



# United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

WASHINGTON, D.C. 20240



PH 802.00

OCT - 7 1991

Mr. Arthur Davis  
Secretary, Department of  
Environmental Resources  
P.O. Box 2063  
Harrisburg, Pennsylvania 17120

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Dear Mr. Davis:

As part of its oversight responsibilities under the Surface Mining Control and Reclamation Act (SMCRA), the Office of Surface Mining Reclamation and Enforcement (OSM) monitors and evaluates conditions and events affecting each State's coal mining regulatory program and the regulatory authority's ability to implement this program. If, in accordance with 30 CFR 732.17(c) through (e), OSM determines that an approved State program no longer meets all Federal requirements, it may require amendment of that program. For the reasons set forth below, I have concluded that the Pennsylvania program now falls within this category and that the Commonwealth must amend it to restore consistency with SMCRA.

The specific event leading to this determination is an OSM Field Office evaluation of the adequacy of the Commonwealth's alternative bonding system (ABS). This evaluation identified unfunded reclamation liabilities (for backfilling, grading and revegetation) in excess of eight million dollars for current bond forfeiture sites alone. The review also found that the ABS is financially incapable of abating or permanently treating polluttional discharges from bond forfeiture sites. Even if no such discharges are created in the future, annual treatment costs for existing discharges are currently estimated at 1.3 million dollars.

Section 509(c) of SMCRA authorizes the Secretary to approve an ABS if it will achieve the objectives and purposes of the otherwise mandatory conventional bonding program. As set forth in 30 CFR 800.11(e), this provision means that the ABS must (1) assure that sufficient funds are available to complete the reclamation plans for any areas in default at any time, and (2) provide a substantial economic incentive for the operator to comply with all reclamation requirements. As discussed in the preceding paragraph, these conditions no longer exist in Pennsylvania.

Furthermore, section 519(b) of SMCRA requires the regulatory authority, when evaluating bond release requests, to consider whether pollution of surface and ground water is occurring, the probability of any continuing pollution and the estimated cost of

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abating such pollution. Section 519(c)(3) of SMCRA provides that no bond shall be fully released until all the reclamation requirements of SMCRA have been met. These requirements include abatement of surface and ground water pollution resulting from the operation. Therefore, to be in accordance with SMCRA, an ABS must provide for abatement or treatment of pollutional discharges emanating from bond forfeiture sites, unless the approved program includes some other form of financial guarantee. In Pennsylvania, site-specific performance bonds and other ABS resources currently are not adequate to cover the costs of abating or treating pollutional discharges remaining after reclamation, nor, as a matter of policy, are such resources used to abate or treat these discharges. Accordingly, the ABS and hence the approved program are no longer in conformance with SMCRA and the Federal regulations.

I acknowledge and support your recent initiation of the process required to increase the permit reclamation fee from the current \$50 per acre to \$100 per acre. However, to comply with 30 CFR 800.11(e)(1), which requires that an ABS provide sufficient funds to complete the reclamation plan for any areas which may be in default at any time, a comprehensive analysis, such as an actuarial study, must also be conducted to determine whether the revised ABS can reasonably be expected to generate the funds needed to fully reclaim both existing permanent program bond forfeiture sites and sites likely to be forfeited in the future in accordance with permanent program requirements in a timely manner.

Therefore, in accordance with 30 CFR 732.17(f)(1), please submit to me, within 60 days of your receipt of this letter, either proposed amendments or a description of amendments to be proposed to remedy the deficiencies discussed above, together with a timetable for adoption and implementation consistent with established administrative procedures in Pennsylvania. The submission must include provisions for an actuarial study of a scope sufficient to address the concerns set forth in this letter. OSM may be able to provide funding for a properly designed study.

If you have any questions or wish to discuss the contents of this letter, please contact Mr. Robert Biggi, Director of OSM's Harrisburg Field Office.

Sincerely,

*W. Hord Tipton*

W. Hord Tipton  
Deputy Director, Operations and  
Technical Services

cc: Robert Biggi  
Director, Harrisburg Field Office