

**Aggregate Advisory Board
Regulatory, Legislative and Technical Committee
Noncoal Mining Permit Fee Recommendation and Framework Document**

In 2015, according to the USGS, U.S. production of 14 mineral commodities was valued at more than \$1 billion each. The top three of these 14 were, in decreasing order of value, crushed stone, cement, and sand and gravel.

Pennsylvania ranks second among the states in national crushed stone production and consumption and is a leading economic driver to local communities across the Commonwealth.

Background

Under 25 PA Code § 77.106 (d), mine permit fees are subject to review at least every three years. Noncoal fees were last finalized October 13, 2012. All of the costs associated with the Noncoal Mining Program are paid 100 percent from the Noncoal Surface Mining Conservation and Reclamation Act (NSMCRA) Fund. The PA Department of Environmental Protection (DEP or the Department) presented the required *Three-Year Regulatory Fee and Program Cost Analysis Report* to the Environmental Quality Board (EQB) at the May 20, 2015 Environmental Quality Board meeting.

The Aggregate Advisory Board (Board) was created by *Act 137 of 2014*, which was signed by the Governor September 24, 2014. The above report was reviewed with the Board at its initial meeting on May 13, 2015 prior to presenting to the EQB. The Board's Regulatory, Legislative and Technical (RLT) Committee was charged with developing a recommendation to the full Board regarding noncoal mine permit fees. After meeting, the RLT Committee presented a recommendation to the Board, which was tabled. After discussion, the Board requested the RLT Committee to reassess and develop a revised recommendation for the Board.

The RLT meetings were held June 9 and 30 and July 18, 2016 and this document reflects the RLT Committee's discussions as to the need for documentation regarding commitments from both the Department and Industry, due to potential future personnel changes within both the Department and Industry.

At the first meeting, several points of clarification regarding the partnership between the Department and Industry included:

- The RLT Committee's ultimate goal is to provide a recommendation and framework document, for presentation to the full Aggregate Advisory Board that includes a package of topics, actions, discussion and follow-up, which will be addressed by the Department and Industry.
- In putting together this document, there is no suggestion of working outside the regulations, but rather a sensible and reasonable approach, with innovative thinking, to living within the statute and regulations.

Discussion

The RLT Committee recognizes that the General Assembly funds the Department from taxpayer dollars to fulfill its mission and purpose. Therefore, the funds appropriated to the Department should,

first and foremost, be utilized for the programs already created to ensure proper management of those programs.

The RLT Committee agrees that it is reasonable for the Department to collect fees for reviewing, administering and enforcing the Mining Program, as supported by regulation, and in a manner consistent and equitable. The noncoal statute does not state that industry should pay 100 percent of the cost of the Mining Program.

Furthermore, the RLT Committee recognizes that the DEP Mining Program is a multi-stakeholder program and a percentage paid by the two stakeholders—noncoal and coal—based on the information provided to the Aggregate Advisory Board and the Mining and Reclamation Advisory Board by the DEP, should be equitable. The fees should be assessed to those entities regulated by the Mining Program such that only costs to review, administer and enforce the noncoal portion of the Mining Program are assessed to the noncoal operators, and the coal portion of the Mining Program are assessed to the coal operators. Given the Mining Program has two stakeholders, each stakeholder should pay equal percentages of their respective share of the Mining Program costs. For example, if one stakeholder is only paying 50 percent of their respective share, then the other stakeholder should only pay 50 percent of their respective share.

Recommendation

For the noncoal permit and administrative fees, the RLT Committee recommends the fees be based on the Department's six-year January 14, 2016 *Preliminary Draft Annex A for Noncoal*, adjusted yearly by the percentage, up or down, by which the federal Department of Labor, Bureau of Labor Statistics Price Index average for the most recent calendar year exceeds the Index for the previous calendar year; and contingent as part of this recommendation, with the understanding that the DEP Executive Office is in agreement, the Department and Industry agree to implement the Framework Document beginning on page 3 below, in a timely fashion. The appropriate Pricing Index is to be determined by a Working Group of the RLT Committee.

FRAMEWORK DOCUMENT

The document below encompasses the package of topics, proposed actions, discussion and follow-up, which the RLT Committee under the Aggregate Advisory Board will be committed to solving jointly in a timely manner. Proposed Actions and Discussion identified are by no means inclusive and may not be completely identified until the respective Aggregate Advisory Board Work Groups convene.

MANAGEMENT of the NONCOAL PROGRAM

TOPIC: Management of the Noncoal Program by Statute and Regulation

Unless there is a noncoal statute or regulatory mandate, the DEP Mining Program shall not allow the implementation of coal regulations, policies, Standard Operating Procedures (SOPs), Technical Guidance Documents (TGDs), best judgment and practices from coal to noncoal, including underground and surface.

PROPOSED ACTIONS:

1. The Department and Industry agree to a baseline of noncoal personnel (salary, benefits, workload analysis, etc.) required to run the noncoal program, and review annually by the Aggregate Advisory Board.
2. Develop an educational training program that is specifically based on, and driven by, noncoal statute and regulations.
3. Chain of command
 - a. Develop a process whereby decisions, interpretations and judgments can be elevated within the Department and addressed and resolved quickly across all regions. There needs to be transparency, clear communication and no backlash or retaliation.
 - b. Realign the Bureau of District Mining Operations such that the Central Office Bureau of Mining Programs is effectively above the District Mining Operations via the organizational chart. This will ensure that policies written in the Central Office are followed and consistent at the regional levels.

- DISCUSSION:**
1. How to ensure this is done efficiently?
 2. Can the process be documented within an existing Technical Guidance Document?
 3. Need to avoid duplication of Federal efforts in all activities.
 4. How to communicate to Department and Industry?

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TOPIC: Mining in Karst Geology

The Department needs to address in a holistic manner, any and all earth disturbances, development, and associated activities within the karst region in the Commonwealth. This topic needs to be elevated within the overall Department and addressed by a wide range of stakeholders including builders, developers, and municipalities.

PROPOSED ACTIONS:

1. Form a working group of the RLT Committee of Aggregate Advisory Board and develop solution paths with timelines that identify and include all stakeholders.
2. Revisit the zone of influence issue. Prior to the New Hope Environmental Hearing Board decision, there was generic and broad language that allowed for flexibility. How should this be addressed?
3. How to communicate to Department personnel, Industries and the general public?

DISCUSSION:

1. Background statistics need to be gathered on: number of sinkholes, increased land development particularly in urban areas, landfills in karst areas, etc. Are there other statistics needed?
2. Identify zone of influence issues, revisit and determine how this should be addressed, i.e., through Technical Guidance Document revision?
3. Are there outside “experts” that need to be brought into the RLT discussion?
4. Identify other issues that have an effect, including acidic rainfall eroding karst geology and increased wet weather.
5. How to address the management of stormwater by local government?
6. How to adequately characterize groundwater flow systems to support argument that quarries not responsible for sinkhole issues. Identify the process for this - Technical Guidance Document? Regulation change?
7. Need regulatory cites for all items.

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ADMINISTRATIVE

TOPIC: **Bond Release**

PROPOSED ACTIONS:

1. Form a Working Group under the RLT Committee to develop a solution with timelines. Goal is faster bond releases with no double bonding.
2. Define criteria for bond release. Through policy or Technical Guidance Document?
3. Challenges with keeping within the criteria: general timeframe, exceptions, progress tracking, etc.
4. The Department to develop an exception report.

DISCUSSION: 1. Does the Department have the capability to track this quickly?
2. How to communicate to both Department and Industry?

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TOPIC: **Consultant Qualification**

The Department has repeatedly indicated the slow turn-around times for permit issuance is driven by poorly prepared applications. Develop a consultants qualification process to drive better permit application quality.

PROPOSED ACTIONS:

1. Form a Working Group under RLT Committee to develop a solution path with timelines.
2. Review consultants qualification process currently in use among other Commonwealth agencies.
3. Develop qualification criteria.

DISCUSSION: 1. Need to understand how other agencies manage their process.
2. Develop qualification criteria.
3. How to communicate to Department personnel, Industry and consultants?

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TOPIC: **Expedited Review of Permits Upon Request**

PROPOSED ACTIONS:

- 1. Form a Working group under RLT Committee to develop solution paths with timelines.

DISCUSSION:

- 1. Evaluate the process for higher fees for expedited review upon request.
- 2. Assess other states' processes.
- 3. How to communicate to both Department personnel and Industry?

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TOPIC:

Acceptance of PE/PG Stamp on Permit Application Modules

PROPOSED ACTIONS:

- 1. Form a Working Group under RLT Committee to develop solution paths with timelines.

DISCUSSION:

- 1. Identify other states that do this and explore how it could be adapted to PA.
- 2. Identify areas of permit application where this could be applied.

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TOPIC:

Site Inspections

Currently, site inspections are inefficient and costly to both the Department and Industry. (As clarification, this is not a recommendation to combine permits on one site.)

PROPOSED ACTIONS:

- 1. Form a Working Group under RLT Committee to develop a more efficient site inspection approach.

DISCUSSION:

- 1. Administration fee should be per site not per permit.

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TOPIC:

Permit Fee Payment

There is support for the Department's pre-application process and acknowledgement that there is a cost to the Department for this pre-application review, as well as a cost for the review of the full permit application when submitted. There is also acknowledgement that a permittee should be able to count on a timely, straight-forward permit application review within the timeframe established by the Department's Permit Decision Guarantee (PDG) process. Furthermore, as part of the permit application process, there needs to be a financial consequence to the Department, if the Department fails to meet the PDG Guidelines or fails to issue a permit after a positive pre-application process (provided no significant changes on the part of the applicant).

PROPOSED ACTIONS:

- 1. Form a Working Group under RLT Committee to develop solution paths with timelines.

DISCUSSION:

- 1. Need to address extraordinary circumstances within this approach.
- 2. Need Technical Guidance Document or Policy?

3. How to communicate to Department personnel and Industry?

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TOPIC: Transparency of All Information Used in Permit Review

The Department must provide to the permittee for validation all the information—both confidential and anonymous (without specific identifying information as to person or company)—that is taken into consideration by the Department in review of the permit application.

The Department should be using scientific, socioeconomic, biological and defensible information in permit reviews.

The Permittee has the right to address and validate all information used in the permit review process.

PROPOSED ACTIONS:

1. Form a Working Group under the RLT Committee to develop solution path.

DISCUSSION: 1. Format? Clarification via existing Technical Guidance Document?

2. How to communicate to Department and Industry?

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TOPIC: Permit Fees Preamble and Annex

PROPOSED ACTIONS:

1. The Department to work together with RLT Committee on draft Preamble and Annex for permit fees.

DISCUSSION: The Annex will be revised to reflect the six-year fee approach, with a report to EQB every six years and an Annual Report to the Aggregate Advisory Board, as well as whatever other revisions are necessary to address the above changes.

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FINANCIAL MANAGEMENT

TOPIC: Annual Report and Index

PROPOSED ACTIONS:

1. Form a Working Group to analyze and determine Pricing Index for annual permit fee calculations.
2. The Department to develop an Annual Report that consists at a minimum, of a combining statement of revenues, disbursements and changes in cash balances, a workload analysis, employees assigned to each of the noncoal and coal programs via a trackable, consistent and secure numbering system, inspections performed by site, future benefit changes and permit process metrics, no later than December 31 of the most recent fiscal year.
3. Evaluate other states' reports.
4. Agree to a baseline of noncoal personnel required to run the noncoal program.
5. Review report annually with Aggregate Advisory Board.

DISCUSSION: Need for a process to ensure Annual Report review with Aggregate Advisory Board.