



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
August 4, 2009

AUG 04 2009

Secretary

717-787-2814

The Honorable Mary Jo White, Chairman
Senate of Pennsylvania
Senate Environmental Resources and Energy Committee
Senate Post Office Box 203021
Harrisburg, PA 17120-3021

Dear Senator White:

Thank you for your letter of July 29, 2009, regarding Senate Bill 1034, which would amend the Coal Refuse Disposal Control Act, 52 P.S. § 30.51 et seq (CRDCA). The CRDCA's permitting provisions include an extensive site selection component. The site selection process defines preferred sites and non-preferred sites for refuse disposal. Senate Bill 1034 (and its counterpart HB 1847) would add an additional category of preferred sites for areas "adjacent to or an expansion of existing coal refuse disposal site" to the list of preferred site categories in the CRDCA.

The addition of this category of preferred sites may allow portions of Exceptional Value (EV) watersheds, which would currently be prohibited from consideration in the CRDCA site selection process, to be considered as potential sites for a coal refuse disposal area during the site selection review stage. Enacting the CRDCA amendment proposed by Senate Bill 1034 would not, however, diminish the protections afforded EV watersheds by Federal and State statutes and the Department of Environmental Protection's (DEP) regulations.

Potential sites containing EV watersheds that fit within one of the existing categories of preferred sites in § 30.54a(a) of the CRDCA are also subject to these statutory and regulatory protections. The current preferred site categories are subject to the requirements for EV watersheds found in Federal and State statutes and DEP's water quality and mining regulations. The protections for EV watersheds, e.g., those found in the Clean Streams Law and DEP's regulations in 25 Pa. Code Chs. 92, 93 and 96, would continue to be applied to any proposed coal refuse disposal facility (whether a preferred or non-preferred site). In addition, the new category of preferred sites, like the current existing categories, would be subject to being excluded from preferred site status if "the adverse environmental impacts of the preferred site clearly outweigh the public benefits[.]" 52 P.S. § 30.54a.

If you have any questions, please contact Jon Price, Director of Legislative Affairs, by e-mail at jonatprice@state.pa.us or by telephone at 717-783-8303.

Sincerely,


John Hanger
Secretary





Senate Environmental Resources and Energy Committee

Senator Mary Jo White
Chairman

Patrick Henderson, Executive Director

Room 169 • State Capitol Building
Mailing address: Senate Box 203021 • Harrisburg, PA 17120-3021
Phone: 717-787-9684 • FAX: 717-787-6088 • energy@pasen.gov

July 29, 2009

John Hanger, Secretary
Department of Environmental Protection
16th Floor Rachel Carson Building
Harrisburg, PA 17105

Dear Secretary Hanger:

Yesterday, the Senate Environmental Resources and Energy Committee unanimously reported out Senate Bill 1034 to the full Senate. This legislation, introduced by Senator Barry Stout, would add "an area adjacent to or an expansion of an existing coal refuse disposal site" to the list of preferred sites authorized under the Coal Refuse Disposal Control Act (CRDCA). The House Environmental Resources and Energy Committee recently voted in favor of similar legislation.

Citizens for Pennsylvania's Future (Pennfuture) has taken a position opposing this legislation. Most troubling is the group's allegation that SB 1034 would allow Exceptional Value (EV) streams to literally be filled with coal refuse. My understanding is that both federal and state law and regulations require DEP to protect and maintain all existing EV waterways; therefore, DEP would not be permitted to allow an activity which degraded an EV waterway. The current CRDCA already contains five categories of "preferred sites", and to my knowledge none of these preferred sites permit a coal refuse operator or DEP to degrade an EV waterway.

I would appreciate knowing DEP's legal position on whether the current CRDCA preferred site categories, or the new category proposed in SB 1034, would alter the law and permit the destruction or degradation of an EV waterway. For background, I am enclosing a copy of Pennfuture's Action Alert and form email distributed to its membership on this subject.

I would appreciate a prompt response to this issue, as I anticipate that SB 1034 will be considered by the full Senate in the near future. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Mary Jo White".

Mary Jo White, Chairman
Senate Environmental Resources
& Energy Committee

Enclosure