

EXECUTIVE SUMMARY
25 Pa. Code, Chapter 77, Noncoal Fees

This proposed rulemaking includes amendments to 25 Pa. Code, § 77.106 (fees) in order to increase fees to support the Department of Environmental Protection's (DEP) noncoal mining program.

Purpose of the Proposed Rulemaking

The proposed amendments increase fees to fund the noncoal mining program which implements the Noncoal Surface Mining Conservation and Reclamation Act (the 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 \$3,000,000 per year. Existing fees were finalized in 2012, based on cost estimates from 2009.

DEP is required to review the fees necessary to implement the noncoal mining program every three years under § 77.106(d) and recommend changes to the Environmental Quality Board (Board). In 2015, DEP completed an analysis of its costs to administer the noncoal mining program. To complete this analysis, DEP reviewed the time necessary to administer the noncoal mining program and the associated staff costs (salary and benefits) and overhead costs (offices, computers, other equipment, supplies, etc.). DEP concluded that it would have insufficient funds to administer the noncoal mining program consistent with its statutory responsibilities without an increase in the permit application fees and annual permit administration fees.

The proposed rulemaking implements 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 intends to cover DEP's cost to review permit applications. DEP sets permit fees scaled to the size and scope of the operation for which an operator submits an application. The fee amounts are based on the number of hours DEP typically requires to review a specific type of permit application. The annual administrative fee intends to cover DEP's costs to administer the permit. These include the cost to perform inspections of the operations, compliance assistance and other compliance related activities, as well as tracking the required reporting and monitoring by permittees. As with the permit fees, the annual administrative fees are set based on a workload analyses. The annual administrative fee schedule reflects the differences between types of operations based on DEP's respective administrative workload.

This proposed rulemaking is necessary to provide DEP with funding needed to carry out the purposes of the act. Adequate and stable funding for DEP is critical to ensuring that noncoal mining operations are conducted consistent with the act to protect the natural resources of the Commonwealth, restore the land for future beneficial uses, and ensure the health and safety of the public. With these additional funds, DEP will be able to continue to review permit applications, inspect permitted operations and take appropriate actions to ensure compliance in a timely manner.

DEP's ability to fulfill its responsibilities under the act is essential to the vitality of noncoal mining within the Commonwealth because such activity can only occur consistent with the

mandates of the act when DEP can properly issue and administer noncoal mining permits. Each year, DEP processes approximately 500 noncoal mining permits and conducts approximately 5,000 inspections of noncoal mining operations to ensure this industry can benefit the Commonwealth's economy while protecting its natural resources consistent with the act. The noncoal mining industry generates approximately \$20 billion dollars per year within the Commonwealth and consistently ranks among the top ten noncoal mineral producers in the nation.

Summary of Proposed Revisions

The proposed permit application fees and proposed annual permit administration fees for noncoal mining operations would increase incrementally over six years. For small noncoal surface mining operations, the proposed permit application fee will increase from the current \$525 to \$775, with a \$75 increase proposed for each of the first and second phases, and a \$100 increase proposed for the third phase. The annual administrative fee for these small noncoal operations is proposed to increase from \$200 to \$500, with a \$200 increase proposed in the first phase, and a \$50 increase proposed in each of the second and third phases.

The proposed increase in fees for small noncoal mining operations is attributable to several factors. The salary and benefit costs for DEP staff in the noncoal mining program have increased between 2009 and 2015. In addition, DEP determined an average of three hours is needed to inspect a small noncoal mine operation, rather than the two hours estimated in the prior analysis. Finally, certain indirect costs and overhead costs were not accounted for in the prior cost analysis.

For large noncoal surface mining operations, as well as underground noncoal mining operations, the permit applications fees are also proposed to increase. For example, the permit application fee for large noncoal surface mining operations that require groundwater pumping is proposed to increase from \$20,225 to \$29,500 with a \$2,225 increase in the first phase, a \$3,075 increase in the second phase and a \$3,975 increase in the third phase. The annual permit administration fee for active large surface mining operations with blasting is proposed to increase from \$1,850 to \$2,250, with an actual decrease of \$175 in the first phase, an increase of \$75 above the current fee in the second phase, and a further increase of \$325 in the third phase.

As with the proposed increase in fees for small noncoal mining operations, the increases for the large noncoal surface mining operations and underground operations are attributable to several factors, including salary and benefit cost increases. The percent increase to annual administration fees for large noncoal operations was less than that for small noncoal operations because DEP determined that an average of five hours is needed to inspect the larger operations rather than the seven hours used in the prior cost analysis.

The total increased costs to the industry for the fees proposed in this rulemaking is estimated to be about \$1,200,000 when all phases of the proposed increases are implemented. Fee increases beyond that time would depend on the change in the United State Bureau of Labor Statistics index applied every two years.

Advisory Board Collaboration and Outreach

DEP has presented revenue and cost data to the Pennsylvania Aggregate and Concrete Association periodically since the increase in fee collections began in the Fall of 2012. In 2014, the Surface Mining Conservation and Reclamation Act was amended to create the Aggregate Advisory Board to advise DEP on matters pertaining to surface mining. The Aggregate Advisory Board reviewed the draft 2015 cost analysis at its initial meeting on May 13, 2015. In addition, DEP provided detailed data about the mining program's expenses and revenue at this meeting. The Aggregate Advisory Board conducted additional review of the cost and revenue data at its meeting on August 21, 2015.

In response to a request by advisory board members, DEP posted information regarding revenue and expenses for both the coal mining and noncoal mining programs on the Aggregate Advisory Board's webpage. DEP further discussed revenue data with the Aggregate Advisory Board on November 10, 2015, posted additional data on the Aggregate Advisory Board webpage, and discussed that data with the Regulatory, Legislative, and Technical (RLT) Committee of the Aggregate Advisory Board on January 19, 2016. At this meeting, DEP introduced the concept of phasing in fee increases and presented a preliminary draft Annex A that included a fee schedule.

On February 18, 2016, the RLT Committee met to review a preliminary draft Annex A. At a meeting of the full Aggregate Advisory Board, also on February 18, 2016, the Board discussed recommendations but ultimately tabled the issue for further action at a subsequent meeting. On May 4, 2016, the Aggregate Advisory Board met and referred the fee package to the RLT Committee for further review, with the intention of preparing a recommendation. The RLT Committee met on June 9, June 30 and July 18 and provided a recommendation to the Aggregate Advisory Board at the August 3, 2016, meeting. The Aggregate Advisory Board ultimately approved a recommendation that specified that DEP implement the preliminary fee schedule DEP proposed in January 2016 over six years, followed by a yearly adjustment to the fee schedule based on an index from the United States Bureau of Labor Statistics.

Public Comment

DEP recommends that this proposed rulemaking be adopted by the Board and published in the *Pennsylvania Bulletin* with a 30-day public comment period.