

Reclamation Fee Fiscal-year Report 2012

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, 2012 was \$4,077,087.11. This balance does not include civil penalties collected during the fiscal year.

PREVIOUS YEAR REVENUE

Reclamation Fee

The Reclamation Fee for the period July 2011 through June 2012 was \$0. Therefore there was no revenue from this source.

Interest

Interest was credited to the Reclamation Fee O & M Trust Account from July 2011 through June 2012 in the amount of \$9,699.53. This is slightly lower than the interest earned on the principal in the 2010-2011 fiscal year which totaled \$10,772.29.

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 2011 through June 2012 is listed below:

Month	Coal Civil Penalties
Jul-11	\$19,303.50
Aug-11	\$13,950.00
Sep-11	\$16,965.00
Oct-11	\$41,078.00
Nov-11	\$6,075.00
Dec-11	\$50,857.50
Jan-12	\$12,850.00
Feb-12	\$46,419.50
Mar-12	\$22,213.33
Apr-12	\$21,850.83
May-12	\$27,690.83
Jun-12	\$29,395.00
Total	\$308,648.49

The net amount to be transferred to the Reclamation Fee O & M Trust Account is \$293,216.07. 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 during fiscal year 2011-2012.

PREVIOUS YEAR O & M COSTS

O & M costs were incurred in four categories: personnel costs, lab costs, grants and contracts.

Personnel Costs

The total cost to the Reclamation Fee O & M Trust Account for personnel from July 2011 through July 2012 is \$7,779.68. 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.

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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 2011 through June 2012 is \$6,789.01.

Grants

Grants were awarded in the amount of \$50,530.80 from July 2011 through June 2012. These were for the REM Orcutt-Smail and the C & K Sites.

Contracts

Contract costs for operation and maintenance of the existing ABS treatment facilities for July 2011 through June 2012 totaled \$103,503.72.

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 2013.

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 around \$10,000 for the last two years. Therefore \$10,000 in income from interest is projected for the 2012-2013 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 2012-2013 fiscal year. This is a conservative estimate based on the average of the previous three years (\$286,640) civil penalty revenue.

Other Revenue

There is no other revenue stream in place.

PROJECTED EXPENDITURES

The total projected expenditures for fiscal year 2012-2013, as explained in further detail below is \$810,492.

Personnel Costs

The total projected debit for DEP personnel costs from the Reclamation Fee O & M Trust Account from July 2012 through June 2013 is \$15,400. 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 2012 through June 2013 is \$12,000. 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 \$214,412 from July 2012 through June 2013. This includes grants 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 anticipated grants total is a potential grant to the Clinton County Conservation District for the Lobb, Narco (Permit No. 18860101) site.

Contracts

Contract costs from July 2012 through June 2013 are expected to total \$568,680. The sites covered by these contracts include the following:

Company	Site Name	Contract Amount
K & J Coal Co. Inc.	Westover	\$2,000
K & J Coal Co. Inc.	Gaber Brown	\$2,000
Acme Drilling	Broom Strip	\$4,000
Windber High Std. Coal Co.	Brant Strip	\$1,500
H & H Coal Co.	James E Long	\$1,500
Delta Mining Inc.	Maust Mine	\$1,500
Met Co Mining & Minerals Inc.	Ankey Mine	\$1,500
Big J Mining Inc.	Sorber Mine	\$37,575
PA Energy Corp.	Horse Hill Strip	\$3,000
D & E Construction	Moore	\$1,500
Delta Mining Inc	Bashore	\$38,700

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American Development	Job 33	\$37,700
Delta Mining Inc	Hay 2	\$1,500
L & B Coal Co	No 5	\$4,000
Gurosik Coal Co	King	\$58,346
H & D	Merola	\$5,500
REM	Truittsburg	\$5,500
Bituminous Coals	Addison	\$36,359
REM	Orcutt Smail	\$75,000
Additional Possible Contracts		\$250,000

Note: The C & K Coal Co sites may be covered by either the grant listed in the previous section or under contract for O & M. The amount is included under both the grants and contracts section (under Additional Possible Contracts), which is included to provide for contingencies (e.g. unanticipated projects).

Financial Summary

Income	FY 2011-2012	FY 2012-2013 (Projected)
Interest	\$9,699.53	\$10,000
Reclamation Fee	\$0	\$0
Civil Penalties	\$293,216.07	\$250,000
Other	\$0	\$0
Total	\$302,915.60	\$260,000

Expenses	FY 2011-2012	FY 2012-2013 (Projected)
DEP Lab Costs	\$6789.02	\$12,000
DEP Personnel	\$7,779.68	\$15,400
Contracts	\$103,503.72	\$568,680
Grants	\$50,530.80	\$214,412
Total	\$168,603.21	\$810,492

Reclamation Fee Calculation

Based on the existing balance in the Reclamation Fee O & M Account (\$4,077,087.11), the un-transferred civil penalties (\$293,216.07), the projected revenue (\$260,000) and expenses (\$810,492), DEP has determined that the reclamation fee amount can remain at \$0 for calendar year 2013. This will maintain the balance in the Reclamation Fee O & M Account of \$3,000,000 as required under 25 Pa. Code § 86.17(e)(3).

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, 2011, the balance in the ABS

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Legacy Sites Trust Account was \$5,660,006.82. The June 30, 2012 balance was \$5,674,432.38. This balance reflects the credit of \$14,425.56 in interest.

Report Process

On August 11, 2012, notice of availability of the draft report was published in the *Pa. Bulletin*.

By a letter dated September 12, 2012, comments were received from PennFuture. These comments are incorporated in this report as an attachment.

On October 25, 2012, the draft report was reviewed at the MRAB meeting.

Note: In October 2012, Act 157 amended the Surface Mining Conservation and Reclamation Act to, among other things, provide additional revenue sources for the Reclamation Fee O & M Trust Account.

September 12, 2012



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RECEIVED
BUR. OF MINING AND
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12 SEP 18 AM 10: 57
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Re: Draft "Reclamation Fee Fiscal-year Report, 2012"
42 Pa. Bull. 5293 (August 11, 2012)

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

Dear Mr. Allen:

On behalf of the Pennsylvania Federation of Sportsmen's Clubs, Inc., Pennsylvania Chapter Sierra Club, Pennsylvania Trout, Inc., Mountain Watershed Association, Inc., the Center for Coalfield Justice, Citizens for Pennsylvania's Future (PennFuture) and their members, PennFuture submits these comments on the draft "Reclamation Fee Fiscal-year Report, 2012" (Draft Report) prepared by the Pennsylvania Department of Environmental Protection (PADEP). This letter updates the comment letter submitted by these same organizations exactly one year ago concerning the draft report for Fiscal Year (FY) 2010-2011.

Comment: PADEP has failed to fulfill its duty to complete the construction or replacement of treatment systems at ABS Legacy Sites.

For the fourth year in a row, the Draft Report reveals that PADEP's expenditures on mine drainage treatment at "ABS Legacy Sites" have fallen far short of: a) the projection made by PADEP just one year earlier; and b) by an even greater margin, the estimated total cost of roughly \$1.6 million per year for treating all discharges from all ABS Legacy Sites.¹ We will

¹ "The annual amount for O&M costs will increase gradually over the next few years until it reaches the \$1.4 million total; when combined with recapitalization costs of about \$200,000 the Department will need approximately \$1.6 million annually to cover O&M and recapitalization costs for all the [existing] primacy ABS forfeiture discharge sites." (ABS Program Amendment (8/1/2008), p. 43) Those 2008 estimates are generally consistent with the data provided in PADEP's most recent (January 2012) update of its "Primacy ABS Bond Forfeitures" report, which covers calendar year 2011. The spreadsheet titled "Item 6 Discharge List 2011" in that report lists the total "Annual O&M costs—Dec 2011" for the ABS Legacy sites as \$1,484,037. It also lists a total "Recap cost" of \$5,194,330, but does not contain an annualized recapitalization cost. These cost figures do not include any amounts for the Purco Coal Company's Watkiss Mine (SMP No. 26753065) and Spruell Mine (SMP No. 26663023), which were added to the list of ABS Legacy Sites within the last few weeks.

pick up where we left off last year by filling in the last two columns in Table 4, which originally appeared on page 3 of our September 12, 2011 comment letter.

TABLE 4: Fiscal Year 2011-2012 (July 1, 2011 through June 30, 2012)

Cost Categories	Projected Expenditures FY 2011-2012 (2011 Draft Report)	Actual Expenditures FY 2011-2012 (2012 Draft Report)	Actual Expenditures as Percentage of Projected Expenditures
Personnel	\$15,000.00	\$7,779.68	
Laboratory	\$6,000.00	\$6,789.02	
Grants	\$91,500.00	\$50,530.80	
Contracts	\$490,372.00	\$103,503.72	
TOTAL	\$602,872.00	\$168,603.22	27.97%
		vs. projected costs for all ABS Legacy Sites of \$1.6 million per year	
	37.68%		10.54%

As completed, Table 4 confirms the observation we made in last year's comment letter that PADEP's projection of the FY 2011-12 expenditures "should be taken with more than a grain of salt." The actual expenditures from the Reclamation Fee O&M Account (Account) in FY 2011-12 were about 28% of the amount PADEP projected in August 2011. Obviously it is prudent for PADEP to err on the side of caution in projecting the Account's annual expenditures. After four fiscal years, however, the Account's expenditures never have reached as high as 30% of the beginning-of-fiscal-year projection. This might be welcome news if it resulted from PADEP repeatedly being at least 70% more efficient than expected. Unfortunately, however, the explanation for most of the discrepancy appears to be the same old story, namely the failure to live up to the projected pace of installing and starting the operation of treatment systems on ABS Legacy Sites.

Table 4 shows that four years after the 2008 ABS Program Amendment projected that the Account would need \$1.6 million per year to treat the discharges from the ABS Legacy Sites, only about one tenth that amount is being spent from the Account. PADEP's January 2012 "Primacy ABS Bond Forfeitures" report reveals that as of the end of calendar year 2011, nearly half of the 60 ABS Legacy Sites on the "Item 6 Discharge List 2011"² were awaiting initial construction, replacement, or reconstruction/rehabilitation of their mine drainage treatment systems. PADEP's report identifies fewer than ten of those sites as being slated for construction in 2012, which suggests that roughly one-third of the ABS Legacy Sites will still have inadequate treatment systems, and in some instances, entirely untreated discharges, at the end of the current construction season. Clearly, neither the Court of Appeals, when requiring the program amendment five 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 would be delayed so long.

² Again, the "Item 6 Discharge List" does not include Purco Coal Company's Watkiss and Spruell Mines, which were classified as "ABS Legacy Sites" within the last few weeks. See footnote 1, above.

Table 5, immediately below, sets the stage for next year.

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

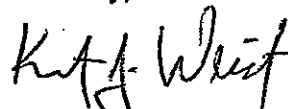
Cost Categories	Projected Expenditures FY 2011-2012 (2012 Draft Report)	Actual Expenditures FY 2011-2012 (to be determined)	Actual Expenditures as Percentage of Projected Expenditures
Personnel	\$15,400.00		
Laboratory	\$12,000.00		
Grants	\$214,412.00		
Contracts	\$568,680.00		
TOTAL	\$810,492.00		
		vs. projected costs for all ABS Legacy Sites of \$1.6 million per year	
	50.66%		

The figure of 50.66% at the bottom of the second column in Table 5 shows that even if PADEP – contrary to its track record – actually reaches its projected treatment expenditures at the ABS legacy Sites in FY 2012-2013, it still will be spending just slightly more than half of the estimated \$1.6 million per year total cost for recapitalization and operation and maintenance of treatment systems at ABS Legacy Sites.

In its final rule approving the reclamation fee adjustment mechanism in the 2008 ABS Program Amendment, OSM made clear that PADEP's progress toward completing the ABS Legacy Site treatment systems would be subject to review as part of OSM's reinvigorated state program oversight activities. See 75 Fed. Reg. at 48541 (col. 1-2). Largely because the actual expenditures from the Account have lagged so far behind the projections, however, for the fourth year in a row, no reclamation fee will be charged under 25 Pa. Code § 86.17(e) during calendar year 2013. PADEP's protracted failure to complete all of the ABS Legacy Site treatment systems required by the *Kemphorne* decision demands a more aggressive schedule from PADEP and more aggressive oversight by OSM, which must ensure that PADEP fulfills its duty to faithfully implement Pennsylvania's approved state regulatory program under the Surface Mining Control and Reclamation Act. See 30 C.F.R. § 733.11.

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: Ben Owens, Director, Pittsburgh Field Division, OSM
Andrew J. Jenkins, Assistant Counsel, Bureau of Regulatory Counsel, PADEP