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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 29, 2012

Honorable Michael Krancer, Chairman
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-460 (IRRC #2864)
Environmental Quality Board
Noncoal Mining Fees

Dear Chairman Krancer:

The Independent Regulatory Review Commission disapproved your regulation on June 21, 2012. Our order is enclosed and will be available on our website at www.irrc.state.pa.us.

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact David Sumner, our Executive Director, at 783-5506.

Sincerely,

Silvan B. Lutkewitte, III

Chairman

sfh

Enclosure

cc: Honorable Mary Jo White, Majority Chairman, Senate Environmental Resources and Energy Committee
Honorable John Yudichak, Minority Chairman, Senate Environmental Resources and Energy Committee
Honorable Scott E. Hutchinson, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Camille George, Minority Chairman, House Environmental Resources and Energy Committee

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held June 21, 2012

Silvan B. Lutkewitte, III, Chairman
George D. Bedwick, Vice Chairman
John F. Mizner, Esq.
Lawrence J. Tabas, Esq.

Regulation No. 7-460 (#2864)
Environmental Quality Board
Noncoal Mining Fees

On August 18, 2010, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Environmental Quality Board (Board). This rulemaking amends 25 Pa. Code Chapter 77. The proposed regulation was published in the August 28, 2010 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on May 21, 2012.

This final-form rulemaking establishes fees to support the Noncoal Mining Program (Program). According to the documentation provided with the rulemaking, there are 1,500 noncoal mining operators in the Commonwealth. Currently, the operators must pay a \$250 National Pollutant Discharge Elimination System permit fee, but only when that type of permit is required. According to the Board, this fee currently generates \$25,000 per year. The fees included in the final-form rulemaking would generate \$2,500,000 per year.

We understand the budgetary problems the Department of Environmental Protection is facing. However, we believe the direct costs to the private sector associated with an immediate fee increase of this magnitude will have an adverse economic impact on the regulated community. (71 P.S. § 745.5b(b)(1)(i)). For example, has the Department sufficiently considered an incremental fee increase in order to reduce the impact on the noncoal mining industry?

Further, we remain concerned whether the imposition of these fees to fund the Program constitutes the least burdensome alternative to the industry. (71 P.S. § 745.5b(b)(1)(i)).

We have determined this regulation is consistent with the statutory authority of the Board (52 P.S. §§ 3307(a) and 3311(a)) and the intention of the General Assembly. However, after considering all of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

The regulation #7-460 _____ (IRRC #2864 _____) from the _____

Environmental Quality Board _____

was disapproved on June 21, 2012.



Silvan B. Lutkewitte, III, Chairman

