

AGGREGATE ADVISORY BOARD (BOARD)
Thursday, February 18, 2016
Harrisburg, PA

Rachel Carson State Office Building
10th Floor Conference Room

VOTING MEMBERS OR ALTERNATES PRESENT

John Stefanko, Department of Environmental Protection (DEP): Acting Deputy Secretary, Office of Active and Abandoned Mine Operations (Alternate, Chairman); Representative Bryan Barbin, PA House of Representatives (Member); Richard Fox, Executive Director, Senate Environmental Resources and Energy Committee (Alternate); D. Michael Hawbaker, Glenn O. Hawbaker, Inc. (Alternate); Walter Heine, Citizens Advisory Council (CAC) (Member); Katherine Hetherington-Cunfer, Acting Executive Director of the CAC (Alternate); Jonathan Lutz, Executive Director, House Environmental Resources and Energy Committee (Alternate); Representative Sandra Major, PA House of Representatives (Member); Adam Pankake, Office of Senator Gene Yaw (Alternate); William Ruark, PA Bluestone Association (Member); Todd Schmidt, PA Bluestone Association (Alternate); Thaddeus Stevens, CAC (Member); Mark Snyder, Pennsy Supply, Inc. (Member, Vice-Chairman); Peter Vlahos, PA Aggregate and Concrete Association (PACA) (Alternate); Burt Waite, CAC (Member)

OTHER ATTENDEES

Thomas Callaghan, DEP Bureau Director, Mining Programs; William Allen, DEP, Bureau of Mining Programs; Bruce Carl, DEP, Bureau of Mining Programs; Tammy Cree, DEP, Office of Active and Abandoned Mine Operations; Laura Edinger, DEP Policy Office; Glenn Florence, DEP, Office of Active and Abandoned Mine Operations; Josie Gaskey, PACA; Jennifer Gulden, DEP, Bureau of Mining Programs/Aggregate Advisory Board Clerical Support; Sharon Hill, DEP, Bureau of Mining Programs; Matthew McClure, Specialty Granules, Inc.; Shuvonna Perry, DEP, Bureau of Mining Programs/Aggregate Advisory Board Administrative Support; Paul Pocavich, DEP, Bureau of Mining Programs; Daniel E. Snowden, D.Ed., DEP Bureau of Mining Programs/Aggregate Advisory Board Liaison

CALL TO ORDER/INTRODUCTIONS

Board Chairman Stefanko called the meeting to order at approximately 10:05 a.m. Board members, alternates and other attendees also introduced themselves at this time.

APPROVAL OF MINUTES

Board members mentioned that the minutes from the November 10, 2015 meeting should include the action item on the need for an update from the Bureau of Abandoned Mine Reclamation (BAMR) regarding its reclamation grant program was requested and, for BAMR to provided continued updates on this topic at future Board meetings. Once this change was noted, the Board unanimously voted to approve the minutes from the November 10, 2015 meeting.

CORRESPONDENCE

No correspondence was reported to the Board.

COMMITTEE REPORTS

Mr. Snyder provided an update from the Board's Regulatory, Legislative and Technical (RLT) Committee. The RLT Committee met shortly before the full Board to continue a discussion of changes to noncoal permitting fees. The meeting resulted in the creation of a Noncoal Permitting Fees document, which was approved by the Committee. The main points of the Noncoal Permitting Fees document included the following for the DEP to consider:

- *Stakeholders: pay equal percentages of their respective shares of Mining Program costs.*
- *Administrative Fees (Noncoal) = Salary rate + 37% benefit cost X Average total number of noncoal sites (over past 3 years).*
- *Administrative Fees (Noncoal – Forfeited Sites): covered by funds appropriated by the PA General Assembly.*
- *Permit Fees (Noncoal) = Average number of hours X Average salary of Department's permit reviewers and administrative support + 37% benefit cost.*
- *Government Infrastructure Costs: cover by general funds appropriated by the PA General Assembly.*
- *Assessment of variable costs only (noncoal and coal) for their respective portions involving reviews, administration and enforcement in the Mining Program.*
- *An annual Mining Program financial statement report.*
- *Deduction of new industry revenues from any revenues generated via Mining Program permit fees.*

Upon further discussion of the provisions of the Noncoal Permitting Fees document, Board members voted to table the document for further discussion and possible finalization at special meetings - scheduled for both of the Committee and the full Board

PROPOSED TECHNICAL GUIDANCE DOCUMENT (TGD) REVISION (PRE-APPLICATION REVIEW)

Ms. Hill presented revisions to DEP Technical Guidance 563-211-214 (Coal Surface Mining Activity Permit Pre-Application Review). The revisions relate to the inclusion of information for noncoal mining permits, along with updates to the coal mining permit process. The revised TGD is slated to be presented to all advisory boards in February 2016, with publication (draft form) and public comment to follow in April 2016 and, final publication in September 2016.

PROFESSIONAL LICENSURE AND PERMIT REVIEW

Ms. Hill presented on the roles of permit applicants and DEP regarding to Professional Engineer (PE)- and Professional Geologist (PG)-licensed work, in the context of shortening permit review times.

Ms. Hill outlined DEP's responsibilities under Chapter 77 (i.e., collecting and evaluating public comments; holding hearings; making written findings; waiving and determining; evaluating impacts). Permitting decisions were also noted (i.e., written findings: criteria for permit approval or denial; legal obligation to ensure that a noncoal mining project complies with laws and regulations; no presumptive evidence of pollution)

Ms. Hill covered similar responsibilities for consultants (i.e., gathering and compiling data and plans; addressing any environmental consequences of proposed activities). The differences between PE and PG sealed submittals (both requiring licensure by law; PG: data collection, interpretation and prediction; PE: design standards – done per accepted specifications and best practices) were also addressed, with a PG example included for groundwater hydrology.

Ms. Hill described the complexity of permit reviews for both applicants/consultants (i.e., interpretation, reviewing for errors, professional judgment – all related to making claims regarding prediction of pollution) and DEP (i.e., use of relevant additional information – assessing information that is contrary to pollution prediction claims; fair consideration of comments and input from other sources; historic/current complaint investigations; records of staff institutional and historical knowledge; confidential information).

Ms. Hill explained conflicts of interest regarding permit applications from consultants (i.e., ethics act/disclosure of interest; bias; employment by mining companies; defending work upon permit appeals). She explained that the preparation of permit applications by licensed PEs or PGs (portions as applicable) does not guarantee automatic approvals.

Ms. Hill noted several streamlining options for permit applications (i.e., pre-application meetings; formulation of suitable general permits; data submittal options (e.g., spreadsheets); modifying DEP's standard operating procedures; agency pre-approvals (e.g., zoning; public concerns; water loss potential; protected species; historical issues). She included some items that could be tailored for automatic approval, as they have standards that currently fit the regulations (i.e., erosion and sedimentation plans; general permits – both still have liability issues associated with them).

UPDATES

Mr. Allen provided the following updates:

Technical Guidance Document (TGD) Update

Mr. Allen provided status reports for TGDs:

- *Pre-Applications (this TGD is being revised to include noncoal information).*
- *Engineering Manual (this TGD is still with Regulatory Counsel, but will be routed for approval to post).*
- *Blaster's License Suspension (this TGD is being finalized for approval; finalization is expected by early summer 2016 – replacement of the matrix with a point system will be part of this TGD).*
- *Coal Ash (this TGD is with Regulatory Counsel).*
- *General Permit (GP) Materials (this TGD is with Regulatory Counsel).*
- *Civil Penalties (this TGD will be posted for comment soon).*
- *Government-Financed Construction Contracts (GFCCs) (this TGD is with Regulatory Counsel).*
- *Reclamation Fill (this TGD was finalized on December 19, 2015).*

- *Other TGDs under Consideration (i.e., Beneficial Use of Sewage Sludge; Stream Protection from Underground Mining; Permit Transfers; Noncoal Underground Mining Applications; Processing Completion Reports (Bond Releases).*

Regulatory Update

Mr. Allen reported that the changes to the regulations regarding Blasting and Explosives (25 PA Code, Chapters 210 and 211) were published on February 27, 2016 and, were undergoing a 30-day public comment period and review by the Independent Regulatory Review Commission (IRRC). He also mentioned the Noncoal Fees (ongoing discussion) and the Noncoal Program regulations (25 PA Code, Chapter 77) would not be taken up at the present time.

National Pollution Discharge Elimination System (NPDES) Permitting Update

Mr. Allen reported that 32 noncoal draft NPDES permits had been sent to the United States Environmental Protection Agency (US EPA) for review and, that the US EPA had commented or objected to eight of these draft permits. To date, six draft permits have been issued and two such permits could be issued, with US EPA comments; also, 21 such permits have been issued and three permits could be issued, without US EPA comment (including 16 “no comment” letters). Even with this progress, there are still some NPDES permitting issues between PA DEP and US EPA:

- *Checklist (permit applications are slated to include this element, but more questions remain).*
- *Effluent Characterization (this involved detection limits – some of the data submitted show higher parameter levels than these limits, making it unreliable).*
- *Monthly Calls (these will be reinstated).*
- *US EPA Staff Turnover (this occurs on a regular basis – when new persons come into the NPDES program at US EPA, they often take new angles on dealings with States).*
- *Meeting from December 15, 2015 (this was about permit reviewers’ engaging in the monthly call process to resolve issues).*
- *Electronic Reporting Rule (there is a new database to manage discharge monitoring reports, allowing for electronic submissions).*

Permit Decision Guarantee (PDG) Update

Mr. Allen reported that 413 out of 444 noncoal mining permits (93%) had been disposed in 2015 (all from the Pottsville District Mining Office (DMO)) and, that 31 remained for action (including 17 renewals). He also shared on-time percentages among DMOs with processing noncoal permit applications – these ranged from a low of 64.2% (Pottsville DMO) to a high of 91.1% (Knox DMO). At this time, Board members inquired as to whether the number applications returned or denied were reported together; it was recommended that Bill Plassio, DMO Director, be brought in to explain these statistics in greater detail. Mr. Allen provided a breakdown of PDG applications completed on time in 2015 (i.e., 334 applications pending – 31 small operator; 61 large operator; 156 NPDES; 86 miscellaneous; all averaging 203 days for review) and those overdue during the same period (i.e., 200 applications pending – 11 small operator; 32 large operator; 107 NPDES; all averaging 305 days for review). The DMOs were compared for overdue PDG applications, and the ranges were a low of 238 days for the Cambria DMO to a high of 326 days for the Pottsville DMO.

Board members recommended that PA DEP create a table that shows the progress of such applications for a single year.

Noncoal Fund Update

Mr. Allen reported on revenues collected in 2015 for the Noncoal Fund. Noncoal fee revenues were mentioned, with \$667,200.00 collected in administrative fees; \$171,595.00 in collected permitting fees; and \$85,243.90 collected in licensing fees. Mr. Allen also reported on additional revenues collected for the Noncoal Fund, from penalties (\$80,275.00 collected – 5% of this total (4,013.75) is set aside for the Environmental Education fund, making the actual penalties collection total \$76,261.25); interest (\$82,576.37 collected); and PILBs (\$39,721.41 collected). Mining revenues from the Clean Water Fund (CWF) were also mentioned, ranging from \$247,800.00 in fiscal year 2012-2013 to \$328,221.00 in fiscal year 2015-2016 (as of December 2015).

Noncoal Program Overview/Bonding and Bond Forfeitures Update

Mr. Allen provided some particulars for the noncoal program in terms of facilities (i.e., 9 underground mines; 9 GP 103; 54 GP 105; 809 large operator; 333 small operator (< 10,000 tons/year) and 1,143 small operator (< 2,000 tons/year); applications (i.e., 1,185 licenses; 9 new permits (large operator); 40 new permits (small operator); 13 new NPDES permits and 54 NPDES renewals; and 7 pre-applications).

Mr. Allen also covered the Noncoal Surface Mining Conservation and Reclamation Act (NCSMCRA) Fund Obligations in 2015 (i.e., cash collateral: \$2,055,457.87; PILB underwritten; \$2,092,597.05; and Bond Forfeiture Reclamation: \$4.3 million) and the NSMCRA Fund Balance elements (i.e., General Operations: \$6,893,735.36; Collateral: \$1,479,098.98; and Restricted Bonds: \$706,517.52). Finally, Mr. Allen mentioned Bond Forfeitures (these ranged from 8 small operators and 0 large operators in 2010 to 34 small operators and 3 large operators in 2015).

PAYMENT IN LIEU OF BOND (PILB)

Mr. Allen reported on the status of noncoal PILB permit cases. He began by presenting some statistics on the matter (i.e., 29 permits – 22 large operators, 1 small operator, 2 GP104 and 4 STEN; all underwritten for \$1,982,351.05, with 4 forfeitures (see below) and, revenues of \$1.8 million (since 1985).

Mr. Allen described the PILB payment history, from FY 2008-2009 to FY 2001-2015, via a comparison between revenue deposits and E-Facts. Discrepancies between these reporting types (ranging from around \$3.00 to slightly over \$20,000.00) are related to the time lags as to when the entries show up in the reports.

It was also noted that the four PILB forfeiture sites (Gerhard Road Materials (reclaimed); Pocono Excavating, Inc. (awaiting reclamation); Melvin Meinhart (awaiting reclamation); and USA Energy (awaiting reclamation)) made combined payments of \$27,303.72. Additionally, it was reported that the reclaimed PILB site (Gerhard Road Materials) had reclamation costs of \$41,718.00 (restricted bonds - with \$932.00 spent on mapping and related preparations) and \$40,452.00 (general operations).

NONCOAL BONDING RATES

Mr. Carl presented information about how bond amounts are calculated for noncoal mining operations. The presentation was extensive, as it served as the first time that actual noncoal bonding rates were fully available. He first explained that the noncoal bond rates were based on 2010 coal bond rates and industry estimates and, that these rates were subject to revision via notice in the Pennsylvania Bulletin. Mr. Carl shared a general methodology of how the bond rates were applied to the large noncoal sites (i.e., flat acre rate for grading and revegetation; also accounts for spoil storage, backfilling, demolition, highwall blasting and slope reclamation for the mining of consolidated materials below the water table). Mr. Carl also discussed lateral phase mining, where operators have the option of bonding permit areas by phase. Bond liability is for the maximum portion of the permit area that the permittee is authorized to disturb at any time.

Mr. Carl discussed per-acre rates, which amount to \$3,000.00/acre for noncoal mining areas (including select grading and revegetation). Previous coal rates (2010) for these activities were \$1,150.00/acre (select grading) and \$1,615.00/acre (revegetation), along with \$1,500.00/acre for select areas (revegetation included). Bond rates for spoil storage and earthmoving were also mentioned, at \$.90/cubic yard (grading – backfilling and other earthmoving for spoil) – the rate, again, was based on the 2010 coal grading averages (\$.80/cubic yard (< 500 feet) and \$1.00/cubic yard (> 500 feet).

Mr. Carl discussed bonding rates for additional items (mostly based on 2010 coal industry estimates, except where noted): blasting - between \$10.00/linear foot of highwall (up to 20 feet) and \$60.00/linear foot of highwall (the blasting highwall estimates were actually based on 2010 explosives industry estimates); pond reclamation: \$3,800.00 apiece; junk tire removal: \$300.00 apiece; mobilization costs – at 4% of \$40,000.00 maximum; structure demolition costs; and non-bonding for structures with post-mining land use. He also provided some specifics for bonds covering both large noncoal sites (i.e., at \$1,600.00/acre for sites mining above and below the water table and, selective grading coverage for impoundment slopes/safety benches; highwall grading – between \$1,600.00/acre (35 feet) and \$3,500.00/acre (> 65 feet); safety benches – at \$1,600.00/acre or, \$.90/cubic yard for using unmarketable materials for reclamation) and small noncoal sites (i.e., reclamation at 1 acre reclaimed/1 acre affected – at \$1,500.00/acre when permittee is authorized to disturb areas at specific times; unconsolidated materials: \$3,000.00/acre; consolidates materials: between \$1,500.00/acre and \$5,000.00/acre (for sites > 1 acre).

Mr. Carl reported that the current noncoal bond rate summaries for 2015 include: grading – between \$.90/cubic yard (< 500-foot push) and \$1.50/cubic yard (\geq 500-foot push/haul); selective grading at \$1,700.00/acre; and revegetation at \$1,900.00/acre. It was recommended that a task force (spearheaded by PACA or another noncoal industry entity) should be established to address revising the noncoal bond rates from 2010 to current costs.

NEW BUSINESS

The following topics were mentioned:

- **Aggregate Advisory Board Annual Report:** Ms. Gaskey stated that this report was 90% complete, and would be available for discussion at the next Board meeting (May 4, 2016).
- **Field Trip Options:** Mr. Hawbaker shared the option of having the Board visit a noncoal mining operation in Pleasant Gap, PA (just outside of State College, PA) for its August field

trip (8-2-16), followed by its regular meeting (8-3-16). The Board voted unanimously to accept this field trip invitation.

OPEN TIME

Topics covered during this time include:

- **Scheduling of the special meetings for the full Board and its RLT Committee:** Mr. Snyder mentioned the need for another RLT Committee meeting, followed by a full Board meeting – all regarding the Noncoal Permitting Fees document, which the Board had tabled earlier. Dr. Snowden mentioned that he would contact Board members and alternates and, RLT Committee members with several dates to choose from.
- **Department of Conservation and Natural Resources (DCNR) and its PA Natural Diversity Index (PNDI):** Ms. Gaskey inquired about the PNDI and, whether it would be feasible to have a representative from DCNR speak about it during a future Board meeting. The matter of interest here was endangered species. Mr. Stefanko stated that DEP does have an individual who is familiar with the PNDI – Ann Roda – who would be available to speak about PNDI issues (endangered species and otherwise) with the Board, upon request.
- **Director, DEP Bureau of Deep Mine Safety:** Mr. Vlahos inquired as to whether the DEP Bureau of Deep Mine Safety had a director. Mr. Stefanko stated that Craig Carson serves in this capacity for DEP.
- **Quality of Noncoal Mining Permit Applications:** Board members inquired as to when the Board would hear about this topic, particularly about pre-applications and, how to get District Mining Office representatives to meet with applicants at the pre-application stage, in order to address deficiencies (per the inclusion of regulatory citations in deficiency letters, as appropriate) and improve applications overall. Mr. Callaghan stated that William Plassio Bureau Director, DEP District Mining Operations, is the person to contact about these matters and, that he was working to have Mr. Plassio address the Board on noncoal permit application matters at a future Board meeting (depending upon his availability).
- **BAMR and Waste Coal Facility Cleanups:** This matter was mentioned and would be discussed at a future Board meeting.

ADJOURNMENT/NEXT MEETING

The Board voted to adjourn the meeting at approximately 12:30 p.m. The Board will meet again on May 4, 2016 at 10:00 a.m., at the DEP Southcentral Regional Office.