

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 77 ]

### Noncoal Mining Program Fees

The Environmental Quality Board (Board) proposes to amend Chapter 77 (relating to noncoal mining) to read as set forth in Annex A. This proposed rulemaking increases noncoal mining permit application fees and annual permit administration fees to provide funds necessary for the Department of Environmental Protection (Department) to administer the noncoal mine program.

This proposed rulemaking was adopted by the Board at its meeting on October 17, 2017.

#### A. *Effective Date*

This proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*.

#### B. *Contact Persons*

For further information, contact Thomas Callaghan, PG, Director, Bureau of Mining Programs, Rachel Carson State Office Building, 5th Floor, 400 Market Street, P.O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5015; or Joseph Iole, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board (EQB)").

#### C. *Statutory Authority*

This proposed rulemaking has been developed under the authority of sections 7(a) and 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (act) (52 P.S. §§ 3307(a) and 3311(a)), which authorize the Department to charge and collect a reasonable permit filing fee, which may not exceed the cost of reviewing, administering and enforcing the permit, and authorize the Board to promulgate regulations as it deems necessary to carry out the provisions and purposes of the act; section 6 of The Clean Streams Law (35 P.S. § 691.6), which authorizes the Department to charge and collect in accordance with its rules and regulations reasonable filing fees for applications filed and for permits issued; and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to adopt rules and regulations necessary for the performance of the work of the Department.

#### D. *Background and Purpose*

The Department is the agency responsible for issuing, administering and enforcing permits for noncoal surface mining under the act. Under section 2 of the act (52 P.S. § 3302), the purpose of the act is:

to provide for the conservation and improvement of areas of land affected in the surface mining of noncoal minerals, to aid in the protection of birds and

wildlife, to enhance the value of the land for taxation, to decrease soil erosion, to aid in the prevention of the pollution of rivers and streams, to protect and maintain water supply, to protect land, to enhance land use management and planning, to prevent and eliminate hazards to health and safety and generally to improve the use and enjoyment of the lands.

The Department is also responsible for issuing, administering and enforcing permits under The Clean Streams Law (35 P.S. §§ 691.1—691.1001), the objective of which is "not only to prevent further pollution of the waters of the Commonwealth, but also to reclaim and restore to a clean, unpolluted condition every stream in Pennsylvania that is presently polluted." See section 4(3) of The Clean Streams Law (35 P.S. § 691.4(3)). The Department fulfills these responsibilities through its noncoal mine program and collects fees consistent with its statutory authority from noncoal mining permit applicants and permittees to cover the costs incurred by the Department to administer the noncoal mining program.

The Department implements the noncoal mining program through the review of permit applications for the various types of noncoal mining operations and the inspection of these operations to ensure operators' compliance with their permits. These operations range from small quarries that produce less than 2,000 tons of material per year to large quarries that produce millions of tons of aggregate per year. The Department issues permits for the term of the expected mining activity, which also varies from a few years to decades. Operators can request modifications of their permits if their plans change. The Department inspects permitted noncoal mines for compliance with their permits and environmental and safety laws and regulations, including the act, The Clean Streams Law, Chapter 77 and Chapter 209a (relating to surface mining).

The Department has funded the activities necessary to administer the noncoal mining program through permit application fees, annual administration fees and funds appropriated by the General Assembly annually from general tax revenue through the budget process. The Board promulgated the current noncoal mine permit application fees and annual permit administration fees in § 77.106 (relating to fees) at 42 Pa.B. 6536 (October 13, 2012). These fees were promulgated based on a cost analysis performed by the Department in 2009, which estimated the cost to administer the noncoal mine program to be \$2.5 million. The General Assembly has not appropriated any funds to the Department to administer the noncoal mine program since that time.

The Department is required to review the fees necessary to implement the noncoal mining program every 3 years under § 77.106(d) and recommend changes to the Board. In 2015, the Department completed an analysis of its costs to administer the noncoal mining program. To complete this analysis, the Department 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, and the like). Following is a table from this 2015 analysis that includes a summary of the cost analysis showing revenues (permit and license fees, penalties and interest) and expenditures for the prior and future fiscal years at that point in time.

<i>Fiscal Year (FY)</i>	<i>Revenue</i>	<i>Program Costs</i>
FY-2 (2012-2013)	\$1,704,234.96	\$2,815,131.75
FY-1 (2013-2014)	\$2,452,449.76	\$3,019,992.63
Current FY (2014-2015)	\$2,500,000.00 (estimate)	\$3,100,000.00 (projected)
FY+1 (2015-2016)	\$2,500,000.00 (estimate)	\$3,200,000.00 (projected)
FY+2 (2016-2017)	\$2,500,000.00 (estimate)	\$3,300,000.00 (projected)
FY+3 (2017-2018)	\$2,500,000.00 (estimate)	\$3,400,000.00 (projected)

About 60% of the noncoal mining program costs are associated with inspections and enforcement. The remaining 40% is related to reviewing permit and license applications. The sources of revenue for the noncoal mining program for Fiscal Year (FY) 2013-14 were as follows:

<i>Category</i>	<i>Percentage</i>
Annual Administration Fees	56%
Permit Application Fees	17%
License Fees	9%
Civil Penalties	6%
Interest	12%

See the "3-Year Regulatory Fee and Program Cost Analysis Report to the Environmental Quality Board" presented at the May 20, 2015, meeting of the Board (available at <https://goo.gl/V1WszB>).

The Department's 2015 cost analysis is based on actual salaries for FY 2013-2014, which have increased since 2009. In addition, the cost of employee benefits (for example, health insurance, retirement, and the like) was estimated in 2009 to be approximately 40% of the employees' salaries. However, the actual cost for benefits for FY 2013-2014 was approximately 87% of salaries.

The Department concluded in its cost analysis 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 Department has implemented measures to decrease costs for the noncoal mining program. For example, the noncoal mining program has partnered with the coal mining program to reduce overhead costs and has reduced its administrative costs to less than 5% of the total program costs. However, while the efficiencies have reduced the cost of administering the noncoal mining program, these efficiencies alone could not offset the projected shortfall in funding that was identified in the 2015 cost analysis. Based on the Department's cost analysis and recommendation, the Board is proposing to increase the noncoal mining fees in this proposed rulemaking.

#### *Permit application fee*

The Department is responsible for reviewing permit applications for noncoal mining operations and issuing permits consistent with the act and The Clean Streams Law. The permit application fees in this proposed rulemaking are based on the 2015 cost analysis. As part of that analysis, the Department reviewed the number of hours required to review permit applications and issue permits for each type of noncoal mining operation. The Department also reviewed the wage rate for the employees that conduct the permit reviews, along with the cost of employee benefits and associated overhead costs. The

workload analysis data the Department used in the development of this proposed rulemaking is included in a spreadsheet with multiple pages available on the Aggregate Advisory Board's webpage at <http://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Aggregate-Advisory-Board/Pages/2015.aspx> (under "Aggregate Advisory Board RLT Meeting Agenda (9-22-15) (PDF)" select "2015 Inspection Staff Analysis (XLSM)"). Workload data for the Department's review of permit applications (labeled "authorizations" in the spreadsheet) as well as its administration and enforcement of permits is included in this document.

The proposed increases for noncoal mining permit fee applications vary based on the nature of the permit application. The time required by the Department to review a permit application varies depending on the complexity of the proposed noncoal mining operation. For example, applications for large noncoal surface mining operations that propose to pump groundwater take significantly more time to review because of their potential hydrologic impact. Therefore, the proposed increase in the permit application fee for these operations is based on the time required for review of this type of operation. Similarly, if blasting is proposed, then the blasting inspector is involved in the review of the blast plan for the application. Therefore, the proposed increase in the application fee for review of blast plans is based on the cost to review those plans.

As part of the 2015 cost analysis, the Department determined that the time necessary to review new noncoal mining permit applications has increased because of the complexity of the new noncoal mining operations being proposed. Thus, although the Department has experienced a decrease in the total number of permit applications received, it has experienced an overall increase in its permitting workload for noncoal mining operations.

#### *Annual administrative fee*

In addition to the Department's review of permit applications, it routinely inspects noncoal mining operations for which permits have been issued and takes appropriate actions to ensure these operations comply with their permits, and statutory and regulatory requirements. The Department has established inspection frequencies based upon the type of noncoal mining permit issued and the status of activity being conducted (that is, active, inactive, startup, and the like). Activities conducted by a Department inspector include review of the permit file for the noncoal mining operation, review of submissions made by the permittee under the permit and verification of compliance through a site review.

The Department categorizes noncoal mining operations based on size. Small operations are those authorized to produce up to 10,000 tons per year and large operations

are those that produce more than this amount. The Department typically inspects large operations four times per year and small operations two times per year. For noncoal mining operations authorized by their permits to conduct blasting, the Department also conducts a blasting inspection each year.

The proposed increases in annual permit administration fees for noncoal mining operations are based on the Department's 2015 cost analysis for conducting inspections and taking actions necessary to ensure these operations comply with their permits. The Department provided its calculations for the annual administration fees to the Aggregate Advisory Board in 2016, available at [http://files.dep.state.pa.us/Mining/BureauOfMiningPrograms/BMPPortalFiles/AAB/Agendas\\_and\\_Handouts/2016/January%202016%20Noncoal%20Admin%20Fee%20Phases.pdf](http://files.dep.state.pa.us/Mining/BureauOfMiningPrograms/BMPPortalFiles/AAB/Agendas_and_Handouts/2016/January%202016%20Noncoal%20Admin%20Fee%20Phases.pdf).

#### *Advisory board collaboration and outreach*

The Department has presented revenue and cost data to the Pennsylvania Aggregate and Concrete Association periodically since the fee collections published at 42 Pa.B. 6536 began. In 2014, the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.19b) was amended to create the Aggregate Advisory Board to advise the Department on matters pertaining to surface mining. See section 18(g.1) of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.18(g.1)). The Aggregate Advisory Board reviewed the draft 2015 cost analysis at its initial meeting on May 13, 2015. In addition, the Department 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 12, 2015.

By letter dated June 12, 2015, the Pennsylvania Concrete and Aggregate Association and the Pennsylvania Bluestone Association requested detailed information about the revenue and expenses for the coal mining and noncoal mining programs, including information on Federal grants provided the Department to implement Title V of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1251—1279). The Department posted data responding to this request on the Aggregate Advisory Board webpage and reviewed the data with the Aggregate Advisory Board's Regulatory, Legislative and Technical (RLT) Committee on September 22, 2015, and October 23, 2015. The data included the Department's Title V grant applications for the previous 5 years, the Federal Financial Reports for closing out its Title V grant for 5 years and the five most recent annual reports regarding the Department's administration of the Title V program. The Department also provided its workload analysis for the mining program, the total fees collected, the number and types of applications and inspections, and the hours worked by Department employees for the coal and noncoal mining programs. The Department also

reviewed the data, including additional revenue data, with the Aggregate Advisory Board at its November 10, 2015, meeting.

The Department posted additional data on the Aggregate Advisory Board webpage and reviewed the data with the RLT Committee at its January 19, 2016, meeting. The data included the Department's spend plan, which analyzed existing and projected revenue and expenses for the noncoal mining program. At this meeting, the Department introduced the concept of phasing in fee increases and presented a preliminary draft of the proposed revisions to § 77.106, which included a proposed fee schedule.

On February 18, 2016, the RLT Committee met to review the preliminary draft revisions to § 77.106. At a meeting of the full Aggregate Advisory Board on February 18, 2016, the Board discussed recommendations, but did not vote on a final recommendation. On May 4, 2016, the Aggregate Advisory Board met and referred the draft fee revisions to the RLT Committee for further review, with the intention of preparing a recommendation. The RLT Committee met on June 9, 2016, June 30, 2016, and July 18, 2016, and provided its recommendation to the Aggregate Advisory Board at the August 3, 2016, meeting. The RLT Committee recommended that the rulemaking proceed with the draft fee schedule as presented in January 2016, which phased in the proposed fee increases over 6 years, and adjusted the fee schedule annually after the phased increases are implemented based on an index from the United States Bureau of Labor Statistics. Further, this recommendation would coincide with continued collaboration with the Department on programmatic issues identified by the Aggregate Advisory Board. These issues are outlined in a Framework Document presented at the Board's meeting on August 3, 2016. By letter dated October 3, 2016, the Secretary of the Department sent notice to the Aggregate Advisory Board of the Department's "commitment to fully collaborate with the Aggregate Advisory Board on prioritizing and resolving the issues identified in the Framework Document."

As noted previously, on August 3, 2016, the Aggregate Advisory Board concurred with the Department's recommendation to move this proposed rulemaking forward for Board consideration. The data the Department provided to the Aggregate Advisory Board during the development of the noncoal fee rulemaking are available on the Aggregate Advisory Board's webpage at <http://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Aggregate-Advisory-Board/Pages/default.aspx>.

#### *E. Summary of Proposed Regulatory Requirements*

##### *§ 77.106. Fees*

Proposed amendments to subsection (e) increase noncoal mining permit application fees as summarized in the following table in three phases. The first phase would become effective on January 1 of the year following promulgation of the final-form rulemaking. The second and third phases would each become effective on January 1, 2 years after the prior phase becomes effective.



<i>Permit Application Fee Category</i>	<i>Current Fee</i>	<i>First Phase</i>	<i>Second Phase</i>	<i>Third Phase</i>
<i>Large Noncoal Surface Mining with Groundwater Pumping</i>				
Permit Application	\$22,225	\$22,450	\$25,525	\$29,500
Major Amendment	\$3,850	\$4,250	\$4,850	\$5,625
Minor Amendment	\$700	\$775	\$900	\$1,050
Transfer	\$900	\$975	\$1,125	\$1,300
<i>Large Noncoal Surface Mining without Groundwater Pumping</i>				
Permit Application	\$13,500	\$15,000	\$17,025	\$19,750
Major Amendment	\$1,600	\$1,775	\$2,000	\$2,350
Minor Amendment	\$700	\$775	\$900	\$1,050
Transfer	\$900	\$975	\$1,125	\$1,300
<i>Small Noncoal Surface Mining</i>				
Permit Application	\$525	\$600	\$675	\$775
Minor Amendment	\$175	\$200	\$225	\$250
<i>Underground Noncoal Mining</i>				
Permit Application	\$20,225	\$22,450	\$25,525	\$29,500
Major Amendment	\$2,650	\$2,950	\$3,350	\$3,900
Transfer	\$900	\$975	\$1,125	\$1,300
<i>Bonding Increment</i>	\$450	\$500	\$550	\$650
<i>Completion Report Application</i>	\$600	\$650	\$750	\$875
<i>Blast Plan</i>	\$475	\$550	\$675	\$775
<i>Notice of Intent to Explore</i>	\$60	\$65	\$75	\$85
<i>Pre-application</i>	\$3,375	\$3,750	\$4,250	\$4,950
<i>Permit Renewal</i>	—	\$175	\$200	\$225

Proposed amendments to subsection (f) increase noncoal mining annual permit administration fees as summarized in the following table. As with the permit application fees, these fees would be implemented in three phases. The first phase would become effective on January 1 of the year following promulgation of the final-form rulemaking. The second and third phases would each become effective on January 1, 2 years after the prior phase becomes effective.

<i>Annual Administrative Fee Category</i>	<i>Current Fee</i>	<i>First Phase</i>	<i>Second Phase</i>	<i>Third Phase</i>
Active Large Noncoal Surface Mining Permit	\$1,450	\$1,300	\$1,500	\$1,750
Active Large Noncoal Surface Mining Permit with Blasting	\$1,850	\$1,675	\$1,925	\$2,250
Active Small Noncoal Surface Mining Permit	\$200	\$400	\$450	\$500
Active Small Noncoal Surface Mining Permit with Blasting	\$300	\$550	\$625	\$700
Active Underground Noncoal Mining Permit	\$1,450	\$1,300	\$1,500	\$1,750
General Permit	\$200	\$400	\$450	\$500
All Noncoal Mining Permits—Not Started	\$100	\$125	\$150	\$175
All Noncoal Mining Permits—Inactive	\$100	\$125	\$150	\$175

Subsection (g) is proposed to be added as recommended by the Aggregate Advisory Board to provide for an ongoing fee adjustment factor. The Aggregate Advisory Board initially recommended annual adjustments, but subsection (g) proposes automatic adjustments every 2 years. The Department anticipates that the biennial adjustment is sufficient to keep the program fees on pace with inflation (or deflation) thereby potentially reducing the frequency of future fee-related rulemakings.

The first adjustment would be applied 2 years following the phase-in of the fees proposed in subsections (e) and (f). The adjustment would be based on the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation or another

similar index if found to be more appropriate. Any adjustment to fees based on this index would be in increments of \$25. This subsection also includes the requirement to review fee adjustments with the Aggregate Advisory Board and to publish the final fee adjustments in the *Pennsylvania Bulletin*.

#### F. Benefits, Costs and Compliance

This proposed rulemaking updates the existing permit application and annual permit administrative fee schedules for noncoal mining operations to provide funding for the Department to carry out its responsibilities under the act. This proposed rulemaking will benefit the public and the noncoal mining operators by enabling the Department to provide timely review and effective oversight of

permitted noncoal mining operations to achieve the purposes of the act. While this proposed rulemaking will increase the cost of compliance with the act, the fee increases are proposed to be phased in over 6 years to allow the noncoal mine operators to plan for these increased costs.

#### *Benefits*

As described in the purpose of the act quoted in Section D of this preamble, the General Assembly explains the benefits achieved by the act, which are to ensure that noncoal mining operations conducted in this Commonwealth prevent pollution of Commonwealth rivers and streams, restore the land for future beneficial use, protect water supplies, as well as soil and wildlife resources, and eliminate health and safety hazards. See section 2 of the act. The Department is the agency responsible for administering the act to achieve these benefits. See section 7 of the act.

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

The Department's ability to fulfill its responsibilities under the act is essential to the vitality of noncoal mining in this Commonwealth because this activity can only occur consistent with the mandates of the act when the Department can properly issue and administer noncoal mining permits. Each year, the Department processes approximately 500 noncoal mining permits and conducts approximately 5,000 inspections of noncoal mining operations to ensure this industry can benefit this Commonwealth's economy while protecting its natural resources consistent with the act. The noncoal mining industry generates approximately \$20 billion dollars per year in this Commonwealth and consistently ranks among the top ten noncoal mineral producers in the United States.

#### *Compliance costs*

As shown in the previous tables, the proposed permit application fees and proposed annual permit administration fees for noncoal mining operations would increase incrementally over 6 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 Department staff in the noncoal mining program have increased between 2009 and 2015. In addition, the Department determined an average of 3 hours is needed to inspect a small noncoal mine operation, rather than the 2 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. As discussed in Section D of this preamble, the salary and benefit costs for Department staff in the noncoal mining program have increased between 2009 and 2015. The percent increase to annual administration fees for large noncoal operations was less than that for small noncoal operations because the Department determined that an average of 5 hours is needed to inspect the larger operations rather than the 7 hours used in the prior cost analysis.

The total increased costs to the industry for the fees in this proposed rulemaking is estimated to be about \$1.2 million when all phases of the proposed increases are implemented. Fee increases beyond that time would depend on the change in the United States Bureau of Labor Statistics index applied every 2 years.

#### *Compliance assistance plan*

Compliance assistance for this proposed rulemaking will be provided through routine interaction with the Aggregate Advisory Board, trade groups and individual applicants.

#### *Paperwork requirements*

No additional paperwork is required under this proposed rulemaking.

#### *G. Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking has minimal impact on pollution prevention since it is focused on establishing appropriate fees to cover the Department's costs to administer the act.

#### *H. Sunset Review*

The Board is not establishing a sunset date for this regulation, since it is needed for the Department to carry out its statutory authority. The Department will continue to closely monitor this regulation for its effectiveness and recommend updates to the Board as necessary.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 17, 2018, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. 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 this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding this proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by March 5, 2018.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

PATRICK McDONNELL,  
*Chairperson*

**Fiscal Note:** 7-523. 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 77. NONCOAL MINING

Subchapter C. PERMITS AND PERMIT APPLICATIONS

GENERAL

§ 77.106. Fees.

(a) **Payment.** A permit application for noncoal mining activities shall be accompanied by a nonrefundable payment for the permit application fee payable to the “Commonwealth of Pennsylvania.” The applicable permit application fee amount is specified in subsection (e). For purposes of this subsection, permit applications include all of the applications listed in subsection (e).

(b) **Assessment.** The Department will assess an annual administration fee for each permitted activity and facility. For licensed mine operators, this annual administration fee will be assessed annually, will be collected as part of the mine operator’s license renewal application and will include the appropriate annual administration fee for each of the licensee’s permitted facilities. If the permittee is not required to maintain a mining license, a notice of the annual administration fee will be sent to the permittee for all of the permittee’s permitted facilities and the fee must be paid within 30 days of receipt of the notice. The applicable fee amounts are specified in subsection (f).

(c) **Deposit of funds.** Fees collected under this section and all enforcement cost recovery funds will be deposited in the Noncoal Surface Mining Conservation and Reclamation Fund. The fees collected under this section will be used by the [ department ] **Department** for the purposes specified by the act.

(d) **Regulatory amendment.** At least every 3 years, the Department will recommend regulatory changes to the fees in this section to the EQB to address any disparity between the program income generated by the fees and program costs. The regulatory amendment will be based upon an evaluation of the program fees income and the Department’s costs of administering the program.

**(e) The permit application fee schedule is as follows:**

(1) <i>New permits</i>	<i>Fee</i>
Large Surface Mining Permit—Groundwater Pumping Authorized	\$20,225
Large Surface Mining Permit—No Groundwater Pumping	\$13,500
Small Surface Mining Permit	\$525
Underground Mining Permit	\$20,225

<i>(2) Major amendments</i>	<i>Fee</i>
Large Surface Mining Permit—Groundwater Pumping Authorized	\$3,850
Large Surface Mining Permit—No Groundwater Pumping	\$1,600
Underground Mining Permit	\$2,650
<i>(3) Minor Amendments</i>	<i>Fee</i>
Large Surface Mining Permit	\$700
Small Surface Mining Permit	\$175
<i>(4) Transfers</i>	<i>Fee</i>
Large Surface Mining Permit	\$900
Underground Mining Permit	\$900
<i>(5) Other Actions</i>	<i>Fee</i>
Bonding Increment	\$450
Completion Report Application	\$600
Blast Plan	\$475
Notice of Intent to Explore	\$60
Pre-applications	\$3,375

(f) The annual administration fee schedule will be as follows:

<i>Permit Category—Permit Status</i>	<i>Annual Fee</i>
Large Surface Mining Permit—Active	\$1,450
Large Surface Mining Permit—Active with Blasting	\$1,850
Small Surface Mining Permit—Active	\$200
Small Surface Mining Permit—Active with Blasting	\$300
Underground Mining Permit—Active	\$1,450
General Permit	\$200
All Permits—Not Started	\$100
All Permits—Inactive	\$100 ]

(e) *Permit application fee schedule.*

(1) Effective January 1, \_\_\_\_ (*Editor's Note: The blank refers to the year after which this proposed rulemaking is adopted.*), the permit application fee schedule is as follows:

<i>(i) New Permits.</i>	<i>Fee</i>
Large Surface Mining Permit—Groundwater Pumping Authorized	\$22,450
Large Surface Mining Permit—No Groundwater Pumping	\$15,000
Small Surface Mining Permit	\$600
Underground Mining Permit	\$22,450
<i>(ii) Major Amendments.</i>	<i>Fee</i>
Large Surface Mining Permit—Groundwater Pumping Authorized	\$4,250
Large Surface Mining Permit—No Groundwater Pumping	\$1,775
Underground Mining Permit	\$2,950
<i>(iii) Minor Amendments.</i>	<i>Fee</i>
Large Surface Mining Permit	\$775
Small Surface Mining Permit	\$200
<i>(iv) Transfers.</i>	<i>Fee</i>
Large Surface Mining Permit	\$975
Underground Mining Permit	\$975
<i>(v) Other Actions.</i>	<i>Fee</i>
Bonding Increment	\$500
Completion Report Application	\$650
Blast Plan	\$550

<u>Notice of Intent to Explore</u>	<u>\$65</u>
<u>Pre-applications</u>	<u>\$3,750</u>
<u>Renewal</u>	<u>\$175</u>

(2) Effective January 1, \_\_\_\_\_ (*Editor's Note: The blank refers to 3 years after the year in which this proposed rulemaking is adopted.*), the permit application fee schedule is as follows:

<u>(i) New Permits.</u>	<u>Fee</u>
<u>Large Surface Mining Permit—Groundwater Pumping Authorized</u>	<u>\$25,525</u>
<u>Large Surface Mining Permit—No Groundwater Pumping</u>	<u>\$17,025</u>
<u>Small Surface Mining Permit</u>	<u>\$675</u>
<u>Underground Mining Permit</u>	<u>\$25,525</u>
<u>(ii) Major Amendments.</u>	<u>Fee</u>
<u>Large Surface Mining Permit—Groundwater Pumping Authorized</u>	<u>\$4,850</u>
<u>Large Surface Mining Permit—No Groundwater Pumping</u>	<u>\$2,000</u>
<u>Underground Mining Permit</u>	<u>\$3,350</u>
<u>(iii) Minor Amendments.</u>	<u>Fee</u>
<u>Large Surface Mining Permit</u>	<u>\$900</u>
<u>Small Surface Mining Permit</u>	<u>\$225</u>
<u>(iv) Transfers.</u>	<u>Fee</u>
<u>Large Surface Mining Permit</u>	<u>\$1,125</u>
<u>Underground Mining Permit</u>	<u>\$1,125</u>
<u>(v) Other Actions.</u>	<u>Fee</u>
<u>Bonding Increment</u>	<u>\$550</u>
<u>Completion Report Application</u>	<u>\$750</u>
<u>Blast Plan</u>	<u>\$675</u>
<u>Notice of Intent to Explore</u>	<u>\$75</u>
<u>Pre-applications</u>	<u>\$4,250</u>
<u>Renewal</u>	<u>\$200</u>

(3) Effective January 1, \_\_\_\_\_ (*Editor's Note: The blank refers to 5 years after the year in which this proposed rulemaking is adopted.*), the permit application fee schedule is as follows:

<u>(i) New Permits.</u>	<u>Fee</u>
<u>Large Surface Mining Permit—Groundwater Pumping Authorized</u>	<u>\$29,500</u>
<u>Large Surface Mining Permit—No Groundwater Pumping</u>	<u>\$19,750</u>
<u>Small Surface Mining Permit</u>	<u>\$775</u>
<u>Underground Mining Permit</u>	<u>\$29,500</u>
<u>(ii) Major Amendments.</u>	<u>Fee</u>
<u>Large Surface Mining Permit—Groundwater Pumping Authorized</u>	<u>\$5,625</u>
<u>Large Surface Mining Permit—No Groundwater Pumping</u>	<u>\$2,350</u>
<u>Underground Mining Permit</u>	<u>\$3,900</u>
<u>(iii) Minor Amendments.</u>	<u>Fee</u>
<u>Large Surface Mining Permit</u>	<u>\$1,050</u>
<u>Small Surface Mining Permit</u>	<u>\$250</u>
<u>(iv) Transfers.</u>	<u>Fee</u>
<u>Large Surface Mining Permit</u>	<u>\$1,300</u>
<u>Underground Mining Permit</u>	<u>\$1,300</u>
<u>(v) Other Actions.</u>	<u>Fee</u>
<u>Bonding Increment</u>	<u>\$650</u>
<u>Completion Report Application</u>	<u>\$875</u>



<u>Blast Plan</u>	<u>\$775</u>
<u>Notice of Intent to Explore</u>	<u>\$85</u>
<u>Pre-applications</u>	<u>\$4,950</u>
<u>Renewal</u>	<u>\$225</u>

**(f) Annual administration fee schedule.**

**(1) Effective January 1, \_\_\_\_ (Editor’s Note: The blank refers to the year after which this proposed rulemaking is adopted.), the annual administration fee schedule will be as follows:**

<u>Permit Category—Permit Status</u>	<u>Annual Fee</u>
<u>Large Surface Mining Permit—Active</u>	<u>\$1,300</u>
<u>Large Surface Mining Permit—Active with Blasting</u>	<u>\$1,675</u>
<u>Small Surface Mining Permit—Active</u>	<u>\$400</u>
<u>Small Surface Mining Permit—Active with Blasting</u>	<u>\$550</u>
<u>Underground Mining Permit—Active</u>	<u>\$1,300</u>
<u>General Permit</u>	<u>\$400</u>
<u>All Permits—Not Started</u>	<u>\$125</u>
<u>All Permits—Inactive</u>	<u>\$125</u>

**(2) Effective January 1, \_\_\_\_ (Editor’s Note: The blank refers to 3 years after the year in which this proposed rulemaking is adopted.), the annual administration fee schedule will be as follows:**

<u>Permit Category—Permit Status</u>	<u>Annual Fee</u>
<u>Large Surface Mining Permit—Active</u>	<u>\$1,500</u>
<u>Large Surface Mining Permit—Active with Blasting</u>	<u>\$1,925</u>
<u>Small Surface Mining Permit—Active</u>	<u>\$450</u>
<u>Small Surface Mining Permit—Active with Blasting</u>	<u>\$625</u>
<u>Underground Mining Permit—Active</u>	<u>\$1,500</u>
<u>General Permit</u>	<u>\$450</u>
<u>All Permits—Not Started</u>	<u>\$150</u>
<u>All Permits—Inactive</u>	<u>\$150</u>

**(3) Effective January 1, \_\_\_\_ (Editor’s Note: The blank refers to 5 years after the year in which this proposed rulemaking is adopted.), the annual administration fee schedule will be as follows:**

<u>Permit Category—Permit Status</u>	<u>Annual Fee</u>
<u>Large Surface Mining Permit—Active</u>	<u>\$1,750</u>
<u>Large Surface Mining Permit—Active with Blasting</u>	<u>\$2,250</u>
<u>Small Surface Mining Permit—Active</u>	<u>\$500</u>
<u>Small Surface Mining Permit—Active with Blasting</u>	<u>\$700</u>
<u>Underground Mining Permit—Active</u>	<u>\$1,750</u>
<u>General Permit</u>	<u>\$500</u>
<u>All Permits—Not Started</u>	<u>\$175</u>
<u>All Permits—Inactive</u>	<u>\$175</u>

**(g) The fees in subsections (e) and (f) will be adjusted by the Department every 2 years, beginning on January 1, \_\_\_\_ (Editor’s Note: The blank refers to 7 years after the year in which this proposed rulemaking is adopted.), based on the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation, or an equivalent index recognized by the United States Department of Labor. The adjustment will be based upon the cost difference for the most recent 2-year period prior to the calculation. The fee schedule will be adjusted in increments of \$25. The Department will provide the proposed fee schedule to the Aggregate Advisory Board for review prior to publication. The final adjusted fee schedule will be effective upon publication in the *Pennsylvania Bulletin*.**

[Pa.B. Doc. No. 18-180. Filed for public inspection February 2, 2018, 9:00 a.m.]

**OFFICE OF ATTORNEY GENERAL****[ 37 PA. CODE CHS. 301 AND 311 ]****Unfair Market Trade Practices; Automotive Industry Trade Practices; Withdraw of Proposed Rulemaking**

The Office of Attorney General hereby withdraws the proposed rulemaking which would have amended the Unfair Trade Practices and Consumer Protection Law (73 P.S. §§ 201-1—201-9.3) regulations. Chapter 301 (relating to automotive industry trade practices) was proposed to be amended and Chapter 311 (relating to unfair market trade practices) was proposed to be added.

This proposed rulemaking was published at 48 Pa.B. 267 (January 13, 2018).

The public hearing scheduled for 10 a.m. on February 12, 2018, is hereby canceled.

Further information is available by contacting Joseph Betsko, Senior Deputy Attorney General, (717) 787-4530.

MICHELLE A. HENRY,  
*First Deputy  
Attorney General*

[Pa.B. Doc. No. 18-181. Filed for public inspection February 2, 2018, 9:00 a.m.]