

COAL MINING AMENDMENTS

#7-376

COMMENT AND RESPONSE DOCUMENT

List of Commentators

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4. Independent Regulatory Review Commission

COMMENTS AND RESPONSES

1. Comment: Highway construction projects involving cut and fill are very similar to a linear surface mining operation. Forested areas are logged, the land is cleared, topsoil is stripped away and stored, overburden is removed then stored for later use or placed in an engineered fill. Encountered coal is often removed from the site. However, one critical difference is that in mining the permit includes plans for handling toxic and acid-producing spoil and the area is backfilled to approximate original contour. Conversely, in the majority of highway projects open cuts remain exposing toxic strata to weathering and fills are constructed with little regard to special handling of toxic spoils. In several instances we have noted that polluting discharges have resulted from highway construction causing degradation to diversified wildlife ecosystems.

We recommend the Environmental Quality Board oppose this regulation until these concerns are adequately addressed. We believe that a Memorandum of Understanding between PENNDOT, DEP, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission and other natural resource agencies could be developed to resolve our concerns. (1, 2)

- Response: The Department believes that these concerns will be adequately addressed by existing statutory and regulatory requirements applicable to these projects. As explained in the preamble to the proposed regulation and reiterated in the final-form preamble, under the National Environmental Policy Act of 1970 and Pennsylvania's Act 120, the Department and other natural resource agencies have adequate opportunity to provide PENNDOT with information on environmental concerns, including the handling of toxic- and acid-producing overburden. The Department is committed to working with the appropriate agencies to assure compliance with the water quality regulations.

As an additional safeguard, the Department has inserted new paragraphs to subsection (a), which requires that the construction or reclamation be performed under bond, contract and specifications consistent with the acts and approved by the Department. In addition, the Department has inserted a new paragraph to subsection (c), which requires a person extracting more than 250 tons of coal or affecting more than 2 acres to maintain certain documents on the site. The new paragraph requires a person, whose project affects an area designated unsuitable for mining, to maintain on site a copy of the detailed report developed during the designation process. The report contains all of the information used by the Environmental Quality Board in making its decision on the designation,

including information on overburden, hydrology, and water quality. The report also identifies problem strata and impacts from any existing mines. Also a new subsection (d) has been added to the regulation that affirmatively states that these projects are required to comply with the other Department regulations, including the water quality regulations.

2. Comment: PCA supports the proposed regulation. However, we suggest the amendment include other types of government-financed construction beyond highway construction and reclamation. The Pennsylvania Surface Mining Conservation and Reclamation Act (SMCRA), definition of “surface mining activities,” exclusion (4), excludes those “[a]ctivities not considered to be surface mining as determined by the United States Office of Surface Mining, Reclamation and Enforcement (OSM) and set forth in department regulations.” SMCRA uses the words “considered to be” instead of “defined as” and defers to OSM’s “determination” on these activities. We believe the legislature intended to provide flexibility and to allow the Board to adopt regulations consistent with the Federal regulatory scheme. (3)

Response: The Department, upon further consideration of the language in Section 3 of SMCRA (52 P.S. § 1396.3), agrees with this suggestion. The Department has revised the regulation to exempt coal extraction incidental to other government-financed construction projects from its coal mining regulations. The Department interprets exclusion (4) (52 P.S. § 1396.3(4)) to cover those activities that the Office of Surface Mining has determined are not subject to regulation as surface mining. The Federal Surface Mining Control and Reclamation Act and regulations specifically exempt the incidental removal of coal in government-financed highway and other construction projects from the requirements of the Federal act and regulations. The Department agrees that these projects are not properly regulated as traditional surface mining.

3. Comment: Subsection (a)(1) is similar to the Federal regulation at 30 CFR §707.5 except that the Federal exemptions are not limited to highway construction and reclamation projects. The Federal regulations include exemptions for coal extraction incidental to other types of government-financed construction projects. Why doesn’t the proposed regulation also include these exemptions? (4)

Response: The proposed regulation was developed in response to a specific request from PENNDOT. It was based on exclusion (2) in the SMCRA definition of “surface mining activities,” which deals solely with coal extraction incidental to government-financed highway construction. As noted above in the response to Comment 2, the Department has revised the regulation to exempt coal extraction incidental to other government-financed

construction from its coal mining regulations pursuant to exclusion (4) in the SMCRA definition of “surface mining activities.”

4. Comment: The proposed regulation should include references to the water quality and environmental protection regulations that will still apply to government-financed projects. (4)

Response: The Department agrees and has inserted a new subsection (d) requiring these projects to comply with the appropriate regulations.