrisburg, PA 17105, Fax 783-8926, mtate@pa.gov

Secondary Contact: Patricia Allan, Director, Policy Office, 783-8727, 400 Market St., 16th floor, RCSOB, Harrisburg, PA 17105, Fax 783-8926, pmallan@pa.gov

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language (100 words or less)

The regulation will amend regulatory requirements to implement reasonable filing fees for industrial mineral (noncoal) mining activities. The proposed regulations provide schedules for permit application fees and annual administration fees.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The amendments are proposed under section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act ("Noncoal Act")(52 P. S. § 3311(a)), section 7(a) of the Noncoal Act, 52 P.S. § 3307(a) (the "department is authorized to charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing, administering and enforcing the permit"), and section 1920-A of the Administrative Code of 1929 (71 P. S. § 510-20).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is necessary for DEP to maintain a regulatory program for noncoal mining activities in Pennsylvania, which DEP will be unable to maintain in the absence of a stable source of sufficient funding to cover the costs of administering the noncoal mining regulatory program in Pennsylvania. Recent cuts to DEP's budget have jeopardized the continued administration of DEP's noncoal mining regulatory program. The regulation will enable the Commonwealth to fulfill its obligation to administer and enforce the Noncoal Act.

All of the citizens of the Commonwealth will benefit through the environmental protection provided by the continued administration and enforcement of the Noncoal Act

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Departmental workload analysis data, including calculations associated with staff time and costs needed to review permit applications, were used to substantiate fee estimates. Costs associated with program operational needs are posted to the Commonwealth's SAP accounting system. This information is included in the Department's Basic Financial Statements that are prepared in conformity with general accepted accounting principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB). The Commonwealth's Basic Financial Statements are jointly audited by the Department of Auditor General and an independent public accounting firm.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

The regulated industry will be adversely affected by having to pay higher fees. There are about 1500 noncoal mining operators in PA. The average economic impact is about \$1,700 per year for each operator; however the fee schedules have been developed in a manner which imposes less impact on small-scale operators in order to significantly reduce the individual impact on small businesses.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

There are about 1500 noncoal mining operators that will have to comply with these amendments.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The cost to the regulated community is about \$2,500,000 per year. This amount is DEP's approximate cost to administer the Noncoal Mining regulatory program. Fee amounts have been calculated with the intention of providing for the full program cost. The fees are based on a workload analysis that establishes the number of hours it takes to complete a task, the employee costs and overhead.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation will not result in any additional costs or savings to local governments.

(16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed regulations will result in savings to state government in the amount of the fees collected (estimated to be \$2,500,000 per year).

(17) In the table below, provide an estimate of the fiscal savings and costs associated with

implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government	\$0	\$0	\$1,250,000	\$2,500,000	\$2,500,000	\$2,500,000
Total Savings	\$0	\$0	\$1,250,000	\$2,500,000	\$2,500,000	\$2,500,000
COSTS:						
Regulated Community	\$0	\$0	\$1,250,000	\$2,500,000	\$2,500,000	\$2,500,000
Local Government						
State Government						
Total Costs	\$0	\$0	\$1,250,000	\$2,500,000	\$2,500,000	\$2,500,000
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(17a) Provide the past three year expenditure history for programs affected by the regulation

Program	FY -3	FY -2	FY -1	Current FY
Fund 073 - Noncoal Regulatory – Gen Opr. 20101	\$2,200,000	\$3,696,000	\$2,252,000	\$5,002,000

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Without the imposition of fees, the noncoal mining regulatory program will have to be terminated or at least severely curtailed. There is inadequate funding at present to cover DEP's costs to administer the program. Without a stable source of funding DEP will not be capable of issuing, administering and enforcing permits required by the Noncoal Act. Operators would not be able to obtain permits required by law, and the public's interest in health safety and environmental protection would not be protected.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

DEP conducted outreach with the regulated community through meeting with trade groups (Pennsylvania Aggregate and Concrete Association and the PA Bluestone Association) and roundtable meetings. The proposal has been met with some opposition. However, there seems to be an acknowledgement that there is a need for the fees.

Comments were received from 20 commentators.

In addition to the EQB comment period, DEP requested comments on January 28, 2012. Comments were received from 20 commentators as a result of this request.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Implementing a new fee program without going through the regulatory process using the broad authority of the Noncoal Act's fee provision in § 3307(a) (authorizing DEP "to charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing, administering and enforcing the permit" but notably not requiring that fees be implemented through "rules and regulations" as is required by other environmental statutes) was considered and dismissed. It was determined that implementing fee increases through the regulatory process was preferred due to the transparency of the process. Other stable sources of funding are not available so DEP has chosen to exercise its authority to charge a reasonable fee to cover the costs of administering program. DEP has made every effort to use the least burdensome alternative when developing the manner of assessing fees on the industry.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Not applicable.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The proposed regulations will place PA in the middle when compared with other states. For example, New York imposes substantially higher annual administration fees. Ohio has a multifaceted fee program for noncoal mining. Ohio imposes a \$500 flat application fee, which is supplemented by a \$75 per acre fee, and a \$500 annual fee on large operations and \$250 per year fee for small operations. Also, Ohio imposes a \$0.02 per ton severance tax.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies?
If yes, explain and provide specific citations.

No.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Application forms will have to be revised when these regulations are finalized.

Tracking system modifications will be required to collect the annual administration fee.

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

None.

(26) Include a schedule for review of the regulation including:

- | | |
|---|----------------|
| A. The date by which the agency must receive public comments: | February 2012 |
| B. The date or dates on which public meetings or hearings will be held: | Not Applicable |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | July 2012 |
| D. The expected effective date of the final-form regulation: | August 2012 |
| E. The date by which compliance with the final-form regulation will be required: | August 2012 |
| F. The date by which required permits, licenses or other approvals must be obtained: | Not Applicable |

(27) Provide the schedule for continual review of the regulation.

The regulation includes a periodic review of fee amounts every three years.

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(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-460

DATE OF ADOPTION APRIL 17, 2012

BY 

TITLE MICHAEL KRANCER
CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

By 
Megan L. Consedine **MAY 18 2012**

DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel - Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Noncoal Mining Fees

25 Pa. Code, Chapter 77

**Notice of Final Rulemaking
Department of Environmental Protection
Environmental Quality Board
25 PA CODE CHAPTER 77
Noncoal Program Fees**

Order

The Environmental Quality Board (Board) by this order amends Chapter 77 (relating to noncoal mining). The final-form rulemaking incorporates amendments necessary to provide funding for the implementation of the Noncoal Surface Mining Conservation and Reclamation Act.

This order was adopted by the Board at its meeting of April 17, 2012.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking, except that the annual administration fee established under § 77.106(b) will become effective on January 1, 2013 and will be applied to all mining licenses being renewed which have an expiration date occurring on or after January 1, 2013.

B. Contact Persons

For further information contact Thomas Callaghan, Director, Bureau of Mining Programs, P.O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103, or Richard S. Morrison, Assistant Director, Bureau of Regulatory Counsel, P O Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5988 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection (DEP) website (<http://www.depweb.state.pa.us>).

C. Statutory Authority

The amendments are proposed under sections 7(a) and 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (Act) (52 P. S. §§ 3307(a) and 3311(a)) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. Background and Purpose

The purpose of this final-form rulemaking is to establish fees as authorized by the Act. Section 7 of the Act states: "The department is authorized to charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing,

administering and enforcing the permit.” 52 P.S. § 3307(a). The Act thus authorizes the DEP to collect fees from noncoal mining permit applicants and permittees in an amount sufficient to cover DEP’s costs of administering the noncoal mining regulatory program, so long as the amount of fees collected does not exceed those costs. DEP has calculated its costs of administering the noncoal mining program and will establish fees through this regulation which are sufficient to cover most of its costs.

The final-form regulations implement the statutory authorization of the Act to collect a reasonable filing fee through two kinds of fees, the permit application fee and the administration fee. The permit application fee is intended to cover DEP’s cost to review noncoal mining permit applications. The permit fees have been set according to the type of permit application submitted; the amounts of these fees are based on the number of hours typically required to review a specific type of permit application. A large noncoal surface mining permit where the pumping of groundwater will take place is substantially more complex, and requires significantly more review time, than a small noncoal surface mining permit. Consequently, the amount of the respective permit fees reflects the average review time for each type of permitting action.

The annual administration fee is intended to cover DEP’s costs to administer the permit. These include, among other things, 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. As with the permit fees, the annual administration fees have been set based on workload analyses. A large surface mining permit with blasting activity necessitates substantially more administrative activity by DEP; the annual administration fee reflects the differences between types of operations based on DEP’s respective administrative workload.

The assessment of the two kinds of fees is necessary to fairly represent the cost to the Commonwealth for reviewing, and administering, a noncoal mining permit. This final-form rulemaking is necessary in large part due to recent funding cuts. General appropriation funding to support DEP’s regulatory/permitting programs was significantly reduced in fiscal year 2009-10, so it has become necessary to pay for all of the noncoal mining program staff costs through collection of fees paid by the regulated industry. These staff costs total approximately \$2.5 million per year.

Permit Application Fee

The permit application fee amounts were calculated based on a workload analysis that DEP uses to manage the work force. The workload analysis assigns a certain number of hours for the review time for each type of application.

Permit applications vary in their complexity based on a number of factors. The primary factor relates to hydrologic impacts. Applications that propose to pump groundwater take significantly more time to review. Therefore, the application fee for these permits is higher. Similarly, if blasting is proposed, then the blasting inspector is involved in the

review of the blast plan for the application. Therefore, a fee is being proposed for blast plans.

The permit application fees will be applicable to any applications submitted after the date of publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Annual Administration Fee

The annual administration of a noncoal mining permit is accomplished through routine inspections to assure that the mining activities are being conducted in compliance with the permit requirements. DEP has established inspection frequencies based upon the type of permit and the status of the activity.

There are two types of permits, small and large. Small permits authorize up to 10,000 tons per year in production. Large permits are needed for production that exceeds 10,000 tons per year. The inspection frequency for large permits is four per year. For small permits, the frequency is two per year.

For large permits that authorize blasting, one inspection per year by a DEP Blasting Inspector is needed. This results in a higher annual administration fee amount for the large noncoal permits where blasting is authorized.

The annual administration fee will become effective on January 1, 2013, and will be applied to all mining licenses being renewed which have an expiration date occurring on or after January 1, 2013.

There is no advisory board for the noncoal mining program. DEP conducted outreach with the regulated community through meetings with trade groups (PA Aggregate and Concrete Association, the PA Bluestone Association, and the Society of Mining Engineers). Also, DEP held four outreach meetings throughout the state. All licensed noncoal mine operators were invited to attend these meetings through a mass mailing that included information about the proposed fees. DEP also used an email distribution list to keep interested parties informed through the process.

E. Summary of Changes to the Proposed Rulemaking

§ 77.106. Fees

The permit application fee schedule has been revised to clarify the description of the two categories of large noncoal sites. In the proposed regulation, these categories were described as “mining below the water table” and “not mining below the water table.” For clarity, the descriptions have been changed to “groundwater pumping authorized” and “no groundwater pumping.” This clarifies that it is the pumping of the groundwater, and assessing the impacts of that pumping, that makes a difference in the complexity of the review. Sites where mining is occurring below the water table, but where pumping is not being done (i.e. dredge operations) are in the less complex category.

In the fee schedule, the fee category and amount have been deleted for the small surface mining permit transfer, since these permits are not transferable. The fee category and amount have also been deleted for general permits (GP). This was done because application fee amounts vary with each GP and are published in the *Pennsylvania Bulletin* when a GP is proposed. Final application fee amounts for GPs are included with the final publication of each permit after the opportunity for comment. These GPs are alternatives to large or small noncoal permits where the applicant voluntarily chooses to apply for coverage under the GP rather than obtaining a small or large noncoal permit. Also, the annual administration fee description for GPs has been revised to delete the reference to the GP for short-term construction. At the time the regulation was proposed, this was the only GP available. This revision applies the same administration fee amount to all GPs.

F. Summary of Comments and Responses on the Proposed Rulemaking

Opposition to Imposition of Fees

Several commentators voiced general opposition to the imposition of permit fees on noncoal mining operators, stating that the fees would burden small businesses during a difficult economic time, and the noncoal mining program should be funded by the Commonwealth through general fund appropriations. Comments stated that DEP's administration of the mining permitting program is a fundamental function of state government and should be funded by taxpayers. Objections to the amount of the fees in the proposed fee schedule were also raised, as well as concerns that the substantial fee increases will decrease competition by reducing the number of noncoal operators in the Commonwealth.

The Noncoal Surface Mining and Conservation Act clearly authorizes the collection of reasonable fees from operators as the means of funding the DEP's implementation and administration of the statute's provisions. While the concern of the regulated community is understandable, these fees are required as part of a shift to a self-sustaining program. The fee amounts are reasonable, in part because they have been tailored to the scale of the mining operation, and the amounts compare favorably with fees assessed by neighboring and other states so they are not expected to have any anti-competitive impacts.

Support for Fees

Several commentators voiced general support for the proposed rulemaking to increase the permit application fees and to add an annual administration fee to be paid by noncoal mine operators. Support was also noted for assessing fees for the small operators differently, including increasing the proposed fee amounts for the smaller operations because they are not self-supporting.

The Board acknowledges and appreciates the support expressed for the rulemaking. While the individual fee amounts are lower for small noncoal operators, there are more of

these operators in Pennsylvania, therefore, they are self-supporting. The fee amounts are based on the workload analysis which accounts for the differences between small and large permits.

Fee Amounts

Comments were made that the proposed permit application fee schedule is unreasonable because DEP takes too much time to complete its permit review and administration work, excessive inspections are conducted, DEP's salaries are too high, or fees should not be based on salaries for DEP personnel in the noncoal mining program. Commentators also objected that DEP's operations are inefficient and therefore the overall cost of operating the program is too high.

The fee amounts are based upon a well-developed work load analysis. The fee calculations reflect the cost to DEP to review applications to assure that they comply with the regulations and to administer permits to assure compliance. Regulatory compliance prevents pollution, protects the environment and assures that resources are preserved. DEP is continuously looking to improve efficiency. For example, DEP has revised an existing general permit to expand its use. Unfortunately, many of the permit applications DEP receives are often not well prepared, and DEP has historically made extensive efforts to assist the permit applicant with correcting an application. Since the regulation requires that DEP review the fee amounts at least every three years, and report its analysis to the Board, program efficiencies will be evaluated as part of this effort.

Professional Seals

Comments were made that DEP's review time is too lengthy and cumbersome for work that is submitted under a professional seal and that DEP is unwilling to accept work performed by a licensed professional without further review. The commentator contends that DEP duplicates work by not accepting application materials that have been sealed by a professional.

The information submitted with any permit application requires review. The professional seal ensures that conclusions drawn by the consultant have been prepared in the best professional opinion of that particular consultant. DEP review of the work submitted with a permit application is necessary in order to assure that it meets the regulatory requirements. In DEP's experience, however, meeting generally accepted engineering or geology standards does not guarantee that the work meets the regulatory requirements. DEP does not duplicate work, it reviews the work of consultants. Revisions to the permit application may be required to meet regulatory requirements, correct an error or clarify a conclusion reached in an application.

Administration fee by site rather than Permit

Commentators suggested that the annual administration fee should be applied to a site and not to each individual permit; i.e. the annual administration fee should be tied to a location rather than a permit.

DEP's workload analysis is based on the average amount of time for each category of permits.

The annual administration fee is defined in § 77.1 as: "A nonrefundable filing fee assessed on an annual basis for the cost to the Department of inspecting a permitted activity or facility in order to administer the permit." Subsection § 77.106(f) lists eight different types of permits that would be subject to the annual administration fee. A commentator stated that each mining facility could have several permits, and asked whether a mining facility could be subject to more than one annual administration fee, or is the fee only applicable to the facility.

The permit fees are set on a per-permit basis. Administratively, inspections are conducted on a permit-specific basis, not on a facility basis. Each permit file must be reviewed for the permit requirements. A separate inspection report is needed for each permit. An alternative for a permittee with multiple permits, subject to multiple fees, would be to consolidate its facility under one permit.

Industry Advisory Board

According to a commentator, the industry needs to be heard in a formal setting, and it is not reasonable for the industry to be 100% responsible for the management costs of the program given that there is no advisory board for the noncoal mining program.

In order to comply with the Noncoal Surface Mining Conservation and Reclamation Act, a sustainable funding source is required. Since there are no other funds available, the proposal is based on 100% program funding from these fees. DEP is committed to providing the highest level of interaction possible with the regulated industry. DEP meets on a quarterly basis with PACA and regularly with the PA Bluestone Association as issues arise. These meetings will continue in order to identify and understand industry concerns and to work to improve program efficiency.

Miscellaneous

A commentator questioned what the large permit fee covers and if the fee covers all processing fees associated in the correction of an application, if such an application is returned by DEP.

The large noncoal permit fee (new) includes all of the processing time in the review of an application. This may include multiple correction letters to resolve application deficiencies. Typically, DEP provides assistance to applicants and their consultants throughout the course of the application review (including before the application is

submitted). DEP strives to review all applications as promptly as possible. For permits that are rejected, the fees remain applicable because the review is still needed to determine that the permit can not be issued. DEP strives to accommodate permit applicants.

The PA Bluestone Association commented that it did not have sufficient interaction with DEP concerning this fee rulemaking proposal.

DEP conducted outreach with the regulated community on the proposed rule. The outreach included a series of meetings with industry groups (Pennsylvania Aggregate and Concrete Association and the PA Bluestone Association) and roundtable meetings with industry representatives. DEP meets regularly with the PA Bluestone Association as issues arise. These meetings will continue in order to identify and understand industry concerns and to work to improve program efficiency.

A commenter suggested that there has been no clear evidence given of the budget for the Industrial Minerals administration and permit reviews other than what DEP has generated, and that an external independent audit should be conducted to verify DEP's need for this fee increase, and any future fee increases.

DEP's costs are based on actual expenditures. The workload analysis used is continually evolving in order to keep up with changing circumstances. During the outreach to industry, data was shared. The detailed data is available and was provided to individuals who requested it during the outreach process.

G. Summary of Comments and Responses Solicited by the DEP

On January 28, 2012, the DEP published notice in the PA Bulletin, at 42 Pa.B. 553, announcing it was accepting comments for thirty days relating to the Noncoal Fee Regulations.

Comments were received from 20 commentators during this comment period. These comments were mostly (13 of 20) related to sand and gravel operations in northwest Pennsylvania. The comments primarily focused on the adverse impact the increased fees will have on small businesses that operate sand and gravel pits. Four comments of support for the fees were received.

DEP appreciates that the fees impose a burden on noncoal mine operators, including small businesses that operate sand and gravel pits. The fees are necessary to provide funding to enforce the Noncoal Surface Mining and Conservation Act.

Other comments related to general noncoal program implementation through permitting and compliance activity. DEP continues to endeavor to improve efficiency and reduce costs.

H. Benefits, Costs and Compliance

The amendments will enable the Commonwealth to fulfill its obligations to enforce the Act.

Compliance Costs

It is estimated that these regulations will impose total additional compliance costs of about \$2,500,000 on the regulated community.

Compliance Assistance Plan

DEP will provide written notification to all noncoal mine operators to inform them of the final promulgation of these regulatory changes. DEP may also hold roundtable meetings with mine operators and consultants to explain program changes and answer questions.

Paperwork Requirements

The amendments will require DEP to update its application forms.

I. Pollution Prevention

The rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multi-media pollution prevention approach of existing requirements in 25 Pa. Code.

J. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by DEP to determine whether the regulations effectively fulfill the goals for which they were intended.

K. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on ___ August 18, 2010, DEP submitted a copy of the notice of proposed rulemaking, published at 40 *Pa.B.* 4963, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, DEP has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on ___ (blank) ___, these final-form regulations were deemed approved by the House and Senate Committees. Under section

5.1(e) of the Regulatory Review Act, IRRC met on _____ (blank) _____ and approved the final-form regulations.

L. Findings of the Board

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 40 *Pennsylvania Bulletin* 4963 (Saturday, August 28, 2010).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

M. Order of the Board

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapter 77, are amended to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This order shall take effect immediately.

BY:

Michael Krancer
Chairman
Environmental Quality Board

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 77. NONCOAL MINING

Subchapter A. GENERAL PROVISIONS

§ 77.1 Definitions.

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

* * * * *

Annual administration fee--a non-refundable filing fee assessed on an annual basis for the cost to the department of inspecting a permitted activity or facility in order to administer the permit.

* * * * *

Large noncoal permit--a mining permit that authorizes the extraction of greater than 10,000 tons per year of noncoal materials

Major permit revision--a revision to a permit that requires public notice.

* * * * *

Minor permit revision--a revision to a permit that does not require public notice.

* * * * *

Permit application fee--a non-refundable filing fee due at the time of submission of an application. The permit application fee is required in order for an application to be considered complete.

* * * * *

Permit status—an indicator of the level of progress of mining activity at a permitted facility. Permit statuses are as follows:

(i) Not started. Mine sites where the mining permit has been issued, but mining activities have not begun,

(ii) Active. Mine sites that do not qualify for inactive status, not started status or released status,

(iii) Inactive. Mine sites where mineral extraction activity has been completed but final bond release has not been completed,

(iv) Released. Mine sites where the final bond release has been completed.

* * * * *

Small noncoal permit—a mining permit that authorizes the extraction of up to 10,000 tons of noncoal minerals per year.

* * * * *

§ 77.51. License requirement.

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(e) *Refusal to issue or renew license.* The Department will not issue a noncoal surface mining operator's license or renew or amend a license if it finds, after investigation and an opportunity for informal hearing, that a person, partner, associate, officer, parent corporation or subsidiary corporation has been subject to a bond forfeiture under the act and environmental acts or has failed to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree under the act and environmental acts. The Department will not renew a license for an operator who uses the provisions for payment in lieu of bond unless the operator submits his annual payment with the license renewal application. **The department will not renew a noncoal mining operator's license for an applicant who has not made full payment of the annual administration fee required under § 77.106(f) (relating to fees).** A person who opposes the Department's decision on issuance or renewal of a license has the burden of proof.

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Subchapter C. PERMITS AND

PERMIT APPLICATIONS

GENERAL

§ 77.106. [Permit fees] Fees.

[If required, a permit application for noncoal mining activities shall be accompanied by a check, payable to the “Commonwealth of Pennsylvania” in the amount set forth by the Department. The Department may require other fees set by the act, the environmental acts, this title or the Secretary.]

(a) A permit application for noncoal mining activities shall be accompanied by a non-refundable payment for the permit application fee payable to the “Commonwealth of Pennsylvania.” The applicable permit application fee amount is specified in subsection (e). For purposes of this subsection, permit applications include all of the applications listed in subsection (e).

(b) The department will assess an annual administration fee for each permitted activity and facility. For licensed mine operators, this annual administration fee will be assessed annually, will be collected as part of the mine operator’s license renewal application and will include the appropriate annual administration fee for each of the licensee’s permitted facilities. If the permittee is not required to maintain a mining license, a notice of the annual administration fee will be sent to the permittee for all of the permittee’s permitted facilities and the fee must be paid within 30 days of receipt of the notice. The applicable fee amounts are specified in subsection (f).

(c) Fees collected under this section and all enforcement cost recovery funds will be deposited in the noncoal surface mining conservation and reclamation fund. The fees collected under this section will be used by the department for the purposes specified by the act.

(d) At least every three years, the department will recommend regulatory changes to the fees in this section to the EQB to address any disparity between the program income generated by the fees and program costs. The regulatory amendment will be based upon an evaluation of the program fees income and the department’s costs of administering the program.

(e) The permit application fee schedule is as follows:

(1) New permits

Fee

Large Surface Mining Permit--[mining below water table] GROUNDWATER PUMPING AUTHORIZED

\$20,225.00

<u>Large Surface Mining Permit--[not mining below water table] NO GROUNDWATER PUMPING</u>	<u>\$13,500.00</u>
<u>Small Surface Mining Permit</u>	<u>\$525.00</u>
<u>[General Permit]</u>	<u>[\$525.00]</u>
<u>Underground Mining Permit</u>	<u>\$20,225.00</u>
<u>(2) Major amendments</u>	<u>Fee</u>
<u>Large Surface Mining Permit--[mining below water table] GROUNDWATER PUMPING AUTHORIZED</u>	<u>\$3,850.00</u>
<u>Large Surface Mining Permit--[not mining below water table] NO GROUNDWATER PUMPING</u>	<u>\$1,600.00</u>
<u>Underground Mining Permit</u>	<u>\$2,650.00</u>
<u>(3) Minor Amendments</u>	<u>Fee</u>
<u>Large Surface Mining Permit</u>	<u>\$700.00</u>
<u>Small Surface Mining Permit</u>	<u>\$175.00</u>
<u>(4) Transfers</u>	<u>Fee</u>
<u>Large Surface Mining Permit</u>	<u>\$900.00</u>
<u>Underground Mining Permit</u>	<u>\$900.00</u>
<u>[Small Surface Mining Permit]</u>	<u>\$175.00]</u>
<u>(5). Other Actions</u>	<u>Fee</u>
<u>Bonding Increment</u>	<u>\$450.00</u>
<u>Completion Report Application</u>	<u>\$600.00</u>
<u>Blast Plan</u>	<u>\$475.00</u>
<u>Notice of Intent to Explore</u>	<u>\$60.00</u>

Pre-applications \$3,375.00

(f) The annual administration fee schedule will be as follows:

<u>Permit Category--Permit Status</u>	<u>Annual fee</u>
<u>Large Surface Mining Permit--Active</u>	<u>\$1,450.00</u>
<u>Large Surface Mining Permit--Active with Blasting</u>	<u>\$1,850.00</u>
<u>Small Surface Mining Permit--Active</u>	<u>\$200.00</u>
<u>Small Surface Mining Permit--Active with Blasting</u>	<u>\$300.00</u>
<u>Underground Mining Permit--Active</u>	<u>\$1,450.00</u>
<u>General Permit[short term construction]</u>	<u>\$200.00</u>
<u>All Permits--Not Started</u>	<u>\$100.00</u>
<u>All Permits--Inactive</u>	<u>\$100.00</u>

REVIEW, PUBLIC PARTICIPATION, ITEMS
AND CONDITIONS OF PERMIT APPLICATIONS

§ 77.126. Criteria for permit approval or denial.

* * * * *

(c) A permit, permit renewal or revised permit application will not be approved unless the applicant has made full payment of the permit application fee required under § 77.106(e) (relating to fees) and the annual administration fee required under § 77.106(f) for all of the applicant's permitted mining facilities.

* * * * *

Comment and Response Document Noncoal Fee Regulations

Comments received in response to the Environmental Quality Board comment period.

Commentators:

(1)

Harold L. Brake, Chairman
Charles E. Brake Company, Inc
6450 Lincoln Way West
PO Box 275
St. Thomas, PA 17252-0275

(2)

Marilyn McDaniel
1211 Shady Avenue
Pittsburgh, PA 15232

(3)

Lynn R. Powell
1510 Kane Rd.
Montrose, PA 18801

(4)

Arthur Frecoske
1125 West Wilkes-Barre TPA
Montrose, PA 18801

(5)

Michael Jones-Stewart. P.G.
The EADS Group
15392 Route 322
Clarion, PA 16214

(6)

Will Sill
Tunkhannock, PA

(7)

Darrel K. Lewis, P.E.
Allegheny Mineral Corporation
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Kittanning, PA 16201

(8)

Karl Fatter
Glacial Sand & Gravel Company
PO Box 1022
Kittanning, PA 16201

(9)
Troy Adzima
Lakeland Sand & Gravel, Inc.
White Rock Silica Sand Company, Inc.
Lakeland Aggregates, Inc.

(10)
Jeff Stankiewicz
938 Catlin Rd.
Kingsley, PA 18826

(11)
Duane and LuAnn Rogers
141 Schlessler Rd.
Factoryville, PA 18419

(12)
William M. Ruark, President
The Pennsylvania Bluestone Association
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Meshoppen, PA 18630

(13)
William M. Ruark, President
Meshopen Stone, Inc.
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Meshoppen, PA 18630

(14)
Deborah Loomis, Marketing Executive
Ronald Opeil Flagstone Company

(15)
Paul Stoltzfus
Martin Limestone, Inc.
PO Box 550
Blue Ball, PA 17506

(16)
Rodney Birchard
Northeast Stone Works, Inc.

(17)
Peter Vlahos
Pennsylvania Aggregate and Concrete Association
Pennsylvania Concrete Promotional Council
3509 North Front St.
Harrisburg, PA 17110

(18)
Mark Sherman
149 Wilson Ave.
Susquehanna, PA 18847

(19)
Representative Sandra J. Major
111th Legislative District
417 Main Capitol Building,
P.O. Box 202111
Harrisburg, PA 17120-2111

(20)
Kim Kaufman, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

The applicable commentators are listed in parentheses following each comment. Comments are grouped by category.

Support

Comment: I fully support the proposed rulemaking to amend Chapter 77 (relating to noncoal mining) to increase the permit application fees and to add an annual administration fee to be paid by noncoal mine operators. (2)

Response: The support is noted.

Comment: I support assessing fees for the small operators differently. In the proposal they are not self supporting. The fees for the small sites should be increased. (1)

Response: The fee amounts were calculated based on a comprehensive workload analysis that accounts for differences between small and large permits, including variability in permit application complexity and ranges of ongoing costs related to administering and enforcing the permit. Based on that workload analysis, the fees are self-supporting.

Opposition

Comment: I hope you will reconsider these fee increases. Small operators are struggling. (3)

Comment: The fee increases will discourage hard working mine operators. (4)

Comment: As a quarrymen and the land owner of a bluestone quarry I am opposed to the Rulemaking. (11)

Comment: The draconian fees for "non-coal mining" enterprises have the effect of crippling virtually all commercial enterprises. (6)

Comment: To increase the fees by over 100 fold is not only unfair to industry, but also will place a hardship on the industry as a whole (5)

Comment: I would like the DEP to look at this fee schedule before finalizing since this will put more quarries out of business and also discourage more people from coming into the business. We also encourage an open dialogue with the DEP on any future changes. We thought we were an important industry for the state, please treat us as such. (12), (13)

Comment: The proposed fees present significant challenges to the bluestone and quarry industries in the Commonwealth. It is not prudent to offset budget reductions through these excessive fees at the expense of small businesses. The EQB should reject these fee increases. (19)

Comment: The proposed fee structure is neither realistic nor justified. While the current fees are antiquated, a 100 fold increase is exorbitant. A fee in the \$1,500 to \$2,500 range for a large noncoal permit would be more palatable to industry. (8)

Comment: To increase the quarry license fee four fold with the new legislation would create economic hardship given today's economic recession. (18)

Comment: The ripple effect of the Department increased fees will be to drive more and more small operators out of business. (16)

Comment: The increased fees will decrease the total number of aggregate producers in our state because of your new costs. This will decrease competition and let the larger companies who can afford to pay your new rates, to charge the state whatever they want. (9)

Comment: As a Quarrymen and owner of a bluestone business, I am opposed to the rule makings of the NON-COAL MINING FEES. If you raise the fees THERE WILL NO BLUE STONE INDUSTRY to raise the fees on. Please consider leaving well enough alone as I do not believe that we should have to pay anymore then we are already paying. (10)

Comment: The department continues to increase revenue by penalizing honest people who willingly permit their quarries. What about the dishonest people who knowing and willingly violated Pa state laws, leaving quarries abandoned all over Northeastern PA., forfeit their bonds and walk away laughing? (16)

Comment: We believe if the state of Pennsylvania keeps raising fees you will put many of these bluestone operations out of business since many of them are 2 or 3 men operations. The Pennsylvania Bluestone Association can not support increases that will put people out of work especially when the increases are not warranted when we most recently accepted new bonding increases. (12), (13)

Comment: As a member of the regulated community I would like to ask the board not to approve the fee increases requested by the Bureau of Mining and Reclamation. I believe these fees are excessive and represent inaccurate calculations leading to wrong conclusions. While I am willing to admit that an increase to the existing fees may be warranted, I believe the significant increases requested are neither valid nor reasonable, especially in the midst of our current economic climate. (15)

Comment: Review times attributable to the public or resource agency comments should be solely borne by the Commonwealth. (7)

Comment: I believe the Department has overstepped the bounds of “reasonable” in this case simply due to a shortage of funds from the General Budget. (15)

Comment: Several commentators, including Representative Sandra Major, have stated that they are aware of the budgetary problems and hardships facing the Department of Environmental Protection. However, they believe that the fee schedule being imposed, and the \$2.5 million it is projected to generate, is an economic burden that Pennsylvania businesses cannot afford at this time. They are concerned that the fees could potentially force some of Pennsylvania's mine operators to close their businesses. (20)

Response: The fees are necessary as the result of the reduced general fund appropriations. DEP is implementing the authorization of the law that allows DEP to “charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing, administering and enforcing the permit.” DEP estimates that the revenue generated by permit fees will need to be supplemented by license fees and civil penalty revenue. DEP is implementing the will of the legislature, as authorized by the statute, through this rulemaking. While the concern of the regulated community is understandable, these fees are required as part of a fundamental shift to a self-sustaining program. The fee amounts are reasonable and compare favorably with fees assessed by other states. The fee amounts were arrived at through a workload analysis using the best available permit review and permit administration costs. The fee schedule will be periodically reviewed as required in the proposed rulemaking, to ensure that fees are sufficient but not excessive.

Fee Amounts

Comment: Excessive inspections are made. The annual “administration” fee should be eliminated. (5)

Comment: The charge for blasting and transfers of permits makes sense, the rest is not justifiable. (12), (13)

Comment: Time matrix for the completion of tasks is unrealistic. While a handful of permits may in fact take more time to process, overall the projected 300 hours (or a full 8 weeks of man time at 37.5 hours/week) exceeds in many cases the time it took the applicant to complete the entire permit preparation. (5)

Comment: Fees based on salaries are unreasonable. The departmental salaries quoted in the presentations to the stakeholders exceed normal industry salaries for the same tasks. (5)

Comment: The proposed permit application fee schedule is unreasonable. (17)

Response: The fee amounts are based upon a well-developed work load analysis. The fee calculations reflect the cost to DEP to review applications to assure that they comply with the regulations and to administer permits to assure compliance. Regulatory compliance prevents pollution, protects the environment and assures that resources are preserved. “Reasonable” fees as outlined in section 7(a) of Noncoal SMCRA, are fees that cover the costs of reviewing, administering and enforcing permits.

Professional Seal

Comment: The Department’s review time is too lengthy and cumbersome for work that is submitted under a professional seal. This is an area where costs can be reduced. (7)

Response: DEP requires a professional seal since it is unlawful for any person to practice or to offer to practice engineering, land surveying, or geology in this Commonwealth, unless they are licensed and registered under the laws of this Commonwealth. The information submitted with any permit application requires review. The professional seal ensures that conclusions drawn by the consultant have been prepared in the best professional opinion of that consultant. Review of the work submitted is still required to assure that it meets the regulatory requirements.

Comment: Why is the Department unwilling to accept work performed by a licensed professional? (17)

Response: DEP is not unwilling to accept work performed by professionals; in fact there is a DEP Registered Professional Survey Matrix to show which tasks require a registered professional. In DEP’s experience, work that meets generally accepted engineering or geology standards does not guarantee that the work meets the regulatory requirements. Various statutes and regulations that govern the mining program require work to be prepared by licensed professionals. DEP views the preparation of work by licensed professionals as an important step in ensuring technically complete permit applications and proper facility planning and design. DEP, through its Coordinating Committee on Professional Practices, maintains the matrix, which outlines the types of submittals that require preparation and/or oversight by licensed professionals. DEP uses in-house licensed professionals to review these submittals. DEP’s review of this information is conducted to fulfill statutory obligations and make important regulatory findings such as; that the applicant has demonstrated that there is no presumptive evidence of pollution as a result of the proposed mining activities.

Comment: A professional’s seal should stand to certify the work as it is submitted. The individual who sealed the work is accountable should the information be in error. Countless review comments are generated which are unnecessary and do nothing to change the environmental or Hydrogeological conclusions reached by the applicant.

Consideration should be given to eliminating a calculation by calculation review of ditches and other E&S controls which are sealed by a PE. (5)

Comment: I ask the board to consider that a company of our size often uses a Professional Engineer consultant to complete and file a mining permit application. That application process, in order to meet the Bureau's guidelines and often multiple rounds of review comments, typically costs us between \$20-40,000. Now, DEP wants to add another \$22,225 to that cost! My frustration is that the DEP too often seems to duplicate work that we've already paid a certified professional consultant to do and now they use those "300 hours" to justify charging us an exorbitant application fee. (15)

Response: DEP reviews the work of the consultants. Revisions may be required to meet regulatory requirements, correct an error or clarify a conclusion reached in an application. DEP cannot simply "accept" applications based on the fact they are sealed by professionals. DEP, through its technical review process, fulfills various statutory obligations to prevent pollution, enhance land management and eliminate health and safety hazards. The review of applications using in-house licensed professionals allows the agency to find errors in technical submittals, identify chronically poor work products, and make required regulatory findings, including; ensuring that the proposed activity will prevent material damage to the hydrologic balance, ensuring that there is no presumptive evidence of pollution related to the activity, and protecting endangered species.

Public Policy

Comment: The operation of the Mining permitting program is a fundamental function of state government and should be funded as such. A modest processing fee is justified, but fee increases of 80 times higher is not. (7)

Comment: The operation of the mining program is a basic function of state government which should be funded by the Commonwealth. (8)

Comment: Review costs beyond a standard set of guidelines generated by overzealous public comment should be borne solely by the Commonwealth or the requestor. (8)

Comment: The \$250 permit fee does need adjusted. However, the Non-Coal Industry should not be required to pick up the "shortfall" caused by the budget. (5)

Comment: The review time is lengthened by the Departments over reaction to "public" comments. However, too much time and money is spent answering and explaining the permit to non-professionals. (5)

Comment: It is not fair for the industry to be responsible for paying the entire cost for DEP to manage the noncoal mining program. (17)

Comment: Review times attributable to the public or resource agency comments should be solely borne by the Commonwealth. (7)

Response: DEP is implementing the authorization of the law that allows DEP to “charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing, administering and enforcing the permit.” It was not necessary to implement this authorization until recently when the appropriation to DEP was reduced. DEP is implementing the will of the legislature through this rulemaking. When the Noncoal SMCRA was enacted, the public policy decision was made to authorize DEP to fund the program through fees.

Efficiency

Comment: Third party contracts could be used to economize some functions, such as water analysis. (7)

Comment: Redundant efforts, such as PNDI checks, municipality and landowner notifications, should be eliminated. (7)

Comment: These values that are being projected are very unrealistic for many businesses to cope with in this terrible economic time. I think that the fees will also create many more problems than they will help. These new fees will have to be passed onto the consumer which in most cases will be the tax paying citizens of Pennsylvania for the repair of building and maintaining our roadways. (9)

Comment: An audit should be conducted by an independent third party to determine the Department’s efficiency in reviewing and issuing large noncoal permits. Inefficient processes should be eliminated. (8)

Comment: Permit applications need to be reviewed in an expeditious and timely manner. What reasonable assurance does the industry have that permit applications will be processed in a reasonable time when the DEP fees are based on the employee hours invested? (17)

Comment: PACA would support a reasonable increase in permit fees as long as the Department is willing to discuss a new operating protocol based on more timely performance and accountability rather than a system inflating employee hours by nitpicking applications. (17)

Comment: I won’t argue that fees may need to be increased to help support the mining programs. However, I simply can not be convinced that the increases need to be of this magnitude before a serious review of the Bureau’s own calculations and system efficiencies. I urge you to require the Bureau to reexamine this request and to balance any approved fee increase with a substantial review of policies and procedures so that we are not paying for inefficiencies or a duplication of time and effort. (15)

Comment: In the Regulatory Analysis Form submitted with the rulemaking, the Board has included the following statement: "The Department has made every effort to use the least burdensome alternative when developing the manner of assessing fees on the industry." We appreciate the Board's efforts in devising a fee schedule that is the least burdensome alternative to the regulated community. However, several commentators have made suggestions on how the Board's estimated annual cost of \$2.5 million to fund

the nonmining coal program could be reduced. We ask the Board to consider implementing the suggestions of the commentators, thus reducing the economic impact this rulemaking will have on the regulated community. (20)

Response: DEP is continuously looking to improve efficiency. For example, recently, DEP has revised an existing mineral extraction general permit to expand its use. Unfortunately, many of the permit applications DEP receives are often not well prepared. The additional work this requires is reflected in the workload analysis used to calculate the fee amounts. In the past, DEP has made extensive efforts to assist the permit applicant in correcting an application. DEP recognizes that this is inefficient and will endeavor to return or deny deficient applications, rather than spending time and resources to assure that corrections are made. Since the regulation requires that DEP review the fee amounts at least every three years and report its analysis to the Board, program efficiencies will be evaluated as part of this effort. Historically, the noncoal program has been funded through the general fund. Program income was not directly related to the number of hours invested in permit reviews. Moving forward, historical permit processing data will be part of the evaluation of fee adjustments.

Administration fee by site rather than Permit

Comment: The annual administration fee should be applied to a site and not to each individual permit. For those sites where we now have 3 or 4 separate mining permits, it certainly does not require 7 hours of inspection time per permit. Inspectors at our locations are typically on site for less than 3 or 4 hours to cover all of the permit area. (15)

Comment: The annual administration fee should be tied to a location rather than a permit. (17)

Response: DEP's workload analysis is based on permits. The workload analysis is also based on averages. While there is some efficiency gained by having permits with little or no travel time between them, there isn't an effective method to account for this. Consequently, the fees will be tied to a permit, not a location.

Comment: The annual administration fee is defined under § 77.1, relating to definitions, as: "A nonrefundable filing fee assessed on an annual basis for the cost to the Department of inspecting a permitted activity or facility in order to administer the permit." Subsection § 77.106(f) lists eight different types of permits that would be subject to the annual administration fee. A commentator has stated that each mining facility could have several permits. Under this rulemaking, could a mining facility be subject to more than one annual administration fee, or is the fee only applicable to the facility? This should be clarified in the final-form rulemaking. (20)

Response: The permit fees are set on a per-permit basis. Administratively, inspections are conducted on a permit-specific basis, not on a facility basis. Each permit file must be reviewed for that permit's requirements. A separate inspection report is needed for each permit. An alternative for a permittee with multiple permits, subject to multiple fees, would be to consolidate its facility under one permit.

Industry Advisory Board

Comment: The industry needs to be heard in a formal setting. It is not reasonable for the industry to be 100% responsible for the management costs of the program especially in light that there is no advisory board for the noncoal mining program. (17)

Response: DEP is committed to providing the highest level of interaction that is possible with the regulated industry. In the case of coal mining, the Mining and Reclamation Advisory Board was statutorily created to provide this opportunity in that context. DEP recognizes the need to improve interaction. Periodic meetings are warranted and will be held.

Miscellaneous

Comment: Could you please clarify the large permit fee will cover and include;

- All processing fees included in corrections of applications if kicked back by the DEP?
- Assistance from the DEP?
- Permits being approved in a timely manner?
- Clarification of definitions if permit is rejected by the DEP?
- Complete cooperation between the department and the permit applicant? (14)

Response: The large noncoal permit fee (new) includes all of the processing time in the review of an application. This includes the multiple correction letters to resolve application deficiencies. Typically, DEP provides assistance to applicants and their consultants throughout the course of the application review, including before the application is submitted. DEP strives to review all applications as promptly as possible. For permits that are rejected, the fees remain applicable because the review is still needed to determine that the permit can not be issued. DEP also strives to be accommodating to permit applicants.

Comment: We, the PA Bluestone Association, have met with the DEP numerous times in the past discussing issues and concerns and looking to help raise money for our poor state. We were not included in the development of this proposal, only the tail end. (12)

Response: DEP's budget was cut to the point that no funds were available to fund the Noncoal Mining Program which forced DEP to proceed as quickly as possible in order to provide the necessary funds to administer the program. Outreach was conducted on a statewide basis in order to provide all of the mine operators an opportunity to provide input.

Comment: There has been no clear evidence given of the budget for the Industrial Minerals administration and permit reviews other than what the department has generated. An external independent audit should be conducted to verify these needs for these and any future fee increases. (5)

Response: DEP's costs are based on actual expenditures. The workload analysis used is continually evolving in order to keep up with changing circumstances. During the outreach, prior to the proposed rule, data was shared.

Supplemental Comment and Response Document Noncoal Fee Regulations

Comments received in response to the January 28, 2012 notice in the *PA Bulletin*.

Commentators:

- (1) Ronald Troyer
Waterford, PA
- (2) Daniel Bliley
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3901 Bell Street
P.O. Box 10622
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- (4) William A. Guiste
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- (5) Ronald Nunemaker
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- (6) Angela Wroblewski
Wattsburg, PA 16442
- (7) Harry Skinner
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- (8) Dan McDonald
McDonald Sand and Gravel
11425 Neiger Rd
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- (9) Frank Tucci
25000 PA Route 99
Cambridge Springs, PA 16403
- (10) Tom Jameson
IA Construction Corporation
- (11) John Soltesz
J D Diversified Services Inc
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- (12) Representative Brad Roae
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- (13) Bruce L. Hasbrouck
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- (14) William Ruark, President
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- (16) Emily Kraffack
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- (18) Ralph Kisberg
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Janie Richardson
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Barbara Jarmoska
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Responsible Drilling Alliance
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- (19) Ted Stroter
100 Retreat Road
Williamsport, PA 17702
- (20) Peter T. Vlahos
PA Aggregates and Concrete Association
3509 N Front St
Harrisburg, PA 17110

The applicable commentator number is listed in parentheses following each comment.

Opposition

Comment: We are a small mining operation that takes anywhere from 1500-4000 Tons a year out of our family-owned gravel pit for our business use only. We do not sell it to customers. We find that these fees are extremely high for the volume we produce. We would like you to reconsider the proposed fees for smaller businesses like ours (2)

Comment: Because we are a new small business, employing 4 people, the proposed fees will place an extreme financial burden on us. We have three permits and at \$1450 per permit per year this will cost us \$4350 per year. If you produce more than 10,000 tons per year a large permit is needed. The fees may be reasonable if you produce a million tons per year, but not when you produce 20,000 tons per year. It is not fair that the fee is the same for both of these cases. Maybe there should be more classifications. (3)

Comment: It is my opinion that what this does to me, as a small business owner, is to make us not want to comply with the law as the fees make it impossible to be able to pay. This is slowly driving the small businesses out of business. (4)

Comment: When agencies like DEP raise the rates that we have to pay in order to keep producing gravel it puts our jobs at risk. This latest rate hike is so drastic and so increased that I myself do not even know why we would choose to pay it and stay open. How can any of these places continue to pay your fees and still keep employees? Can you tell me why you are imposing these new fee requirements? What are the new fees going towards? (5)

Comment: The first question I would like to ask is what is this increase for? What exactly are you doing with our money? Will it create more jobs for people? Is it going to allow for our business to keep up with current safety regulations? Will it make sure that our land is free of danger and that our equipment is safe to run and able to even dig under the water table? Will it make sure we can put the earth back to a natural habitat for animals and a future clean place for our children to run and play? We are a business that is small and family based. We are a close network of people who do not just come to work every day and then go home. (6)

Comment: The fees will force my employer out of business. (7)

Comment: The fees are a substantial burden in the current economic environment. There is a big difference between someone who produces twenty thousand tons a year and those that produce hundreds of thousands or tons. (8)

Comment: The proposed changes to the non-coal surface mining permits would create a financial hardship on our company. We are a small business permitted for 4 large surface mines although each one is small in acreage or barely used at all. The proposed fee changes would cost our company \$5800.00 annually. We are currently close to running out of gravel and are looking for a new location. The 'new permit' fee in addition to the engineering costs would be out of the question for us to afford. Therefore a company that has been an integral part of our community since 1950, providing jobs, construction material, and tax revenue could disappear. To stay competitive we cannot raise our prices enough to cover all the costs of doing business. We urge you to

reconsider this proposal to include the idea that smaller mines cannot afford what large companies could handle. (9)

Comment: If this proposed increase of the cost of the mining permits is approved, the only recourse we would have is to layoff the rest of the employees, which is down from 15 to 6, let the bank foreclose on the property, and go on Welfare. We respectfully request that you review the impact that this legislation would have on small business and do not pass this rate increase. (11)

Comment: The proposed fee schedule is arbitrary, excessive, and punitive and does not relate to the actual cost of regulating. The proposed fee schedule would cause extreme harm to small business owners, reduce the number of rural jobs and create an unnecessary hardship on these struggling businesses. (12)

Comment: The fees will result in increased prices and these costs will be passed along to other businesses which will result in higher product prices and force businesses to locate in other states. (13)

Comment: Because the actual engineering costs related to filing an application are extensive and is borne by the applicant with little or no input from the Department it appears to me that these fees are excessive. It would seem that the review process would not require as much time as the actual engineering process of gathering and calculating the required information. Would the Department clarify to the public the average number of hours the review process requires and the estimated hourly rate applied. It's likely that this fee as proposed will prohibit some producers from permitting some gravel deposits formerly considered economically viable. (1)

Comment: This proposed fee schedule is quite simply too aggressive and will have too great of a shock impact on the mining industry at all levels. A higher concern should be given to the sudden increase in fees from zero to the large, if not excessive, fee schedule being proposed to all entities in the noncoal mining industry. If a fee schedule is to be imposed on the noncoal mining industry, it should at least reflect some kind of sliding scale that would ease the industry into such fees over a satisfactory time frame. (10)

Comment: The annual administrative fees are hard to accept. Withdrawal of these fees will help the bluestone operators. (14)

Response: The fees are necessary as the result of the reduced appropriations to the DEP to enforce environmental statutes. DEP is implementing the authorization of the Noncoal Surface Mining Conservation and Reclamation Act that authorizes DEP to “charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing, administering and enforcing the permit.” DEP is implementing the will of the legislature, as stated in the statute, through this rulemaking. While the opposition to these fees is understandable, the fees are necessary as part of a fundamental shift to a self-sustaining program. The fee amounts are comparable to fees assessed by other states. The fee amounts were arrived at through a workload analysis using the best available cost data for permit review and permit administration. The fees are necessary to comply with the law. The fee schedule will be periodically reviewed as required in the proposed rulemaking, to ensure that fees are sufficient but not excessive.

The premise of the fee proposal is that the fairest way to implement the fees is to base the fee amounts on the work needed for DEP to apply the law. Without a stable source of funding, DEP will not be capable of issuing, administering and enforcing the permits required by the law. Operators would not be able to obtain the required permits, and the public's interest in health, safety and the environment would not be protected.

The fee amounts are based upon a work load analysis. For example, an application for a new small noncoal permit is assigned 9 hours of review time. The wage rate for pay scale group 7 (for the mining permit specialist class) is \$32.83 per hour. Benefits cost DEP about 40% of the wage costs. Overhead was calculated using a standard 40% rate. These overhead costs include those incurred to operate DEP such as database management, leave and holiday pay, transportation, utilities and property management. With the wage rate of \$32.83, benefits of 40%, overhead of 40%, the hourly cost is \$59.09. The cost for nine hours at this rate is \$531.81. Rounding results in the proposed fee amount of \$525 for a new small noncoal application.

Miscellaneous Comments

Comment: We would like to request that there be a clear and concise definition for the term "water table" as used to determine the "fee" for the permits submitted. This should NOT apply to those permits which will encounter small perched aquifers which will be mined through and not require extensive modeling during the permitting processes. It should also be pointed out that most sand and gravel quarry's are conducted below the water table. Historically there is no pumping of the ground water and no interruption to the groundwater system. Therefore, these permits should have the lesser rates applied to their application processes. (15), (20)

Response: The permit application fee schedule has been revised to clarify the description of the two categories of large noncoal sites. In the proposed regulation, these were described as "mining below the water table" and "not mining below the water table." For clarity, the descriptions have been changed to "groundwater pumping authorized" and "no groundwater pumping required." This clarifies that it is the pumping of the groundwater, and assessing the impacts of that pumping, that makes a difference in the complexity of the review.

Comment: All applications are signed by a PE, PLS or PG. The seal should stand to certify the work as it is. The accountability lies with applicant and the individual who sealed the permit modules. While the review input from the Department is valid in many instances, all too often the reviewer's comments create "busy work" which is unnecessary and do nothing to change the environmental or hydrogeological conclusions reached by the applicant. (15)

Response: The information submitted with any permit application requires review. The professional seal ensures that conclusions drawn by the consultant have been prepared in the best professional opinion of that consultant. Review of the work submitted is still required to assure that it meets the regulatory requirements.

Comment: The distinguishing criterion between a major and minor amendment is whether it has to be published or not. Many of those criteria do not include any hydrological revisions which would result in longer review times. (15)

Response: The definitions in the proposed regulation of “Major Permit Revision” and “Minor Permit Revision” make it clear that the distinction between these is the public notice.

Comment: The transfer fee seems excessive as transfers involve ONLY the administrative portion of the permit. There should be no more “review” of a transfer application than that of a Small Non-Coal or general permit. (15)

Response: The fee amounts were calculated based on the work load analysis. This assigns 15 hours of review time for a large noncoal permit transfer.

Comment: The application fee for a Blast Plan should be clarified to reflect a REVISION to the plan, not in addition to the initial permit fee(s). It also should be clarified that a “pre application” does NOT include informal meetings with the department to discuss a project, but only those instances where a semi-formal submission permit modules is made. (15)

Response: The proposed fee schedule is sufficiently clear. A revision to a blast plan is assigned the same amount of review time (8 hours) as a new blast plan, so the fee is the same for each. The pre-application fee is applicable to formal submissions of the pre-application documents for review.

Comment: The annual administrative fees should be modified to incorporate a “Sliding” scale which would acknowledge several components. Numerous quarries or facilities are permitted adjacent to each other with little or no separation between the operations and hence the individual permits within the working boundaries of the operation(s). These operations are NOT separate inspectable units and share common access roads, monitoring points, E&S Controls etc. The fee associated with these quarries should be modified so that the TOTAL fee for the year is the \$1,450 or \$1,850 for those operations which comply with this scenario. (15)

Response: DEP’s workload analysis is based on permits. The workload analysis is also based on averages. While there is some efficiency gained by having permits with little or no travel time between them, there isn’t an effective method to account for this. Consequently, the fees are tied to a permit, not a location. The permit fees are set on a per-permit basis. Administratively, inspections are conducted on a permit-specific basis, not on a facility basis. Each permit file must be reviewed for that permit’s requirements. A separate inspection report is needed for each permit. An alternative for a permittee with multiple permits, subject to multiple fees, would be to consolidate its facility under one permit.

Comment: There should be an “intermediate” fee for a small to medium sized operation (>5.0 to <100) acre permit. Operators who do not qualify for a “Small Non Coal” but do not ship more than a few thousand tons per year find these inspection fees to be burdensome. (15)

Response: The suggested approach is inconsistent with the fundamental premise of the proposed fees. The fees are proposed to cover the costs to DEP for the inspections. The amount of production has no direct bearing on the amount of work needed to enforce the rules.

Comment: Excessive inspections are made. Many sites are inspected monthly, not quarterly even though there are no “problems” associated with the site. If the inspectors have the “extra” time to make monthly inspections, a review of the work-load for some district offices should be made. (15)

Response: Inspectors do not have “extra” time. Managing work load in the current environment is difficult. Where more frequent inspections than the minimum required inspections are conducted, they are focused on preventing safety and environmental problems which establish work load priorities.

Comment: The review time is lengthened by the Department’s over reaction to “public” and sister agency comments. While public comments are invited, too much time and money is spent answering and explaining the permit to non-professionals or organizations which are not “local”. If the technical data meets the department’s regulations, that should be sufficient for permit approval. (15)

Response: The public participation and resource agency components of the application review process are vital to assuring compliance with the statutory requirements. The trend is that these components are increasingly important as mines encroach on areas of population and natural resources.

Comment: With the initiation of the review fees, it is industry’s hope that additional staff can be added to the District Offices to expedite the Non-Coal Permitting Process. Due to retirements and resignations, most District Offices have lost reviewing staff. This has greatly impacted the Non-Coal Industry as the “wait time” for the review and issuance of permits has resulted in abnormally long times for reviews. This, in turn, has required industry to seek alternative sources for Highway Contracts resulting in a greater expense to both the applicant, and ultimately, the overall cost of the project. It is our hope that implementation of these fees will permit the department to hire additional individuals to expedite the permitting processes. (15)

Response: DEP is not in a position to add staff. The funding from these fees will allow DEP to maintain the status quo and meet its obligation to implement the Noncoal Surface Mining Conservation and Reclamation Act.

Comment: Because the industry will be funding the program, DEP should consider and implement program improvements to improve efficiency. These efforts should include reporting and accountability, electronic permitting and third-party review. (20)

Response: DEP is continually looking for ways to increase efficiency. DEP will continue to work with the regulated community to reduce costs and improve results.

Support

Comment: It is reasonable that DEP is in need of amending the fee and establishing an annual administrative fee in order to adequately fund the program. (16)

Comment: I strongly favor an increase in existing permit application fees and the establishment of an annual administrative fee for the noncoal mining program. (17)

Comment: We are pleased to see the Department attempting to address the issues by bringing in the revenue to be able adequately carry out the necessary oversight and permitting functions in a timely manner. We appreciate your efforts and support the proposed rule changes. They should translate into jobs for Pennsylvanians who have worked hard to attain the needed education and would like the opportunity to put their education to work serving the public and our environment. (18), (19)

Response: The support is noted.

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FEE REPORT FORM

Agency: Bureau of Mining Programs
Department of Environmental Protection

Contact: Tom Callaghan
Director
Bureau of Mining Programs

Phone: 717-783-1659

Fee Collections:	Prior Year 2010-2011 (FY)	Current Year 2011-2012 (Anticipated)	Fiscal Year 2012/13 Projected	Fiscal Year 2013/14 Projected	Fiscal Year 2014/15 Projected
Current – Total	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Proposed-Projected	\$0	\$0	\$1,250,000	\$2,500,000	\$2,500,000

FEE TITLE AND RATE:

Title: Noncoal Mining Fees

Current Fee Schedule:

The current fee is in accordance with the following, and must accompany a permit application. The fee is as follows:

CATEGORY	FEE
- Surface Mining or Underground Mining, Support Facilities (including NPDES when required)	\$250

Proposed Fee Schedule:

The fee proposal includes permit application fees and annual administration fees. The proposed fees would be in accordance with the following schedules and must accompany a permit application. The fees are as follows:

The Permit Application Fee schedule:

New Permits	Fee
Large Surface Mining Permit-Groundwater Pumping Authorized	\$20,225.00
Large Surface Mining Permit-No Groundwater Pumping	\$13,500.00
Small Surface Mining Permit	\$525.00
Underground Mining Permit	\$20,225.00
Major Amendments	Fee
Large Surface Mining Permit- Groundwater Pumping Authorized	\$3,850.00
Large Surface Mining Permit- No Groundwater Pumping	\$1,600.00
Underground Mining Permit	\$2,650.00

**NONCOAL MINING FEES
FEE REPORT FORM
Page 2 of 3**

Minor Amendments	Fee
Large Surface Mining Permit	\$700.00
Small Surface Mining Permit	\$175.00

Transfers	Fee
Large Surface Mining Permit	\$900.00
Underground Mining Permit	\$900.00

Other Actions	Fee
Bonding Increment	\$450.00
Completion Report Application	\$600.00
Blast Plan	\$475.00
Notice of Intent to Explore	\$60.00
Pre-applications	\$3,375.00

The Annual Administration Fee schedule:

Permit Category-Permit Status	Annual Fee
Large Surface Mining Permit-Active	\$1,450.00
Large Surface Mining Permit-Active with Blasting	\$1,850.00
Small Surface Mining Permit-Active	\$200.00
Small Surface Mining Permit-Active with Blasting	\$300.00
Underground Mining Permit-Active	\$1,450.00
General Permit	\$200.00
All Permits-Not Started	\$100.00
All Permits-Inactive	\$100.00

Fee Objective:

The fees have been calculated to cover the personnel and operational costs to the Department to review permit applications and administer and enforce permits in accordance with the Noncoal Surface Mining Conservation and Reclamation Act, 52 P.S. § 3307(a). This section reads. "The department is authorized to charge and collect from persons a reasonable filing fee, which fee shall not exceed the cost of reviewing, administering and enforcing the permit."

The Department tracks its program costs by using the SAP database. This shows total personnel costs of \$2,200,000 for the program a year. Further analysis of the data shows additional costs for transportation, water sampling and supplies result in a cost of \$300,000. The total cost of the program is \$2,500,000 a year.

Fee Related Activities and Costs:

The permit application fee amounts were calculated based on the staff time needed to review the various kinds of permit applications. The Bureau of District Mining Operations maintains a workload analysis that tracks the permit applications and the review times. This workload analysis assigns a number of hours of staff time per application. The permit application fee

**NONCOAL MINING FEES
FEE REPORT FORM
Page 3 of 3**

amounts are based only on the cost of reviewing the application and are not intended to cover the costs of administering and enforcing the permit.

The annual administration fee amounts were calculated based on the workload analysis time to inspect the various kinds and statuses of permits. The same methodology was used for these fees as for the permit application fees.

Analysis of the program costs reveals that about 25% of the total cost is for permit reviews, 40% for enforcement of the permits and 35% for administrative (clerical and supervisory) support of these activities.

Revenue projections, based on the most recent few years' applications and the current list of mine sites break down with about \$600,000 from the application fees and \$1,500,000 from the annual administrative fee. Other revenue available to operate the program comes from license fees (about \$250,000 per year) and civil penalties (about \$150,000 per year). Interest income is also available, but is difficult to predict in the current economic climate.

Analysis:

The current permit fees for the noncoal mining program are minimal. Under the new fee schedule the Department will collect fees that will support the review of applications and administering and enforcing the permit. Historically, the program costs have been provided through General Fund appropriations, with \$2,500,000 spent to implement the Noncoal Act.

The proposed regulation provides for the review of adequacy of the fee schedule at least every three years to assure that the fees are appropriate based upon actual cost for review.

Comment:

The fee schedule has been reviewed by the regulated industry. The proposed rulemaking was published in the PA Bulletin in August 2010. Comments were received from 20 commentators relating to the proposed regulation. While there was some support for the proposal indicated, the majority of comments were in opposition to the imposition, and the amounts, of the increased fees.

An additional comment period was provided through notice in the PA Bulletin published January 28, 2012. Comments were received from 20 commentators during this comment period. These comments were mostly (13 of 20) related to sand and gravel operations in northwest Pennsylvania. The comments primarily focused on the adverse impact the increased fees will have on small businesses that operate sand and gravel pits. Four comments of support were received.



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION
POLICY OFFICE

May 21, 2012

David Sumner
Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17120

Re: Final-Form Rulemaking – Employer Trip Reduction; Repeal (#7-471)
Final-Form Rulemaking – Portable Fuel Containers; Repeal (#7-472)
Final-Form Rulemaking – St. Joe’s Resources SO₂ Emissions Reduction Limitations; Repeal (#7-473)
Final-Form Rulemaking – Noncoal Mining Fees (#7-460)

Dear Mr. Sumner:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed copies of four final-form rulemakings for review and comment by the Independent Regulatory Review Commission (Commission). The Environmental Quality Board (EQB) approved final-form rulemakings #7-471, #7-472, and #7-473 on March 20, 2012, and final-form rulemaking #7-460 on April 17, 2012. Details pertaining to each rulemaking are elaborated below.

Employer Trip Reduction; Repeal (25 Pa Code Chapters 121 and 126): This final rulemaking, processed with notice of proposed rulemaking omitted, rescinds the employer trip reduction (ETR) requirements in 25 Pa. Code §§ 126.201 – 126.208, Appendix A and the related definitions in § 121.1. Pennsylvania’s ETR regulations were promulgated in January 1994 in response to section 182(d)(1)(B) of the Federal Clean Air Act, which required states with a severe ozone nonattainment area to submit a revision to the State Implementation Plan (SIP) requiring employers in the nonattainment area with 100 or more employees to develop compliance plans designed to increase the average passenger occupancy of their employees who commuted to work during the peak period by 25% above the average passenger occupancy of the nonattainment area. At the time Pennsylvania’s regulation was published, the Commonwealth portion (Bucks, Chester, Delaware, Montgomery and Philadelphia counties) of the Philadelphia Consolidated Metropolitan Statistical Area (CMSA) was the only area of the Commonwealth classified as a severe ozone nonattainment area.

In November 1994, the Commonwealth’s General Assembly passed Act 95 of 1994, which amended the Commonwealth’s Vehicle Code to require the Governor to suspend implementation and enforcement of the ETR program until March 31, 1995, or until an alternative program with equivalent emission reductions was developed. Act 95 of 1994 also stipulated that “the employer trip reduction program or an alternative program shall not be required if the area classified as severe ozone nonattainment is reclassified as a serious ozone nonattainment area by the EPA.” In 1995, Congress amended the Clean Air Act to make the ETR program voluntary.

Additionally, the Philadelphia CMSA is now classified as a “moderate” nonattainment area, which is a lesser classification than “severe” or “serious” under the Clean Air Act’s classification system. The repeal of the Commonwealth’s regulations will not negatively affect the environmental air quality of the Commonwealth. Furthermore, the ETR regulation was never implemented in Pennsylvania and the Commonwealth did not claim emission reduction credits for it in SIP revisions.

The rulemaking was discussed with the Air Quality Technical Advisory Committee (AQTAC) on June 23, 2011. The AQTAC voted 11-2-2 to concur with the Department’s recommendation to forward the rulemaking to the EQB. The rulemaking was discussed with the Citizens Advisory Council (CAC) Air Committee on October 19, 2011. The CAC Air Committee had no concerns. On the recommendation of the Air Committee, on November 15, 2011, the CAC voted to concur with the Department’s recommendation to proceed with the rulemaking to the EQB.

Portable Fuel Containers; Repeal (25 Pa Code Chapter 130, Subchapter A): This final rulemaking, processed with notice of proposed rulemaking omitted, rescinds the portable fuel container requirements in 25 Pa. Code Chapter 130, Subchapter A, as set forth in §§ 130.101 – 130.108 and published at 32 Pa.B. 4819 (October 5, 2002). The Department’s regulations, which limit emissions of volatile organic compounds (VOC) into the atmosphere from the use of portable fuel containers designed to hold gasoline, are superseded by a more stringent Federal regulation, which is applicable nationwide and was promulgated at 72 FR 8428 on February 26, 2007. The Federal requirement, codified at 40 CFR §§ 59.600-59.699, applies to all portable fuel containers, including gasoline, diesel, and kerosene containers and spouts manufactured in or imported into the United States beginning January 1, 2009.

The Department discussed the final-omitted rulemaking with AQTAC on June 23, 2011 and August 4, 2011. During the June meeting, members of AQTAC requested additional information regarding enforceability of the Federal regulation by Commonwealth enforcement staff. The Department provided this information at the August meeting, at which AQTAC voted 12-2-2 to concur with the Department’s recommendation to move the final-omitted rulemaking forward to the EQB. The AQTAC also voted 9-6-1 to recommend that the Department consider adopting the Federal regulation by reference. The Department consulted the Small Business Compliance Advisory Committee (SBCAC) on July 27, 2011. The members of the SBCAC had no concerns. The rulemaking was discussed with the CAC Air Committee on October 19, 2011. The CAC Air Committee had no concerns. On the recommendation of the Air Committee, on November 15, 2011, the CAC voted to concur with the Department’s recommendation to proceed with the rulemaking to the EQB.

St. Joe Resources Company; SO₂ Emissions Reduction Limitations; Repeal (25 Pa Code Chapter 128): This final rulemaking, processed with notice of proposed rulemaking omitted, rescinds the requirements in 25 Pa. Code § 128.21, published as final rulemaking at 16 Pa.B. 521 (February 22, 1986). The regulation provided an alternative compliance option to the applicable sulfur dioxide (SO₂) standards in 25 Pa. Code § 123 22(d) for the St. Joe Resources Company (now doing business as Horsehead Industries, Inc.) facility located in Beaver County.



As background, the owner of the Beaver County facility requested the alternative emission reduction limitations in a 1982 Plan Approval application, which proposed emissions of SO₂ from the coal-fired boilers in excess of the emission limitation in § 123.22(d), and in exchange, reduced SO₂ emissions from two other sources at the facility, including the sinter machines and the roaster plant. On October 5, 1987, DEP received notice of a change of ownership from St. Joe Resources Company to The New Jersey Zinc Company, a division of Horsehead Industries, Inc. The New Jersey Zinc Company is also known as Zinc Corporation of America and Horsehead Corporation. On December 16, 1988, Zinc Corporation of America requested a revision to their Operating Permit # 04-325-001A, removing the alternative emission reduction limitations and adding the applicable requirements of § 123.22(d). Horsehead Corporation's current Title V Operating Permit #04-00044 contains the requirements of § 123.22(d) for the coal-fired boilers and retains the reduced SO₂ emission limits for the sinter machines as required by 25 Pa. Code § 127.441. The roaster plant regulated under § 128.21 is no longer in operation. Continuous emissions monitoring system data indicate the boilers now meet the standards in § 123.22(d) due to a change to low sulfur fuel with lime injection and natural gas. The alternative emission reduction limitations in § 128.21 are no longer necessary and the owners of the Horsehead facility agree that the alternative SO₂ limits in § 128.21 should be repealed.

The rulemaking was discussed with AQTAC on June 23, 2011. The AQTAC voted 15-0 to concur with the Department's recommendation to forward the rulemaking to the Board. The rulemaking was discussed with the CAC Air Committee on October 19, 2011. The CAC Air Committee had no concerns. On the recommendation of the Air Committee, on November 15, 2011, the CAC voted to concur with the Department's recommendation to proceed with the rulemaking to the EQB.

Noncoal Mining Fees (25 Pa Code Chapter 77): This final rulemaking includes amendments to 25 Pa Code Chapter 77 in order to modify and establish permit fees to fund the noncoal mining program. The existing fees are nominal and have not been adjusted in the history of the program. The proposed fees are calculated to provide full funding for the program, which costs about \$2,500,000 per year. The rulemaking includes two types of fees, including the permit application fee and the administration fee. The permit application fee is intended to cover the Department's cost to review noncoal mining permit applications. The permit fees have been set according to the type of permit application submitted, with the amount of the fees based on the number of hours typically required by the Department to review a specific type of permit application. The annual administration fee is intended to cover the Department's costs to administer the permit. These include, among other things, 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. As with the permit fees, the annual administration fees have been set based on workload analyses conducted by the Department.

The proposed regulation was approved by the Board on June 15, 2010, and published in the *Pa Bulletin* for comment on August 28, 2010, at 40 Pa.B. 4963. Twenty commentators, predominantly representing noncoal mine operators and industry groups, provided comments to the Board on the rulemaking. On January 28, 2012, DEP solicited additional comment on the rulemaking through a notice in the *Pa Bulletin* at 42 Pa.B. 553. As a result, comments were

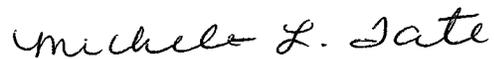
submitted from twenty commentators. While there was some support for the proposal, the majority of comments were in opposition to the imposition, and the amounts, of the increased fees. Many of the comments focused on the negative financial impacts the increased fees will have on small businesses that operate bluestone operations and sand and gravel pits. The large aggregate producers, commenting through PACA, recognized the reason for the increased fees but requested increased program efficiencies and questioned DEP's fee calculation method.

There is no advisory board to the Department for the Noncoal Mining Program. However, the Department has initiated significant outreach with the regulated community on the rulemaking.

The Department will provide assistance as necessary to facilitate the Commission's review of the enclosed final-form rulemakings under Section 5.1(e) of the Regulatory Review Act.

Please contact me at the number above if you have any questions or need additional information.

Sincerely,



Michele L. Tate
Regulatory Coordinator

Enclosures



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO
 THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7-460
 SUBJECT: noncoal mining fees
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

2012 MAY 21 PM 4:35

RECEIVED
 IRRC

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolerated Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5-21-12	<i>[Signature]</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
5-21-12	<i>[Signature]</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
5.21.12	<i>[Signature]</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
5/21	<i>[Signature]</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
5/21/12	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

