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Independent Regulatory Review Commission
333 Market Street
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Dear Commissioners:

This correspondence concerns certain regulatory changes that the Pennsylvania Department of Environmental Protection Bureau of Mining and Reclamation (PADEP) currently has before you for consideration. According to Mr. Joe Pizarchik, Director of the Bureau of Mining and Reclamation, Commission staff has raised concerns regarding portions of changes made in response to comments received on the proposed regulations that deal with encouraging property owners to provide access to operators to conduct a pre-subsidence survey. Before you make a final decision related to the final rulemaking, I want to provide you with some background information.

The Office of Surface Mining Reclamation and Enforcement (OSM) and PADEP have been working to resolve longstanding differences between 1994 revisions to the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act and 1992 revisions to the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA). The aforementioned revisions put into place Commonwealth and federal requirements for repair, compensation, and replacement when structures or water supplies are affected by subsidence from underground mining. The final rulemaking you have before you for consideration is the product of a unique multi-year collaborative effort between OSM and PADEP.

OSM began this lengthy process with the review of Pennsylvania's initial regulatory proposal in 1998. In December 2001, OSM published a final rule approving a majority of the Pennsylvania amendments and implementing regulations. However, OSM's final rule also disapproved a number of provisions thereby generating significant controversy with members of the Pennsylvania coal industry, citizen groups and individual property owners. One of the more controversial issues was OSM disapproval of Commonwealth regulations that would relieve operators of liability for subsidence damages to an occupied dwelling if the property owner denies access for a premining survey. The 1992 revisions to federal SMCRA do not provide for

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such relief. As a result of the OSM final rule, the Pennsylvania Coal Association and the PADEP filed separate legal challenges disputing many of OSM's findings. PADEP was concerned that some of OSM's decisions did not accommodate proposed procedures that were unique to the Pennsylvania underground mining program.

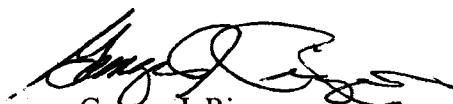
Because the underlying Pennsylvania and federal requirements were substantially different in scope, structure, and procedural requirements, PADEP and OSM decided to form a team of knowledgeable staff to evaluate each area of disagreement. From April 2002, through December 2004, staff of PADEP, OSM, and the Department of Interior Office of the Solicitor implemented a collaborative process to resolve issues, develop proposed regulations, and to hold special outreach meetings with the Pennsylvania coal industry and citizen groups. OSM and PADEP also crafted a unique process involving parallel state/federal rulemaking with sequential public hearings. OSM is very appreciative of the effort and the commitment of PADEP to resolve many complicated issues.

While OSM has already formally approved the vast majority of the regulations now before the IRRC, we have not approved the pre-subsidence survey provision. The survey provision was modified between proposed and final rulemaking to address public comments and must be submitted to OSM for review and approval. I cannot predetermine the outcome of an OSM review for any sections we must still evaluate; however, I think it is important for the IRRC to know that OSM and PADEP have always agreed that property owners should be encouraged to provide operator access for premining surveys. The 1995 federal rules addressing subsidence damage stress the importance of premining surveys and OSM has repeatedly advised Pennsylvania property owners to allow premining surveys. OSM and PADEP have long recognized that a pre-subsidence survey provides a firm basis for enforcement actions when necessary. Finally, encouraging property owners to provide access for pre-subsidence surveys enhances the process of subsidence damage repair and reduces regulatory conflict; both are important goals of the federal mining requirements.

Now that PADEP's regulations are before you for consideration, OSM and PADEP have essentially achieved the difficult task of resolving controversial state and federal legislative and regulatory differences; some of which initially involved litigation by outside parties. I am sure that you will take into consideration the very open, careful, and deliberative effort by our agencies before acting on the PADEP rulemaking now before the IRCC.

Thank you for this opportunity to provide information concerning your review of PADEP's final regulations.

Sincerely,



George J. Rieger
Division Chief
Pittsburgh Field Division