

Supplemental Comment and Response Document Noncoal Fee Regulations

Comments received by the Department of Environmental Protection in response to the
January 28, 2012, notice in the *PA Bulletin* at 42 Pa.B. 553.

Commentators:

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The applicable commentator number is listed in parentheses following each comment.

Opposition

Comment: We are a small mining operation that takes anywhere from 1500-4000 tons a year out of our family-owned gravel pit for our business use only. We do not sell it to customers. We find that these fees are extremely high for the volume we produce. We would like you to reconsider the proposed fees for smaller businesses like ours. (2)

Comment: Because we are a new small business, employing 4 people, the proposed fees will place an extreme financial burden on us. We have three permits and at \$1,450 per permit per year this will cost us \$4,350 per year. If you produce more than 10,000 tons per year a large permit is needed. The fees may be reasonable if you produce a million tons per year, but not when you produce 20,000 tons per year. It is not fair that that the fee is the same for both of these cases. Maybe there should be more classifications. (3)

Comment: It is my opinion that what this does to me, as a small business owner, is to make us not want to comply with the law as the fees make it impossible to be able to pay. This is slowly driving the small businesses out of business. (4)

Comment: When agencies like DEP raise the rates that we have to pay in order to keep producing gravel it puts our jobs at risk. This latest rate hike is so drastic and so increased that I myself do not even know why we would choose to pay it and stay open. How can any of these places continue to pay your fees and still keep employees? Can you tell me why you are imposing these new fee requirements? What are the new fees going towards? (5)

Comment: The first question I would like to ask is what is this increase for? What exactly are you doing with our money? Will it create more jobs for people? Is it going to allow for our business to keep up with current safety regulations? Will it make sure that our land is free of danger and that our equipment is safe to run and able to even dig under the water table? Will it make sure we can put the earth back to a natural habitat for animals and a future clean place for our children to run and play? We are a business that is small and family based. We are a close network of people who do not just come to work every day and then go home. (6)

Comment: The fees will force my employer out of business. (7)

Comment: The fees are a substantial burden in the current economic environment. There is a big difference between someone who produces twenty thousand tons a year and those that produce hundreds of thousands or tons. (8)

Comment: The proposed changes to the non-coal surface mining permits would create a financial hardship on our company. We are a small business permitted for 4 large surface mines although each one is small in acreage or barely used at all. The proposed fee changes would cost our company \$5,800.00 annually. We are currently close to running out of gravel and are looking for a new location. The 'new permit' fee in addition to the engineering costs would be out of the question for us to afford. Therefore a company that has been an integral part of our community since 1950, providing jobs, construction material, and tax revenue could disappear. To stay competitive we cannot raise our prices enough to cover all the costs of doing business. We urge you to

reconsider this proposal to include the idea that smaller mines cannot afford what large companies could handle. (9)

Comment: If this proposed increase of the cost of the mining permits is approved, the only recourse we would have is to layoff the rest of the employees, which is down from 15 to 6, let the bank foreclose on the property, and go on Welfare. We respectfully request that you review the impact that this legislation would have on small business and do not pass this rate increase. (11)

Comment: The proposed fee schedule is arbitrary, excessive, and punitive and does not relate to the actual cost of regulating. The proposed fee schedule would cause extreme harm to small business owners, reduce the number of rural jobs and create an unnecessary hardship on these struggling businesses. (12)

Comment: The fees will result in increased prices and these costs will be passed along to other businesses which will result in higher product prices and force businesses to locate in other states. (13)

Comment: Because the actual engineering costs related to filing an application are extensive and is borne by the applicant with little or no input from the Department it appears to me that these fees are excessive. It would seem that the review process would not require as much time as the actual engineering process of gathering and calculating the required information. Would the Department clarify to the public the average number of hours the review process requires and the estimated hourly rate applied. It's likely that this fee as proposed will prohibit some producers from permitting some gravel deposits formerly considered economically viable. (1)

Comment: This proposed fee schedule is quite simply too aggressive and will have too great of a shock impact on the mining industry at all levels. A higher concern should be given to the sudden increase in fees from zero to the large, if not excessive, fee schedule being proposed to all entities in the noncoal mining industry. If a fee schedule is to be imposed on the noncoal mining industry, it should at least reflect some kind of sliding scale that would ease the industry into such fees over a satisfactory time frame. (10)

Comment: The annual administrative fees are hard to accept. Withdrawal of these fees will help the bluestone operators. (14)

Response: The fees are necessary as the result of the reduced appropriations to the DEP to enforce environmental statutes. DEP is implementing the authorization of the Noncoal Surface Mining Conservation and Reclamation Act that authorizes 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 is implementing the will of the legislature, as stated in the statute, through this rulemaking. While the opposition to these fees is understandable, the fees are necessary as part of a fundamental shift to a self-sustaining program. The fee amounts are comparable to fees assessed by other states. The fee amounts were developed based on a workload analysis by the Department using the best available cost data for permit review and permit administration. The fees are necessary to comply with the law. The fee schedule will be periodically reviewed as required in the

proposed rulemaking, to ensure that fees are sufficient to cover the costs of program administration.

The premise of the fee proposal is that the fairest way to implement the fees is to base the fee amounts on the work needed for DEP to apply the law. Without a stable source of funding, DEP will not be capable of issuing, administering and enforcing the permits required by the law. Operators would not be able to obtain the required permits, and the public's interest in health, safety and the environment would not be protected.

The fee amounts are based upon a work load analysis. For example, an application for a new small noncoal permit is assigned 9 hours of review time. The wage rate for pay scale group 7 (for the mining permit specialist class) is \$32.83 per hour. Benefits cost DEP about 40% of the wage costs. Overhead was calculated using a standard 40% rate. These overhead costs include those incurred to operate DEP such as database management, leave and holiday pay, transportation, utilities and property management. With the wage rate of \$32.83, benefits of 40%, overhead of 40%, the hourly cost is \$59.09. The cost for nine hours at this rate is \$531.81. Rounding results in the proposed fee amount of \$525 for a new small noncoal application.

Miscellaneous Comments

Comment: We would like to request that there be a clear and concise definition for the term "water table" as used to determine the "fee" for the permits submitted. This should NOT apply to those permits that will encounter small perched aquifers which will be mined through and not require extensive modeling during the permitting processes. It should also be pointed out that most sand and gravel quarry's are conducted below the water table. Historically there is no pumping of the ground water and no interruption to the groundwater system. Therefore, these permits should have the lesser rates applied to their application processes. (15), (20)

Response: The permit application fee schedule has been revised to clarify the description of the two categories of large noncoal sites. In the proposed regulation, these categories were described as "mining below the water table" and "not mining below the water table." For clarity, the descriptions have been changed to "groundwater pumping authorized" and "no groundwater pumping required." This change clarifies that it is the pumping of the groundwater, and assessing the impacts of that pumping, that makes a difference in the complexity of the review.

Comment: All applications are signed by a PE, PLS or PG. The seal should stand to certify the work as it is. The accountability lies with the applicant and the individual who sealed the permit modules. While the review input from the Department is valid in many instances, all too often the reviewer's comments create "busy work" which is unnecessary and do nothing to change the environmental or hydrogeological conclusions reached by the applicant. (15)

Response: 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. Departmental review of the work

submitted by the permit applicant is still required to assure that it meets the regulatory requirements.

Comment: The distinguishing criterion between a major and minor amendment is whether it has to be published or not. Many of those criteria do not include any hydrological revisions which would result in longer review times. (15)

Response: The definitions in the proposed regulation of “Major Permit Revision” and “Minor Permit Revision” make it clear that the distinction between these is the public notice.

Comment: The transfer fee seems excessive as transfers involve ONLY the administrative portion of the permit. There should be no more “review” of a transfer application than that of a Small Non-Coal or general permit. (15)

Response: The fee amounts were calculated based on the work load analysis. This assigns 15 hours of review time for a large noncoal permit transfer.

Comment: The application fee for a Blast Plan should be clarified to reflect a REVISION to the plan, not in addition to the initial permit fee(s). It also should be clarified that a “pre application” does NOT include informal meetings with the department to discuss a project, but only those instances where a semi-formal submission permit modules is made. (15)

Response: The proposed fee schedule is sufficiently clear. A revision to a blast plan is assigned the same amount of review time (8 hours) as a new blast plan, so the fee is the same for each. The pre-application fee is applicable to formal submissions of the pre-application documents for review.

Comment: The annual administrative fees should be modified to incorporate a “Sliding” scale which would acknowledge several components. Numerous quarries or facilities are permitted adjacent to each other with little or no separation between the operations and hence the individual permits within the working boundaries of the operation(s). These operations are NOT separate inspectable units and share common access roads, monitoring points, E&S Controls etc. The fee associated with these quarries should be modified so that the TOTAL fee for the year is the \$1,450 or \$1,850 for those operations which comply with this scenario. (15)

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 are tied to a permit, not a location. 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.

Comment: There should be an “intermediate” fee for a small to medium sized operation (>5.0 to <100) acre permit. Operators who do not qualify for a “Small Non Coal” but do not ship more than a few thousand tons per year find these inspection fees to be burdensome. (15)

Response: The suggested approach is inconsistent with the fundamental premise of the proposed fees. The fees are proposed to cover the costs to DEP for the inspections. The amount of production has no direct bearing on the amount of work necessary by DEP to enforce the rules.

Comment: Excessive inspections are made. Many sites are inspected monthly, not quarterly even though there are no “problems” associated with the site. If the inspectors have the “extra” time to make monthly inspections, a review of the work-load for some district offices should be made. (15)

Response: Managing work load in the current environment is difficult. Where more frequent inspections than the minimum required inspections are conducted, they are focused on preventing safety and environmental problems which establish work load priorities.

Comment: The review time is lengthened by the Department’s over reaction to “public” and sister agency comments. While public comments are invited, too much time and money is spent answering and explaining the permit to non-professionals or organizations which are not “local”. If the technical data meets the department’s regulations, that should be sufficient for permit approval. (15)

Response: The public participation and resource agency components of the application review process are vital to assuring compliance with the statutory requirements. The trend is that these components are increasingly important as mines encroach on areas of population and natural resources.

Comment: With the initiation of the review fees, it is industry’s hope that additional staff can be added to the District Offices to expedite the Non-Coal Permitting Process. Due to retirements and resignations, most District Offices have lost reviewing staff. This has greatly impacted the Non-Coal Industry as the “wait time” for the review and issuance of permits has resulted in abnormally long times for reviews. This, in turn, has required industry to seek alternative sources for Highway Contracts resulting in a greater expense to both the applicant, and ultimately, the overall cost of the project. It is our hope that implementation of these fees will permit the department to hire additional individuals to expedite the permitting processes. (15)

Response: The funding from these fees will allow DEP to continue to administer the program and meet its obligation to implement the Noncoal Surface Mining Conservation and Reclamation Act.

Comment: Because the industry will be funding the program, DEP should consider and implement program improvements to improve efficiency. These efforts should include reporting and accountability, electronic permitting and third-party review. (20)

Response: DEP is continually looking for ways to increase efficiency. DEP will continue to work with the regulated community to reduce costs and improve results.

Support

Comment: It is reasonable that DEP is in need of amending the fee and establishing an annual administrative fee in order to adequately fund the program. (16)

Comment: I strongly favor an increase in existing permit application fees and the establishment of an annual administrative fee for the noncoal mining program. (17)

Comment: We are pleased to see the Department attempting to address the issues by bringing in the revenue to be able adequately carry out the necessary oversight and permitting functions in a timely manner. We appreciate your efforts and support the proposed rule changes. They should translate into jobs for Pennsylvanians who have worked hard to attain the needed education and would like the opportunity to put their education to work serving the public and our environment. (18), (19)

Response: DEP acknowledges and appreciates the commentator's support of the rulemaking.