

Comment and Response Document Noncoal Fee Regulations

Comments received in response to the Environmental Quality Board comment period.

Commentators:

(1)

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(2)

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The applicable commentators are listed in parentheses following each comment. Comments are grouped by category.

Support

Comment: I fully support the proposed rulemaking to amend Chapter 77 (relating to noncoal mining) to increase the permit application fees and to add an annual administration fee to be paid by noncoal mine operators. (2)

Response: The support is noted.

Comment: I support assessing fees for the small operators differently. In the proposal they are not self supporting. The fees for the small sites should be increased. (1)

Response: The fee amounts were calculated based on a comprehensive workload analysis that accounts for differences between small and large permits, including variability in permit application complexity and ranges of ongoing costs related to administering and enforcing the permit. Based on that workload analysis, the fees are self-supporting.

Opposition

Comment: I hope you will reconsider these fee increases. Small operators are struggling. (3)

Comment: The fee increases will discourage hard working mine operators. (4)

Comment: As a quarrymen and the land owner of a bluestone quarry I am opposed to the Rulemaking. (11)

Comment: The draconian fees for "non-coal mining" enterprises have the effect of crippling virtually all commercial enterprises. (6)

Comment: To increase the fees by over 100 fold is not only unfair to industry, but also will place a hardship on the industry as a whole (5)

Comment: I would like the DEP to look at this fee schedule before finalizing since this will put more quarries out of business and also discourage more people from coming into the business. We also encourage an open dialogue with the DEP on any future changes. We thought we were an important industry for the state, please treat us as such. (12), (13)

Comment: The proposed fees present significant challenges to the bluestone and quarry industries in the Commonwealth. It is not prudent to offset budget reductions through these excessive fees at the expense of small businesses. The EQB should reject these fee increases. (19)

Comment: The proposed fee structure is neither realistic nor justified. While the current fees are antiquated, a 100 fold increase is exorbitant. A fee in the \$1,500 to \$2,500 range for a large noncoal permit would be more palatable to industry. (8)

Comment: To increase the quarry license fee four fold with the new legislation would create economic hardship given today's economic recession. (18)

Comment: The ripple effect of the Department increased fees will be to drive more and more small operators out of business. (16)

Comment: The increased fees will decrease the total number of aggregate producers in our state because of your new costs. This will decrease competition and let the larger companies who can afford to pay your new rates, to charge the state whatever they want. (9)

Comment: As a Quarrymen and owner of a bluestone business, I am opposed to the rule makings of the NON-COAL MINING FEES. If you raise the fees THERE WILL NO BLUE STONE INDUSTRY to raise the fees on. Please consider leaving well enough alone as I do not believe that we should have to pay anymore then we are already paying. (10)

Comment: The department continues to increase revenue by penalizing honest people who willingly permit their quarries. What about the dishonest people who knowing and willingly violated Pa state laws, leaving quarries abandoned all over Northeastern PA., forfeit their bonds and walk away laughing? (16)

Comment: We believe if the state of Pennsylvania keeps raising fees you will put many of these bluestone operations out of business since many of them are 2 or 3 men operations. The Pennsylvania Bluestone Association can not support increases that will put people out of work especially when the increases are not warranted when we most recently accepted new bonding increases. (12), (13)

Comment: As a member of the regulated community I would like to ask the board not to approve the fee increases requested by the Bureau of Mining and Reclamation. I believe these fees are excessive and represent inaccurate calculations leading to wrong conclusions. While I am willing to admit that an increase to the existing fees may be warranted, I believe the significant increases requested are neither valid nor reasonable, especially in the midst of our current economic climate. (15)

Comment: Review times attributable to the public or resource agency comments should be solely borne by the Commonwealth. (7)

Comment: I believe the Department has overstepped the bounds of “reasonable” in this case simply due to a shortage of funds from the General Budget. (15)

Comment: Several commentators, including Representative Sandra Major, have stated that they are aware of the budgetary problems and hardships facing the Department of Environmental Protection. However, they believe that the fee schedule being imposed, and the \$2.5 million it is projected to generate, is an economic burden that Pennsylvania businesses cannot afford at this time. They are concerned that the fees could potentially force some of Pennsylvania's mine operators to close their businesses. (20)

Response: The fees are necessary as the result of the reduced general fund appropriations. DEP is implementing the authorization of the law that allows DEP to “charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing, administering and enforcing the permit.” DEP estimates that the revenue generated by permit fees will need to be supplemented by license fees and civil penalty revenue. DEP is implementing the will of the legislature, as authorized by the statute, through this rulemaking. While the concern of the regulated community is understandable, these fees are required as part of a fundamental shift to a self-sustaining program. The fee amounts are reasonable and compare favorably with fees assessed by other states. The fee amounts were arrived at through a workload analysis using the best available permit review and permit administration costs. The fee schedule will be periodically reviewed as required in the proposed rulemaking, to ensure that fees are sufficient but not excessive.

Fee Amounts

Comment: Excessive inspections are made. The annual “administration” fee should be eliminated. (5)

Comment: The charge for blasting and transfers of permits makes sense, the rest is not justifiable. (12), (13)

Comment: Time matrix for the completion of tasks is unrealistic. While a handful of permits may in fact take more time to process, overall the projected 300 hours (or a full 8 weeks of man time at 37.5 hours/week) exceeds in many cases the time it took the applicant to complete the entire permit preparation. (5)

Comment: Fees based on salaries are unreasonable. The departmental salaries quoted in the presentations to the stakeholders exceed normal industry salaries for the same tasks. (5)

Comment: The proposed permit application fee schedule is unreasonable. (17)

Response: The fee amounts are based upon a well-developed work load analysis. The fee calculations reflect the cost to DEP to review applications to assure that they comply with the regulations and to administer permits to assure compliance. Regulatory compliance prevents pollution, protects the environment and assures that resources are preserved. “Reasonable” fees as outlined in section 7(a) of Noncoal SMCRA, are fees that cover the costs of reviewing, administering and enforcing permits.

Professional Seal

Comment: The Department’s review time is too lengthy and cumbersome for work that is submitted under a professional seal. This is an area where costs can be reduced. (7)

Response: DEP requires a professional seal since it is unlawful for any person to practice or to offer to practice engineering, land surveying, or geology in this Commonwealth, unless they are licensed and registered under the laws of this Commonwealth. The information submitted with any permit application requires review. The professional seal ensures that conclusions drawn by the consultant have been prepared in the best professional opinion of that consultant. Review of the work submitted is still required to assure that it meets the regulatory requirements.

Comment: Why is the Department unwilling to accept work performed by a licensed professional? (17)

Response: DEP is not unwilling to accept work performed by professionals; in fact there is a DEP Registered Professional Survey Matrix to show which tasks require a registered professional. In DEP’s experience, work that meets generally accepted engineering or geology standards does not guarantee that the work meets the regulatory requirements. Various statutes and regulations that govern the mining program require work to be prepared by licensed professionals. DEP views the preparation of work by licensed professionals as an important step in ensuring technically complete permit applications and proper facility planning and design. DEP, through its Coordinating Committee on Professional Practices, maintains the matrix, which outlines the types of submittals that require preparation and/or oversight by licensed professionals. DEP uses in-house licensed professionals to review these submittals. DEP’s review of this information is conducted to fulfill statutory obligations and make important regulatory findings such as; that the applicant has demonstrated that there is no presumptive evidence of pollution as a result of the proposed mining activities.

Comment: A professional’s seal should stand to certify the work as it is submitted. The individual who sealed the work is accountable should the information be in error. Countless review comments are generated which are unnecessary and do nothing to change the environmental or Hydrogeological conclusions reached by the applicant.

Consideration should be given to eliminating a calculation by calculation review of ditches and other E&S controls which are sealed by a PE. (5)

Comment: I ask the board to consider that a company of our size often uses a Professional Engineer consultant to complete and file a mining permit application. That application process, in order to meet the Bureau's guidelines and often multiple rounds of review comments, typically costs us between \$20-40,000. Now, DEP wants to add another \$22,225 to that cost! My frustration is that the DEP too often seems to duplicate work that we've already paid a certified professional consultant to do and now they use those "300 hours" to justify charging us an exorbitant application fee. (15)

Response: DEP reviews the work of the consultants. Revisions may be required to meet regulatory requirements, correct an error or clarify a conclusion reached in an application. DEP cannot simply "accept" applications based on the fact they are sealed by professionals. DEP, through its technical review process, fulfills various statutory obligations to prevent pollution, enhance land management and eliminate health and safety hazards. The review of applications using in-house licensed professionals allows the agency to find errors in technical submittals, identify chronically poor work products, and make required regulatory findings, including; ensuring that the proposed activity will prevent material damage to the hydrologic balance, ensuring that there is no presumptive evidence of pollution related to the activity, and protecting endangered species.

Public Policy

Comment: The operation of the Mining permitting program is a fundamental function of state government and should be funded as such. A modest processing fee is justified, but fee increases of 80 times higher is not. (7)

Comment: The operation of the mining program is a basic function of state government which should be funded by the Commonwealth. (8)

Comment: Review costs beyond a standard set of guidelines generated by overzealous public comment should be borne solely by the Commonwealth or the requestor. (8)

Comment: The \$250 permit fee does need adjusted. However, the Non-Coal Industry should not be required to pick up the "shortfall" caused by the budget. (5)

Comment: The review time is lengthened by the Departments over reaction to "public" comments. However, too much time and money is spent answering and explaining the permit to non-professionals. (5)

Comment: It is not fair for the industry to be responsible for paying the entire cost for DEP to manage the noncoal mining program. (17)

Comment: Review times attributable to the public or resource agency comments should be solely borne by the Commonwealth. (7)

Response: DEP is implementing the authorization of the law that allows DEP to “charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing, administering and enforcing the permit.” It was not necessary to implement this authorization until recently when the appropriation to DEP was reduced. DEP is implementing the will of the legislature through this rulemaking. When the Noncoal SMCRA was enacted, the public policy decision was made to authorize DEP to fund the program through fees.

Efficiency

Comment: Third party contracts could be used to economize some functions, such as water analysis. (7)

Comment: Redundant efforts, such as PNDI checks, municipality and landowner notifications, should be eliminated. (7)

Comment: These values that are being projected are very unrealistic for many businesses to cope with in this terrible economic time. I think that the fees will also create many more problems than they will help. These new fees will have to be passed onto the consumer which in most cases will be the tax paying citizens of Pennsylvania for the repair of building and maintaining our roadways. (9)

Comment: An audit should be conducted by an independent third party to determine the Department’s efficiency in reviewing and issuing large noncoal permits. Inefficient processes should be eliminated. (8)

Comment: Permit applications need to be reviewed in an expeditious and timely manner. What reasonable assurance does the industry have that permit applications will be processed in a reasonable time when the DEP fees are based on the employee hours invested? (17)

Comment: PACA would support a reasonable increase in permit fees as long as the Department is willing to discuss a new operating protocol based on more timely performance and accountability rather than a system inflating employee hours by nitpicking applications. (17)

Comment: I won’t argue that fees may need to be increased to help support the mining programs. However, I simply can not be convinced that the increases need to be of this magnitude before a serious review of the Bureau’s own calculations and system efficiencies. I urge you to require the Bureau to reexamine this request and to balance any approved fee increase with a substantial review of policies and procedures so that we are not paying for inefficiencies or a duplication of time and effort. (15)

Comment: In the Regulatory Analysis Form submitted with the rulemaking, the Board has included the following statement: "The Department has made every effort to use the least burdensome alternative when developing the manner of assessing fees on the industry." We appreciate the Board's efforts in devising a fee schedule that is the least burdensome alternative to the regulated community. However, several commentators have made suggestions on how the Board's estimated annual cost of \$2.5 million to fund

the nonmining coal program could be reduced. We ask the Board to consider implementing the suggestions of the commentators, thus reducing the economic impact this rulemaking will have on the regulated community. (20)

Response: DEP is continuously looking to improve efficiency. For example, recently, DEP has revised an existing mineral extraction general permit to expand its use. Unfortunately, many of the permit applications DEP receives are often not well prepared. The additional work this requires is reflected in the workload analysis used to calculate the fee amounts. In the past, DEP has made extensive efforts to assist the permit applicant in correcting an application. DEP recognizes that this is inefficient and will endeavor to return or deny deficient applications, rather than spending time and resources to assure that corrections are made. Since the regulation requires that DEP review the fee amounts at least every three years and report its analysis to the Board, program efficiencies will be evaluated as part of this effort. Historically, the noncoal program has been funded through the general fund. Program income was not directly related to the number of hours invested in permit reviews. Moving forward, historical permit processing data will be part of the evaluation of fee adjustments.

Administration fee by site rather than Permit

Comment: The annual administration fee should be applied to a site and not to each individual permit. For those sites where we now have 3 or 4 separate mining permits, it certainly does not require 7 hours of inspection time per permit. Inspectors at our locations are typically on site for less than 3 or 4 hours to cover all of the permit area. (15)

Comment: The annual administration fee should be tied to a location rather than a permit. (17)

Response: DEP's workload analysis is based on permits. The workload analysis is also based on averages. While there is some efficiency gained by having permits with little or no travel time between them, there isn't an effective method to account for this. Consequently, the fees will be tied to a permit, not a location.

Comment: The annual administration fee is defined under § 77.1, relating to definitions, as: "A nonrefundable filing fee assessed on an annual basis for the cost to the Department of inspecting a permitted activity or facility in order to administer the permit." Subsection § 77.106(f) lists eight different types of permits that would be subject to the annual administration fee. A commentator has stated that each mining facility could have several permits. Under this rulemaking, could a mining facility be subject to more than one annual administration fee, or is the fee only applicable to the facility? This should be clarified in the final-form rulemaking. (20)

Response: The permit fees are set on a per-permit basis. Administratively, inspections are conducted on a permit-specific basis, not on a facility basis. Each permit file must be reviewed for that permit's requirements. A separate inspection report is needed for each permit. An alternative for a permittee with multiple permits, subject to multiple fees, would be to consolidate its facility under one permit.

Industry Advisory Board

Comment: The industry needs to be heard in a formal setting. It is not reasonable for the industry to be 100% responsible for the management costs of the program especially in light that there is no advisory board for the noncoal mining program. (17)

Response: DEP is committed to providing the highest level of interaction that is possible with the regulated industry. In the case of coal mining, the Mining and Reclamation Advisory Board was statutorily created to provide this opportunity in that context. DEP recognizes the need to improve interaction. Periodic meetings are warranted and will be held.

Miscellaneous

Comment: Could you please clarify the large permit fee will cover and include;

- All processing fees included in corrections of applications if kicked back by the DEP?
- Assistance from the DEP?
- Permits being approved in a timely manner?
- Clarification of definitions if permit is rejected by the DEP?
- Complete cooperation between the department and the permit applicant? (14)

Response: The large noncoal permit fee (new) includes all of the processing time in the review of an application. This includes the multiple correction letters to resolve application deficiencies. Typically, DEP provides assistance to applicants and their consultants throughout the course of the application review, including before the application is submitted. DEP strives to review all applications as promptly as possible. For permits that are rejected, the fees remain applicable because the review is still needed to determine that the permit can not be issued. DEP also strives to be accommodating to permit applicants.

Comment: We, the PA Bluestone Association, have met with the DEP numerous times in the past discussing issues and concerns and looking to help raise money for our poor state. We were not included in the development of this proposal, only the tail end. (12)

Response: DEP's budget was cut to the point that no funds were available to fund the Noncoal Mining Program which forced DEP to proceed as quickly as possible in order to provide the necessary funds to administer the program. Outreach was conducted on a statewide basis in order to provide all of the mine operators an opportunity to provide input.

Comment: There has been no clear evidence given of the budget for the Industrial Minerals administration and permit reviews other than what the department has generated. An external independent audit should be conducted to verify these needs for these and any future fee increases. (5)

Response: DEP's costs are based on actual expenditures. The workload analysis used is continually evolving in order to keep up with changing circumstances. During the outreach, prior to the proposed rule, data was shared.