

March 1, 2016

Pennsylvania Department of Environmental Protection
The Honorable John H. Quigley
Rachel Carson Office Building
P.O. Box 2063 Harrisburg, PA 17105-2063

Dear Secretary Quigley,

On February 23, 2016, the Mining and Reclamation Advisory Board (MRAB) held a special meeting to discuss PA Code Title 25, §86.1, and the Department's preliminary proposed rulemaking increasing the Mining Program's coal fees. As a result, the MRAB unanimously voted on a number of recommendations to the Department, which I would like to take this opportunity to convey for your consideration.

By way of background, in October of 2009 the Department presented to the MRAB a draft proposed rulemaking that included significant increases in coal mining permit application fees. The rulemaking was rejected by the MRAB, as were two subsequent counter proposals, leading to the Department and industry working together to reach a reasonable increase to coal fees, published in the Pennsylvania Bulletin as final in 2012. To date the increased fees have been insufficient in producing preliminary estimates, which is likely due to a decline in industry. Nevertheless, the Department has presented the MRAB with a rulemaking designed to fund the Department's estimated state share of the coal portion of the Mining Program, which again includes drastic fee increases.

The decline in Pennsylvania's coal production has been significant, with a 20% reduction in tonnage in the past year. Yet, the cost of the Mining Program has increased by \$4.5 million over the past three years. Decreases in mining authorizations and fee authorizations since 2009 when a fee increase was last explored have been 43% and 33%, respectively. Considering this, and the millions of dollars in reclamation benefits provided from industry and realized by the Commonwealth and taxpayers, the MRAB voted unanimously on the following recommendations to the Department:

- The MRAB encourages the Department to use the funding it receives from the General Assembly for existing programs.
- The MRAB should continue to advise the Department on appropriate fee assessment and allocation measures.
- The MRAB agrees that it is reasonable to ask industry to partially fund the coal portion of the Department's Mining Program through permit fees, however:
 - The increases in these fees should be reasonable, should not discourage remaining activities and their reclamation benefits to Pennsylvania; and

- The fee increases should be dedicated exclusively to the coal portion of the Mining Program's permit review process; and
- The Department should consider the taxes and fees paid by operators in entirety, the external costs associated with submitting permits, and costs associated with full-cost bonding.
- All coal mining permit-related fees directed to other funds (e.g., Clean Water Fund) should be dedicated to the coal mining program.
- Credits claimed by other programs, Departments or Commissions should be attributed to the total cost of the coal mining program.
- The Department should explore and execute programmatic changes to reflect the significant decreases in permitting and overall mining activities while improving efficiencies within the Mining Program.
- MRAB supports imposing a marginal fee based on staff time and comparable to existing fees, for temporary cessation, while aligning Pennsylvania's requirements with those of the Federal government (i.e., SMCRA, Section 816.13 – Cessation of Operations, Temporary).
- The MRAB remains committed to contributing to the coal portion of the Mining Program and proposes a sizeable increase to current established coal mining program fees, 50%, implemented on a two-tier basis for new permits, with half the permit cost at the time of application and the remainder due at the time the permit is approved and issued.
- MRAB supports an annual cost of living adjustment to the program fees.

The MRAB appreciates the opportunity to work with the Department in developing an updated fee schedule for the Mining Program that ultimately continues to encourage coal mining in the Commonwealth while providing economic benefit to families, businesses, and communities across the Commonwealth.

Thank you in advance for your attention to this very important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David Osikowicz". The signature is fluid and cursive, with a large initial "D" and "O".

David Osikowicz, Chairman
Mining and Reclamation Advisory Board

cc: MRAB (via e-mail)