

EXECUTIVE SUMMARY

25 Pa. Code, Chapter 77, Noncoal Fees

This final-form rulemaking includes amendments to *25 Pa. Code*, §§ 77.1 (definitions), 77.51 (license requirement), 77.106 (fees), and 77.126 (criteria for permit approval or denial) in order to implement fees to support the Noncoal Mining Program.

The amendments assess fees to fund the noncoal mining program which implements the Noncoal Surface Mining Conservation and Reclamation Act and the Clean Streams Law. With the Commonwealth's Fiscal Year 2009-2010 budget, funding from the General Fund was eliminated for this program. The fees are calculated to provide full funding for the program, which costs about \$2,500,000 per year. Existing fees are nominal and have not been adjusted in the history of the program. Many permits currently have no fee.

Without the imposition of fees, the noncoal mining regulatory program will have to be terminated or at least severely curtailed. Without a stable source of funding the Department of Environmental Protection (DEP) will not be capable of issuing, administering and enforcing permits required by the Noncoal Surface Mining Conservation and Reclamation Act and the Clean Streams Law. Operators would not be able to obtain permits required by law, and the public's interest in health, safety and environmental protection would not be protected.

The final-form regulations implement the statutory authorization to collect a reasonable filing fee through two kinds of fees, the permit application fee and the administrative fee. The permit application fee is intended to cover DEP's cost to review permit applications. The permit fees have been set according to the type of application submitted. The fee amounts are based on the number of hours typically required to review a specific type of permit application.

The annual administrative fee is intended to cover DEP's costs to administer the permit. These include, among other things, the cost of performing inspections of the operations, compliance assistance, and other compliance related activities, as well as tracking of required reporting and monitoring by permittees. As with the permit fees, the annual administrative fees are set based on workload analyses. The annual administrative fee schedule reflects the differences between types of operations based on DEP's respective administrative workload.

The assessment of the two kinds of fees is necessary to fairly represent the cost to the Commonwealth for reviewing, and administering, a noncoal mining permit.

Revisions from Proposed Regulation to Final-form Regulation

First, the permit application fee schedule has been revised to clarify the description of the two categories of large noncoal sites. In the proposed regulation, these were described as "mining below the water table" and "not mining below the water table." For clarity, the descriptions have been changed to "groundwater pumping authorized" and "no groundwater pumping." This clarifies that it is the pumping of the groundwater, and assessing the impacts of that pumping, that makes a difference in the complexity of the review. Also, an error was corrected in the fee schedule. The fee category and amount have been deleted in the fee schedule for the small

surface mining permit transfer, because these permits are not transferable. The fee category and amount have also been deleted for general permits (GP). This was done because application fee amounts vary with each GP and are published in the *Pennsylvania Bulletin* when a GP is proposed. Final application fee amounts for GPs are included with the final publication of each permit after the opportunity for comment. These GPs are alternatives to large or small noncoal permits where the applicant voluntarily chooses to apply for coverage under the GP rather than obtaining a small or large noncoal permit. Also, the annual administration fee description for general permits has been revised to delete the reference to the GP for short-term construction. At the time the regulation was proposed, this was the only GP available. This revision applies the same administration fee amount to all GPs.

There is no advisory board for the noncoal mining program. However, the Bureaus of District Mining Operations and Mining Programs have conducted outreach with the regulated community. Although, the proposal was met with some opposition, there is an acknowledgement by the industry that there is a need for fees to sustain the program.

Comments were received from 20 commentators relating to the proposed regulation during the EQB comment period. While there was some support for the proposal indicated, the majority of comments were in opposition to the imposition and the amounts of the increased fees. The fee schedule was not changed because it reflects a reasonable apportionment of the fees among the various types of noncoal mining operations, and establishes a fair and reasonable basis for collecting sufficient funds to administer the requirements and provisions of the Noncoal Surface Mining and Conservation Act.

On January 28, 2012, DEP solicited comments. Comments were received from 20 commentators as a result. These comments were almost exclusively (13 of 20) related to sand and gravel operations in northwest Pennsylvania. The comments primarily focused on the adverse impact the increased fees will have on small businesses that operate sand and gravel pits. Four comments supporting the fee proposal were received.

The EQB voted to approve the final-form regulation on April 17, 2012, and the final rulemaking was submitted on May 21, 2012 to the Independent Regulatory Review Commission (IRRC) and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act. The Standing Committees deemed the regulations approved on June 20, 2012, and IRRC considered the final-form regulations at its public meeting held on June 21, 2012. The IRRC voted to disapprove the final-form regulations, and issued a Disapproval Order to the EQB on June 29, 2012 which was received by the Chairman of the EQB that same day. It is the Department's recommendation to the Board that the regulations be resubmitted to IRRC and the Standing Committees without revisions. If the EQB concurs with the Department's recommendation, the final-form regulations without revisions, a copy of IRRC's Disapproval Order, and a written response and recommendations regarding these regulations will be submitted to IRRC and the standing committees in accordance with § 7(b) of the Regulatory Review Act, 71. P.S. § 745.7(b).