CONSTRAINTS ON THE ANTHRACITE COAL INDUSTRY

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Introduction

Good morning, Chairman and members of the Committee.
Thank you for the opportunity to testify today.

My name is David Williams. I am a Professional Engineer in Mining Engineering with extensive experience in the anthracite mining industry. I am here today to discuss the following: (1) How the current implementation of the Environmental Justice policy is impacting mining operations and, more broadly, the economic viability of the communities in which we operate. (2) The burden on anthracite underground coal mine operations having to deal with a federal and state agency performing the same safety functions. (3) The impact on proposed mining operations from the Pennsylvania Natural Diversity Inventory (PNDI) program.

Environmental Justice Framework and Authority

Environmental Justice, as currently implemented, is not achieving its stated goals-and in some cases is harming the very communities it is intended to protect.

The Pennsylvania Department of Environmental Protection's Office of Environmental Justice operated pursuant to executive order and internal policy guidance-not through statutory authority enacted by the General Assembly.

Policies with significant economic and permitting consequences are being implemented through DEP processes without explicit legislative authorization, clear statutory standards, or formal legislative oversight.

While DEP has statutory authority, the Environmental Justice framework is influencing permitting outcomes, timelines, and project viability in ways that raise concerns regarding transparency, consistency, and accountability.

Lack of Economic Development Focus

The Governor's Executive Order identifies economic development as a core responsibility of Environmental Justice. However, the current DEP policy contains no meaningful framework to promote economic growth in these communities.

Without a focus on economic opportunity, Environmental Justice risks being a barrier rather than a benefit.

Exclusion of Key Stakeholders

The anthracite industry is a key stakeholder, yet it has not been meaningfully included. The Environmental Justice Advisory Board lacks representation from industry even though it's Bi-Laws states that there needs to be representation from industry.

A process intended to ensure fairness must include all affected stakeholders.

Use of Inaccurate Data

The PennEnviroScreen tool is used in part for the determination of which municipalities should be considered as "Environmental Justice" zones. It relies on outdated and sometimes inaccurate data, including sites that have already been reclaimed.

Policy decisions with real economic consequences should not be based on unreliable data.

Public Participation and Delays

Enhanced public participation has resulted in excessive delays, in some cased over three and half years or more. These delays directly impact jobs, investment, and business viability.

Anthracite as an Environmental Solution

Anthracite mining contributes significantly to environmental remediation by reclaiming abandoned mine lands and improving water quality at no cost to taxpayers. DEP permits are classified as "Mining & Reclamation" permits.

Market-Based Solutions

Market-driven approaches can achieve environmental goals while supporting economic growth.

Duplication of Underground Mine Safety Inspections by State's DEP's Anthracite Mine Safety Division and the Federal Mine Safety and Health Administration

Duplication of Inspections

Anthracite underground coal mine operators must deal with a State and Federal agency that perform the same function of mine safety.

During the inspection of an anthracite underground coal mine, an operator will accompany a Federal mine inspector during his inspection of the mine. The operator will then also have to accompany a State mine inspector during his inspection of the mine.

Duplication of Plans and Regulations

MSHA regulations require a "Roof Support Plan" and a "Mine Ventilation Plan." The information in these plans is duplicated by DEP in a "Mine Opening Plan." These plans are revised as conditions change in the mine. The revised plans must be approved by the corresponding agencies to allow the underground coal mine to continue to operate.

MSHA regulations are found in CFR 30, Parts 1 to 99, Mineral Resources. These regulations are constantly up-dated and revisions are made as the results of investigations of mining accidents. DEP's regulations for mine safety are found in Act 346. These regulations were adopted in 1965 and the

only revision that was basically made since then was to make the regulations gender sensitive.

The DEP adopted portions of MSHA's 30 CFR Part 77 for safety and became known as 25 PA Code Chapter 209a. This allows for a DEP inspector to enforce the same regulations that an MSHA inspector enforces.

The DEP's Act 346 also includes sections of regulations that apply to their own mine inspectors. Many of these sections are not even being followed.

MSHA Resources

MSHA organization has many resources that cover almost any aspect of underground mine safety. They have numerous training programs which also includes their academy at Beckley, West Virginia. They have testing facilities, approval agencies and numerous other portions of their agency that are well suited to handle any need that the anthracite underground community would need.

Other States Involvement with MSHA

The State of Oklahoma has eliminated their underground mine safety program as of December 2021. Other states including Colorado and Kentucky are reviewing the elimination of their underground mine safety program in favor of MSHA's mine safety program.

Pennsylvania Natural Diversity Inventory

The Pennsylvania Natural Diversity Inventory (PNDI) is an environmental review tool used to screen project areas for potential impacts on threatened, endangered, or special concern species and their habitats.

The information is to provide current, reliable, objective ecological data and analysis to help guide conservation work and land-use planning.

There are four jurisdictional agencies that participate in the PNDI review of coal mine permit applications. These agencies include the PA Department of Conservation of Natural Resources, PA Game Commission, PA Fish and Boat Commission and United States Fish and Wildlife Services.

The review process of a PNDI for a coal mine permit can take a significant amount of time to make a determination. A study by a certified company

will be required if any significant species are indicated within 1000 meters of the proposed permit site.

Costs for hiring a certified company capable of studying the significant identified species are very costly.

The PennEnviroScreen tool is also used in some decision making. As stated before, there are many inaccuracies of the data that this tool relies on.

Some western States have worked with equivalent agencies and developed programs that place bat bars at mine opening portals to allow for bat habitat. This is done as part of the post-mining program. Also, operators are willing to purchase the identified plant of concern to be used as part of the reclamation plan. State nurseries should begin growing these types of plants. Basically, there needs to be cooperation between the government agencies involved and the mining industry to develop alternate and acceptable solutions to these issues.

Conclusion and Recommendations

1. Incorporated economic development into Environmental Justice policy
2. Ensure accurate and current data
3. Reform Advisory Board representation
4. Establish reasonable permitting timelines
5. Ensure policies operate within statutory boundaries.
6. Eliminate the DEP's Anthracite Mine Safety Division and allow MSHA to take over that responsibility in it's entirety.
7. Establish a committee with Industry representation to work together with the four jurisdictional agencies that are involved with PNDI approvals to recommend acceptable solutions for various issues.
8. Create an independent oversight Board to review DEP's implementation of regulations and use the results when having DEP budget hearings.

Thank you for allowing me to address these issues today.

Sincerely,

David Williams, P.E., P.L.S.