

DRAFT

MINING AND RECLAMATION ADVISORY BOARD (BOARD)

Thursday, January 10, 2008

10:00 A.M.

**Rachel Carson State Office Building
Delaware Room, 16th Floor
Harrisburg, Pennsylvania**

Voting Members/Alternates in attendance: David Osikowicz (Chairman), Jack Chamberlin (Member), Edward Helfrick, Jr. (Member), David Strong (Member), Patricia Davenport (Alternate), Janice Dean (Alternate), Joe Deklinski (Alternate), George Ellis (Alternate)*, Richard Fox (Alternate), Bob Hughes (Alternate), Tara Smith (Alternate)*, Sue Wilson (Alternate)

Others in attendance: State Representative Deberah Kula (Member)*, Duane Feagley (Alternate), Sue Germanio (Alternate), Darrel Lewis (Alternate)*, William Allen (DEP), Bruce Carl (DEP), Jim Charowsky (DEP), Rod Fletcher (DEP), Bruce Golden (WPCAMR), David Hamilton (OSM), Curtis Kratz (Penna. E & R), Richard Morrison (DEP), Andy McAllister (WPCAMR), Jeff McNelly (ARIPPA), Joseph Pizarchik (DEP), George Rieger (OSM), Marc Roda (DEP), Greg Shuler (DEP), Andrew Signore (DEP), Christina Simeone (DEP), John Stefanko (DEP), Nick Troutman (Sen. Rhoades' representative), Kurt Weist (Penn Future), Amy Wolfe (Trout Unlimited)

Meeting Called to Order

Mr. Jack Chamberlin, acting on behalf of the Chairman of the Board, David Osikowicz, called the meeting to order at 10:00 a.m. He welcomed everyone and asked that they introduce themselves.

Adoption of Meeting Minutes

Mr. Chamberlin announced that the first order of business was approval of the draft minutes of the Board's November 29, 2007 meeting. Mr. David Strong made a motion to adopt the minutes and Janice Dean seconded the motion. With a unanimous vote, the minutes were adopted.

Correspondence

Mr. Chamberlin reported that the Board had not received any correspondence since the last meeting.

Committee Reports

Policy Committee

No report.

Reclamation Committee

The committee chairman, David Strong, explained that Mr. Bruce Golden, Western Pennsylvania Coalition of Abandoned Mine Reclamation (WPCAMR), had been invited to make a presentation regarding Abandoned Mine Lands (AML) funds interest rates calculations. To allow Mr. Golden an opportunity to prepare the equipment for his presentation, Mr. Strong asked for an adjustment of the meeting agenda so the presentation could be made later in the proceedings. This request was granted.

Regulation, Legislation, and Technical Committee

No report.

Alternate Bonding System (ABS) Legacy Fund

Mr. Joseph Pizarchik, Department of Environmental Protection (DEP), and Mr. William Allen, DEP, provided the Board with an overview of the Advanced Notice of Final Rulemaking (ANFR) pertaining to the funding of the Alternate Bonding System (ABS) Legacy Sites. In anticipation of soliciting comments and advice from the Board, the Department had provided each member and alternate member a copy of the ANFR prior to the meeting.

The Board expressed several concerns and sought changes to the ANFR. Mr. George Ellis raised a concern regarding use of the reclamation fee money. He, along with several other Board members, voiced concern that the rulemaking did not do enough to protect the treatment funds from being utilized by the government for other purposes. They thought the regulation needed to do more to protect the money. They expressed their desire to see the regulation amended to specify that the ABS Legacy account will become actuarially sound when the money in it, together with the money in the Reclamation Fee O&M account, will generate enough interest to pay the treatment costs in perpetuity and the money will all be placed in the ABS Legacy account.

After much discussion, the Board unanimously voted to support an amended motion made by David Strong, and seconded by Mr. George Ellis, recommending the Department proceed with the final rulemaking on the following conditions:

- The provision that provides for a minimum \$50.00 reclamation fee be removed.
- The regulation be amended to specifically include language that if, instead

of the reclamation fee, an alternative source of funding to adequately fund the reclamation fee O&M account is established, then the \$100.00 reclamation fee will not be adjusted up or continue to be collected.

- The provision that authorizes the Department to transfer money from the Reclamation Fee O&M account into the ABS Legacy account be modified to limit the Department's authority to the transfer of excess funds.

Abandoned Mine Land Presentation (Reclamation Committee Report Continued)

Bruce Golden offered a presentation detailing a computer program which calculates spending possibilities of abandoned mine reclamation funds, putting into perspective spending realities versus spending expectations.

2008 Bond Rate Guidelines

Mr. Bruce Carl, DEP, disclosed the 2008 bond rate guidelines which will take effect April 1, 2008. He noted an increase in grading costs. In addition, he provided an overview of the formula the Department used to arrive at the rates, and offered a projection of the 2009 rates.

Lunch

Mr. Osikowicz recessed the meeting at 12:10 p.m. for lunch.

Appalachia Regional Reforestation Initiative

Mr. Osikowicz called the meeting to order at 12:40 p.m. Mr. Dave Hamilton, Office of Surface Mining (OSM), was recognized. He offered a presentation regarding the Appalachia Regional Reforestation Initiative. A brief question and answer session followed the presentation.

Treatment Trust Fund Status Report

Mr. William Allen, DEP, reported that the Department is continuing to work toward securing treatment trusts or bonds for sites that have post-mining discharges but do not have full cost bonds in place. Of an estimated 124 agreements needed, it was reported that 72 are complete which represents a 58 percent completion rate.

Total Maximum Daily Load (TMDL) Update

Mr. Allen provided an update on the TMDL issue. He explained that the Department has recognized that in order to address this issue, a solid tracking system must be established. Currently, there is no organized tracking system in place; however, the Department is actively pursuing ideas and methods which may prove useful in tracking information needed to address the TMDL as it relates to permitting requirements.

Regulatory Rulemaking Package Update

Mr. Allen discussed the Department's Chapter 209, Surface Mine Safety Regulation rulemaking proposal. He explained that the Department had received comments on the proposal, some which resulted in revisions to the current draft. Some of these changes included the rewording of the definition of "accident" in the regulation, as well as the accident reporting procedure. Mr. Allen asked the Board for a recommendation to proceed with the rulemaking as currently written. Ms. Susan Wilson made a motion to recommend the Department proceed with the current draft of the regulation. Mr. Duane Feagley seconded the motion. Mr. Darrel Lewis was the sole member to cast a negative vote on the motion. The Board achieved a majority vote and the motion was approved.

DEP Response to the Clean Air Task Force Report on Coal Combustion Waste

Mr. Allen presented information regarding the Department's response to a report prepared by the Clean Air Task Force concerning coal combustion waste. He explained that the Bureau of Waste Management is currently working on revising their regulations which will incorporate program experience and recommendations made by the National Academy of Sciences in a report it published in the past that provided a detailed analysis of the use of coal ash nationwide. Essentially, monitoring of additional chemical parameters will be included in the new regulations. Also, it was explained that the frequency of monitoring groundwater will change from yearly to quarterly, and the frequency of ash sampling will change from semi-annually to quarterly. Mr. Allen told the Board that this matter will be discussed by the Solid Waste Advisory Committee which is scheduled to meet within a week.

Bureau of Abandoned Mine Reclamation Report

Mr. Brian Bradley, DEP, reported that in 2006 there were 108 reclamation projects completed resulting in 1,064 acres of reclaimed land. In 2007 there were 71 reclamation projects completed resulting in 1,231 acres of reclaimed land. For the current year, 2008, there are 79 active projects and it is believed that once reclamation is complete, 5,400 acres of land will be reclaimed.

Abandoned Mine Land Funds Investments/Treasury Meeting Report

Mr. David Strong reported to the Board that the Reclamation Committee, which had met on October 17, 2007 with members of the Commonwealth Treasury Department, was waiting for a reply to their request for other investment program options. He noted that during the meeting there was discussion of the "Pool 98" portfolio as one possible option for AML investments. He agreed to keep the Board updated as information became available.

Abandoned Mine Land Funds Advisory Group Formation

Mr. Strong opened dialogue on the topic of the formation of an Abandoned Mine Land Funds advisory group, an idea that was discussed by the Board during a previous meeting. During the discussion Mr. Osikowicz explained that the function of such an advisory group would be to advise the Department regarding AML funds issues. The Board reached a consensus that there was not a need to create a new advisory group as its Minefield Task Force would assume this responsibility.

2005 and 2006 MRAB Annual Reports

Ms. Susan Wilson presented the 2005 and 2006 MRAB Annual Reports and the Board unanimously voted to approve them.

New Business

Mr. Pizarchik provided the Board with information regarding a discharge near the Flight 93 Memorial site. Specifically, he explained that in September, 2003 there was a discharge which began to seep from the ground near a sediment pond of a reclaimed surface mine site located near the Flight 93 accident site. For this reason, the mine operator, PBS Coals, was unable to enter the site to construct a treatment facility. The company opted to move approximately one mile from the discharge site where they drilled a bore hole into underground mine workings in order to pump and treat the water. The company was treating between 900 and 1,500 gallons of water per minute. Because of the expense of treating this volume of water for manganese, and based on the fact that there was insufficient evidence to determine the amount of water which needed to be treated, as well as the quality requirements of the treated water, the Department agreed to allow PBS Coals to suspend treatment for that particular element. The Department, along with the Pennsylvania Fish Commission, and local groups are conducting a year-long study to determine if this discharge is having an effect on the receiving stream, Lambert's Run.

Ms. Susan Wilson reminded the Board that the elections for Board officers may be in order as required by the established by-laws. The Board requested clarification on the election requirements. The Board agreed that this item should be included on the agenda of the next scheduled MRAB meeting.

Adjournment

On behalf of Mr. Osikowicz, Mr. Strong adjourned the meeting at 2:05 p.m.

* Representative Kula left during the course of the meeting and Tara Smith assumed her voting authority. Mr. George Ellis left the meeting just prior to lunch and Mr. Darrel Lewis assumed his voting authority.