

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 86]

Coal Mining Fees

The Environmental Quality Board (Board) proposes to amend Chapter 86 (relating to surface and underground coal mining: general) to read as set forth in Annex A. The proposed rulemaking establishes a schedule of fees for coal mining activity permit applications.

This order was adopted by the Board at its meeting of October 12, 2010.

A. *Effective Date*

The proposed amendments will become effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Thomas Callaghan, Director, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103; or Richard S. Morrison, Assistant Counsel, 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 Pennsylvania 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 (Department) web site (<http://www.depweb.state.pa.us>).

C. *Statutory Authority*

The rulemaking is proposed 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(a) 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." The proposed amendments revise permit application review fees for coal mining activity permits. A schedule of fees for coal mining activity permit applications is proposed.

The coal mining regulatory program is funded, in part, through a grant from the Federal government under Title V of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328). Under this grant, funds are provided to cover the costs of up to 50% of the program. The Commonwealth must provide matching funds. The Commonwealth share has been provided through the general fund appropriation to the Department. For the most recent Federal fiscal year (October 2008 through September 2009), the Title V grant provided about \$11 million towards total program costs of approximately \$22 million, with the Commonwealth share of about \$11 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 proposed rulemaking will generate about \$400,000 per year in revenue.

This fee proposal is the result of a process where the Department worked with the Mining and Reclamation Advisory Board (MRAB), as described in more detail as follows. 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 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 proposed fee schedule, the first step (that is, the lowest wage rate) was used. Benefits (for example, health insurance, retirement and leave/holidays) cost the Commonwealth about 41% of the wage rate. Operational costs (for example, management, rent and 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 proposal establishes fees calculated to cover only a portion of the state share of the workload cost (that is, about 37%, or 3/8 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 being proposed (for example, minor revisions, blast plans, completion reports, preapplications and annual bond reviews).

Fee Calculation Example

A new surface mining permit takes 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 3/8 results in \$3,288. Rounding off results in the proposed fee amount of \$3,250.

MRAB

At a meeting 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 proposal and requested the Department to work with an MRAB committee to develop an alternative proposal. The strongest specific objection was the amount of the fees (for example, the proposed fee for a new surface mining permit was \$11,675). The October 2009 proposal contained permit application fees designed to cover the Commonwealth share of the Department'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, the Department 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 Commonwealth share for funding the program (that is, about \$11 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 its meeting in January 2010. The recommendations are summarized 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 applications) is reasonable.
- Any increase in permit fees should be dedicated exclusively to finance the mining program permit review process.
- The Department should not establish fees which would discourage or provide disincentives to re-mining activities and their reclamation benefits to the Commonwealth.
- It is reasonable to ask industry to contribute to funding some part of the coal mining program.
- The MRAB would like to continue to advise the Department 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 RLT Committee decided to report to the full MRAB its recommendation to proceed with the section of the draft regulations regarding permit application fees, but to recommend the Department not implement the annual administration fees. At the April 22, 2010, meeting, the MRAB recommended that the Department 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 proposed rulemaking was prepared following these MRAB recommendations.

E. Summary of Regulatory Requirements

§ 86.1. Definitions

Definitions are being 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 being revised to add subsection (b), which necessitates the lettering of the existing text 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 the Department’s cost of reviewing permits.

§ 86.17. Permit and reclamation fees

This section is being revised to include a detailed fee schedule for coal mining permit activity applications. The requirement to pay by check is being deleted from subsection (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 being amended to specify that the money collected from permit application fees will be used by the Department 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 the Department’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 the Department’s costs and the necessity for changes to the permit application fees.

F. Benefits, Costs and Compliance

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

Compliance Costs

The proposed rulemaking will impose a total additional compliance cost 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

The Department will provide written notification to all coal mine operators to inform them of the final promulgation of this proposed rulemaking.

Paperwork Requirements

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

G. Pollution Prevention

The proposed 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 (relating to environmental protection).

H. Sunset Review

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

I. Regulatory Review

Under section 5(a) and (f) of the Regulatory Review Act (71 P. S. § 745.5(a) and (f)), on December 14, 2010, the Department submitted a copy of this proposed rulemaking to Independent Regulatory Review Commission (IRRC). Under section 5(f) of the Regulatory Review Act, the Department will submit the proposed rulemaking and the required material to the Chairpersons of the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee (Committees) no later than the second Monday after the date by which both Committee designations have been published in the *Pennsylvania Bulletin*. In addition to submitting the proposed rulemaking, the Department provided IRRC and will provide the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

J. Public Comments

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by January 24, 2011. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by January 24, 2011. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by January 24, 2011. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JOHN HANGER,
Chairperson

Fiscal Note: 7-467. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter A. GENERAL PROVISIONS

§ 86.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Major permit revision—A revision to a coal mining permit that requires public notice.

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Permit application fee—A nonrefundable filing fee due at the time of submission of an application. The permit application fee is required in order for an application to be considered complete.

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§ 86.3. Use of Coal Refuse Disposal Control Fund.

(a) Moneys, including permit application fees, fines, bond forfeitures and civil penalties deposited in the Coal Refuse Disposal Control Fund may be used by the Department for the elimination of pollution, the abatement of health and safety hazards and nuisances, reclamation and other related uses including conducting scientific studies and research as authorized under the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66).

(b) Permit application fees required under this chapter for permit applications submitted pursuant to the Coal Refuse Disposal Control Act will be used by the Department to cover its costs to review the applications.

Subchapter B. PERMITS

GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

§ 86.17. Permit and reclamation fees.

(a) A permit application for coal mining activities shall be accompanied by a [check for \$250 payable] payment to the "Commonwealth of Pennsylvania[.]" for the amount of the permit application fee provided in the fee schedule in subsection (b) which corresponds to the type of application being submitted. For purposes of this subsection, permit applications include all of the applications listed in subsection (b).

(b) [A permit application for a coal preparation plant shall be accompanied by a check for \$250 payable to the "Commonwealth of Pennsylvania."] The permit application fee schedule is as follows:

Table with 2 columns: Description and Fee. Includes categories like (1) New permits, (2) Major permit revisions, (3) Permit transfer, (4) Permit renewal, and (5) Other actions.

(c) [A renewal application, whether the site has not yet been activated or where coal is being extracted, shall be accompanied by a check for \$250 payable to the "Commonwealth of Pennsylvania." A renewal application for reclamation activities requires no application fee.] For surface coal mine facilities, coal refuse reprocessing facilities, and coal mining activity facilities, except for bituminous underground mines, permit application fees collected will be deposited in the Surface Mining Conservation and Reclamation Fund. Permit application fees collected for bituminous underground mines will be deposited in the Bituminous Mine Subsidence and Land Reclamation Fund. For coal

refuse disposal facilities, permit application fees collected will be deposited in the Coal Refuse Disposal Control Fund. Permit application fees required under this section will be used by the Department to cover its costs to review permit applications.

(d) [A permit application for coal refuse disposal activities shall be accompanied by a check for \$500 plus \$10 per acre for acreage in excess of 50 acres payable to the "Commonwealth of Pennsylvania."] The Department will review the adequacy of the permit application fees established in this section at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it will contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

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[Pa.B. Doc. No. 10-2458. Filed for public inspection December 23, 2010, 9:00 a.m.]
