

**Aggregate Advisory Board
Regulatory, Legislative and Technical Committee
Permit Fees Recommendation
February 18, 2016**

The Aggregate Advisory Board Regulatory, Legislative and Technical Committee (RLT Committee) welcomes this opportunity to work with the Department of Environmental Protection (DEP) regarding the proposed permit fees for the noncoal mining industry. In order to better understand the reasoning for these fees, the Aggregate Advisory Board requested the DEP provide a combining statement of revenues, disbursements and changes in cash balances for both the noncoal and coal portions of the DEP Mining Program. At this time, the Aggregate Advisory Board RLT Committee only received a portion of the requested noncoal and coal documentation. With the foregoing in mind, the Aggregate Advisory Board RLT Committee makes the following recommendation:

The Aggregate Advisory Board RLT Committee recognizes that the General Assembly funds the Department from taxpayer dollars to fulfill its mission and purpose. Therefore, the funds appropriated to the Department should, first and foremost, be utilized for the programs already created to ensure proper management of those programs.

The Aggregate Advisory Board RLT Committee agrees that it is reasonable for the DEP to collect fees for reviewing, administering and enforcing the Mining Program, as supported by regulation, and in a manner consistent and equitable. The noncoal statute does not state that industry should pay 100 percent of the cost of the Mining Program. Furthermore, the RLT Committee recognizes that the DEP Mining Program is a multi-stakeholder program and a percentage paid by the two stakeholders—noncoal and coal—based on the information provided to the Aggregate Advisory Board and the Mining and Reclamation Advisory Board by the DEP, should be equitable. The fees should be assessed to those entities regulated by the Mining Program such that only specific costs as outlined below to review, administer and enforce the noncoal portion of the Mining Program are assessed to the noncoal operators, and the coal portion of the Mining Program are assessed to the coal operators. Given the Mining Program has two stakeholders, each stakeholder should pay equal percentages of their respective share of the Mining Program costs. For example, if one stakeholder is only paying 50 percent of their respective share, then the other stakeholder should only pay 50 percent of their respective share.

For the noncoal administrative fees, the fees should be based on the salary rate as noted in the Department's *January 2016 Noncoal Administrative Fee Phases* plus a 37 percent benefits cost¹ times the average of the total number of noncoal sites over the last three years per the Department's *Industrial Minerals Mines and Quarries - Summary Production Information by County*, adjusted yearly by the percentage, up or down, by which the Consumer Price Index average for All-Urban Consumers for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year.

Administrative fees for forfeited sites should be covered by the general funds appropriated to the DEP by the PA Legislature.

For permit fees, the baseline fee should be calculated using the average number of hours to perform each specific category of permit review timeframes per the Department's 2015 workload analysis, times the 2016 average salary of DEP permit reviewers and administrative support, plus a 37 percent benefit cost. This fee should be adjusted yearly by the percentage, if any, by which the Consumer Price Index average for All-Urban Consumers for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year.

All the governmental infrastructure costs incurred by the DEP in operating the Mining Program, as well as its general operations, should be covered by the general funds appropriated to the DEP by the PA Legislature. In other words, the noncoal and coal operators should only be assessed for the variable costs of reviewing, administering and enforcing their portion of the Mining Program.

In determining the DEP's variable costs for reviewing, administering and enforcing the noncoal portion of the Mining Program, the DEP must represent that the noncoal Mining Program is operated in an efficient and cost-effective manner within the realm of the noncoal regulations and the DEP's Permit Decision Guarantee, and as part of an equitable funding of the Mining Program by both the noncoal and coal stakeholders.

¹ U.S. Department of Labor, Bureau of Labor Statistics, Employer Costs for Employee Compensation, September 2015, found at <http://www.bls.gov/news.release/ecec.t04.htm>.

In support of DEP's transparency policy and to provide a baseline of the Mining Program operations, the DEP will provide to the Aggregate Advisory Board, an annual Mining Program financial statement report consisting, at a minimum, of a combining statement of revenues, disbursements and changes in cash balances, workload analysis, employees assigned to each of the noncoal and coal programs via a trackable, consistent and secure numbering system, and inspections performed by site, no later than December 31 of the most recent fiscal year.

Any new revenue generated from industry stakeholders of the Mining Program, would be deducted from the revenue generated by the respective Mining Program permit fees.

The Department must ensure that any existing or future noncoal permit and administrative fees paid to other DEP Funds (i.e., the Clean Water Fund), should be credited to the noncoal portion of the mining program only.

The RLT Committee also recommends that the DEP work with the Aggregate Advisory Board via the RLT Committee, on the development of the Preamble and Annex to implement this fee package.