

Original: 2269



Pennsylvania Coal Association

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GEORGE ELLIS
President

June 18, 2002

2002 JUN 25 AM 8:44

REGISTRY
COMMISSION

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

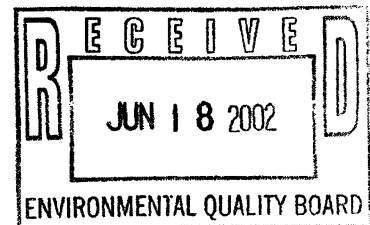
PCA supports the proposed regulatory amendment. However, we suggest that the amendment should include other types of government-financed construction beyond highway construction and reclamation. The Pennsylvania Surface Mining Control and Reclamation Act (PA SMCRA) excludes from its definition of "surface 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





OFFICE OF
EXECUTIVE DIRECTOR
717-787-3633

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Game Commission

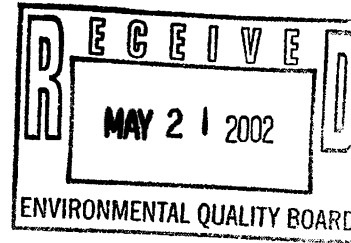
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PROCUREMENT DIVISION	717-787-6594
LICENSE DIVISION	717-787-2084
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LAND MANAGEMENT	717-787-6818
REAL ESTATE DIVISION	717-787-6568
MANAGEMENT INFORMATION	
SYSTEMS	717-787-4076

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



www.pgc.state.pa.us
RECEIVED
MAY 21 AM 11:12
ENVIRONMENTAL PROTECTION
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.

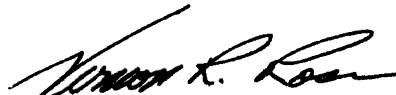
Ultimately the determination to approve any area, as "Unsuitable for Mining" by the DEP is a collective effort from all of the wildlife resource agencies, includes numerous public reviews and comments, and seeks the final approval from the Environmental Quality Board. In the past, the Commission as well 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

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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Cc: Roberts, Scott, DEP
Guise, Dennis, PFBC
Arway, John, PFBC
McDonald, Susan, PennDOT
Hess, Paul, CAC
Everett, Carl, CAC
Urban, Margaret, CAC
Strong, David, CAC
Heine, Walter, CAC
Mindlin, Nevin, Dept. of Labor & Industry
Hall, William, PUC
Ocko, Dan, alternate for Rep. George
Brown, Mark, alternate for Rep. Hershey
Henderson, Pat, alternate for Sen. White
Walsh, Edith, PA Historical & Museum Comm.
Taglang, Steve, Governor's Policy office
Overmoyer, Richard, CED
Bender, Mary, Dept. of Agriculture
Logue, James, Dept. of Health
Dunkle
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Harshaw
Grabowicz
Capouillez
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**COMMONWEALTH OF PENNSYLVANIA
FISH & BOAT COMMISSION
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2002 JUN 25 AM 8:44
REGULATORY
REVIEW COMMISSION

June 18, 2002

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

Re: Notice of Proposed Rulemaking
Fiscal Note No. 7-376
25 Pa. Code Ch. 86 – Coal Mining

By Electronic Mail to RegComments@state.pa.us

Dear Secretary Hess:

On behalf of the Pennsylvania Fish and Boat Commission, I am submitting these comments concerning the proposed 25 Pa Code § 86.6 (relating to extraction of coal incidental to government-financed highway construction or reclamation projects). This notice of proposed rulemaking was published at 32 Pa. Bulletin 2217 (May 4, 2002). Today (June 18, 2002) is the deadline for public comment.

As I noted at the March 2002 meeting of the Environmental Quality Board, the Fish and Boat Commission shares many of the concerns expressed by the Game Commission with respect to this proposal. Our staff have had the opportunity to review the Game Commission's written comments to you, and we generally endorse them.

The proposed 25 Pa. Code § 86.6 would allow for extraction of coal incidental to government-financed highway construction or reclamation projects to be exempt from regulation under Chapters 86, 87, and 88. This exemption would also allow for incidental coal extraction in areas designated by the EQB as "Unsuitable for Mining." These areas were designated as such due to concerns over impacts of "unique resources" from mining related activities.

As stated in the Executive Summary, the main request is a result of a road alignment in Centre County (Route 322), which would affect the upper watershed areas in Cold Stream and Black Bear Run. Studies conducted by the Department documented the problems associated with coal removal in these watersheds by identifying adjacent areas which coal removal activities have caused serious environmental problems through the creation of acid mine drainage (AMD). The PFBC staff strongly believe that it would not be prudent to disturb the geologies of these watersheds without a thorough pre-mining review by your Bureau of Mining and Reclamation offices.

Current mining regulations require specific information to be collected and analyzed to determine potential impacts from mining activities. If the proposed 86.6 is approved, it appears that the information requirements would not be fully implemented for PennDOT projects, thus increasing the potential for environmental degradation from the exempted activities.

The Fish and Boat Commission has forged an excellent cooperative working relationship with PennDOT and DEP on highway projects. We believe this fine record of cooperation could be extended by means of an interagency MOU as suggested by the Game Commission or some other similar mechanism. Such a process could help ensure that all information previously gathered and reviewed by the DEP's Bureau of Mining and Reclamation Office be given appropriate consideration when dealing with any proposed highway alignment within a designated UFM area of the Commonwealth.

I believe that all the agencies are in agreement that all coal extraction activities incidental to highway construction projects should be evaluated to ensure protection of the fish and wildlife resources of the area. The Fish and Boat Commission looks forward to working with DEP and the Game Commission to carry out this broad policy and apply it to specific situations.

Sincerely,

Dennis T. Guise
Deputy Executive Director
Chief Counsel