



May 20, 2016

To: Members of the House Environmental Resources & Energy Committee  
Re: **Concerns with House Bill 1967 (P.N. 3119)**

Dear Representatives:

The Pennsylvania Environmental Council (PEC) would like to share our concerns with House Bill 1967 (P.N. 3119), which may soon be considered by the Environmental Resources & Energy Committee.

We recognize the current market challenges faced by the coal industry, and understand the limited purpose of this legislation. At the same time, we are concerned about the risk of adding to Pennsylvania's coal mining-related environmental liabilities if appropriate safeguards are not put in place during cessation of operations. Without safeguards, these liabilities could ultimately be borne by Commonwealth taxpayers if an operator elects not to restart mining activity or declares bankruptcy.

We would like to offer the following suggestions for amending the legislation:

1. Ongoing Site Maintenance And Safety

If operators are to be given additional latitude – potentially several years – to leave sites inactive, the legislation should include a requirement that a Temporary Cessation Site Stabilization and Safety Plan be submitted to and approved by the Department of Environmental Protection (DEP).

At a minimum, the Plan should address:

- a. Maintenance of erosion and sedimentation control and containment measures to ensure their proper functioning;
- b. The maintenance of other required measures to monitor both surface and ground water to ensure their proper functioning;
- c. The maintenance and continued operation of any required water treatment or other pollution prevention measures;
- d. Temporary reclamation measures needed to stabilize the site for the estimated period of cessation of operations to prevent pollution from going off-site;
- e. The submission of a final, detailed site reclamation design plan that could be immediately put out to bid by DEP in the event the operator chooses not to reactivate the site;
- f. Containment of any potentially environmentally harmful waste solids or liquids maintained on site;
- g. Public safety safeguards to prevent public trespass and the creation of attractive nuisances, which could lead to bodily injury or contamination incidents on site or damage to pollution control measures, equipment or other features or buildings remaining on the site during cessation;

- h. Provisions for regular inspection and reporting to assure the terms of the Plan are being met, as well as immediate notification requirements if measures taken under the Plan are damaged or not functioning, or other provisions of the Plan are not being met or will not be met by the mine operator in the future; and
- i. The provision of financial assurance to cover the estimated ongoing costs to maintain the above measures and controls in the event the operator is no longer able to perform them. (please see below)

## 2. Financial Assurance

The most recent downturn in the industry, resulting in numerous bankruptcies, underscores the stark reality that securing sufficient funding for maintaining and restoring sites is critical. While Pennsylvania law requires mine operators to post financial assurance for the final reclamation of a mining site, the cost of fulfilling commitments under a Temporary Cessation Site Stabilization and Safety Plan is not covered and would be left to taxpayers if the mine operator cannot meet those commitments.

Recognizing this, any operator who files a Temporary Cessation Site Stabilization and Safety Plan should be required to submit financial assurance to DEP sufficient to cover the ongoing costs of that Plan. We would anticipate that financial mechanisms, similar to those now in place for final site restoration, could be adapted for this purpose.

## 3. Inconsistency in Language

House Bill 1967 uses the phrases “operation” and “operations” (emphasis added), and “surface mining activities.” The terms “operation” and “surface mining activities” are provided in existing law; however, there is not a definition provided for “operations.” The legislation should be amended for consistency.

If the legislation comes up for consideration, we urge you to amend this bill to protect the citizens and environment of Pennsylvania. Without appropriate safeguards, this legislation could lead to new and significant financial liabilities for the Commonwealth in the years to come.

Thank you for your consideration.

Sincerely,



John Walliser  
Senior Vice President, Legal & Government Affairs