

Reclamation Fee Fiscal-year Report 2014

The regulations at 25 Pa. Code § 86.17(e)(2) require the DEP to prepare a fiscal-year report containing a financial analysis of the revenue and expenditures of the Reclamation Fee O & M Trust Account.

25 Pa. Code § 86.17(e)(4) requires the following factors to be used to determine the amount of the Reclamation Fee:

- Current Balance in the Reclamation Fee O & M Trust Account
- Previous year revenue
 - Reclamation Fee
 - Interest
 - Civil Penalties
 - Other sources
- Previous year O & M Costs
- Projected number of acres subject to the Reclamation Fee
- Projected Revenue
 - Reclamation Fee
 - Interest
 - Civil Penalties
 - Other sources
- Projected expenditures

CURRENT BALANCE

The balance in the Reclamation Fee O & M Trust Account as of June 30, 2014 was \$3,311,866.28. This balance does not include civil penalties (\$298,650.22) collected during the fiscal year.

PREVIOUS YEAR REVENUE

Reclamation Fee

The Reclamation Fee for the period July 2013 through June 2014 was \$0. Therefore there was no revenue from this source.

Interest

Interest was credited to the Reclamation Fee O & M Trust Account from July 2013 through June 2014 in the amount of \$6,187.42.

Civil Penalties

Civil penalties (less the 5% due to the Environmental Education Fund) will be transferred into the Reclamation Fee O & M Trust Account each year. The total revenue from civil penalties from July 2013 through June 2014 is listed below:

Month	Coal Civil Penalties
Jul-13	\$43,300.00
Aug-13	\$56,319.50
Sep-13	\$20,362.50
Oct-13	\$10,115.00
Nov-13	\$25,920.00
Dec-13	\$49,103.00
Jan-14	\$31,733.75
Feb-14	\$7,410.00
Mar-14	\$54,743.98
Apr-14	-\$1,276.08
May-14	\$9,435.00
Jun-14	\$7,202.00
Total	\$314,368.65

The negative number for April 2014 was the result of the close-out of an account where appealed civil penalties had been deposited. The cases related to this account are undergoing review. As each case is resolved, the eligible funds will be deposited in the SMCRA fund as income from civil penalties.

The net amount eligible for transfer to the Reclamation Fee O & M Trust Account is \$298,650.22. This is 95% of the collected civil penalties. The remaining 5% is required by statute to be transferred to the Environmental Education Fund.

Other Sources

There was no income from other sources credited during fiscal year 2013-2014. However, under Act 157 of 2012, the interest on the funds held in the Land Reclamation Financial Guarantee (LRFG) Account may be transferred into the Reclamation Fee O & M Trust Account. The available interest to transfer is \$10,193.82 from 2012-2013 and \$21,961.74 from 2013-2014. The intention is to periodically transfer this interest to the Reclamation Fee O & M Trust Account.

Act 157 also authorized the transfer of premium payments for Land Reclamation Financial Guarantees to the Reclamation Fee O & M Trust Account and included the provision for an annual appropriation from the Gross Receipts Tax.

PREVIOUS YEAR O & M COSTS

O & M costs were incurred in four categories: personnel costs, lab costs, grants and contracts. The total spent in 2013-2014 was \$499,122.48.

Personnel Costs

The total cost to the Reclamation Fee O & M Trust Account for personnel from July 2013 through June 2014 is \$13,099.75. This is for labor for the monitoring that is needed for several ABS Primacy bond forfeiture sites where it is more efficient for DEP to do this work.

Lab Costs

The total cost to the Reclamation Fee O & M Trust account for the samples collected and analyzed at the DEP lab for the ABS Primacy bond forfeiture sites from July 2013 through June 2014 is \$7,906.74.

Grants

Grants were awarded in the amount of \$284,687.66 from July 2013 through June 2014.

Contracts

Contract costs for operation and maintenance of the existing ABS treatment facilities for July 2013 through June 2014 totaled \$193,428.33.

PROJECTED NUMBER OF ACRES SUBJECT TO THE RECLAMATION FEE

The table below lists the approximate number of acres permitted each year that would have been subject to the reclamation fee. These values are based upon acres authorized as tracked in the eFACTS database. The average of these values is 2,817 acres. This is the projected number of acres subject to the reclamation fee for 2015.

Year	Acres
2011	3148
2012	2287
2013	3017

PROJECTED REVENUE

Reclamation Fee

The projected revenue from the reclamation fee is \$0.

Interest

Interest on the money held in the Reclamation Fee O & M account has been decreasing for the last few years. Therefore \$6,000 in income from interest is projected for the 2014-2015 fiscal year.

Civil Penalties

For purposes of the projection, it is estimated that about \$300,000 will be available from civil penalty revenue for the 2014-2015 fiscal year.

Other Revenue

Act 157 of 2012 provides other potential revenue streams to the Reclamation O & M Trust Account. These include the interest on the funds held in the LRFG Account, premiums from the LRFG program and an annual appropriation from the Gross Receipts Tax. The plan is to routinely transfer the interest from the LRFG Account. The interest available for transfer is \$32,155.56 (\$10,193.82 from 2012-2013 plus \$21,961.74 from 2013-2014).

For 2012-2013, \$71,988.70 was collected from premium payments and deposited in the newly established LRFG Account. For 2013-2014, \$276,563.94 was collected from premium payments and deposited in the LRFG Account. It is estimated that \$300,000.00 will be generated from premium payments in 2014-2015. The transfer of any of this money is being deferred until it is necessary based upon unexpected expenses or a revenue shortfall. Having this money available for transfer provides assurance that the Reclamation Fee O & M Trust Account will be able to be maintained above the required \$3,000,000 minimum balance.

In order to provide the long-term financial stability intended under Act 157 of 2012, it will be necessary to obtain the annual appropriation from the Gross Receipts Tax.

PROJECTED EXPENDITURES

The total projected expenditures for fiscal year 2014-2015, as explained in further detail below is \$861,500.00.

Personnel Costs

The total projected debit for DEP personnel costs from the Reclamation Fee O & M Trust Account from July 2014 through June 2015 is \$25,000.00. The amount is for labor for the monitoring that the DEP is doing for the ABS Primacy bond forfeiture sites.

Lab Costs

The total projected debit from the Reclamation Fee O & M Trust account from July 2014 through June 2015 is \$12,000.00. This is the expected cost for the analysis of the samples collected and analyzed by DEP while monitoring the ABS Primacy bond forfeiture sites.

Grants

Grants are expected to be awarded in the amount of \$224,500.00 from July 2014 through June 2015. This includes grants (\$164,500.00) for the O & M for the following C & K sites where the Clean Streams Foundation is the trustee:

Bell Woodcock (Permit No. 11783035), Stroud (Permit No. 11823002), Cambria 51 (Permit No. 11850106), Snyder-Sertik (Permit No. 10860118), Hill Estate (Permit No. 16713004), Smith-Heasley (Permit No. 16803030), Tremba-Horner (Permit No. 16830114), Kriebel (Permit No. 16840103), Racic (Permit No. 61783001).

Also included in the grants total is a grant (\$60,000.00) for the Bernice Mining, Lewis (Permit No. 57830101) site.

Contracts

Contract costs from July 2014 through June 2015 are expected to total \$600,000.00. The sites covered by these contracts include the following:

Company	Site Name	Contract Amount
H & D	Merola	\$7,000
Gurosik Coal Co	King	\$60,000
REM	Truittsburg	\$7,000
REM	Orcutt Smail	\$50,000
Glacial	Blair	\$175,000
Power Operating	Dugan 2	\$7,000
Avery Coal Co Inc	Pine Glen	\$30,000
Thompson Bros	Alder Run	\$60,000
Ed Hanslovan Coal Co Inc	Keating 1	\$60,000
PA Energy Corp.	Horse Hill Strip	\$3,100
Acme Drilling	Broom Strip	\$4,100
Delta Mining Inc.	Maust Mine	\$1,500
D & E Construction	Moore	\$1,500
Delta Mining Inc	Bashore	\$40,000
American Development	Job 33	\$39,000
Met Co Mining & Minerals Inc.	Ankey Mine	\$1,500
Delta Mining Inc	Hay 2	\$1,500
H & H Coal Co.	James E Long	\$1,500
L & L	Berkey	\$1,500
Big J Mining Inc.	Sorber Mine	\$39,000

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Windber High Std. Coal Co.	Brant Strip	\$1,500
L & B Coal Co	No 5	\$4,100
K & J Coal Co. Inc.	Westover	\$2,100
K & J Coal Co. Inc.	Gaber Brown	\$2,100

For the purpose of planning, \$250,000 has been authorized for unexpected contracts. However, for the reclamation fee calculation, the \$250,000 for additional contracts has not been included.

Financial Summary

Income	FY 2013-2014	FY 2014-2015 (Projected)
Interest	\$6,187.42	\$6,000.00
Reclamation Fee	\$0	\$0
Civil Penalties	\$298,650.22	\$300,000.00
Other (LRFG Interest)	\$21,961.74	\$20,000.00
Total	\$326,799.38	\$326,000.00

Expenses	FY 2013-2014	FY 2014-2015 (Projected)
DEP Lab Costs	\$7,906.74	\$12,000.00
DEP Personnel	\$13,099.75	\$25,000.00
Contracts	\$193,428.33	\$600,000.00
Grants	\$284,687.66	\$224,500.00
Total	\$499,122.48	\$861,500.00

Reclamation Fee Calculation

Based on the June 30 balance in the Reclamation Fee O & M Account (\$3,311,866.28), the civil penalties (\$298,650.22) transferred in July 2014, the un-transferred interest from the LRFG account (\$32,155.56), the projected revenue (\$326,000.00) and expenses (\$861,500.00), and the funds available to transfer from the LRFG premiums (\$348,552.64), if necessary, DEP has determined that the reclamation fee amount can remain at \$0 for calendar year 2015. This will maintain the balance in the Reclamation Fee O & M Account of \$3,000,000 (\$3,107,172.06) as required under 25 Pa. Code § 86.17(e)(3).

For the purpose of determining the reclamation fee amount, the authorized contingency of \$250,000 for contracts was not included in the calculation. For contingency planning, the balance will be closely monitored in the Reclamation Fee O & M Account balance to determine if it is approaching the \$3,000,000 threshold which must be maintained. If it is likely that the balance will approach the threshold, then transfer of premium payments from LRFGs can be made in order to maintain the balance above the required minimum.

2016 Projection

Based upon the spending and income trends, it is likely that a reclamation fee will be necessary beginning in January 2016. Preliminary estimates suggest that about \$300,000 will be necessary from the reclamation fee in order to maintain the balance of \$3,000,000. To generate this amount of revenue, a reclamation fee \$150 per acre would be needed in calendar year 2016.

In the alternative, an appropriation from the Gross Receipts Tax could offset the need to impose a reclamation fee. In order to offset the reclamation fee, an appropriation of at least \$300,000 would be needed for the 2015-2016 budget year. In order to assure that the need for a reclamation fee can be offset and to provide funding for the ABS Legacy Site Trust Account, the maximum appropriation of \$2,000,000 from the Gross Receipts Tax is warranted.

ABS Legacy Sites Trust Account

The ABS Legacy Sites Trust Account was established by regulation at 25 Pa. Code § 86.187(a)(2)(i), effective August 30, 2008. The following table presents the income and year-end balance in the ABS Legacy Site Trust Account for the last three years.

Year Ending	Income	Year-End Balance
June 30, 2012	\$14,425.56	\$5,674,432.38
June 30, 2013	\$12,415.83	\$5,686,848.21
June 30, 2014	\$9,818.27	\$5,696,666.48

Report Process

On September 20, 2014, notice of availability of the draft report was published in the *Pa. Bulletin*.

By a letter dated October 6, 2014, comments were received from PennFuture. These comments are incorporated in this report as an attachment.

On October 23, 2014, the draft report was reviewed at the MRAB meeting.

October 6, 2014

Sent Via Electronic Mail: wallen@pa.gov
(Hard Copy to Follow by First-Class Mail)



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Re: Draft "Reclamation Fee Fiscal-year Report, 2014"
44 Pa. Bull. 6025-26 (September 20, 2014)

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)

Dear Mr. Allen:

On behalf of the six organizations listed above and their members, PennFuture submits these comments on the draft "Reclamation Fee Fiscal-year Report, 2014" (2014 Draft Report) prepared by the Pennsylvania Department of Environmental Protection (PADEP).

Table 6, 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 2 of our October 15, 2013 comment letter concerning PADEP's draft report for Fiscal Year (FY) 2012-2013. The updated table below fills in the Actual Expenditures column with the data reported in the 2014 Draft Report, and adds the percentage figures appearing in the fourth column.

TABLE 6: Fiscal Year 2013-2014 (July 1, 2013 through June 30, 2014)

Cost Categories	Projected Expenditures FY 2013-2014 (2013 Final Report)	Actual Expenditures FY 2013-2014 (2014 Draft Report)	Actual Expenditures as Percentage of Projected Expenditures
Personnel	\$9,000.00	\$13,099.75	
Laboratory	\$12,000.00	\$7,906.74	
Grants	\$201,500.00	\$284,687.66	
Contracts	\$736,834.00	\$193,428.33	
TOTAL	\$959,334.00	\$499,122.48	52.0%
	60.0%	vs. projected costs for all ABS Legacy Sites of \$1.6 million per year	31.2%

The figure of 31.2% found at the end of Table 6 shows that the \$499,122.48 in expenditures from the Reclamation Fee O&M Trust Account during FY 2013-2014 was less than one-third 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. Some other figures in Table 6 are a bit misleading because the "Projected Expenditures" on "Contracts" for FY 2013-14 as presented in the 2013 Final Report (\$736,834) included a \$250,000 contingency for unexpected contracts. The 2014 Draft Report explains that this same amount has been authorized for unexpected contracts for FY 2014-2015. For the purposes of determining the amount of the reclamation fee for calendar year 2015, however, the Department has *not* included the \$250,000 figure in the projected contract expenditures for FY 2014-2015. (Draft 2014 Report, p. 6) If the Projected Expenditures for FY 2013-2014 (\$959,334.00) are reduced by \$250,000, to \$709,334.00, the Actual Expenditures for FY 2013-2014 (\$499,122.48) would represent about 70.4% of the projected amount, or nearly 20% higher than the 52.0% shown in the fourth column of Table 6.

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

Until this past fiscal year, the trend in expenditures had been steadily upward as more treatment systems were completed or refurbished and, as a result, annual operation and maintenance costs increased. 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.

The 2014 Draft Report projects a rebound in treatment expenditures at the ABS Legacy Sites during the current fiscal year, to a level slightly above the previous high in FY 2012-2013. Table 7 at the top of the next page presents data from the "Financial Summary" at the end of the 2014 Draft Report. It projects a considerable, 72.6% increase in the expenditures from the Reclamation Fee O&M Trust Account in the upcoming fiscal year, from \$499,122.48 in FY 2013-2014 to \$861,500.00 in FY 2014-2015.

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

Cost Categories	Projected Expenditures FY 2014-2015 (2014 Draft Report)	Actual Expenditures FY 2014-2015 (to be determined)	Actual Expenditures as Percentage of Projected Expenditures
Personnel	\$25,000.00		
Laboratory	\$12,000.00		
Grants	\$224,500.00		
Contracts	\$600,000.00		
TOTAL	\$861,500.00		
	53.8%	vs. projected costs for all ABS Legacy Sites of \$1.6 million per year	

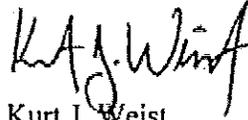
The figure of 53.8% at the bottom of the second column in Table 7 shows that the projected expenditures from the Account will be 46.2% below the ABS Program Amendment's 2008 estimate of \$1.6 million per year in total recapitalization and operation and maintenance costs for the treatment systems at the 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. Neither the Court of Appeals, when requiring the ABS Program Amendment seven years ago, *see Pennsylvania Federation of Sportsmen's Clubs, Inc. v. Kempthorne*, 497 F.3d 337 (3d Cir. 2007), nor OSM, in partially approving it four years ago, 75 Fed. Reg. 48526 (Aug. 10, 2010), contemplated that adequate treatment of all of the discharges from the ABS Legacy Sites would be delayed so long.

Updating a line found in all of the previous reports, the 2014 Draft Report states that "DEP has determined that the reclamation fee amount can remain at \$0 for calendar year 2015" (2014 Draft Report, p. 6), making it the sixth consecutive year in which no reclamation fee will be charged under 25 Pa. Code § 86.17(e). For the first time, however, PADEP anticipates that "it is likely that a reclamation fee will be necessary beginning in January 2016." (*Id.*) Based on preliminary estimates, PADEP projects that unless other sources of revenue are tapped, the reclamation fee would have to be set at \$150 per acre for calendar year 2016 to generate the additional \$300,000 needed to maintain the required \$3 million minimum balance in the Reclamation Fee O&M Trust Account. (*Id.*, pp. 6-7).

Which specific sources of revenue PADEP should rely upon for FY 2015-2016 is a decision it need not make for roughly a year. PADEP's *immediate* imperative is to provide adequate treatment for *all* discharges from the ABS Legacy Sites by completing the installation of the necessary treatment systems, which is a prerequisite 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 black ink, appearing to read "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