MINING AND RECLAMATION ADVISORY BOARD (BOARD)

Wednesday, April 23, 2009
Rachel Carson State Office Building
1st Floor, Conference Room 105
Harrisburg, PA
10:00 a.m.

Voting Members/Alternates in attendance: Jack Chamberlin (Member), Bruce Golden (Member), Joseph Deklinski (Alternate), Allison Dutrey (Alternate), George Ellis (Alternate), Duane Feagley (Alternate), Richard Fox (Alternate), Bernie Hoffner (Member), Darrell Lewis (Alternate), Jeff Pyle (Member), Tara Smith (Alternate), David Strong (Member), Burt Waite (Member), Sue Wilson (Alternate)

Others in attendance: Molly Adams (DEP) William Allen (DEP), Shuvonna Ballard (DEP), Richard Beam (DEP), Brian Bradley (DEP), Keith Brady (DEP), Robert Burns (Keystone Anthracite), Bruce Carl (DEP), James Charowsky (DEP), Roderick Fletcher (DEP), Ron Heransky (DEP), Sharon Hill (DEP), Dan Lapato (DEP), Richard Morrison (DEP), Jeff McNelly (ARIPPA), Joseph Pizarchik (DEP), Paul Pocavich (DEP), George Rieger (OSM), Paul Scott (Rep. DeWeese), Steven Socash (DEP), John Stefanko (DEP), Michael Terretti (DEP),

Meeting Called to Order

Mr. Strong chaired the meeting, and called the meeting to order at 10:00 a.m. He welcomed everyone and asked that they introduce themselves.

Adoption of Minutes

Mr. Strong called for a motion to approve the Board's January 21, 2009, meeting minutes. Ms. Smith asked that her name be corrected and the motion was made, then seconded and with the Board's unanimous vote, the minutes were adopted.

Indiana Bat

In consideration for those who couldn't attend the entire meeting, this issue was discussed first. Mr. Pizarchik apprised the Board on the status of the conservation efforts on behalf of the Indiana Bat. The bat has been listed as an endangered species since 1973. A number of permit applications have been submitted for areas that may affect the habitat of the bat. The Endangered Species Act prohibits any actions that would threaten the animal or habitat protected by the Law. Federal and State laws require that the permitees prove that they will not harm the animal. The DEP must notify the U.S. Fish and Wildlife Service and the PA Game Commission and the agencies are to work with the applicant to put together a Protection and Enhancement

Plan for that site. These measures include both short and long term requirements. There has been an increase in the number of bats discovered recently. There is also greater concern regarding them as they are being affected by a condition known as "white nose syndrome" which appears to be a highly fatal disease. This condition has been found to affect bats throughout Pennsylvania and its cause is as yet, unknown.

Some proposals to protect the bat and its habitat, in some instances are in some respects, fairly burdensome. There have been reports for a 3 to 1 offset for an acre of woodland affected. Two to three years ago the Office of Surface Mining Reclamation and Enforcement (OSMRE) began talks with the U.S. Fish and Wildlife Service to negotiate regional guidelines for providing options and guidelines for the mining companies and resource and regulatory agencies on how to address the Indiana Bat in instances of mining permits applications.

At the request of the Interstate Mining Compact Commission (IMCC), the federal workgroup was expanded to include states and to develop range wide guidelines and is currently in draft stage. It will be discussed at the IMCC meeting in Alaska. DEP was unable to attend due to restrictions on "out of state" travel. The workgroup hopes to have the range wide guidelines finalized this year. There is no definitive timeline.

A similar situation occurred in West Virginia. WVDEP developed a programmatic agreement with the U.S. Fish and Wildlife Service which contains guidelines. Some of the same people involved in the development of the WV guidelines are involved with the range wide guidelines as well.

Rep. Pyle applauded DEP on its handling of the Indiana Bat situation. He offered his assistance toward the aims of the Department at both protecting the bat and assisting the mining operations.

Mr. Strong asked if the Board would be provided with something in writing so that members could familiarize themselves with the situation. Mr. Pizarchik offered to provide the draft range wide guidelines to the Board as well as the parts of the regulations that speak to this matter. He mentioned that the range wide guidelines were being shaped by people from states with more experience with the Indiana Bat. He also offered to provide copies of the Department's comments on the guidelines. He also offered copies of the 1996 Biological Opinion, which provided for a more streamlined and less burdensome means of satisfying the need of the bat.

Mr. Strong asked about the economic impact of Indiana Bat conservation. Rep. Pyle offered that recent examples are leading them to believe that there would be a significant financial impact involved and that the conservation efforts may be cost prohibitive for some. He again applauded DEP for its graciousness in helping operators to deal with the protection of the bat and sustaining the mining industry at the same time.

Mr. Lapato asked if there wasn't already a recovery plan in place in the Federal Listing.
Mr. Pizarchik informed him that there is only a draft recovery plan that has been in place but it has not yet been finalized. Mr. Pizarchik explained that the range wide guidelines were not a recovery plan but a way to give operators options and things to consider in the permit

applications. The hope is to eliminate inconsistencies across the different agencies involved as well as leveling the playing field for operators who may be operating in different states.

Mr. Strong requested that at the next meeting about that there be another presentation on the status of the Indiana Bat as many members were unaware of the situation prior to the meeting.

Dr. Hoffner made a point about mitigation. He mentioned that some reclamation projects are also creating bat habitat although he didn't know if it was specifically the Indiana Bat. He suggested that it was reasonable that these mitigating factors be considered when these guidelines are being discussed. The Enhancement Plans do provide for the applicant to submit other ideas for consideration if they had them. The process provides for dialogue between agencies and the operators.

Mr. Lapato asked if these requirements applied only to surface coal mining activities.
Mr. Pizarchik said that as he reads the law, these requirements would apply to every industry. He said that the guidelines were intended to provide clarity to the guidelines that everyone is expected to here. He was unaware of any other industry that was formulating similar guidelines.

Rep. Pyle agreed with Mr. Pizarchik's interpretation and also believes that it applies to all resource recovery industries.

Mr. Fox asked about the specific range of the bat. Mr. Pizarchik informed him that there are certain counties where the bat is known to be present. The range extends through many states.

Rep. Pyle informed the Board that this was also an issue for I-99 project in State College.

Correspondence

Secretary Hanger sent a letter regarding Title IV. Secretary McGinty charged the Board with to review spending plans and how the program was run. Secretary Hanger has agreed with that.

> Mr. Golden reiterated that the Board needed to decide how they would proceed on this matter.
>
> Dr. Hoffner suggested that the Reclamation Committee should take this on. Dr. Hoffner also volunteered to serve on the committee.

Letter to OSM regarding PA Regulatory program and DEP amendments to that program.

Endorsement letter for the Eastern Pennsylvania Coalition for Abandoned Mine Reclamation (EPCAMR) for a grant for the 3D mapping project.

A letter to Rep. Camille "Bud" George requesting funding regarding Bond Forfeiture Sites.

> There has been no response from Rep. George.

Ms. Smith offered to talk to Rep. George about this issue.

Mr. Pizarchik stated the Department has a neutral position on this issue. He offered to answer any questions regarding this issue. PCA has been provided with draft legislation.

Letter to House of Representatives regarding OSMRE Elimination of its Emergency Funds Program.

Mr. Strong asked about what would happen if there were any emergencies.

Dr. Hoffner asked if it would be helpful to send a notice to the delegation of representatives letting them know what happened and what the Board would like to happen.

Mr. Golden commented that our best approach would be to wait and see the results before anything is decided.

Mr. Strong listed the names of people outside of CAC who have been reappointed to the Board.

CAC reappointed Burt Waite and David Strong to the Board and Bernie Hoffnar replaced Bruce Tetkoskie. The Secretary reappointed the following to the Board. Jack Chamberlain, Mark Snyder, Ed Helfrick and David Osikowicz.

From the Senate pro Tempe – Reappointed Raphael J. Musto and appointed new member Donald White. From the House of Representatives – Reappointed Deberah Kula and appointed new member Jeffrey Pyle.

Committee Reports

Policy Committee

No Report

Reclamation Committee

Cost Analysis: Project Proposal

Winter Energy received 1.5 million dollar grant to demonstrate liquid to liquid extraction technology in the treatment of acid mine drainage. Linked to this was the commercial production of other chemical compounds. The end cost was approximately 3.4 million dollars, the balance to be recovered by Winter Global. The Department is currently holding a portion of the Grant funds pending approval of the project report.

Chapter 290 Beneficial Use of Coal Ash

Recently, there have been news stories involving mishaps with coal ash. Most notable are the Tennessee Valley Authority's coal ash impoundment failure in Roane County, Tennessee, where over five million cubic yards of ash spilled into the Emory River and the Gambrills, Maryland, site where private wells were contaminated due to ash placement. In August 2006 Pennsylvania had its own mishap with coal ash when a leak in an impoundment at the Martins Creek Steam Electric Station, in Northampton County, released 100,000,000 gallons of water and fly ash to the surrounding area and into the Delaware River. Fortunately, a thorough study found no adverse impacts to the river, wildlife or human health.

Although none of these cases involved beneficial use of ash as defined by Pennsylvania law or were subjected to the protective criteria imposed in Pennsylvania for beneficially used ash, these stories have raised the level of public awareness and concern on the storage, disposal and beneficial use of coal ash.

The National Academy of Sciences made several recommendations in their 2006 report, *Managing Coal Combustion Residues in Mines*. The Department has proposed to adopt many of their recommendations in its proposed amended policies, "Certification Guidelines for Beneficial Uses of Coal Ash" (563-2112-224) and "Technical Guidance Document for Beneficial Uses of Coal Ash" (563-2112-225). The draft policies were published for public comment in the fall of 2008. The most common comment received was that regulations, not guidance, are needed. While regulations do exist for beneficial use of coal ash in §§ 287.661-287.666, they have changed little since their adoption in 1992.

The Department believes that the regulations concerning beneficial use of coal ash should be updated. The Department also agrees with the commentators that much of what is currently found in guidance would be more appropriately placed in regulation. To effect these changes, including adoption of the recommendations of the National Academy of Sciences, in a timely manner, the Department is proposing a targeted rulemaking focused on the beneficial use of coal ash in order to move expeditiously on coal ash issues rather than including it in the larger waste rulemaking package.

The Following is a summary of the major points of the Draft Coal Ash Regulations:

- Update the general requirements for beneficial use, including tying in the chemical and physical characteristics for coal ash and establishes when water quality monitoring is required. The draft regulations also include approval or notification processes and operating requirements for coal ash beneficial use as structural fill, as a soil substitute or soil amendment, in reclamation of active, abandoned or previously mined coal mines, and for other uses, such as use in the manufacture of concrete, for mine subsidence control,

mine fire control and mine sealing, as pipe bedding, and the use of bottom ash as anti-skid.

- Establishes the procedures for qualifying coal ash for beneficial use. Sets the chemical leaching levels for beneficial use and testing for physical characteristics. Covers revocation of qualification, re-qualification and exceedances of standards.

- Establishes requirements for water quality monitoring and water quality monitoring plans. Covers monitoring points, well construction standards, assessment and abatement plans, and monitoring recordkeeping.

- Establishes standards for storage of coal ash, including design, operation and duration of storage in piles and storage impoundments, surface water and groundwater protection and areas where the storage of coal ash is prohibited. Storage impoundments require a permit from the Bureau of Waterways Engineering, Division of Dam Safety.

- Projects involving placement of more than 10,000 tons of coal ash per acre or more than 100,000 tons of coal ash at any project or contiguous projects require water quality monitoring.

    - A minimum of 1 upgradient and 3 downgradient water quality monitoring points required, unless the Department approves a different number.

    - Requires monthly water quality background samples for one year prior to placement of coal ash.

    - Water quality monitoring is to be quarterly up to 5 years after final placement of coal ash and annually for an additional 5 years. The Department can require a longer monitoring period.

    - Addresses requirements for assessment and abatement if groundwater degradation above background is observed.

- Since coal ash used as a soil substitute or soil amendment will be below the 10,000 tons of coal ash per acre, water quality monitoring is not required. In place of water quality monitoring, loading rates are established that make this use more protective and acceptable.

- Requires sampling and analysis of coal ash and compliance with the leachate standards under coal ash qualification for most uses.

    - Leachate standards are based on 25 times the waste classification standard for metals and other indicators and the drinking water standards for other contaminants. The factor of 25 allows for dilution and attenuation of metals and other indicators that are known to occur.

    - This can be waived or modified by the Department for uses not involving direct placement into the environment, such as use in the manufacture of concrete and in extraction or recovery of materials and compounds contained in the coal ash.

- Adds deed notice for structural fills involving placement of more than 10,000 tons of coal ash per acre and all mine reclamation projects.

- Includes isolation distances for structural fill, soil substitute/soil additive and mine reclamation to protect streams, wetlands and water supplies.

- Includes slope, compaction, and Proctor density requirements to ensure stability of structural fill and mine reclamation projects.

- Requires annual reports for structural fills involving placement of more than 10,000 tons of coal ash per acre and all mine reclamation projects.

- Establishes chemical (leachate) and physical standards and the procedure for qualifying coal ash for beneficial use, which was previously done as certification by policy.

- Establishes design criteria for coal ash storage impoundments, including requiring a composite liner and water quality monitoring.

- Limits storage in surface impoundments to 1 year. Storage in the area where the coal ash will be utilized is generally limited to 90 days. With controls, such as a pad or liner and in a structure to prevent runoff, storage is limited to 1 year.

- Contains siting restrictions for storage areas to protect groundwater and surface water. These restrictions include distance from streams, wetlands, water sources, and others.

Reclaiming Primacy Bond Forfeiture Sites

Mr. Heransky, from the Greensburg DMO presented a summary of the districts reclamation activities covering several sites that have been or are in the process of being reclaimed. There are a total of nine sites with acid discharges with a total of 16 discharges in need of treatment. Six of those sites are under contract.

2008 Reclamation & Remining Incentive Report

A summary of the 2008 report was provided.

The Department recommends (1) Section 4(d) of SMCRA be amended to allow reclamation bonds posted for “lands eligible for remining” to be released similar to the provisions of the

federal Surface Mining Control and Reclamation Act (SMCRA). This would mean reducing the minimum amount of time bonds are held after reclamation work is complete from 5 years to 2 years; (2) continuing the reclamation and remining incentives programs; and (3) continuing to identify and develop reclamation and remining incentives.

The Department has developed four of the five reclamation and remining incentive programs authorized by the 1992 amendment to the Surface Mine Conservation and Reclamation Act (SMCRA): Government-Financed Reclamation Contracts, Remining Operator's Assistance Program (ROAP), Financial Guarantees and Bond Credits. The fifth program - Designating Areas Suitable for Remining - is not practical. In the time the four programs have been available, coal mine operators have used them to aid in completing reclamation of 5,045 acres of abandoned mine land. This equates to an approximate reclamation value of $27,301,271 (completed reclamation areas only). In general, it takes several years to negotiate leases, obtain permits, and then remine and reclaim a site. There are many projects in progress with remining or reclamation not yet completed.

Department costs to operate the programs are minimal. Existing staff absorbed the reclamation and remining program work as additional duties.

These programs are encouraging abandoned mine land reclamation at a dramatic cost saving to the Commonwealth. The environment is being enhanced, the mine operators are receiving support, and the Commonwealth's abandoned mine land burden is being reduced. The "Reclaim PA" program aims to maximize reclamation of Pennsylvania's $15 billion abandoned mine legacy. Remining by industry is a major component of this reclamation effort. This program encourages reclamation with financial incentive for operators to remine and reclaim abandoned mine lands as opposed to surface mining on virgin lands. These remining incentives have become the keystone in the Commonwealth's "Reclaim PA" program. The Department will continue to identify and develop incentives to encourage and expand reclamation and remining operations.

2009 Bond Rate Guideline Update

The 2009 bond rate guidelines were published in *The Pennsylvania Bulletin* on February 14, 2009, and became effective April 1, 2009. The 2009 rates remained the same compared to the 2008 rates for most reclamation tasks. Significant changes occurred for: Selective Grading – decrease from $1,600 to $1,250 per acre, Revegetation – increase from $1,530 to $1,600 per acre, and Subsurface Drain – increase from $13.00 to $18.50 per lineal foot.

To date there have only been 3 reclamation projects awarded for 2009. The combined cubic yards for grading for these 3 projects is approximately 600,000 cubic yards with the low bid at $.80 per cubic yard. The weighted average of the 3 lowest bids for all 3 projects combined is $.93. Based on these preliminary numbers, the 2010 bond rates are anticipated to remain about the same as the 2009 rates. More data on 2009 reclamation project costs will be available for the July MRAB meeting

ABS Legacy Trust Update

Bill Allen provided a status report for the establishment of trust fund or bonds for sites with post-mining discharges. Also included were revenue and expense figures (through the first quarter of 2009) for the Reclamation Fee O & M Trust Account and some preliminary analysis. The preliminary analysis indicates that the reclamation fee calculation for 2010 could be $0. Mr. Allen also raised the issue of excess funds, as described in the reclamation fee regulations, and suggested that the Department will be looking to the Board for advice as to whether to transfer some funds from the Reclamation Fee O & M Trust Account into the ABS Legacy Sites Trust Account. Also included was some information on improved tracking of trust funds and some accomplishments relating to the ABS Bond Forfeiture Discharges (establishing the ABS Legacy Sites Trust Account, providing the initial funding to the Reclamation Fee O & M Trust Account, and the progress report sent to OSM in January 2009).

Title IV Budget Update

The board agreed to have a Reclamation Committee Meeting in the Cambria DMO to discuss this matter in detail on May 7, 2009.

BAMR Projects/Status Report

As of March 20, 2008 completions are as follows: 85 projects were completed with a total to 974 acres of abandoned mine reclaimed at a cost totaling $38,458,438. No projects started in 2009 have yet been completed. 42 active projects will be completed in the future reclaiming 1,828 acres at a cost of $51,956,588. There are 184 projects in the design stage. These 184 projects will reclaim 4,623 acres at a cost of $108,516,082.

New Business

No New Business

Adjournment

With no further questions or comments, Mr. Strong called for a motion to adjourn the meeting. The motion was made and seconded and the meeting was adjourned at 2:30 PM.