

AGGREGATE ADVISORY BOARD (BOARD)
Wednesday, February 2, 2022
Hybrid Meeting (via Microsoft Teams)

VOTING MEMBERS OR ALTERNATES PRESENT:

Peter Vlahos (Alternate – PA Aggregates and Concrete Association (PACA))
Griffin Caruso (Alternate – PA House of Representatives)
D. Michael Hawbaker (Member – Glenn O. Hawbaker, Inc.)
William Ruark (Member – Meshoppen Stone, Inc.)
Lori Dayton (Member – Specialty Granules, LLC/Citizen’s Advisory Council (CAC))
Thaddeus Stevens (Member – Sylvan Glen, Inc./CAC)
Paul Detwiler, III (Member – Enterprise Stone and Lime)
Rep. Michael Carroll (Member – PA House of Representatives)
John Stefanko (Alternate - DEP – Active and Abandoned Mine Operations (AAMO))
Emily Eyster (Alternate – PA Senate)
Nick Troutman (Alternate – PA Senate)
Rep. Ryan Mackenzie (Member – PA House of Representatives)
Ronald Kurpiel (Alternate – Hanson Aggregates)
R. Timothy Weston (Member – CAC)

OTHER ATTENDEES:

Bill Allen (DEP – Bureau of Mining Programs (BMP))
Bruce Carl (DEP – BMP)
Sharon Hill (DEP – BMP)
Greg Greenfield (DEP – BMP)
Geoff Lincoln (DEP – BMP)
Eric Oliver (DEP – BMP)
Kevin Bogdan (DEP – BMP)
Melanie Barber (DEP – BMP)
Gregory Shuler (DEP – BMP)
Seth Pelepko (DEP – BMP)
Daniel E. Snowden, D.Ed. (DEP – BMP/Board Liaison)
Dan Sammarco (DEP – Bureau of District Mining Operations (DMO))
Kristen Schlauderaff (DEP – Bureau of Clean Water (BCW))
Manyi Liu (DEP – BCW)
Michael Lookenbill (DEP – BCW)
Michelle Moses (DEP – Regulatory Counsel)
Christopher Minott (DEP – Regulatory Counsel)
Amy Berrios (DEP - AAMO)
Roland Gensel (DEP – AAMO)
Abbey Cadden (DEP – Policy Office)
Kate Cole (DEP – Policy Office)
Brian Chalfant (DEP – Policy Office)
Josie Gaskey (Guest – PACA)
Rachel Gleason (Guest – PA Coal Alliance (PCA))
Matthew Fritch (Guest – Philadelphia Water Department (PWD))

CALL TO ORDER/INTRODUCTIONS

The meeting was called to order at approximately 10:00 a.m. Board members introduced themselves, as did all Department personnel and other guests in the audience.

PACA ANTI-TRUST STATEMENT

The Board reaffirmed its adherence to PACA's anti-trust statement, both in letter and spirit. This requirement extends to industry members and alternates on the Board.

APPROVAL OF MINUTES

The motion to approve the minutes from the November 3, 2021 meeting was put forward by Mr. Weston and seconded by Mr. Detwiler and was approved without objection.

CORRESPONDENCE

There was no new correspondence.

COMMITTEE REPORTS:

The Regulatory, Legislative and Technical (RLT) Committee did not meet since the previous meeting.

DELIVERABLES

There were no deliverables requested by the Board at the last meeting.

BUREAU OF MINING PROGRAMS UPDATES

The Board was provided with updates on the following topics:

- **Small Noncoal Applications Breakdown:**

Ms. Hill provided the Board with detailed information regarding the distribution of applications across the District Mining Offices (DMOs) for the entirety of 2021.

- **Non-Regulatory Agenda:**

While reviewing the Engineering manual, the Department realized a new approach to the document was needed. The length of the document means that review takes significant time, and the organization of the document means that updating it might cause conflict with other forms. The Department would like a joint meeting between the Aggregate Advisory Board and, the Mining and Reclamation Advisory Board (MRAB) RLT Committees to discuss an overall overhaul.

- **Regulatory Agenda:**

The Final Rulemaking for the Chapter 77 regulations is tentatively scheduled to be presented before the Environmental Quality Board (EQB) in the Spring.

- **Technical Items:**

A new Standard Operating Procedure (SOP) for Sediment Ponds was developed. This SOP would not apply to existing designs and is available on the BMP website. The Streams and Wetlands SOP is still in draft.

- **National Pollutant Discharge Elimination System (NPDES) Permitting:**

Monthly calls with the United State Environmental Protection Agency (US EPA) have continued, but no serious issues require being brought to the Board's attention have been raised.

- **Program Overview (Facilities and Applications):**

- Between March 2016 and December 2021, the numbers of inspectable units decreased overall for small facilities (both < 2,000 tons/year and, < 10,000 tons/year), large facilities (> 10,000 tons/year), and NPDES applications.
- GP-105 Operator and Underground facilities permits increased, while GP-103 Operator Permits decreased.
- Between 2017 and 2021, the ranges for various application types included the following:
 - Licenses: between 1,135 (2017) and 961 (2020), with 1015 for 2021.
 - Large Facilities (New): between 9 (2018) and 6 (2019), with 18 for 2021.
 - Small Facilities (New): between 43 (2017) and 23 (2020), with 30 for 2021.
 - NPDES (New): between 33 (2018) and 11 (2020), with 30 for 2021.
 - NPDES (Renewal): between 84 (2018) and 46 (2019), with 76 for 2021.
 - Pre-Applications: between 7 (2019) and 3 (2017), with 7 for 2021.

- **Bonding and Bond Forfeitures:**

- Between 2015 and 2021, the number of bond forfeitures for large operators ranged from a low of 0 (2016, 2018) to a high of 3 (2015), with 1 for 2021.
- Between 2015 and 2021, the number of bond forfeitures for small operators ranged from a low of 3 (2019) to a high of 34 (2015), with 13 for 2021.

- **E-Permitting and E-Discharge Monitoring Reports (E-DMR):**

- Seven-hundred eighty (780) individual permits have been submitted through the eDMR system.

- **Non-Coal Surface Mining Conservation and Reclamation Act (NCSMCRA) Fund Obligations:**

- As of the latest report, there is over \$2.7 million in cash collateral, \$2.8 million in payments in lieu of bonds, and over \$10.3 million in bond fund reclamation.

- The NCSMR fiscal report showed about \$973,000.00 in general operations monies, with about \$2.5 million in collateral and over \$1.4 million in restricted bond monies.
- **Clean Water Fund (CWF) Mining Fee Revenue:**
Between Fiscal Year (FY) 2012-2013 and FY 2020-2021, CWF mining fee revenues ranged from a low of \$247,800.00 (FY 2012-13) to a high of \$794,124.00 (FY 2019-2020), with \$113,375.00 collected for FY 2021-2022.

NEW BUSINESS

Update from District Mining Offices

Mr. Sammarco provided the Board with an update on DMO operations. The DMOs are continuing to fill vacant positions. Of 16 vacant positions, several are in the selection stage, and replacements continue. Randy Shustack will be the Pottsville District Mining Manager effective at the end of February.

The DMO is finishing a LEAN HMR program through Greenport. The testing phase has been concluded, and the anticipated live date is April 7.

Manganese Water Quality Standards

Ms. Schlauderaff, Bureau of Clean Water, presented the Department's draft final-form rulemaking: Water Quality Standards for Manganese and Implementation. Based on available, peer-reviewed science, applicable existing laws, regulations and policies, as well as the public comments received on the proposed rulemaking, the Department intends to make the following recommendations to EQB: the deletion of the existing Potable Water Supply criterion for manganese of 1.0 mg/L from 25 Pa. Code § 93.7, Table 3; the addition of a human health toxics criterion of 0.3 mg/L to 25 Pa. Code § 93.8c, Table 5; and maintenance of the point of compliance for the human health manganese criterion at the point of discharge consistent with section 96.3(c). The Department expects to present its recommendations on the final-form rulemaking to the EQB in the spring of 2022.

The Board had several questions regarding the presentation.

Mr. Weston posed an inquiry related to the Citizens Advisory Council's work with legacy issues across the state, particularly on mining (where mined lands which require treatment for reclamation also get NPDES permits). Mr. Weston asked if an evaluation was conducted based on the proposed manganese in-stream criteria to determine whether upgrading of the existing treatment processes is necessary, and if so whether that will increase the cost of water quality treatment for those projects. Mr. Weston's concern was that many of the streams are in areas with TMDLs largely because of the mine impacts.

Ms. Schlauderaff stated that BCW is currently evaluating permits and collaborating with BMP. She further explained that facilities with an NPDES permit could potentially be affected by this proposed manganese water quality standard; however, the impacts would need to be evaluated on a site-specific basis and examined individually to understand effects. Ms. Schlauderaff also explained that BCW has looked at a subset of permits to develop an approximation of industry-wide effects.

Mr. Weston then asked if BMP has a sense about how this will affect existing and planned facilities. Mr. Allen clarified that not all facilities have NPDES permits. He explained that the majority of facilities referred to here – namely, Commonwealth-constructed facilities meant to treat the Abandoned Mine Land related discharges – generally do not currently hold NPDES permits.

Mr. Stefanko agreed with Mr. Allen and stated that BMP may need to evaluate facilities that do not hold NPDES permits, but there is not yet a definitive strategy for such facilities.

Mr. Weston then stated it was his understanding that facilities are designed to meet water quality standards; he also made a reference to previously mined lands not being affected because they would be subject to the OSMRE program. He asked whether previously mined lands subject to the OSMRE program would still have obligations to meet in-stream water quality standards. Mr. Stefanko stated that BMP has an approved program with the federal Office of Surface Mining, because Pennsylvania is a delegated State.

Mr. Allen explained that the premise of the remining regulations with respect to water quality is that the implementation of best management practices through remining will not make the water quality worse. He continued that there is information in the TMDLs about remining, and mentioned a recent phone call about a specific permit with US EPA that involved the permitting under the TMDL of the removal of an abandoned refuse pile. US EPA pointed out to BMP that this particular TMDL is unique and its implementation is accomplished through remining, among other strategies. Through this method, remining actually helps to meet the water quality standard, and will implement the TMDL by facilitating the corrective actions as a result remining.

Ms. Gaskey asked for clarity regarding whether manganese limits would be enacted at all facilities with manganese discharges, or if the regulation specifically applies to mining operations. Speaking specifically to the requirements for mining operations, Mr. Stefanko stated that when a regulation is put in place, AAMO must figure out how the mining program would implement it, and that other Department Bureaus whose work involves NPDES permits and discharges at non-mining facilities would determine their own strategies for implementation.

Ms. Gaskey asked that if the noncoal mining industry lowers its manganese levels, how this would compare with manganese being discharged at other operations. Ms. Schlauderaff stated any operations or facilities that require NPDES permits issued by the Department would also be subject to the manganese water quality standard. Ms. Gaskey stated that there are perhaps thousands of discharges out there that may have high manganese discharge levels, but do not have permits, and that the noncoal mining industry's manganese discharge control efforts might be negated by manganese discharges from other industries.

Other comments on the presentation were made by Ms. Gaskey. Specifically, Ms. Gaskey stated that a slide in the rulemaking presentation shows that BCW received 869 identical form letters in support of the rulemaking, bringing the number of unique comments in support of the rulemaking to 55, and therefore does not demonstrate overwhelming support of the rulemaking compared to the 30 unique comments submitted in opposition.

Ms. Gaskey went on to state that there was testimony presented to the legislature regarding cost and the scientific challenges with implementing the manganese standards. Ms. Gaskey said the rulemaking presentation used capital costs and annual costs from the testimony for New Enterprise,

and stated that two of the sites have serious footprint issues and may not have space to expand. She noted that there were six sites that will need the pond size expanded or they will need increased treatment or chemical systems. Projected costs for these sites would be related to engineering, construction, treatment systems, power and automation systems. Additional personnel would be needed to manage the additional treatment systems, and these costs may not be recuperated.

Ms. Gaskey inquired as to why US EPA has not previously set limitations for manganese. Ms. Schlauderaff stated that US EPA is evaluating manganese; the Safe Drinking Water program recently collected information to inform its unregulated contaminants rule. Moreover, US EPA does have a federal Clean Water Act § 304 criterion recommendation for manganese, but the limit is now outdated. She continued by explaining that manganese is not as significant an issue in other States as it is in the Commonwealth, and the EPA must use limited resources to prioritize issues of national importance. Ms. Schlauderaff concluded by explaining that States are not precluded from protecting their waters and the Commonwealth can adopt and pursue criteria beyond EPA's recommendations for pollutants found in NPDES discharges to Commonwealth surface waters.

Mr. Troutman stated that the Senate Environmental Resources and Energy Committee held a hearing on manganese concerns in September of 2020, which highlighted the significant economic cost to industry as well as the minimal environmental benefit. He stated that during the hearing the Chairman asked the Deputy Secretary for Water Programs a few questions to which the Committee was still waiting on some answers. Mr. Stefanko assured Mr. Troutman that he would relay this message to Deputy Secretary Atkinson.

Rep. Mackenzie noted his opposition to the proposed manganese water quality standard. He explained that the House Environmental Resources and Energy Committee met on this matter and, that in September of 2021, the Committee had sent a letter in opposition to the regulations that were being proposed. He noted that a number of the points highlighted continue to be problems, including that a Maximum Contaminant Level (MCL) for manganese to protect human health has not been established by the Department. He continued by stating that the language in Act 40 was also very clear, in that it requires the point of compliance for manganese be moved from the point of discharge and be applied to the potable water supply withdrawal point. Rep. Mackenzie stated that this was a better approach, and expressed interest in continuing to have his opposition to the regulation recognized.

Mr. Lookenbill mentioned that the Commonwealth does enforce a Secondary Maximum Contaminant Level (SMCL) for drinking water supplies, so there is a drinking water endpoint.

The Board noted its continued opposition to this rulemaking.

Bond Forfeiture Reclamation Obligations

Mr. Stefanko informed the Board of the creation of a Noncoal Abandoned Mine Lands (AML) program, currently still in development. The latest status is that due to money not being appropriated to it through the legislation, a continuing resolution to fund it would be necessary.

Reclamation and Safety Award

PACA and the BMP are working together to create an award for Reclamation and Safety in hopes to recognize how the industry values the safety of its employees and for reclaiming its sites. Updates will continue as the idea is developed.

Deliverables

The Board requested that the facilities table in the BMP update include year by year trends for the reportable permits, a case law for water supply replacement activities as it relates to the revisions to the guidance documents, and to keep track of potential impacts from the final Manganese Water Quality Standard towards future reclamation activities at Noncoal operations.

ADJOURNMENT/NEXT MEETING

A motion to adjourn was unanimously accepted by the Board. The meeting concluded at approximately 11:20 a.m. The next scheduled meeting will be held on May 4, 2022, in Conference Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101. The meeting is also available remotely via Microsoft Teams.