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**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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December 12, 2003

Honorable Kathleen A. McGinty, Chairperson
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 15th Floor
Harrisburg, PA 17105

Re: Regulation #7-385 (IRRC #2358)
Environmental Quality Board
Bond Adjustment and Bituminous Mine Subsidence Control Standards

Dear Chairperson McGinty:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

wbg

Enclosure

cc: Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee
Honorable William F. Adolph, Jr., Majority Chairman, House Environmental Resources and Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation No. 7-385

Bond Adjustment and Bituminous Mine Subsidence Control Standards

December 12, 2003

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Environmental Quality Board (EQB) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on November 12, 2003. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

Coordination of State and Federal final regulations. - Statutory authority; Implementation procedures.

This rulemaking satisfies conditions set forth by the Federal Office of Surface Mining and Reclamation and Enforcement (OSM). Section 503(a) of the Federal Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. §§1201 *et seq.*) permits a state to assume primacy if its laws and regulations are consistent with federal laws and regulations. Pennsylvania must meet these conditions to maintain primary enforcement authority over coal mining.

OSM initiated two rulemakings to assist the Commonwealth in this task. The first OSM rulemaking (68 FR 55134-55137, (December 27, 2001)) will supercede six portions of the Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) (52 P.S. §§1406.1-1406.21) that are less effective than their federal counterparts. The second OSM rulemaking (68 FR 55106-55134, (September 22, 2003)) seeks comments on the EQB's proposed regulations related to the BMSLCA.

The EQB's existing regulations were promulgated under the statutory authority of the BMSLCA and other Pennsylvania statutes. We believe that the EQB does not have the statutory authority to promulgate this regulation until the first OSM rulemaking is in effect. Promulgation of EQB's rulemaking before the relevant portions of the BMSLCA are superceded by the first OSM rulemaking would result in a conflict between the EQB's regulations and the BMSLCA. Therefore, we recommend that the EQB does not deliver this rulemaking in its final-form until the first OSM rulemaking has been finalized.

Facsimile Cover Sheet

Kristine M. Shomper
Administrative Officer



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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Shirley Wright
Agency: Department of Environmental Protection
Phone: 7-2814
Fax: 705-4980
Date: December 12, 2003
Pages: 3

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-385 (IRRC #2358). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through Interdepartmental mail. You should expect delivery in a few days. Thank you.

RECEIVED
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Accepted by: Shirley Wright Date: 12/12/03