

AGGREGATE ADVISORY BOARD (BOARD)
Wednesday, August 28, 2024
Hybrid Meeting (via Microsoft Teams)

VOTING MEMBERS OR ALTERNATES PRESENT:

William Ruark (Member – Meshoppen Stone, Inc.)
Paul Detwiler, III – (Member – New Enterprise Stone and Lime Co., Inc. (NES&L))
Jonathan Kolbe (Member -- Allegheny Mineral Corporation (AMC))
R. Timothy Weston (Member -- K & L Gates, LLP / Citizens Advisory Council (CAC))
Thaddeus Stevens (Member -- Sylvan Glen, Inc (SGI)/CAC)
Ryan MacKenzie (Member -- PA House of Representatives)
Ian Irvin (Alternate – CAC)
Peter Vlahos (Alternate – PA Aggregates and Concrete Association (PACA))
Andrew Gutshall (Alternate -- Heidelberg Materials, LLC)
Glendon King (Alternate -- PA House of Representatives)
Matthew Osenbach (Alternate – PA Senate)

OTHER ATTENDEES:

Nathan Houtz (DEP -- Active and Abandoned Mine Operations (AAMO))
Sharon Hill (DEP – Bureau of Mining Programs (BMP))
Greg Greenfield (DEP – BMP)
Laura Mensch (DEP – BMP)
Gregory Shuler (DEP -- BMP)
Daniel E. Snowden, D.Ed. (DEP – BMP/Board Liaison)
Christopher Catalano (DEP – BMP)
Emily Fisher (DEP – BMP)
Sage Saum (DEP -- BMP)
Randy Shustack (DEP -- Bureau of District Mining Operations (BDMO))
Richard Marcil (DEP – Regulatory Council)
High Garst (DEP -- Policy Office)
Robert Stormer (Guest – The EADS Group, Inc.)
Trent Machamer (Guest -- PA Senate (Research))
Jeffrey Iovic (Guest -- PA Senate)
Megan Dennis (Guest -- PA Aggregates and Concrete Association (PACA))
Michael Clark (Guest -- NES&L.)
Laura Berra (Guest -- Skelly and Loy, Inc)
Matthew McClelland (Bernstein-Burkley, Attorneys-at-Law)
Benjamin Welch (Guest -- Glenn O. Hawbaker, Inc.)
Brian Welsh (Rosebud Mining Company, Inc.)
Arthur Fisher, Jr. (Guest -- Grenergy Renewables)
Nathan Eachus (Guest -- Unknown)

CALL TO ORDER

The meeting was called to order at approximately 10:00 a.m. by Nathan Houtz, Chair.

ROLL CALL/INTRODUCTIONS

Board members, alternates and guests in the room who were present for the meeting introduced themselves, and those joining online then introduced themselves, facilitated by Dr. Snowden.

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 May 7, 2024 without changes.

CORRESPONDENCE

Dr. Snowden reported that as of July 2, both Paul Detweiler III and Bill Rourke have been reappointed to the board, and Jonathan Kolbe has been appointed as a new member of the Board.

PUBLIC COMMENTS

The floor was opened for public comments by the Chair; Dr. Snowden indicated that none had been submitted to the board.

COMMITTEE REPORTS

The Board's Regulatory, Legislative and Technical (RLT) Committee reported that they had received and reviewed comments about the Technical Guidance Document (TGD) for Benching. The comments were circulated, and the Committee members will be reviewing them before the next RLT Committee meeting in October.

DELIVERABLES

Sharon Hill indicated that there were no deliverables for the Board at this time.

BUREAU OF MINING PROGRAMS (BMP) UPDATES

The Board was provided with updates from Sharon Hill and Laura Mensch on the following topics:

- **Non-coal Applications Breakdown**

Ms. Hill provided the Board with information regarding the distribution of applications across the District Mining Offices (DMOs). Data shown in the first table of the BMP Update encompasses the summary of all non-coal applications received and disposed from January 1 to August 1 of this year, for each of the DMOs that accept non-coal mining permits and applications. Below that is a table showing in-process applications, broken down by type, as of August 1. Totals are shown at the bottom and in the column on the right-hand side.

There was a question from the Board asking for clarification about Key Performance Indicators (KPIs) in the new administration, in terms of review and approval times for the applications. Specifically, the inquiry involved whether there is there a specific time frame the applications are to be completed, due to the Payback initiative, which drives KPIs. Ms. Hill responded that most non-coal applications, with the exception of licenses, are not subject to Payback, due to statutory limitations which prohibit returning application fees. There are, however, program time limits as to how many days the applications are in house before a decision is made to reject the application, or issue the permit, or ask for additional

corrections required for an application; say, 30 to 60 days to review the application and take some sort of action on it, which are already built into the eFACTS System. The reviewers, and then their supervisors, the District Mining Managers, keep a check on that to ensure the deadlines for review are met.

Another question was raised, asking if the number of denials are tracked versus approvals. Ms. Hill responded that denials are rare, though that metric is not one which is tracked. DEP shows as part of disposed records, "issued", "denied", "withdrawn". She noted that most of the time, if they are not issued, such as if a problem arises and we cannot move toward issuance, the applicant will withdraw the permit or the application. Also, if the question can be framed to the Board, such as how many denials this year, or for certain types of permits, the answer can be a future deliverable.

Ms. Hill was also asked if, when appeals occur (for applications, not appeals for compliance actions), whether they be by a third-party or the permittee, if those numbers are tracked, and, if so, how many might be currently pending. The interest indicated was whether they are complicating the workload for the Department. Ms. Hill indicated that was a complicated question because the database does not reflect that; she would need to go to each office to ask what is currently under appeal. Gregory Greenfield was able to check during the questioning and offered the information regarding current appeals noting that currently, there are two permits under appeal with the Environmental Hearing Board: Gibraltar and Collier Stone.

Mr. Stevens raised a question about the Knox DMO versus all of the other offices, and why they show more permits out than applications in, and whether there would be a reason for that. Ms. Hill indicated that the numbers may fluctuate depending on the time of year, but that nothing has stood out as a trend, though the DMOs individually may be able to note trends. It was also noted that previous versions of the update from meetings could be reviewed by the Board for the information, if needed.

- **Regulatory Agenda**

Ms. Hill noted that there will be a discussion later in the meeting about the final omitted blast clarification regulation.

- **Non-Regulatory Agenda**

Ms. Hill reported that there is nothing pending for the non-regulatory agenda, and no pending Technical Guidance Documents (TGD's) at this time.

- **e-Permitting**

Ms. Hill shared that there are currently no updates on the e-Permitting. She noted that the Public Upload Payment (PUP) process is working well. It is checked daily to ensure it is running smoothly, and there have not been major issues recently. It was indicated that if any issue occurs, she relates that back to e-Permitting support. Staff is encouraging people to submit their applications that way, since it is easier to handle than paper.

Regarding forms and process updates, Ms. Hill wanted to remind everyone about the new revision application, which is available for the first time this quarter. It makes for an easier way to submit any type of major or minor revision.

A question was raised by the Board about the U.S. Environmental Protection Agency's (EPA) website tool – Environmental Compliance History Online (ECHO). ECHO can sometimes erroneously show National Pollutant Discharge Elimination System (NPDES) permits to be in Significant Non-Compliance (SNC) status. A member company raised concern about the sometimes-incorrect information. Ms. Hill invited Ms. Mensch to speak to this, after indicating that there are quarterly meetings held with the EPA, and these issues have been raised with them. Ms. Mensch indicated that the EPA ranks the violations detected that flow into their Integrated Compliance Information System (ICIS) database. While true violations do get flagged, ICIS may also erroneously flag data associated with permits which can cause these permits to appear to the public as violations on ECHO. BMP has been working to address this issue. For example, BMP found that many NPDES were inaccurately being flagged with violations due to a miscommunication between databases regarding the timing of report submissions. After working extensively with IT, BMP was able to correct how data is sent to ICIS for a large number of these permits, thereby removing the false violation indicators. Finding and correcting these errors is a complicated and labor-intensive process involving BMP, IT and EPA staff. Correcting the issue will be a long-term process.

The Board then asked for clarification as to whether this was a tech or human issue, and how it can be fixed. Ms. Mensch related that PA, along with numerous other states nationwide, is experiencing issues with a process known as Electronic Data Transfer (EDT). EDT is the process by which data is sent from state databases to EPA's ICIS database. When there are miscommunications between the databases, false violations can appear. About ten months ago, EPA formed a work group to address the issues states are facing with the EDT process. Ms. Mensch noted that, while she can go into the system and manually force a correction on erroneous information, unless the problem is solved long-term that correction will be subsequently over-written the next time data is sent to ICIS.

- **Bonding and Bond Forfeitures**

Ms. Mensch delivered the update to the Board for fiscal and bonding. She reported that so far in 2024 there have been two small non-coal bond forfeitures, both in Susquehanna County, and one bluestone forfeiture (which had been reported in the last meeting). Ms. Mensch then shared the information on the current non-coal SMCRA fund obligations, the numbers for the current cash collateral bonds being held, the bonds underlying the Payment-in-Lieu-of-Bond (PILB) program, and bonds collected for non-coal bond forfeiture reclamation.

She then moved on to share the information on the general operations fund, collateral bonds held by the Department, noting the numbers may appear different, but that is only due to the timing of the report. The last number reviewed was the amount of bonds collected to be used for forfeiture reclamation. Ms. Mensch then reviewed the amount generated into the Clean Water Fund so far in 2024, including both coal and non-coal, NPDES, Chapter 105 fees, and

wetland encroachment fees; she noted that the number appears on the low end, but that is due to the fact that contributions only just started for the new fiscal year, July 1.

The Board asked that the table additionally show an accounting for fees collected, as part of the packet, excluding Clean Water (since that includes both coal and non-coal, and it would affect the number they wish to see). Mr. Greenfield indicated this would be examined to see if that information could be provided for the Board.

Ms. Mensch then reviewed the revenue totals by fee categories from July 1 and noted the 5% deduction which comes out of civil penalties to go to the Environmental Education Fund. The expenditures were shown, and she indicated that personnel costs since July 1 are continuing to be charged to the General Fund, rather than the Non-coal Fund, to allow that fund to increase again from it having been depleted. This is the same as last fiscal year. With the personnel expenditures coming largely out of the General Fund, the revenue is relatively steady; attempting to support the program through fees began to prove to be untenable.

The Board asked about the budget being approved for fiscal year 2024-2025, and whether there were other hires for the non-coal program or for any DMOs; the answer was no, other programs were part of the request for additional staff there.

PRESENTATION -- Final Omitted Rulemaking: Blast "Site" Clarification for Non-coal Mining Operations

Mr. Catalano joined Ms. Hill, who presented to the Board information about the use of the final omitted rulemaking process to make a one-word correction to the Chapter 77 section, changing the language to blast "site" versus it previously reading blast "area". The reason the correction was to ensure the language is consistent with the definitions of both terms in the department's regulation on the storage, handling and use of explosives, Chapter 211. This is to alleviate any confusion regarding set back limits for worker and public safety during the preparation of the holes containing explosives and clarify the intent of the regulation.

Ms. Hill pointed out that this final omitted process does not receive public comment because it is a minor and straightforward change. The package goes straight to the Environmental Quality Board (EQB), but the Board may provide any comments and considerations at this time.

Mr. Catalano briefed the Board on the notification which he sent to the industry, via email, to apprise them of this change. He noted that he did receive positive feedback from a few in the industry, as well as feedback from inspectors who have had questions about it. To illustrate to the Board the idea of blast site versus the blast area, Mr. Catalano had a visual of a quarry, showing the smaller blast site, where the explosives are being loaded, which is surrounded by the larger blast area.

The Board had no additional comments on the rulemaking.

UPDATE FROM BUREAU DISTRICT MINING OPERATIONS (BDMO)

Randy Shustack, BDMO Director, indicated that, on August 7, he joined Pottsville DMO staff on a site visit to H&K's Pottsville Materials Asphalt Plant, to witness how baghouse fines are created in asphalt production. He stated the visit was worthwhile to help their interaction with Bureau of Waste Management to answer some of the questions raised on storage and use of baghouse fines on mine sites.

Mr. Shustack also noted that the Pottsville DMO is almost back to full compliment for non-coal inspections, and the vacancies that remain are currently in coal districts; until the full complement can be reached, some of the offices, especially out west, are helping each other out. The Board also requested that Mr. Shustack share numbers of permits and whether they are increasing, decreasing or flat through the DMOs, and he indicated he would reach out to gather that information to share with the Board.

NEW BUSINESS

The Board requested information on the status of the Environmental Justice (EJ) Policy and were informed that there had been staffing changes at EJ. The last update was they were still working on the comment and response document. In response to a question from the Board, Randy Shustack indicated that he has not seen any negative impact from the EJ Policy on the permitting process at the DMOs.

The Board also had a question about whether non-coal permitting had been discussed as being a part of the speed initiative, to which Mr. Houtz indicated there had not been. He also indicated that the non-coal permits' complexity would be part of the problem with that inclusion in the speed initiative.

ADJOURNMENT/NEXT MEETING

A motion to adjourn was unanimously accepted by the Board. The meeting concluded at approximately 10:50 a.m. The next scheduled meeting is to be held on November 6, 2024, at 10:00 a.m., in Conference Room 105 of the Rachel Carson State Office Building in Harrisburg.