

**EXECUTIVE SUMMARY**  
**Noncoal Mining Program Fees**  
**25 Pa. Code Chapter 77**

*The Environmental Quality Board (Board) initially adopted this final-form rulemaking on August 21, 2018, enabling the rule to continue in the regulatory review process. On September 14, 2018, the rulemaking was submitted to IRRC for consideration, and it was added to IRRC's October 18, 2018 public meeting agenda. Prior to the scheduled IRRC meeting, the rulemaking was withdrawn to make clarifying amendments to the regulatory language. Specifically, language was added to clarify that the fee adjustment pursuant to the Employment Cost Index for State and Local Government Compensation will not be applied if doing so would result in fees that exceed the Department's cost of reviewing, administering and enforcing the permit. This added language is highlighted (as seen below) in all corresponding rulemaking documents provided for the December 18, 2018 Board meeting. The Department is recommending adoption of this final-form rulemaking, as amended.*

This final-form rulemaking amends 25 Pa. Code § 77.106 (relating to fees) in order to increase fees to support the noncoal mining program.

The amendments increase fees to help fund the noncoal mining program which implements the Noncoal Surface Mining Conservation and Reclamation Act (Noncoal 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 \$3,500,000 per year. Existing fees were finalized in 2012, based on cost estimates from 2009.

Without the increase of fees, the noncoal mining regulatory program will have to be curtailed, which means that the Department of Environmental Protection (Department) will not be capable of issuing, administering and enforcing permits required by the Noncoal 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.

This final-form rulemaking implements the Department's statutory authorization to collect a reasonable filing fee through two kinds of fees – the permit application fee and the annual administration fee. The permit application fee is intended to cover the Department'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 administration fee is intended to cover the Department'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 the tracking of required reporting and monitoring by permittees. As with the permit fees, the annual administration fees are set based on workload analyses. The annual administration fee schedule reflects the differences between types of operations based on the Department's respective administrative workload. The assessment of the two kinds of fees is necessary to fairly represent the cost to the Department for reviewing, and administering, a noncoal mining permit.

Revenues are growing more slowly than expenses. Fewer permit applications are being received, while at the same time those applications are becoming more complex and therefore require more hours of staff time. The proposed fees are tailored to this particular problem by assessing different fees for different types of projects. With the elimination of funding from the General Fund, this final form rulemaking will provide the noncoal mining program with a sustainable source of funding for the foreseeable future.

### Regulatory Requirements

The permit application fee schedule incrementally increases fee amounts. The first phase, to be effective January 1, 2020, includes an increase to reflect current wage and benefit rates resulting in about a 20% increase from current fees. The second phase, to be in effect January 1, 2022, adds about 25% to the fees to account for indirect costs (e.g. information technology, supplies and equipment). The third phase, scheduled to be in effect January 1, 2024, adds about 34% to the fee amounts to account for overhead (e.g. utilities, fuel and training). The phased-in structure will allow regulated entities time to prepare for the full impact of the increase.

Beginning January 1, 2026, an adjustment factor will be applied every two years to account for increases in costs by using an index from the Bureau of Labor Statistics. It is anticipated that the fee schedule will close the gap between revenue and expenses. Further, the Board has revised § 77.106(g) to ensure that the fee adjustment pursuant to the Employment Cost Index for State and Local Government Compensation is not applied if doing so would result in fees that exceed the Department's cost of reviewing, administering and enforcing the permit.

### Comments on the proposed rulemaking

Comments were received from one public commentator and the Independent Regulatory Review Commission (IRRC). The comments focused on the process for adjusting fee amounts based on an inflation index. In addition, the comments requested additional information and explanation about the available money to implement the noncoal mining program. Detailed responses have been included in the comment and response document and the regulatory analysis form.

### Revisions to the proposed rulemaking

This final-form rulemaking includes two revisions from the proposed rulemaking. A definition for the term Aggregate Advisory Board is added under § 77.1. Additionally, dates have been inserted for when the various schedules come into effect 2020, 2022, and 2024, respectively.

### Advisory board collaboration and outreach

During the proposed rulemaking process, the Department provided detailed information to the Aggregate Advisory Board. The draft fee report to the Aggregate Advisory Board was reviewed with the Board at their initial meeting on May 13, 2015. The information was provided through a series of meetings from May 2015 through November 2016, when the Board concurred with the Department's recommendation to proceed with the rulemaking process.

This final-form rulemaking was reviewed with the Aggregate Advisory Board at its May 9, 2018 meeting. The Aggregate Advisory Board, with the proviso that the actual dates be inserted in the

language for when the various schedules come into effect, concurred with the Department's recommendation to proceed with the final-form rulemaking process.