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# Pennsylvania Coal Association

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GEORGE ELLIS  
President

June 18, 2002

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ENVIRONMENTAL QUALITY BOARD

Environmental Quality Board  
P.O. Box 8477  
Rachel Carson State Office Building  
Harrisburg, PA 17105-8477

**Re: *Comments and One-Page Summary of Pennsylvania Coal Association: Notice of Proposed Rulemaking: Coal mining; Extraction of Coal Incidental to Government Financed Highway Construction or Reclamation Projects, 25 Pa. Code Chapter 86, 32 Pennsylvania Bulletin at 2217-19 (May 4, 2002)***

Members of the Board:

Thank you for giving the Pennsylvania Coal Association (PCA) an opportunity to submit written comments on above-referenced Notice of Proposed Rulemaking (the "Proposed Rulemaking"). PCA represents 27 bituminous coal producers and 86 associate member companies who work with and support the mining industry. Our members account for three-fourths of the bituminous coal production in Pennsylvania and are directly and substantially interested in the subject matter of the proposed rulemaking. We ask that our single page of comments be distributed to the Board in lieu of a one-page summary.

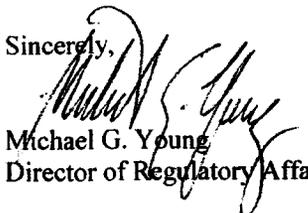
***Proposed Amendment to 25 Pa. Code §86.6, Extraction of Coal Incidental to Government-Financed Highway Construction***

PCA supports the proposed regulatory amendment. However, we suggest that the amendment should include other types of government-financed construction beyond highway construction and reclamation. The Pennsylvania Surface Mining Control and Reclamation Act (PA SMCRA) excludes from its definition of "surface mining activities" those "[a]ctivities not considered to be surface mining as determined by the United States Office of Surface Mining, Reclamation and Enforcement and set forth in department regulations." 52 P.S. §1396.3 (definition of "surface mining activities," exclusion (4)). The statute uses the words "considered to be" instead of "defined as," and defers to OSM's "determination" on these activities, instead of simply referring to or incorporating federal statutory or regulatory provisions. We therefore believe the legislature intended to provide flexibility and to allow the Board to adopt regulations consistent with the federal regulatory scheme and federal policy.

While the federal regulations do not exclude coal removal incidental to government financed construction from the definition of "surface mining activities," there is an express exemption of these activities "from the Act and this Chapter." Because the federal Surface Mining Control and Reclamation Act and the federal regulations implementing it comprehensively regulate surface coal mining, it is clear that OSM does not "consider" the extraction of coal incidental to government financed construction to be "surface mining" because it is exempted from the law and regulations governing "surface mining."

Thank you for considering these comments. We would like a copy of the final form rulemaking when it is available.

Sincerely,

  
Michael G. Young  
Director of Regulatory Affairs

