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**Gelnett, Wanda B.**

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**From:** Allen, William (DEP) [wallen@state.pa.us]  
**Sent:** Monday, February 04, 2008 2:05 PM  
**To:** Tate, Michele  
**Cc:** Simeone, Christina; Morrison, Richard  
**Subject:** FW: PA Coal Assn Comments

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-----Original Message-----

**From:** Pacoal1@aol.com [mailto:Pacoal1@aol.com]**Sent:** Monday, February 04, 2008 2:04 PM**To:** wallen@state.pa.us

**Cc:** kmcginty@state.pa.us; jayroberts@state.pa.us; jpizarchik@state.pa.us; jprushnok@pnresources.com; masnyder@snydercos.com; bobmurray@coalsource.com; JohnSt@amerikohl.com; zubekinc@juno.com; daveo@valiercoalyard.com; rscott@pbscoals.com; mjr@bradfordenergy.com; hshaak@bnrpa.com; mjones@eadsgroup-clarion.com; coal@rosebudmining.com; concrete@pennswoods.net; pmerritts@alphanr.com; dennis.foster@rosebudmining.com; scario@foundationcoal.com; Dave.Thomas@arlp.com; jim.ashby@ARLP.com; sreyba@parkwoodresources.com; BARBWCI@HUGHES.NET; TommyJohnsonII@consolenergy.com; tjspolka@windstream.net; JKukura@foundationcoal.com; tjssmith@windstream.net; action@pennswoods.net; scott.mort@nacoal.com; sean.isgan@cmemgmt.com; garyslagel@cnxgas.com; jburcat@saul.com; tdayton@foundationcoal.com; bmiller@foundationcoal.com; jgallo@pbscoals.com; drebuck@blackwolfcoal.com; mmishra@foundationcoal.com; clarkbj@bipc.com; TREED@DINSLAW.com; jonathanpachter@consolenergy.com; kerrykampfer@consolenergy.com; rmarcavitch@coalsource.com; dlroman@adelphia.net; bwaite@moody-s.com; gwidenhofer@alphanr.com; mdtourdot@penn-er.com; etidennis@atlanticbb.net; musser@musserengineering.com; darrel.lewis@snydercos.com; bwright@moody-s.com; rhaupt@bnrpa.com; k.fenush@verizon.net; sblauvelt@penn-er.com; rkudlawiec@coalsource.com; mtercek@pbscoals.com; DaveHudson@consolenergy.com; rbottegal@alphanr.com; bdunst@verizon.net; bsutphin@moody-s.com; markstanley@consolenergy.com; Jim.Ashby@arlp.com; MarkStanley@consolenergy.com; bpancher@wallacepancher.com; rustya@ARLP.com; MSTEWART@mbakercorp.com; cindy.hass@ARLP.com; Steve.Hinderliter@cmemgmt.com; StanGeary@consolenergy.com; kyingling@alphanr.com; Dave.White@nacoal.com; Bruce.Krug@RockwoodCasualty.com; sgermanio@comcast.net; Pacoal1@aol.com

**Subject:** PA Coal Assn Comments

Hard copy being mailed to Mr. Allen.

January 31, 2008

Mr. William S. Allen, Jr., Chief  
 Division of Monitoring and Compliance  
 Bureau of Mining and Reclamation  
 Rachel Carson State Office Building  
 400 Market Street (5<sup>th</sup> Floor)  
 Harrisburg, PA 17101-8461

2/19/2008

**RE:** Department of Environmental Protection  
Draft Final-Form Regulations  
Surface and Underground Coal Mining: General-  
Changes to Proposed Rulemaking at 36 Pa.B. 4200 (August 5, 2006)  
As announced at 38 Pa.B. 80 (January 5, 2008)

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Dear Mr. Allen:

The purpose of this letter is to provide comments, suggestions and objections of the Pennsylvania Coal Association ("PCA") to the above-referenced Proposal of the Department of Environmental Protection (DEP).

PCA is the principal trade organization of Pennsylvania's bituminous coal producers. We represent both large and small companies, partnerships and individuals that produce over 75% of the bituminous coal annually mined in Pennsylvania. A list of PCA member companies is attached. PCA's members produce bituminous coal by surface and underground mining methods. This proposal principally affects our members' surface mining operations.

The DEP is revising its proposed rulemaking published in the Pennsylvania Bulletin on August 5, 2006, which would have eliminated a \$100-per-acre reclamation fee, currently used to supplement forfeited bonds, to reclaim mining operations where operators have defaulted on their reclamation obligations. The rationale for eliminating the fee was based on revision of DEP's bonding program, from an Alternative Bonding System (ABS) to a Conventional Bonding System (CBS), which now requires all mine permit applicants to post full-cost reclamation bonds.

The elimination of the fee, together with other issues, was the subject of litigation (*PFSC, et al. v. Kempthorne, et al.*, 497 F.3d 337 (3<sup>rd</sup> Cir. 2007)), in which the Court decided that Pennsylvania must address funding inadequacies of its prior Alternative Bonding System, so that annual operation and maintenance (O&M) costs at sites forfeited under that system will be fully funded. Thereafter, the Federal Office of Surface Mining (OSM) advised the DEP that it will disapprove any surface mining program amendment that deletes the \$100-per-acre reclamation fee at this time unless accompanied by a funding mechanism that fully funds the ABS Legacy sites.

The Mining and Reclamation Advisory Board (MRAB) met on January 10, 2008, at which time it reviewed the DEP's revised rulemaking to maintain the \$100-per-acre reclamation fee until January, 2010, and additional recommendations, including:

- (a) A mechanism to adjust the fee after January, 2010, based on the need for sufficient revenue to fund perpetual O&M costs at affected sites. The fee would be continued at a minimum rate of \$50-per-acre with \$50 incremental increases, as needed, to maintain at least the current balance of \$3 million in the Reclamation Fee O&M Account, and to supplement a new perpetual account called the Alternative Bonding System (ABS) Legacy Sites Account. Any fee adjustment would be a final action of the department appealable to the Environmental Hearing Board;
- (b) The reclamation fee will be eliminated when the ABS Legacy Sites Fund is actuarially sound (i.e., construction of treatment facilities at all legacy sites is completed; financial guarantees to cover reclamation and discharge treatment at all legacy sites in perpetuity are approved by the DEP; and the Legacy Sites Fund is sufficient to generate enough interest to pay the annual O&M costs for discharge treatment at all affected sites into the future);

(c) Interest on collected reclamation fees; up to \$500,000 from civil penalties collected under the Surface Mining Control and Reclamation Act (SMCRA or the Act); and a portion of interest on other moneys in the Reclamation Fee O&M Account, must also be deposited into the O&M Account in each fiscal year;

(d) Any additional moneys from penalties, appropriations, donations or fees for sum-certain financial guarantees to facilitate full-cost bonding may be deposited into the O&M Account; and all moneys in the Account must be used to pay construction and O&M costs, including recapitalization costs, related to discharge treatment at legacy sites;

(e) The new ABS Legacy Sites Account would be initially funded with moneys from bonds forfeited on ABS legacy sites and the interest thereon; but the DEP may also transfer moneys from the Reclamation Fee O&M Account, together with interest on that account, and any appropriations, donations or other moneys, into the new Legacy Sites Account.

## I. General Comments

When the Department converted its bonding program from an alternative bonding system (ABS) to a conventional full cost bonding (FCB) scheme in August, 2001, it acknowledged to operators that the reclamation fee would no longer be needed to supplement the bond fund. Once the FCB was in place and fully implemented, the Department made a commitment to industry that it would eliminate the fee. The original purpose of this rulemaking was to accomplish this.

Now, the rulemaking not only intends to continue to impose the fee on operators but to use its proceeds to help address the shortfall in the ABS forfeiture fund.

**The active mining industry is in no way responsible for any of the sites forfeited under the ABS.** Despite this, and like the imposition and application of the federal Abandoned Mine Land fee, a part of the mining industry that followed the law and regulations, while surviving a cyclical and competitive coal market, is now being forced to pay for the consequences of that part of the industry that failed to meet its responsibilities. This is patently unfair.

Asking responsible operators to continually bear the burden of those who forfeited their sites with insufficient bond amounts makes the former less competitive with surface operators in other states and underground operators regardless of their locations.

Further, as costs continue to escalate, additional tax impositions by the state could force operators already on-the-margins to leave the industry, resulting in less active operators absorbing a greater share of the cost burden. It also could reduce the number of operators on which the Commonwealth relies on to help address, through remining and other programs, the state's AML and AMD legacy.

Despite the proposal's unfair consequences on the active mining industry, PCA has agreed to support the rulemaking provided changes are made to incorporate the recommendations of the MRAB (see specific comments) **and the use of the reclamation fee as a funding source to address the ABS Legacy is limited to two years.** In the interim, PCA, along with the MRAB and DEP, are encouraged to work with legislative leaders and develop an alternative permanent financing mechanism that does not rely on revenue from the reclamation fee.

## II. Specific Comments.

PCA strongly supports the following changes to the rulemaking recommended by the MRAB at its January Board meeting.

1. There should be no continuing \$50-per-acre reclamation fee. Rather, in January, 2010, at the end of the initial two-year period during which the \$100-per-acre reclamation fee continues, and each fiscal year thereafter, a financial analysis must be conducted by the DEP and reviewed by the MRAB for its recommendation regarding whether or not the fee should be continued; and, if so, at what rate;
2. Only "excess" monies in the Reclamation Fee O&M Account, not needed to maintain a minimum \$3M balance and to address current projects at ABS sites, may be transferred into the new ABS Legacy Sites Account, and only upon review and recommendation of the MRAB:
3. If the legislature approves use of premiums from the Bond Conversion Assistance Fund for O&M costs at ABS sites, then those funds should be deposited into the Reclamation Fee O&M Account and considered during the annual review regarding continuation or adjustment of the per-acre reclamation fee. However, because this source of funding would not be permanent and may not be adequate to provide for O&M costs at legacy sites in perpetuity; then
4. If the legislature approves a permanent funding stream to sufficiently address all future O&M costs at ABS legacy sites, that funding must be dedicated for such purpose and a determination made, with the advice and recommendation of the MRAB, regarding elimination of the per-acre reclamation fee and transfer of all monies remaining in the Reclamation Fee O&M Account into the ABS Legacy Sites Fund. Potentially, such actions will render the ABS Legacy Sites Fund actuarially sound, and it will become the sole source of funding reclamation and treatment at ABS legacy sites.

Thank you for the opportunity to submit these comments. Please keep in mind that this letter should not be construed as a waiver of any right of PCA or its member companies to contest any adverse decision or findings that may be applicable to them.

Please feel free to call me if you have any questions.

Sincerely yours,

George Ellis, President  
Pennsylvania Coal Association

GE:sg

Attachment (PCA member companies)

cc: Hon. Kathleen A. McGinty, Secretary, DEP

Hon. J. Scott Roberts, Deputy Secretary for Mineral Resources Management

Joseph G. Pizarchik, Director, Bureau of Mining and Reclamation

PCA Board Members

PCA Technical Committee

**Pennsylvania Coal Association  
Producing Members**

Action Mining, Inc.  
Alliance Coal, LLC  
Amerikohl Mining, Inc.  
AMFIRE Mining Company, LLC  
Ancient Sun, Inc.  
Berwind Natural Resources  
Bradford Energy Co., Inc.  
E.M. Brown, Inc.  
CONSOL Energy, Inc.  
Fisher Mining Company  
Hepburnia Coal Co.  
King Coal Sales, Inc.  
Murray Energy Corporation  
North American Coal Royalty Co.  
Original Fuels, Inc.  
P&N Coal, Inc.  
Parkwood Resources, Inc.  
PBS Coals, Inc.  
Penn View Mining, Inc.  
Pennsylvania Services Corporation, as Affiliate of Foundation Coal  
Rosebud Mining Co.  
Thomas J. Smith, Inc.  
State Industries, Inc., C.H. Snyder, Co.  
TJS Mining, Inc.  
Waroquier Coal Co., Inc.  
Zubek, Inc.

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