

**NOTICE OF PROPOSED RULEMAKING  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**[25 PA. CODE CHAPTER. 86]**

**Coal Mining Fees**

The Environmental Quality Board (Board) proposes to amend Chapter 86 (relating to surface and underground coal mining). 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 \_\_\_\_\_.

**A. Effective Date**

The proposed amendments will become effective upon publication as final rulemaking 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 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 (52 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 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.” 52 P.S. § 1396.4(a). The proposed regulations 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 Federal Surface Mining Control and Reclamation Act 30 U.S.C. § 1201 et seq. Under this grant, funds are provided to cover the costs of up to 50% of the program. The Commonwealth must provide matching funds. This state 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 State 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 below. 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 (i.e., 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 (i.e., the lowest wage rate) was used. Benefits (e.g., health insurance, retirement, leave/holidays) cost the Commonwealth about 41% of the wage rate. Operational costs (e.g., management, rent, 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 (i.e. about 37%, or three-eighths 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 (e.g., minor revisions, blast plans, completion reports, pre-applications 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 three-eighths results in \$3,288. Rounding off results in the proposed fee amount of \$3,250.

## *Mining and Reclamation Advisory Board*

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 proposal of October 2009 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 (i.e. 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 their meeting in January 2010. The recommendations are summarized below:

- 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.
- DEP should not establish fees which would discourage or provide disincentives to remaining activities and their reclamation benefits to the State.
- It is reasonable to ask industry to contribute to funding some part of the coal mining program.
- MRAB would like to continue to advise DEP 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 committee decided to report to the full board their recommendation to proceed with the section of the draft regulations relating to 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 paragraph b, which necessitates the lettering of the existing paragraph as paragraph a. Paragraph 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 paragraph a, to allow applicants the option of paying by other methods (e.g. credit card).

Paragraph b sets forth the detailed permit application fee schedule.

Paragraph 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.

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

### **Compliance Costs**

The proposed changes will impose a total 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 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 these regulatory changes.

## *Paperwork Requirements*

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

### **G. Pollution Prevention**

The 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.

### **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**

In accordance with section 5(a) and (f) of the Regulatory Review Act (71 P.S. §§ 745.5a and (f)), the Department submitted a copy of the proposed rulemaking on \_\_\_\_\_, 2010, to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the *Pennsylvania Bulletin*, and to the Independent Regulatory Review Commission (Commission). In accordance with Section (f) of the act (71 P.S. § 745.5(f)), the Department will submit the proposed regulations 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 amendments, the Department has provided the Commission 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 amendments to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th 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 \_\_\_\_\_ (within 30 days of publication in the *Pennsylvania Bulletin*). 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 two working days, the comments should be retransmitted to ensure receipt.

JOHN HANGER  
Chairperson  
Environmental Quality Board