

# Comments of the Independent Regulatory Review Commission



## Environmental Quality Board Regulation #7-489 (IRRC #3074)

### Land Reclamation Financial Guarantees and Bioenergy Crop Bonding

December 24, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the October 25, 2014 *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 Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

#### **1. Section 86.17. Permit and reclamation fees. – Clarity; Economic impact.**

Language is added in Paragraph (e)(2) relating to Act 157 of 2012 (Act 157). The EQB explains in the Preamble that this language was added at the request of the Mining Reclamation Advisory Board. We have two concerns. First, Citizens for Pennsylvania’s Future commented that the wording of the added language could have the practical effect of eliminating the reclamation fee as a source of revenue. We ask the EQB to review the language added to the regulation, consider amendments and provide further explanation of the purpose of the added language in the Preamble to the final-form regulation.

Second, the added language states “. . . the need to offset an **increase** in the reclamation fee . . . .” (Emphasis added.) It is our understanding that within several sources of funding available, the fee could be increased and possibly later decreased. Therefore, rather than using the word “increase,” we suggest phrasing the regulation as an “adjustment,” or similar language suitable to the EQB’s intent.

#### **2. Section 86.162b. Land Reclamation Financial Guarantees. – Consistency with statute; Clarity.**

##### *Paragraph (f)(3)*

The last phrase of Paragraph (3) states “. . . plus a margin of safety determined by the Department.” Section 2 of Act 157, establishing Section 19.2(d)(1) uses slightly different language: “. . . plus a **reasonable margin of safety to protect the account from risk of forfeiture.**” 52 P.S. §1396.19b(d)(1). (Emphasis added.) We recommend including the statutory language.

*Paragraph (k)(3)*

The paragraphs under Subsection (k) describe what the coal mining operator must demonstrate to be eligible for a Land Reclamation Financial Guarantee. As worded, Paragraph (3) is not clear regarding what the operator must demonstrate. We ask the EQB to review Paragraph (3) for clarity.

*Paragraph (m)(2)*

This paragraph provides a payment schedule. Should this schedule be provided by the Department “in writing”?