

Reclamation Fee Fiscal Year Report 2018

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.

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, 2018, was \$3,856,932.52. This balance does not include the civil penalties (\$232,265.92) DEP has collected in fiscal year 2017-2018 that was transferred to the account.

PREVIOUS YEAR REVENUE

Reclamation Fee

The Reclamation Fee for calendar year 2018 was \$0 per acre.

Interest

DEP credited interest on the funds in the Reclamation Fee O & M Trust Account to the account in the amount of \$54,984.68 from July 2017 through June 2018.

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 2017 through June 2018 is shown in Table 1.

TABLE 1	
Month	Coal Civil Penalties
Jul-17	\$20,744.00
Aug-17	\$25,086.00
Sep-17	\$10,095.00
Oct-17	\$20,850.48
Nov-17	\$49,246.54
Dec-17	\$34,868.48
Jan-18	\$11,856.52
Feb-18	\$23,319.98
Mar-18	\$12,772.98
Apr-18	\$8,964.98
May-18	\$20,557.98
Jun-18	\$6,127.50
Total	\$244,490.44

The amount of civil penalty dollars eligible for transfer to the Reclamation Fee O & M Trust Account is \$232,265.92 or 95% of the collected civil penalties. The transfer of this amount was completed in August 2018 with the remaining 5% transferred to the Environmental Education Fund.

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 Land Reclamation Financial Guarantee (LRFG) Account into the Reclamation Fee O & M Trust Account. \$206,851.80 has accrued in the LRFG account during fiscal year 2017-2018. DEP will transfer these funds during fiscal year 2018-2019.

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 this year due to the available civil penalty revenue.

PREVIOUS YEAR O & M COSTS

DEP incurred O & M costs in five categories: personnel, lab, grants, contracts, and materials resulting in expenditures of \$458,840.02 in 2017-2018.

Personnel Costs

DEP expended \$31,149.99 from the Reclamation Fee O & M Trust Account for personnel from July 2017 through June 2018 to monitor several ABS Primacy bond forfeiture sites.

Lab Costs

No lab costs were billed 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 2017 through June 2018.

Grants

DEP awarded grants in the amount of \$174,515.39 from July 2017 through June 2018.

Contracts

Contract costs for operation and maintenance of the existing ABS treatment facilities for July 2017 through June 2018 totaled \$236,504.69. In addition, DEP made a direct payment for electricity in the amount of \$1,761.18.

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 2017 through June 2018 in the amount of \$14,908.77.

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 1423, 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, the projected number of acres subject to the reclamation fee for 2019 is estimated at 1,000. 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

PROJECTED REVENUE

Reclamation Fee

The projected revenue for fiscal year 2018-2019 from the reclamation fee is \$0 as the current fee remains at \$0 per acre through the end of 2019.

Interest

DEP estimates that interest on the money in the Reclamation Fee O & M Trust Account will generate about \$60,000 in income for the 2018-2019 fiscal year.

Civil Penalties

DEP projects that about \$200,000 will be available from civil penalty revenue for the 2018-2019 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 \$150,000 during the fiscal year. This estimate is based upon the revenue from fiscal year 2017-2018 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.

PROJECTED EXPENDITURES

The total projected expenditures based on the approved spend plan for fiscal year 2018-2019, as explained in further detail below, is \$1,318,923.00.

Personnel Costs

The total projected debit for DEP personnel costs from the Reclamation Fee O & M Trust Account from July 2018 through June 2019 is \$18,000. 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 2018 through June 2019 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 \$382,909 for O & M from July 2018 through June 2019. This includes projected costs (\$180,319) for the O & M for the C & K sites (Table 3) where the Clean Streams Foundation is the trustee.

TABLE 3	
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 anticipates that it will execute a grant agreement with the Clean Streams Foundation for the O & M for the sites in Table 4.

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

DEP projects that the O & M for these facilities will cost \$202,590 per year. This amount is included in the projected cost for contracts below, in case a grant agreement is not put in place. For the purpose of planning, DEP has received authorization for \$50,000 for unexpected grants. However, DEP has not included this amount in the reclamation fee calculation.

Contracts

DEP expects contract costs from July 2018 through June 2019 to total \$908,014. The contracts cover the sites in Table 5.

Company	Site Name	Contract Amount
H & D	Merola	\$11,000
Gurosik Coal Co.	King	\$50,000
REM	Truittsburg	\$60,000
REM	Orcutt Smail	\$160,000
Pengrove	Martin Bell	\$50,000
Glacial	Blair	\$15,000
Avery Coal Co. Inc.	Pine Glen	\$25,997
Thompson Bros.	Alder Run	\$53,640
PA Energy Corp.	Horse Hill Strip	\$2,409
Acme Drilling	Broom Strip	\$6,000
Delta Mining Inc.	Maust Mine	\$2,527
D & E Construction	Moore	\$1,680
Delta Mining Inc.	Bashore	\$15,938
American Development	Job 33	\$30,604
Met Co. Mining & Minerals Inc.	Ankey Mine	\$57,000
Delta Mining Inc.	Hay 2	\$2,496
H & H Coal Co.	James E. Long	\$12,000
Laurel Land Development	McDermott	\$5,941
Big J Mining Inc.	Sorber Mine	\$20,085
Windber High Std. Coal Co.	Brant Strip	\$2,965
L & B Coal Co	No. 5	\$1,688
C & O	Burkholder	\$1,880
Power Operating	Vought	\$7,000
Pengrove	Ruth Mine	\$300,000
Moshannon Passive Systems*	Multiple	\$12,164

**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.*

The K & J Coal Westover & Gaber Brown sites were removed from the list as these treatment trusts are fully funded. The “Moshannon Offset Site” was also removed because consideration and study are underway for an offset to treat an equal load of acid mine drainage contaminants in a more cost-effective and beneficial location.

For the purpose of planning, DEP has received authorization for \$50,000 for unexpected contracts. However, DEP has not included this amount in the reclamation fee calculation.

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

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.

TABLE 6			
Fiscal Year	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	-	-

Based on the projected expenses for the past six fiscal years, DEP has concluded that taking 60% of the spend plan cost is a reasonable prediction of the actual expenses. Using this approach, the projection of the expenses in the 2018-2019 fiscal year will be about \$800,000. (This was determined by taking 60% of \$1,318,923.00 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 \$1,800,000.00 that could be transferred as well as money from the LRFG account.

Financial Summary

TABLE 7		
Income	FY 2017-2018	FY 2018-2019 (Projected)
Interest	\$54,984.68	\$60,000.00
Reclamation Fee	\$0.00	\$0.00
Civil Penalties	\$232,265.92	\$200,000.00
Other (LRFG Interest)	\$206,851.80	\$150,000.00
LRFG Premium Transfer	\$0.00	\$0.00
Total	\$494,102.40	\$410,000.00

Expenses	FY 2017-2018	FY 2018-2019 (Projected)
DEP Lab Costs	\$0.00	\$10,000.00
DEP Personnel	\$31,149.99	\$18,000.00
Contracts	\$236,504.69	\$908,014.00
Grants	\$174,515.39	\$382,909.00
Electricity	\$1,761.18	Included in Contracts
Hydrated Lime	\$14,908.77	Included in Contracts
Total	\$458,840.02	\$1,318,923.00
Adjusted Total		\$800,000.00

Reclamation Fee Calculation

Based on the June 30 balance in the Reclamation Fee O & M Trust Account (\$3,856,932.52), the civil penalties (\$232,265.92) to be transferred, the projected revenue (\$410,000.00) and expenses (\$800,000.00), DEP has determined that **a reclamation fee is not needed for calendar year 2019**. 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 \$100,000 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	\$856,932.52
Civil Penalties (17-18)	\$232,265.92
Projected Income	\$410,000.00
Total	\$1,499,198.44

Minuses	
Expected Expenditures 2018-2019	\$800,000.00
Expected Expenditures Second half 2019	\$400,000.00
Total	\$1,200,000.00

Calculated Difference	\$299,198.44
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2020 Projection

Based upon the spending and income trends, DEP projects that a reclamation fee increase may be necessary beginning in January 2020. 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 2018.

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

Report Process

On September 15, 2018, notice of availability of the draft report was published in the *Pennsylvania Bulletin*.

Comments were received from the Pennsylvania Coal Alliance (PCA) and PennFuture. These comments are available on the eComment webpage:

<https://www.ahs.dep.pa.gov/eComment/ViewComments.aspx?enc=8YWleHIdijzUAfiG53EkjRMt%2bGIqtETppmku2xecwK8%3d>

An overview of the comments submitted by PennFuture can be summarized into three main topics:

1. The draft report fails to account for all of the ABS Legacy Sites.
2. DEP should retain the original methodology of using the full amount of the Reclamation Fee O & M Trust Account's projected expenses in determining the reclamation fee rate.
3. DEP should transfer the \$1.3 million in unused civil penalties to the ABS Legacy Site Trust Account.

Based on the comments, DEP added a disclaimer that not all of the ABS Legacy Sites are listed in the report. The comments submitted by PCA resulted in the scheduling of a meeting with the MRAB RLT Committee to continue to explore options that will provide for an alternative funding source to maintain the account. The comments did not have an impact on the reclamation fee which will remain at \$0 for 2019. DEP reviewed the draft report with the Mining and Reclamation Advisory Board (MRAB) on October 25, 2018.