

Reclamation Fee Fiscal Year Report 2020

The Department of Environmental Protection (DEP) has prepared this fiscal year report in accordance with 25 Pa. Code § 86.17(e) regarding the revenue and expenditures of the Reclamation Fee O & M Trust Account. This report includes DEP's calculation of the required amount of the per acre reclamation fee on applications to conduct surface mining activities (excluding surface effects of underground mining) on new acreage, to be used by DEP to pay the construction costs and operation and maintenance costs associated with treating postmining polluttional discharges at ABS Legacy Sites (defined at 25 Pa. Code § 86.1). This report also includes the proposed adjustment of the reclamation fee amount and information necessary for determining the need to supplement funding of the Reclamation Fee O & M Trust Account established under 25 Pa. Code § 86.17(e)(1) to ensure that there are sufficient revenues to maintain a balance in this account of at least \$3,000,000, as required by 25 Pa. Code § 86.17(e)(3).

Consistent with 25 Pa. Code § 86.17(e)(4), DEP considered the following factors in this analysis 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 Revenue Sources
- Previous Year O & M Costs
- Projected Number of Acres Subject to the Reclamation Fee
- Projected Revenue
 - Reclamation Fee
 - Interest
 - Civil Penalties
 - Other Revenue Sources
- Projected Expenditures

CURRENT BALANCE

The balance in the Reclamation Fee O & M Trust Account as of June 30, 2020, was \$3,809,109.81. This balance does not include the civil penalties (\$182,421.39) DEP has collected in fiscal year 2019-2020 as well as interest from the Land Reclamation Financial Guarantee (LRFG) Account (\$283,798.91), both of which were transferred into the account.

PREVIOUS YEAR REVENUE

Reclamation Fee

The 2019 Final Reclamation Fee Fiscal Year Report concluded that a Reclamation Fee for calendar year 2020 was necessary and was set at \$100 per acre. The revenue collected from the Reclamation Fee from January 2020 through June 2020 is listed below:

Month	Reclamation Fee
Jan-20	\$0.00
Feb-20	\$0.00
Mar-20	\$1,710.00
Apr-20	\$0.00
May-20	\$0.00
Jun-20	\$490.00

Interest

DEP credited interest on the funds in the Reclamation Fee O & M Trust Account to the account in the amount of \$64,434.45 from July 2019 through June 2020.

Civil Penalties

DEP transfers civil penalties into the Reclamation Fee O & M Trust Account each year. A portion (5%) of all civil penalties collected by DEP are transferred to the Environmental Education Fund as required by statute. The total revenue from civil penalties DEP collected between July 2019 through June 2020 is shown in Table 1. Please note that the negative reported amount for January 2020 is the result of a returned check for insufficient funds related to a civil penalty payment. A total of \$2,650 was collected in fines and penalties, but the returned check was in the amount of \$11,250 resulting in a negative balance for the month.

TABLE 1	
Month	Coal Civil Penalties
Jul-19	\$17,387.50
Aug-19	\$21,620.02
Sep-19	\$10,000.00
Oct-19	\$19,095.00
Nov-19	\$35,925.00
Dec-19	\$26,070.00
Jan-20	\$-8,600.00
Feb-20	\$16,250.00
Mar-20	\$12,445.00
Apr-20	\$4,000.00
May-20	\$19,980.00
Jun-20	\$17,850.00
Total	\$192,022.52

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The amount of civil penalty dollars eligible for transfer to the Reclamation Fee O & M Trust Account is \$182,421.39 or 95% of the collected civil penalties. The remaining 5% is required to be transferred to the Environmental Education Fund. There is a pending potential project that would allow for reclamation in-lieu-of a civil penalty of a substantial amount. If this project is completed, then the Department intends to transfer an equal amount from the balance of the PBS Coal Incorporated penalty settlement from several years ago.

Other Revenue Sources

Under Section 19.2 of the Surface Mining Conservation and Reclamation Act (SMCRA), as amended in 2012 (52 P.S. § 1396.19b), DEP may transfer the interest on the funds held in the LRFG Account into the Reclamation Fee O & M Trust Account. \$283,798.91 has accrued in the LRFG account during fiscal year 2019-2020. DEP will transfer these funds during fiscal year 2020-2021.

Section 19.2 of SMCRA also authorizes DEP to transfer premium payments for Land Reclamation Financial Guarantees to the Reclamation Fee O & M Trust Account. DEP is not transferring any payments until an actuarial study can be completed on the LRFG Account to determine the minimum balance necessary to cover the reclamation obligations of the Commonwealth.

PREVIOUS YEAR O & M COSTS

DEP incurred O & M costs in five categories: personnel, lab, grants, contracts, and materials resulting in expenditures of \$472,201.41 in 2019-2020.

Personnel Costs

DEP expended \$16,162.01 from the Reclamation Fee O & M Trust Account for personnel from July 2019 through June 2020 to monitor several ABS Primacy bond forfeiture sites.

Lab Costs

There was no cost to the Reclamation Fee O & M Trust Account for samples collected and analyzed at the DEP lab for the ABS Primacy bond forfeiture sites from July 2019 through June 2020.

Grants

DEP awarded grants in the amount of \$154,972.78 from July 2019 through June 2020. For further information, please refer to the 2019 Final Reclamation Fee Fiscal Year Report.

Contracts

Contract costs for operation and maintenance of the existing ABS treatment facilities for July 2019 through June 2020 totaled \$279,838.71. In addition, DEP made a direct payment for electricity in the amount of \$2,009.02. For further information, please refer to the 2019 Final Reclamation Fee Fiscal Year Report.

Materials

DEP purchased hydrated lime for the operation and maintenance of the Avery Pine Glen AMD Treatment System located in Burnside Twp., Clearfield County as required under the Bond Forfeiture ABS Mining Program for July 2019 through June 2020 in the amount of \$19,218.89.

PROJECTED NUMBER OF ACRES SUBJECT TO THE RECLAMATION FEE

Table 2 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 downward trend in the number of acres is noteworthy. In 2016, when a reclamation fee was imposed, the projected acres totaled 1,423, but DEP only collected the reclamation fee for 978 acres. Assuming the decreasing trend in number of acres authorized continues apace and the lower than anticipated number of acres for which the fee was collected in 2016 continues, the projected number of acres subject to the reclamation fee for 2021 is estimated at 550. Based on the trend, DEP expects that the number of acres subject to the reclamation fee will continue to decline.

Year	Acres
2011	3,148
2012	2,287
2013	3,017
2014	2,542
2015	1,919
2016	1,423
2017	1,443
2018	826
2019	601
2020 Projected	550

PROJECTED REVENUE

Reclamation Fee

The projected revenue for fiscal year 2020-2021 from the reclamation fee is \$55,000. This is based on a reclamation fee of \$100 per acre, which went into effect on January 1, 2020, and will continue through 2021.

Interest

DEP estimates that interest on the money in the Reclamation Fee O & M Trust Account will generate about \$100,000 in income for the 2020-2021 fiscal year.

Civil Penalties

DEP projects that about \$200,000 will be available from civil penalty revenue for the 2020-2021 fiscal year.

Other Revenue

Act 157 of 2012 provides other potential revenue streams to the Reclamation O & M Trust Account including an annual appropriation from the Gross Receipts Tax. This was done once during the 2016-2017 fiscal year.

In addition, DEP expects the interest on the money supporting the Land Reclamation Financial Guarantees to generate about \$200,000 during the fiscal year. This estimate is based upon the revenue from fiscal year 2019-2020 as the foundation, with an expectation that the amount will increase since the value in the LRFG account is greater than last year. DEP transfers this interest each year into the Reclamation Fee O & M Trust Account.

PROJECTED EXPENDITURES

The total projected expenditures based on the approved spend plan for fiscal year 2020-2021, as explained in further detail below, is \$1,118,370.00.

Personnel Costs

The total projected debit for DEP personnel costs from the Reclamation Fee O & M Trust Account from July 2020 through June 2021 is \$35,000. The amount reflects labor for the monitoring that DEP undertakes for the ABS Primacy bond forfeiture sites.

Lab Costs

The total projected debit from the Reclamation Fee O & M Trust Account from July 2020 through June 2021 is \$10,000. 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

DEP projects it will award grants of approximately \$463,356 for O & M from July 2020 through June 2021. This includes projected costs (\$260,766) for the O & M for the C & K sites (Table 3) where the Clean Streams Foundation is the trustee.

Site Name	Permit number
Bell Woodcock	11783035
Stroud	11823002
Cambria 51	11850106
Snyder-Sertik	10860118
Hill Estate	16713004
Smith-Heasley	16803030
Tremba-Horner	16830114
Kriebel	16840103
Racic	61783001

DEP executed a grant agreement with the Clean Streams Foundation for the O & M for the Al Hamilton sites in Table 4. Currently, the Clean Streams Foundation submits their expenses for reimbursement on a quarterly basis and money is taken from both the underfunded Al Hamilton Treatment Trust and a Non-Solicitation Grant. The projected O&M for these facilities will cost \$202,590 per year.

TABLE 4	
Site Name	Permit number
Miller Stein	17753159
Sandturn	17803176
Morris 2	17810104
Pearce	17820106
Carnwath	17820166
Ralston	17850109
Kauffman	17890115
Kauffman North	17970107
Little Beth	17723164

For the purpose of planning, DEP has received authorization for \$100,000 for unexpected grants. However, DEP has not included this amount in the reclamation fee calculation as there is no expectation to spend this money.

Contracts

DEP expects contract costs from July 2020 through June 2021 to total \$610,014. The contracts cover the sites in Table 5.

Company	Site Name	Contract Amount
H & D Coal Co.	Merola	\$15,000
Gurosik Coal Co.	King Mine	\$50,000
REM Coal Co.	Truittsburg Mine	\$60,000
REM Coal Co.	Orcutt Smail	\$160,000
Pengrove Coal Co.	Martin Bell	\$50,000
Glacial Minerals Inc.	Blair	\$15,000
Avery Coal Co. Inc.	Pine Glen	\$36,646
Thompson Bros. Coal Co.	Alder Run	\$71,241
PA Energy Corp.	Horse Hill Strip	\$2,555
Acme Drilling Inc.	Broom Strip	\$2,843
Delta Mining Inc.	Maust Mine	\$2,680
D & E Construction	Moore	\$1,783
Delta Mining Inc.	Bashore	\$16,909
American Development Co.	Job 33	\$32,467
Met Co. Mining & Minerals Inc.	Ankey Mine	\$1,951
Delta Mining Inc.	Hay 2	\$2,648
H & H Coal Co.	James E. Long	\$1,738
Laurel Land Development Inc.	McDermott Mine	\$6,303
Big J Mining Inc.	Sorber Mine	\$21,308
Windber High Std. Coal Co.	Brant Strip	\$3,145
L & B Coal Co.	No. 5	\$1,791
C & O Coal Co.	Burkholder	\$1,994
Power Operating Co. Inc.	Vought	\$7,000
Pengrove Coal Co.	Ruth Mine	\$25,000
Moshannon Passive Systems*	Multiple	\$20,012

**A contract is in place for O & M, as needed, on a group of passive treatment sites managed by the Moshannon District Mining Office. The sites included under this contract include Power Operating Dugan 2 and Dugan 4, M & M Latherow, Thompson Bros. No. 1, Lobb Narco, Bernice Lewis, Avery Victoria and Chews Little D.*

For the purpose of planning, DEP has received authorization for \$75,000 for unexpected contracts. However, DEP has not included this amount in the reclamation fee calculation as there is no expectation to spend this money.

The various sites listed in the tables are not meant to be an all-encompassing list of the ABS Legacy Sites. Some sites are not listed when O & M is not required, or it is being done by the Department and those costs are reflected in the lab and personnel areas.

Adjusted Projection of Expenses

Prior to the 2018 reclamation fee report, previous reclamation fee reports have relied solely on the approved spend plan for the Reclamation Fee O & M Trust Account to project costs from the account. However, this method of projection has proven to be inaccurate. Table 6 shows the comparison of projected vs. actual expenses since the Reclamation Fee O & M Trust Account was established. Last year, 90% of the projected spend plan was chosen based on evaluating the percentage of actual vs. projected expenses for the previous fiscal years. Unlike the first year when the Department’s projection fell short of the actual expenses, last year the projection was almost double the actual expenses. DEP still feels that this is a more reliable predictor and will be using this modified approach again this year.

Fiscal Year	Projected Expenses Based on Spend Plan	Modified Projected Expenses	Actual Expenses	Percentage of Actual vs Projected
2008-2009	-	-	\$9,957.52	-
2009-2010	\$762,200.00	-	\$84,625.16	11.10%
2010-2011	\$366,500.00	-	\$106,633.77	29.10%
2011-2012	\$602,872.00	-	\$168,603.21	27.97%
2012-2013	\$810,492.00	-	\$821,213.13	101.32%
2013-2014	\$959,334.00	-	\$499,122.48	52.03%
2014-2015	\$861,500.00	-	\$369,197.98	42.86%
2015-2016	\$949,785.00	-	\$501,358.39	52.79%
2016-2017	\$980,499.00	-	\$483,642.01	49.33%
2017-2018	\$827,486.00	-	\$458,840.02	55.45%
2018-2019	\$1,318,923.00	\$800,000.00	\$1,046,281.36	79.33%
2019-2020	\$1,032,810.00	\$925,000.00	\$472,201.41	45.72%
2020-2021	\$1,118,370.00	\$900,000.00	-	-

Based on the projected expenses for the past eight fiscal years, DEP has concluded that taking 80% of the spend plan cost is a reasonable prediction of the actual expenses. Using this approach, the projection of the expenses in the 2020-2021 fiscal year will be about \$900,000. (This was determined by taking 80% of \$1,118,370.00 and rounding up.) DEP decided that using this number to project the expenses for the Reclamation Fee O & M Trust Account will be more reliable in determining whether a reclamation fee is needed or not. If this approach underestimates the actual expenses for the fiscal year and the reclamation fee account approaches the \$3,000,000.00 threshold, DEP has additional civil penalty in the amount of \$1,500,000.00 that could be transferred as well as money from the LRFG account.

Financial Summary

TABLE 7		
Income	FY 2019-2020	FY 2020-2021 (Projected)
Interest	\$64,434.45	\$100,000.00
Reclamation Fee	\$2,200.00	\$55,000.00
Civil Penalties	\$182,421.39	\$200,000.00
Other (LRFG Interest)	\$283,798.91	\$200,000.00
LRFG Premium Transfer	\$0.00	\$0.00
Additional Civil Penalties	\$0.00	\$0.00
Total	\$532,854.75	\$555,000.00

Expenses	FY 2019-2020	FY 2020-2021 (Projected)
DEP Lab Costs	\$0.00	\$10,000.00
DEP Personnel	\$16,162.01	\$35,000.00
Contracts	\$279,838.71	\$610,014.00
Grants	\$154,972.78	\$463,356.00
Electricity	\$2,009.02	Included in Contracts
Hydrated Lime	\$19,218.89	Included in Contracts
Total	\$472,201.41	\$1,118,370.00
Adjusted Total		\$900,000.00

Reclamation Fee Calculation

Based on the June 30th balance in the Reclamation Fee O & M Trust Account (\$3,809,109.81), the civil penalties (\$182,421.39) to be transferred, the projected revenue (\$555,000.00) and expenses (\$900,000.00), DEP has determined that **a reclamation fee of \$100 per acre is still needed for calendar year 2021**. This will maintain the minimum balance in the Reclamation Fee O & M Trust Account of \$3,000,000 as required under 25 Pa. Code § 86.17(e)(3).

For the purpose of determining the reclamation fee amount, DEP did not include the authorized contingency of \$175,000.00 for contracts and grants in the calculation. DEP will monitor the balance in Reclamation Fee O & M Trust Account to determine if it is approaching the \$3,000,000 threshold. If it is likely that the balance will reach the threshold, DEP will transfer additional civil penalty money or funds from the LRFG premiums to maintain the balance above the required minimum.

Reclamation Fee Arithmetic
TABLE 8

Pluses

Balance Above \$3 M	\$809,109.81
Civil Penalties (19-20)	\$182,421.39
Projected Income	\$555,000.00
Total	\$1,546,531.20

Minuses

Expected Expenditures 2020-2021	\$900,000.00
Expected Expenditures Second half 2019	\$450,000.00
Total	\$1,350,000.00

Calculated Difference	\$196,531.20
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2022 Projection

Based upon the spending and income trends, DEP projects that a reclamation fee will likely need to continue without an additional revenue source. Considering the increasing trend of expenses, additional funding may eventually be needed to maintain the minimum balance of \$3,000,000.

ABS Legacy Sites Trust Account

The ABS Legacy Sites Trust Account was established under 25 Pa. Code § 86.187(a)(2)(i), effective August 30, 2008. Table 9 presents the income and year-end balance in the ABS Legacy Site Trust Account from 2012 to 2020.

TABLE 9		
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
June 30, 2015	\$10,448.00	\$5,707,114.48
June 30, 2016	\$17,996.58	\$5,725,111.06
June 30, 2017	\$44,308.64	\$5,769,419.70
June 30, 2018	\$82,955.76	\$5,852,375.46
June 30, 2019	\$140,254.82	\$5,992,630.28
June 30, 2020	\$107,328.62	\$6,099,958.90

Report Process

On September 19, 2020, notice of availability of the draft report was published in the *Pennsylvania Bulletin* see 50 PA.B. 4819 (September 19, 2020).

Comments were received from the Pennsylvania Coal Alliance (PCA). The comment letter is attached to this report.

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It is anticipated that the concerns raised in the comment letter will be addressed in the upcoming months and there will be follow-up interaction with PCA and the Mining and Reclamation Advisory Board (MRAB). The comments did not have an impact on the reclamation fee which will remain at \$100 for 2021. DEP reviewed the draft report with the MRAB on October 22, 2020.

October 19, 2020

Department of Environmental Protection
Policy Office
P.O. Box 2063
Harrisburg, PA 17105-2063

Dear Policy Office:

I am writing regarding the Pennsylvania Department of Environmental Protection's (PA DEP) draft Fiscal-Year Report for the Reclamation Fee O & M Trust Account, as announced in 50 Pa.B. 4819 on September 19, 2020.

The Pennsylvania Coal Alliance (PCA) is the principal trade organization representing underground and surface bituminous coal operators in Pennsylvania, as well as other associated companies that rely on coal mining and a strong coal economy. PCA member companies produce nearly 90 percent of the bituminous coal mined annually in Pennsylvania, which in 2019 was the third largest coal producing state in the nation.

Between 1982 and 2001 PA DEP administered an Alternative Bonding System (ABS) to bond surface coal mine sites for the correction of any environmental or safety hazards in the event of a forfeiture. Under ABS, bond amounts were determined by a flat per-acre rate and supplemented by a non-refundable per acre reclamation fee paid by the operator. During that time, a number of operators forfeited their operations and the bond money was found to be insufficient to complete reclamation. ABS was determined to be an inadequate way to calculate bonds, and financial responsibility for treatment of the forfeited sites was subject to a federal court challenge.

Due to the inadequacy of ABS, PA DEP converted to a full-cost Conventional Bonding System (CBS) in 2001, in which individual bonds are calculated on a site-specific basis to guarantee financial responsibility for any post-mining reclamation work. Annually PA DEP publishes Bond Rate Guidelines that reflect the current cost of reclaiming a site, ensuring adequate funding is available to the Commonwealth in the event a current operator forfeits a site. All current active mine sites are adequately and fully bonded by CBS.

The U.S. Court of Appeals for the Third Circuit ruled the Commonwealth is responsible for costs associated with reclamation and water treatment activities at the aforementioned sites that were forfeited between 1982 and 2001. This resulted in the Department establishing of the Reclamation Fee O&M (Operations and Maintenance) Trust Account in August of 2008 and depositing roughly \$4 million in unspent reclamation fees from the years of ABS into that account. In addition, the restricted ABS Legacy Sites Trust Account was established to fund the perpetual cost of water treatment at ABS sites. At the same time the Reclamation Fee O&M Trust Account and the ABS Legacy Sites Trust Account were established, the regulations also provided for an annual adjustable reclamation fee on surface

bituminous coal operations to ensure that there are sufficient revenues to maintain a balance in the Reclamation Fee O&M Trust Account of at least \$3,000,000, and until the ABS Legacy Sites Trust Account is actuarially sound.

During the rulemaking process establishing the two accounts and annual adjustable fee, the Mining Reclamation Advisory Board encouraged that the Department find an alternative, permanent source of revenue, as current coal operations are fully bonded and have no fiduciary responsibility for sites they do not own and did not abandon. Assessing a reclamation fee of \$100 per new acre on new and expanding bituminous surface operations imposes an inequitable financial burden, discourages new operations, and makes Pennsylvania coal production less competitive with that of other coal producing states.

As noted in the draft Fiscal-Year Report for the Reclamation Fee O & M Trust Account, coal production from surface acreage has steadily declined in recent years. In 2009, Pennsylvania's surface bituminous coal production was close to eight million tons, and a decade later production has drastically dropped to just shy of three million tons. Absent regulatory reforms that encourage business growth, coupled with any increase in cost to obtain a permit, assessing a fee on new acreage at surface coal mines will not be a reliable funding source if there are few to no operations on which the Department can assess a fee.

While PCA recognizes §86.17 authorizes the annual adjustment of the reclamation fee, we encourage PA DEP to find a permanent alternative funding source for the account and support the development of innovative approaches to improving our state's landscape and waterways while maintaining the viability of the mining industry. As previously suggested, in lieu of a permanent source of funding, PA DEP could develop a program that incentivizes all existing operators to reclaim abandoned sites and associated water treatment needs. Developing pound for pound offsets at appropriate mine sites for the treatment of O&M sites, or contributions, financially or otherwise, to groups interested in reclaiming ABS sites is an avenue that should be explored, especially in the absence of a secure and reliable funding source for the Account.

Thank you in advance for your consideration of the above comments as they relate to the 2020 draft Fiscal-Year Report for the Reclamation Fee O&M Trust Account. If you have any questions or would like to discuss further, please do not hesitate to contact me at gleason@pacoal.org at your earliest convenience.

Sincerely,



Rachel Gleason
Executive Director
Pennsylvania Coal Alliance