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October 3, 2016

PA Department of Environmental Protection
Policy Office
Rachel Carson State Office Building,
P.O. Box 2063
Harrisburg, PA 17105-2063

Dear Policy Office:

I am writing regarding the Pennsylvania Department of Environmental Protection's (PA DEP) draft Fiscal-Year Report for the Reclamation Fee O & M Trust Account, as announced in 45 Pa.B. 5779 on September 3, 2016.

The Pennsylvania Coal Alliance (PCA) is the principal trade organization representing underground and surface bituminous coal operators in Pennsylvania, as well as other associated companies whose businesses rely on coal mining and a strong coal economy. PCA member companies produce almost 90 percent of the bituminous coal mined annually in Pennsylvania, which is the fourth largest coal producing state in the nation.

By way of background, the PA DEP administered an Alternative Bonding System (ABS) between 1982 and 2001 to bond surface coal mine sites for the correction of any environmental or safety hazards in the event of a forfeiture. Under ABS, bond amounts were determined by a flat per-acre rate and supplemented by a non-refundable per acre reclamation fee paid by the operator. During that time, a number of operators forfeited their operations and the bond money was found to be insufficient to complete reclamation. As such, ABS was determined to be an inadequate way to calculate bonds, and financial responsibility for treatment of the forfeited sites was subject to a Federal court challenge.

Because ABS was deemed inadequate, PA DEP began converting from ABS to a full-cost Conventional Bonding System (CBS) in 2001, in which individual bonds are calculated on a site-specific basis to guarantee financial responsibility for any post-mining reclamation work. Annually PA DEP publishes Bond Rate Guidelines that reflect the current cost of reclaiming a site, ensuring adequate funding is available to the Commonwealth in the event a current operator forfeits a site.

In the interim, the U.S. Court of Appeals for the Third Circuit ruled the Commonwealth is responsible for costs associated with reclamation and water treatment activities at the aforementioned forfeited sites. This resulted in the establishment of the Reclamation Fee O&M

(Operations and Maintenance) Trust Account in 25 PA Code, §86.17, and roughly \$4 million in unspent reclamation fees from the years of ABS were deposited into the account. At the same time the Reclamation Fee O&M Trust Account was established, §86.17 directed that “Commencing January 1, 2010, and continuing until either a permanent alternative funding source is established or the ABS Legacy Sites Trust Account is actuarially sound, the reclamation fee will be adjusted as necessary to ensure that there are sufficient revenues to maintain a balance in the Reclamation Fee O&M Trust Account of at least \$3,000,000.” While PCA recognizes §86.17 authorizes the annual adjustment of the reclamation fee, we encourage PA DEP to find a permanent alternative funding source for the account, as assessment of the fee on current operators for sites they are not responsible for imposes an inequitable financial burden. Further, PCA encourages PA DEP to reexamine the \$3,000,000 Account balance requirement outlined in §86.17, as the balance could be better used to pay for the Commonwealth’s obligation rather than assess fees on current operators.

As outlined in §86.17(4), the reclamation fee is to be annually calculate based on a number of factors, including the “*The amount of ongoing operation and maintenance costs incurred by the Reclamation Fee O&M Trust Account during the previous fiscal years.*” With that in mind, historically, as illustrated in chart #1, the Department’s projections have been inflated when compared to the actual expenses incurred during the fiscal year. Assessing a reclamation fee based on such inflated projections places an unnecessary cost on current operators. With that in mind, PCA requests that the Department revisit §86.17 to determine a more accurate method of determining the projected expenditures, or adjust and assess the fee based on actual prior fiscal year expenses.

Chart #1. Reclamation Fee O&M Account projected versus actual fiscal year expenses

FISCAL YEAR	PROJECTED EXPENSES	ACTUAL EXPENSES
2009/2010	\$762,000.00	\$84,625.16
2010/2011	\$366,500.00	\$106,633.77
2011/2012	\$581,872.00	\$168,603.21
2012/2013	\$810,492.00	\$821,213.16
2013/2014	\$959,334.00	\$499,122.48
2014/2015	\$861,500.00	\$369,197.98

Additionally in §86.17(4), the reclamation fee is to be annually calculate based on the “...*projected expenditures of the Reclamation Fee O&M Trust Account for operation and maintenance costs for the current fiscal year.*” However, while the arithmetic provided on page 8 of the 2016 draft Fiscal-Year Report for the Reclamation Fee O&M Trust Account projects expenditures for the 2016-2017 fiscal year, the draft Report also considers expenditures for the first half of the 2017-2018 fiscal year. Not only is it premature to project for the 2017-2018 fiscal year, those expenditures are erroneously included and should be removed and held for the 2017 Report. In addition, the “Projected Income excluding the rec fee (16-17),” which is civil penalties, interest and other income, provided for in §86.17(4)(v), was miscalculated, and should be adjusted to \$225,000 based on the figures provided on page 7 of the draft Report. Lastly,

page 3 of the draft Report notes that the projected number of acres subject to the reclamation fee for 2017 is 1,500, yet the arithmetic on page 8 divides the calculated deficit by 1,400 acres. Regardless, PA DEP has historically utilized the statistical average of the acreage tracked in the eFACTS database. Based upon this previously utilized method, and including the projections for the 2016 calendar year as mentioned in the Report, 2,274 acres should be subject to the reclamation fee for 2017. PCA recommends that PA DEP continue to utilize this method for calculating the projected acreage subject to the fee in this Report and future Reports.

Considering this, the reclamation fee arithmetic should be revised as reflected in chart #2, and the reclamation fee should be eliminated for 2017.

Chart #2. Revised reclamation fee arithmetic

Pluses

Balance Above \$3M	\$309,951.07
Civil Penalties (15-16)	\$177,991.53
Projected Income excluding rec fee (FY 2016-2017)	\$225,000.00
2016-2017 Appropriation	\$500,000.00
Total	\$1,212,942.60

Minus

Expected Expenditures (FY 2016-2017)	\$980,499.00
Total	\$980,499.00

Calculated Deficit	\$0.00
Divided by 2274 acres	\$0.00 per Acre
Result	\$0.00 per Acre

Thank you in advance for your consideration of the above comments as they relate to the 2016 draft Fiscal-Year Report for the Reclamation Fee O&M Trust Account. If you have any questions or would like to discuss further, please do not hesitate to contact me at your earliest convenience.

Sincerely,



Rachel Gleason
 Executive Director
 PA Coal Alliance