

AGGREGATE ADVISORY BOARD (BOARD)
Wednesday, February 1, 2023
Hybrid Meeting (via Microsoft Teams)

VOTING MEMBERS OR ALTERNATES PRESENT:

Paul Detwiler, III (Member – Enterprise Stone and Lime)
Rep. Ryan Mackenzie (Member – PA House)
John Stefanko (Alternate – DEP – Active and Abandoned Mine Operations (AAMO))
William Ruark (Member – Meshoppen Stone, Inc.)
Thaddeus Stevens (Member – Sylvan Glen, Inc./Citizens Advisory Council (CAC))
D. Michael Hawbaker (Alternate – Glenn O. Hawbaker, Inc.)
William Hughes (Alternate – PA House of Representatives)
Glendon King (Alternate – PA House of Representatives)
Emily Eyster (Alternate – PA Senate)
Matthew Osenbach (Alternate – PA Senate)
Peter Vlahos (Alternate – PA Aggregates and Concrete Association (PACA))
Robert Hughes (Member – Eastern PA Coalition for Abandoned Mine Reclamation
(EPCAMR)/State Conservation Commission (SCC))

OTHER ATTENDEES:

Nathan Houtz (DEP – Bureau of Mining Programs (BMP))
Sharon Hill (DEP – BMP)
Greg Greenfield (DEP – BMP)
Geoff Lincoln (DEP – BMP)
Eric Oliver (DEP – BMP)
Melanie Barber (DEP – BMP)
Michaela Plazek (DEP – BMP)
Seth Pelepko (DEP – BMP)
Christopher Catalano (DEP – BMP)
Daniel E. Snowden, D.Ed. (DEP – BMP/Board Liaison)
Jennifer Gulden (DEP – BMP)
Elizabeth Gnazzo (DEP – BMP)
Dan Sammarco (DEP – Bureau of District Mining Operations (DMO))
Amy Berrios (DEP - AAMO)
Patrick Webb (DEP – Bureau of Abandoned Mine Reclamation (BAMR))
Richard Marcil (DEP – Bureau of Regulatory Counsel)
Brian Chalfant (DEP – Policy)
Laura Griffin (DEP – Policy)
Cole Gessner (DEP – Policy)
Josie Gaskey (Guest – PACA)
Jeffrey Iovic (Guest – PA Senate)
Jonathan Kolbe (Guest – Allegheny Minerals Corp)
Maximillian Schultz (Guest – McCarter and English, LLP)
Sharon Stauffer (Guest)
Christine Parise (Guest – Widener Law School)

CALL TO ORDER/INTRODUCTIONS

The meeting was called to order at approximately 10:06 a.m. Board members introduced themselves, as did all DEP personnel and other guests in the audience.

Patrick Webb was introduced as the Acting Director for the Bureau of Abandoned Mine Reclamation (BAMR), taking over for Brian Bradley who retired. Patrick addressed questions about the Bipartisan Infrastructure Law (BIL) funding and fee-based projects for bidding, as well as when notification will be made.

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 Board approved the meeting minutes from the November 22, 2022, meeting without changes.

CORRESPONDENCE

There were no items of correspondence for the Board.

COMMITTEE REPORTS:

The Board's Regulatory, Legislative and Technical (RLT) Committee did not meet since the joint meeting with the Mining and Reclamation Advisory Board's (MRAB) RLT Committee, on March 17, 2022.

DELIVERABLES

Nate Houtz provided the Board with an update on the Full-Time Equivalent (FTE) complement analysis at the 4th quarter meeting, along with further insight regarding permitting/inspection functions. Payroll analysis reports going back to FY 2015, were gathered of the nearly 200 staff persons; categorization of this work continues.

BUREAU OF MINING PROGRAMS UPDATES

The Board was provided with updates on the following topics:

- **Noncoal Applications Breakdown:**
Sharon Hill provided the Board with information regarding the distribution of applications across the District Mining Offices (DMOs) for the 2022 calendar year.
- **Regulatory Agenda:**
The Chapter 77 voting item will be addressed at the end of these updates.
- **Non-Regulatory Agenda:**
The Water Supply Replacement Technical Guidance Documents (TGDs) are continuing to be reworked. Estimated completion dates for the revision to 3 documents are still not available, in part, due to the BMP Technical Section (Division of Permitting and Compliance) having two vacancies. It was also noted that Greg Shuler was promoted to Technical Section Chief for the BMP Permitting and Compliance Division.

- **Technical Items:**

BMP met in November with coal and noncoal industry representatives of an engineering workgroup. The next meeting is being scheduled for March. DEP staff and consultants to continue to develop new engineering information related to surface mining operations.

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

- DMRs for individual National Pollutant Discharge Elimination System (NPDES) permits and coverage under GP-104 must be submitted through the eDMR system as required by the Federal e-rule. Ms. Hill indicated that compliance is moving along well. The current focus of the e-DMR effort is on permittees that hold individual NPDES permits; however, applicants for the GP-104 are also registering.
- The end-of-year annual coal and mineral production reports are being submitted at this time. An e-permitting application for submittal is operational. Enhancements for next year are being identified to help make this reporting process easier.
- Last quarter (January 31st end date), 98 mine operators submitted a total of 438 hydrologic monitoring reports (HMRs). While electronic submission of these reports is not currently required, this e-reporting feature is being utilized.

- **Bonding and Bond Forfeitures:**

- During this discussion, it was reported that two small noncoal forfeitures would be going out soon; both of these were in Susquehanna County and, were not reflected in the information on the meeting handouts (thus the need to mention them here as an addendum).

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

- As of the latest report, there is about \$2.6 million in cash collateral, \$3.0 million in payments in lieu of bonds and, over \$10.3 million in bond fund reclamation monies.
- The NCSMCRA fiscal report showed about \$1.2 million in general operations monies, with about \$2.5 million in collateral and just over \$1.4 million in restricted bond monies.

- **Noncoal Surface Mining & Reclamation Fund:**

The quarterly summary of non-coal expenditures and revenue was reviewed, highlighting the status of funds as of December 31st, 2022.

- **Clean Water Fund (CWF) Mining Fee Revenue:**

CWF revenue for FY 2022 – 2023 (as of Dec 31st) was \$237,614.00. This includes NPDES fees for coal and noncoal, Chapter 105 permit fees and, Wetland Encroachment permit fees.

VOTING ITEM

Ms. Hill shared the final version (after revisions) of the Chapter 77 Regulations Package with the Board. This proposed rulemaking was published in March of 2021. Comments were received from the public and, from the Independent Regulatory Review Commission (IRRC). A final version of the regulatory package was developed with some revisions from draft to final. The revisions, designated by text formatting in the posted document labeled as Annex A, were discussed.

Josie Gaskey, representing PACA (represented on the Board by member Michael Hawbaker) expressed concerns about the revisions to section 77.293, related to civil penalties, from draft to final. Ms. Gaskey explained that there was confusion regarding two particular issues related to this section:

In 77.293(a) regarding Cessation Orders, subparagraph (1), she suggested that the language be revised as follows:

(1) The Department will assess a civil penalty of up to \$5,000 per day **under the Noncoal Surface Mining Control and Reclamation Act** for each violation of the act or any rule, regulation, order of the Department or a condition of any permit issued under the act which leads to a cessation order.

The Department replied that the "the act" already referred to in (a)(1) is defined in reference to the NCSMCRA in these regulations. Therefore, the additional language would not be necessary.

In 77.293(a) regarding Cessation Orders, subparagraph (2), she suggested that the new language be revised as follows:

(2) If the violation leads to issuance of a cessation order, THE DEPARTMENT WILL ASSESS A CIVIL PENALTY UP TO \$10,000 PER DAY FOR EACH VIOLATION OF THE CLEAN STREAMS LAW.

A request was made to add language to further clarify this section tying together cessation orders and civil penalties. As such, a discussion and further clarification of these matters followed. The Department agreed to add the parallel language from (a)(1) "which leads to a cessation order" to this section, which would serve the same purpose. Additionally, it was requested to note this matter in meeting minutes.

Ms. Gaskey wished to state that PACA's intent was to be clear about when these maximum penalties could be applied under the specified statutes. Ms. Hill requested clarification from Mr. Detweiler, the co-chair, if the comments from Ms. Gaskey/PACA represented the wishes of the Board regarding the suggested language. He affirmed that they did.

There were no other comments regarding the proposed changes from draft to final.

The Board held a roll-call vote. Members present (or their alternates) voted unanimously "yes" to the motion that the Board approve moving forward with this rulemaking as final with the suggested changes. Four members were not present for voting.

NEW BUSINESS

Update from District Mining Offices (DMOs)

Dan Sammarco provided the Board with an update on DMO operations. The DMOs continue to effectively process applications, both recently received and backlogged.

The DMOs are continuing to fill vacant positions. Of the 15 current vacancies, six are in the compliance sections, five permitting staff, 2 MSI positions, 1 in GIS in California DMO, and

Environmental Group Manager in Cambria DMO. Interviews for the last position and other vacancies are ongoing. The New Stanton Tech Chief, Jim Edwards, was hired October 24.

Acting Secretary Richard Negrin

John Stefanko reported that he met briefly with Acting Secretary Richard Negrin, who indicated that it was his primary goal to get agency resources it needs. Mr. Stefanko also noted that other key executive positions were still in “Acting” status.

Deliverables

There were no deliverables noted.

ADJOURNMENT/NEXT MEETING

A motion to adjourn was unanimously accepted by the Board. The meeting concluded at approximately 11:10 a.m. The next scheduled meeting is to be held on May 3, 2023 at 10:00 a.m. in Conference Room 105 of the Rachel Carson State Office Building, 400 Market St, Harrisburg, PA 17101. The meeting will also be available remotely via Teams.