

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 86]

Coal Mining Fees

The Environmental Quality Board (Board) amends Chapter 86 (relating to surface and underground coal mining: general). 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 July 17, 2012.

A. *Effective Date*

This final-form rulemaking will become effective upon publication 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, Executive Deputy Chief Counsel, Office of Chief Counsel, P. O. Box 2063, Rachel Carson State Office Building, Harrisburg, PA 17105-2063, (717) 787-4449. Persons with a disability may use the AT&T Relay Service, (800) 654-5988 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at 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(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 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 (program) is funded, in part, through a grant from the Federal government under Title V of the Surface Mining Control and Reclamation Act (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 State share has been provided through the General Fund appropriation to the Department. For the most recent Federal Fiscal Year from October 2011 through September 2012, the Title V grant provided 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 the Department worked with the Mining and Reclamation Advisory Board (MRAB). The proposed fee amounts were calculated using a workload analysis system, the primary purpose of which is to manage staffing for the 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 and leave/holidays) cost the Commonwealth approximately 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 schedule 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 included (for example, minor revisions, blast plans, completion reports, preapplications and annual bond reviews).

Fee Calculation Example

A new surface mining permit takes Department 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 3/8 results in \$3,288 or \$3,250 if the amount is rounded off.

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 work with an MRAB committee to develop an alternative proposal. The MRAB's objection to the proposed rulemaking 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 State 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 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 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 January 2010 meeting. 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 program permit review process.
- The Department should not establish fees which would discourage or provide disincentives to remining activities and their reclamation benefits to the Commonwealth.
- It is reasonable to ask the industry to contribute to funding some part of the 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 Board their 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 final-form rulemaking follows these MRAB recommendations.

The proposed rulemaking was published at 42 Pa.B. 1228 (March 10, 2012) with a 30-day comment period. Comments were not 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 rulemaking and did not have objections, comments or recommendations to offer.

The final-form rulemaking is adopted as proposed (that is, changes were not made to the proposed regulations). The final-form rulemaking was approved by the MRAB at a special meeting 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 paragraph 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*

Subsection (a) is amended to include a detailed fee schedule for coal mining permit activity applications. The requirement to pay by check is 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 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 Board regarding the Department’s costs and the necessity for changes to the permit application fees.

F. *Benefits, Costs and Compliance*

This final-form rulemaking enables the Commonwealth to generate a percentage (less than 5%) of the State share of the funds required to operate the program.

Compliance Costs

The final-form rulemaking imposes 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 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 this final-form rulemaking.

Paperwork Requirements

This final-form rulemaking requires the Department to update its fact sheets explaining the law and regulations.

G. *Pollution Prevention*

This final-form rulemaking does not modify the pollution prevention approach by the regulated community and maintains the multimedia 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) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 29, 2012, the Department submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 1228, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

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 September 19, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory

Review Act, the final-form rulemaking was deemed approved by IRRC effective September 19, 2012.

J. Findings

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 Pa. 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 proposed rulemaking published at 42 Pa.B. 1228.

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

K. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 86, are amended by amending §§ 86.1, 86.3 and 86.17 to read as set forth at 42 Pa.B. 1228.

(b) The Chairperson of the Board shall submit this order and 42 Pa.B. 1228 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 42 Pa.B. 1228 to IRRC 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 42 Pa.B. 1228 and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

MICHAEL L. KRANCER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 6352 (October 6, 2012).)

Fiscal Note: Fiscal Note 7-476 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 12-2194. Filed for public inspection November 9, 2012, 9:00 a.m.]
