Coal vs. Non-Coal Permitting

Under SMCRA 1971, bonding for non-coal mining was significantly lower than under a coal mining permit. Many coal mining operators began applying for non-coal mining permits and would crush some stone or sell a load here and there so that they could call it a non-coal operation but still mined primarily coal. In 1990 and amended in 1995, SMCRA was amended to provide definitions of what constituted coal mining, non-coal mining, and incidental coal extraction. The amendments also put regulatory guardrails in place to ensure that the proper permits were issued for the mining activity and gave the regulatory authorities the ability to enforce proper permitting.

For incidental coal extraction on a non-coal mining permit, the following amendments were passed:

§ 77.3. Relationship to coal mining.

(a) Mining activities will be deemed to be noncoal mining activities if the extraction of coal is incidental to the extraction of other minerals and the coal extracted does not exceed 16 2/3% of the tonnage of materials removed for purposes of commercial use or sale. Coal extraction is incidental when the coal is geologically located above the mineral to be mined and is extracted in order to mine the principal mineral.

(b) The incidental extraction of coal under subsection (a) shall conform to § 86.5 (relating to extraction of coal incidental to noncoal surface mining).

§ 86.5. Extraction of coal incidental to noncoal surface mining.

(h) The Department will notify the applicant if the request for exemption is incomplete and may at any time require submittal of additional information. The Department will approve a request for exemption only if the following are satisfied:

(1) The cumulative production of coal extracted from the mining area determined annually, as described in subsection (j)(4), does not exceed 16 2/3% of the total cumulative production of coal and other minerals removed during the period for purposes of bona fide sale or reasonable commercial use.

(2) Coal is produced from a geological stratum lying above the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

(3) The cumulative revenue derived from the coal extracted from the mining area determined annually does not exceed 50% of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

The Department used the existing regulations to allow for producing and selling non-coal materials from a coal mining permit. The approval process requires a permittee to show through engineering calculations that they would have excess backfilling material and the approval would grant the permittee to process and sell non-coal materials only equal to the volume of the excess.

For example:		
	Overburden to be excavated over the life of the mine =	1,000,000 cubic yards
	Swell factor of the overburden = 35% so the overburden	
	When used to backfill would occupy	1,350,000 cubic yards
	Coal to be removed over the life of the mine =	- 150,000 cubic yards
	Excess backfill material =	200,000 cubic yards

In this example, the permittee would submit an application to produce non-coal materials from the site using this calculation and any supporting documentation. The Department would approve, by permit condition, a maximum of 200,000 cubic yards of material to be removed from the overburden (usually selectively from a specific seam of rock) and processed for sale. The calculation shows that, with the expected swell factor, there would still be sufficient overburden to backfill the mining pit and make up for the volume of coal that had been removed.

The problem is that mining companies are trying to maximize the value of every material that they drill, blast, load and haul. It makes sense for the mining company but also the environment. The current permitting process does not allow for a coal mine to also produce aggregate and reclaim to grades that are allowed in non-coal mining. In today's anthracite mines, most surface coal operations move over a million cubic yards of overburden per year. In many cases, a large percentage of that overburden could be processed to meet local aggregate needs. Aggregates produced from coal mines would reduce the need to mine rock from otherwise unaffected areas. As other opportunities might arise for production of ores, rare earths, or other non-coal minerals that could potentially be extracted from coal mining overburden, the limitations placed on coal or non-coal mining permits are going have an increasing negative impact on the industry's ability to minimize the mining footprint to produce all of our mining products.

Is there a way to work within the existing framework to allow both coal and non-coal mining to occur within the same footprint without the regulatory restrictions?