

Department Comments Regarding Remining Incentives

Recommended by PCA and PAC

May 2003

The Pennsylvania Coal Association (PCA) submitted recommendations for remining incentives at the January 2003 MRAB meeting. The Pennsylvania Anthracite Council (PAC) submitted recommendations for remining incentives at the April 2003 MRAB meeting. The MRAB requested the Department provide its comments on the recommendations. For convenience, the industry recommendations are set forth and are followed by the Department's comments.

PCA Recommendations

- (1) *Remining Bond Program:* We encourage the Department to expedite efforts to provide additional funds and authority for offsetting the bond at remining sites in an amount equal to the estimated value of the reclamation. Obtaining OSM approval for the use of Title IV AML funds for this purpose was a condition of the MRAB's recommended approval of the transition to the conventional bonding system. Although OSM rejected the Department's proposal, this avenue should be explored further with OSM.

The Department should also resolve quickly any remaining impediments to the expansion and improvement of the financial guarantees program proposed as an alternative to the OSM funding.

Department comment: The suggested Remining Bond Program is similar to the existing Remining Financial Guarantee Program except it would use federal money. OSM has already disapproved use of Title IV funds to offset bonds for future remining sites. Using Title IV funds would require a change to federal law. However, the Department will explore expanding the GFCC program for use on Priority 1 and Priority 2 sites, which are part of an anticipated remining site. The Department will determine whether a GFCC, partially funded with Title IV funds can be used in conjunction with a remining permit.

The Land Reclamation Financial Guarantee Program and the Remining Financial Guarantee Program account for approximately 40% of the bonds posted on active surface mine sites. In these difficult economic times, it is necessary for the Department to give careful consideration to expanding the state's share of the bonding market. The Department encourages industry sponsored bonding.

This recommendation does not require legislative action. Therefore, the Department recommends it not be included in the Remining Report to the General Assembly.

- (2) *Tax Credits:* PCA has proposed and pressed for a tax credit for remining operations as an incentive. PCA's legislation would provide a \$2 per ton credit against an operator's total state tax liability for each ton of coal mined from a Subchapter F or G permit. The Department should make this a priority item in the next legislative session.

Department comment: Any tax credit requires careful and thoughtful consideration in the current economic climate.

- (3) *Direct Economic Support:* While tax credits are useful, there is no better incentive than a proposal that recognizes and rewards in part the direct value provided by remining through a compensation program or an offset against federal AML tax liabilities. Unlike income or capital stock taxes, a value added or excise tax such as the AML tax is collected on production regardless of the profitability or capital holdings of the company. If it is not economical to mine and sell the coal at a price which includes the tax, the company will not elect to develop a remining project.

Providing a transferable credit or AML tax offset is one approach that could favorably affect the economics of remining and encourage more. It is possible that an appropriate incentive could engage more operators, including larger producers, in remining projects. As we have said before, it is not a subsidy when the state pays less than market value for desirable results: It is a bargain. We do recognize that an offset of the AML tax liability would require federal action, but we encourage the Department to evaluate that option along with a transferable credit approach as ways of providing meaningful economic support for remining operations.

Department comment: Similar proposals are being evaluated as part of the AML reauthorization process. Support of the MRAB, the industry and the General Assembly could help realize this or a similar goal.

- (4) *Elimination of Impediments to and Encouragement for Remining on Public Lands:* Despite the economic and environmental benefits of remining, it is sometimes difficult to obtain remining permits for previously affected mine lands in state parks, game lands or forests, even where this would eliminate potential hazards to the public and existing water pollution problems. These impediments should be eliminated and remining should be encouraged as responsible management of public lands. In many cases, remining offers the best way to reclaim AML and can be accomplished in a way that complements and enhances the state resource. PCA will work with the Department to ensure the concerns of other resource management agencies are addressed, but the reclamation of public lands for public good, through efficient and effective modern remining should be encouraged as a matter of policy.

Department comment: Remining in state parks, state game lands and state forest lands is currently allowed but limited by state and federal law. It is the policy of the Department to encourage reclamation through remining. The Department will continue to work closely with the Pa. Game Commission and the Pa. Department of Conservation and Natural Resources to allow for remining of these public lands in accordance with the law.

Because this recommendation does not require legislative action, it is recommended that it not be included in the Remining Report.

- (5) *Coordination of Remining With Other Reclamation Resources:* The Department should look to maximize reclamation and recovery of areas affected by past mining by giving priority to projects which coordinate remining with other reclamation efforts. First, the Department's evaluation of grant applications for reclamation projects should consider the potential for complete restoration of an affected area and the role remining could play in achieving that end. At the same time, the Department should consider contracting with the operator for the reclamation of adjacent abandoned mine lands as a priority when this could achieve significant environmental benefits or more complete restoration of an affected area.

Department comment: The Department will explore this recommendation as it related to pre-primacy abandoned mine lands. Pa. SMCRA allows the Department to contract with property owners or mine operators and to use the forfeited bond money to reclaim the property. Operators are encouraged to determine whether the unreclaimed mine land is on a bond forfeiture site. If so, the operator should consider proposing a contract using bond forfeiture money for reclamation.

Because this recommendation does not require legislative action, it is recommended it not be included in the Remining Report.

- (6) *Recognition of Remining as "Green" Energy Production:* Finally, the Department should press the administration to recognize that remining is "green" energy production. There must be recognition that green power goes beyond the reduction in air emissions and includes the significant water quality, public safety and environmental improvements provided by remining.

Department comment: The Department supports classifying the power generated from burning of coal wastes as "Pennsylvania Preferred". A classification with benefits similar to the "green" energy concept.

PAC Recommendations

- (1) On sites where a mine operator is considering applying for a permit that would include subchapter F/G modules, the Department could routinely offer its staff to

work with the operator's consultants to develop abatement/mitigation techniques to address any pollution discharges. DEP could assist with water monitoring.

Department comment: The district mining offices are always willing to work with permit applicants to develop effective plans for mitigating and abating pollutional discharges on prospective remining areas. The Department encourages applicants to participate in pre-application meetings to discuss potential problems and solutions prior to proceeding with site design.

The Department is also willing to assist in the collection on baseline data on discharges at prospective Subchapter F and G sites. Approximately five years ago, the Pottsville Office initiated a program for collecting baseline water quality information in areas of the anthracite coalfields that were considered likely candidates for Subchapter G permits. The monitoring was discontinued after two years because no Subchapter G permit applications were received. The Department would consider restarting this program if it had some reasonable assurance that the data would actually be used to develop remining permit applications.

- (2) The Department could provide a bond "Credit" to permittees who reclaim abandoned mine land next to their permitted operations. This would need a funding source.

Department comment: The General Assembly has already authorized a "bond credit" program. An operator earns a bond credit under an agreement with the Department whereby the operator reclaims abandoned mine lands for an agreed upon price and is then able to use that value for bonding his operation. An operator may use a bond credit two times.

Because this recommendation is already part of the law, it is recommended that it not be included in the Remining Report.

- (3) The Department should allocate \$125,000 per year to the ROAP program and allow the funds to be used to help pay for engineering costs for bond increments in the anthracite region. Currently the ROAP program is providing financial assistance to new permits.

Department comment: The Department continuously seeks funds for the ROAP. The engineering cost is eligible for payment under SOAP, which has funds available. Ninety percent of the operators are eligible for SOAP. Under conventional bonding, the operation area moves, is fully bonded and there is no need for bonding increments.

Because this recommendation does not require legislation, it is recommended it not be included in the Remining Report.

- (4) For refuse pile remining sites, the Department should reduce the five-year liability period that starts after final planting to a two-year liability period. This would match the reduction approved in the federal program in 1992.

Department comment: Reduction of this liability period requires action by the General Assembly. It is not necessary to wait for legislative action. The Department has an OSM approved contract process for the reclamation of abandoned coal refuse sites which has only a one year liability period. Furthermore, the maintenance bond is a performance bond and is not penal in nature. This program has been successfully used many times to reclaim refuse piles in the bituminous region.