

EXECUTIVE SUMMARY
25 Pa. Code, Chapter 86, Coal Mining Permit Fees

Section 4 of the Surface Mining Conservation and Reclamation Act states that the DEP “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.” The regulations include a revision to application processing fees for coal mining activity permits and coal refuse disposal permits.

The coal mining regulatory program is funded, in part, through a grant from the federal government. Under this grant, funds are provided to cover the costs of up to 50% of the program. The Commonwealth must provide matching funds. For the most current federal fiscal year (October 2011 through September 2012), the Title V grant from the federal government will provide about \$11.8 million towards the program costs of over \$23.7 million. It is estimated that this fee schedule will generate about \$400,000 per year in revenue, or about 4% of DEP’s cost to operate the coal mining program. The current fees generate only about \$50,000 per year in revenue.

The fee amounts were calculated using a workload analysis, the primary purpose of which is to manage staffing. Benefits and operational costs were included in the calculations. This schedule includes fees calculated to cover a portion of the state share of the workload cost (i.e. about 37%, or three-eighths of the total cost) for the selected permitting authorizations in the fee schedule.

This rulemaking is the result of working with the Mining and Reclamation Advisory Board (MRAB) to develop a fee schedule acceptable to the majority of the MRAB. In October 2009, DEP presented a proposed rulemaking package to the MRAB that included a proposed permit application fee schedule. The MRAB would not endorse the proposed fee schedule and requested DEP to work with an MRAB committee to develop an alternative proposal. The strongest objection was to the amount of the fees. The October 2009 proposal included full-cost permit application fees for the State’s share of the cost of the permitting part of the mining program. The October 2009 fee proposal would have generated about \$1.2 million per year.

In response to the MRAB’s recommendations, DEP met with the MRAB’s Regulatory, Legislative and Technical (RLT) Committee. The result of this process was a series of recommendations adopted by the MRAB at their meeting in January 2010, as follows:

- 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 application) is reasonable.
- Any increase in permit fees should be dedicated exclusively to finance the mining program permit review process.

- DEP should not establish fee 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.

At the April 22, 2010 meeting, the MRAB recommended that DEP proceed with a fee approach that includes only application fees in a form that would generate about \$400,000 per year in revenue.

The final rulemaking follows the MRAB's recommendations. Section 86.17 was amended to include a detailed fee schedule for coal mining permit activity applications as well as a few related changes. The requirement to pay by check was deleted to allow applicants the option of paying by other methods (e.g. credit card). The section was amended to specify that the money collected from the permit application fees must be used by DEP to pay the cost of reviewing permit applications. Finally, a new paragraph was added to establish the framework for periodically reviewing the fee schedule and providing a report to the Environmental Quality Board regarding DEP's costs and the necessity for changes to the permit application fees.

In addition, definitions for the terms Major Permit Revision and Permit Application Fee were added to § 86.1. These definitions are needed for clarity in implementing the fee schedule. Section 86.3 was revised to add a paragraph regarding the use of the money collected from permit application fees for coal refuse disposal permit applications that are deposited in the Coal Refuse Disposal Control Fund.

The proposed regulations were published for comment in the March 10, 2012, edition of the *Pennsylvania Bulletin*. No public comments were received. In addition, the Independent Regulatory Review Commission (IRRC) reviewed the proposed regulation, but had no objections, comments, or recommendations to offer on the regulation. No changes were made between the proposed and final rulemaking. On May 15, 2012, at a special meeting of the MRAB, the committee approved the final rulemaking.