

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

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

(1) Agency: Department of Environmental Protection

(2) Agency Number:

Identification Number: 7-523

IRRC Number: 3190

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

(4) Short Title: Noncoal Mining Program Fees

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

Primary Contact: Laura Edinger, 717.783.8727, ledinger@pa.gov

Secondary Contact: Jessica Shirley, 717.783.8727, jessshirley@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 proposed rulemaking revises current regulations to increase permit application and administrative fees. It is necessary to increase fees because the revenue from the current fees, finalized in 2012, does not adequately fund the implementation of the requirements of the Noncoal Surface Mining Conservation and Reclamation Act and the Clean Streams Law.

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

This proposed rulemaking is promulgated under the authority of sections 7(a) and 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3307(a) (authorizing permit filing fee) and 3311(a) (authorizing rulemaking)); section 6 of the Clean Streams Law (35 P.S. § 691.6) (authorizing permit filing fee); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20) (authorizing rulemaking).

(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.

The rulemaking is not mandated by any federal or state law. However, it is necessary to adequately implement the Noncoal Surface Mining Conservation and Reclamation Act (Noncoal SMCRA) and the Clean Streams Law.

(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 Department needs the proposed regulation because sufficient money is not available for the Department to support the implementation of the Noncoal Surface Mining Conservation and Reclamation Act, the purpose of which is “to provide for the conservation and improvement of areas of land affected in the surface mining of noncoal minerals, to aid in the protection of birds and wildlife, to enhance the value of the land for taxation, to decrease soil erosion, to aid in the prevention of the pollution of rivers and streams, to protect and maintain water supply, to protect land, to enhance land use management and planning, to prevent and eliminate hazards to health and safety and generally to improve the use and enjoyment of the lands.” See 52 P.S. § 3302. The proposed rulemaking will provide additional funding to sustain the program, which at the current rate of expenditures will exhaust the reserves in the Noncoal Surface Mining Fund, resulting in inadequate funding and curtailment of the program. Without the stable funding realized through the imposition of the proposed increased fees, the Department will not be capable of timely issuance and administration and enforcement of permits as required by the Noncoal Surface Mining Conservation and Reclamation Act and the Clean Streams Law, risking not only the deleterious effects of unregulated noncoal mining the statute sought to remedy, but also a negative economic impact to the Commonwealth. Because Noncoal SMCRA prohibits noncoal mining without a permit issued by the Department, timely processing of noncoal operator permits (approximately 300 annually) is vital to support Pennsylvania’s economy as the noncoal industry is currently a \$20 billion dollar per year industry in the state and consistently ranks among the top ten noncoal mineral producers in the nation.

(11) 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.

No provisions are more stringent than federal standards because noncoal mining is not subject to federal standards.

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

DEP assessed fees in this regulation based on the approach used in the 2012 rulemaking. This approach adjusts the fee amounts in two categories; permit application fees and administration fees. The permit application fee covers the cost of reviewing permits and the annual administration fee covers the cost of administering and enforcing the permits. These fees fund the cost to the Commonwealth for the implementation of Noncoal SMCRA. This approach is more direct than the alternatives implemented in other states.

Nearby states use various methods to assess fees and are therefore unable to be directly compared to Pennsylvania’s fee structure. However, an analysis of the various approaches used by nearby states suggests Pennsylvania operators will remain at a competitive advantage.

For example, a 50-acre mine producing minerals for 30 years, would pay the following estimated fees state-by-state.

State	Fee	Additional Tariffs
New York	\$120,000	+Additional disturbance fee per acre
Ohio	\$20,270	+ Severance tax
Maryland	\$31, 540	+Additional disturbance fee per acre
West Virginia	\$4,500	+ Severance tax
Virginia	\$24,750	+Additional disturbance fee per acre
Pennsylvania	\$57,000	No additional tax or fee

However, in addition to fees, for example, Ohio and West Virginia charge a severance tax based on the quantity of minerals extracted. In Ohio, operators pay an additional four cents per ton of salt, two cents per ton of limestone and gravel, and one cent per ton for sandstone, shale, and quartzite. West Virginia assesses a tax based on the value of the mineral at five cents per \$100.

New York assesses a substantial fee based on the acreage disturbed as follows:

- \$400 for minor projects
- \$700 for mines less than or equal to 5 acres
- \$900 for mines between 5 and 10 acres
- \$1,500 for mines between 10 and 20 acres
- \$4,000 for mines between 20 and 30 acres
- \$8,000 for mines greater than 30 acres

Maryland and Virginia assess an additional annual disturbance fee of \$12 and \$16 per acre, respectively.

It is important to note the market for noncoal minerals are localized and not driven by state-by-state markets. Mineral materials are a low-cost commodity and the transportation of the minerals represent a substantial portion of the cost to the consumer. It is unlikely out-of-state sources of noncoal minerals can compete within the Commonwealth due to increased transportation costs. Further, noncoal mines exist in every county of Pennsylvania (except for Philadelphia) allowing for materials to be readily available at a low cost throughout the state.

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

This regulation will not impact other regulations or state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department reviewed the draft proposed rulemaking at multiple meetings with the Aggregate Advisory Board, which includes representation from the Pennsylvania House of Representatives, Pennsylvania Senate, Pennsylvania Aggregate and Concrete Association, Citizens Advisory Council, and private industry. This interaction, which ultimately resulted in a recommendation to move forward with presenting the proposed rulemaking to the Environmental Quality Board (EQB), took place over a

period of 15 months at six meetings of the full board and seven meetings of the Aggregate Advisory Board's Regulation, Legislation and Technical Committee.

The Department has presented revenue and cost data to the Pennsylvania Aggregate and Concrete Association periodically since the fee collections established in the 2012 final rulemaking began. In 2014, the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.31) was amended to create the Aggregate Advisory Board to advise the Department on matters pertaining to surface mining. 52 P.S. § 1396.18(g.1). The Aggregate Advisory Board reviewed the draft 2015 cost analysis at its initial meeting on May 13, 2015. In addition, the Department provided detailed data about the mining program's expenses and revenue at this meeting. The Aggregate Advisory Board conducted additional review of the cost and revenue data at its meeting on August 21, 2015.

By letter dated June 12, 2015, the Pennsylvania Concrete and Aggregate Association and the Pennsylvania Bluestone Association requested detailed information about the revenue and expenses for both the coal mining and noncoal mining programs, including information on the Federal grants provided the Department to implement Title V of the Federal Surface Mining Control and Reclamation Act (30 U.S.C. §§ 1251—1279). The Department posted data responding to this request on the Aggregate Advisory Board webpage and reviewed the data with the Aggregate Advisory Board's Regulatory, Legislative, and Technical (RLT) Committee on September 22, 2015, and October 23, 2015. The data included the Department's Title V grant applications for the previous five years, the Federal Financial Reports for closing out its Title V grant for five years and the five most recent annual reports related to the Department's administration of the Title V program. The Department also provided its workload analysis for the mining program, the total fees collected, the number and types of applications and inspections, and the hours worked by Department employees for the coal and noncoal mining programs. The Department also reviewed the data, including additional revenue data, with the Aggregate Advisory Board at its November 10, 2015, meeting.

The Department posted additional data on the Aggregate Advisory Board webpage and reviewed the data with the RLT Committee at its January 19, 2016, meeting. The data included the Department's spend plan, which analyzed existing and projected revenue and expenses for the noncoal mining program. At this meeting, the Department introduced the concept of phasing in fee increases and presented a preliminary draft of the proposed revisions to § 77.106, which included a proposed fee schedule.

On February 18, 2016, the RLT Committee met to review the preliminary draft revisions to § 77.106. At a meeting of the full Aggregate Advisory Board, also on February 18, 2016, the Board discussed recommendations, but did not vote on a final recommendation. On May 4, 2016, the Aggregate Advisory Board met and referred the draft fee revisions to the RLT Committee for further review, with the intention of preparing a recommendation. The RLT Committee met on June 9, June 30 and July 18, August 3 and provided its recommendation to the Aggregate Advisory Board at the November 2, 2016, meeting. The RLT Committee recommended that the rulemaking proceed with the draft fee schedule as presented in January 2016, which phased in the proposed fee increases over six years, and adjusted the fee schedule annually after the phased increases are implemented based on an index from the United States Bureau of Labor Statistics. Further, this recommendation would coincide with continued collaboration with the Department on programmatic issues identified by the Aggregate Advisory Board. These issues are outlined in a "Framework Document" presented at the Board's meeting on August 3, 2016. By letter dated October 3, 2016, the Secretary of the Department sent notice to the

Aggregate Advisory Board of the Department's "commitment to fully collaborate with the Aggregate Advisory Board on prioritizing and resolving the issues identified in the Framework Document."

As noted previously, on November 2, 2016, the Aggregate Advisory Board concurred with DEP's recommendation to move the proposed rulemaking forward for Environmental Quality Board consideration. The data the Department provided to the Aggregate Advisory Board during the development of the noncoal fee rulemaking are available on the Aggregate Advisory Board's webpage: <http://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Aggregate-Advisory-Board/Pages/default.aspx>

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Approximately 1,200 licensed noncoal mine operators operate in Pennsylvania. Most of these entities who conduct noncoal mining in Pennsylvania are small businesses. Only a few of the licensed noncoal mine operators are not small businesses.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

The 1,200 licensed noncoal mine operators in Pennsylvania will be required to comply with the proposed rulemaking.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The proposed amendments increase the cost for permit applications and administrative fees. To mitigate the impacts on the noncoal operators, DEP introduced an approach that will incrementally increase the fees in three, two-year phases. Also, consistent with current practice, the fees are scaled to the size and scope of the regulated operation. The existing fee structure inadequately covers the cost for DEP to review permit applications, perform inspections, provide compliance assistance, and track permittee reporting requirements. Without an adjustment to the fee schedule, the gap between the fees and program costs will continue to grow and the Department will not be able to fulfill its responsibility to implement the Noncoal Surface Mining Conservation and Reclamation Act. The purpose of the Noncoal Surface Mining Conservation and Reclamation Act is "to provide for the conservation and improvement of areas of land affected in the surface mining of noncoal minerals, to aid in the protection of birds and wildlife, to enhance the value of the land for taxation, to decrease soil erosion, to aid in the prevention of the pollution of rivers and streams, to protect and maintain water supply, to protect land, to enhance land use management and planning, to prevent and eliminate hazards to health and safety and generally to improve the use and enjoyment of the lands." See 52 P.S. § 3302. A fee sufficient to support the implementation of the Noncoal Surface Mining Conservation and Reclamation Act will allow the Department to achieve those purposes for the benefit of the citizens of the Commonwealth.

While every effort is made to reduce the impact on small businesses, the noncoal mining program is fully funded through fees and has no additional funding sources to minimize the impact on small businesses.

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

The regulation adjusts fees necessary to support the Department's implementation of the Noncoal SMCRA, the purpose of which is "to provide for the conservation and improvement of areas of land affected in the surface mining of noncoal minerals, to aid in the protection of birds and wildlife, to enhance the value of the land for taxation, to decrease soil erosion, to aid in the prevention of the pollution of rivers and streams, to protect and maintain water supply, to protect land, to enhance land use management and planning, to prevent and eliminate hazards to health and safety and generally to improve the use and enjoyment of the lands." See 52 P.S. § 3302. With Noncoal SMCRA, the Commonwealth acknowledged the environmental, public health and safety, and economic risks associated with underregulated noncoal mining. The Department's ability to mitigate those risks through implementation of the Noncoal SMCRA outweighs the cost to the regulated community from the fees adjusted under the proposed regulation. Moreover, the Noncoal SMCRA prohibits noncoal mining without a permit issued by the Department. Therefore, timely processing of noncoal operator permits (approximately 300 annually) is vital for Pennsylvania's economy as the noncoal industry is currently a \$20 billion dollar per year industry in the state and consistently ranks among the top ten noncoal mineral producers in the nation.

(19) 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 proposed permit application fees and proposed annual permit administration fees for noncoal mining operations would increase incrementally over six years. For small noncoal surface mining operations, the proposed permit application fee will increase from the current \$525 to \$775, with a \$75 increase proposed for each of the first and second phases, and a \$100 increase proposed for the third phase. The annual administrative fee for these small noncoal operations is proposed to increase from \$200 to \$500, with a \$200 increase proposed in the first phase, and a \$50 increase proposed in each of the second and third phases.

The proposed increase in fees for small noncoal mining operations is attributable to several factors. The salary and benefit costs for Department staff in the noncoal mining program have increased between 2009 and 2015. In addition, the Department determined an average of three hours is needed to inspect a small noncoal mine operation, rather than the two hours estimated in the prior analysis. Finally, certain indirect costs and overhead costs were not accounted for in the prior cost analysis.

For large noncoal surface mining operations, as well as underground noncoal mining operations, the permit applications fees are also proposed to increase. For example, the permit application fee for large noncoal surface mining operations that require groundwater pumping is proposed to increase from \$20,225 to \$29,500, with a \$2,225 increase in the first phase, a \$3,075 increase in the second phase and a \$3,975 increase in the third phase. The annual permit administration fee for active large surface mining operations with blasting is proposed to increase from \$1,850 to \$2,250, with an actual decrease of \$175 in the first phase, an increase of \$75 above the current fee in the second phase, and a further increase of \$325 in the third phase.

As with the proposed increase in fees for small noncoal mining operations, the increases for the large noncoal surface mining operations and underground operations are attributable to several factors. As discussed in Section D of this preamble, the salary and benefit costs for Department staff in the noncoal mining program have increased between 2009 and 2015. The percent increase to annual administration

fees for large noncoal operations was less than that for small noncoal operations because the Department determined that an average of five hours is needed to inspect the larger operations rather than the seven hours used in the prior cost analysis.

The total increased costs to the industry for the fees proposed in this rulemaking is estimated to be about \$1,200,000 when all phases of the proposed increases are implemented. Fee increases beyond that time would depend on the change in the United State Bureau of Labor Statistics index applied every two years.

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

The Department expects no impact on local governments.

(21) Provide a specific estimate of the costs and/or savings to the **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 regulation will not create any additional costs or savings to the state government because the administration involved in the collection of fees will remain the same.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

The Department does not anticipate any additional reporting, recordkeeping or other paperwork because the administration involved in the collection of fees will remain the same.

(22a) Are forms required for implementation of the regulation?

The regulation does not require new forms. The Department will revise existing forms to reflect the final fee schedule once it is adopted.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

The large industrial mineral application form (5600-PM-BMP0315) includes a fee schedule in Module 1:
<http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-98752/5600-PM-BMP0315-1.pdf>

The Small Industrial Mineral Application (5600-PM-BMP0316) does not include a fee section.

The Department collects annual administration fees with the license renewal application. These applications are generated by the Department's database. Each application includes a customized annual administration fee section that calculates the fee for the applicant. The Department expects

applicants to confirm that the information provided by the Department from the database is correct. The Department resolves any discrepancies during the license renewal review process. When the final-form regulations are approved, the Department will update the database to reflect the final fee amounts.

(23) 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 2017/18	FY +1 2018/19	FY +2 2019/20	FY +3 2020/21	FY +4 2021/22	FY +5 2022/23
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community	\$2,355,133	\$2,356,000	\$2,827,000	\$2,827,000	\$3,534,000	\$3,534,000
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$2,355,133	\$2,356,000	\$2,827,000	\$2,827,000	\$3,534,000	\$3,534,000
REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 2014/15	FY -2 2015/16	FY -1 2016/17	Current FY 2017/18
Noncoal Surface Mng Conservation & Reclam Fund	\$2,912,000	\$3,196,000	\$3,594,000	\$4,122,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The Department estimates that about 1,200 small businesses will be subject to this proposed regulation. No alternative method exists to accomplish the revenue generation and public safety elements of this proposed rulemaking. The fee amounts are based upon the actual cost for the Department to do the work, so while every effort is made to reduce the impact for small businesses, it is not possible to eliminate the effect because the fees reflect the cost of implementing the Noncoal Surface Mining Conservation and Reclamation Act. Without an additional funding source, which is not available, it is not possible to mitigate the impact on small businesses.

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

The regulation contains no special provisions focused on the needs of minorities, the elderly, small businesses or farmers. The Department does not have any authority to adjust fees for these groups, which would result in increased fees for noncoal mining operators who do not fall within these groups. However, consistent with current practice, the Department scaled the proposed fees based on the size and scope of the regulated operation.

(26) 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.

Because the premise of this rulemaking is the generation of funds to implement the Department's noncoal program, the final permit fee for each permit category reflects the Department's cost and workload analysis, and the Noncoal Surface Mining Conservation and Reclamation Act authorizes the Department to adjust fees in this manner, the Department did not consider alternative regulatory provisions outside of the fee schedule provision as a less burdensome alternative. However, the Department did consider the impact that an all-at-once fee adjustment would have on the regulated community and determined that a three-phase roll out of the fee adjustment with two years between each phase would be a less burdensome acceptable alternative.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

While the Department did not consider other regulatory methods that will minimize adverse impacts specifically on small businesses, consistent with current practice, the Department scaled the proposed fees based on the size and scope of the regulated operation, which may to some extent correlate with the size of the business. The Department also considered the impact that an all-at-once fee adjustment would have on the regulated community and determined that a three-phase roll out of the fee adjustment with two years between each phase would be a less burdensome acceptable alternative. Again, the Department considered this flexibility in relation to the industry as a whole and not specifically with regard to small businesses as defined by the Regulatory Review Act. However, the Department anticipates that small businesses will be more likely to benefit from the three-phase roll out of the regulation.

(28) 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.

The fees assessed in this proposed rulemaking are based on a workload planning tool used by the Department to manage staffing levels. Current calculations of DEP's noncoal mining program reveal a substantial deficit between incoming revenue and expenses used to permit and administer the noncoal mining program.

Fiscal Year	Revenue	Expenses
2011-2012	\$1,081,051.52	\$2,445,425.30
2012-2013	\$1,704,234.96	\$2,815,131.75
2013-2014	\$2,452,449.76	\$3,019,993.00
2014-2015	\$2,571,166.41	\$2,768,333.00
2015-2016	\$2,532,837.75	\$3,030,545.43

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

- | | |
|---|------------------------|
| A. The length of the public comment period: | <u>30 days</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>NA</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Quarter 3, 2018</u> |
| D. The expected effective date of the final-form regulation: | <u>Quarter 3, 2018</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Quarter 3, 2018</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>NA</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department will gauge the regulation's effectiveness through ongoing interaction with the industry, advisory boards and the public. The ultimate test of effectiveness is whether the fees provide sufficient funding for the implementation of the Noncoal Surface Mining Conservation and Reclamation Act. The Department tracks this on a monthly basis as it receives revenue and incurs costs.

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

By:

Anthony J. Ethier
(Deputy Attorney General)

DEC 28 2017
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. 7-523

DATE OF ADOPTION OCTOBER 17, 2017

BY *Patrick McDonnell*

TITLE PATRICK MCDONNELL
CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

By:

Manita H. Z. Leh

NOV 02 2017
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 PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Noncoal Mining Program Fees

25 Pa. Code, Chapter 77

**PROPOSED RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA CODE CH. 77]
Noncoal Mining Program Fees**

The Environmental Quality Board (Board) proposes to amend Chapter 77 (relating to noncoal mining) to read as set forth in Annex A. This proposed rulemaking increases noncoal mining permit application fees and annual permit administration fees to provide funds necessary for the Department of Environmental Protection (Department) to administer the noncoal mine program.

This proposed rulemaking was adopted by the Board at its meeting on October 17, 2017.

A. Effective Date

This proposed rulemaking will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Thomas Callaghan, PG, Director, Bureau of Mining Programs, Rachel Carson State Office Building, 5th Floor, 400 Market Street, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5015; or Joseph Iole, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's website at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. Statutory Authority

This proposed rulemaking has been developed under the authority of sections 7(a) and 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (act) (52 P. S. §§ 3307(a) and 3311(a)), which authorizes the Department to charge and collect a reasonable permit filing fee, which may not exceed the cost of reviewing, administering and enforcing the permit, and authorizes the Board to promulgate such regulations as it deems necessary to carry out the provisions and purposes of the act; section 6 of The Clean Streams Law (35 P.S. § 691.6), which authorizes the Department to charge and collect in accordance with its rules and regulations reasonable filing fees for applications filed and for permits issued; and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes the Board to adopt rules and regulations necessary for the performance of the work of the Department.

D. Background and Purpose

The Department is the agency responsible for issuing, administering and enforcing permits for noncoal surface mining under the act, the purpose of which is "to provide for the conservation

and improvement of areas of land affected in the surface mining of noncoal minerals, to aid in the protection of birds and wildlife, to enhance the value of the land for taxation, to decrease soil erosion, to aid in the prevention of the pollution of rivers and streams, to protect and maintain water supply, to protect land, to enhance land use management and planning, to prevent and eliminate hazards to health and safety and generally to improve the use and enjoyment of the lands.” 52 P.S. § 3302. The Department is also responsible for issuing, administering and enforcing permits under the Clean Streams Law, the objective of which is to “not only prevent further pollution of waters of the Commonwealth, but also to reclaim and restore to a clean, unpolluted condition every stream in Pennsylvania that is presently polluted.” 35 P.S. § 691.4(3). The Department fulfills these responsibilities through its noncoal mine program and collects fees consistent with its statutory authority from noncoal mining permit applicants and permittees to cover the costs incurred by the Department to administer the noncoal mining program.

The Department implements the noncoal mining programs through the review of permit applications for the various types of noncoal mining operations and the inspection of these operations to ensure operators’ compliance with their permits. These operations range from small quarries that produce less than 2,000 tons of material per year to large quarries that produce millions of tons of aggregate per year. The Department issues permits for the term of the expected mining activity, which also varies from a few years to decades. Operators can request modifications of their permits if their plans change. The Department inspects permitted noncoal mines for compliance with their permits and environmental and safety laws and regulations, including the act, the Clean Streams Law (35 P.S. §§ 691.1—691.1001), and Chapters 77 (relating to Noncoal Mining) and 209a (relating to Occupational Health and Safety: Surface Mining).

The Department has funded the activities necessary to administer the noncoal mining program through permit application fees, annual administration fees, and funds appropriated by the General Assembly annually from general tax revenue through the budget process. The Board promulgated the current noncoal mine permit application fees and annual permit administration fees in § 77.106 on October 13, 2012 (42 Pa.B. 6536). These fees were promulgated based on a cost analysis performed by the Department in 2009, which estimated the cost to administer the noncoal program to be \$2.5 million. The General Assembly has not appropriated any funds to the Department to administer the noncoal program since that time.

The Department is required to review the fees necessary to implement the noncoal mining program every three years under § 77.106(d) and recommend changes to the Board. In 2015, the Department completed an analysis of its costs to administer the noncoal mining program. To complete this analysis, the Department reviewed the time necessary to administer the noncoal mining program and the associated staff costs (salary and benefits) and overhead costs (offices, computers, other equipment, supplies, etc.). Below is a summary of the cost analysis showing revenues (permit and license fees, penalties and interest) and expenditures for the prior and future fiscal years.

<u>Fiscal Year (FY)</u>	<u>Revenue</u>	<u>Program Costs</u>
FY-2 (12-13)	\$1,704,234.96	\$2,815,131.75
FY-1 (13-14)	\$2,452,449.76	\$3,019,992.63
Current FY (14-15)	\$2,500,000.00 (est)	\$3,100,000.00(projected)
FY+1 (15-16)	\$2,500,000.00 (est)	\$3,200,000.00(projected)
FY+2 (16-17)	\$2,500,000.00 (est)	\$3,300,000.00(projected)
FY+3 (17-18)	\$2,500,000.00 (est)	\$3,400,000.00(projected)

About 60% of the noncoal mining program costs are associated with inspections and enforcement. The remaining 40% is related to reviewing permit and license applications. The sources of revenue for the noncoal mining program for the 2013-14 fiscal year were as follows:

<u>Category</u>	<u>Percentage</u>
Annual Administration Fees	56%
Permit Application Fees	17%
License Fees	9%
Civil Penalties	6%
Interest	12%

See 3-Year Regulatory Fee and Program Cost Analysis Report to the Environmental Quality Board presented at the May 20, 2015 meeting of the EQB (available at <https://goo.gl/V1WszB>).

The Department's 2015 cost analysis is based on actual salaries for FY 2013-2014, which have increased since 2009. In addition, the cost of employee benefits (e.g., health insurance, retirement, etc.) was estimated in 2009 to be approximately 40% of the employees' salaries. However, the actual cost for benefits for FY 2013-2014 was approximately 87% of salaries.

The Department concluded in its cost analysis that it would have insufficient funds to administer the noncoal mining program consistent with its statutory responsibilities without an increase in the permit application fees and annual permit administration fees. The Department has implemented measures to decrease costs for the noncoal mining program. For example, the noncoal mining program has partnered with the coal mining program to reduce overhead costs and has reduced its administrative costs to less than 5% of the total program costs. However, while the efficiencies have reduced the cost of administering the program, these efficiencies alone could not offset the projected shortfall in funding that was identified in the 2015 cost analysis. Based on the Department's cost analysis and recommendation, the Board is proposing to increase the noncoal mining fees in this rulemaking.

Permit Application Fee

The Department is responsible for reviewing permit applications for noncoal mining operations and issuing permits consistent with the act and the Clean Streams Law. The permit application fees proposed in this rulemaking are based on the 2015 cost analysis. As part of that analysis, the Department reviewed the number of hours required to review permit applications and issue permits for each type of noncoal mining operation. The Department also reviewed the wage rate for the employees that conduct the permit reviews, along with the cost of employee benefits and

associated overhead costs. The workload analysis data the Department used in the development of the rulemaking is included in a spreadsheet with multiple pages available on the Aggregate Advisory Board's webpage, and at the following link:

<http://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Aggregate-Advisory-Board/Pages/2015.aspx>. The spreadsheet is located under the heading for the Aggregate Advisory Board RLT Meeting Agenda (9-22-15) and is titled "2015 Inspection Staff Analysis." Workload data for the Department's review of permit applications (labeled "authorizations" in the spreadsheet) as well as its administration and enforcement of permits is included in this document.

The proposed increases for noncoal mining permit fee applications vary based on the nature of the permit application. The time required by the Department to review a permit application varies depending on the complexity of the proposed noncoal mining operation. For example, applications for large noncoal surface mining operations that propose to pump groundwater take significantly more time to review because of their potential hydrologic impact. Therefore, the proposed increase in the permit application fee for these operations is based on the time required for review of this type of operation. Similarly, if blasting is proposed, then the blasting inspector is involved in the review of the blast plan for the application. Therefore, the proposed increase in the application fee for review of blast plans is based on the cost to review those plans.

As part of the 2015 cost analysis, the Department determined that the time necessary to review new noncoal mining permit applications has increased because of the complexity of the new noncoal mining operations being proposed. Thus, although the Department has experienced a decrease in the total number of permit applications received, it has experienced an overall increase in its permitting workload for noncoal mining operations.

Annual Administrative Fee

In addition to the Department's review of permit applications, it routinely inspects noncoal mining operations for which permits have been issued and takes appropriate actions to ensure these operations comply with their permits, and statutory and regulatory requirements. The Department has established inspection frequencies based upon the type of noncoal mining permit issued and the status of activity being conducted (*i.e.*, active, inactive, startup, etc.). Activities conducted by a Department inspector include review of the permit file for the noncoal mining operation, review of submissions made by the permittee under the permit, and verification of compliance through a site review.

The Department categorizes noncoal mining operations based on size. Small operations are those authorized to produce up to 10,000 tons per year and large operations are those that produce more than this amount. The Department typically inspects large operations four times per year and small operations two times per year. For noncoal mining operations authorized by their permits to conduct blasting, the Department also conducts a blasting inspection each year.

The proposed increases in annual permit administration fees for noncoal mining operations are based on the Department's 2015 cost analysis for conducting inspections and taking actions necessary to ensure these operations comply with their permits. The Department provided its

calculations for the annual administration fees to the Aggregate Advisory Board in 2016, available at:

http://files.dep.state.pa.us/Mining/BureauOfMiningPrograms/BMPPortalFiles/AAB/Agendas_and_Handouts/2016/January%202016%20Noncoal%20Admin%20Fee%20Phases.pdf.

Advisory board collaboration and outreach

The Department has presented revenue and cost data to the Pennsylvania Aggregate and Concrete Association periodically since the fee collections established in the 2012 final rulemaking began. In 2014, the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.31) was amended to create the Aggregate Advisory Board to advise the Department on matters pertaining to surface mining. 52 P.S. § 1396.18(g.1). The Aggregate Advisory Board reviewed the draft 2015 cost analysis at its initial meeting on May 13, 2015. In addition, the Department provided detailed data about the mining program's expenses and revenue at this meeting. The Aggregate Advisory Board conducted additional review of the cost and revenue data at its meeting on August 21, 2015.

By letter dated June 12, 2015, the Pennsylvania Concrete and Aggregate Association and the Pennsylvania Bluestone Association requested detailed information about the revenue and expenses for both the coal mining and noncoal mining programs, including information on the Federal grants provided the Department to implement Title V of the Federal Surface Mining Control and Reclamation Act (30 U.S.C. §§ 1251—1279). The Department posted data responding to this request on the Aggregate Advisory Board webpage and reviewed the data with the Aggregate Advisory Board's Regulatory, Legislative, and Technical (RLT) Committee on September 22, 2015, and October 23, 2015. The data included the Department's Title V grant applications for the previous five years, the Federal Financial Reports for closing out its Title V grant for five years and the five most recent annual reports related to the Department's administration of the Title V program. The Department also provided its workload analysis for the mining program, the total fees collected, the number and types of applications and inspections, and the hours worked by Department employees for the coal and noncoal mining programs. The Department also reviewed the data, including additional revenue data, with the Aggregate Advisory Board at its November 10, 2015, meeting.

The Department posted additional data on the Aggregate Advisory Board webpage and reviewed the data with the RLT Committee at its January 19, 2016, meeting. The data included the Department's spend plan, which analyzed existing and projected revenue and expenses for the noncoal mining program. At this meeting, the Department introduced the concept of phasing in fee increases and presented a preliminary draft of the proposed revisions to § 77.106, which included a proposed fee schedule.

On February 18, 2016, the RLT Committee met to review the preliminary draft revisions to § 77.106. At a meeting of the full Aggregate Advisory Board, also on February 18, 2016, the Board discussed recommendations, but did not vote on a final recommendation. On May 4, 2016, the Aggregate Advisory Board met and referred the draft fee revisions to the RLT Committee for further review, with the intention of preparing a recommendation. The RLT Committee met on June 9, June 30 and July 18, and provided its recommendation to the Aggregate Advisory Board

at the August 3, 2016, meeting. The RLT Committee recommended that the rulemaking proceed with the draft fee schedule as presented in January 2016, which phased in the proposed fee increases over six years, and adjusted the fee schedule annually after the phased increases are implemented based on an index from the United States Bureau of Labor Statistics. Further, this recommendation would coincide with continued collaboration with the Department on programmatic issues identified by the Aggregate Advisory Board. These issues are outlined in a “Framework Document” presented at the Board’s meeting on August 3, 2016. By letter dated October 3, 2016, the Secretary of the Department sent notice to the Aggregate Advisory Board of the Department’s “commitment to fully collaborate with the Aggregate Advisory Board on prioritizing and resolving the issues identified in the Framework Document.”

As noted previously, on August 3, 2016, the Aggregate Advisory Board concurred with the Department’s recommendation to move the proposed rulemaking forward for Environmental Quality Board consideration. The data the Department provided to the Aggregate Advisory Board during the development of the noncoal fee rulemaking are available on the Aggregate Advisory Board’s webpage:

<http://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Aggregate-Advisory-Board/Pages/default.aspx>.

E. Summary of Proposed Regulatory Requirements

§ 77.106. Fees

Subsection (e) proposes to increase noncoal mining permit application fees as summarized in the table below in three phases. The first phase would become effective on January 1 of the year following promulgation of the final regulations. The second and third phases would each become effective on January 1 two years after the prior phase becomes effective.

Permit Application Fee Category	Current Fee	First Phase	Second Phase	Third Phase
Large noncoal surface mining with groundwater pumping:				
Permit Application	\$22,225	\$22,450	\$25,525	\$29,500
Major Amendment	\$3,850	\$4,250	\$4,850	\$5,625
Minor Amendment	\$700	\$775	\$900	\$1,050
Transfer	\$900	\$975	\$1,125	\$1,300
Large noncoal surface mining without groundwater pumping:				
Permit Application	\$13,500	\$15,000	\$17,025	\$19,750
Major Amendment	\$1,600	\$1,775	\$2,000	\$2,350
Minor Amendment	\$700	\$775	\$900	\$1,050
Transfer	\$900	\$975	\$1,125	\$1,300
Small noncoal surface mining:				
Permit Application	\$525	\$600	\$675	\$775
Minor Amendment	\$175	\$200	\$225	\$250
Underground noncoal mining:				
Permit Application	\$20,225	\$22,450	\$25,525	\$29,500

Permit Application Fee Category	Current Fee	First Phase	Second Phase	Third Phase
Major Amendment	\$2,650	\$2,950	\$3,350	\$3,900
Transfer	\$900	\$975	\$1,125	\$1,300
Bonding Increment	\$450	\$500	\$550	\$650
Completion Report Application	\$600	\$650	\$750	\$875
Blast Plan	\$475	\$550	\$675	\$775
Notice of Intent to Explore	\$60	\$65	\$75	\$85
Pre-application	\$3,375	\$3,750	\$4,250	\$4,950
Permit renewal	---	\$175	\$200	\$225

Subsection (f) proposes to increase noncoal mining annual permit administration fees as summarized in the table. As with the permit application fees, these fees would be implemented in three phases. The first phase would become effective on January 1 of the year following promulgation of the final regulations. The second and third phases would each become effective on January 1 two years after the prior phase becomes effective.

Annual Administrative Fee Category	Current Fee	First Phase	Second Phase	Third Phase
Active large noncoal surface mining permit	\$1,450	\$1,300	\$1,500	\$1,750
Active large noncoal surface mining permit with blasting	\$1,850	\$1,675	\$1,925	\$2,250
Active small noncoal surface mining permit	\$200	\$400	\$450	\$500
Active small noncoal surface mining permit with blasting	\$300	\$550	\$625	\$700
Active underground noncoal mining permit	\$1,450	\$1,300	\$1,500	\$1,750
General permit	\$200	\$400	\$450	\$500
All noncoal mining permits – not started	\$100	\$125	\$150	\$175
All noncoal mining permits – inactive	\$100	\$125	\$150	\$175

Subsection (g) is proposed to be added as recommended by the Aggregate Advisory Board to provide for an ongoing fee adjustment factor. The Aggregate Advisory Board had initially recommended annual adjustments, but subsection (g) proposes automatic adjustments every two years. The Department anticipates that the biennial adjustment is sufficient to keep the program fees on pace with inflation (or deflation) thereby potentially reducing the frequency of future fee-related rulemakings.

The first adjustment which would be considered two years following the phase in of the fees proposed in subsections (e) and (f). The adjustment would be based on the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation or another similar index if found to be more appropriate. Any adjustment to fees based on this index would be in increments of \$25. This subsection also includes the requirement to review fee adjustments with the Aggregate Advisory Board and to publish the final fee adjustments in the *Pennsylvania Bulletin*.

F. Benefits, Costs and Compliance

This proposed rulemaking updates the existing permit application and annual permit administrative fee schedules for noncoal mining operations to provide funding for the Department to carry out its responsibilities under the act. The proposed rulemaking will benefit the public and the noncoal mining operators by enabling the Department to provide timely permit review and effective oversight of permitted noncoal mining operations to achieve the purposes of the act. While the proposed rulemaking will increase the cost of compliance with the act, the fee increases are proposed to be phased in over six years to allow the noncoal mine operators to plan for these increased costs.

Benefits

As described in the purpose of the act quoted in Section D of this preamble, the General Assembly explains the benefits achieved by the act, which are to ensure that noncoal mining operations conducted within the Commonwealth prevent pollution of Commonwealth rivers and streams, restore the land for future beneficial use, protect water supplies, as well as soil and wildlife resources, and eliminate health and safety hazards. 52 P.S. § 3302. The Department is the agency responsible for administering the act to achieve these benefits. 52 P.S. § 3307.

This proposed regulation is necessary to provide the Department with funding necessary to carry out the purposes of the act. Adequate and stable funding for the Department is critical to ensuring that noncoal mining operations are conducted consistent with the act to protect the natural resources of the Commonwealth, restore the land for future beneficial uses, and ensure the health and safety of the public. With these additional funds, the Department will be able to continue to review permit applications, inspect permitted operations and take appropriate actions to ensure compliance in a timely manner.

The Department's ability to fulfill its responsibilities under the act is essential to the vitality of noncoal mining within the Commonwealth because such activity can only occur consistent with the mandates of the act when the Department can properly issue and administer noncoal mining permits. Each year, the Department processes approximately 500 noncoal mining permits and conducts approximately 5,000 inspections of noncoal mining operations to ensure this industry can benefit the Commonwealth's economy while protecting its natural resources consistent with the act. The noncoal mining industry generates approximately \$20 billion dollars per year within the Commonwealth and consistently ranks among the top ten noncoal mineral producers in the nation.

Compliance costs

As shown in the tables above, the proposed permit application fees and proposed annual permit administration fees for noncoal mining operations would increase incrementally over six years. For small noncoal surface mining operations, the proposed permit application fee will increase from the current \$525 to \$775, with a \$75 increase proposed for each of the first and second phases, and a \$100 increase proposed for the third phase. The annual administrative fee for

these small noncoal operations is proposed to increase from \$200 to \$500, with a \$200 increase proposed in the first phase, and a \$50 increase proposed in each of the second and third phases.

The proposed increase in fees for small noncoal mining operations is attributable to several factors. The salary and benefit costs for Department staff in the noncoal mining program have increased between 2009 and 2015. In addition, the Department determined an average of three hours is needed to inspect a small noncoal mine operation, rather than the two hours estimated in the prior analysis. Finally, certain indirect costs and overhead costs were not accounted for in the prior cost analysis.

For large noncoal surface mining operations, as well as underground noncoal mining operations, the permit applications fees are also proposed to increase. For example, the permit application fee for large noncoal surface mining operations that require groundwater pumping is proposed to increase from \$20,225 to \$29,500, with a \$2,225 increase in the first phase, a \$3,075 increase in the second phase and a \$3,975 increase in the third phase. The annual permit administration fee for active large surface mining operations with blasting is proposed to increase from \$1,850 to \$2,250, with an actual decrease of \$175 in the first phase, an increase of \$75 above the current fee in the second phase, and a further increase of \$325 in the third phase.

As with the proposed increase in fees for small noncoal mining operations, the increases for the large noncoal surface mining operations and underground operations are attributable to several factors. As discussed in Section D of this preamble, the salary and benefit costs for Department staff in the noncoal mining program have increased between 2009 and 2015. The percent increase to annual administration fees for large noncoal operations was less than that for small noncoal operations because the Department determined that an average of five hours is needed to inspect the larger operations rather than the seven hours used in the prior cost analysis.

The total increased costs to the industry for the fees proposed in this rulemaking is estimated to be about \$1,200,000 when all phases of the proposed increases are implemented. Fee increases beyond that time would depend on the change in the United State Bureau of Labor Statistics index applied every two years.

Compliance Assistance Plan

Compliance assistance for this proposed rulemaking will be provided through routine interaction with the Aggregate Advisory Board, trade groups and individual applicants.

Paperwork requirements

No additional paperwork is required under the proposed rulemaking.

G. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the

reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking has minimal impact on pollution prevention since it is focused on establishing appropriate fees to cover the Department's costs to administer the act.

H. *Sunset Review*

The Board is not establishing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 17, 2018, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

J. *Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by March 5, 2018.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

Patrick McDonnell,
Chairperson

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 C. PERMITS AND PERMIT APPLICATIONS

§ 77.106. Fees.

(a) A permit application for noncoal mining activities shall be accompanied by a nonrefundable 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 3 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) **(1) Effective January 1, _____ (Editor’s Note: The blank refers to the year after which this proposed rulemaking is adopted.), the [The] permit application fee schedule is as follows:**

<i>(1) New permits</i>	<i>Fee</i>
Large Surface Mining Permit—Groundwater Pumping Authorized	[\$20,225] <u>22,450</u>
Large Surface Mining Permit—No Groundwater Pumping	[\$13,500] <u>15,000</u>
Small Surface Mining Permit	[\$525] <u>600</u>
Underground Mining Permit	[\$20,225] <u>22,450</u>
	<i>Fee</i>

<i>(2) Major amendments</i>	
Large Surface Mining Permit—Groundwater Pumping Authorized	[\$3,850] <u>4,250</u>
Large Surface Mining Permit—No Groundwater Pumping	[\$1,600] <u>1,775</u>
Underground Mining Permit	[\$2,650] <u>2,950</u>
<i>(3) Minor Amendments</i>	
Large Surface Mining Permit	[\$700] <u>775</u>
Small Surface Mining Permit	[\$175] <u>200</u>
<i>(4) Transfers</i>	
Large Surface Mining Permit	[\$900] <u>975</u>
Underground Mining Permit	[\$900] <u>975</u>
<i>(5) Other Actions</i>	
Bonding Increment	[\$450] <u>500</u>
Completion Report Application	[\$600] <u>650</u>
Blast Plan	[\$475] <u>550</u>
Notice of Intent to Explore	[\$60] <u>65</u>
Pre-applications	[\$3,375] <u>3,750</u>
<u>Renewal</u>	<u>\$175</u>

(2) Effective January 1, _____ (Editor's Note: The blank refers to 3 years after the year in which this proposed rulemaking is adopted.), the permit application fee schedule is as follows:

<u>(1) New permits</u>	<u>Fee</u>
<u>Large Surface Mining Permit—Groundwater Pumping Authorized</u>	<u>\$25,525</u>
<u>Large Surface Mining Permit—No Groundwater Pumping</u>	<u>\$17,025</u>
<u>Small Surface Mining Permit</u>	<u>\$675</u>
<u>Underground Mining Permit</u>	<u>\$25,525</u>
<u>(2) Major amendments</u>	<u>Fee</u>
<u>Large Surface Mining Permit—Groundwater Pumping Authorized</u>	<u>\$4,850</u>
<u>Large Surface Mining Permit—No Groundwater Pumping</u>	<u>\$2,000</u>
<u>Underground Mining Permit</u>	<u>\$3,350</u>
<u>(3) Minor Amendments</u>	<u>Fee</u>
<u>Large Surface Mining Permit</u>	<u>\$900</u>
<u>Small Surface Mining Permit</u>	<u>\$225</u>
<u>(4) Transfers</u>	<u>Fee</u>
<u>Large Surface Mining Permit</u>	<u>\$1,125</u>
<u>Underground Mining Permit</u>	<u>\$1,125</u>
<u>(5) Other Actions</u>	<u>Fee</u>
<u>Bonding Increment</u>	<u>\$550</u>

<u>Completion Report Application</u>	<u>\$750</u>
<u>Blast Plan</u>	<u>\$675</u>
<u>Notice of Intent to Explore</u>	<u>\$75</u>
<u>Pre-applications</u>	<u>\$4,250</u>
<u>Renewal</u>	<u>\$200</u>

(3) Effective January 1, _____ (Editor’s Note: The blank refers to 5 years after the year in which the proposed rulemaking is adopted.), the permit application fee schedule is as follows:

<u>(1) New permits</u>	<u>Fee</u>
<u>Large Surface Mining Permit—Groundwater Pumping Authorized</u>	<u>\$29,500</u>
<u>Large Surface Mining Permit—No Groundwater Pumping</u>	<u>\$19,750</u>
<u>Small Surface Mining Permit</u>	<u>\$775</u>
<u>Underground Mining Permit</u>	<u>\$29,500</u>
<u>(2) Major amendments</u>	<u>Fee</u>
<u>Large Surface Mining Permit—Groundwater Pumping Authorized</u>	<u>\$5,625</u>
<u>Large Surface Mining Permit—No Groundwater Pumping</u>	<u>\$2,350</u>
<u>Underground Mining Permit</u>	<u>\$3,900</u>
<u>(3) Minor Amendments</u>	<u>Fee</u>
<u>Large Surface Mining Permit</u>	<u>\$1,050</u>
<u>Small Surface Mining Permit</u>	<u>\$250</u>
<u>(4) Transfers</u>	<u>Fee</u>
<u>Large Surface Mining Permit</u>	<u>\$1,300</u>
<u>Underground Mining Permit</u>	<u>\$1,300</u>
<u>(5) Other Actions</u>	<u>Fee</u>
<u>Bonding Increment</u>	<u>\$650</u>
<u>Completion Report Application</u>	<u>\$875</u>
<u>Blast Plan</u>	<u>\$775</u>
<u>Notice of Intent to Explore</u>	<u>\$85</u>
<u>Pre-applications</u>	<u>\$4,950</u>
<u>Renewal</u>	<u>\$225</u>

(f) (1) Effective January 1, _____ (Editor’s Note: The blank refers to the year after which this proposed rulemaking is adopted.), the [The] annual administration fee schedule will be as follows:

<i>Permit Category—Permit Status</i>	<i>Annual Fee</i>
Large Surface Mining Permit—Active	\$(1,450) <u>1,300</u>
Large Surface Mining Permit—Active with Blasting	\$(1,850) <u>1,675</u>

Small Surface Mining Permit—Active	\$[200]400
Small Surface Mining Permit—Active with Blasting	\$[300]550
Underground Mining Permit—Active	\$[1,450]1,300
General Permit	\$[200]400
All Permits—Not Started	\$[100]125
All Permits—Inactive	\$[100]125

(2) Effective January 1, _____ (Editor’s Note: The blank refers to 3 years after the year in which this proposed rulemaking is adopted.), 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>\$1,500</u>
<u>Large Surface Mining Permit—Active with Blasting</u>	<u>\$1,925</u>
<u>Small Surface Mining Permit—Active</u>	<u>\$450</u>
<u>Small Surface Mining Permit—Active with Blasting</u>	<u>\$625</u>
<u>Underground Mining Permit—Active</u>	<u>\$1,500</u>
<u>General Permit</u>	<u>\$450</u>
<u>All Permits—Not Started</u>	<u>\$150</u>
<u>All Permits—Inactive</u>	<u>\$150</u>

(3) Effective January 1, _____ (Editor’s Note: The blank refers to 5 years after the year in which this proposed rulemaking is adopted.), 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>\$1,750</u>
<u>Large Surface Mining Permit—Active with Blasting</u>	<u>\$2,250</u>
<u>Small Surface Mining Permit—Active</u>	<u>\$500</u>
<u>Small Surface Mining Permit—Active with Blasting</u>	<u>\$700</u>
<u>Underground Mining Permit—Active</u>	<u>\$1,750</u>
<u>General Permit</u>	<u>\$500</u>
<u>All Permits—Not Started</u>	<u>\$175</u>
<u>All Permits—Inactive</u>	<u>\$175</u>

(g) The fees in subsections (e) and (f) shall be adjusted by the Department every two years, beginning on January 1, _____ (Editor’s Note: The blank refers to 7 years after the year in which this proposed rulemaking is adopted.), based on the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation, or an

equivalent index recognized by the U.S. Department of Labor. The adjustment will be based upon the cost difference for the most recent two-year period prior to the calculation. The fee schedule will be adjusted in increments of \$25. The Department will provide the proposed fee schedule to the Aggregate Advisory Board for review prior to publication. The final adjusted fee schedule will be effective upon its publication in the *Pennsylvania Bulletin*.

January 17, 2018

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

Re: Proposed Rulemaking: Noncoal Mining Program Fees (#7-523)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission (Commission). This proposal is scheduled for publication in the *Pennsylvania Bulletin* on February 3, 2018, with a 30-day public comment period. The Environmental Quality Board (Board) adopted this proposal on October 17, 2017.

The enclosed rulemaking proposes to increase noncoal mining permit application fees and annual permit administration fees to provide funds necessary for the Department of Environmental Protection (Department) to administer the noncoal mining program. The Department is responsible for implementing the Noncoal Surface Mining Conservation and Reclamation Act (the act), the purpose of which is “to provide for the conservation and improvement of areas of land affected in the surface mining of noncoal minerals, to aid in the protection of birds and wildlife, to enhance the value of the land for taxation, to decrease soil erosion, to aid in the prevention of the pollution of rivers and streams, to protect and maintain water supply, to protect land, to enhance land use management and planning, to prevent and eliminate hazards to health and safety and generally to improve the use and enjoyment of the lands.” 52 P.S. § 3302.

Section 7(a) of the act authorizes the Department to charge and collect a reasonable filing fee from noncoal permit applicants, provided the fees do not exceed the cost of “reviewing, administering and enforcing the permit.” Thus, the act authorizes the Department to collect fees from noncoal mining permit applicants and permittees to cover the costs incurred by the Department to administer the noncoal mining regulatory program. The Department inspects permitted noncoal mines for compliance with their permits, which require compliance with environmental and safety requirements included in the act, the Clean Streams Law, and Chapters 77 (Noncoal Mining) and 209a (Occupational Health and Safety: Surface Mining).

The Department is required to review the noncoal mining permit fees every three years under § 77.106(d) and recommend changes to the Board. In 2015, the Department completed an analysis of its costs to administer the noncoal mining program. To complete this analysis, the Department reviewed the time required to conduct various activities necessary to administer the noncoal mining program and the associated staff costs (salary and benefits) and overhead costs

(offices, computers, other equipment, supplies, etc.). The Department concluded in its cost analysis that it would have insufficient funds to administer the noncoal mining program without an increase in the permit application fees and annual permit administration fees. The existing fee structure inadequately covers the cost for the Department to review permit applications, perform inspections, provide compliance assistance, and track permittee reporting requirements.

Without an adjustment to the fee schedule, the Department will not be able to fulfill its responsibility to implement the act. A fee sufficient to support the implementation of the act will allow the Department to achieve those purposes for the benefit of the citizens of the Commonwealth. Adequate and stable funding for the Department is critical to ensuring that noncoal mining operations are conducted consistent with the act to protect the natural resources of the Commonwealth, restore the land for future beneficial uses, and ensure the health and safety of the public. With these additional funds, the Department will be able to continue to review permit applications, inspect permitted operations and take appropriate actions to ensure compliance in a timely manner. Further, the Department's ability to fulfill its responsibilities under the act is essential to the vitality of noncoal mining within the Commonwealth because such activity can only occur consistent with the mandates of the act when the Department can properly issue and administer noncoal mining permits. Each year, the Department processes approximately 500 noncoal mining permits and conducts approximately 5,000 inspections of noncoal mining operations to ensure this industry can benefit the Commonwealth's economy while protecting its natural resources consistent with the act. The noncoal mining industry generates approximately \$20 billion dollars per year within the Commonwealth and consistently ranks among the top ten noncoal mineral producers in the nation.

The proposed amendments increase the cost for permit applications and administrative fees. To mitigate the impacts to the licensed noncoal operators in Pennsylvania, the Department introduced an approach that will incrementally increase the fees in three, two-year phases. Also, consistent with current practice, the fees are scaled to the size and scope of the regulated operation.

For small noncoal surface mining operations, the proposed permit application fee will increase from the current \$525 to \$775, with a \$75 increase proposed for each of the first and second phases, and a \$100 increase proposed for the third phase. The annual administrative fee for these small noncoal operations is proposed to increase from \$200 to \$500, with a \$200 increase proposed in the first phase, and a \$50 increase proposed in each of the second and third phases.

For large noncoal surface mining operations, as well as underground noncoal mining operations, the permit applications fees are also proposed to increase. For example, the permit application fee for large noncoal surface mining operations that require groundwater pumping is proposed to increase from \$20,225 to \$29,500, with a \$2,225 increase in the first phase, a \$3,075 increase in the second phase and a \$3,975 increase in the third phase. The annual permit administration fee for active large surface mining operations with blasting is proposed to increase from \$1,850 to \$2,250, with an actual decrease of \$175 in the first phase, an increase of \$75 above the current fee in the second phase, and a further increase of \$325 in the third phase.

The total increased costs to the industry for the fees proposed in this rulemaking is estimated to be about \$1,200,000 when all phases of the proposed increases are implemented (six years). Fee increases beyond that time would depend on the change in the United State Bureau of Labor Statistics index applied every two years.

The Department has presented revenue and cost data to the PA Aggregate and Concrete Association periodically since the increase in fee collections began in the Fall of 2012. In 2014, the Surface Mining Conservation and Reclamation Act was amended to create the Aggregate Advisory Board to advise the Department on matters pertaining to surface mining. The Aggregate Advisory Board reviewed the draft 2015 cost analysis at its initial meeting on May 13, 2015. The Department also provided detailed data about the mining program's expenses and revenue at this meeting. The Aggregate Advisory Board conducted additional review of the cost and revenue data at its meeting on August 21, 2015. The Department further discussed revenue data with the Aggregate Advisory Board on November 10, 2015, and discussed additional data with the Regulatory, Legislative, and Technical (RLT) Committee of the Aggregate Advisory Board on January 19, 2016. At this meeting, the Department introduced the concept of phasing in fee increases and presented draft proposed regulatory amendments that included a fee schedule.

On February 18, 2016, the RLT Committee met to further review draft proposed regulatory amendments. At a meeting of the full Aggregate Advisory Board, also on February 18, 2016, the Board discussed recommendations, but did not vote on a final recommendation. On May 4, 2016, the Aggregate Advisory Board met and referred the draft fee revisions to the RLT Committee for further review, with the intention of preparing a recommendation. The RLT Committee met on June 9, June 30 and July 18, and provided its recommendation to the Aggregate Advisory Board at the August 3, 2016, meeting. The RLT Committee recommended that the rulemaking proceed with the draft fee schedule as presented in January 2016, which phased in the proposed fee increases over six years, and adjusted the fee schedule annually after the phased increases are implemented based on an index from the United States Bureau of Labor Statistics. Further, this recommendation would coincide with continued collaboration with the Department on programmatic issues identified by the Aggregate Advisory Board. These issues are outlined in a "Framework Document" presented at the Board's meeting on August 3, 2016. By letter dated October 3, 2016, the Secretary of the Department sent notice to the Aggregate Advisory Board of the Department's "commitment to fully collaborate with the Aggregate Advisory Board on prioritizing and resolving the issues identified in the Framework Document."

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendations or suggestions made by the Commission, as well as the Committees and public commentators, prior to final adoption of this rulemaking.

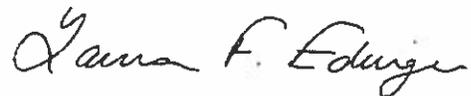
Mr. David Sumner, Executive Director

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January 17, 2018

Please contact me by e-mail at ledinger@pa.gov or by telephone at 717.783.8727 if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Laura F. Edinger". The signature is written in black ink and is positioned above the typed name.

Laura Edinger
Regulatory Coordinator

Enclosures

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

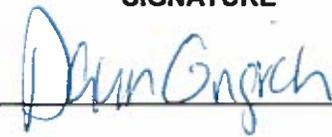
I.D. NUMBER: 7-523 Noncoal Mining Program Fees
 SUBJECT:
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

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 Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<u>1/17/18</u>	<u></u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Representative John Maher</i>
<u>1/17/18</u>	<u></u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Representative Mike Carroll</i>
<u>1/17/18</u>	<u></u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Senator Gene Yaw</i>
<u>1/17/18</u>	<u></u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Senator John Yudichak</i>
<u>1/17/18</u>	<u></u>	INDEPENDENT REGULATORY REVIEW COMMISSION <i>David Sumner</i>
		ATTORNEY GENERAL (for Final Omitted only)
<u>1/17/18</u>	<u></u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

