

**MINING AND RECLAMATION ADVISORY BOARD (MRAB)
REGULATION, LEGISLATION AND TECHNICAL COMMITTEE**

**Thursday, January 6, 2005
Rachel Carson State Office Building
1st Floor, Room 105
9:00 a.m.**

Members/Alternates in attendance: Dave Osikowicz (Chair), Jack Chamberlin (Member), Sue Wilson (Alternate), Stan Geary (Alternate), Sue Germanio (Alternate), Burt Waite (Member), Joe Deklinski (Alternate), Fred Wolf (Member), and George Ellis (Alternate).

Others in attendance: Joe Pizarchik (DEP), Nevin Strock (DEP), Mick McCommons (DEP), Mike Steiner (DEP), Keith Brady (DEP), Bill Shakely (DEP), Marc Roda (DEP), and Lara Logan (DEP).

Meeting Called to Order

Committee Chairman Dave Osikowicz called the meeting to order at 9:00 a.m.

Water Supply Replacement

The committee met to discuss water supply replacement issues and DEP's proposed resolutions for purposes of providing the full Board with recommendations on the issues. After lengthy discussion based on the response from the Pennsylvania Coal Association (PCA), the following recommendations were given.

Issue #1, relating to a coal company's obligation to pay increased operation and maintenance (O&M) costs of the replacement water supply

Recommendation: Payment for O&M costs should be for a fixed term of 20 years based on OSM's approval of Kentucky's water supply replacement regulations containing a 20-year timeline. DEP stressed that according to case law, the obligation should be to permanently pay increase O&M costs. The suggestion of 20 years was made by PCA

Issue #2, relating to payment of O&M costs when an operator and water supply owner cannot reach a financial agreement.

Recommendation: If the time period is fixed at 20 years, as in Issue 1, the annual costs should be compounded at 3.1% for the 20 years.

Issue #3, relating to what types of financial mechanisms are acceptable to provide for payment of O&M costs when the operator and water supply owner cannot agree on a lump sum settlement.

Recommendation: The wording in DEP's proposed resolution should be changed to omit the phrase "third party financial providers," because water companies and the Clean Streams Foundation Trust are not "third party financial providers." A wide variety of mechanisms should be available, including reasonable and consistent self-assurance guidelines. Foundations such as the Clean Streams Foundation Trust should be looked into as a means of investment, where the funds can be invested as one lump sum, and the costs can be decreased. Current inflation rates should be studied to come up with a more reasonable multiplier to calculate costs.

Issue #4, relating to the quantity of water that should be provided where accurate premining data is not available.

Recommendation: If accurate premining data is available, the quantity of the replacement supply should be based on well-established average daily uses and the operator should be allowed to utilize storage facilities as part of the replacement water supply. DEP should revise the five gallon per minute yield requirement based on common field practices with storage facilities and on additional data made available to DEP. If the operators are allowed to use storage facilities, the yield should be set at 75 gallons per day per each member of the household.

Issue #5, relating to the quality of water that should be provided where premining quality is better than drinking water standards.

Recommendation: DEP's proposed resolution is satisfactory. DEP's resolution is that the replacement water supplies are to meet either documented pre-mining water quality or drinking water standards taking into consideration uses of the water supply and requiring water quality better than drinking water standards if the pre-mining water quality was better than drinking water standards and the better quality water is needed for current uses.

Issue #6, relating to how water supply replacement should be handled where an operator is only partially responsible for the diminution.

Recommendation: The operator should only be responsible for the diminution that the operator caused.

The Committee was unable to address the correspondence from Pennsylvania Mining Professionals on this issue, as well as other specific recommendations made by DEP, due to time restraints.

The meeting was concluded at 10:55 a.m.