

NOTICE OF PROPOSED RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Environmental Quality Board
(25 Pa. Code Chapter 77)
Noncoal Mining Fees

Preamble

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 addresses the fees paid by noncoal mine operators.

This proposal was adopted by the Board at its meeting of _____.

A. Effective Date

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact William S. Allen, Jr., Acting 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 AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's website at www.depweb.state.pa.us.

C. Statutory Authority

The amendments are proposed under sections 7(a) and 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (Act) (52 P. S. §§ 3307(a) and 3311(a)) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. Background and Purpose

The purpose of this rulemaking is to establish fees as authorized by the Act. Section 7 of the act states: "The department is authorized to charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing, administering and enforcing the permit." 52 P.S. § 3307(a). The Act thus authorizes the Department to collect fees from noncoal mining permit applicants and permittees in an amount sufficient to cover all of the Department's costs of administering the noncoal mining regulatory program, so long as the amount of fees collected does not exceed those costs. The Department has calculated its costs of administering the noncoal mining program and will establish fees through this regulation which are sufficient to cover most of its costs.

The proposed regulations implement the statutory authorization of the Act to collect a reasonable filing fee through two kinds of fees, the permit application fee and the administrative fee. The permit application fee is intended to cover only the Department's cost to review noncoal mining permit applications. The permit fees have been set according to the type of permit application submitted; the amounts of these fees are based on the number of hours typically required to review a specific type of permit application. A large noncoal surface mining permit where mining will take place below the water table is substantially more complex, and requires significantly more review time, than a small noncoal surface mining permit. The amount of the respective permit fees reflects the average review time for each type of permitting action.

The annual administrative fee is intended to cover the Department's cost of administering the permit. These include, among other things, the cost of performing inspections of noncoal mining operations, compliance assistance, and other compliance related activities, as well as tracking of required reporting and monitoring by permittees. As with the permit fees, the annual administrative fees have been set based on workload analyses. A large surface mining permit with blasting activity necessitates substantially more administrative activity by the Department; the annual administrative fee 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 Commonwealth for reviewing, and administering, a noncoal mining permit. This proposed rulemaking has become necessary in large part due to recent funding cuts. General appropriation funds to support the Department's regulatory/permitting programs was significantly reduced in fiscal year 2009-10 so it has become necessary to pay for all of the noncoal mining program through collection of fees paid by the regulated industry. The cost of implementing this program is \$2.5 million per year.

Permit Application Fee

The permit application fee amounts were calculated based on a workload analysis that the Department uses to manage the work force. The workload analysis assigns a certain number of hours for the review time for each type of application. Other factors, including the wage rate for the employee classification that reviews the application, benefits and overhead are included in the fee calculation. The result of this calculation was then rounded off.

Permit applications vary in their complexity based on a number of factors. The primary factor relates to hydrologic impacts. Applications that propose to mine below the water table take more time to review. Therefore, the application fee for these permits is higher. Similarly, if blasting is proposed, then the Blasting inspector is involved in the review of the blast plan for the application. Therefore, a fee is being proposed for blast plans.

Annual Administration Fee

The annual administration of a noncoal mining permit is accomplished through routine inspections to assure that the mining activities are in compliance with the permit requirements.

The Department has established inspection frequencies based upon the type of permit and the status of the activity.

There are two types of permits, small and large. Small permits authorize up to 10,000 tons per year in production. Large permits are needed for production that exceeds 10,000 tons per year. The inspection frequency for large permits is four per year. For small permits, the frequency is two per year.

For large permits that authorize blasting, one inspection per year by the Blasting Inspector is needed. This results in a higher annual administrative fee amount for the large noncoal permits where blasting is authorized.

There is no advisory board for the noncoal mining program. However, the Department has engaged in extensive outreach with the regulated community. Feedback from the industry was considered in the drafting of the proposed regulations.

E. Summary of Regulatory Requirements

The following sections are included in this proposed rulemaking:

§ 77.1 (relating to definitions)

This section is being amended to add definitions of Annual Administration Fee, Large Noncoal Permit, Major Permit Revision, Minor Permit Revision, Permit Application Fee, Permit Status and Small Noncoal Permit. These definitions are needed for clarity in implementing the fee schedules.

§ 77.51 (relating to License requirement)

Subsection (e) is being amended to require an operator to pay fees in order to be eligible for a renewal of a mining license.

§ 77.106 (relating to Permit Fees)

This section is being renamed from “Permit Fees” to “Fees” and revised to include fee schedules for the permit application fees and annual administration fees. This section also specifies the intended use of the funds collected from the fees to support the Department’s costs of reviewing applications and administering and enforcing permits.

§ 77.126 (relating to Criteria for permit approval or denial)

Subsection (c) is being added to include the requirement that an applicant pay all fees before a permit application may be approved by the Department.

F. Benefits, Costs and Compliance

Benefits

The money generated by these fees will enhance environmental protection by assuring that the Department has the funds needed to review permit applications in order to prevent problems from occurring and administer the permits to assure compliance.

Compliance costs

The proposed rulemaking will impose increased compliance costs on the regulated community. There are about 1500 noncoal mining permit holders in Pennsylvania. It is expected that the fees will cost the industry \$2.5 million per year.

Compliance assistance plan

The Department will revise forms used by the industry once the fees are finalized.

G. Pollution Prevention

The proposed rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multimedia pollution prevention approach of existing requirements in Chapter 77.

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 _____, 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 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 _____. 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 _____. 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 _____. 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.

BY:

JOHN HANGER,
Chairperson
Environmental Quality Board