

PROPOSED LETTER TO LEGISLATURE REGARDING ABS FUND SHORTFALL

The purpose of this letter is to provide background information regarding a deficit in funding for treatment of acid mine discharges associated with mine sites forfeited during the period 1982-2001 and to seek your assistance in finding a balanced funding remedy to this problem. These were sites not covered by abandoned mine land fees under the Federal AML fund; but were guaranteed with performance bonds and a per-acre reclamation fee. In addition, the active coal mining industry was in no way responsible for these forfeited sites.

In August 1981, the Department of Environmental Protection (DEP) instituted an Alternative Bonding System (ABS) to guarantee that sufficient funds would be available to cover the cost of reclamation in the case of default. The ABS consisted of a site-specific bond based on a graduated per-acre fee, set below the cost of reclamation and supplemented by a per-acre reclamation fee imposed on surface mine operators. The fee was initially set at \$50 per acre and then increased to \$100 per acre in 1993.

In 2001, DEP converted to a full cost or conventional bonding system (CBS), under which an operator must post a bond in the full amount needed to complete total reclamation in the event of forfeiture. This “full cost” system made the supplemental revenue source (i.e. the \$100-per-acre reclamation fee) unnecessary. Accordingly, DEP proposed a rulemaking in August, 2006 to terminate the reclamation fee.

In response to litigation challenging the “adequacy” of the ABS system, the US Court of Appeals for the Third Circuit issued a ruling that claimed that the ABS was inadequate in ensuring that sufficient money would be available to guarantee complete reclamation of a bonded site by the Commonwealth in the event of a forfeiture and objected to actions of DEP and OSM in trying to demonstrate the solvency of the ABS. In light of the court decision, OSM notified DEP that any attempts to repeal the \$100 reclamation fee at this time would be disapproved by the federal agency. As a result, DEP revised its 2006 PRM by reinstating the reclamation fee as well as making other changes.

In order to meet the Court’s requirement that sufficient money be available at any time to complete reclamation at ABS sites, including treatment of post-mining discharges, the members of the this Board joined with DEP in developing a workable temporary solution to a dilemma which could well exceed \$50 million and become more serious as time passes and costs for treatment, maintenance and recapitalization of projects escalates.

Regulation 7-410, adopted by IRRRC in July, 2008, provides as follows:

1. The \$100 per-acre reclamation fee will be maintained until January, 2009. If alternative permanent funding is found to cover operation and maintenance (O&M) costs at ABS forfeiture sites, then the reclamation fee would be eliminated. If no alternative funding is provided then the fee will be maintained, and adjusted in \$50 increments, as needed. At all times, a cushion of \$3 M must be maintained in the Reclamation Fee Trust Account to demonstrate to the Court's satisfaction that the Commonwealth can respond if emergency remediation is required at an ABS forfeited site.

This brings us to our first major request. The MRAB urgently seeks your assistance in providing a separate annual budget line item to appropriate monies into a newly-established ABS Legacy Fund, initially created with \$4.6 million from ABS discharge bonds, which would earn interest and eventually be able to support ongoing treatment costs at ABS forfeited sites.

2. A portion of the interest generated by the Surface Mine Fund will be used to cover some of the O&M costs not covered by the reclamation fee.

3. Money collected from civil penalties under the Act, and any other monies that may become available in the future (donations, etc.) also can be used for O&M costs as needed.

4. The Board also seeks your assistance with our second major request. We require your cooperation in the timely enactment of legislation to allow excess premiums collected in the Bond Conversion Assistance Fund (established by the General Assembly to help mine operators move from alternative bonding to full-cost bonding) to be used for O&M costs at ABS forfeited sites.

Today's mine operators continue to pay for the errors of their predecessors through per-ton AML fees and per-acre reclamation fees while also fully guaranteeing reclamation of their own sites through costly full-cost bonds. Few other historic industries hold their modern participants liable to this degree.

Certainly, past mining practices have caused environmental harms that cannot be ignored; but neither can we ignore the benefits that all Pennsylvanians have received through decades of reliable electric power and mining-related economic opportunities resulting from the efforts of dedicated Pennsylvania miners.

We graciously ask for your attention to our requests outlined above in items 1 and 4 and anxiously await a reply, if you wish, from your own honorable representatives to this Board.

Respectfully,

David Osikowicz, Chairman
Mining Reclamation Advisory Board