

September 14, 2015



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Submitted Via eComment System

Pennsylvania Department of Environmental Protection
 Bureau of Mining Programs
 Rachel Carson State Office Building, 5th Floor
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**Re: Draft "Reclamation Fee Fiscal-year Report, 2015"
 45 Pa. Bull. 4986 (August 22, 2015)**

**Comments of Pennsylvania Federation of Sportsmen's Clubs, Inc.,
 Pennsylvania Chapter Sierra Club, Pennsylvania Trout, Inc., Mountain
 Watershed Association, Inc., Center for Coalfield Justice, and Citizens for
 Pennsylvania's Future (PennFuture)**

To the Bureau of Mining Programs:

On behalf of the six organizations listed above and their members, PennFuture submits these comments on the draft "Reclamation Fee Fiscal-year Report, 2015" (2015 Draft Report) prepared by the Pennsylvania Department of Environmental Protection (PADEP).

Table 7, immediately below, is the latest in a series of similar tables appearing in comment letters submitted by our coalition over the last six years. Specifically, it is an updated version of the same table that appeared on page 3 of our October 6, 2014 comment letter concerning PADEP's draft report for Fiscal Year (FY) 2013-2014. The updated table below fills in the Actual Expenditures column with the data reported in the 2015 Draft Report, and adds the percentage figures appearing in the fourth column.

TABLE 7: Fiscal Year 2014-2015 (July 1, 2014 through June 30, 2015)

Cost Categories	Projected Expenditures FY 2014-2015 (2014 Final Report)	Actual Expenditures FY 2014-2015 (2015 Draft Report)	Actual Expenditures as Percentage of Projected Expenditures
Personnel	\$25,000.00	\$16,549.49	
Laboratory	\$12,000.00	\$5,279.00	
Grants	\$224,500.00	\$193,429.02	
Contracts	\$600,000.00	\$153,940.47	
TOTAL	\$861,500.00	\$369,197.98	42.9%
	53.8%	vs. projected costs for all ABS Legacy Sites of \$1.6 million per year	23.1%

The figure of 23.1% found at the end of Table 7 shows that the \$369,197.98 in actual expenditures from the Reclamation Fee O&M Trust Account during FY 2014-2015 was less than one-quarter the amount (\$1.6 million) that PADEP's 2008 "ABS Program Amendment" estimated would be needed to cover the annual recapitalization and operation and maintenance costs for treatment systems at all ABS Legacy Sites.

The table immediately below presents the actual expenditures from the Reclamation Fee O&M Trust Account as reported by the Department in its six annual reports.

Reclamation Fee O&M Trust Account	
Fiscal Year	Actual Expenditures
2008-2009	\$9,957.52
2009-2010	\$84,625.16
2010-2011	\$107,243.05
2011-2012	\$168,603.22
2012-2013	\$821,213.13
2013-2014	\$499,122.48
2014-2015	\$369,197.98

During the first five fiscal years, the trend in expenditures had been steadily upward as annual operation and maintenance costs increased in response to the installation or refurbishing of more treatment systems. After a dramatic increase to \$821,213.13 in FY 2012-2013, however, the expenditures abruptly dropped by 39%, to \$499,122.48, in FY 2013-2014, and then by another 26.0%, to \$369,197.98, in FY 2014-2015.

Table 8 at the top of the next page presents data from the "Financial Summary" at the end of the 2015 Draft Report. It projects an enormous, 157.3% increase in the expenditures from the Reclamation Fee O&M Trust Account during the current fiscal year, from \$369,197.98 in FY 2014-2015, to a new high of \$949,785.00 in FY 2015-2016. Last year's annual report projected a similar increase, but it did not materialize. As shown in Table 7, above, the 2014 Draft Report projected expenditures of \$861,500. The actual expenditures were less than half that projected amount (\$369,197.98).

TABLE 8: Fiscal Year 2015-2016 (July 1, 2015 through June 30, 2016)

Cost Categories	Projected Expenditures FY 2015-2016 (2015 Draft Report)	Actual Expenditures FY 2015-2016 (to be determined)	Actual Expenditures as Percentage of Projected Expenditures
Personnel	\$14,000.00		
Laboratory	\$12,000.00		
Grants	\$199,973.00		
Contracts	\$723,812.00		
TOTAL	\$949,785.00		
		vs. projected costs for all ABS Legacy Sites of \$1.6 million per year	
	59.4%		

In the August 2008 ABS Program Amendment, the Department stated: “The annual amount for O&M costs will increase gradually *over the next few years* until it reaches the \$1.4 million total; when combined with recapitalization costs of about \$200,000 the Department will need approximately \$1.6 million annually to cover O&M and recapitalization costs for all the primacy ABS forfeiture discharge sites. (ABS Program Amendment, p. 43) (emphasis added) Those “next few years,” however, have already come and gone, while dozens of discharges at ABS Legacy Sites continue to flow without adequate treatment. The figure of 59.4% at the bottom of the second column in Table 8 shows that the projected expenditures from the Reclamation Fee O&M Trust Account will be 40.6% below the ABS Program Amendment’s 2008 estimate of \$1.6 million per year in total costs for the treatment systems at the ABS Legacy Sites. Even if that 2008 estimate was conservative (high), it is clear that a considerable amount of work remains to complete all of the required construction and upgrading of treatment systems at ABS Legacy Sites.

Reclamation Fee Rate

After six consecutive years in which no reclamation fee has been charged under 25 Pa. Code § 86.17(e), the 2015 Draft Report states that PADEP “has determined that a reclamation fee amount of \$100 per acre is needed for calendar year 2016.” (2015 Draft Report, p. 6) PADEP arrives at that figure by first calculating a “deficit” of \$260,354.25 (that is, a projected balance of \$2,739,645.75 at the end of FY 2015-2016, compared with the required minimum balance of \$3,000,000.00), then dividing that deficit figure by the estimated 2,750 acres of operations subject to the reclamation fee to be permitted during calendar year 2016. That calculation results in a rate of \$94.67 per acre, which, in accordance with 25 Pa. Code § 86.17(e)(4), PADEP rounds to \$100 per acre.

A \$100 per acre reclamation fee for calendar year 2016, however, will be in effect only for the second half of FY 2015-2016 (January 1 – June 30, 2016). Thus, as stated on page 3 of the 2015 Draft Report, it would generate only \$137,500 in revenue during FY 2015-2016, or about half of the projected \$260,354.25 deficit. Setting the reclamation fee at \$100 therefore would leave a deficit of \$122,854.25 at the end of FY 2015-2016, in violation of the requirement

to “maintain a balance in the Reclamation Fee O&M Trust Account of at least \$3,000,000.” 25 Pa. Code § 86.17(e)(3)(ii).

In order to prevent the projected deficit of \$260,354.25 from developing by the end of FY 2015-2016 on June 30, 2016, the Department needs to generate \$260,354.25 more revenue *by June 30, 2016*, not by the end of the calendar year on December 31, 2016. If the reclamation fee were applied on a *fiscal* year basis, from July 1, 2015 through June 30, 2016, a fee of \$100 per acre would generate this required amount of revenue (plus about \$10,000 extra). Because the fee is applied on a *calendar* year basis, however, a fee of \$100 starting on January 1, 2016 would fall \$122,854.25 short of the \$260,354.25 in revenue needed by June 30, 2016. As a result, the fee must be set at double the rate recommended by the Department – \$200 per acre – for calendar year 2016.

2017 Projection

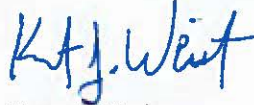
The Department’s preliminary estimate is that a reclamation fee of \$200 will be needed in calendar year 2017 to generate the \$420,000 needed to maintain the required minimum balance of \$3 million in the Reclamation Fee O&M Trust Account during FY 2016-2017. (2015 Draft Report, p. 7) These amounts should be recalculated to take into account the incongruity between the fiscal year basis of the deficit projection and the calendar year basis of the fee adjustment discussed immediately above with respect to the calendar year 2016 fee rate calculation. We note that charging a fee of \$200 per acre for calendar year 2016, as recommended above, would likely reduce the fee rate needed in calendar year 2017 to maintain the required \$3 million minimum balance.

As amended by Act 157 of 2012, the Surface Mining Conservation and Reclamation Act authorizes up to \$2 million collected from the gross receipts tax on sales of electric energy to be appropriated each fiscal year, through June 30, 2039, for transfer to the Reclamation Fee O&M Trust Account. *See* 52 P.S. § 1396.19b(b)(7). The 2015 Draft Report notes that an appropriation and transfer of \$500,000 or more in gross receipts tax revenue could fully offset the revenue otherwise needed from the reclamation fee in calendar year 2017. It further asserts that “the maximum appropriation of \$2,000,000 from the Gross Receipts Tax is warranted.” (2015 Draft Report, p. 7)

Premium payments on Land Reclamation Financial Guarantees (LRFGs) are another source of revenue that may be transferred to the Reclamation Fee O&M Trust Account. *See* 52 P.S. § 1396.19b(b)(6). Given the amount of LRFG premium payments currently being held in reserve, and the \$400,000 in such payments expected to be received during FY 2015-2016 (2015 Draft Report, p. 4), it does not appear that any appropriation of gross receipt tax revenue to the Reclamation O&M Trust Account is needed during the Commonwealth’s FY 2016-2017. No matter which specific sources of revenue are relied upon next year, however, PADEP’s *immediate* imperative must be to provide adequate treatment for *all* discharges from the ABS Legacy Sites by completing the installation or rehabilitation of the necessary treatment systems, which one of the prerequisites to finding that the ABS Legacy Sites Trust Account is “actuarially sound.” *See* 25 Pa. Code §§ 86.17(e)(6)(ii), 86.187(a)(2)(iii)(B).

Thank you for your consideration of these comments. Please feel free to contact me at 717-214-7925 if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Kurt J. Weist". The signature is written in a cursive style with a large initial "K".

Kurt J. Weist
Senior Attorney

cc: (by electronic mail only)
Ben Owens, Director, Pittsburgh Field Division, OSM
Robert A. "Bo" Reiley, Assistant Director, Bureau of Regulatory Counsel, PADEP
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