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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 19, 2009

Honorable John Hanger, Acting Chair
Coal and Clay Mine Subsidence Insurance Board
Rachael Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-424 (IRRC #2737)
Coal and Clay Mine Subsidence Insurance Board
Mine Subsidence Fund

Dear Acting Chair Hanger:

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 regulatory 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 me.

Sincerely,

Kim Kaufman
Executive Director

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Enclosure

cc: Honorable Mary Jo White, Chair, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Chair, Senate Environmental Resources and Energy Committee
Honorable Camille George, Chair, House Environmental Resources and Energy Committee
Honorable Scott E. Hutchinson, Chair, House Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission



Coal and Clay Mine Subsidence Insurance Board Regulation #7-424 (IRRC #2737)

Mine Subsidence Fund

February 19, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the December 20, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Coal and Clay Mine Subsidence Insurance Board (Board) to respond to all comments received from us or any other source.

1. Section 401.11. Eligibility for insurance. – Reasonableness; Clarity.

Subsections (d)(1) and (2) contain the phrase “to the Board’s satisfaction.” This phrase is vague and contains no direct guidance for the regulated community. What criteria will be used to determine if “satisfaction” is achieved? The Board should establish these criteria in the final-form regulation or should remove this phrase.

2. Section 401.42. Commission rates. – Reasonableness; Clarity.

This section states, “The Board will annually establish commission rates.” How will these rates be established? How will the regulated community be notified of what the annual rate is? The final-form regulation should set forth how the annual commission rates will be established and where they can be found.

3. Section 401.43. Payment of commissions. – Reasonableness; Clarity.

This section states that “[t]he Board may authorize other forms of payment.” How could one obtain this authorization? Also, what other forms of payment could be authorized by the Board? This should be included in the final-form regulation.

4. Section 401.44. Repayment of commissions. – Clarity.

Under this section, in what timeframe must an insurance producer repay the unearned commissions? This should be specified in the final-form regulation.

5. Section 401.45. Confidentiality of policyholder information. – Reasonableness; Clarity.

This section states that insurance producers must “safeguard all applicant and policyholder information and are responsible for the misuse of information that is under their control.” The term “safeguard” and the phrase “misuse of information” are vague. The regulation does not provide the regulated community a clear understanding of the expectations of the Board. In addition, the lack of clarity could lead to different enforcement standards. We recommend that this section be amended to provide more precise language that would allow the regulated community to understand what the Board expects of them and also provide a uniform standard that could be applied evenly to all insurance producers.

6. Section 401.51. Loans and grants. – Statutory authority; Legislative intent; Reasonableness; Clarity.

This section allows the Board to authorize loans and grants to entities to develop technologies, perform services or engage in other activities that benefit the fund. We acknowledge that Section 19 of the act of August 23, 1961 (P.L. 1068, No. 484) (52 P.S. § 3219) (act) provides the Board with broad rulemaking authority to fulfill the purposes of the act. However, Section 1 of the act (52 P.S. 3201), relating to purposes, does not contemplate the issuance of loans or grants by the Board. What is the Board’s authority to provide loans or grants, and how is this consistent with the intent of the General Assembly when it passed the act?

If the Board is able to demonstrate that it has the statutory authority to provide loans and grants, we recommend that the final-form regulation include more detail on how the loan and grant program will be administered. The application process, criteria for reviewing applications and timeframes for applying for loans and grants should be included.

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

To: Debra L. Failor
Agency: Coal and Clay Mine Subsidence Insurance Board
Phone: 7-2814
Fax: 705-4980
Date: February 19, 2009
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Coal and Clay Mine Subsidence Insurance Board regulation #7-424 (IRRC #2737). 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.

Accepted by: *Paula Johnson* Date: 2-19-09

Enc

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