



**DATE:** November 3, 2010

**SUBJECT:** November 16, 2010, Environmental Quality Board Meeting

**TO:** EQB Members and Alternates

**FROM:** Michele L. Tate  
Regulatory Coordinator

The next meeting of the Environmental Quality Board (Board) is scheduled for Tuesday, November 16, 2010, at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board will consider the following items:

**1. Consideration of Final Rulemaking: Coal Mining Program Amendments (Incidental Coal Extraction, Bonding, Enforcement, Sediment Control and Remining Financial Guarantees) (25 Pa Code, Chapters 86 – 90):** This final-form rulemaking includes two categories of amendments. First, the rulemaking includes amendments to address regulatory program deficiencies identified by the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE), which has oversight authority over Pennsylvania's coal mining program. A majority of the deficiencies that are addressed in this final rulemaking are minor and include modifications that are needed to ensure that state regulations are consistent with and as effective as federal regulations. The regulatory deficiencies must be addressed in order for Pennsylvania to retain regulatory authority for its coal mining program. If program deficiencies are not resolved to the satisfaction of OSMRE, the Commonwealth is at risk for losing or receiving less federal funding for the Abandoned Mine Land Reclamation program. Second, the rulemaking includes improvements to the Remining Financial Guarantee program, which are needed because of the transition in the coal mining bonding program from an alternate bonding system, which used acre-based bond rates, to a conventional bonding system where the bond amount is based on the actual costs of reclamation. The amendments included in the rulemaking are not expected to increase or add costs to the regulated community.

The Board approved the proposed rulemaking on March 16, 2010, with a 30-day public comment period. The proposal was published for public comment in the May 1, 2010, edition of the *Pennsylvania Bulletin*. The Board received comments from three commentators, a majority of which requested greater clarity and more precise alignment of federal regulatory language with state program deficiency sections. Comments were also received regarding operator eligibility concerning the remining financial guarantees portion of the rulemaking. As a result of the public comments received on the OSMRE program deficiency amendments, minor changes were made at final rulemaking to enhance clarity and to ensure consistency with federal language. Concerning the remining financial guarantees amendments, changes were made at final rulemaking to clarify that the reclamation liability applies to a proposed mining area rather than the permitted area and that an operator who has participated in the remining financial guarantee program and who has met its obligations is eligible for subsequent remining financial guarantees. At the September 7, 2010, meeting of the Department's Mining and Reclamation Advisory Board (MRAB), the MRAB recommended the Department proceed with the rulemaking to the Board for final approval.

The Department recommends the Board's approval of the final-form rulemaking.

**2. Consideration of Final Rulemaking: Air Quality Fee Schedules (25 Pa Code, Chapters 121, 127 and 139):** This final-form rulemaking amends existing requirements and fee schedules codified in 25 Pa. Code Chapter 127, Subchapter I (relating to plan approval and operating permit fees) to ensure that fees are sufficient to cover the costs of administering the air quality program, as required under Section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3). In addition to increasing existing fees, the rulemaking proposes new fees applicable to plan approval modifications and requests for determination (RFD) of whether a plan approval is required. Specifically, the rulemaking amends the annual emission fee paid by the owner or operator of a Title V facility for up to 4,000 tons of each "regulated pollutant" and adds a new section to address fees for risk assessment applications. The rulemaking also adds Subchapter D (relating to testing, auditing and monitoring fees) to 25 Pa. Code Chapter 139 to establish fees to address Department-performed stack emissions source testing, test report reviews and auditing and monitoring activities related to continuous emissions monitoring systems (CEMS). The final-form rulemaking is expected to increase revenue to the Department by approximately \$7.5 million per year to cover the costs of administering the air pollution control program. The rulemaking requires the Department at least every 5 years to provide the Board with an evaluation of the fees, including a recommendation for regulatory changes to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program, with the objective of ensuring sufficient fees meet all program costs. The rulemaking, if adopted as final by the Board, will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan.

The proposed rulemaking was approved by the Board on July 21, 2009, and was published for public comment in the October 17, 2009, edition of the *Pennsylvania Bulletin*. During the 60-day public comment period, which included three public hearings in Harrisburg on November 17, 2009; Norristown on November 18, 2009; and Pittsburgh on November 20, 2009, the Board received comments from 17 commentators. As a result of comments received, changes were made to the Definitions section of the final rulemaking, as well as to the effective calendar years for the fee schedules in order to conform the dates with the projected effective date of the final-form rulemaking, which is expected to be 2011.

The final-form regulation was discussed with the Air Quality Technical Advisory Committee (AQTAC) at its October 21, 2010, meeting. The final-form regulation was discussed with the Citizens Advisory Council (CAC) Air Committee on October 18, 2010. The AQTAC and CAC concurred with the Department's recommendation to move the final-form regulation forward to the Board. In addition, the comments on the proposed rulemaking were discussed with the Small Business Compliance Advisory Committee (SBCAC) on July 28, 2010. On October 29, 2010, the SBCAC sent a letter to the Department recommending that the fee for Requests for Determination submitted by the owners or operators of small businesses be reduced or waived.

The Department recommends the Board's approval of the final-form rulemaking.

**3. Consideration of Proposed Rulemaking: Safe Drinking Water Program Fees (25 Pa Code, Chapter 109):** This proposed rulemaking establishes and augments existing permit application fees and establishes a new annual fee for drinking water systems in order to support the Department's Safe Drinking Water Program. The Commonwealth is ranked fourth in the nation regarding the number of public water systems, with nearly 9,500 water systems across the state providing clean drinking water to 10.7 million customers. The Department's Safe Drinking Water Program is responsible for ensuring these public water suppliers protect their water sources, provide adequate treatment, effectively operate

and maintain public water system facilities, and take whatever investigative or corrective action is necessary to assure that safe and potable water is continuously supplied to consumers. Currently the Department collects approximately \$250,000 in permit and monitoring fees annually to support the Safe Drinking Water Program; however, the cost to administer the program is approximately \$15 million, which is funded by \$11 million from the General Fund and \$4 million from the U.S. Environmental Protection Agency. The proposed fees in this rulemaking will generate nearly \$8.4 million annually, which will replace approximately 75% of program funding currently supported by General Fund appropriations.

The new and amended permit fees in this rulemaking will apply to all public water systems, including community water systems, noncommunity water systems and bottled, vended, retail and bulk water systems. The proposed permit fees, which have not been amended since 1984, range from \$50 to \$10,000 and are estimated to generate approximately \$500,000 in revenue to support the Safe Drinking Water Program. The annual fees proposed in the rulemaking are assessed based upon the population served by the drinking water system and range from \$30 for systems serving 25 -100 individuals up to \$60,000 for systems servicing 100,001 or more individuals. Noncommunity water systems, a majority of which are small businesses, are exempt from paying the proposed annual fee; however, this exemption will be reevaluated by the Department in three years. In comparison to Pennsylvania, many other states charge fees to review and approve permits or plans, including at least 23 other states that charge annual fees to drinking water systems to supplement program costs. Other states' annual fees range from \$50 to \$160,000, making the Commonwealth's proposal comparable with other state drinking water programs.

The proposed rulemaking was presented to the Technical Assistance Center for Small Drinking Water Systems (TAC) on March 9, 2010. Pursuant to the formation of a subcommittee to evaluate the impact of the rulemaking, TAC subsequently met again on June 18, 2010, to consider the recommendations of the subcommittee. Some of TAC's recommendations were incorporated into the proposed rulemaking; however other recommendations were incorporated into the Preamble of the rulemaking as a means to solicit further public comment on the proposed rulemaking, in particular the method in which to assess annual fees. More specifically, for comparison purposes, TAC requested that the Department provide annual fee estimates using several other options – including annual fees based on the number of service connections (using a flat rate per connection and no minimum or maximum fee) and annual fees based on the number of service connections (using a sliding scale rate per connection and a minimum fee) – to solicit public comment on the assessment of an annual fee. Estimates based on the other options identified by TAC are included in the Preamble of the rulemaking.

The Department recommends the Board's approval of the proposed rulemaking with a 30-day public comment period.

I will be contacting each Board member prior to the meeting to discuss any questions or concerns you may have regarding the agenda items for the November 16, 2010, EQB meeting.

If you have any immediate questions or concerns, please contact me at 717-783-8727 or by e-mail at [mtate@state.pa.us](mailto:mtate@state.pa.us).

Thank you.

Attachments