

**NOTICE OF FINAL RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

[25 Pa Code CHAPTER 86]

Coal Mining Fees

The Environmental Quality Board (Board) by this order amends Chapter 86 (relating to surface and underground coal mining). The final-form rulemaking establishes a schedule of fees for coal mining activity permit applications.

This order was adopted by the Board at its meeting of _____.

A. Effective Date

These amendments will become effective upon publication as final rulemaking in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information contact Thomas Callaghan, Director, Bureau of Mining Programs, P.O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103, or Richard S. Morrison, Assistant Director, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5988 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection (DEP) web site (<http://www.depweb.state.pa.us>).

C. Statutory Authority

The final-form rulemaking is adopted under the authority of Section 5 of The Clean Streams Law (35 P.S. § 691.5); Sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.4(a) and 1396.4b); Section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); and Section 1920-A of the Administrative Code of 1929 (71 P.S. 510-20).

D. Background and Purpose

Section 4 of the Surface Mining Conservation and Reclamation Act states: “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.” 52 P.S. § 1396.4(a). The final-form regulations revise permit application review fees for coal mining activity permits. A schedule of fees for coal mining activity permit applications is included.

The coal mining regulatory program is funded, in part, through a grant from the federal government under Title V of the Federal Surface Mining Control and Reclamation Act 30 U.S.C. § 1201 et seq. Under this grant, funds are provided to cover the costs of up to 50% of the program. The Commonwealth must provide matching funds. This state share has been provided through the general fund appropriation to DEP. For the current federal fiscal year (October 2011 through September 2012), the Title V grant provides about \$11.8 million towards total program costs of approximately \$23.7 million, with the state share of about \$11.8 million coming almost entirely from general fund appropriations because the current fees generate only about \$50,000 per year in revenue. It is estimated that the revised fees established by this final-form rulemaking will generate about \$400,000 per year in revenue.

This fee schedule is the result of a process where DEP worked with the Mining and Reclamation Advisory Board (MRAB), as described in more detail below. The proposed fee amounts were calculated using a workload analysis system, the primary purpose of which is to manage staffing for the mining program. The workload analysis assigns a specific number of hours to each task (that is, type of permit application) based on historical data recording hours spent by staff for permit reviews. Factors used for the fee calculations include the hourly wage rates for the employees who typically perform a given task, benefits and overhead. Wages are paid in accordance with a pay scale that has 20 steps for each pay range. For the purpose of the fee schedule, the first step (that is, the lowest wage rate) was used. Benefits (for example, health insurance, retirement, leave/holidays) cost the Commonwealth approximately 41% of the wage rate. Operational costs (for example, management, rent, utilities) cost the Commonwealth about 30% of the wage rate. The 30% figure is used to represent the costs described as “indirects” under the Title V grant application. This schedule establishes fees calculated to cover only a portion of the state share of the workload cost (that is, about 37%, or three-eighths of the total cost) for the selected authorizations. The list of authorizations included in the fee schedule is not exhaustive. There are other types of applications for which fees are not included (for example, minor revisions, blast plans, completion reports, pre-applications and annual bond reviews).

Fee Calculation Example

A new surface mining permit takes DEP staff about 200 hours to review. These applications are reviewed by staff in pay range 8 (step 1 for 2010 is \$25.64/hour). Adding 41% for benefits, 30% for overhead and multiplying by 200 hours, then multiplying by three-eighths results in \$3,288 or \$3,250 if the amount is rounded off.

Mining and Reclamation Advisory Board

At a meeting in October 2009, DEP presented a proposed rulemaking package to the MRAB that included a proposed permit application fee schedule. The MRAB would not endorse the proposal and requested DEP work with an MRAB committee to develop an alternative proposal. The MRAB’s objection to the proposal was the amount of the fees (for example, the proposed fee for a new surface mining permit was \$11,675). The

proposal of October 2009 contained permit application fees designed to cover the state share of DEP's costs to review mining permit applications. It was estimated that the October 2009 fee proposal would have generated about \$1.2 million per year in revenue.

In response to the MRAB's recommendations, DEP met several times with the MRAB's Regulatory, Legislative and Technical (RLT) Committee. During this process, various options were explored, including trying to develop a fee approach that would generate the full state share for funding the program (that is, about \$11.8 million). This option was dismissed as unrealistic based on industry opposition and the fact that it would represent such a dramatic policy shift from the status quo where the fees are nominal. The approaches taken by other states and the Federal Office of Surface Mining were also reviewed. The result of this process was a series of recommendations adopted by the MRAB at their meeting in January 2010. The recommendations are summarized below:

- 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 applications) 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 re-mining 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.

The RLT committee met on March 15, 2010 and reviewed a proposal containing permit application fees and an annual administrative fee that would have generated about \$750,000 per year in revenue. The committee decided to report to the full board their recommendation to proceed with the section of the draft regulations relating to permit application fees, but to recommend DEP not implement the annual administration fees. At the April 22, 2010 meeting, the MRAB recommended that DEP proceed with a fee approach that includes only permit application fees in a form that would generate about \$400,000 per year in revenue. This final-form rulemaking follows these MRAB recommendations.

On March 10, 2012, at 42 *Pa.B.* 1228, the proposed rulemaking was published for comment, with a 30 day comment period, in the *Pennsylvania Bulletin*. No comments were received during the public comment period. In addition, on May 9, 2012, the Independent Regulatory Review Commission (IRRC) provided notice that it reviewed the proposed regulation, but had no objections, comments, or recommendations to offer on the regulation.

The final-form rulemaking is the same as the proposed rulemaking (that is, no changes were made to the proposed regulations). The final-form rulemaking was approved by the MRAB at a special meeting held on May 15, 2012.

E. Summary of Regulatory Requirements

§ 86.1. Definitions

Definitions are added for the terms Major Permit Revision, and Permit Application Fee. These definitions are needed to implement the fee schedule.

§ 86.3. Use of Coal Refuse Disposal Control Fund

This section is amended to add subsection b, which necessitates the lettering of the existing subsection as subsection a. Subsection b is intended to provide clarity regarding the use of the money collected from permit application fees that are deposited in the Coal Refuse Disposal Control Fund. This reflects the MRAB's recommendation that the money collected from the fees should be used specifically for DEP's cost of reviewing permits.

§ 86.17. Permit and reclamation fees.

Subsection a is amended to include a detailed fee schedule for coal mining permit activity applications. The requirement to pay by check is being deleted from paragraph a, to allow applicants the option of paying by other methods (for example, credit card).

Subsection b sets forth the detailed permit application fee schedule.

Subsection c is amended to specify that the money collected from permit application fees will be used by DEP to pay the costs of reviewing permit applications. This reflects the MRAB's recommendation that the money collected from the fees should only be used for DEP's cost of reviewing permits.

Subsection d establishes a framework for periodically reviewing the fee schedule and providing a report to the Environmental Quality Board regarding DEP's costs and the necessity for changes to the permit application fees.

F. Benefits, Costs and Compliance

The amendments will enable the Commonwealth to generate a percentage (less than 5%) of the state share of the funds required to operate the coal mining regulatory program.

Compliance Costs

The proposed amendments will impose additional compliance costs on the regulated community (approximately 500 mine operators) of about \$350,000 per year. Currently, permit application fees cost the operators about \$50,000 per year. The proposed fee schedule is estimated to cost operators about \$400,000 per year.

Compliance Assistance Plan

DEP will provide written notification to all coal mine operators to inform them of the final promulgation of these regulatory changes.

Paperwork Requirements

The amendments will require DEP to update its fact sheets explaining the law and regulations.

G. Pollution Prevention

The rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multi-media pollution prevention approach of existing requirements in *25 Pa. Code*.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by DEP to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. §§ 745.5(a)), on February 29, 2012, DEP submitted a copy of these proposed rulemaking, published at *42 Pa. B.* 1228, to the Independent Regulatory Review Commission (IRRC) and the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendments, DEP has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by DEP. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. §745.5a(j.2)), on (blank), the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on (blank) and approved the final-form regulations.

J. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 42 *Pennsylvania Bulletin* 1228 (Saturday, March 10, 2012).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapter 86, are amended to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

MICHAEL KRANCER
Chairperson
Environmental Quality Board