

AGGREGATE ADVISORY BOARD
Wednesday, May 13, 2015
Harrisburg, PA

Rachel Carson State Office Building
6th Floor Conference Room

VOTING MEMBERS OR ALTERNATES PRESENT

John Quigley, Chairman, Acting Secretary, Department of Environmental Protection (DEP)
John Stefanko, DEP Deputy Secretary, Office of Active and Abandoned Mine Operations - Alternate
Thomas Bryan, Pennsylvania Aggregates and Concrete Association (PACA)
Representative Bryan Barbin, Pennsylvania House of Representatives
Terry Dayton, Citizens Advisory Council (CAC)
Richard Fox, Executive Director, Pennsylvania Senate Environmental Resources and Energy
Committee - Alternate
Walter Heine, CAC
Robert Hughes, Eastern Pennsylvania Coalition for Abandoned Mine Reclamation (EPCAMR)
Representative Sandra Major, Pennsylvania House of Representatives
Adam Pankake, Executive Director, Senate Environmental Resources and Energy Committee -
Alternate
Mark Snyder, Pennsy Supply, Inc.
Michelle Tate, Executive Director of the CAC - Alternate
Burt Waite, CAC

OTHER ATTENDEES

Tom Callaghan, DEP Bureau Director, Mining Programs
Bill Allen, DEP Bureau of Mining Programs
Bruce Carl, DEP Bureau of Mining Programs
Rick Lamkie, DEP Bureau of Mining Programs
Paul Pocavich, DEP Bureau of Mining Programs
Geoff Lincoln, DEP Bureau of Mining Programs
Dan Snowden, DEP Bureau of Mining Programs
Glenn Florence, DEP Office of Active and Abandoned Mine Programs
Laura Edinger, DEP Policy Office
Scott Schalles, Independent Regulatory Review Commission (IRRC)
Paul Detwiler III, New Enterprise Stone and Lime Co., Inc.
Josie Gaskey, PACA
Tim Gourley, Dietz-Gourley Consulting, LLC
Michael Hawbaker, Glenn O. Hawbaker, Inc.
Joseph Iole, DEP Bureau of Regulatory Counsel
Darrel K. Lewis, Allegheny Minerals Corp.
Matthew McClure, Specialty Granules, Inc.
John Rice, Pennsy Supply, Inc.
William Ruark, Pennsylvania Bluestone Association (PBA)
Todd Schmidt, PBA
William R. (Rusty) Taft, Eastern Industries, Inc.
Peter Vlahos, PACA

CALL TO ORDER/INTRODUCTIONS

Acting Secretary Quigley called the meeting to order at 10:05 a.m. He addressed the Board and the audience members, stressing the overall importance of DEP's advisory committees. All persons in attendance introduced themselves. Acting Secretary Quigley then turned the meeting over to Deputy Secretary Stefanko to chair.

LEGISLATIVE OVERVIEW

Mr. Stefanko briefly mentioned Act 137 of 2014, which created the Aggregate Advisory Board. The Board was created in a fashion similar to that of the Mining and Reclamation Advisory Board (i.e., composition, members' terms of service, voting, meetings (quarterly), selection of officers, and preparation of an annual report to the House and Senate Environmental Resources and Energy Committees).

BOARD OPERATIONS

Deputy Secretary Stefanko began the discussion of how the Board would operate.

Mr. Callaghan noted that DEP staff will assist the Board with matters regarding updates on regulations, policies, legislation and technical matters, coordination of meetings and related matters (requesting agenda items, provision of meetings materials, reappointments of members, preparation of Board communications, maintaining Board members' status), and, administrative and logistical details (e.g., travel arrangements).

The draft bylaws were reviewed. Mr. Snyder made a motion for the Board to adopt the bylaws; the motion was seconded by Mr. Waite. The Board voted unanimously to adopt the bylaws.

Board members discussed the designation of alternates. Deputy Secretary Stefanko recommended that each Board member send a letter from his/her respective organization to Dan Snowden, naming an individual whom the Board member wants to serve as his or her alternate.

The selection of a Vice-Chairperson for the Board was considered. Mr. Heine recommended that Mr. Snyder serve as the Board's Vice-Chairperson. This recommendation was seconded by Representative Barbin. The Board voted unanimously to approve Mr. Snyder as its Vice-Chairperson.

The Board discussed setting up committees. Ms. Gaskey recommended that a Technical and Regulatory Committee be set up to review any proposed changes to DEP regulations, policies or guidance documents regarding non-coal mining. Representative Barbin motioned to have such a committee formed within the Board; the motion was seconded by Mr. Snyder. The Board voted unanimously to form a Technical and Regulatory Committee. The members of this committee will be Representative Barbin, Mr. Hughes, Mr. Bryan and, Thaddeus Stevens (a Board member who was absent from this meeting, but recommended by Mr. Waite).

Ms. Gaskey also recommended the formation of an Annual Report Committee within the Board. Nominations for this committee will be made at the next Board meeting. Mr. Waite volunteered to act as chair of this committee.

The scheduling of future Board meetings was discussed. Mr. Lutz made a motion for the meetings to occur in February, May, August, and November of each calendar year, in order to maintain consistency with the quarterly meeting requirement in the bylaws. Representative Barbin seconded this motion. The Board voted unanimously to hold its meetings during the aforementioned months, with the caveat (per Mr. Lutz and Representative Barbin) that the meetings not occur on days when the General Assembly is in session. Additionally, for the Board's forthcoming summer meeting (August 2015), Mr. Snyder and Mr. Hughes recommended that a field trip be included with this meeting, similar to the arrangement that exists for the Mining and Reclamation Advisory Board's summer meeting (July 2015).

DEP REPORTS

Mr. Allen discussed standard regulatory and related reporting. He stated that such reports are provided to the MRAB during that advisory committee's meetings, and asked if the Board would like to see similar information. The Board voted in favor of receiving such information during its meetings.

Technical Guidance (Non-Regulatory Agenda)

Mr. Allen reported that several DEP guidance documents that were under revision. The guidance documents cover the following topics regarding coal and non-coal mining: 1) *mining pre-applications*; 2) *the Engineering Manual (this document is in its final stages of revision)*; 3) *Blaster's License Suspension*; 4) *Coal Ash*; 5) *General Permit (GP) Materials*; 6) *Civil Penalties (this document will include elements of the National Pollutant Discharge Elimination Standards (NPDES) program as part of its revisions, in order to calculate penalties)*; 7) *Government-Financed Construction Contracts (GFCCs)*; and 8) *Reclamation Fill*.

Regulatory Updates

Mr. Allen also reported on sets of regulations that are slated for revision: 1) *25 PA Code, Chapters 210 and 211 (the regulations for the Storage, Handling and Use of Explosives) (explained in further detail below)*; 2) *Fees (related to coal)*; and 3) *25 PA Code, Chapter 77 (Non-Coal Mining regulations) (regulations will be discussed in further detail at a future Board meeting)*.

NPDES Permitting Update

Mr. Allen reported that as of March 31, 2015, 29 non-coal draft permits (out of 560 draft permits overall) have been sent to the United States Environmental Protection Agency (US EPA), which provided comments or objections to eight of these non-coal draft permits (out of 332 draft permits with comments or objections). The issues related to the US EPA comments and objections are related to the following:

- *Checklist: DEP plans to send a list of topics of interest to US EPA, in order to make the permit application process more efficient.*
- *Remining and Total Maximum Daily Loads (TMDLs).*
- *Sediment Pond Sampling on TMDLs: the issue is the relevance of pre-mining sampling for parameters that are more related to natural gas drilling than coal and non-coal mining.*

The NPDES permitting statistics were also part of this presentation. Mr. Allen reported that to date, 303 mining permits have been issued, with four such permits awaiting issuance and 25 such permits pending – all with comments from US EPA. Among mining permits that have no comments from US EPA, 188 of these permits have been issued, with 29 permits that could be issued, and 11 permits that are pending (with a 30-day waiting period).

Historical Application Progress for Non-Coal Mining Permit Applications

Mr. Allen reported that as of April 8, 2015, 403 of 444 non-coal mining permits have been disposed (all of these are from the Pottsville District Mining Office), with 41 such permit awaiting action. There are 19 renewals among these permits.

Fee Revenues (1st Quarter of 2015)

Mr. Allen discussed fees received from non-coal permit applications. The breakdown provided is as follows (totaling \$1,147,050.00 in annual administrative permitting fees received, and \$241,310.00 in permit application fees received):

- *January 2015: \$160,400.00 in annual administrative fees received, and \$36,835.00 in permit application fees received.*
- *February 2015: \$78,900.00 in annual administrative fees received, and \$9,335.00 in permit application fees received.*
- *March 2015: \$174,400.00 in annual administrative fees received, and \$30,495.00 in permit application fees received.*

Mr. Allen also reported non-coal fee revenues for the 2012-2013, 2013-2014 and 2014-2015 fiscal years (FYs):

- *FY 2012-2013: \$589,925.00 collected in administrative fees, and \$229,755.00 collected in permit application fees.*
- *FY 2013-2014: \$1,367,950.00 collected in administrative fees, and \$410,525.00 collected in permit application fees.*
- *FY 2014-2015 (through March): \$1,147,050.00 collected in administrative fees, and \$241,310.00 collected in permit application fees.*

Mr. Allen provided details regarding the Non-Coal Surface Mining Conservation and Reclamation Act (NCSMCRA) Fund Revenues. The Board is interested in receiving a full description of this information at future meetings, in order to show how the funding operates as a whole. The elements of the NCSMCRA fund revenues include the following (through March 2015):

- *Interest: \$184,943.25*
- *Penalties: \$64,045.26*
- *License Fees: \$155,492.20*
- *Payments In-Lieu of Bond (PILBs): \$80,948.30*

Mr. Allen reported revenues received from mining fees related to the Clean Water Fund (CWF) (including NPDES and Chapter 105 fees) for FY 2012-2013, FY 2013-2014, and FY 2014-2015:

- *FY 2012-2013: \$247,800.00 in CWF fee revenue collected.*
- *FY 2013-2014: \$523,296.00 in CWF fee revenue collected.*
- *FY 2014-2015 (through March): \$340,479.00 in CWF fee revenue collected.*

Non-Coal Fees: 3-Year Report to the Environmental Quality Board (EQB)

Mr. Allen shared the Non-Coal Fee 3-Year Report to the EQB. He described the current disparity with non-coal program revenues and expenditures. The reasons behind this disparity include: 1) non-coal fees were based upon 2009 wage rates (these rates have changed since then); 2) the increased benefit rate was not anticipated (87% of salaries, as opposed to 40%); and 3) a decreasing number of permit applications, coupled with an increase in application complexity. Due to the aforementioned situations, an increase in fees is needed to cover the costs of the non-coal program.

The Board discussed the Non-Coal Fee Report. After this discussion, Representative Major motioned to move this report forward to the EQB. Mr. Ruark seconded this motion. The Board voted unanimously to forward the report to the EQB.

Program Overview: Facilities, Applications and Bonding

Mr. Allen then moved to the topic of non-coal mining facilities. There are 2,091 total inspectable units, which are broken down as follows:

- *Small Facilities (less than 2,000 tons/year): 1,027 units (inspected twice a year)*
- *Small Facilities (less than 10,000 tons/year): 313 units (inspected twice a year)*
- *Large Facilities (greater than 10,000 tons/year): 783 units (inspected four times a year)*
- *General Permit Facilities (GP-105): 49 units (inspected twice a year)*
- *General Permit Facilities (GP-103): 10 units (inspected twice a year)*
- *Underground Facilities: 9 units (inspected twice a year)*

Mr. Allen presented information about non-coal mining application types received (2014 calendar year):

- *Licenses: 1,247 (with 37 new applications)*
- *New Permits (Large Operators): 17*
- *New Permits (Small Operators): 39*
- *NPDES Permits: 79 (with 63 as GP-104)*
- *Pre-Applications: 15*

Mr. Allen provided details on non-coal program bonding, emphasizing the types of bonds involved and the total amount collected to date:

- *Surety Bonds: \$214,854,196.62*
- *LOC Bonds: \$32,876,713.24*
- *Certificates of Deposit (CDs): \$4,999,986.01*
- *Cash: \$1,924,369.60*
- *Negotiable Securities: \$141,579.44*
- *PILBs: \$1,936,717.68*

DRAFT PROPOSED RULEMAKING: HANDLING AND USE OF EXPLOSIVES

Mr. Lamkie reported on changes to Chapters 210 (Blaster's Licenses) and 211 (Storage, Handling and Use of Explosives) (It should be noted that Mr. Lamkie provided this same report to the MRAB during its April 23, 2015 meeting). The proposed changes in Chapter 210 are related to definitions, compliance with relevant Federal regulations and license applications (increased fees).

The proposed changes in Chapter 211 are more substantive and are related to the following:

- *General Provisions (Definitions; Scope; Enforcement),*
- *Storage and Classification of Explosives (Magazine and License Fees; Standards for Classifying and Storing Explosives/Constructing, Maintaining and Siting Magazines; Decommissioning Magazines; Daily Summaries of Magazine Transactions),*
- *Permits (General Requirements; Blasting Activity Permits; Blasting Activity Permit-by-Rule; Fees);*
- *Records of Disposition of Explosives (Blast Reports);*
- *Transportation of Explosives (General Requirements);*
- *Blasting Activities (Prevention of Damage or Injury; Preparing the Blast; Pre-Blast Measures);*
- *Requirements for Monitoring (General Provisions; Monitoring Instruments);*
- *Blasting Activities near Utility Lines (General Provisions);*
- *Seismic Exploration (Scope; Permits; Blasting Records; General Requirements for Handling Explosives on a Seismic Exploration); and*
- *Civil Penalties (Scope; Inspection (General); Assessment of Penalty; System of Assessment for Penalties; Procedures for Assessment of Civil Penalties; Final Action; Final Assessment and Payment of Penalty).*

NORTHERN LONG-EARED BAT – THREATENED SPECIES LISTING

Mr. Lincoln briefed the Board on the U. S. Fish and Wildlife Service's (USFWS) Interim Final 4(d) Rule to list the Northern Long-Eared Bat as a Threatened Species. While this rule is in effect (as of May 4, 2015), it is also open for public comment until July 1, 2015. The connection of this rule to non-coal mining operations is significant due to: 1) *the northern long-eared bat's presence throughout Pennsylvania;* and 2) *the occurrence of white-nose syndrome in northern long-eared bat hibernacula in half of Pennsylvania's counties.* Unlike in the coal mining program where there is a Federal nexus (the U. S. Office of Surface Mining Reclamation and Enforcement (OSMRE)) for dealing with the combination of endangered or threatened species and mining operations, there is no such Federal nexus available for non-coal operations.

Mr. Lincoln recommended that several key areas be explored in order for non-coal operators to address the northern long-eared bat issue:

- *The Pennsylvania Natural Diversity Inventory (PNDI): these may have to be run again in areas where they had been run previously due to the current USFWS listing for the northern long-eared bat (more PNDI hits for this species are likely to come up);*

- *Check with the PA DCNR website to ensure that the PNDI tool is updated to include the northern long-eared bat; and*
- *Get stakeholders in place to determine the appropriate actions to deal with issues regarding the northern long-eared bat and impacts to non-coal mining operations in Pennsylvania.*

The documents provided to the Board and referenced by Mr. Lincoln during this briefing included: 1) *a USFWS fact sheet detailing the Interim Final 4(d) Rule regarding the northern long-eared bat; 2) a March 17, 2015 letter to the USFWS from DEP (Office of Active and Abandoned Mine Operations) regarding the inclusion of abandoned mine land (AML) projects among the list of activities that could impact northern long-eared bat habitats (a request to exclude such projects from this listing was made); and 3) a USFWS map showing the white-nose syndrome buffer zone and infected hibernacula within the range of the northern long-eared bat.*

The Board plans to evaluate the northern long-eared bat issue further at its next meeting.

OPEN TIME

No questions or comments were received.

NEXT MEETING

A specific date for the next Board meeting was not determined; however, the Board did decide to hold the meeting in August and to have a field trip included as part of it (similar to the Mining and Reclamation Advisory Board's summer meeting in July).

ADJOURNMENT

The Board meeting adjourned at approximately 12:30 p.m.