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August 27, 2021

Members of the Independent Regulatory Review Commission:

Over the past two years, the Appalachian Region Independent Power Producers Association (“ARIPPA”) has stressed the importance of considering the impact of Pennsylvania’s proposed CO2 Budget Trading Program Rule, also known as the Regional Greenhouse Gas Initiative (“RGGI”), on the coal refuse reclamation to energy industry. While the proposed rulemaking adopts the main program elements of the RGGI Model Rule, the Department of Environmental Protection (“Department” or “DEP”) opted to exercise its independent rulemaking authority to account for certain unique environmental, energy, and economic intricacies of this Commonwealth. Specifically, they have proposed to establish a Waste Coal Set Aside Account (“set aside”) in Pennsylvania’s RGGI program.

ARIPPA appreciates Governor Tom Wolf and the Department continuing to support the coal refuse reclamation to energy industry and recognizing the environmental benefits that the industry provides to the Commonwealth by including this set aside in the proposed RGGI rule. In testimony before the Senate Appropriations Committee, DEP Secretary Patrick McDonnell explained that the goal of this set aside “would be basically holding [coal refuse energy facilities] harmless for the carbon emissions they are going to have.” ARIPPA supports including a set aside in Pennsylvania’s RGGI program that appropriately recognizes the positive environmental externalities of the coal refuse reclamation to energy industry.

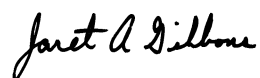
An adequate set aside is necessary to allow these facilities to continue to operate and achieve their maximum environmental potential to clean up the legacy of mining waste from historic coal mining operations that powered our country during the previous century. The proposed RGGI rule allocates CO2 budget allowances to a set aside account each year based upon the “legacy emissions” of these facilities, which was initially defined as five years. Unfortunately, the past five years have been some of the lowest operating years in the industry’s history.

During the rulemaking process, the Department has constructively worked with the coal refuse reclamation to energy industry resulting in several positive changes already being made to the waste coal set aside in the proposed RGGI rule. ARIPPA supports the proposed RGGI rule including an extended “legacy emissions” period of ten years, thereby increasing the waste coal set aside to approximately 12.5 million allowances to provide the maximum environmental benefit to the Commonwealth from future coal refuse pile removal and abandoned mine land (“AML”) reclamation by the industry. Making this change, in addition to accounting for the continued operation of all ten existing waste coal facilities, will avoid any potential negative impact on this industry from RGGI and fulfill the Department’s commitment of “holding the industry harmless” under the proposed rule.

The coal refuse reclamation to energy industry is a market-based, alternative energy solution to Pennsylvania’s AML problem that if preserved can save the Commonwealth over \$5 billion in environmental remediation costs. The AML reclamation work performed by these facilities produces quantifiable improvements to the land, air, and water of the local communities where the reclamation occurs, as well as downstream communities impacted by acid mine water runoff from these sites. When considering the limited dollars available for reclamation and remediation of mining-affected lands, and the magnitude of coal mining’s legacy in Pennsylvania, this industry provides the best option for removing polluting coal refuse piles from the environment without shifting the full, significant cost to public resources. Should this option become unavailable, the entire burden of removal and remediation of at least 220 million tons of remaining coal refuse would fall upon Pennsylvania’s taxpayers.

ARIPPA thanks the Commonwealth for its resounding and unwavering support of the coal refuse reclamation to energy industry. We encourage recognition of the effort by the Department to “hold the industry harmless” under the proposed RGGI program. If you have any questions regarding our support of the RGGI program including an adequate waste coal set aside, how the proposed RGGI regulations would affect this industry, or how the industry would be fully “held harmless” under RGGI with the 10-year legacy emissions period, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Jaret A. Gibbons". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

Jaret A. Gibbons  
Executive Director  
ARIPPA