

AGGREGATE ADVISORY BOARD (BOARD)
Wednesday, August 3, 2016
Glenn O. Hawbaker Facility
Pleasant Gap, PA

VOTING MEMBERS OR ALTERNATES PRESENT: Rep. Bryan Barbin (PA House of Representatives – Member); Michael Hawbaker (Glenn O. Hawbaker and Associates/PA Aggregates and Concrete Association (PACA) – Alternate); Katie Hetherington-Cunfer (Citizens Advisory Council (CAC), Executive Director – Alternate); Paul Detwiler, III (New Enterprise Stone and Lime Co., Inc. - Alternate); Jonathan Lutz (PA House of Representatives – Alternate); Rep. Sandra Major (PA House of Representatives – Member); Joanne Manganello (PA Senate – Alternate); William Ruark (Meshoppen Stone, Inc. – Member); Todd Schmidt (PA Bluestone Association – Alternate); John Stefanko (DEP – Executive Deputy Secretary for Programs/Acting Deputy Secretary – Active and Abandoned Mine Operations (AAMO) – Alternate; Board Chairperson); Thaddeus Stevens (CAC – Member); Peter Vlahos (PACA – Alternate); and Burt Waite (CAC – Member)

OTHER ATTENDEES: Bill Allen (DEP – Mining Programs); Dana Aunskt (DEP – Deputy Secretary for Water Programs); Tom Callaghan (DEP – Mining Programs, Director); Tylerc Cook (DEP – Mining Programs (Intern)); Richard Fox (PA House of Representatives - Staff); Josie Gaskey (PACA); Timothy Gourley (Dietz-Gourley Consultants); Andrew Gutshall (Lehigh Hanson); Charley Hall (PA House of Representatives – Staff); Shuvonna Perry (DEP – Mining Programs on conference call); William Plassio (DEP – District Mining, Director); Paul Pocavich (DEP – Mining Programs – on conference call); Keith Previc (DEP- Mining Programs); Michael Smith (DEP – District Mining Manager (Moshannon Office)); Daniel E. Snowden, D.Ed. (DEP – Mining Programs; Board Liaison); and Michael Welch (Glenn O. Hawbaker Associates).

CALL TO ORDER/INTRODUCTIONS

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

PACA ANTI-TRUST STATEMENT

Mr. Vlahos reminded the Board that the non-coal mining industry is required to abide by PACA’s anti-trust statement, both in letter and spirit. This requirement extends to industry members and alternates on the Board.

APPROVAL OF MINUTES

The Board voted unanimously to approve the minutes from its May 4 meeting.

CORRESPONDENCE

Mr. Stefanko inquired as to whether the Board had received any correspondence since its last meeting. Board Liaison Dr. Snowden stated that no correspondence had been received during that period.

COMMITTEE REPORTS:

Mr. Detwiler reported that Board's Regulatory, Legislative and Technical (RLT) Committee had met on two occasions (June 9 and June 30) to discuss proposed changes to the Non-Coal Fees Regulatory package. The RLT Committee developed a Recommendation Document as a result of these meetings. This document was then shared with the Board which voted unanimously to accept it. From here, a letter of support from the DEP Secretary was requested and Mr. Stefanko stated that such a letter was forthcoming. Finally, Mr. Detwiler mentioned that the RLT Committee would need at least 2 additional meetings with DEP in August or September to provide input for finalizing the Non-Coal Fees Regulatory package, based on the Recommendation Document.

TRAVEL PROCEDURES

Ms. Perry shared information regarding Travel Expenses with the Board. The discussion was about the various forms that Board members and alternates should use when traveling and how to complete these forms correctly.

UPDATES

Mr. Allen shared the following updates with the Board:

- **Technical Guidance:** Among several Technical Guidance Documents (TGDs) that were up for discussion, definitive updates were offered for the following:
 - Beneficial Use of Sewage Sludge at Active Mine Sites: *This TGD is under review by DEP's legal staff.*
 - Engineering Manual: *This TGD is being revised, based upon comments received from the Chapter 102 program (Erosion and Sedimentation Control).*
- **Non-Coal Regulatory Packages:** The regulatory agenda that involves non-coal mining matters includes the following:
 - Chapters 210 (Blasters' Licenses) and 210 (Storage, Handling and Use of Explosives): *This regulatory package has been revised. It was shared with the Mining and Reclamation Advisory Board (MRAB) during its July 21 meeting and approved for forwarding to the Environmental Quality Board (EQB).*
 - Non-Coal Fees: *This matter remains under discussion. The regulations will continue to be revised, per a Recommendation Document prepared by the Board's RLT Committee. The Board was given the options to further address this matter: 1) take up the matter under "New Business;" 2) wait until the November 2 meeting; or 3) hold a special meeting. The Board's RLT Committee will discuss the package revisions per its Recommendation Document during meeting scheduled for August or September.*
 - Chapter 77 (Non-Coal Mining): *This set of regulations has been removed from the regulatory agenda, and a new rulemaking package is needed.*
- **National Pollutant Discharge Elimination System (NPDES) Permitting:** As of June 30, 41 Non-Coal NPDES permits have been sent to the US EPA, which has provided comments on 9 of them. The other 30 were issued without comments (including 19 "No

Comment” letters) and the remaining 2 are pending (within the 30-day period). The NPDES permitting issues that continue to pose challenges include: 1) Whole Effluent Toxicity Testing (WETT) (here the US EPA is requesting more of this type of testing – particularly for waters that have been impaired due to facility activities); and 2) Proposed US EPA Regulations (all about electronic reporting; the challenge is getting both PA DEP and US EPA reporting codes to match – the latter’s regulatory package does not do this).

- **Historical Application Progress under the Permit Decision Guarantee (PDG) Program (Non-Coal):**
 - *As of June 30, 94% of all non-coal permit applications have been disposed (i.e., 417 of 444 permit applications – all from the Pottsville District Mining Office (DMO)). Of the 27 permit applications left, 16 are permit renewals.*
 - *On-Time non-coal permit application processing performance under the PDG Program ranged from a high of 89% (Knox DMO: 436 permits issued out of 483 permit applications received) to a low of 61% (Pottsville DMO: 555 permits issued out of 843 permit applications received)*
 - *The types of permit applications processed on time under the PDG Program included 200 NPDES permits, 70 large operations permits, 34 small operations permits and 92 miscellaneous permits (blast plans, completion reports, general permits). All permit applications were processed in an average of 201 days. During this discussion, the Board expressed interest in obtaining real-time data on the non-coal permit applications processed under the PDG Program; presently DEP staff persons wait until actual permit issuance to enter such data.*
 - *The types of permit applications that were processed late under the PDG program included 114 NPDES permits, 25 large operations permits and 12 small operations permits. All permit applications in the category were processed in an average of 343 days.*
 - *Among DMOs, the number and percentages of overdue non-coal permit applications ranged from a high of 61.1% (Pottsville DMO: 165 overdue applications out of 265 applications pending) to a low of 4.9% (Knox DMO: 2 overdue applications out of 41 applications pending).*
- **Non-Coal Mining Fee Revenues (General):** As of June 30, non-coal revenues include \$1,364,300.00 from annual administrative fees, \$395,830.00 from permits and \$21,458.15 from licenses. There were also additional revenues from penalties (\$187,543.00 (five percent of this figure is sent to the Environmental Education Fund, making the actual total \$178,165.85), interest (\$199,298.87) and Permits In Lieu of Bond (PILBs) (\$91,158.32).
- **Clean Water Fund (CWF) Non-Coal Mining Fee Revenues:** For coal and non-coal, CWF revenues ranged from \$247,800.00 in FY 2012-2013 to \$646,950.00 in FY 2015-2016. The larger figures for the most recently completed fiscal year resulted from increased overall activities, a few instances of monies being placed in the wrong funds initially, and making corrections necessary. During this report, PACA requested to

explore a breakdown of the Clean Water Fund Mining Fees between coal and non-coal. Mr. Stefanko agreed with this idea.

- **Overview of Non-Coal Facilities:** This covers inspectable units. Between March 31 and June, there were no changes in the numbers of inspectable units for small operations (< 2,000 tons/year), GP 103, or underground facilities. There were only slight changes to the small operations (< 10,000 tons/year; down 2 facilities), GP 105 (down 2 facilities) and large operations (down 5 facilities).
- **Overview of Non-Coal Applications:** Between 2012 and 2016, these have fluctuated in the following fashion:
 - *Licenses: These ranged from 1,278 in 2012 to 708 in 2016 (to date).*
 - *Large Operator Permit Applications (New): These ranged from 25 in 2012 to 3 in 2016 (to date).*
 - *Small Operator Permit Applications (New): These ranged from 33 in 2012 to 36 in 2016 (to date).*
 - *NPDES Permit Application (New): These ranged from 17 in 2012 to 8 in 2016 (to date).*
 - *NPDES Renewal Applications: These ranged from 54 in 2012 to 46 in 2016 (to date).*
 - *Pre-Applications: These ranged from 7 in 2012 to 5 in 2016 (to date).*
- **Non-Coal Surface Mining, Conservation and Reclamation Act (NSMCRA) Fund Obligations:** The elements for the NSMCRA obligations include the following:
 - *Cash Collateral (per E-Facts): \$2,055,457.87*
 - *PILB Underwritten: \$2,092,597.05*
 - *Bond Forfeiture (BF) Reclamation: greater than \$4.3 million (this figure could actual double over a short time frame).*
 - *The June 30th, 2016 NCSMCRA Fund Fiscal Report shows:*
 - A total of \$6,425,248.72 for the General Operations account.
 - A total of \$1,994,217.30 for the Collateral account.
 - A total of \$805,253.76 for the Restricted Bond account.
- **Non-Coal Program Bond Forfeitures:** Between 2010 and 2016 (to date) for small and large non-coal operations, overall bond forfeitures ranged from 8 in 2010 (all for small operations) to 13 in 2016 to date (11 from small operations and 2 from large operations).

NON-COAL FEE REGULATORY PACKAGE

This agenda item was covered during the Board's RLT Committee report. The RLT Committee will be revisiting this regulatory package further during its subsequent meetings.

NON-COAL BOND RATE GUIDELINES

Mr. Allen reported on the Non-Coal bond rate guidelines currently proposed which were initially shared with the Board during the May 4 meeting. The guidelines serve as an update from those that were developed in 2011. They will be finalized by early fall 2016 and implemented as current rates in 2017. Feedback from the Board is sought. The RLT Committee plans to evaluate these guidelines during its subsequent meetings as well.

It was noted that the District Mining Offices were developing an action plan to convert sites to full-cost bonding within 3 to 4 years. Increases in bond rates will only apply when the revised figures become available.

NEW BUSINESS

The following matters were discussed during this period:

- **Office of Water Programs Update:** Mr. Aunskt provided a report on the following aspects of the DEP Office of Water Programs:
 - *Overview: The original Water Programs Deputate was found to be too large to operate efficiently. Therefore it was divided into 2 Offices – one for Water Programs and one for Water Resources Planning.*
 - *Working Units: The activities for the Office of Water Resources Planning include the State Water Plan and the River Basin Commission Interactions. The activities under the Office of Water Programs include: 1) Bureau of Safe Drinking Water; 2) Bureau of Waterways Engineering and Wetlands; 3) Bureau of Clean Water; and 4) Chesapeake Bay Office.*
 - *Bureau of Clean Water: This bureau is currently involved with the Integrated Water Report (i.e., the Impaired Waters Listing). This report is currently out for public comment. When that period ends, a comment-response document will be prepared. From there, the report will go to the US EPA for initial review, then back to DEP for final review, then back to US EPA for approval. It was noted that 19,000 miles of Pennsylvania streams are impaired, with many miles of streams impaired by agricultural activities and acid mine drainage (AMD), with the latter (AMD-impaired streams) showing continued restoration per Best Management Practices (BMPs) for runoff control and well-maintained AMD treatment systems. It was also noted that only 300 miles of non-wadeable streams have not been assessed (out of 86,000 total stream miles) and that various uses are considered in determining water quality (i.e., Fish and Aquatic Life, Drinking Water and Recreation) – this assessment effort is also performed with input from the PA Fish and Boat Commission, the U. S. Fish and Wildlife Service, the U. S. Geological Survey and various watershed organizations. The goal is to address the obvious impairments (e.g., AMD) and then move towards addressing the non-obvious impairments (e.g., N, P) by developing Total Maximum Daily Loads (TMDLs) for these impairments, via permit limits.*
 - *NPDES Permits and Water Quality and Fees: The Bureau of Clean Water is currently down 176 positions, and additional funds are sought for increasing this complement. Increases in permit fees are being looked at as one possibility for*

this and the Water Resources Advisory Committee (WRAC) plans to review this regulatory package at its August 16 meeting. At that time, the actual cost to run the programs of this Bureau will be shared.

- *Triennial Review of Water Quality Standards: There are plans to revise the Chloride (Cl) standard to address matters involving the oil and gas industry (mainly in western Pennsylvania) and freshwater mussels. The formula for this will be based upon water hardness and the revised standard will be approximately 230 mg/l for streams with an average hardness. Toxic parameters may also be revised, with consideration for average human body weight and overall health effects.*
- *Chesapeake Bay TMDLs: These are being developed in order to reduce nutrients and sediment from agricultural, stormwater, and urban runoff sources.*
- *Stormwater Regulation: This matter is a water quality issue. Efforts to regulate stormwater are still somewhat fragmented (i.e., covered under several Bureaus), and there is a proposal to restructure the Bureaus of Clean Water and Waterways Engineering and Wetlands to address stormwater more effectively. Listening sessions, work groups, regulatory updates are likely to be employed make stormwater management more risk-based and water quality-based – this concerted effort could begin as early as September 2016.*
- *Function and Value of Wetlands: The protocol for determining this is now being finalized (mainly for wetlands banking). Chapter 105 (Water Obstructions, Encroachments and Wetlands) is undergoing a comprehensive evaluation for possible revision to reflect current conditions, including requirements for buffer zones, public and industry costs of implementing Chapter 105 rules and soil types and water contact (for wetlands, soil absorption is required under the current regulations, but this is not always the case, as there are instances where water does not absorb into the soil at some wetland sites).*
- *Stream Redesignations: There is an existing backlog for the redesignation of specific water bodies; the backlog will be addressed according to existing protocol.*
- *Existing Use List: This applies to water bodies with specific designations (e.g., Cold Water Fishes, High Quality, Exceptional Value). The process for such designations involves petitions with surveys, which are based on water chemistry and aquatic life. These submissions are then reviewed and approved – if applicable, the existing use or the new designated use becomes the norm. There are plans to change how water bodies are designated in the future – this will most likely involve revisions to regulatory citations, with extensive public comment.*
- *Additional Items: PACA requested information for the Board with respect to the DEP Water Program's proposed permit fees for wetlands. Specifically, there was a request to see the support information behind any proposed permit fees for wetlands. PACA also requested for the Board to receive DEP Water Program's stream redesignation backlog list.*

- **Underground Non-Coal Technical Guidance Document:** Mr. Allen reported this document had been revised and would be resubmitted. The report will be shared with the Board's RLT Committee when it becomes available.
- **Annual Report (2015) of the Aggregate Advisory Board:** Ms. Gaskey stated that the Board's Annual Report was undergoing revisions (from the draft that was shared during the Board's May 4 meeting) and that this report would be shared with the Board at its November 2 meeting.

OPEN TIME

No questions or comments were received from the audience.

ADJOURNMENT/NEXT MEETING

Mr. Stefanko adjourned the meeting at approximately 12:10 p.m. Following the meeting, Board members, alternates, and guests participated in a tour of the Glenn O. Hawbaker facility.

The Board will meet again on **November 2** at 10:00 a.m., at the DEP Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg PA 17110.