

## **Reclamation Fee Fiscal Year Report 2019**

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, 2019, was \$3,353,993.55. This balance does not include the civil penalties (\$270,006.13) DEP has collected in fiscal year 2018-2019, additional civil penalty money (\$229,993.87), and interest from the Land Reclamation Financial Guarantee (LRFG) Account (\$360,683.22) that was transferred to the account.

**PREVIOUS YEAR REVENUE**

**Reclamation Fee**

The 2018 Final Reclamation Fee Fiscal Year Report concluded that a Reclamation Fee for calendar year 2019 was not necessary and remained at \$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 \$92,000.15 from July 2018 through June 2019.

**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 2018 through June 2019 is shown in Table 1.

<b>TABLE 1</b>	
<b>Month</b>	<b>Coal Civil Penalties</b>
Jul-18	\$30,825.48
Aug-18	\$6,582.50
Sep-18	\$4,730.00
Oct-18	\$38,327.50
Nov-18	\$29,155.50
Dec-18	\$11,671.50
Jan-19	\$14,327.50
Feb-19	\$16,565.00
Mar-19	\$13,935.00
Apr-19	\$31,732.50
May-19	\$51,520.00
Jun-19	\$34,844.50
<b>Total</b>	<b>\$284,216.98</b>

The amount of civil penalty dollars eligible for transfer to the Reclamation Fee O & M Trust Account is \$270,006.13 or 95% of the collected civil penalties. The transfer of this amount was completed in October 2019 with the remaining 5% transferred to the Environmental Education Fund. An additional amount of civil penalty money was transferred in the amount of \$229,993.87 for a total of \$500,000.00.

**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. \$360,683.22 has accrued in the LRFG account during fiscal year 2018-2019. DEP completed the transfer of these funds in October 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 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 \$1,046,281.36 in 2018-2019.

#### **Personnel Costs**

DEP expended \$19,863.63 from the Reclamation Fee O & M Trust Account for personnel from July 2018 through June 2019 to monitor several ABS Primacy bond forfeiture sites.

#### **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 2018 through June 2019 is \$955.50.

#### **Grants**

DEP awarded grants in the amount of \$314,508.70 from July 2018 through June 2019. For further information, refer to the 2018 Final Reclamation Fee Fiscal Year Report.

#### **Contracts**

Contract costs for operation and maintenance of the existing ABS treatment facilities for July 2018 through June 2019 totaled \$681,110.50. In addition, DEP made a direct payment for electricity in the amount of \$1,848.03. For further information, refer to the 2018 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 2018 through June 2019 in the amount of \$27,995.00.

### **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 2020 is estimated at 765. Based on the trend, DEP expects that the number of acres subject to the reclamation fee will continue to decline.

<b>Year</b>	<b>Acres</b>
2011	3,148
2012	2,287
2013	3,017
2014	2,542
2015	1,919
2016	1,423
2017	1,443
2018	826
2019 Projected	765

## **PROJECTED REVENUE**

### **Reclamation Fee**

The projected revenue for fiscal year 2019-2020 from the reclamation fee is \$38,250. This is based on a reclamation fee of \$100 per acre effective January 1, 2020.

### **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 2019-2020 fiscal year.

### **Civil Penalties**

DEP projects that about \$200,000 will be available from civil penalty revenue for the 2019-2020 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 2018-2019 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 2019-2020, as explained in further detail below, is \$1,032,810.00.

**Personnel Costs**

The total projected debit for DEP personnel costs from the Reclamation Fee O & M Trust Account from July 2019 through June 2020 is \$33,000. 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 2019 through June 2020 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 \$385,618 for O & M from July 2019 through June 2020. This includes projected costs (\$183,028) for the O & M for the C & K sites (Table 3) where the Clean Streams Foundation is the trustee.

<b>TABLE 3</b>	
<b>Site Name</b>	<b>Permit number</b>
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.

<b>TABLE 4</b>	
<b>Site Name</b>	<b>Permit number</b>
Miller Stein	17753159
Sandturn	17803176
Morris 2	17810104
Pearce	17820106
Carnwath	17820166
Ralston	17850109
Kauffman	17890115
Kauffman North	17970107

Little Beth	17723164
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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 \$75,000 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 2019 through June 2020 to total \$604,192. The contracts cover the sites in Table 5.

<b>Company</b>	<b>Site Name</b>	<b>Contract Amount</b>
H & D Coal Co.	Merola	\$11,000
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	\$25,997
Thompson Bros. Coal Co.	Alder Run	\$53,640
PA Energy Corp.	Horse Hill Strip	\$2,481
Acme Drilling Inc.	Broom Strip	\$2,843
Delta Mining Inc.	Maust Mine	\$2,602
D & E Construction	Moore	\$1,731
Delta Mining Inc.	Bashore	\$16,416
American Development Co.	Job 33	\$31,522
Met Co. Mining & Minerals Inc.	Ankey Mine	\$1,951
Delta Mining Inc.	Hay 2	\$2,571
H & H Coal Co.	James E. Long	\$1,738
Laurel Land Development Inc.	McDermott Mine	\$6,119
Big J Mining Inc.	Sorber Mine	\$20,688
Windber High Std. Coal Co.	Brant Strip	\$3,054
L & B Coal Co.	No. 5	\$1,739
C & O Coal Co.	Burkholder	\$1,936
Power Operating Co. Inc.	Vought	\$7,000
Pengrove Coal Co.	Ruth Mine	\$60,000
Sunbeam Coal Co.	Jacques	\$2,000
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.*

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 last year, 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, 60% of the projected spend plan was chosen based on averaging the six previous fiscal years. While the projection fell short of the actual expenses, DEP feels that this is a more reliable predictor and will be using this modified approach again this year.

<b>TABLE 6</b>				
<b>Fiscal Year</b>	<b>Projected Expenses Based on Spend Plan</b>	<b>Modified Projected Expenses</b>	<b>Actual Expenses</b>	<b>Percentage of Actual vs Projected</b>
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	-	-

Based on the projected expenses for the past seven fiscal years, DEP has concluded that taking 90% of the spend plan cost is a reasonable prediction of the actual expenses. Using this approach, the projection of the expenses in the 2019-2020 fiscal year will be about \$925,000. (This was determined by taking 90% of \$1,032,810.00 and rounding down.) 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**

<b>TABLE 7</b>		
<b>Income</b>	<b>FY 2018-2019</b>	<b>FY 2019-2020 (Projected)</b>
Interest	\$92,000.15	\$100,000.00
Reclamation Fee	\$0.00	\$38,250
Civil Penalties	\$270,006.13	\$200,000.00
Other (LRFG Interest)	\$360,683.22	\$200,000.00
LRFG Premium Transfer	\$0.00	\$0.00
Additional Civil Penalties	\$229,993.87	\$0.00
<b>Total</b>	<b>\$722,689.50</b>	<b>\$538,250.00</b>

<b>Expenses</b>	<b>FY 2018-2020</b>	<b>FY 2019-2020 (Projected)</b>
DEP Lab Costs	\$955.50	\$10,000.00
DEP Personnel	\$19,863.63	\$33,000.00
Contracts	\$681,110.50	\$604,192.00
Grants	\$314,508.70	\$385,618.00
Electricity	\$1,848.03	Included in Contracts
Hydrated Lime	\$27,995.00	Included in Contracts
<b>Total</b>	<b>\$1,046,241.36</b>	<b>\$1,032,810.00</b>
<b>Adjusted Total</b>		<b>\$925,000.00</b>

**Reclamation Fee Calculation**

Based on the June 30 balance in the Reclamation Fee O & M Trust Account (\$3,353,993.55), the civil penalties (\$500,000.00) to be transferred, the projected revenue (\$538,250.00) and expenses (\$925,000.00), DEP has determined that **a reclamation fee of \$100 per acre is needed for calendar year 2020**. 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 \$150,000 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**

<b>Pluses</b>	
Balance Above \$3 M	\$353,993.55
Civil Penalties (18-19)	\$500,000.00
Projected Income	\$538,250.00
<b>Total</b>	<b>\$1,392,243.55</b>
<b>Minuses</b>	
Expected Expenditures 2019-2020	\$925,000.00
Expected Expenditures Second half 2019	\$462,500.00
<b>Total</b>	<b>\$1,387,500.00</b>
<b>Calculated Difference</b>	<b>\$4,743.55</b>

### 2021 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 2019.

<b>TABLE 9</b>		
<b>Year Ending</b>	<b>Income</b>	<b>Year-End Balance</b>
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

### Report Process

On September 14, 2019, notice of availability of the draft report was published in the *Pennsylvania Bulletin* see 49 PA.B. 5363 (September 14, 2019).

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

## Final Report 2019

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 2020. DEP reviewed the draft report with the MRAB on October 24, 2019.