

Reclamation Fee Fiscal Year Report 2021

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 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, 2021, was \$3,954,995.08. This balance does not include the civil penalties (\$188,370.75) DEP has collected in fiscal year 2020-2021 as well as interest from the Land Reclamation Financial Guarantee (LRFG) Account (\$31,256.79), both of which were transferred into the account after the draft reclamation fee report was published.

PREVIOUS YEAR REVENUE

Reclamation Fee

The 2020 Final Reclamation Fee Fiscal Year Report concluded that a Reclamation Fee for FY 2020 to 2021 was necessary and was set at \$100 per acre. The revenue collected from the Reclamation Fee from July 2020 through June 2021 was \$21,082.00 and a month to month breakdown is listed below:

Month	Reclamation Fee
Jul-20	\$5,800.00
Aug-20	\$4,000.00
Sep-20	\$0.00
Oct-20	\$750.00
Nov-20	\$0.00
Dec-20	\$0.00
Jan-21	\$495.00
Feb-21	\$0.00
Mar-21	\$0.00
Apr-21	\$4,647.00
May-21	\$4,890.00
Jun-21	\$500.00

Interest

DEP credited interest on the funds in the Reclamation Fee O & M Trust Account to the account in the amount of \$7,551.22 from July 2020 through June 2021.

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 2020 through June 2021 is shown in Table 1.

TABLE 1	
Month	Coal Civil Penalties
Jul-20	\$4,000.00
Aug-20	\$2,500.00
Sep-20	\$23,222.50
Oct-20	\$7,140.00
Nov-20	\$9,000.00
Dec-20	\$45,250.00
Jan-21	\$750.00
Feb-21	\$29,897.50
Mar-21	\$4,675.00
Apr-21	\$35,650.00
May-21	\$13,097.50
Jun-21	\$23,102.50
Total	\$198,285.00

The amount of civil penalty dollars eligible for transfer to the Reclamation Fee O & M Trust Account is \$188,370.75 or 95% of the collected civil penalties. The remaining 5% is required to be transferred to the Environmental Education Fund. This money was transferred following publication of the draft reclamation fee report.

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. \$31,256.79 has accrued in the LRFG account during fiscal year 2020-2021. DEP transferred these funds following publication of the draft reclamation fee report.

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. In July 2021, the Department received the results of an actuarial study of the LRFG account which provides a formula for evaluating when transfers into the Reclamation Fee O & M Account would be appropriate. DEP will be engaging with the Mining & Reclamation Advisory Board to discuss the results of this study and may ultimately decide to transfer money into this account.

PREVIOUS YEAR O & M COSTS

DEP incurred O & M costs in five categories: personnel, lab, grants, contracts, and materials resulting in expenditures of \$348,968.25 in 2020-2021.

Personnel Costs

DEP expended \$18,426.33 from the Reclamation Fee O & M Trust Account for personnel from July 2020 through June 2021 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 2020 through June 2021.

Grants

DEP awarded grants in the amount of \$161,147.51 from July 2020 through June 2021. For further information, please refer to the 2020 Final Reclamation Fee Fiscal Year Report.

Contracts

Contract costs for operation and maintenance of the existing ABS treatment facilities for July 2020 through June 2021 totaled \$161,002.47. In addition, DEP made a direct payment for electricity in the amount of \$3,155.63. For further information, please refer to the 2020 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 2020 through June 2021 in the amount of \$5,236.31.

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. It is possible some of these numbers were revised after the data had been pulled from the 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 2022 is estimated at 300. Based on the trend, DEP expects that the number of acres subject to the reclamation fee will continue to decline.

TABLE 2	
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	276
2021 Projected	300

PROJECTED REVENUE

Reclamation Fee

The projected revenue for fiscal year 2021-2022 from the reclamation fee is \$30,000. This is based on a reclamation fee of \$100 per acre, which went into effect on January 1, 2020, and will continue through 2022.

Interest

DEP estimates that interest on the money in the Reclamation Fee O & M Trust Account will generate about \$10,000 in income for the 2021-2022 fiscal year.

Civil Penalties

DEP projects that about \$200,000 will be available from civil penalty revenue for the 2021-2022 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 \$50,000 during the fiscal 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 2021-2022, as explained in further detail below, is \$1,027,267.00.

Personnel Costs

The total projected debit for DEP personnel costs from the Reclamation Fee O & M Trust Account from July 2021 through June 2022 is \$20,000. 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 2021 through June 2022 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 \$433,437 for O & M from July 2021 through June 2022 for the following sites listed in Table 3. This includes projected costs for the O & M for the C & K sites where the Clean Streams Foundation is the trustee. DEP executed a grant agreement with the Clean Streams Foundation for the O & M for the Al Hamilton sites. Currently, the Clean Streams Foundation periodically submits their expenses for O & M of the ABS sites for reimbursement.

TABLE 3			
Company Name	Site Name	Permit Number	Grant Amount
C & K Coal Co.	Bell Woodcock	11783035	\$60,215
C & K Coal Co.	Stroud	11823002	\$1,845
C & K Coal Co.	Cambria 51	11850106	\$46,287
C & K Coal Co.	Snyder-Sertik	10860118	See Note ¹
C & K Coal Co.	Hill Estate	16713004	See Note ¹
C & K Coal Co.	Smith-Heasley	16803030	See Note ¹
C & K Coal Co.	Kriebel	16840103	See Note ¹
C & K Coal Co.	Racic	61783001	See Note ¹
Al Hamilton Contr.	Miller Stein	17753159	See Note ²
Al Hamilton Contr.	Sandturn	17803176	See Note ²
Al Hamilton Contr.	Morris 2	17810104	See Note ²
Al Hamilton Contr.	Pearce	17820106	See Note ²
Al Hamilton Contr.	Carnwath	17820166	See Note ²
Al Hamilton Contr.	Ralston	17850109	See Note ²
Al Hamilton Contr.	Kauffman	17890115	See Note ²
Al Hamilton Contr.	Kauffman North	17970107	See Note ²
Al Hamilton Contr.	Little Beth	17723164	See Note ²
Bituminous Coal Co.	Addison Strip	56773136	\$32,500

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 as there is no expectation to spend this money.

¹ The projected O & M costs for the five C & K primacy sites is \$100,000.

² The projected O & M Costs for the nine Al Hamilton sites is \$192,590.

Contracts

DEP expects contract costs from July 2021 through June 2022 to total \$563,830. The contracts cover the sites in Table 4.

Company	Site Name	Contract Amount
H & D Coal Co.	Merola	\$16,000
Gurosik Coal Co.	King Mine	\$75,000
REM Coal Co.	Truittsburg Mine	\$25,000
REM Coal Co.	Orcutt Smail	\$160,000
Pengrove Coal Co.	Martin Bell	\$50,000
Glacial Minerals Inc.	Blair	\$18,000
Avery Coal Co. Inc.	Pine Glen	\$19,511
Thompson Bros. Coal Co.	Alder Run	\$46,690
PA Energy Corp.	Horse Hill Strip	\$1,200
Acme Drilling Inc.	Broom Strip	\$3,465
Delta Mining Inc.	Maust Mine	\$2,028
D & E Construction	Moore	\$2,069
Delta Mining Inc.	Bashore	\$17,416
American Development Co.	Job 33	\$26,200
Met Co. Mining & Minerals Inc.	Ankey Mine	\$823
Delta Mining Inc.	Hay 2	\$10,000
H & H Coal Co.	James E. Long	\$560
Laurel Land Development Inc.	McDermott Mine	\$8,739
Big J Mining Inc.	Sorber Mine	\$21,309
Windber High Std. Coal Co.	Brant Strip	\$2,116
L & B Coal Co.	No. 5	\$1,845
C & O Coal Co.	Burkholder	\$1,000
Power Operating Co. Inc.	Vought	\$7,000
Pengrove Coal Co.	Ruth Mine	\$23,000
Darmac Coal Inc.	Silver Rock	\$7,500
Delta Penn	Hostetter	\$5,000
Darmac Coal Inc.	No. 14	\$3,000
L & L Mining Inc.	Berkey Strip	\$531
Moshannon Passive Systems*	Multiple	\$8,828

**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 \$37,500 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 5 shows the comparison of projected vs. actual expenses since the Reclamation Fee O & M Trust Account was established. In the 2019 reclamation fee report, 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, the past two years, the projected has been more than double the actual expenses. DEP still feels that this is a more reliable predictor and will be using this modified approach again this year.

TABLE 5				
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	\$348,968.25	31.20%
2021-2022	\$1,027,267.00	\$620,000.00	-	-

Based on the projected expenses for the past nine 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 2021-2022 fiscal year will be about \$620,000. (This was determined by taking 60% of \$1,027,267.00 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 6		
Income	FY 2020-2021	FY 2021-2022 (Projected)
Interest	\$7,551.22	\$10,000.00
Reclamation Fee	\$21,082.00	\$30,000.00
Civil Penalties	\$188,370.75	\$200,000.00
Other (LRFG Interest)	\$31,256.79	\$50,000.00
LRFG Premium Transfer	\$0.00	\$0.00
Additional Civil Penalties	\$0.00	\$0.00
Total	\$248,260.76	\$290,000.00

Expenses	FY 2020-2021	FY 2021-2022 (Projected)
DEP Lab Costs	\$0.00	\$10,000.00
DEP Personnel	\$18,426.33	\$20,000.00
Contracts	\$161,002.47	\$563,830.00
Grants	\$161,147.51	\$433,437.00
Electricity	\$3,155.63	Included in Contracts
Hydrated Lime	\$5,236.31	Included in Contracts
Total	\$348,968.25	\$1,027,267.00
Adjusted Total		\$620,000.00

Reclamation Fee Calculation

Based on the June 30th balance in the Reclamation Fee O & M Trust Account (\$3,954,995.08), the civil penalties (\$188,370.75) and LRFG interest (\$31,256.79) to be transferred, the projected revenue (\$290,000.00) and expenses (\$620,000.00), DEP has determined that **a reclamation fee of \$100 per acre is still needed for calendar year 2022**. 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 \$87,500.00 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 7

Pluses

Balance Above \$3 M	\$954,995.08
Civil Penalties (20-21)	\$188,370.75
Projected Income	\$295,000.00
Total	\$1,438,365.83

Minuses

Expected Expenditures 2021-2022	\$620,000.00
Expected Expenditures Second half 2022	\$310,000.00
Total	\$930,000.00

Calculated Difference	\$508,365.83
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2023 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 8 presents the income and year-end balance in the ABS Legacy Site Trust Account from 2012 to 2021.

TABLE 8		
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
June 30, 2021	\$11,582.69	\$6,111,541.59

Report Process

On August 28, 2021, notice of availability of the draft report was published in the *Pennsylvania Bulletin* see 51 PA.B. 5494 (August 28, 2021).

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

Final Report 2021

As in previous years, the Department continues the interaction with PCA and the Mining and Reclamation Advisory Board (MRAB) to find a permanent long-term solution to funding the ABS sites. The comments did not have an impact on the reclamation fee which will remain at \$100 for 2022. DEP reviewed the draft report with the MRAB on October 21, 2021.