

**Testimony**

**Of**

**George Ellis**

**President**

**Pennsylvania Coal Association**

**Before the**

**HOUSE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE**

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**Regarding the Fourth Information Meeting of the Committee on an  
Energy Strategy for Pennsylvania**

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Good morning. Chairman Adolph, Chairman George and members of the House Environmental Resources and Energy Committee, my name is George Ellis and I am President of the Pennsylvania Coal Association (PCA).

PCA is a trade organization representing bituminous coal operators – both underground and surface – as well as other associated companies whose businesses rely on a thriving coal economy. PCA member companies produce over 75 percent of the bituminous coal annually mined in Pennsylvania.

We thank the Committee for this opportunity to provide our perspective on a state energy plan, coal's role in that blueprint and ways to encourage coal usage as a means to help reduce our dependence on foreign sources of energy.

PCA has long recognized the link between energy availability and economic development and believes that a long-term energy policy is critical to the continued economic prosperity of the Commonwealth.

The overarching goals of any energy plan should seek to ensure that an adequate and diverse supply of energy will be available in the future at affordable rates and produced and consumed in ways that are environmentally consistent. It should also seek to increase our energy security by harvesting energy from domestic sources like coal.

As the state and country's most affordable, reliable and abundant fuel source, coal is well positioned to play a significant role in helping to secure our energy future and as our best hedge against dependence on imported energy.

### **Profile of the Pennsylvania Coal Industry**

The Energy Information Administration (EIA) estimates the demonstrated US coal reserve base at 496 billion tons distributed geographically among 31 states; with 27 billion tons in Pennsylvania. At current consumption levels, coal supplies will be available for at least the next 250 years.

Pennsylvania is the fourth leading coal producing state, mining 72.7 million tons last year with a workforce of almost 7,000 employees. Almost 80 percent of this output came from 46 underground mines and the remainder from 347 surface mining and reprocessing sites.

Coal has been and will continue to be the major fuel of choice for electricity generation. Fifty percent of the United State's electricity is generated by coal and coal accounted for 56 percent of the total amount of electricity produced in Pennsylvania last year. Persistent high natural gas and oil prices and capacity limitations at nuclear plants will favor greater coal utilization to fuel the projected increases in electricity demand. Simply put, there is no other energy source that can produce electricity in that quantity at such a low cost for many years in the future. If Pennsylvanians are to continue to enjoy a reliable and affordable supply of electricity the Commonwealth must continue its reliance on coal.

In addition, coal is by far the least expensive fossil fuel on a dollar per million BTU basis for electric generation, averaging less than one-third the price of oil and one quarter the price of gas.

Coal mining is also a significant contributor to the state and local economies. It generates on average over \$2 billion in coal sales, directly employs 7,000 workers with a payroll exceeding \$500 million, and creates an additional 70,000 support service jobs with a payroll of about \$1.4 billion.

In addition, the economic importance of coal-based electricity to Pennsylvania was recently quantified in a report prepared by two Pennsylvania State University professors – Dr. Adam Rose and Bo Yang.

In their study, *Projected Economic Impacts of U.S. Coal Production and Utilization*, Rose and Yang found that coal-based electricity, including the production of coal, creates substantial benefits to the overall US economy. Specific to Pennsylvania, Rose and Yang concluded that in 2010 coal production and electricity generation would be responsible for:

- \$11.2 to \$34 billion in increased economic output;
- \$2.9 to \$11.6 billion in increased household earnings; and
- 57,000 to 298,000 additional Pennsylvania jobs.

## **Recommendations**

Although coal is well positioned to play a vital role in providing consumers with reliable and competitively priced energy today and in the future, there still remains a number of significant issues relating to the mining and burning of coal that threaten to impede coal usage.

### **I. Air Quality Issues**

As previously stated, coal is the primary source for generating electricity nationally and in Pennsylvania.

As you would expect, the steam coal market is by far the largest customer for Pennsylvania coal. About 70 percent of Pennsylvania's annual coal production goes to the electric utility sector, principally but not exclusively to PA coal-fired power plants.

Of the 43 million tons of coal consumed by PA's electric utilities last year, 34 million tons was mined in PA, about 50 percent of our total production. Clearly, preservation of this market is essential to the continued viability of the PA coal industry.

PCA supported the PA law that deregulated the electric utility industry because we believed that competition would place a premium on cost-effectiveness and reliability. As generation becomes more and more competitive, the future would belong to the lower cost fuel source, which in any scenario, would be coal.

However, competition depends on the existence of a level playing field on which various fuel options can equally compete. Unfortunately, this is not always the case, particularly given the unevenness and uncertainty surrounding air quality regulations.

For example, if PA's air quality standards are more onerous than standards adopted by other states or nationally uniform standards, it can make PA coal more expensive to burn because of compliance costs or impossible to use because of non-compliance with the tougher rules, thereby destroying coal's competitiveness in the "customer choice" electricity market.

A utility's options to comply with unilateral state regulatory action are to switch fuels, buy compliance coal from out-of-state mines or purchase coal based electricity generated in other states. The consequences of any of these actions is the premature closing of PA coal-fired plants, particularly older units, and the potential loss of the PA coal industry's major customer base.

It is therefore essential that, absent a compelling state-specific need, the air quality standards that PA's electric utilities must meet are the same as or substantially equivalent to federal mandates governing all utilities. Anything less will bias a significant part of the steam coal market against Pennsylvania coal.

#### A. Mercury

A case in point is the mercury rule. The uncertainty about mercury emission control technology combined with concerns over the potential for more stringent regulations imposed by the state, have left PA generators unsure of where to invest for compliance.

Under EPA's Clean Air Mercury Rule (CAMR), mercury emissions must be reduced by 70 percent nationwide by 2018. Since PA coals have a high mercury content, to meet the federal rule PA power plants are required to reduce emissions by 86 percent, requiring a 94 percent removal of mercury in the coal, by 2018.

DEP is considering a state regulation that requires a 90 percent reduction in mercury emissions by 2009, assuming the regulation is finalized by 2006.

Ironically, it is not the stringency of the rule that is in question but the timing.

The timing issue, however, presents a serious risk for continued use of PA coal. First, PA coals are relatively high in mercury, providing an incentive to utilities for switching to non-PA coals or natural gas. Attachment I to my testimony is a chart that provides a statistical distribution of coal mercury content by state for the major producing states in the east and also some in the west. It shows that PA coals have the highest mercury concentration measured in pounds per trillion BTUs of all coals in the eastern United States and twice as much on average as coals produced in West Virginia and Kentucky.

Any attempt by the state to impose its own mercury regulation that accelerates the CAMR timetable combined with the expected reductions in SO<sub>2</sub> (about 80 percent) and NO<sub>x</sub> emissions required under the Clean Air Interstate Rule (CAIR) will force electric utilities to move towards coals that are lower in mercury and sulfur content. Those coals just happen to be plentifully available in West Virginia, eastern Kentucky and states west of the Mississippi.

This is not mere conjecture. At the last meeting of the PA Mercury Rule Workgroup, a number of utilities acknowledged plans to conduct test burns on PRB coals.

To further complicate matters, mercury-specific control technology, particularly its use with high sulfur eastern bituminous coals, is still a work in progress. According to the U.S. Department of Energy (DOE), “Currently no single technology exists that can uniformly control mercury from all power plant flue gas emissions.” This is because there is a huge variation among existing utility boiler designs, air pollution control devices already in place, and coal types. For example, only 4 out of the 19 full-scale tests to date were conducted using high-sulfur bituminous coal and only 2 of 15 scheduled tests will use this type of coal. And, the preliminary results of the test cases that used high-sulfur coal found the technology to perform more poorly.

EPA has concluded that mercury-specific control technologies are not yet commercially available, and does not believe widely applicable technologies can be developed and broadly deployed over the next five years.

While some technology vendors and critics of CAMR assert that greater, near-term emissions reductions are achievable, these claims are largely based on short-duration tests at only a few facilities and are not easily extrapolated to the entire power generation fleet. In addition, vendors so far have been unwilling to provide adequate guarantees for the performance of their equipment, rendering adoption of such equipment by power generators too risky.

Accordingly, PCA makes the following recommendations concerning mercury regulation:

- The federal CAMR is a stringent rule for Pennsylvania,
- DEP has not made a compelling case for a state regulation,
- Implement CAMR with interstate trading,
- Promote the development of mercury-specific control technology, recognizing the limitations of current technology for Pennsylvania’s higher-sulfur bituminous coals.

If DEP continues to pursue a state regulation for mercury, PCA strongly recommends intervention by the state legislature to consider the prudence of unilateral state action.

## B. Incentives to Promote Technology

Continuing innovation in technology development is a key to reducing our dependence on foreign energy sources.

Developing the proper suite of technologies will allow the US and PA to fully utilize its largest domestic energy source and put us on the path toward greater energy independence.

Technological options are clearly needed to optimize the use of coal. Clean Coal Technologies (CCTs) can play a pivotal role in helping to meet energy demand while curbing major emissions from power plants.

Advanced coal technology will help preserve fuel diversity so a reliance on any one fuel does not jeopardize the competitiveness of energy-intensive industries. We will need these technologies to arrest the growing dependence on foreign energy. Finally, we need these technologies to help our most abundant fuel meet the public’s environmental expectations.

With enactment of the Advanced Energy Portfolio Standard (AEPS), incentives are now in place to promote coal waste electric generation.

PCA recommends that the state now consider offering financial and or regulatory inducements to encourage construction of advanced coal gasification technology and installation of scrubbers and Selective Catalytic Reduction (SCR) units to existing Pennsylvania coal-fired plants.

### 1. Edge Initiative

On November 28, Governor Rendell unveiled a set of financial and regulatory incentives (Attachment II) designed to encourage construction of advanced coal gasification technology, like Integrated Gasification Combined Cycle (IGCC) units.

Dubbed EDGE (Energy Deployment for a Growing Economy) the initiative targets eight percent of PA's coal fired capacity that comes from power plants that are small (less than 250 megawatts) and old (30 years and older). Those are the plants most at risk to being shut-down because their remaining economic value would not justify the cost of installing compliance control technology.

PCA supports the EDGE proposal as a way to diversify a fuel portfolio and recommends that the legislature review the merits of the state-related incentives.

### 2. Tax Credits for Using Pennsylvania Coal

As mentioned previously in my testimony, the CAIR Rule will require further significant reductions in SO<sub>2</sub> and NO<sub>x</sub> emissions by 2015.

To promote the use of PA coal and to encourage utilities to upgrade their existing fleet of coal fired plants, PCA recommends that the Committee consider legislation that would provide electric utilities with a \$3 per ton tax credit for each ton of PA coal burned by a coal-fired power plant. To qualify for the credit, the power plant must be owned by the company claiming the credit and a "compliance facility" (i.e. a clean coal technology) must be used in conjunction with the generating unit. The credits would be used to offset the Capitol Stock and Franchise Tax obligations. However, any excess credit over and above their liability under this tax could be applied to their corporate net income tax liability.

This would also help level the playing field for PA coal operators since similar legislation has already been enacted in Ohio, Maryland and Virginia.

Attachment III contains language for such a bill and was patterned after the Ohio law.

## II. Amendments to PA SMCRA

PCA has been working with Representatives Stevenson and Surra, the respective Republican and Democrat chairs of the Subcommittee on Mining, in developing amendments to Pennsylvania's SMCRA (see attachment IV for a summary of the proposed amendments). A number of the amendments were recommended by the Mining and Reclamation Advisory Board and the others by PCA.

The centerpiece of the amendments is a proposal to spur remining of AML sites by providing a \$2 per ton tax credit for each ton of coal removed from a remining area.

“Remining” is the active mining of areas that were previously mined and abandoned without adequate reclamation. Under current law, mine operators engaged in remining must reclaim the area. Using modern environmental management practices, including contemporaneous reclamation, acid mine drainage prediction and prevention and other techniques to ensure compliance with today’s strict standards, remining results in considerable abandoned mine reclamation and pollution abatement at no cost to the taxpayers or the industry-supported Abandoned Mine Land Reclamation Trust Fund.

Remining has been a very effective tool in the reclamation of abandoned mine lands. Over the past five years, operators have provided an estimated \$90 million in reclamation work, returning land to productive use without using state or federal funds.

We hope to have a bill ready for introduction early next year.

### III. Mine Safety

While Pennsylvania’s underground coal mines remain among the safest in the country, there is always room for improvement.

The three primary stakeholders involved in mine health and safety in PA – industry, labor and state regulators – all agree that the Commonwealth’s 1961 mine safety law needs to be amended. The problem, though, is that each party has its own perspective on how it should be done.

Briefly, PCA prefers a three-prong approach towards modifying the state law:

1. Eliminate provisions that are outdated or no longer applicable.
2. Replace provisions of state law with corresponding provisions of the Federal Part 75 standards unless a determination is made that there is a compelling state-specific need for a different standard.
3. Incorporate the federal standard if there is no counterpart state provision and the federal provision is applicable to Pennsylvania.

This is similar to the approach taken by the Pennsylvania Industrial Mineral Industry when it upgraded its regulatory standards. This approach will also ensure consistency in application and enforcement by moving towards a uniform program, provide operators with a sense of certainty on what is required for compliance, and eliminate the confusion and unnecessary duplication inherent with a dual regulatory program.

DEP recently submitted its proposed rewrite of the safety law in the form of HB2229 and SB949, which were introduced by Representative Bob Bastian and Senator Richard Kasunic, respectively.

PCA opposes the DEP proposal for a number of reasons. Among other things, it would continue the inconsistencies and duplication between the state and federal program, and would broadly

expand the authority of the Department to issues in which it lacks expertise and without providing any measure of accountability.

PCA will provide the Committee a more detailed explanation of our objections when our analysis is completed.

PCA and the UMWA have been meeting over the past year to try and reach a consensus on amendments to the safety law. We adopted a two-phase approach to this exercise.

First, we initially focused on issues where an agreement between the two parties was likely to be reached. Following this phase we will deal with the other provisions of the law.

We recently completed the first phase and have developed consensus amendments on a number of issues, including changes to the diesel section, modifications to the provisions governing certification of miners and other skilled positions and providing a new section on reciprocity that would recognize the certification of workers in other states provided those states have a certification program comparable to Pennsylvania.

Once our amendments are developed in bill form, we intend to take the package to Representative Bastian and Senator Kasunic for possible introduction.

We ask you to consider this proposal if it is referred to the Committee.

#### IV. Permitting and Bonding

##### Permitting -

Obtaining a coal mining permit in Pennsylvania is an exhausting, costly and cumbersome process with built-in inefficiencies that can tax the resources of the permittee. The length of time to secure a permit and redundant reporting and permitting requirements are impediments to the start-up of mining operations.

The process itself generates volumes of paper that must be submitted to various bureaus and divisions within the Department. Requests for additional information are common place, information that has already been submitted must be resubmitted because it was lost. Information transferred from one bureau to the next is not always timely sent by the Department.

To reduce this costly and time-consuming burden, PCA has suggested to the Department that it develop an Electronic Permitting or paperless permit application process. Such a process has been instituted by West Virginia and Virginia.

Electronic permitting (ePermitting) essentially is the preparation, delivery, review, correction, approval, and publication of permit application data by using web-based technologies to integrate industry, regulators, and the public with common interface. Information requirements are the same as the paper application counterparts.

The only technical requirements are an Internet connection, an e-mail account, and Internet browser software such as Microsoft's Internet Explorer or Netscape's Navigator.



Currently, a permit application is prepared by a private entity and submitted to DEP as a hard copy bundle of forms and documents. Under the ePermitting process, a private entity can prepare an electronic application and submit it to DEP via the web. A permit applicant will be able to do all the work associated with preparing a permit application online in a secure environment.

This program would make it easier for applicants to submit applications to DEP and easier for DEP to transfer and share information internally. It would reduce permit application reproduction costs and would put Pennsylvania on the same level as competitor states.

We have just begun discussions with DEP about developing such a program for PA. We will keep the Committee apprised of the status of these discussions and may ask for your assistance if legislation is determined to be required to institute the program or financial assistance is needed by the Department to put it in place.

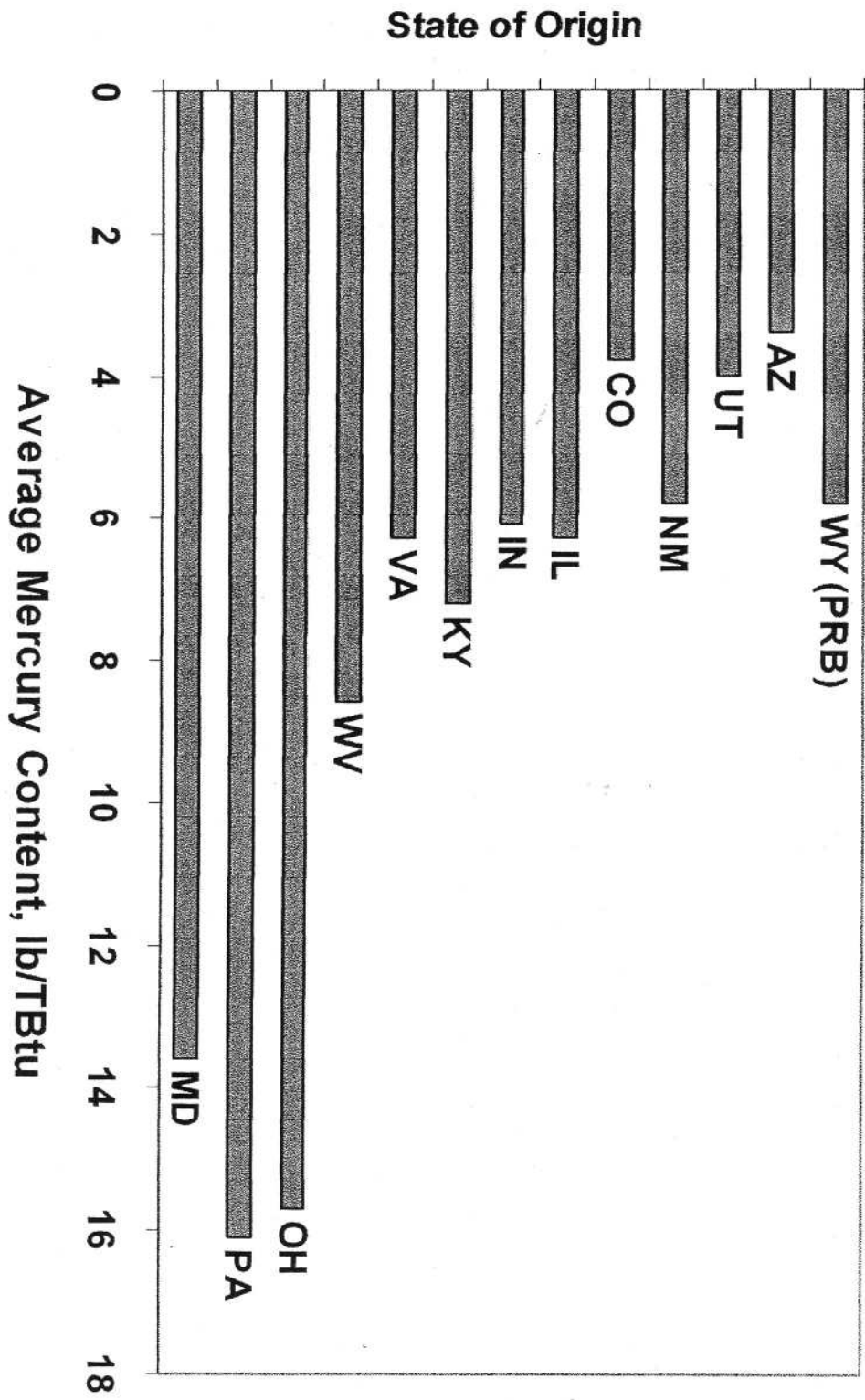
#### Bonding –

Since August 2003, PCA has been working with DEP in developing an umbrella bonding program for surface coal mining operations. A fundamental principle of an umbrella bonding program is to have a single bond which covers the total reclamation obligations of a single operator at all of the operator's sites. Analyses by some of our members have indicated that a properly structured program could reduce company-wide reclamation bond amounts by as much as one half of current levels. In order for the program to be effective, the current total reclamation liability of an operator must be recalculated on a periodic basis. DEP did a pilot test to evaluate the feasibility of administering a blanket bond and found that it was doable.

DEP is prepared to institute an umbrella bond program next year. However, one issue that has delayed this schedule and even jeopardized the existence of the program is the lack of money available to allow the Department to finance computer system upgrades to track the accuracy of an operator's calculated bond liability on a quarterly basis. The cost to perform the upgrade is \$25,000. While the money has recently been appropriated for the program it has not been released for use by the Department. Any assistance that the Committee could provide in getting this money released would be appreciated.

That concludes my testimony. I thank the Committee for this opportunity and time permitting, will try to answer your questions.

# Mercury Contents of Bituminous and PRB Coals\*



## **ATTACHMENT II**

### **FINANCIAL AND REGULATORY INCENTIVES CONTAINED IN EDGE**

- Priority funding through the Pennsylvania Economic Development Financing Authority (PEDFA) and the Pennsylvania Energy Development Authority (PEDA) for advanced coal gasification plants.
- Allowing long-term contracts between project owners and customers, including electric utilities, for gas or electricity product. Such long-term agreements will be crucial in obtaining financial investment for the projects.
- Permitting synthetic gas producers to operate without the burden of utility regulation when they serve and sell to limited purchasers such as chemical, manufacturing or industrial facilities. Without such a distinction, the producers would face a host of complex and costly regulations that are necessary when a company sells to the public.
- Ensuring that electricity produced by these plants will be subject to the pricing and cost-recovery provisions of the state's Alternative Energy Portfolio Standard (Act 213). This will allow utilities involved in developing or owning these plants to recover relevant costs to support their investment.

## ATTACHMENT III

### Tax Credits for Electric Utilities that Burn Pennsylvania Coal

Amending the act of March 4, 1971 (P.L. 6, No. 2), entitled the Tax Reform Code of 1971.

Section 1. Section 601 of the Tax Reform Code is amended by adding a section to read:

Section 601. Definitions – (a) The following words, terms and phrases when used in this Acticle VI shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) “Compliance Facility” means property that is designed, constructed, or installed, and used, at a coal-fired electric generating facility for the primary purpose of complying with acid rain control requirements under Title IV of the “Clean Air Act Amendments of 1990,” 104 Stat. 2584, 42 U.S.C.A. 7651, or that controls or limits emissions of sulphur or nitrogen compounds resulting from the combustion of coal through the removal or reduction of those compounds before, during, or after the combustion of the coal, but before the combustion products are emitted into the atmosphere. “Compliance Facility” also includes any of the following:
  - (a) A facility that removes sulfur compounds from coal before the combustion of the coal and that is located off the premises of the electric generating facility where the coal processed by the compliance facility is burned;
  - (b) Modifications to the electric generating facility where the compliance facility is constructed or installed that are necessary to accommodate the construction or installation, and operation, of the compliance facility;
  - (c) A byproduct disposal facility that exclusively disposes of wastes produced by the compliance facility and other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected regardless of whether the byproduct disposal facility is located on the same premises as the compliance facility or generating unit that produces the wastes disposed of at the facility;
  - (d) Facilities or equipment that is acquired, constructed, or installed, and used, at a coal-fired electric generating facility exclusively for the purpose of handling the byproducts produced by the compliance facility or other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected;
  - (e) A flue gas desulfurization system that is connected to a coal-fired electric generating unit, or

- (f) Facilities or equipment acquired, constructed, or installed, and used, at a coal-fired electric generating unit primarily for the purpose of handling the byproducts produced by a compliance facility or other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected.
- (2) “Pennsylvania Coal” means coal mined from coal reserves located in the Commonwealth of Pennsylvania.

Section 2. The act is amended by adding a section to read:

Section 602.6 Tax Credits for use of Pennsylvania coal.

- (a) For taxable years beginning after December 3, 2000, an entity shall be allowed a credit against the tax imposed by section 602 if it uses Pennsylvania coal in any of its coal-fired electric generating units. The credit shall be claimed at the rate of three dollars per ton for each ton of Pennsylvania coal burned in a coal-fired electric generating unit.
- (b) The entity shall receive the credit under this subsection in the taxable year in which the Pennsylvania coal was consumed.
- (c) The credit shall be allowed only if both of the following conditions are met:
  - (i.) The coal-fired electric generating unit is owned and used by the company claiming the credit, and
  - (ii.) A compliance facility is attached to, incorporated in, or used in conjunction with the coal-fired generating unit.
- (d) Upon a request by the Secretary of Revenue, the Public Utility Commission shall certify whether a facility is a compliance facility.
- (e) If an entity is entitled to a tax credit under this section in an amount which exceeds the entity’s tax liability for the tax imposed by section 602, the excess credit shall be applied against any tax imposed on the entity by section 401.

Section 3. This act shall take effect immediately.

## ATTACHMENT IV

### **PCA's Proposed Amendments to PA SMCRA**

PCA proposes to seek enactment of proposed amendments to PA SMCRA that will accomplish the following:

1. Amend Section 4(d) to change the current requirement for a 5 year period of sustained vegetation to a 2 year period for reclaimed remined areas. This is a recommendation of the MRAB to make state law consistent with Federal SMCRA.
2. Amend Section 4(g) by adding a new subsection (4) that would prohibit DEP from withholding release of reclamation bonds for surface facilities and areas of underground mines that have been reclaimed or for which approval of alternative post mining land use has been approved pending mine pool stabilization unless there is clear and convincing evidence that there will be gravity discharges form the mine or that the mine pool will contaminate existing public or private water supplies.
3. Amend Section 4(i) to shift the burden of proof in appeals to the Environmental Hearing Board (EHB) in one situation. That situation is where DEP denies a bond release request on the ground that the permittee is responsible for mine drainage from the permit area or alleged to be hydrologically connected to the permit area and the Department never ordered the permittee to treat or abate the mine drainage. The purpose of this amendment is to prevent DEP from shifting the burden of proof regarding liability for a discharge of mine drainage to a mine operator by waiting until an operator requests bond release to assert that the operator is responsible for the mine drainage. Currently, if DEP orders the operator to treat the discharge, DEP has the burden of proof of liability in an appeal of that order to the EHB. However, by waiting until the operator requests a bond release, DEP can shift the burden of proof regarding liability to the operator. It is unfair to allow DEP to shift the burden of proof simply by waiting until an operator requests bond release to assert liability for a discharge.
4. Amend Section 4.2(f)(1) to provide that when the O&M costs of a replacement water supply exceeds the O&M costs of the original water supply, the permittee is responsible to pay the increased costs for a period of 20 years, or to provide a one time payment to be calculated by increasing the annual increase in costs by 3.1% per year over the twenty year period of responsibility for increased O&M costs.
5. Add a new Section 4.14 to provide tax incentives for reclamation of abandoned mine lands, including removal of coal from waste coal piles and reclamation of the sites. HB 275, which was introduced by Representative Dick Stevenson last session, was the model for this new section. This amendment will allow the following tax credits to offset an operator's total state tax liability.
  - A tax credit of \$2 per ton for each ton of coal removed from a remining area (area previously affected by mining), and

- A tax credit in an amount equal to the total cost of completing a reclamation contract on an abandoned mine land in which there is no coal removal or minimal coal extraction.
6. Add a new 4.15 that will terminate the alternative bond system \$100 per acre permit fee. The purpose is to effectuate DEP's agreement to terminate the fee, which DEP has recently retracted.