

WRITTEN COMMENTS ON H.B. 2133

**By
Pennsylvania Coal Association
September 26, 2008**

Thank you for allowing the Pennsylvania Coal Association (PCA) to submit written comments on House Bill 2133. PCA is a trade organization representing bituminous coal operators – both underground and surface – as well as other associated companies whose businesses rely on a thriving coal economy. PCA member companies produce over 75 percent of the bituminous coal annually mined in Pennsylvania.

HB2133 would amend the vehicle code to require the Pennsylvania Department of Transportation to revise its schedule of road bonding amounts by January 1, 2009, and at least every three years thereafter, and to impose by regulation a rebuttable presumption against over-posted-weight permittees for damages to posted roads.

For a number of reasons PCA views this bill as a solution in search of a problem and we therefore oppose the measure. First, there are no signs of operators forfeiting bonds to circumvent their road repair obligations because the amount of the bond posted is less than the cost to repair the road. If operators did do this then DEP, under the state's mining laws and regulations, could revoke their mining permits, shutting down operations. This is a far more compelling deterrent to avoiding a repair obligation than the amount of the bond that needs to be posted.

There is no pattern of abuse here. Our mining and methane-producing members who operate heavy vehicles work through one-on-one meetings with PennDot and affected municipalities to anticipate and resolve issues related to the increase in heavy truck traffic. They are posting bonds or signing upfront agreements with local townships that address potential road damage when work is anticipated within their jurisdictions. The reality is that mining companies make every effort to forge good working relationships with PennDot and the townships concerning road bonding.

Second, even before the collapse of some of the nation's most reputable financial institutions the availability of bonds was scarce. Since the collapse, the bonding market has all but dried up. HB2133, which could cause bond rates to increase by January 1, 2009, would exacerbate the difficulties of obtaining bonds to address a problem that does not exist.

Finally, the rebuttable presumption provision of the bill is inequitable and legally unsound. Any vehicle that traverses a road has the potential to cause damage and mining-related vehicles are not the only vehicles traveling across municipal roads. To assume a mining company's vehicle caused damage to a road simply because it may be one of several heavy vehicles using the road is illogical and unfair. Also an impediment to due process, the provision lacks the requisite language providing statutory defenses upon which one may prove his innocence.

PCA member companies will continue to work with municipalities to address any situation in which their activity may pose a threat to the local infrastructure. The system is working and we believe HB2133 is unnecessary.

We appreciate this opportunity to explain our position on HB2133. Please call me if you have any questions or would like additional information.

Submitted by:

George Ellis
President, Pennsylvania Coal Association