

## Reclamation Fee Fiscal-year Report 2013

The regulations at 25 Pa. Code § 86.17(e)(2) require the DEP to prepare a fiscal-year report containing a financial analysis of the revenue and expenditures of the Reclamation Fee O & M Trust Account.

25 Pa. Code § 86.17(e)(4) requires the following factors to be used to determine the amount of the Reclamation Fee:

- Current Balance in the Reclamation Fee O & M Trust Account
- Previous year revenue
  - Reclamation Fee
  - Interest
  - Civil Penalties
  - Other sources
- Previous year O & M Costs
- Projected number of acres subject to the Reclamation Fee
- Projected Revenue
  - Reclamation Fee
  - Interest
  - Civil Penalties
  - Other sources
- Projected expenditures

### CURRENT BALANCE

The balance in the Reclamation Fee O & M Trust Account as of June 30, 2013 was \$3,557,623.12. This balance does not include civil penalties collected during the fiscal year.

### PREVIOUS YEAR REVENUE

#### **Reclamation Fee**

The Reclamation Fee for the period July 2012 through June 2013 was \$0. Therefore there was no revenue from this source.

#### **Interest**

Interest was credited to the Reclamation Fee O & M Trust Account from July 2012 through June 2013 in the amount of \$8,533.04. This is lower than the interest earned on the principal in the 2011-2012 fiscal year which totaled \$9,699.53.

### Civil Penalties

Civil penalties (less the 5% due to the Environmental Education Fund) will be transferred into the Reclamation Fee O & M Trust Account each year. The total revenue from civil penalties from July 2012 through June 2013 is listed below:

Month	Coal Civil Penalties
Jul-12	\$9,420.00
Aug-12	\$2,350.00
Sep-12	\$7,545.00
Oct-12	\$15,630.00
Nov-12	\$6,567.50
Dec-12	\$59,964.50
Jan-13	\$29,268.60
Feb-13	\$39,465.00
Mar-13	\$28,680.00
Apr-13	\$13,267.00
May-13	\$33,080.00
Jun-13	\$14,950.00
<b>Total</b>	<b>\$260,187.60</b>

The net amount that was transferred in July 2013 to the Reclamation Fee O & M Trust Account was \$247,178.22. This is 95% of the collected civil penalties. The remaining 5% is required by statute to be transferred to the Environmental Education Fund.

### Other Sources

There was no income from other sources credited during fiscal year 2012-2013. However, under Act 157 of 2012, the interest on the funds held in the Land Reclamation Financial Guarantee (LRFG) Account may be transferred into the Reclamation Fee O & M Trust Account. The available interest to transfer is \$5,096.91 from 2012-2013. The intention is to periodically transfer this interest to the Reclamation Fee O & M Trust Account. Act 157 also authorized the transfer of premium payments for Land Reclamation Financial Guarantees to the Reclamation Fee O & M Trust Account and included the provision for an annual appropriation from the Gross Receipts Tax.

### PREVIOUS YEAR O & M COSTS

O & M costs were incurred in four categories: personnel costs, lab costs, grants and contracts. The total spent in 2012-2013 was \$821,213.13.

### Personnel Costs

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The total cost to the Reclamation Fee O & M Trust Account for personnel from July 2012 through July 2013 is \$22,082.84. This is for labor for the monitoring that is needed for several ABS Primacy bond forfeiture sites where it is more efficient for DEP to do this work.

### Lab Costs

The total cost to the Reclamation Fee O & M Trust account for the samples collected and analyzed at the DEP lab for the ABS Primacy bond forfeiture sites from July 2012 through June 2013 is \$2,702.14.

### Grants

Grants were awarded in the amount of \$623,832.77 from July 2012 through June 2013.

### Contracts

Contract costs for operation and maintenance of the existing ABS treatment facilities for July 2012 through June 2013 totaled \$172,595.38.

## **PROJECTED NUMBER OF ACRES SUBJECT TO THE RECLAMATION FEE**

The number of acres for which the reclamation fee was collected for the partial fiscal year from July through December 2009 (when the reclamation fee was most recently collected) was 868. This projects to an annual total of 1736 acres. The five-year (calendar years 2005-2009) average for the number of acres is 2,300. This is the projected number of acres subject to the reclamation fee for 2014.

## **PROJECTED REVENUE**

### Reclamation Fee

The projected revenue from the reclamation fee is \$0.

### Interest

Interest on the money held in the Reclamation Fee O & M account has been decreasing for the last two years. Therefore \$8,000 in income from interest is projected for the 2013-2014 fiscal year.

### Civil Penalties

For purposes of the projection, it is estimated that about \$250,000 will be available from civil penalty revenue for the 2013-2014 fiscal year. This is a conservative estimate based on the average of the previous three years (~\$274,000) civil penalty revenue.

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### **Other Revenue**

Act 157 of 2012 provides other potential revenue streams to the Reclamation O & M Trust Account. These include the interest on the funds held in the LRFG Account, premiums from the LRFG program and an annual appropriation from the Gross Receipts Tax. The plan for fiscal year 2013-2014 is to routinely transfer the interest from the LRFG Account.

For 2012-2013, \$71,988.70 was collected from premium payments and deposited in the newly established LRFG Account. It is estimated that \$300,000.00 will be generated from premium payments in 2013-2014.

In order to provide the long-term financial stability intended under Act 157 of 2012, it will be necessary to obtain the annual appropriation from the Gross Receipts Tax.

### **PROJECTED EXPENDITURES**

The total projected expenditures for fiscal year 2013-2014, as explained in further detail below is \$959,334.00.

#### **Personnel Costs**

The total projected debit for DEP personnel costs from the Reclamation Fee O & M Trust Account from July 2013 through June 2014 is \$9,000.00. The amount is for labor for the monitoring that the DEP is doing for the ABS Primacy bond forfeiture sites.

#### **Lab Costs**

The total projected debit from the Reclamation Fee O & M Trust account from July 2013 through June 2014 is \$12,000.00. This is the expected cost for the analysis of the samples collected and analyzed by DEP while monitoring the ABS Primacy bond forfeiture sites.

#### **Grants**

Grants are expected to be awarded in the amount of \$201,500.00 from July 2013 through June 2014. This includes grants (\$151,500.00) for the O & M for the following C & K sites where the Clean Streams Foundation is the trustee:

Bell Woodcock (Permit No. 11783035), Stroud (Permit No. 11823002), Cambria 51 (Permit No. 11850106), Snyder-Sertik (Permit No. 10860118), Hill Estate (Permit No. 16713004), Smith-Heasley (Permit No. 16803030), Tremba-Horner (Permit No. 16830114), Kriebel (Permit No. 16840103), Racic (Permit No. 61783001).

Also included in the grants total is a grant (\$50,000.00) for the Bernice Mining, Lewis (Permit No. 57830101) site.

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### Contracts

Contract costs from July 2013 through June 2014 are expected to total \$736,834.00. The sites covered by these contracts include the following:

<b>Company</b>	<b>Site Name</b>	<b>Contract Amount</b>
PA Energy Corp.	Horse Hill Strip	\$3,000
Acme Drilling	Broom Strip	\$4,000
Delta Mining Inc.	Maust Mine	\$1,500
D & E Construction	Moore	\$1,500
Delta Mining Inc	Bashore	\$38,700
American Development	Job 33	\$37,700
Met Co Mining & Minerals Inc.	Ankey Mine	\$1,500
Delta Mining Inc	Hay 2	\$1,500
H & H Coal Co.	James E Long	\$1,500
L & L	Berkey	\$1,500
Big J Mining Inc.	Sorber Mine	\$37,575
Windber High Std. Coal Co.	Brant Strip	\$1,500
L & B Coal Co	No 5	\$4,000
K & J Coal Co. Inc.	Westover	\$2,000
K & J Coal Co. Inc.	Gaber Brown	\$2,000
Bituminous Coals	Addison	\$36,359
H & D	Merola	\$5,500
Gurosik Coal Co	King	\$50,000
REM	Truittsburg	\$5,500
REM	Orcutt Smail	\$75,000
Glacial	Blair	\$175,000
Additional Possible Contracts		\$250,000

### Financial Summary

<b>Income</b>	<b>FY 2012-2013</b>	<b>FY 2013-2014 (Projected)</b>
Interest	\$8,533.04	\$8,000.00
Reclamation Fee	\$0	\$0
Civil Penalties	\$247,178.22	\$250,000.00
Other (LRFG Interest)	\$5,096.91	\$25,000
<b>Total</b>	<b>\$260,808.17</b>	<b>\$283,000.00</b>

<b>Expenses</b>	<b>FY 2012-2013</b>	<b>FY 2013-2014 (Projected)</b>
DEP Lab Costs	\$2,702.14	\$12,000.00
DEP Personnel	\$22,082.84	\$9,000.00
Contracts	\$172,595.38	\$736,834.00
Grants	\$623,832.77	\$201,500.00
<b>Total</b>	<b>\$821,213.13</b>	<b>\$959,334.00</b>

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### Reclamation Fee Calculation

Based on the June 30 balance in the Reclamation Fee O & M Account (\$3,557,623.12), the civil penalties (\$247,178.22) transferred in July 2013, the un-transferred interest from the LRFG account (\$5,096.91), the projected revenue (\$283,000.00) and expenses (\$959,334.00), DEP has determined that the reclamation fee amount can remain at \$0 for calendar year 2014. This will maintain the balance in the Reclamation Fee O & M Account of \$3,000,000 (~\$3,133,564.22) as required under 25 Pa. Code § 86.17(e)(3).

For contingency planning, balance will be closely monitored in the Reclamation Fee O & M Account balance to determine if it is approaching the \$3 M balance which must be maintained. If it is likely that the balance will approach the threshold, then transfer of premium payments from LFRGs can be done in order to maintain the balance above the required minimum.

### ABS Legacy Sites Trust Account

The ABS Legacy Sites Trust Account was established by regulation at 25 Pa. Code § 86.187(a)(2)(i), effective August 30, 2008. As of June 30, 2012, the balance in the ABS Legacy Sites Trust Account was \$5,674,432.38. The June 30, 2013 balance was \$5,686,848.21. This balance reflects the credit of \$12,415.83 in interest.

### Report Process

On September 21, 2013, notice of availability of the draft report was published in the *Pa. Bulletin*.

By a letter dated October 15, 2013, comments were received from PennFuture. These comments are incorporated in this report as an attachment. The comment letter raises a question about the variability of the expenditures for O & M based on fiscal year 2012-2013 spending. In response to this question, this was the first year where the expected expenses met the projections. This was the result of recapitalization costs incurred from rebuilding passive treatment systems. The nature of these costs for reconstructing facilities is that they are somewhat unpredictable. This is the primary reason that contingent contracting costs are necessary in planning expenses.

On October 24, 2013, the draft report was reviewed at the MRAB meeting.

October 15, 2013

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Re: **Draft "Reclamation Fee Fiscal-year Report, 2013"**  
**43 Pa. Bull. 5659-60 (September 21, 2013)**

**Comments of Pennsylvania Federation of Sportsmen's Clubs, Inc.,  
Pennsylvania Chapter Sierra Club, Pennsylvania Trout, Inc., Mountain  
Watershed Association, Inc., Center for Coalfield Justice, and Citizens for  
Pennsylvania's Future (PennFuture)**

Dear Mr. Allen:

On behalf of the six organizations listed above and their members, PennFuture submits these comments on the draft "Reclamation Fee Fiscal-year Report, 2013" (2013 Draft Report) prepared by the Pennsylvania Department of Environmental Protection (PADEP).

Table 5, immediately below, is part of series of similar tables appearing in comment letters submitted by our coalition over the last five years. Specifically, it is an updated version of the same table that appeared in our September 12, 2012 comment letter concerning the draft report for Fiscal Year (FY) 2011-2012. In addition to correcting the identification of the fiscal year, the updated table fills in the Actual Expenditures column with the data reported in the 2013 Draft Report, and adds the percentage figures appearing in the fourth column.

**TABLE 5: Fiscal Year 2012-2013 (July 1, 2012 through June 30, 2013)**

Cost Categories	Projected Expenditures FY 2012-2013 (2012 Draft Report)	Actual Expenditures FY 2012-2013 (2013 Draft Report)	Actual Expenditures as Percentage of Projected Expenditures
Personnel	\$15,400.00	\$22,082.84	
Laboratory	\$12,000.00	\$2,702.14	
Grants	\$214,412.00	\$623,832.77	
Contracts	\$568,680.00	\$172,595.38	
<b>TOTAL</b>	<b>\$810,492.00</b>	<b>\$821,213.13</b>	<b>101.3%</b>
		vs. projected costs for all ABS Legacy Sites of \$1.6 million per year	<b>51.3%</b>
	<b>50.66%</b>		

The figure of 101.3% in the fourth column of Table 5 shows that for the first time since PADEP began releasing these annual reports in 2009, the actual expenditures for the fiscal year just ending exceeded the projections PADEP had made at the beginning of the fiscal year. More important, however, is that the actual expenditures of \$821,213.13 during FY 2012-2013 were nearly quintuple the actual expenditures for FY 2011-2012 of \$168,603.72. This increase in treatment expenditures confirms the progress PADEP has made in installing treatment systems at ABS Legacy Sites.

The figure of 51.3% found at the end of Table 5, however, gives an indication of the magnitude of the work that remains to have operational treatment systems in place for all ABS Legacy Site discharges. That figure shows that the \$821,213.13 spent from the Reclamation Fee O&M Trust Account for treatment of ABS Legacy Site discharges during FY 2012-2013 was barely more than half of the amount (\$1.6 million) that PADEP's 2008 "ABS Program Amendment" estimated would be needed to cover the annual recapitalization and operation and maintenance costs for treatment systems at all ABS Legacy Sites. Even if that estimate was conservative, it is clear that a considerable amount of work remains.

The incomplete Table 6, immediately below, presents data from the "Financial Summary" at the end of the 2013 Draft Report. It projects a modest, 16.8% increase in the expenditures from the Reclamation Fee O&M Trust Account in the upcoming fiscal year, from \$821,213.13 in FY 2012-2013 to \$959,334.00 in FY 2013-2014.

**TABLE 6: Fiscal Year 2013-2014 (July 1, 2013 through June 30, 2014)**

Cost Categories	Projected Expenditures FY 2013-2014 (2013 Draft Report)	Actual Expenditures FY 2013-2014 (to be determined)	Actual Expenditures as Percentage of Projected Expenditures
Personnel	\$9,000.00		
Laboratory	\$12,000.00		
Grants	\$210,500.00		
Contracts	\$736,834.00		
<b>TOTAL</b>	<b>\$959,334.00</b>		
	60.0%	vs. projected costs for all ABS Legacy Sites of \$1.6 million per year	

It is important to note, however, that the figure of \$736,834 for "Contracts" includes \$250,000 in projected expenditures that are not attributed to a particular mine site, but instead identified as "Additional Possible Contracts." (2013 Draft Report, p. 5) If none of those "possible" contracts comes to fruition, the figure for "Contracts" would drop to \$486,834, and the overall expenditures from the Reclamation Fee O&M Trust Account would be just \$709,334, or nearly \$112,000 (and 13.6%) *lower* than during FY 2012-2013. Because the Reclamation Fee O&M Trust Account generally has not been used for the initial construction of treatment systems at ABS Legacy Sites, it is unclear how it might be possible for the expenditures from the Account to decrease at all, and in particular by such a significant amount.

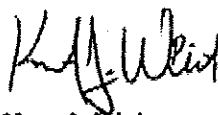


The figure of 60% at the bottom of the second column in Table 6 shows that even if all of the "Additional Possible Contracts" are completed during FY 2013-2014, the expenditures from the Account will still be 40% below the ABS Program Amendment's 2008 estimate of \$1.6 million per year in total recapitalization and operation and maintenance costs for the treatment systems at the ABS Legacy Sites. While we applaud the progress made during the last fiscal year and recognize that some of the remaining sites present special challenges, we reiterate that neither the Court of Appeals, when requiring the ABS Program Amendment six years ago, *see Pennsylvania Federation of Sportsmen's Clubs, Inc. v. Kempthorne*, 497 F.3d 337 (3d Cir. 2007), nor OSM, in partially approving it, 75 Fed. Reg. 48526 (Aug. 10, 2010), contemplated that adequate treatment of all of the discharges from the ABS Legacy Sites would be delayed so long.

The 2013 Draft Report states that "DEP has determined that the reclamation fee amount can remain at \$0 for calendar year 2014" (2013 Draft Report, p. 6), making it the fifth consecutive year in which no reclamation fee will be charged under 25 Pa. Code § 86.17(e). For the first time, however, PADEP projects that the balance in the Reclamation Fee O&M Trust Account will dip near the minimum balance of \$3 million required under 25 Pa. Code § 86.17(e)(3), and indicates that if necessary, it will maintain the required minimum balance by transferring premium payments made for Land Reclamation Financial Guarantees (LRGFs). (*Id.*) Those premium payments are an acceptable source of supplemental funding because they come from mine operators. It appears that \$72,000 in LRFG premium payments already is available for transfer, and PADEP estimates it will receive another \$300,000 in such payments during the current fiscal year. As a result, the LRFG premium payments should be sufficient to sustain the required minimum balance in the Reclamation Fee O&M Trust Account during calendar year 2014. (*Id.*, p. 4)

Thank you for your consideration of these comments. Please feel free to contact me at 717-214-7925 if you have any questions.

Sincerely,



Kurt J. Weist  
Senior Attorney

cc: (by electronic mail only)  
Ben Owens, Director, Pittsburgh Field Division, OSM  
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