

## **MINING AND RECLAMATION ADVISORY BOARD (BOARD)**

**Thursday, January 10, 2013  
Harrisburg, PA  
Rachel Carson State Office Building  
Delaware Room**

**Voting Members/Alternates:** Bob Burns (Member), Jack Chamberlin (Member), Terry Dayton (Member), Marjorie Hughes (Alternate), Darrel Lewis (Alternate), David Osikowicz (Member), Burt Waite (Member)

**Other Attendees:** Molly Adams (DEP), Bill Allen (DEP), Robert Altenburg (DEP), Tom Callaghan (DEP), Bruce Carl (DEP), Jim Charowsky (DEP), George Ellis (Alternate), Duane Feagley (Alternate), Josie Gaskey (Alternate), Gerald Jackson (DEP), Shuvonna Perry (DEP), Dan Snowden (DEP)

### **Meeting Called to Order**

Mr. Osikowicz served as chair for this meeting and called the meeting to order at approximately 10:00 AM. He welcomed everyone and asked that they introduce themselves.

### **Adoption of Minutes**

The Board then voted to approve the October 25<sup>th</sup>, 2012 meeting minutes with the addition of the comment regarding the request for the Act 157 legal opinion.

### **Correspondence**

None received.

### **Committee Reports**

#### Policy

No Report

#### Reclamation

Mr. Feagley sought some follow-up comments regarding the impact of the Federal fiscal cliff/sequestration situation upon Abandoned Mine Lands (AML) funding/sequestration for the Bureau of Abandoned Mine Reclamation (BAMR), under the Baucus Amendment. The concern was that if the situation persisted, Pennsylvania could lose its share of AML funding.

## Regulation, Legislation and Technical (RLT)

Mr. Allen shared that he did receive a legal opinion on HB 1813 (Act 157) and its effective date. In correspondence from Regulatory Counsel, “statutes enacted at the time may not contain an effective dates – for Act 157, this is only for the statute itself, not the regulations that are promulgated therein.” Mr. Allen stated that the legal opinion meant that the program under Act 157 did not have to be implemented at this time, but such implementation could be pursued under a rulemaking package.

There was concern about setting a precedent about some parts of Act 157 going into effect while a rulemaking was still ongoing – here, either the entire statute is to take effect or none of it until the rulemaking package is completed. Mr. Feagley inquired about whether the transfer of \$500,000.00 in funds could occur before the rulemaking package was completed. Mr. Allen stated that this could be done, per existing regulations.

A motion was made to have DEP implement the provisions of Act 157 immediately – Mr. Ellis stated that he would draft a letter for the Chair’s signature to go to DEP’s Secretary. Another motion was made and seconded to fully transfer \$500,000.00 in funds under the Act 157 provisions.

Further discussion occurred on how the phase in the \$500,000.00 – whether to transfer it in \$250,000.00 intervals or all at once. The Board then voted to have the RLT Committee meet with DEP to further discuss the implementation of the Act 157 provisions. The meeting was scheduled for January 22, 2013, in Harrisburg, from 1:00 to 4:00 p.m.

## **Regulatory Update**

The new coal and permit application fees were implemented in November 2012. DEP is in the process of revising the application to reflect this. Meetings are scheduled with the permitting staff to clarify language within the regulations.

Water Supply Replacement, Remining, OSM Consistency are on the regulatory agenda for 2013. The Bureau of Mining Programs (BMP) has initiated the process to get approval from the Secretary to start working on these issues.

BMP has also requested that Biofuels Financial Guarantees be added to regulatory agenda and they have also asked for approval to begin rulemaking.

## **NPDES Permitting**

As of December 31<sup>st</sup>, 2012, 266 draft permits were sent to the EPA, with the latter agency providing comment and/or objections to 160 of these – none of the comments involved major changes. Under the NPDES permitting statistics, it was reported that there were between 75 and 80 such permits under review in the western Pennsylvania (Pittsburgh) area and, that the California District Mining Office (CDMO) could bring this number down to zero by late summer 2013 (pending additional applications). At present, 118 such NPDES permits were issued with

comments, while 77 similar permits were issued without comments. Also, there are 19 permits that could be issued with comments, and 18 similar permits could be issued without comments. Lastly, there are 23 permits pending (with comments) and 111 permits awaiting a 30-day period (no comments).

### **ABS Legacy Trust Account**

A report on the ABS Legacy Trust Account revealed the following, between January 2007 and January 2013: 1) *the number of total ABS Legacy Trust Account agreements ranged from 56 to 112*; 2) *the number of bonds ranged from 31 to 61, with values ranging from \$84.1 million to \$195.3 million*; 3) *the number of fully-funded trusts ranged from 14 to 32, with values ranging from \$38.6 million to \$71.7 million*; and 4) *the number of partially-funded trusts ranged from 11 to 16 (the latter also has 3 ABS trusts, as did the figures for January of 2010 and 2011) with values ranging from \$39 million to \$104.9 million*. Lastly, for the Reclamation Fee Account, the value currently stands at \$96,403.15, with \$3,988.67 earned in interest.

### **Permit Decision Guarantee Update**

The Standard Operating Procedure (SOP) to implement the new permit review process was in place, subject to input from the PA Aggregates and Concrete Association (PACA). Checklists were posted (some of these are needed for non-coal operators) and, guidance documents on the new permitting process will have to be revised to reflect the Permit Decision Guarantee.

### **Bond Rate Guidelines**

The annual average bond rate remains at \$1.10/cubic yard. The grading amounts were a little higher for this year than in the previous year. The long push bond rate is at \$1.50/cubic yard and the short rush bond rate is \$.89/cubic yard. Revegetation costs averaged around \$1,967.00/acre; these costs have been increasing over the years, due to increases in the average prices for seed and mulch.

### **BAMR Status Report**

Mr. Jackson provided a summary of BAMR activities. At the present time, 200 projects were completed, covering 7,333 acres, at a cost of \$26.3 million. For future activities, there are 39 projects proposed, covering 1,195 acres, at a cost of \$45.4 million. Thus, to date, BAMR has completed 138 projects, covering 4,650 acres, at a cost of \$141.3 million.

### **AML Grant Funding Status**

Mr. Jackson reported that due to the Federal fiscal cliff/sequestration situation, the distribution of AML grants for 2013 has been pushed back to February 1<sup>st</sup> and, that the 2012 AML grant monies had been extended to cover this time period. He then stated that the Federal Office of Surface Mining (OSM) would not announce any new AML grant funding sources until the sequestration is lifted.

## **New Business:**

**PA DEP White Paper:** Mr. Jackson provided some details about a white paper on the use of mine-influenced water (MIW) for natural gas extraction. Specifics included the development of a process for DEP review and evaluation of proposals for using MIW; storage options for MIW used by the oil and gas industry in natural gas operations (e.g., non-jurisdictional or centralized impoundments; on-site pits and tanks; polishing ponds or wetlands); potential solutions to long-term liability issues (e.g., Consent Order and Agreement; Environmental Good Samaritan Act); and further support for using MIW for natural gas extraction.

The Board recommended that a DEP representative be selected to provide a presentation about the status of the white paper as it relates to mining permits, at the April meeting.

**Field Trip:** Dr. Snowden suggested that the field trip be to the Rosebud Mining Company's St. Michael's Treatment Facility project in Somerset County. The Board agreed with this field trip idea and, accepted a recommendation to have an individual from the CDMO share details about this project at its April meeting.

**Election of MRAB Vice-Chairperson:** The Board elected Robert Burns as its Vice-Chairperson.

## **Adjourn**

With no further questions or comments, The Chair called for the meeting to be adjourned.