

**MINING AND RECLAMATION ADVISORY BOARD**  
**Thursday, October 22, 2015**  
**Rachel Carson State Office Building**  
**Conference Room 105**  
**Harrisburg, PA**

***NOTE:*** *This meeting was held in an Openscape Web/Conference Call format. Most of the meeting attendees shown below participated in person, except where noted.*

**Voting Members/Alternates:** Robert Burns (Member – Vice-Chairperson); Jack Chamberlin (Member); Katherine Hetherington Cunfer (Alternate); George Ellis (Alternate); Duane Feagley (Alternate); Richard Fox (Alternate – connected via Openscape); Rachel Hursh (Alternate); Darrel K. Lewis (Alternate); Jonathan Lutz (Alternate – connected via Openscape); David Osikowicz (Member – Chairperson); Tara Smith (Alternate); Burt Waite (Member); and Benjamin Wren (Alternate – connected via Openscape)

**Other Attendees:** Bill Allen (DEP – Mining Programs); Mike Bodnar (DEP – California District Mining Office); Brian Bradley (DEP – Abandoned Mine Reclamation); Tom Callaghan (DEP – Mining Programs, Director); Bruce Carl (DEP – Mining Programs); Sarah Clark (DEP – Legislative Liaison); Laura Edinger (DEP – Policy Office); Glenn Florence (DEP – Active and Abandoned Mine Operations); Josie Gaskey (PA Aggregates and Concrete Association (PACA)); Jennifer Gulden (DEP – Mining Programs); Joseph Iole (DEP – Regulatory Counsel); Geoff Lincoln (DEP – Mining Programs); Patrick McDonnell (DEP – Policy Office, Director); Richard Morrison (DEP – Active and Abandoned Mine Operations, Deputy Secretary); Jeff Painter (PA Game Commission (PGC)); Shuvonna Perry (DEP – Mining Programs); Paul Pocavich (DEP – Mining Programs); John Quigley (DEP Secretary); Dan Snowden (DEP – Mining Programs; MRAB Liaison); John Stefanko (DEP – Executive Deputy Secretary for Programs); and Jason Staloski (PA House of Representatives – for Rep. Pamela Snyder).

### **Meeting Called to Order/Introductions**

Mr. Osikowicz called the meeting to order at approximately 10:00 a.m. Board members introduced themselves, as did all DEP personnel and visitors in the audience.

### **Approval of Minutes**

The Board voted unanimously to approve the minutes from its July 9, 2015 meeting.

### **Correspondence**

There was no correspondence recorded.

### **Committee Reports**

- **Policy Committee:** No report
- **Regulation, Legislation and Technical Committee:** No report.

- **Reclamation Committee:** No report.

### **Visit from DEP Secretary John Quigley**

DEP Secretary Quigley arrived for a brief visit to the meeting, accompanied by John Stefanko (Executive Deputy Secretary for Programs) and Sarah Clark (Legislative Liaison). He mentioned that the current regulatory package involving coal fees would be advanced as quickly as possible. He also stated that it would be necessary to revisit this package every three years, in order to determine whether additional actions regarding these fees would be needed.

### **Technical Guidance Update**

Mr. Allen reported on the status of DEP guidance documents:

- **Pre-Applications:** This guidance document is in its preliminary stages of development.
- **Engineering Manual:** This manual is undergoing internal review.
- **Blasters' License Suspension:** This guidance document is being finalized.
- **Coal Ash:** Comments regarding this guidance document are still being received for review.
- **General Permit (GP) Materials:** This guidance document is under development.
- **Civil Penalties:** A proposal is still being sought for this guidance document.
- **Government-Financed Construction Contracts (GFCCs):** This guidance document is now at the beginning of the final development stage.

### **National Pollutant Discharge Elimination System (NPDES) Permitting Update**

Mr. Allen reported on the status of NPDES permits. As of October 5, 2015, 611 draft permits have been sent to the United States Environmental Protection Agency (US EPA), which commented on or objected to 349 of these permits. The US EPA continues to have issues with some of these NPDES permits due to the following:

- ***Checklist***
- ***Remining and Total Maximum Daily Loads (TMDLs)***
- ***Sediment Pond Sampling on TMDLs***
- ***Detection Limits***
- ***June 11 Letter Update:***
  - ***Monthly Calls with US EPA:*** *These have ceased for the moment, due to staff losses at the Federal agency.*
  - ***Osmotic Pressure Levels Based on Conductivity Data:*** *the formula for osmotic pressure is the primary concern – it is said to be too conservative. The Cambria District Mining Office tested this formula for some of its NPDES permit sites – the tests revealed higher numbers than normal.*

Overall NPDES permitting statistics revealed that 321 permits have been issued with comments from US EPA, and 222 permits issued without comment from US EPA. There are still 23 NPDES permits that could be issued with comments from US EPA, while 34 such permits in this category could be issued without comment. Finally, there are 5 NPDES permits that are pending with comments from US EPA, along with 6 such permits that are pending without US EPA comment (these are also awaiting 30 days). Those NPDES permits that fall into the “No Comment” category include 99 with “no comment” letters.

### **Historical Application Progress**

Mr. Allen reported on coal mining permit applications. He reported that as of October 5, 2015, 1,480 such permits (out of 1,629 in total) have been disposed. The 149 permits that remain for action include 90 renewals and 6 annual bond reviews. The only District Mining Offices that have outstanding permits requiring action are Pottsville (58 permits) and California (91 permits).

### **Permit Decision Guarantee (PDG) (Coal Mining Permit Applications)**

Mr. Allen reported on the progress of the PDG program with coal mining permit applications among District Mining Offices. The breakdown is as follows:

- **Knox**: 94.9% efficiency (707 of 767 permit applications disposed)
- **California**: 87.1% efficiency (899 of 1,316 permit applications disposed)
- **Moshannon**: 85% efficiency (1,015 of 1,161 permit applications disposed)
- **Cambria**: 83% efficiency (1,248 of 1,461 permit applications disposed)
- **New Stanton**: 79.4% efficiency (580 of 753 permit applications disposed)
- **Pottsville**: 68.5% efficiency (783 of 1,119 permit applications disposed)

Board members recommended that this information be maintained for future meetings.

### **Trust Agreement/Bond Status**

Mr. Allen provided a status update on the Alternative Bond System (ABS) Trust Legacy Account, from January 2007 through September 2015. The results are as follows:

- ***For January 2007, there were 56 total agreements: 31 bonds worth \$84.1 million; 14 fully-funded trusts worth \$38.6 million; and 11 partially-funded trusts worth \$39 million.***
- ***For January 2011, there were 107 total agreements: 64 bonds worth \$192 million; 30 fully-funded trusts worth \$52.5 million (below the projected \$69.1 million); and 10 partially-funded trusts (with 3 ABS sites) worth \$18.5 million (sharply below the projected \$52.8 million).***
- ***For March 2015, there were 133 total agreements: 76 bonds worth \$225 million; 39 fully-funded trusts worth \$73 million (slightly below the projected \$77 million); and 15 partially-funded trusts (with 3 ABS sites) worth \$60.6 million (sharply below the projected \$127 million).***

- *For September 2015, there were 133 total agreements: 75 bonds worth \$224.5 million; 40 fully-funded trusts worth \$73 million (slightly below the projected \$77.5 million); and 51 partially-funded trusts (with 3 ABS sites) worth \$60.9 million (sharply below the projected \$142 million).*

### **Land Reclamation Financial Guarantees (LRFG)**

Mr. Allen provided information on LRFG permits. Currently, there are 88 LRFG operators (up from 85), operating with 130 LRFG permits. The average amount underwritten for each LRFG operator is \$246,462.00 (with a maximum of \$2.42 million), while the average amount underwritten for each LRFG permit is \$159,475.00 (with a maximum of \$2.1 million). The total amount underwritten for LRFG permits in June 2015 was \$21.1 million; this amount has increased to \$21.7 million, as of October 2015. Mr. Allen noted that some new LRFG permits have been issued, totaling approximately \$100,000.00

### **Reclamation Fee Operations and Maintenance (O & M) Trust Account**

Next, Mr. Allen reported on revenues from the Reclamation Fee O & M Trust Account, in terms of coal civil penalties and interest – all for the 3<sup>rd</sup> quarter of 2015. For July 2015, \$12,907.00 was collected in coal civil penalties, earning \$537.88 in interest. For August 2015, \$13,265.00 was collected in coal civil penalties, earning \$529.84 in interest. Finally, for September 2015, \$16,925.00 was collected in coal civil penalties, earning \$518.05 in interest. For FY 2015 in sum, an amount of \$43,097.00 in coal civil penalties, earning \$1,585.77 in interest, was collected for the Reclamation Fee O & M Trust Account.

It was noted that the Reclamation Fee O & M Trust Account had additional funds, per the LRFG fund. In August 2015, an amount of \$51,028.85 was transferred from the LRFG fund to the Reclamation Fee O & M Trust Account. Additionally, there was \$6,423.20 in accrued interest that will be transferred. It was also noted that \$165,732.25 in funds from FY 2014 was transferred to the Reclamation Fee O & M Trust Account as well.

As of August 31, 2015, the balance in the Reclamation Fee O & M Trust Account stands at \$3,328,205.19.00 Expenditures for FY 2015-2016 to date, totaled \$137,812.00; projected expenses for the remainder of the current fiscal year are slated to total \$941,785.00. Mr. Allen noted that the preceding figures did not reflect the \$165,732.25 collected in civil penalties

Upon initial review, the Board concluded that the \$100/acre reclamation fee in the draft Reclamation Fee Report was appropriate, unless other funds are provided. Mr. Allen indicated that the Reclamation Fee Report, and hence the 2016 fee amount shown in that report, will need to be finalized by December 1, 2015. Board members voted to accept the coal reclamation fee proposal increase to \$100.00/acre. The Board also stressed that if the additional funding comes, even after December 1, 2015, that the reclamation fee should be reduced accordingly. It was also noted that for several years, an appropriation of \$2 million has been requested from the General Assembly for placement into the coal mining program; however, this has not occurred, to date.

## Regulatory Update

Mr. Allen reported on the status of various regulatory packages:

- **Act 97 and 157:** The Environmental Quality Board (EQB) approved this regulatory package at its April 21, 2015 meeting. IRRC approved the regulation on July 9, 2015 and it was published, making the regulation effective, on August 22, 2015.
- **Remining (Subchapters F and G):** The EQB approved this regulatory package during its May 20, 2015 meeting. The regulations are open for public comment. However, there were some issues regarding the drafting of the rule; the even- and odd-numbered values for statistical figures are different (a subscript was changed in Chapter 87.212, but this figure is fine in corresponding Chapters 88.312 and 90.312 – this all relates to the procedure for calculating a single observation/monthly trigger). The preamble and annex for this regulatory package also appear on the EQB web site for review. The revised regulatory package was approved at the EQB's September 15, 2015 meeting.
- **Office of Surface Mining (OSM) Program Consistency:** The Board's RLT Committee plans to continue evaluating this regulatory package.
- **Water Supply Replacement (Chapters 87 and 88):** This regulatory package is still being developed and reviewed.
- **Handling and Use of Explosives (Chapters 210 and 211):** The EQB approved this regulatory package at its September 15, 2015 meeting.
- **Coal Fees:** Fees are discussed in further detail in the next section.

## Coal Fees

Mr. Allen reported that the 3-Year Coal Fees report was presented to the EQB at its May 20, 2015 meeting. He mentioned where the monies from the coal fees are deposited (i.e., the Surface Mining Conservation and Reclamation Act (SMCRA) Fund; the Coal Refuse Fund; the BMCSLA Fund; and the Clean Water Fund (for NPDES Fees)). Overall revenues from coal fees for the previous four fiscal years (one of these, FY 2015-2016 is partial) are as follows (all monies mentioned here go to the SMCRA Fund):

- ***FY 2012-2013: \$54,417.00***
- ***FY 2013-2014: \$166,110.00***
- ***FY 2014-2015: \$100,962.43***
- ***FY 2015-2016 (through September – first 3 months): \$52,445.24***

Clean Water Fund mining fee revenues were as follows:

- ***FY 2012-2013: \$247,800.00***
- ***FY 2013-2014: \$523,296.00***

- **FY 2014-2015: \$474,729.00**
- **FY 2015-2016: \$129,718.00**

At the end of this presentation, Mr. Chamberlin mentioned that the Board’s Regulatory, Legislative and Technical Committee would need to meet prior to the full Board meeting, to discuss the regulations regarding coal fees. Dates of January 7<sup>th</sup>, 2016 and January 21<sup>st</sup>, 2016 were agreed upon by Committee members.

**Bond Rate Guidelines Update**

Mr. Carl reported on the status Bond Rate Guidelines for mine reclamation sites. The figures that he cited were based upon construction contract costs, and are applicable to the variables of grading, revegetation and, mulch, seed and bed preparation, along with seed costs.

On grading costs, there are nine reclamation projects covering 2,674,579 cubic yards. The project costs range from \$.69/cubic yard to \$1.70/cubic yard, with a weighted average of \$1.08/cubic yard (following the low bids of \$1.09/cubic yard, \$.89/cubic yard and \$.86/cubic yard). For projects of 500 feet or less, the weighted average cost for grading was \$.91/cubic yard.

For larger projects, there was additional yardage of 915,110 cubic yards, with grading costs ranging between \$1.50/cubic yard and \$4.00/cubic yard. The three lowest bids for these projects were \$2.87/cubic yard, \$2.88/cubic yard and \$3.73/cubic yard, with a weighted average of \$3.16/cubic yard. Three more of these projects are open for bid, with a total of 1,389,709 acres for grading.

On reclamation costs, there are seven projects, covering 223 acres for revegetation. The costs of the three lowest bids for revegetation ranged between \$1,564/acre and \$4,338.97/acre, with a weighted average cost of \$1,896.00/acre.

On mulch, seed bed preparation and seed costs, the following apply:

- **Mulch Costs per Acre:** Lowest bid was \$842.00/acre, with a three-year weighted average of \$833.00/acre.
- **Seed Bed Preparation Costs per Acre:** Lowest bid was \$190.34/acre, with a three-year weighted average of \$249.77/acre.
- **Seed Costs per Acre:** Lowest bid was \$254.91/acre, with a 3-year weighted average of \$293.45/acre.

2013-2015 Bond Rate Data with 2016 Projections is included in the following table (from Mr. Carl’s presentation):

	Unit	2015 wgt ave	2015 amt	13-15 Weighted	2013	2014	2015	2016
Grading1	Yd	\$1.08	1,284,819	\$0.93	\$0.90	\$0.90	\$0.95	\$0.90
Grading2	Yd				\$1.20	\$1.20	\$1.20	\$1.50
Select Grading	Acre			\$1,700.76	\$1,075.00	\$1,075.00	\$1,700.00	\$1,700.00
Reveg	Acre	\$1,849.32	154.9	\$1,871.36	\$1,800.00	\$1,800.00	\$1,900.00	\$1,850.00

Trees	each	\$2.41	60,585.0	\$2.19	\$0.15	\$0.15	\$0.75	\$0.75
Ditch Ex	Yd	\$6.89	5,725	\$6.28	\$7.00	\$7.00	\$7.00	\$6.25
Jute	sq yd	\$1.80	480	\$3.88	\$3.80	\$3.80	\$4.00	\$3.80
HV Erosion	sq yd	\$2.97	3,875	\$2.99	\$3.80	\$3.80	\$3.80	\$3.00
AASHTO No. 1	Ton	\$21.83	1,635	\$28.92	\$29.00	\$29.00	\$29.00	\$29.00
AASHTO No. 57	Ton	\$26.67	25	\$32.82	\$30.00	\$30.00	\$30.00	\$33.00
R3	Ton			\$37.09	\$33.00	\$33.00	\$33.00	\$37.00
R4	Ton	\$31.77	61.0	\$28.28	\$25.00	\$25.00	\$25.00	\$28.00
R5	Ton	\$32.20	32	\$27.10	\$25.00	\$25.00	\$27.00	\$27.00
Geotex	sq yd	\$2.24	4,365	\$2.47	\$2.80	\$2.80	\$2.80	\$2.50
PVC lining	sq yd				\$12.00	\$12.00	\$12.00	\$12.00
Lime	Ton	\$51.91	396	\$44.81				
Subdrain	foot	\$24.60	845	\$20.41	\$19.00	\$19.00	\$19.00	\$20.00
Mulch	Acre	\$749.54	154.9	\$818.06				
Seed Bed Prep	Acre	\$190.34	116.3	\$249.77				
Seed	Acre	\$254.91	220.4	\$293.45				

	2016	2016
Reveg		
Tot	\$1,850.00	\$1,850.00
Mulch	\$800.00	\$800.00
Seed		
Bed	\$250.00	\$250.00
Seed	\$300.00	
	\$500.00	\$800.00
	Pasture	w/seed

### Bureau of Abandoned Mine Reclamation (BAMR) Status Report/Abandoned Mine Lands (AML) Grant Funding Status

Mr. Bradley provided details about BAMR AML construction projects. For calendar year 2014, there were 219 BAMR AML projects completed, covering 1,101.2 acres and costing \$30,222,922.00. Of the aforementioned monetary figure, \$28,782,025.00 came from Title IV monies, with \$23,770.00 coming from Collected Bond monies, \$91,035.00 coming from Bond Forfeiture and State Program monies and, \$1,413,878.00 coming from Growing Greener monies.

For calendar year 2015, 18 BAMR AML projects have been completed to date. The projects covered 221.3 acres, costing \$7,267,261.00. Of this monetary figure, \$7,260,925.00 came from Title IV monies and, \$7,623.00 came from Collected Bond monies. For calendar year 2015, there are also 37 contracts pending for projects, covering 1,033.4 acres and costing \$45,001,705.00. Of this monetary figure, \$40,665,314.00 will come from Title IV monies, \$2,000,000.00 will come from AMD Set-Aside monies, \$5,046.00 will come from Collected Bond Monies, \$32,754.00 will come from Bond Forfeiture and State Program monies and, \$2,298,591.00 will come from Growing Greener monies.

Future BAMR AML projects will involve 88 contracts covering 2,822.4 acres and costing \$137,985,023.00. Of this monetary figure, \$136,394,523.00 will come from Title IV monies, \$1,500,000.00 will come from AMD Set-Aside monies, and \$90,500.00 will come from Collected Bond monies.

Mr. Bradley also mentioned that the Federal Office of Surface Mining (OSM) would distribute grant monies to States in December and, that Pennsylvania's share of these monies would likely be the same as for the previous year, or less.

### **Clean Energy Plan Presentation**

Mr. McDonnell provided information about the US EPA's Clean Power Plan and Pennsylvania's efforts to develop a similar plan of its own. He explained the Clean Power Plan, via its origins (i.e., a US EPA Final Rule covering carbon emission, plan development and goals specific for Pennsylvania). Mr. McDonnell noted that DEP is accepting comments on Pennsylvania's implementation of the Clean Power Plan through November 12. For additional information, Mr. McDonnell's presentation on the Clean Power Plan is available online.

### **Dates for 2016 Board Meetings**

The Board agreed on the following dates for its meetings to be held during 2016:

- *January 21, 2016*
- *April 21, 2016*
- *July 21, 2016*
- *October 20, 2016*

### **Open Time**

Board members expressed interest in seeing the OSM Stream Protection Rule. There were issues with this rule, related to assessments (the data collection and evaluation method in the rule is said to be one that is not preferred), general language (a need to make this plainer) and air blast limits near streams. Mr. Allen stated that the Rule would be shared with Board members as soon as it became available for posting.

### **Adjournment/Next Meeting**

The Board voted to adjourn the meeting at approximately 12:10 p.m. The Board will hold its next meeting on January 21, 2016 in Harrisburg.