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To

Senate Environmental Resources & Energy Committee

Thursday, June 11, 2015
Pottsville, PA

Background

Anthracite, commonly known as hard coal, is the highest form of coal and a naturally high carbon source. With a typical carbon content range of 84% to 92% and a sulfur content of less than 0.7% anthracite uses range from residential and commercial heating to industrial carbon applications for the manufacturing of steel, graphite, water filtration media and other manufacturing needs.

While most bituminous coal seams lie relatively flat and horizontal. Anthracite coal seam typically pitch downward into the earth in steep slopes of 45 degrees or more, basin out at the bottom and pitch back up and saddle before plunging back into the earth at another steep pitch. An anthracite surface mine may go as deep as 500 to feet to access the mineral.

Pennsylvania mining laws and to a limited extent federal law acknowledges the differences between anthracite and bituminous coal. For example 30 CFR Section 820 requires that the Secretary of the Interior to “*adopt special performance standards for anthracite mines regulated by special environmental protection performance standards of a State as of the date of enactment of the Act.*” However, to the best of my knowledge no such requirement exists for the Administrators of the EPA or the Army Corp of Engineers or other Federal agencies.

War time needs of the last century required that coal be mined as quickly and as cheaply as possible. As a result, U.S. law prior to 1977, discouraged the back filling and reclamation of surface coal mines. Many of those scarred pits still remain a hazard today discharging millions of gallons of pollution daily into the region’s water system. This water eventually finds its way into the nation’s major drainage systems, the Delaware and Susquehanna River Basins.

However, today nearly all mining being done in the Anthracite region is the re-mining of coal left behind in previously mined areas. Anthracite mining operators are actually cleaning up mine drainage and the environment by mining from the surface and “day-lighting” old abandoned deep mines and surface mines. When complete, they then reclaim the landscape by backfilling and re-seeding the area for other uses. In the Anthracite region, surface coal mining and environmental reclamation go hand-in-hand. One does not occur without the other.

Regulatory Climate and Anthracite Coal

Like all mineral extraction industries, anthracite coal mine operators are subject to a broad range of state and Federal regulatory requirements. Nearly all mining regulations enacted in Pennsylvania are the result of three different triggering events. Those events are:

- Enactment of legislation which is signed into law by the Governor
- Legal challenges to a particular rule that results in establishing case law
- Federal program changes

Coal mining in the United States is regulated by the Department of the Interior’s Office of Surface Mining Reclamation & Enforcement (OSM) under provisions of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Coal mining is also regulated by numerous other agencies as well. These include:

- Environmental Protection Agency
- U.S. Army Corp of Engineers
- U.S. Fish && Wildlife Services
- Mine Safety & Health Administration
- DEP and Other State Agencies Through Implementation of the Clean Water Act

Coal mining states like Pennsylvania typically have laws and regulations related to mining and administer permits for coal mining, reclamation and abandoned mine lands. Those regulations cannot be less stringent than Federal coal mining regulations. However, states do have the option to make their coal mining regulations more stringent.

Pennsylvania law requires that its mining regulations comply with all Federal mining rules. The DEP must justify why a regulation should be more stringent than Federal standards before it can be enacted.

Regulatory Concerns and Recommendations

Re-Mining Incentives:

In December of 2006, President George Bush signed into law the 2006 Act, which included amendments to SMCRA. The amendments, among other things, added a Section 415 for Re-Mining Incentives. This Section gives the Secretary of the Interior the option to provide incentives to promote re-mining of abandoned coal lands.

In June of 2008, the Office of Surface Mining hosted a public hearing at the Pottsville District Mining Office to receive testimony from the Anthracite Coal mining industry. We were the only organization in the country to request a public hearing from the OSM.

We have been disappointed by the re-mining incentives outlined by OSM. The incentives they proposed did not represent a major departure from current OSM operational or incentive guidelines. In fact, the incentives OSM proposed but never actually adopted did not go beyond waste coal removal. Further, they did nothing to address the surface and subsurface abandoned mine legacy that remains in this region and other states.

One of our recommendations was the formation of a work group that includes OSM, the Pennsylvania DEP and the Anthracite industry to recommend additional re-mining incentives beyond those drafted by the OSM. A work group convened in February of 2009 at the Pottsville DMO for its one and only meeting.

In June of 2010, Congressman Tim Holden hosted a meeting in his office with representatives of the Anthracite industry and the Deputy Director of the Office of Surface Mining. During that meeting, we requested that the OSM work with industry and the DEP to fulfill the intent of Act 2006.

However, during our meeting in Washington, we were told by OSM that Pennsylvania already had adequate re-mining incentives in place and the Federal agency had other priorities. We are hopeful that the Presidential elections of 2016 will bring with it a change in administration priorities with regard to coal mining and re-mining incentives.

Northern Long Eared Bat

In April of this year, the U.S Fish & Wildlife Services (USFWS) named the Northern Long Eared Bat a “Threatened Species” and announced its intention to create a “species-specific” rule under the authority of section 4(d) of the Federal Endangered Species Act.

According to the U.S. Wildlife Service, the “primary factor” supporting the proposed determination is the disease white nose syndrome (WNS). White nose syndrome is a disease affecting a broad range of bat species and is responsible for significant declines in bat populations throughout the United States.

In its comments to the Wildlife Services, the PAC argued coal mining and the bat populations have co-existed in the anthracite region for over 100 years. And that during that time mining has had little to no negative effect on the bat populations.

While the Wildlife Service acknowledges the main culprit in the decline U.S. bat population is WNS, they have also determined that other factors are also involved. Those factors include: forest management activities, wind-energy development, habitat modification, destruction and disturbance and other threats which may have cumulative effects to the species in addition to WNS.

By naming the NLEB a threatened species rather than endangered, the USFWS has the power under section 4(d) of the Endangered Species Act to “provide exceptions for some of the activities that cause cumulative effects they deem necessary and advisable for the conservation of the species.”

According to a recent study done by the Indonesian Forest Research & Development Agency on reclaimed coal mine sites, the bat populations increased as the sites matured and aged. According to the study, the highest frequency in bat populations occurred within 8 years of planting.

While no similar study exists here in the anthracite region, common sense tells us that a reclaimed abandoned mine site with active and vibrant plant, insect and animal habitat is also good habitat for the Northern Long Eared Bat to thrive in as well.

MSHA Impoundment Dams and Refuse Pile Construction Requirements

The Federal Mine Safety and Health Administration is responsible for enforcing Federal mine safety laws in the across the United States. Over the past two years, coal mine operators in the U.S. have achieved an unprecedented record for safety. In 2014, record low of 16 fatalities occurred in coal mines across the nation. Further, not a single coal mining fatality has been recorded in the anthracite region since 2008. MSHA is divided into twelve coal mining districts. Anthracite coal is situated in the District 1. However, for the last few years, MSHA District 2, which is located in Western Pennsylvania has been responsible for administering the anthracite coal region.

Because MSHA District 2 is located in the bituminous coal fields of Pennsylvania their entire focus until recently has been on bituminous coal. Since they are now responsible for District 1, this has required the District 2 staff to learn the difference between the two types of coal and their mining methods.

However, far too often, I am hearing from my members that MSHA District 2 is attempting to enforce bituminous mining regulations on anthracite coal mining operators. This is creating needless paperwork, field work and additional costs to operators without adding a single benefit to mine safety in the anthracite region.

For example, MSHA is imposing bituminous coal refuse pile construction requirements in the anthracite region. Bituminous coal refuse contains far more volatile matter and is for more likely to spontaneously combust than anthracite coal refuse piles. Since assuming its administrative role in District 1, MSHA has been changing long standing methods for handling anthracite coal refuse to bituminous methods. This is creating more work and costs to operators while adding no additional safety value for the operator or the public.

Another issue is dams and impoundments. In the course of mining activates, mine operators will encounter water and need to impound it on the job site. MSHA District 2 has begun imposing more costly bituminous regulation on anthracite operators. Because the vast majority of anthracite impoundments subsurface, the danger to the public is negligible. However, imposing bituminous guidelines on anthracite operators MSHA District 1 is simply adding additional costs on operators without any additional public health and safety value.

Conclusion

While the DEP has developed separate rules for anthracite, in my opinion, the EPA, the Army Corp of Engineers, the Office of Surface Mining and all Federal regulatory agencies should give special consideration to the impact of their regulations on the anthracite industry and our region's environment. A one size fits all approach is seldom the right way to do business. That is especially true in the anthracite coal region.

The mining and use of anthracite coal is not creating any new or significantly adding to any existing negative environmental impacts in our region. In fact, quite the opposite is true as our industry has shown that current regulations are working. We are providing good paying jobs and making significant contributions in the form of local, state and Federal taxes including the Federal AML Tax which is used to reclaim abandoned mine lands And we are doing all of this while cleaning up the environmental problems from our past.

However a constant bombardment of new regulations coming out of Washington threatens to severely impact my members and their ability to run their businesses in a profitable manner, which leads to fewer good paying jobs and less environmental reclamation. And I wonder, is this really what our government has in mind when it drafts these regulations?