

MINING AND RECLAMATION ADVISORY BOARD (BOARD)

Thursday, July 24, 2008

1:00 p.m.

**Pottsville District Mining Office
5 West Laurel Boulevard
Pottsville, Pennsylvania**

Voting Members/Alternates in attendance: Patty Davenport (Alternate), Duane Feagley (Alternate), Sue Germanio (Alternate), David Osikowicz (Chairman), Nick Troutman (Alternate), Burt Waite (Member), Sue Wilson (Alternate)

Others in attendance: William Allen (DEP), Shuvonna Ballard (DEP), Bruce Carl (DEP), James Charowsky (DEP), Jeffrey Dietz (DEP), Bruce Golden (WPCAMR), Michael Korb (DEP), Curtis Kratz (Penna. E & R), Richard Morrison (DEP), Joseph Pizarchik (DEP), Andrew Signore (DEP), Michael Terretti (DEP)

Meeting Called to Order

Chairman David Osikowicz called the meeting to order at 1:20 p.m. He welcomed everyone and asked that they introduce themselves.

Correspondence

Mr. Osikowicz noted that since the last meeting, the Board received a letter from Senator James Rhoades asking that Mr. Nick Troutman be named as one his alternates to the Board.

In addition, he explained the Board received a letter from the Secretary of the Pennsylvania Department of Environmental Protection, Ms. Kathleen McGinty. In her letter, Secretary McGinty requested the Board's guidance regarding the spending of federal monies from the federal Surface Mine Control and Reclamation Act (SMCRA) Title IV Funding Program. This item will be included on the Board's October meeting agenda.

Adoption of Minutes

Mr. Osikowicz called for a motion to approve the Board's April 24, 2008, meeting minutes. Mr. Duane Feagley moved to adopt the minutes as they were presented. Ms. Sue Wilson seconded the motion. With the Board's unanimous vote, the minutes were adopted.

Committee Reports

Policy Committee

No Report

Reclamation Committee

No Report

Regulation, Legislation and Technical Committee

No Report

Election Committee

Ms. Sue Wilson presented the Board's ad hoc election committee's recommendation that Mr. David Osikowicz be nominated for reelection as the Board's chairman, and Mr. David Strong the vice-chairman. Mr. Burt Waite made a motion to approve the election of Mr. Osikowicz and Mr. Strong, and Mr. Duane Feagley seconded the motion. The motion passed with a unanimous vote.

Regulatory Rulemaking Update

Mr. Joseph Pizarchik, Department of Environmental Protection (DEP), provided the Board with updated information regarding several rulemakings. He explained that the Department's revisions to the Mine Opening Blasting (*25 Pa Code*, Chapters 77, 87, 88, 89, and 210), and Surface Mine Safety (*25 Pa Code*, Chapter 209) laws were approved in late June by the Independent Regulatory Review Commission (IRRC), then deemed approved by the House and Senate committees, and are currently being reviewed for formal legality by the Attorney General's Office. The Department anticipates that the Attorney General's Office will approve these rulemaking packages within two weeks. They will then be submitted to the Legislative Reference Bureau for final publication in August.

Continuing, Mr. Pizarchik explained that the Reclamation Fee and Bond Forfeiture rulemaking package (*25 Pa Code*, Chapters 86 and 87) was submitted to the IRRC for consideration on July 10, 2008. He noted that there were three letters of opposition to finalizing this rulemaking package. Specifically, the Pennsylvania Coal Association (PCA) wrote to oppose the reclamation fee adjustment in multiples of \$50.00. State Representatives DeWeese and Kula wrote letters in support of PCA's position. The IRCC approved the rulemaking package but asked the Department to evaluate the fee structure once implemented. The Department will evaluate the fee structure yearly.

Mr. Pizarchik informed the Board that the Department is continuing to collect supporting information to include in the Alternate Bonding System (ABS) Legacy Fund program

amendment which will be sent to the Office of Surface Mining and Reclamation Enforcement (OSM).

Finally, Mr. Pizarchik explained to the Board that on July 8, 2008, OSM sent a revised Part 732 Notice to the Department. On the same day, OSM published in the Federal Register at Section 938.16(h) a revision updating the program condition that had been reinstated by the court. As a result, Pennsylvania must demonstrate by September 8, 2008, that it has adequate revenues in the Surface Mining Conservation and Reclamation Fund in order to address outstanding reclamation at forfeited sites, or amend its program to provide the funding.

Alternate Bonding System (ABS) Legacy Sites Trust Account Revenue & Expense Update

Mr. William Allen, DEP, addressed the Board regarding the Department's projections and methods for calculating the reclamation fees. He explained that the Department's projected reclamation fees for the fiscal year 2009 are based on calculations of figures and costs from the previous fiscal year that ended June 30, 2008. The projected Reclamation Fund revenue total is approximately \$616,000.00. This amount includes approximately \$190,000.00 collected from reclamation fees, \$214,000.00 (net) from civil penalties that were collected, and \$185,000.00 in interest on the Reclamation Fee Fund balance at a rate of 5 percent. The Department expects to spend about \$700,000.00 for operation and maintenance of the thirty current primacy ABS discharge sites during fiscal year 2009.

Mr. Allen's PowerPoint presentation included cost estimates of various scenarios based on figures collected from the previous fiscal year. Following the presentation there was a question and answer session. During this time Ms. Sue Germanio made a motion that the Board should draft an explanatory letter outlining the need for the ABS Legacy Fund, to be sent to all Pennsylvania legislators. Mr. Duane Feagley seconded the motion, and by unanimous vote, the motion was approved. Ms. Germanio, Mr. Feagley, and Mr. Osikowicz volunteered to prepare a draft letter for the Board's review.

Treatment Trust Discharges Status Report

Mr. Allen continued his presentation by updating the Board on the progress of the Department's project of obtaining trusts or bonds on sites that have post-mining discharges. Since the last treatment trust discharge status report presented to the Board at its April 24, 2008, meeting, the Department has secured two additional agreements; one bond and one fully-funded trust. As a result, the bond total went from approximately \$111 million to \$117 million, and the fully-funded trust total increased about \$6 million. Mr. Allen noted that this particular figure includes one fully-funded trust and two partially-funded trusts that became fully-funded.

In conclusion, Mr. Allen explained that the Department anticipates that there will be a total of 128 agreements, with 75 agreements already secured.

Bond Conversion Assistance Fund

During his final presentation, Mr. Allen informed the Board that as of the end of the 2007 fiscal year, the Bond Conversion Assistance Fund had outstanding guarantees totaling \$33.1 million. During that fiscal year, \$1 million in bonds were released, and \$509,000 in payments made. Since inception, the fund had revenue from fees of about \$4.5 million.

Bond Rate Guideline Update

Mr. Bruce Carl, DEP, provided the Board with the Department's updated projection of the 2009 bond rates based on the average costs of recent reclamation projects. The short-push is projected to be \$0.95 per cubic yard, and the long-push \$1.20 per cubic yard. The revegetation cost is projected to be \$1,615.00 per acre.

Field Trip Briefing

Mr. Michael Korb, DEP, provided a briefing of the agenda for the Board's annual field-trip scheduled for Friday, July 25, 2008. The Board will tour several of the Department's reclamation project sites and a Schuylkill Headwaters Association passive acid mine drainage treatment system. A tour of an active strip mining site and a hybrid poplar biosolids demonstration project will be part of the trip as well.

New Business

Mr. Duane Feagley asked whether an anthracite engineer could serve on the Board to offer expertise in that area. Mr. Nick Troutman noted that Senator Rhoades is in favor of this idea. In response, Mr. Richard Morrison, DEP, explained that pursuant to the Surface Mining Control and Reclamation Act, only one engineering representative is authorized to serve on the Board. Since there is currently a bituminous engineer serving on the Board, it is not possible to approve the inclusion of an anthracite engineering representative at this time. Ms. Sue Wilson confirmed that an anthracite engineer could be named as a resource contact, providing advice to the Board, but having no voting authority.

Mr. Joseph Pizarchik informed the Board that the Department responded to the Remining Incentives Rulemaking that OSM posted in June. Mr. Pizarchik, on behalf of the Department, commented that OSM's proposed rule for waiver fees is unnecessarily limited in its application. Among other comments, the Department explained that Pennsylvania has existing remining incentive programs that could be enhanced through the ability to use federal funds to support them. They include a remining operator assistance program, remining financial guarantees, and bond credits.

The Department's complete comments can be viewed by referencing the Office of Surface Mining and Reclamation Enforcement, *Docket ID OSM-2007-0016; Remining Incentives*.

In closing, Mr. Pizarchik informed the Board that the Department is planning to submit draft model rules for OSM's consideration. The Department had also expressed its willingness to work with OSM in drafting language for additional regulations for remining incentives. Mr. Pizarchik encouraged the Board members to contact the Department if they were interested in providing advice for this endeavor.

Ms. Sue Germanio asked Mr. William Allen to provide an update on the Total Maximum Daily Load (TMDL). Mr. Allen reported that he had prepared a preliminary draft technical guidance document (TGD), but the process of completing that project was temporarily delayed by a Departmental initiative. He did confirm that the first TMDL list is due by April 2009, and the Department is well on its way of achieving that deadline.

Ms. Patty Davenport asked if there was an update available for the Winner Global, LLC, acid mine drainage project in Cambria County that was treating discharge from the St. Michael's mineshaft. Mr. James Charowsky reported that the pilot project, which was the site of the Board's October 2007 fieldtrip, was completed in December 2007, and a final report is being prepared. A copy of the report will be given to the Board members upon its completion.

Mr. Bruce Golden, Western Pennsylvania Coalition for Abandoned Mine Reclamation, informed the Board that the 2008 Abandoned Mine Reclamation Conference was scheduled for August 12 through 14 in State College, Pennsylvania. He provided an overview of the topics and speakers for the event.

Ms. Sue Wilson reintroduced the topic of the SMCRA Title IV funding, suggesting the Board consider making this item a major topic of discussion in upcoming meetings. When asked, Mr. Pizarchik provided information related to the Emergency Funding Program under this law. The Board expressed interest in following developments of the SMCRA Title IV Funding Program.

Mr. David Osikowicz asked Mr. William Allen if the Department is considering revisions to the Conventional Bonding Technical Guidance Document. Mr. Allen confirmed that he is in the process of drafting revisions. Although he could not provide an exact completion date, Mr. Allen confirmed that the TGD would be posted for a comment period.

Mr. Bruce Carl informed the Board that the Department is preparing to implement an electronic (online) mining license renewal program, as well as an electronic monitor reporting program. He explained that the Board will be notified by mail once the system is in place.

Ms. Sue Germanio questioned what agency determined the coal ash analysis limits (Beneficial Use of Coal Ash) for boron and arsenic. Mr. William Allen responded that the Federal Environmental Protection Agency indirectly determined these limits by adjusting their limits of water standards.

Adjournment

With no further questions or comments, Mr. Osikowicz called for a motion to adjourn the meeting. Mr. Duane Feagley moved to adjourn the meeting, and Ms. Sue Wilson seconded the motion. The meeting adjourned at 4:25 p.m.