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COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Game Commission

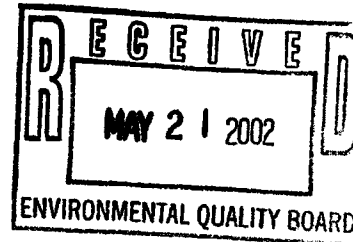
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May 14, 2002

ATTN: Honorable David E. Hess, Chairman
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101



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ENVIRONMENTAL QUALITY BOARD
SECRETARY'S OFFICE

Dear Secretary Hess:

Thank you for providing the Pennsylvania Game Commission an opportunity for review and discussion of the proposal to add a new regulation to Title 25, Chapter 86.6. This new regulation would exclude from the requirements of Chapters 86-88, the extraction of coal that occurs during government-financed highway construction or government-financed reclamation projects. PennDOT has proposed this regulatory change due to its planned realignment and reconstruction of US Route 322 in Centre County that would impact two areas that are designated by the DEP as unsuitable for mining (UFM).

Our review of this proposed regulation has generated some serious reservations as to the potential adverse impacts that could occur to the Commonwealth's wildlife resources. In a cut and fill scenario, highway construction projects are very similar to a linear surface mining operation. These types of highway construction proposals include the same procedures conducted on a surface mine site. Forested areas are logged, the land is cleared, topsoil is stripped away and stored for reclamation of the site, drilling and blasting of rock material is conducted, and overburden material is removed to the required elevation at which the road base development is planned. Subsequently, spoil material is then stored for later use or placed in an engineered fill area. Encountered coal seam(s) are often removed from the site and sold.

However one glaring difference is that in coal mining scenarios regulations ensure that once the coal is removed, the area is backfilled to approximate original contour and the open cut areas and potential toxic spoils do not remain readily accessible to oxidation-reduction and weathering processes. Likewise, plans are developed through the DEP's review, which are directed towards avoiding toxic spoils encountering surface and groundwater regimes to further reduce their ability to cause acidic high metal discharges. Conversely, in the majority of highway construction projects, which intercept coal and toxic overburden, open cut areas are left on the landscape as prominent features. Associated spoils from the highway construction have often been placed in hydrologic

regimes with little regard to special handling of toxic strata, and in several instances we have noted that pollution discharges have resulted from the highway development causing degradation to diversified wildlife ecosystems.

The Department of Environmental Protection is currently entrusted with protecting the environmental resources of the Commonwealth from adverse impacts which may result from coal mining activities and acid mine drainage production induced from oxidation-reduction processes. Titles 25, Chapters 86-90 are specific regarding actions that are permissible by the Department in fulfilling its obligations. Chapter 86.122 allows DEP to designate an area unsuitable for mining based on criteria enumerated. The presence of critical or unique wildlife resources is a key factor in the Department's review of UFM designations. In a permitted mining operation, if the DEP has evidence that indicates mining of a certain coal seam may cause a potential adverse impact to waters and/or natural resources of the Commonwealth, the applicant is required to submit a vast amount of additional information in the permit application.

As you are aware, a tremendous amount of information has already been reviewed prior to a decision being made and justified by the DEP to designate an area as "Unsuitable for Mining." A UFM area designation is largely a determination made by the DEP that important wildlife resources are in jeopardy of adverse impacts if they were to be encountered during the mining of certain designated coal seam(s), to include wetlands, native trout streams, and critical and unique wildlife habitats which may support threatened or endangered bird or animal species. The relevant information reviewed by the DEP in making the above noted determination consists of: overburden analysis of the strata above and below the coal seam(s), acid base accounting tests, in-depth mine drainage abatement and/or alkaline addition requirements, and a detailed overburden special-handling plan. All of these variable reviews and outcomes provide critical background information that is later used by the DEP for future mining permit reviews and in particular, assessing proposed UFM petition areas. This same level of scrutiny conducted by the DEP for coal mining reviews does not occur by PennDOT in proposed highway development scenarios that encounter coal seams. It is the DEP's-Bureau of Mining and Reclamation that has the staff and technical expertise necessary to determine potential harmful impacts from mining activities on environmental resources, not PennDOT.

Ultimately the determination to approve any area, as "Unsuitable for Mining" by the DEP is a collective effort from all of the wildlife resource agencies, includes numerous public reviews and comments, and seeks the final approval from the Environmental Quality Board. In the past, the Commission as well as other environmental resource agencies have relied heavily on reviews conducted by DEP's Bureau of Mining and Reclamation Staff as relates to construction activities encountering the Commonwealth's coal seams. To ignore the DEP's analytical review of pertinent data which was used in designating an area as UFM, while later allowing for PennDOT's

Honorable David E. Hess

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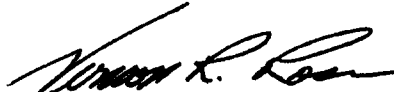
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requested exemption, is simply not a prudent use of currently existing expertise and Commonwealth resources.

At this time, the Commission highly recommends that the Environmental Quality Board oppose this proposed regulatory change until such time as our noted issues and concerns can be more adequately addressed. We believe that a Memorandum of Understanding between PennDOT, DEP, the Pennsylvania Game Commission, and any other vested natural resource agencies could be developed which would resolve our concerns in their entirety. Such a memorandum would ensure that all information previously gathered and reviewed by the DEP's Bureau of Mining and Reclamation Offices during their determination process of a UFM be made part of PennDOT "Environmental Impact Assessments" for any proposed highway alignment within a designated UFM area of the Commonwealth. It is further suggested the MOU encompass not only UFM areas, but also all proposed highway alignments that will encounter coal reserves during proposed highway construction.

Should you have any questions concerning this request and our current position on this matter, please feel free to contact Mr. William A. Capouillez, Acting Chief, Division of Environmental Planning & Habitat Protection at (717) 783-4919.

Very truly yours,



Vernon R. Ross
Executive Director

WAC/wac

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MAY 14 2002
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DEPARTMENT OF ENVIRONMENTAL PROTECTION

COMMUNICATIONS SECTION

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Heine, Walter, CAC
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