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PENNSYLVANIA ANTHRACITE COUNCIL

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RECEIVED

COUNCIL  
December 22, 2009

DEC 21 2009

ENVIRONMENTAL QUALITY BOARD

The Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Re: PAC Comments to Beneficial Use of Coal Ash Proposed Regulations

Dear EQB Members:

I am writing on behalf of the 33 mining operators and affiliate members of the Pennsylvania Anthracite Council regarding proposed Guidelines for Coal Ash Beneficial Use and Mine Site Approval.

**Background**

Anthracite, commonly known as hard coal, has been commercially mined and prepared in the Northeast Region of Pennsylvania for more than 150 years. Most Anthracite reserves are found in the five counties of Schuylkill, Carbon, Northumberland, Lackawanna and Luzerne Counties. The Anthracite coal fields extend 50 miles east and west and 100 miles north and south covering approximately 484 square miles. Current estimates show 4 to 6 billion tons of reserves of Anthracite left in the region.

Anthracite is a naturally high carbon, clean burning solid fuel with a typical sulfur content of less than 0.7% and volatile matter of just 4% to 6%. In fact, Anthracite is the cleanest burning solid fuel on the commercial market today. In fact, it has lower sulfur content than some heavy fuel oils. Its uses range from residential and commercial to industrial carbon and water filtration media.

Like all other sources of energy, anthracite's heat value is measured in British Thermal Units (BTUs). There are about 25 million btus per ton of Anthracite. This is the equivalent of 180 gallons of home heating oil and 260 therms of natural gas. Current estimates show between 300 to 500 years of Anthracite reserves still remain in the ground today.

Anthracite mining and usage has a long history in America. At the turn of the 20<sup>th</sup> Century, it helped fuel the industrial revolution and to meet the tremendous energy and production demands of two World Wars. At its peak in 1915, the Anthracite industry employed over 177,000 miners. Today, the Anthracite industry employs more than 1,000 people and contributes more than \$200 million to the region and state economy.

## **Environmental Benefits of Anthracite**

Often confused with bituminous or soft coal, Anthracite is naturally high in carbon (86% to 92%) and low in sulfur (less than 0.8%). Because Anthracite is harder than Bituminous coal it has a more consistent burn time and it is virtually smokeless.

In addition to its clean air qualities, the mining and use of Anthracite provides the added benefit of reclaiming the regions lands and surface and sub-surface water systems.

War time needs required that the coal be mined as quickly and as cheaply as possible. As a result, U.S. law discouraged the back filling and reclamation of surface coal mines. Thus many of those scarred pits still remain a hazard today discharging million of gallons of pollution daily into the region's water system. This water eventually finds its way into two of the nation's major drainage systems, the Delaware and Susquehanna River Systems.

However, since 1977 all surface coal mining operators are required to reclaim the land once they are done extracting the mineral. In addition, the Federal Government has undertaken the responsibility for the reclamation of abandoned pits and surface workings left open prior to 1977. To pay for those costs, the government has levied a special mining reclamation tax on all mining operators. This money is paid into the Abandoned Mine Land (AML) reclamation fund administered by the Office of Surface Mining. At \$.35 per ton of surface coal mines, Anthracite operators have paid millions of dollars to the federal government to reclaim pre-1977 abandoned mine areas. But as the use of Anthracite has declined, so has the taxes paid to reclaim those old pits and the amount of acreage reclaimed by the industry.

In other words, the few tons of Anthracite produced, the few dollars there are for the government to reclaim those abandoned and hazardous areas. That places a greater burden on taxpayers during a time of shrinking and federal and state budgets.

However since all mining being don in the Anthracite coal region is the re-mining of coal left behind in previously mined areas, this includes abandoned deep mines, refuse piles and silt dams. Anthracite mining operators are actually cleaning up acid mine drainage and the environment by mining from the surface and "daylighting" old abandoned deep mines and closing them off. They then reclaim the landscape by backfilling and re-seeding the affected area reclaiming it for other uses. They do this as a part of their normal business operations.

Re-mining reclamation does not require the use of a single tax dollar and is done completely by the mining operator. This reclaims the environment and saves taxpayers millions of dollars annually, a win/win situation for everybody. However, as anthracite markets continue to diminish, the responsibility will shift from the mining operator to the tax payer to clean up these environmental hazards.

## **Overview of Proposed Regulation**

In general, the anthracite mining industry understands the political climate that has driven the inception of these proposed regulation changes. Continued pressure from environmental groups and negative media coverage surrounding the use of coal creates constant pressure on regulatory agencies nationwide.

Although there have been no proven significant environmental problems surrounding the beneficial use of ash as defined by Pennsylvania law that perception still lingers.

Further, we are concerned by the Department's decision to move forward with technical guidance and program implementation before regulations could be completely reviewed and commented on by all affected parties. While we understand the urgency of the situation and industry has done its best to cooperate with the Department, we hope that the Department will not see the need to issue technical guidance in advance of the full completion of the rule making process in the future.

## **Comments to Proposed Regulations Chapter 209 Regulations**

**290.101 General requirements for the beneficial uses of coal as (d)** This section states that a water monitoring plan *"must be developed and implemented if either more than 10,000 tons of coal ash per acre is to be used on a project or more than 100,000 tons of coal ash in total will be used at a project. Contiguous projects will be considered a single project for purposes of this section."*

Currently, there are thousands of acres of land and hundreds of small abandoned mine sites in the anthracite coal region, many of which could benefit from the beneficial placement use of coal ash for reclamation purposes.

However, when an operator factors his engineering costs, permitting fees and bonding costs along with the cost to construct and maintain monitoring wells throughout a site, it is highly likely that operators will avoid those smaller sites because they will now become too costly to use for the placement of ash. We believe these tonnage limitations are far too constricting and these new rules will result in a disincentive for reclaiming the hundreds of small abandoned mines that dot the anthracite coal region.

**290.104 Beneficial use of Coal As at coal mining activity sites (4) (1)** As it is written, this section of the rule making requires that all Beneficial Use of Ash sites be permitted, active and pay an annual fee of \$2,000. The regulation does not allow for a permitted and inactive site. Further, the regulation calls for the strict monitoring of all active ash disposal sites whether they are actively receiving ash for beneficial use or not. This has resulted in the expiration of numerous ash disposal permits.

The Pennsylvania Anthracite Council recommends the DEP establish a second category of permitted ash disposal sites that are approved, but not actively utilizing ash for beneficial use. Operators could be allowed to identify, permit and inventory inactive sites for future use.

Operators would still be required to go through the normal public comment and permitting process. However, they would be exempt from the background monitoring requirements while the site is inactive. Operators would be required to give a one year notice to the DEP and pay the active permit fee of \$2,000 and begin doing its background monitoring before ash could begin being placed on the site. To offset the tracking costs the Department can levee a \$250 annual inactive permit fee.

**290.104 Beneficial use of Coal As at coal mining activity sites (f) (1)** According to this section of the regulation the *“the volume of coal ash to be placed a the site may not exceed the volume of coal, coal refuse, culm or silt removed from the site by the active mining operation on a cubic yard basis unless approved by the Department.”*

Nearly all mining being done in the anthracite coal mining region is the re-mining of previously mined and abandoned areas. In those cases operators are mining reserves that have been depleted by 50% or more decades or even a century or more ago. Additionally, in many cases the overburden removed to get at the coal on those abandoned sites may not be located on the current permit for use in back filling.

By restricting the beneficial placement of ash at a re-mining site to current volumes of coal being extracted, the Department will be creating a disincentive for mine operators to enter an abandoned mine area for re-mining purposes.

The wording of this section does give the Department significant authority to approve greater volumes of ash at active re-mining sites if they choose. However, a strict adherence to this requirement in the anthracite region could unfairly and needlessly limit the beneficial use of coal ash in the reclamation re-mining process. We recommend that the Department write rules that account for coal volumes that may have been mined decades ago and allow for increased volumes of coal ash at those sites based on the estimates of the historic extraction of coal from the site and a lack of viable over burden that can be used in backfilling.

**290.301 Water Quality Monitoring (3) (g)** Under this section, the regulation requires, *“water quality monitoring shall continue quarterly for a minimum of five (5) years after final placement or storage of coal ash at the site, and annually there after from the end of year 5 through 10 years after the final placement or storage of coal ash at the site. The Department may require more frequent or longer water quality monitoring if the results of water quality monitoring indicates that contamination may be occurring.”*

While we fully understand the Department's desire to protect the public's interest in the placement of coal ash, we also must recognize the historic success of this program. The Pennsylvania DEP has a 20 year track record of excellence in the administration of the placement and use of coal ash for beneficial use.

The Department offers no rational or scientific basis for the requirement of an additional five years of monitoring beyond what is already prescribed by law. We believe that current testing and monitoring requirements are sufficient to protect the environment and the public at large.

This requirement will needlessly lead to more costs on the part of operators while providing no additional protection for the environment. According 290.104 section (d) (5) operators will be required to pay an annual \$2,000 permitting fee to the Department "*until the final bond release for the coal mining activity site.*" Operators will be required to pay an additional \$10,000 plus bonding costs for an additional five years.

This requirement along with those we cited earlier leads to an even greater disincentive for operators to use coal ash to reclaim small sites. We believe this should be addressed more fully by the Department.

**290.304 Assessment Plan (a) (1)** This section of the regulation requires an operator to submit an assessment plan in the event the data obtained from monitoring by the Department or person indicates a "significant change" in the quality of groundwater or surface water from background levels determined under section 209.301 (a) (2).

This section of the proposed regulation is completely void of any suggestion or information on what would trigger such an assessment plan. Additionally in the anthracite coal mining region, the geography, geology and legacy of long abandoned underground mine workings may create challenges when trying to identify sources, reasons and durations for any "significant change" in water quality.

The anthracite coal mining region is littered with thousands of miles of underground tunnels creating enormous drainage areas that include entire towns and cities. As a result changes in hydrology can occur as a result from storm water diversions, wildcat sewers, combined sewer over flows leaking into the drainage system. In addition, illegal dumping of trash can create short term and negative impacts on water quality in a particular area as well.

Further, breaches in barrier pillars that are known to occur from time to time, major rain events, major snow melts could all result in increase flows and temporarily impact water quality at an ash disposal site. In addition, drought conditions in an area could also contribute to a temporary occurrence of water degradation.

We believe the regulations should include a better definition of a "significant change" and how long of a duration that "significant change" lasts before the need to submit and implement and "assessment plan."

We believe that this trigger and time durations should be better defined by the department in the regulations.

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I appreciate the opportunity to provide you and the department with these comments. If I can be of any further assistance, please do not hesitate to call me.

Sincerely yours.

A handwritten signature in cursive script that reads "Duane C. Feagley". The signature is written in black ink and is positioned above the typed name.

Duane C. Feagley  
Executive Director