

EXECUTIVE SUMMARY
25 Pa. Code, Chapter 86, Coal Mining Permit Fees

Section 4 of the Surface Mining Conservation and Reclamation Act states that the Department “is authorized to charge and collect from persons a reasonable filing fee. Such fee shall not exceed the cost of reviewing, administering and enforcing such permit.” The proposed regulations include amendments to current application processing fees for coal mining activity permits and coal refuse disposal permits. The fees apply to new permit applications, major permit revisions, transfers and renewals.

The coal mining regulatory program is funded, in part, through a grant from the federal government. Under this grant, funds are provided to cover the costs of up to 50% of the program. The Commonwealth must provide matching funds. These state funds are provided primarily from the general fund appropriation to the Department. For the most recent federal fiscal year (October 2008 through September 2009), the Title V grant from the federal government provided about \$11 million towards the program costs of over \$22 million. It is estimated that this fee proposal will generate only about \$400,000 per year in revenue, or about 4% of the Department’s cost to operate the coal mining program. The current fees generate only about \$50,000 per year in revenue.

The proposed fee amounts were calculated using a workload analysis, the primary purpose of which is to manage staffing. Benefits and operational costs were included in the calculations. This proposal includes fees calculated to cover a portion of the state share of the workload cost (i.e. about 37%, or three-eighths of the total cost) for the selected permitting authorizations in the fee schedule.

This proposed rulemaking is the result of working with the Mining and Reclamation Advisory Board (MRAB) to develop a fee schedule acceptable to the majority of the MRAB. In October 2009, the Department presented a proposed rulemaking package to the MRAB that included a proposed permit application fee schedule. The MRAB would not endorse the proposed fee schedule, and requested the Department work with an MRAB committee to develop an alternative proposal. The strongest objection was to the amount of the fees. The October 2009 proposal included full-cost permit application fees for the State’s share of the cost of the permitting part of the mining program. The October 2009 fee proposal would have generated about \$1.2 million per year.

In response to the MRAB’s recommendations, the Department met with the MRAB’s Regulatory, Legislative and Technical (RLT) Committee. The result of this process was a series of recommendations adopted by the MRAB at their meeting in January 2010, as follows:

- Because permit fees have not gone up since 1982, a permit fee increase from the current amount of \$250 per application (\$500 for coal refuse disposal permit application) is reasonable.

- Any increase in permit fees should be dedicated exclusively to finance the mining program permit review process.
- DEP should not establish fees which would discourage or provide disincentives to remining activities and their reclamation benefits to the State.
- It is reasonable to ask industry to contribute to funding some part of the coal mining program.
- MRAB would like to continue to advise DEP on appropriate permit fee assessment and allocations.

At the April 22, 2010 meeting, the MRAB recommended that the Department proceed with a fee approach that includes only application fees in a form that would generate only about \$400,000 per year in revenue.

The proposed rulemaking follows the MRAB's recommendations. Section 86.17 is amended to include a detailed fee schedule for coal mining permit activity applications as well as a few related changes. The requirement to pay by check is being deleted to allow applicants the option of paying by other methods (e.g. credit card). The section is also being amended to specify that the money collected from the permit application fees must be used by the Department to pay the cost of reviewing permit applications. Finally, a new paragraph is added to establish the framework for periodically reviewing the fee schedule and providing a report to the Environmental Quality Board regarding the Department's costs and the necessity for changes to the permit application fees.

In addition, definitions for the terms Major Permit Revision and Permit Application Fee are being added to § 86.1. These definitions are needed for clarity in implementing the fee schedule. Section 86.3 is being revised to add a paragraph regarding the use of the money collected from permit application fees for coal refuse disposal permit applications that are deposited in the Coal Refuse Disposal Control Fund.