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News

Coal companies fight royalties on exports

They say the tax is unconstitutional

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By Don Hopey, Pittsburgh Post-Gazette

American coal companies, including Bethel Park-based Consol Energy Inc. and its subsidiaries, are suing the United States because they don't want to pay federal royalties on millions of tons of coal they export.

The royalties -- 31.5 cents a ton for surface-mined coal and 13.5 cents a ton for deep-mined coal -- are assessed on all coal, whether it's for domestic consumption or for export. But the coal companies claim that it is unconstitutional to tax coal that is exported.

Seventy-five companies that mine, sell and export coal are listed as plaintiffs in the lawsuit against the U.S. Department of the Interior, including at least a dozen from Pennsylvania. Seven of those are subsidiaries of Consol Energy, the biggest mining operator in Pennsylvania and the fifth-biggest by tonnage in the nation, mining 66 million tons last year, 7 million tons of which it exported.

The royalties, which have been assessed since 1977, bring in millions of dollars a year to the federal Abandoned Mine Lands Fund, which is used to reclaim dangerous and degraded abandoned mine lands and streams.

If coal companies are successful in avoiding the royalties on exported coal, it will reduce the amount of money Pennsylvania and other mining states get to reclaim thousands of acres of land and fix thousands of miles of ecologically damaged streams.

"In just Pennsylvania it would be millions of dollars that would not come to the state," said R. John Dawes, chairman of the Pennsylvania Abandoned Mine Land Campaign and executive director of the Foundation for Pennsylvania Watersheds. "It's ridiculous because the mining companies should want to pay the royalties to clean up the scars of the past, which are bad advertisements for the industry."

Despite years of restoration work, there are still 184,000 acres of degraded abandoned mine land in Pennsylvania -- more than in any other state -- and 4,600 miles of dead streams.

Oral arguments in the case are scheduled for today before the U.S. Court of Appeals for the Federal Circuit in Washington, D.C.

The coal companies say the per ton assessment -- what the lawsuit refers to as the "coal reclamation fee" -- on coal sold and shipped for foreign use is unconstitutional.

Mr. Dawes said the mining companies' legal position is contrary to Congress' intent when it passed the Abandoned Mine Land Fund reauthorization in December 2006. Sen. Arlen

Specter, R-Pa., a prime sponsor of the reauthorization, declined to comment for this story because of the ongoing litigation.

In 1998, a U.S. District Court ruled that a similar royalty or "excise tax" levied on coal to fund black lung benefits for disabled miners was unconstitutional when applied to exported coal.

"This case is different from the black lung case but the constitutional issue is the same. Our argument is the tax is unconstitutional and we shouldn't have to pay an unconstitutional tax," said Tom Hoffman, a Consol spokesman. "We're still paying a substantial amount of tax and in the short run the states aren't going to notice any effect on their restoration programs."

If the case is decided in Consol's favor, it will save approximately \$1 million of the almost \$9 million it paid in coal reclamation fees last year.

Altogether, mining companies would get refunds of royalties paid on 2007 exports totaling between \$18.6 million and \$77.3 million, depending on how much of the exported coal came from strip mines or deep mines.

The National Mining Association declined to make a spokesman available but its position is that the reclamation fee total on exported coal is an insignificant amount when compared to the total revenue stream going to the AML Fund.

"The fund is huge and the states are going to have a hard time spending all of that money on [abandoned mine land] projects," said Mr. Hoffman.

Looking ahead, the amount of reclamation fee royalties on exported coal will climb as exports spike by as much as 20 percent this year and in years to come to meet the growing demands for coal in China, India and Europe, coal industry experts agree.

According to the U.S. Energy Information Administration, U.S. coal exports increased last year by 9.5 million tons -- 19.2 percent -- to 59.2 million tons. That's about 6 percent of the 1.12 billion tons of coal mined in the United States.

The state received \$28 million from the federal AML Fund this year, and is projected to get a total of \$1.36 billion over the next 18 years for land and stream restoration work, much of it done by watershed groups and the state Department of Environmental Protection.

To date, a total of \$950 million has been spent on land and stream reclamation projects in Pennsylvania, with \$400 million of that coming from the federal fund.

Tom Rathbun, a DEP spokesman, said the department is not a party to the case but is watching it closely because the amount of money promised to the state from the AML Fund in future years is not guaranteed. He said it's impossible to predict how a ruling in favor of the coal companies will affect the state's allocation.

At least 44 of the state's 67 counties have abandoned mine sites. In Allegheny County, there are 263 identified abandoned mine sites affecting 4,514 acres.

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