

MINING AND RECLAMATION ADVISORY BOARD (BOARD)

**Thursday, July 11, 2013
Cambria District Office
Ebensburg, PA**

Main Conference Room

Voting Members/Alternates: Jack Chamberlin (Member), Terry Dayton (Member), Duane Feagley (Alternate), Josie Gaskey (Alternate), Darrel Lewis (Alternate), Dave Osikowicz (Member – Board Chair), Burt Waite (Member)

Other Attendees: Bill Allen (DEP), Bruce Carl (DEP), A. J. Jenkins (DEP – Office of Chief Counsel), Dan Sammarco (DEP – Mining Manager, Cambria District Office), Dan Snowden (DEP – Board Liaison)

Meeting Called to Order/Introductions

Mr. Osikowicz called the meeting to order at approximately 9:05 a.m. He welcomed all attendees and asked that they introduce themselves.

Adoption of Minutes

The Board voted to approve the April 25th, 2013 meeting minutes.

Correspondence

None.

Feedback on the Rosebud Mining Company St. Michael Discharge Field Trip

Board members were provided the opportunity to provide comments on the field trip from July 10th. All feedback received was positive about the St. Michael Discharge project that will be operated by the Rosebud Mining Company. The general consensus among the Board was that more projects like this one are needed and, that it would be a good idea to visit the St. Michael Discharge site at a future date, in order to see how well it works. There was also mention of having the next Board field trip in the anthracite coal region (Pottsville District).

Committee Reports

- *Policy Committee:* No report.
- *Regulation, Legislation and Technical Committee:* Mr. Chamberlin reported that this Committee met on May 30th, 2013 to continue the discussion on the implementation of the relevant Act 157 provisions (i.e., Act 157 statutory language, existing Land Reclamation Financial Guarantee (LRFG) language, initial Committee commentary, proposed Act 157 regulatory language). He further reported that DEP discussed a variety of Act 157- and Remining Financial Guarantee (RFG) program-related aspects with the Committee. These included the following; 1) *ensuring the financial stability of the LRFG program;* 2) *collection of LFRG program premiums;* 3);

conversion of existing sum-certain financial guarantees into the LRFG program; 4) LRFG program eligibility; 5) development of underwriting methods for the LRFG program; 6) provisions for discontinuance of the LRFG program for operators due to noncompliance; and 7) Environmental Quality Board (EQB) promulgation of LRFG program regulations. Mr. Chamberlin also reported that DEP shared some additional information with the Committee regarding the following matters: *1) program consistency; 2) water supply replacement; 3) alignment with Federal requirements; 4) 24-hour storms; 5) re-mining incentives; 6) required mining program regulatory amendments under Title 30 of the Code of Federal Regulations; and 7) Act 95 provisions (Biofuels).* However, these matters were not covered during the Committee meeting, but they may come up for discussion at a later date, either at a future Board meeting or, at a future Committee meeting.

- Reclamation Committee: No report.

Regulatory Packages Update

Mr. Allen reported that approval had been received for developing regulatory language related to water supply replacement (25 PA Code, Chapters 87 and 88), Remining (25 PA Code, Chapter 86, Subchapters F and G), Federal Office of Surface Mining (OSM) program consistency (regarding the anthracite emergency loan program), and, Acts 95 and 157 (developing a strategy to follow for implementation). As part of this discussion, Mr. Allen mentioned that to date, the status on the implementation of Act 157 includes: *1) the establishment of an Act 157 account; 2) the transfer of \$500,000.00 in monies from the Land Reclamation Financial Guarantees (LRFG) Account to the Remining Financial Guarantees (RFG) Account (with an increase in limits published on March 23rd); and 3) the receipt of permission to develop a rulemaking package.*

National Pollutant Discharge Elimination System (NPDES) Permitting Guidelines Update

Mr. Allen continued by reporting that as of June 30th, 2013, 361 draft NPDES permits have been sent to the United States Environmental Protection Agency (US EPA), which provided comments on 209 of these draft NPDES permits. A guidance document on mining-related NPDES permits was published on June 22nd, and the NPDES permit template has been developed. During this discussion, there was mention of offsets (discharge limits) for specific parameters; such offsets are in place with the St. Michael Discharge Treatment project.

Mr. Allen reported that the current NPDES permitting statistics (as of June 30th, 2013) reveal that 165 permits have been issued with comments and, 104 permits were issued without comments (with 67 of these having no-comment letters). Further, there are 26 permits that could be issued with comments (pending resolution of US EPA issues), and 29 permits that could be issued without comments (these related to the connection of bonds to the general permitting process). Lastly, there are 18 permits pending issuance with comments and 20 permits pending issuance without comments. Overall, these scenarios have not impacted coal mine operators as yet, and the development of a fact sheet to address US EPA comments on the NPDES permits is underway. Additionally, an NPDES permit compliance standard operating procedure (SOP) has been drafted and a method for addressing US EPA reviews of Discharge Monitoring Reports (DMR) is under development.

ABS Legacy Trust Account Update

Mr. Allen continued with a discussion of the ABS Legacy Trust Account. To date, this account has 132 total agreements (ranging from 56 in January 2007 to 110 as of June 30, 2013), 59 bonds (as of June 30, 2013; there were anywhere from 31 to 64 of these between January 2007 and January 2011), 33 fully-funded trusts (as of June 30, 2013; there were anywhere from 14 to 30 of these between January 2007 and January 2011), and 15 partially-funded trusts, with 3 ABS sites (as of June 30, 2013; these ranged from 11 (January 2007), 6, with 3 ABS sites (January 2010), and 10 with 3 ABS sites (January 2011).

The financial summaries for the bonds, fully-funded trusts, and partially-funded trusts varied. The bonds ranged from \$84.1 million (January 2007) to \$194.5 million (June 30, 2013); the fully-funded trusts ranged from \$38.6 million (January 2007) to \$59.6 million – with a projection of \$72 million (June 30, 2013); and the partially-funded trust ranges from \$39 million (January 2007 to \$42.3 million – with a projection to \$105 million (June 30, 2013), to \$14,950.00 in coal civil penalties and \$521.71 in interest (June 2013). To date, the account has \$260,187.60 with \$8,533.04 in interest. Revenue from the Reclamation Fee Account for the April-June 2013 period ranged from \$13,267 in coal civil penalties and \$661.02 in interest (April 2013) to \$33,080.00 in coal civil penalties and \$538.84 in interest.

To further review the Reclamation Fee Account, Mr. Allen noted that the June 30, 2012 balance for this account was \$4,077,087.11 with expenditures of \$821,213.13 (this was around \$40,000.00 less than expected). The account's revenue for FY 2012/2013 included \$247,178.22 in civil penalties, \$8,533.04 in interest and, \$5,096.91 in Land Reclamation Financial Guarantee (LRFG) interest, leaving an overall account balance of \$3,516,682.15 (this will be the starting point for the account in FY 2013/2014). For FY 2013/2014, the estimated expenses for the account are \$959,334.00 and the estimated revenues for the account will consist of \$250,000.00 in civil penalties, \$8,000.00 in interest and \$25,000.00 in LRFG interest, leaving a balance of \$2,840,348.14 (this amount is below the \$3,000,000.00 required to maintain the account). Options for augmenting the account relate to transferring LRFG premiums (between \$71,988.70 from FY 2012/2013 and \$300,000.00 for FY 2013/2014). The Board's Regulation, Legislation and Technical Committee plans to look into this matter further, in a separate meeting.

Permit Decision Guarantee (PDG) Update

Mr. Allen continued by reporting that an SOP and checklists for the PDG have been posted and, that the PDG guidance documents will be revised. He also mentioned that as of June 30th, 2013, 959 permit applications have been processed, with 670 permit applications remaining for action. There are 249 renewals and 75 annual bond reviews among these remaining permit applications. Among the District Mining Offices, the remaining permit applications are distributed variably in Pottsville (250), California (256), Cambria (72), Greensburg (66), Moshannon (16) and Knox (6).

Bond Rate Guidelines Update

Mr. Carl provided a status report on the calculation of land reclamation bonds on coal mining operations. To begin, for the 2013 abandoned mine land (AML) reclamation grading costs, total cubic yards reclaimed amounted to 1,219,900, with most bid amounts ranging from \$.90 per cubic yard to \$0.95 per cubic yard. Next, for the 2013 grading costs (per cubic yard), the overall range was from \$0.62/cubic yard to \$2.00/cubic yard.

Further, total grading costs between 2011 and 2013 ranged from \$25,872.00 (at \$0.48/cubic yard) to \$282,900 (at \$6.00/cubic yard), with most projects falling between \$0.75/cubic yard (13 projects at \$969,465.00 for 1,292,620 cubic yards) and \$1.00/cubic yard (18 project at \$1,171,020.00 for 1,171,020 cubic yards); most projects with greater unit costs covered fewer cubic yards overall.

Revegetation trends between 2003 and 2013 ranged between \$1,259.00/acre (2003) and \$2,054/acre (2013); increases in the costs of seed bed preparation and mulch were factors for this. The 5-year trend in grading costs between 2009 and 2014 (projected) ranged from a high of \$0.95/cubic yard in 2009 to a low of \$0.75/cubic yard in 2012, to the projected high of \$0.95/cubic yard for 2014 – all for projects involving less than 500 feet of grading. For projects involving over 500 feet of grading, the costs ranged from \$1.20/cubic yard in 2009 to a low of \$1.00/cubic yard in 2012, to the projected \$1.20/cubic yard in 2014.

Remining – US EPA Statistical Methods

Mr. Allen provided a summary report on US EPA methods for statistical calculations related to remining matters (as related to water samples from mined areas). The statistical methods mentioned were the Baseline/Quick Trigger method (where trigger level is the highest number in a sample set (with fewer than 17 samples) or, is determined by a formula (sample sets with more than 17 results) and the Annual (Subtle) method, which can involve either the current system (baseline) or the Wilcoxon-Mann-Whitney Test. Problems can occur with these statistical methods in situations where: *1) locating a median within an even number of values (two central values are averaged here); 2) ties in the ranking method occur (the ranks of the values are averaged here); and 3) large data sets using the ranking method (the table established for the critical values is useless in these specific cases).*

Under one Baseline/Quick Trigger method, there is a 95% Confidence Interval, which is the median (middle number) of the data set. DEP uses this method; with any data set that has fewer than 17 results, the quick trigger is the maximum loading value. In situations where there are more than 17 results in a sample set, repeat medians are measured, with the 95% Confidence Interval occurring at the highest median – this becomes the trigger level. The other Quick Trigger method measures the sum of the main median and the quartile ranges of the other medians that occur in the data sets – the highest level of the quartile range (i.e., 75% to 95%) becomes the trigger level here.

Under the Annual Trigger method, the median, interquartile range and number of samples are the elements. The baseline Trigger is calculated and compared to the subtle trigger – if the subtle trigger exceeds the baseline trigger, a statistically significant increase in loading. With the Subtle Trigger, the Wilcoxon-Mann-Whitney Test is used. Here, the ranks of the data, as opposed to the values, are considered. Baseline and monitoring data are combined and ranked together and, the baseline value ranks are added. From here, the sum of the baseline values is compared with the Critical Value table –if the baseline sum of ranks is less than the critical value, then the monitoring exceeds the baseline).

An example of this was provided as:

- Baseline: 1, 3, 5, 7, 9, 11, 13, 15, 17, 19
- Monitoring: 2, 4, 6, 8, 10, 12, 14, 16, 18, 20
- Baseline sum of ranks: 100
- Critical value from table: 66 – monitoring did not exceed baseline.

This matter of US EPA Statistical Methods for Remining will be revisited during a future meeting of the Board's Regulation, Legislation and Technical Committee.

Act 157 and Act 95 Draft Regulations

Mr. Allen provided a brief description of proposed regulatory language for Act 157 and Act 95. The language is slated for placement in the 25 PA Code, Chapter 86 regulations (Surface and Underground Coal Mining – General). The Act 95 regulatory language covers Bioenergy Crop Bonding (slated to occur as 86.162c) while the Act 157 regulatory language covers the LRFG Account (slated to occur as 86.162b). The regulatory language for both is all about where revenue will be generated and, the overall function of the programs covered. The Board had some comments regarding operator's history of compliance and conversion assistance, along with the origins of the Act 157 regulations. Mr. Allen explained that these were derived from both language contained in the Act 157 statute and, previous discussions with the Board's Regulation, Legislation and Technical Committee. In any case, this particular Committee will be providing additional input as to what the final regulatory language for both statutes will look like.

New Business

None.

Open Time

Dr. Snowden mentioned that since the previous Board meeting (April 25th, 2013), two Board members had been reappointed. Mr. Osikowicz and Mr. Chamberlin were reappointed to the Board by the DEP Secretary.

Adjourn

With no further questions or comments, the Chair called for the meeting to be adjourned at around 11:00 a.m.