

**Summary of the Comment of Citizens for Pennsylvania's Future (PennFuture)  
Proposed Rulemaking  
"Land Reclamation Financial Guarantees and Bioenergy Crop Bonding"  
44 Pa. Bull. 6781 (October 25, 2014)**

- In 1993, the Environmental Quality Board (Board) increased the reclamation fee under 25 Pa Code § 86.17(e) from the rate of \$50 per acre set in 1981 to \$100 per acre.
- In 2006, the Board proposed to eliminate the reclamation fee.
- In 2008, in light of the intervening decision of the U.S. Court of Appeals in *Pennsylvania Federation of Sportsmen's Clubs, Inc. v. Kempthorne*, 497 F.3d 337 (3d Cir. 2007), the Board abandoned its 2006 proposal to eliminate the reclamation fee, and instead kept the \$100 per acre reclamation fee in place through the end of 2009 and made the fee rate adjustable starting January 1, 2010.
- No reclamation fee has been charged since the rate first became adjustable in 2010. The fee rate has been set at zero dollars per acre for calendar years 2010 through 2015.
- Among the provisions added to Pennsylvania's Surface Mining Conservation and Reclamation Act by Act 157 of 2012 was Section 19.2(b)(7), 52 P.S. § 1396.19b(b)(7), which authorizes the Pennsylvania Department of Environmental Protection (PADEP) to transfer gross receipts tax revenues specifically appropriated in the future for the purpose of being transferred to the Reclamation Fee O&M Trust Account.
- Section 19.2(b)(7) does *not* provide that the General Assembly *must*, or even that it *should*, appropriate funds for transfer to the Reclamation O&M Trust Account, or that it should be guided by a purpose of offsetting any increase in the reclamation fee (which, given that the fee rate is set at zero dollars per acre, is the same as saying a purpose of preventing any reclamation fee from being charged).
- The pending proposed amendment to 25 Pa. Code § 86.17(e)(2) states a standard that incorrectly includes "the *need* to offset an increase in the reclamation fee," which, as practical matter (given the starting point of zero dollars per acre), implies an objective of preventing any reclamation fee from being charged.
- The proposed amendment to 25 Pa. Code § 86.17(e)(2) would tend to perpetuate the *de facto* elimination of the reclamation fee that has occurred since the fee rate became adjustable in 2010.
- As the first two words of *Reclamation Fee* O&M Trust Account make unmistakably clear, the Board intended the reclamation fee to be a source of revenue to that account.
- The proposed amendment to 25 Pa. Code § 86.17(e)(2) would subvert that intention by implementing a premise not found in Act 157, namely that the public coffers always should be tapped in preference to charging coal mine operators any reclamation fee.