

MINING AND RECLAMATION ADVISORY BOARD (BOARD)

**Thursday, April 24, 2014
Harrisburg, PA**

**Rachel Carson State Office Building
Conference Room 105**

Voting Members/Alternates: Jack Chamberlin (Member), Terry Dayton (Member), George Ellis (Alternate), Duane Feagley (Alternate), Josie Gaskey (Alternate), Michael Kishbaugh (Alternate), G. Carlton Logue (Alternate), Jonathan Lutz (Alternate), Darrel K. Lewis (Alternate), Tara Smith (Alternate), and Michele Tate (Alternate)

Other Attendees: Bill Allen (DEP – Mining Programs), Mark Baird (NRG Energy, Inc.), Brian Bradley (DEP – Abandoned Mine Reclamation), Tom Callaghan (DEP –Bureau Director, Mining Programs), Bruce Carl (DEP – Mining Programs), Sarah Clark (PA House of Representatives), Laura Edinger (DEP – Policy Office), A. J. Jenkins (DEP – Office of Chief Counsel), Teresa McCurdy (TD Communications), Jeff McNelly (Anthracite Region Independent Power Producers Association (ARIPPA)), Paul Pocavich (DEP), Dan Snowden (DEP – Mining Programs/MRAB Liaison), John Stefanko (DEP –Deputy Secretary for Active and Abandoned Mine Operations), and Kurt Weist (Penn Future)

Meeting Called to Order/Introductions

Mr. Lewis, acting as Chairperson, called the meeting to order at approximately 10:15 A.M. Board members and alternates introduced themselves, along with DEP personnel and other guests in the audience.

Adoption of Minutes

The Board voted to approve the January 9th, 2014 meeting minutes.

Correspondence

There was no correspondence reported.

Committee Reports

- Policy Committee: No report.
- Regulation, Legislation and Technical Committee: This Committee met shortly before the main Board meeting to continue its discussion of the proposed remining regulations. Mr. Allen shared a draft language of the regulatory proposal with the Committee; from here, the Committee provided comments regarding the following issues:
 - Definition for “Steep Slope”: This was taken from the Federal remining regulations. The definition is meant to be used for implementing the Federal option for sampling

(here, individual discharge sampling is not required). Also, there were matters of high wall spoil piles (this was not found to be an issue); context for sampling (outlining places where samples cannot be taken); the inclusion of abandoned mine features in the “steep slope” definition; and the need to add language to depict Pennsylvania-specific terrains (per location and region) in the “steep slope” definition.

- **Bond Guidelines:** There was a need to include language for the purpose of expediting the bond release process. Here, the Committee recommended that language reading “within 60 days of bond release request...” – this was found to be potentially infeasible, due to provisions in the current bond release regulations. It was determined that the bond guidelines issue could be better addressed in another regulatory package that covers the 10-year, 24-hour storms.
- **Determination of Whether a Discharge Problem Exists at a Site:** This issue was about successful trigger reporting and baseline studies, as reviewed by the District Mining Offices. It was determined that this matter could be addressed in a Technical Guidance Document.
- **Selection of Methods:** This issue involved determining what party determines the statistical method that will be used during sampling and analysis events. It was determined that language to clarify that the statistical method will be selected and applied by the applicant, upon review and approval by DEP.
- **Calculation:** This issue involved the simple correction of an equation in the proposed regulatory package.
- **New Section on Reports:** This issue involved the request for DEP to provide reports to the Board regarding the remining program. Here, the matters of completion dates, success with the implementation of the remining regulations, and, how this implementation benefits applicants and DEP were mentioned (per data and reporting frequency). It was determined that this matter could be covered in future editions of the Reclamation and Remining Incentives Report.

- **Reclamation Committee:** No report.

Permit Decision Guarantee (PDG) Update

Mr. Allen began by reporting that there were two guidance documents currently under revision; 1) the Pre-Application Manual (Document 563-2112-214) and 2) the Engineering Manual. He also reported that revisions had been completed for the Surface Mine Accident Investigation document (finalized on March 15th, 2014) and the Conventional Bonding document (finalized on April 5th, 2014).

National Pollutant Discharge Elimination System (NPDES) Update

Mr. Allen continued with an update on NPDES permit applications. He reported that as of March 31st, 2014, there were 459 draft NPDES permits sent to the United States Environmental Protection Agency (US EPA). The US EPA provided comments or objections on 279 of the permits submitted. The issues were related to the Small Business Exemption (SBE) matter in Table IV; Stormwater and Total Maximum Daily Loads (TMDLs); and, the use of “0” to represent “not present” (a revision to the permit application forms may be required for this).

As a whole with the NPDES Permitting Statistics, 236 permits have been issued, with 41 that could be issued, and 2 pending. Also, 146 of the 236 permits issued had no comments (with 86 “no comment” letters sent), with 27 permits that could be issued (with no comments) and 7 permits awaiting 30 days (again, with no comments likely).

Historical Mining Permit Application Progress

Mr. Allen continued by reporting on the current status of mining permit applications. As of March 31st, 2014, there have been 1,253 permit applications completed (disposed). Action remains for 331 of these permit applications (21%), with 168 permit renewal applications and 12 annual bond review applications. Among the District Mining Offices, the permit application breakdown is as follows: Pottsville: 126 permit applications; California: 167 permit applications; Cambria: 11 permit applications; Greensburg: 20 permit applications; Moshannon: 4 permit applications; and Knox: 0 permit applications.

Alternative Bonding System (ABS) Trust Account Update

Mr. Allen continued with a report on the ABS Trust Account. The breakdown for this is as follows (from the initial 165 total agreements – this is an increase from the original figure of 132 for this category):

- *In January 2007, there were 56 total agreements, 31 bonds, 14 fully-funded trusts, and 11 partially-funded trusts.*
- *In January 2009, there were 96 total agreements, 56 bonds, 31 fully-funded trusts, and 6 partially-funded trusts (along with 3 ABS trusts).*
- *In January 2011, there were 107 total agreements, 64 bonds, 30 fully-funded trusts and 10 partially-funded trusts (along with 3 ABS trusts).*
- *As of April 2014, there are 129 total agreements, 75 bonds, 36 fully-funded trusts, and 15 partially-funded trusts (along with 3 ABS trusts).*

Mr. Allen then moved to the financial summary component of the report. The breakdown for bonds, fully-funded trusts and partially-funded trusts for the same periods listed above (January 2007; January 2009; January 2011; and April 2014) is as follows:

- *January 2007: \$84.1 million in bonds; \$38.6 million in fully-funded trusts; and \$39 million in partially-funded trusts.*
- *January 2009: \$118.4 million in bonds; \$57.6 million in fully-funded trusts; and \$36.8 million in partially-funded trusts.*

- January 2011: \$192 million in bonds; \$52.5 million in fully-funded trusts (as opposed to the \$69.1 million projected initially); and \$18.5 million in partially-funded trusts (as opposed to the \$52.8 million projected initially).
- April 2014: \$214 million in bonds; \$68.3 million in fully-funded trusts (as opposed to the \$73.8 million projected initially); and \$42.8 million in partially-funded trusts (as opposed to the \$102.9 million projected initially).

Reclamation Fee Account Update

Mr. Allen continued with a report on the status of the Reclamation Fee Account. Here, the figures for the first quarter of 2014 were shared, along with the cumulative totals.

- January 2014: A total of \$31,733.75 in coal civil penalties was collected, with \$516.52 earned in interest.
- February 2014: A total of \$7,410.00 in coal civil penalties was collected, with \$500.61 earned in interest.
- March 2014: A total of \$54,743.98 in coal civil penalties was collected, with \$461.28 earned in interest.
- Fiscal Year to Date (FYTD): A total of \$299,007.73 (of which \$284,057.34 is available to be transferred) in coal civil penalties has been collected, with \$4,868.61 earned in interest.

Regulatory Update

Mr. Allen provided an update on the status of the current regulatory agenda.

- Act 95 and Act 157 Regulations: The proposed rulemaking package is undergoing internal review, and it might be on the agenda for the July Environmental Quality Board (EQB) meeting.
- Remining Regulations (Chapter 86, Subchapters F and G): The Board's RLT Committee is making progress with DEP in the further development of this regulatory package.
- Office of Surface Mining (OSM) Program Consistency Regulations: Development continues.
- Water Supply Replacement Regulations: Development continues.

Reclamation Fee Operations and Maintenance (O & M) Account Update

Mr. Allen provided details on the Reclamation Fee O & M Account, with special attention to any funds transferred to the account from interest earned on the Land Reclamation Financial Guarantees (LRFG) Account. As of March 31st, 2014, the balance on the Reclamation Fee O & M Account stands at \$3,356,304.37. The interest earned on the LRFG Account stands at \$16,918.42. The funding available for transfer from the LRFG Account to the Reclamation Fee O & M Account includes \$71,988.70 earned from FY 2012-2013 and, \$197,805.15 at the FYTD.

Projects pursued for the Reclamation Fee O & M Account include 30 individual permits under contract and, 10 projects under grants. For FY 2014-2015, the monies for projects under contract

will total \$856,700.00 (with \$250,000.00 available for contingencies) and the monies for projects under grants will total \$224,500.00.

Overall estimates for the Reclamation Fee O & M Account are as follows:

- *Current Balance: \$3.35 million*
- *Contracts: \$600,000.00 (expenditure)*
- *Grants: \$225,000.00 (expenditure)*
- *Income: \$305,000.00*
- *Estimated Balance: \$2.83 million*

Bond Rate Guidelines Update

Mr. Carl reported that during January and February 2014, only 4 project bids were awarded and, that during March and April 2014, 5 more projects are going out for bid. He also mentioned a substantial increase in the cost for tree seedlings used at mine reclamation sites; here, the Department of Conservation and Natural Resources (DCNR) will no longer provide these seedlings for mine reclamation projects – the DCNR cost is \$.15 per seedling. The Pennsylvania Landscape and Nursery Association had issues with DCNR's provision of seedlings for mine reclamation projects, as the low price per seedling offered by the latter was cutting into the former's business. As such, the price for seedlings used at mine reclamation sites will now become \$2.00 per seedling, to reflect the current 3-year average cost on a larger scale.

Bureau of Abandoned Mine Reclamation (BAMR) Status Report and Abandoned Mine Land (AML) Grant Funding

Mr. Bradley provided an update on BAMR activities. With regards to project completions for there were 77 projects covering 647 acres; the cost of these projects was \$28,718,314.00. For 2014 to date, there are 3 projects completed covering one acre at a cost of \$900,928.00. For future projects, there are 42 of these that are under construction; these projects will cover 1,406 acres with contract costs of \$43,713,406.00. Additionally, there are 80 design projects for future contracts covering 3,293 acres with contract costs of \$114,450,033.00. For 2014, there have been 4 contracts awarded, with the low bid contract cost of \$4,923,831.00

With regards to AML Grant Funding, Pennsylvania's share of this funding is \$52,368,972.10, effective on April 1st, 2014. . This represents a decrease of \$9,366,181.00 (15%) compared to 2013 and, it reflects a sequestration reduction of \$4,063,110.00 (7.2%). By comparison, the figure for 2013 after sequestration was \$61,735,153.00, which represented a reduction of 5.1% from 2012. Lastly, regarding the 2006 Reauthorization, initial projects were that Pennsylvania would receive \$1.4 billion through 2022. However, through 2014, the actual figure is \$353 million (as opposed to the \$451.3 million projected); this reduces the actual projection to \$734.6 million through 2022.

Discussion of SB 411

Deputy Secretary John Stefanko spoke to the Board about Senate Bill SB411 which Amends Title 27 (Environmental Resources) of the Pennsylvania Consolidated Statutes, which was amended by

Act 68 of 1999 known as the Good Samaritan Act to provide information to clarify the intent and address the misinformation regarding the Bill. Deputy Secretary Stefanko began by stating the SB411 provides another means for cleaning up the streams impacted by mine influenced water (MIW) by allowing the use of the MIW in the development of the oil and gas industry and other industrial uses. Industry may build new systems to treat MIW, upgrade existing systems or, provide financial support to watershed groups who are currently treating MIW.

Deputy Secretary Stefanko continued by explaining that the Department (i.e., coordination among the DEP Deputies for Oil and Gas Management, Waste-Air-Radiation Protection, and Water Management) currently have a process in place to submit proposals regarding the use of MIW waters for hydraulic fracturing or other industrial uses. DEP will evaluate the proposals for environmental impacts, respond to those submitting proposals requesting any additional information, and provide a response for denial or approval which would include any DEP permits or other approvals that would need to be obtained to move forward with the proposal.

Upon hearing the explanations provided by Deputy Secretary Stefanko regarding SB 411, the Board voted to offer its support for this bill.

New Business

Mr. Allen began by discussing the AMD Treatment facility options to visit for the Board's July meeting and field trip. These facilities fall within the borders of the Moshannon District Mining Office and occur in Centre County and Clearfield County; they include the following (all of these are Primacy Bond Forfeiture ABS Treatment Systems funded for Fiscal Year 2013-2014):

- *Avery Coal Company (Victoria): Passive Treatment of an unnamed tributary to Clearfield Creek (per a Vertical Flow Pond (VFP)). Project cost: \$475,993.00. The main impetus for this project involves AMD from the Iron Laden Deep Mine Discharge. The AMD flow is 65 gallons per minute (GPM), with a pH of 5.51; acidity concentration of 39.4 milligrams per liter (mg/l), iron (Fe) concentration of 29.2 mg/l; manganese (Mn) concentration of 17.6 mg/l; and sulfate (SO₄) concentration of 540 mg/l. The Clearfield County Conservation District obtained a Surface Mining Control and Reclamation Act (SMCRA) grant to build an bioreactor underdrain and a stream channel as part of the Avery Coal Company (Victory) AMD treatment system. Construction work for this AMD treatment system was completed in October 2013.*
- *Avery Coal Company (Pine Glen): Construction of a Hydrated Lime Plant to treat a Moshannon Creek tributary. Project cost: \$461,886.00. The AMD flow for this project is 100 GPM, with a pH of 3.5; an acidity concentration of 338 mg/l; an Fe concentration of 14 mg/l; a Mn concentration of 77 mg/l; an Al concentration of 33 mg/l; and a SO₄ concentration of 2,245 mg/l. Stream Restoration, Inc. obtained a SMCRA grant to site a lime silo and, to construct the AMD treatment system. The project is slated for completion and start-up by May 2014.*
- *Power Operating Company (Dugan 4): Construction of a Rehabbed VFP and Limestone Bed Passive Treatment System for treating a Moshannon Creek tributary. Project cost: \$101,692.00. This is actually the rehabilitation of an existing AMD treatment system. The main impetus for this project involves AMD from Power Lake. The AMD flow for this project is 81 GPM, with a pH of 3.3; acidity concentration of 132 mg/l; Fe concentration of*

27 mg/l; Mn concentration of 17 mg/l; aluminum (Al) concentration of 3 mg/l; and SO₄ concentration of 1,244 mg/l. Stream Restoration, Inc. obtained a SMCRA grant to do the following: 1) replace the compost in the project's VFP; and 2) reconstruct a manganese bed into a horizontal flow limestone drain. Rehabilitation work for this AMD treatment system was completed in July 2013.

- *Power Operating Company (Dugan 2): Construction of an Anoxic Limestone Drain (ALD) Channel and a VFP for Passive Treatment of a Moshannon Creek tributary. Project cost: \$373,053.00. The AMD flow is 60 GPM, with a pH of 4.1; an acidity concentration of 117 mg/l; an Fe concentration of 22.1 mg/l; a Mn concentration of 19 mg/l; an Al concentration of 6.6 mg/l; and a SO₄ concentration of 342.8 mg/l. Stream Restoration, Inc. obtained a SMCRA grant to further develop the ALD and VFP systems, in order to treat 2 separate AMD discharges. The construction of a wetland is also part of this project. All work on the Dugan 2 AMD treatment system was completed in July 2013.*

Next, Mr. Carl discussed the 2013 Reclamation and Remining Incentives Report. Here, he briefly mentioned the main programs described in the report (i.e., Government Financed Construction Contracts (GFRCC); Remining Operator's Assistance Program (ROAP); Remining Financial Guarantees (RFG); and Reclamation Bond Credits)) and, that comments on the report were being sought from the Board. May 23rd, 2014 is the deadline for the board to submit comments on the 2013 Reclamation and Remining Incentives Report.

Open Time

There were a few questions and comments. First, Mr. McNelly inquired about a land reclamation value figure of \$6,000.00 per acre. He wanted to know how this figure was derived, whether it is still applicable today and, whether the acreage is applicable to the surface area or, is inclusive of all materials that occur below grade.

Second, there was interest in the Board's support of SB 411. Here, another bill, SB 1346 is being considered (with a version to follow in the House) with regards to providing a tax credit for coal refuse removal. A request was made for the Board to consider supporting SB 1346, as it had done for SB 411 during the meeting.

Third, Dr. Snowden reported that Cynthia Carrow had been reappointed to the Board by the Citizens Advisory Council (CAC). He also mentioned that reappointment packages had been prepared for another CAC appointee, Terry Dayton and, for the 2 DEP Secretary appointees, Robert Burns and Mark Snyder.

Adjournment

The Board meeting adjourned at 11:30 a.m.