

Reclamation Fee Fiscal-Year Report 2015

The regulations at 25 Pa. Code § 86.17(e)(2) require DEP to prepare a fiscal-year report containing a financial analysis of the revenue and expenditures of the Reclamation Fee O & M Trust Account.

25 Pa. Code § 86.17(e)(4) requires the following factors to be used 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 sources
- Previous year O & M Costs
- Projected number of acres subject to the Reclamation Fee
- Projected Revenue
 - Reclamation Fee
 - Interest
 - Civil Penalties
 - Other sources
- Projected expenditures

CURRENT BALANCE

The balance in the Reclamation Fee O & M Trust Account as of June 30, 2015 was \$3,247,670.65. This balance does not include civil penalties (\$165,732.25) collected during the fiscal year.

PREVIOUS YEAR REVENUE

Reclamation Fee

The Reclamation Fee for the period July 2014 through June 2015 was \$0. Therefore, there was no revenue from this source.

Interest

Interest was credited to the Reclamation Fee O & M Trust Account from July 2014 through June 2015 in the amount of \$6,352.13.

Civil Penalties

Civil penalties (less the 5% due to the Environmental Education Fund) are transferred into the Reclamation Fee O & M Trust Account each year. The total revenue from civil penalties from July 2014 through June 2015 is listed below:

Month	Coal Civil Penalties
Jul-14	\$10,967.50
Aug-13	\$8,050.00
Sep-13	\$10,200.50
Oct-13	\$17,701.25
Nov-13	\$9,247.50
Dec-13	\$14,793.75
Jan-14	\$4,700.00
Feb-14	\$20,787.50
Mar-14	\$8,641.67
Apr-14	\$9,335.00
May-14	\$41,388.67
Jun-14	\$18,641.66
Total	\$174,455.00

The net amount eligible for transfer to the Reclamation Fee O & M Trust Account is \$165,732.25. This is 95% of the collected civil penalties. The remaining 5% is required by statute to be transferred to the Environmental Education Fund.

Other Sources

There was no income from other sources credited during fiscal year 2014-2015. However, under Act 157 of 2012, the interest on the funds held in the Land Reclamation Financial Guarantee (LRFG) Account may be transferred into the Reclamation Fee O & M Trust Account. The available interest to transfer is \$5,096.91 from 2012-2013, \$21,961.74 from 2013-2014 and \$23,970.20 from 2014-2105. The intention is to periodically transfer this interest to the Reclamation Fee O & M Trust Account.

Act 157 also authorized the transfer of premium payments for Land Reclamation Financial Guarantees to the Reclamation Fee O & M Trust Account and included the provision for an annual appropriation from the Gross Receipts Tax.

PREVIOUS YEAR O & M COSTS

O & M costs were incurred in four categories: personnel costs, lab costs, grants and contracts. The total spent in 2014-2015 was \$369,197.98.

Final Report 2015

Personnel Costs

The total cost to the Reclamation Fee O & M Trust Account for personnel from July 2014 through June 2015 is \$16,549.49. This is for labor for the monitoring that is needed for several ABS Primacy bond forfeiture sites where it is more efficient for DEP to do this work.

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 2014 through June 2015 is \$5,279.

Grants

Grants were awarded in the amount of \$193,429.02 from July 2014 through June 2015.

Contracts

Contract costs for operation and maintenance of the existing ABS treatment facilities for July 2014 through June 2015 totaled \$153,940.47.

PROJECTED NUMBER OF ACRES SUBJECT TO THE RECLAMATION FEE

The table below 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 average of these values is 2,750 acres. This is the projected number of acres subject to the reclamation fee for 2016.

Year	Acres
2011	3,148
2012	2,287
2013	3,017
2014	2,542

PROJECTED REVENUE

Reclamation Fee

The projected revenue for fiscal year 2015-2016 from the reclamation fee is \$137,500. This is based on a reclamation fee of \$100 per acre effective January 1, 2016.

Interest

Interest on the money held in the Reclamation Fee O & M account has been decreasing for the last few years. Therefore \$5,000 in income from interest is projected for the 2015-2016 fiscal year.

Civil Penalties

For purposes of the projection, it is estimated that about \$200,000 will be available from civil penalty revenue for the 2015-2016 fiscal year.

Other Revenue

Act 157 of 2012 provides other potential revenue streams to the Reclamation O & M Trust Account. These include the interest on the funds held in the LRFG Account, premiums from the LRFG program and an annual appropriation from the Gross Receipts Tax. The interest available for transfer is \$51,028.85 (\$5,096.91 from 2012-2013 plus \$21,961.74 from 2013-2014 and \$23,970.20 from 2014-2015). An invoice to transfer this \$51,028.85 was processed in July 2015.

For 2012-2013, \$71,988.70 was collected from premium payments and deposited in the newly established LRFG Account. For 2013-2014, \$276,563.94 was collected from premium payments and deposited in the LRFG Account. For 2014-2015, \$295,734.52 was collected from premium payments and deposited in the LRFG Account. It is estimated that \$400,000 will be generated from premium payments in 2015-2016. The transfer of any of this money is being deferred until it is necessary based upon unexpected expenses or a revenue shortfall. Having this money available for transfer provides assurance that the Reclamation Fee O & M Trust Account will be able to be maintained above the required \$3,000,000 minimum balance.

PROJECTED EXPENDITURES

The total projected expenditures for fiscal year 2015-2016, as explained in further detail below, is \$941,785.

Personnel Costs

The total projected debit for DEP personnel costs from the Reclamation Fee O & M Trust Account from July 2015 through June 2016 is \$14,000. The amount is for labor for the monitoring that the DEP is doing for the ABS Primacy bond forfeiture sites.

Lab Costs

The total projected debit from the Reclamation Fee O & M Trust account from July 2015 through June 2016 is \$12,000. 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

Grants are expected to be awarded in the amount of \$209,973 from July 2015 through June 2016. This includes grants (\$184,973) for the O & M for the following C & K sites where the Clean Streams Foundation is the trustee:

Final Report 2015

Bell Woodcock (Permit No. 11783035), Stroud (Permit No. 11823002), Cambria 51 (Permit No. 11850106), Snyder-Sertik (Permit No. 10860118), Hill Estate (Permit No. 16713004), Smith-Heasley (Permit No. 16803030), Tremba-Horner (Permit No. 16830114), Kriebel (Permit No. 16840103), Racic (Permit No. 61783001).

Also included in the grants total is a grant (\$15,000) for the Bernice Mining, Lewis (Permit No. 57830101) site.

Contracts

Contract costs from July 2015 through June 2016 are expected to total \$723,812. The sites covered by these contracts include the following:

Company	Site Name	Contract Amount
H & D	Merola	\$7,000
Gurosik Coal Co.	King	\$30,000
REM	Truittsburg	\$7,000
REM	Orcutt Smail	\$100,000
Glacial	Blair	\$200,000
Avery Coal Co. Inc.	Pine Glen	\$36,056
Thompson Bros.	Alder Run	\$52,506
Ed Hansolvan	Keating	\$60,000 (Rehab)
PA Energy Corp.	Horse Hill Strip	\$2,204
Acme Drilling	Broom Strip	\$2,526
Delta Mining Inc.	Maust Mine	\$4,634
D & E Construction	Moore	\$1,538
Delta Mining Inc.	Bashore	\$13,836
American Development	Job 33	\$35,879
Met Co. Mining & Minerals Inc.	Ankey Mine	\$46,784
Delta Mining Inc.	Hay 2	\$2,284
H & H Coal Co.	James E. Long	\$1,544
L & L	Berkey	\$1,591
Big J Mining Inc.	Sorber Mine	\$10,911
Windber High Std. Coal Co.	Brant Strip	\$3,039
L & B Coal Co	No. 5	\$1,545
K & J Coal Co. Inc.	Westover	\$45,506
K & J Coal Co. Inc.	Gaber Brown	\$5,040
Pengrove	Martin-Bell	\$30,000
C & O	Burkholder	\$1,720
Power Operating	Vought	\$7,000
Moshannon Passive Sites	Multiple	\$13,669

A contract is in place to do O & M, as needed, on a group of passive treatment sites managed by the Moshannon DMO. The sites included under this contract include Power Operating Dugan 2

and Dugan 4, M & M Latherow, Thompson Bros. 001, Lobb Narco, Ed Hanslovan Keating, Bernice Lewis, Avery Victoria and Chew Little D.

For the purpose of planning, \$10,000 has been authorized for unexpected contracts. However, for the reclamation fee calculation, the \$10,000 for additional contracts has not been included.

Financial Summary

Income	FY 2014-2015	FY 2015-2016 (Projected)
Interest	\$6,352.28	\$5,000.00
Reclamation Fee	\$0.00	\$0.00
Civil Penalties	\$165,732.25	\$200,000.00
Other (LRFG Interest)	\$23,970.20	\$20,000.00
Appropriation	\$0.00	\$0.00
Total	\$196,054.73	\$225,000.00

Expenses	FY 2014-2015	FY 2015-2016 (Projected)
DEP Lab Costs	\$5,279.00	\$12,000.00
DEP Personnel	\$16,549.49	\$14,000.00
Contracts	\$153,940.47	\$723,812.00
Grants	\$193,429.02	\$199,973.00
Total	\$369,197.98	\$949,785.00

Reclamation Fee Calculation

Based on the June 30 balance in the Reclamation Fee O & M Account (\$3,247,670.65), the civil penalties (\$165,732.25) to be transferred in July 2015, the un-transferred interest from the LRFG account (\$51,028.85) the projected revenue (\$225,000) and expenses (\$949,785), DEP has determined that a reclamation fee amount of \$100 per acre is needed for calendar year 2016. This will maintain the balance in the Reclamation Fee O & M Account of \$3,000,000 as required under 25 Pa. Code § 86.17(e)(3).

For the purpose of determining the reclamation fee amount, the authorized contingency of \$20,000 for contracts and grants was not included in the calculation. For contingency planning, the balance will be closely monitored in the Reclamation Fee O & M Account balance to determine if it is approaching the \$3,000,000 threshold. If it is likely that the balance will approach the threshold, then transfer of premium payments from LRFGs can be made in order to maintain the balance above the required minimum.

Reclamation Fee Arithmetic

Pluses

Balance Above \$3 M	\$247,670.65
Civil Penalties (14-15)	\$165,732.25
LRFG Interest (through June 15)	\$51,027.85
Projected Income	\$225,000.00
Total	\$689,430.75

Minus

Expected Expenditures	\$949,785.00
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Calculated Deficit	\$260,354.25
Divided by 2,750 acres	\$94.67 per acre
Result	\$100.00 per acre

2017 Projection

Based upon the spending and income trends, it is likely that a reclamation fee increase will be necessary beginning in January 2017. Preliminary estimates suggest that about \$420,000 will be necessary from the reclamation fee in order to maintain the balance of \$3,000,000. To generate this amount of revenue, a reclamation fee \$200 per acre would be needed in calendar year 2017.

As an alternative, an appropriation from the Gross Receipts Tax could offset the need to impose a reclamation fee. In order to maintain the minimum balance without revenue from the reclamation fee in calendar year 2017, an appropriation of at least \$500,000 would be needed for the 2016-2017 budget year. In order to assure that the need for supplement funding to assure the long-term operations for the ABS Legacy Sites, the maximum appropriation of \$2,000,000 from the Gross Receipts Tax is warranted.

ABS Legacy Sites Trust Account

The ABS Legacy Sites Trust Account was established by regulation at 25 Pa. Code § 86.187(a)(2)(i), effective August 30, 2008. The following table presents the income and year-end balance in the ABS Legacy Site Trust Account for the last four years.

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

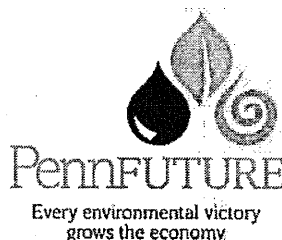
Report Process

On August 22, 2015, notice of availability of the draft report was published in the *Pa. Bulletin*.

By a letter dated September 14, 2015, comments were received from PennFuture. These comments are incorporated in this report as an attachment.

On October 22, 2015, the draft report was reviewed at the MRAB meeting. The MRAB recommended that the reclamation fee be \$100 per acre for calendar year 2016, unless an appropriation is provided to offset the need for this increase. The MRAB further recommended that if the appropriation is provided after the reclamation fee amount for 2016 is finalized, that the Department consider adjusting the fee amount once the appropriation is available.

September 14, 2015



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**Re: Draft "Reclamation Fee Fiscal-year Report, 2015"
45 Pa. Bull. 4986 (August 22, 2015)**

**Comments of Pennsylvania Federation of Sportsmen's Clubs, Inc.,
Pennsylvania Chapter Sierra Club, Pennsylvania Trout, Inc., Mountain
Watershed Association, Inc., Center for Coalfield Justice, and Citizens for
Pennsylvania's Future (PennFuture)**

To the Bureau of Mining Programs:

On behalf of the six organizations listed above and their members, PennFuture submits these comments on the draft "Reclamation Fee Fiscal-year Report, 2015" (2015 Draft Report) prepared by the Pennsylvania Department of Environmental Protection (PADEP).

Table 7, immediately below, is the latest in a series of similar tables appearing in comment letters submitted by our coalition over the last six years. Specifically, it is an updated version of the same table that appeared on page 3 of our October 6, 2014 comment letter concerning PADEP's draft report for Fiscal Year (FY) 2013-2014. The updated table below fills in the Actual Expenditures column with the data reported in the 2015 Draft Report, and adds the percentage figures appearing in the fourth column.

TABLE 7: Fiscal Year 2014-2015 (July 1, 2014 through June 30, 2015)

Cost Categories	Projected Expenditures FY 2014-2015 (2014 Final Report)	Actual Expenditures FY 2014-2015 (2015 Draft Report)	Actual Expenditures as Percentage of Projected Expenditures
Personnel	\$25,000.00	\$16,549.49	
Laboratory	\$12,000.00	\$5,279.00	
Grants	\$224,500.00	\$193,429.02	
Contracts	\$600,000.00	\$153,940.47	
TOTAL	\$861,500.00	\$369,197.98	42.9%
		vs. projected costs for all ABS Legacy Sites of \$1.6 million per year	
	53.8%		23.1%

The figure of 23.1% found at the end of Table 7 shows that the \$369,197.98 in actual expenditures from the Reclamation Fee O&M Trust Account during FY 2014-2015 was less than one-quarter the amount (\$1.6 million) that PADEP's 2008 "ABS Program Amendment" estimated would be needed to cover the annual recapitalization and operation and maintenance costs for treatment systems at all ABS Legacy Sites.

The table immediately below presents the actual expenditures from the Reclamation Fee O&M Trust Account as reported by the Department in its six annual reports.

Reclamation Fee O&M Trust Account	
Fiscal Year	Actual Expenditures
2008-2009	\$9,957.52
2009-2010	\$84,625.16
2010-2011	\$107,243.05
2011-2012	\$168,603.22
2012-2013	\$821,213.13
2013-2014	\$499,122.48
2014-2015	\$369,197.98

During the first five fiscal years, the trend in expenditures had been steadily upward as annual operation and maintenance costs increased in response to the installation or refurbishing of more treatment systems. After a dramatic increase to \$821,213.13 in FY 2012-2013, however, the expenditures abruptly dropped by 39%, to \$499,122.48, in FY 2013-2014, and then by another 26.0%, to \$369,197.98, in FY 2014-2015.

Table 8 at the top of the next page presents data from the "Financial Summary" at the end of the 2015 Draft Report. It projects an enormous, 157.3% increase in the expenditures from the Reclamation Fee O&M Trust Account during the current fiscal year, from \$369,197.98 in FY 2014-2015, to a new high of \$949,785.00 in FY 2015-2016. Last year's annual report projected a similar increase, but it did not materialize. As shown in Table 7, above, the 2014 Draft Report projected expenditures of \$861,500. The actual expenditures were less than half that projected amount (\$369,197.98).

TABLE 8: Fiscal Year 2015-2016 (July 1, 2015 through June 30, 2016)

Cost Categories	Projected Expenditures FY 2015-2016 (2015 Draft Report)	Actual Expenditures FY 2015-2016 (to be determined)	Actual Expenditures as Percentage of Projected Expenditures
Personnel	\$14,000.00		
Laboratory	\$12,000.00		
Grants	\$199,973.00		
Contracts	\$723,812.00		
TOTAL	\$949,785.00		
	59.4%	vs. projected costs for all ABS Legacy Sites of \$1.6 million per year	

In the August 2008 ABS Program Amendment, the Department stated: “The annual amount for O&M costs will increase gradually *over the next few years* until it reaches the \$1.4 million total; when combined with recapitalization costs of about \$200,000 the Department will need approximately \$1.6 million annually to cover O&M and recapitalization costs for all the primacy ABS forfeiture discharge sites. (ABS Program Amendment, p. 43) (emphasis added) Those “next few years,” however, have already come and gone, while dozens of discharges at ABS Legacy Sites continue to flow without adequate treatment. The figure of 59.4% at the bottom of the second column in Table 8 shows that the projected expenditures from the Reclamation Fee O&M Trust Account will be 40.6% below the ABS Program Amendment’s 2008 estimate of \$1.6 million per year in total costs for the treatment systems at the ABS Legacy Sites. Even if that 2008 estimate was conservative (high), it is clear that a considerable amount of work remains to complete all of the required construction and upgrading of treatment systems at ABS Legacy Sites.

Reclamation Fee Rate

After six consecutive years in which no reclamation fee has been charged under 25 Pa. Code § 86.17(e), the 2015 Draft Report states that PADEP “has determined that a reclamation fee amount of \$100 per acre is needed for calendar year 2016.” (2015 Draft Report, p. 6) PADEP arrives at that figure by first calculating a “deficit” of \$260,354.25 (that is, a projected balance of \$2,739,645.75 at the end of FY 2015-2016, compared with the required minimum balance of \$3,000,000.00), then dividing that deficit figure by the estimated 2,750 acres of operations subject to the reclamation fee to be permitted during calendar year 2016. That calculation results in a rate of \$94.67 per acre, which, in accordance with 25 Pa. Code § 86.17(e)(4), PADEP rounds to \$100 per acre.

A \$100 per acre reclamation fee for calendar year 2016, however, will be in effect only for the second half of FY 2015-2016 (January 1 – June 30, 2016). Thus, as stated on page 3 of the 2015 Draft Report, it would generate only \$137,500 in revenue during FY 2015-2016, or about half of the projected \$260,354.25 deficit. Setting the reclamation fee at \$100 therefore would leave a deficit of \$122,854.25 at the end of FY 2015-2016, in violation of the requirement

to “maintain a balance in the Reclamation Fee O&M Trust Account of at least \$3,000,000.” 25 Pa. Code § 86.17(e)(3)(ii).

In order to prevent the projected deficit of \$260,354.25 from developing by the end of FY 2015-2016 on June 30, 2016, the Department needs to generate \$260,354.25 more revenue *by June 30, 2016*, not by the end of the calendar year on December 31, 2016. If the reclamation fee were applied on a *fiscal* year basis, from July 1, 2015 through June 30, 2016, a fee of \$100 per acre would generate this required amount of revenue (plus about \$10,000 extra). Because the fee is applied on a *calendar* year basis, however, a fee of \$100 starting on January 1, 2016 would fall \$122,854.25 short of the \$260,354.25 in revenue needed by June 30, 2016. As a result, the fee must be set at double the rate recommended by the Department – \$200 per acre – for calendar year 2016.

2017 Projection

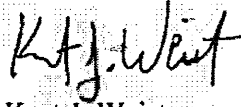
The Department’s preliminary estimate is that a reclamation fee of \$200 will be needed in calendar year 2017 to generate the \$420,000 needed to maintain the required minimum balance of \$3 million in the Reclamation Fee O&M Trust Account during FY 2016-2017. (2015 Draft Report, p. 7) These amounts should be recalculated to take into account the incongruity between the fiscal year basis of the deficit projection and the calendar year basis of the fee adjustment discussed immediately above with respect to the calendar year 2016 fee rate calculation. We note that charging a fee of \$200 per acre for calendar year 2016, as recommended above, would likely reduce the fee rate needed in calendar year 2017 to maintain the required \$3 million minimum balance.

As amended by Act 157 of 2012, the Surface Mining Conservation and Reclamation Act authorizes up to \$2 million collected from the gross receipts tax on sales of electric energy to be appropriated each fiscal year, through June 30, 2039, for transfer to the Reclamation Fee O&M Trust Account. *See* 52 P.S. § 1396.19b(b)(7). The 2015 Draft Report notes that an appropriation and transfer of \$500,000 or more in gross receipts tax revenue could fully offset the revenue otherwise needed from the reclamation fee in calendar year 2017. It further asserts that “the maximum appropriation of \$2,000,000 from the Gross Receipts Tax is warranted.” (2015 Draft Report, p. 7)

Premium payments on Land Reclamation Financial Guarantees (LRFGs) are another source of revenue that may be transferred to the Reclamation Fee O&M Trust Account. *See* 52 P.S. § 1396.19b(b)(6). Given the amount of LRFG premium payments currently being held in reserve, and the \$400,000 in such payments expected to be received during FY 2015-2016 (2015 Draft Report, p. 4), it does not appear that any appropriation of gross receipt tax revenue to the Reclamation O&M Trust Account is needed during the Commonwealth’s FY 2016-2017. No matter which specific sources of revenue are relied upon next year, however, PADEP’s *immediate* imperative must be to provide adequate treatment for *all* discharges from the ABS Legacy Sites by completing the installation or rehabilitation of the necessary treatment systems, which one of the prerequisites to finding that the ABS Legacy Sites Trust Account is “actuarially sound.” *See* 25 Pa. Code §§ 86.17(e)(6)(ii), 86.187(a)(2)(iii)(B).

Thank you for your consideration of these comments. Please feel free to contact me at 717-214-7925 if you have any questions.

Sincerely,



Kurt J. Weist
Senior Attorney

cc: (by electronic mail only)
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