

MINING AND RECLAMATION ADVISORY BOARD (BOARD)

Thursday, January 9, 2014
Harrisburg, PA

Rachel Carson State Office Building
12th Floor Conference Room

Voting Members/Alternates: Jack Chamberlin (Member), George Ellis (Alternate), Duane Feagley (Alternate), Josie Gaskey (Alternate), Dave Hess (Member), Mark Killar (Alternate), Michael Kishbaugh (Member) Darrel Lewis (Alternate), Dave Osikowicz (Member – Chair), Tara Smith (Alternate), Michele Tate (Alternate) and Burt Waite (Member).

Other Attendees: Bill Allen (DEP), Brian Bradley (DEP), Keith Brady (DEP), Tom Callaghan (DEP – Bureau Director, Mining Programs), Bruce Carl (DEP), A. J. Jenkins (DEP – Office of Chief Counsel), Paul Pocavich (DEP), Shuvonna Perry (DEP), Dan Snowden (DEP – MRAB Liaison), and John Stefanko (DEP –Deputy Secretary for Active and Abandoned Mine Operations)

Meeting Called to Order/Introductions

Mr. Osikowicz called the meeting to order at approximately 10:05 A.M. Board members and alternates introduced themselves, along with DEP personnel in the audience.

Adoption of Minutes

The Board voted to approve the October 24th, 2013 meeting minutes.

Correspondence

There was no correspondence reported.

Committee Reports

- *Policy Committee:* No report.
- *Regulation, Legislation and Technical Committee:* Mr. Chamberlin reported that this Committee met shortly before the main Board meeting to discuss the following matters: 1) *Incorporation of the United States Environmental Protection Agency's (US EPA) statistical methods into reining projects; and 2) Obtaining consistency between the State and Federal mining programs through changes to specific regulatory citations. The discussion covered several topics – a) Baseline Water Quality Data in reining project areas (what US EPA statistical method to use – there is a need to examine additional cases for this); b) Data Evaluation (annual reviews of data – looking at both “good” sites and “bad” sites, in order to obtain a clearer picture of what’s going on); c) US EPA Methods (effluent limits vs. pass/fail ranking for reining project sites; statutory matters – Clean Streams Law and Clean Water Act); d) Developing Options for US EPA methods (project applicants should be able to make these choices – this is all about flexibility); and e) Supporting regulatory documents (State and/or Federal) – mine discharge behavior; peer review and use sustainability for reining project proposals; which US EPA statistical method to use in which situations; pollution abatement plans.* Mr. Chamberlin concluded his report by stating that the Committee will meet again on February 24th, 2014, at the Moshannon District Mining Office in Philipsburg, PA, to discuss the aforementioned matters further.

- Reclamation: No report.

Permit Decision Guarantee (PDG) Update and Regulatory Update

Mr. Allen began by stating that the PDG Guidance Documents (i.e., regarding Pre-Application Procedures and the Engineering Manual) were undergoing revisions.

Regarding the regulatory agenda, Mr. Allen reported that the proposed rulemaking package for Act 95 and 157 are in the queue. In the meantime, the regulatory packages for Remining (25 PA Code, Chapter 86, Subchapters F and G), Office of Surface Mining (OSM) consistency with the State mining program and, water supply replacement (all regarding 25 PA Code, Chapters 87 and 88) were still in the works.

National Pollutant Discharge Elimination System (NPDES) Update

Mr. Allen continued by reporting that as of December 31st, 2013, 425 draft NPDES permits had been sent to the US EPA, which in turn, provided comments and/or objections on 249 of these draft NPDES permits. Remaining issues regarding these permits include effluent characterization, stormwater/Total Maximum Daily Loads (TMDLs), and average monthly compliance calculations.

Next, Mr. Allen provided specific NPDES permitting statistics, which indicated that 213 draft permits were issued with comments, while another 33 such permits could be issued with comments and, 3 such permits are pending, with comments. He continued by stating that 130 draft permits were issued without comments, while 36 such permits could be issued without comments and, 10 such permits are pending without comments (along with a 30-day waiting period). He also noted that there were 80 no-comment letters regarding these draft NPDES permits.

Lastly, Mr. Allen reported the overall historical progress of the NPDES permitting program, noting that as of December 31st, 2013, 1,176 applications had been disposed, with 453 (or 25% of the total) remaining for action (of these, there are 198 renewals and 54 annual bond reviews). Among District Mining Offices, 190 such permits are in Pottsville, with 207 in California, 21 in Cambria, 27 in Greensburg, 5 in Moshannon and, none in Knox.

Alternative Bonding System (ABS) Trust Account Update

Mr. Allen turned the discussion towards the ABS Trust Account. In summary, there are 132 total agreements; fifty-six of these were completed by January 2007, with 96 completions by January 2009, 107 completions by January 2011 and, 122 completions by January 2014. Figures for bonds during the aforementioned periods were 31 (January 2007), 56 (January 2009), 64 (January 2011) and 71 (January 2014). Fully-funded trusts numbers 14 by January 2007, 31 by January 2009, 30 by January 2011 and, 34 by January 2014. Lastly, the figures for partially-funded trusts were 11 by January 2007, 6 by January 2009 (with 3 ABS sites), 10 by January 2011 (with 3 ABS sites) and, 14 by January 2014 (with 3 ABS sites).

Mr. Allen continued with a financial summary for bonds, fully-funded trusts, and partially-funded trusts for the same aforementioned periods (January 2007; January 2009; January 2011; January 2014). For bonds, the financial figures were: \$84.1 million (January 2007); \$118.4 million (January 2009); \$192 million (January 2011); and \$212.2 million (January 2014). The financial figures for fully-funded trusts were \$38.8 million (January 2007); \$57.6 million (January 2009); \$52.5 million (previously estimated at \$69.1 million) (January 2011); and \$61.2 million (previously estimated at \$73.8 million) (January 2014). Finally, the financial figures for partially-funded trusts were \$39 million (January 2007); \$36.8 million

(January 2009); \$18.5 million (previously estimated at \$52.8 million) (January 2009); and \$40.8 million (previously estimated at \$102.8 million) (January 2014).

Reclamation Fee Account and Reclamation Fee Operations and Maintenance (O & M) Trust Account Updates

Next, Mr. Allen provided updates on the Reclamation Fee Account for the 4th quarter of 2013 (in terms of coal civil penalties and the interest collected on these penalties to date) and, the Reclamation Fee O & M Trust Account. For October 2013, coal civil penalties totaled \$10,115.00, with \$634.96 collected in interest. In November 2013, these figures were \$25,920.00 and \$600.86, respectively. In December 2013, these figures were \$49,103.00 and \$507.35, respectively. Overall for 2013, coal civil penalties totaled \$205,120 (originally estimated at \$194,864.00), with \$3,390.20 collected in interest.

Regarding the Reclamation Fee O & M Trust Account, Mr. Allen reported that as of December 2013, the balance in this account is \$3,564,435.07. There is the possible transfer of Land Reclamation Financial Guarantee (LRFG) Account monies to this Reclamation Fee O & M Trust Account. Here, the funds available from the LRFG Account include \$71,988.70 from fiscal year 2012/2013, with \$300,000.00 estimated for fiscal year 2013/2014. For the current fiscal year, there is an amount of \$163,063.44 available for transfer from the LRFG Account to the Reclamation Fee O & M Trust Account.

Bond Rate Guidelines Update

Mr. Carl presented the Board with information regarding Abandoned Mine Land (AML) Reclamation Grading Costs, and the Bond Rate associated with these. For the 2011-2013 reporting period, AML reclamation grading costs ranged from \$.40 per cubic yard to \$6.00 per cubic yard. There were 21 bids at \$1.00 per cubic yard, and a total of 3,041,207 total cubic yards reclaimed at \$.90. With the associated bond rates, grading costs that covered less than a 500-foot push averaged \$.90 per cubic yard (below the projection of \$.95 per cubic yard), while grading costs that covered greater than a 500-foot push or haul averages \$1.20 per cubic yard (with a range between \$1.01/cubic yard and \$1.62/cubic yard). Revegetation costs were increased by \$200.00 per acre, to \$1,800.00 per acre, while selective grading costs were around \$1,075.00 per acre (this value is from 2009).

To continue, tree plant costs were around \$0.15 per tree (much of this was nursery stock from the Pennsylvania Department of Conservation and Natural Resources (PA DCNR), Ditch excavation costs increased slightly (by \$0.20), from \$6.80 per cubic yard to \$7.00 per cubic yard. Jute matting costs remained the same as in previous years, at \$3.80 per square yard; this same figure was the cost from erosion control in HV areas (up from \$3.70 per square yard). Additionally, there were rock lining and related drainage costs. Here, the cost for R5 rock lining was \$25.00 per ton. Associated geotextile and filter fabric costs were \$2.80 per square yard, and PVC lining costs were \$12.00 per square yard. For drainage, the costs for subsurface drains were \$19.00 per lineal foot (an increase of \$3.00 per lineal foot, from \$16.00 per lineal foot).

For maintenance costs, the Stage 3 Maintenance Bond for Non-Cropland areas was \$100.00 per acre, while similar Stage 3 Maintenance Bond for Pastureland or Hay Areas was \$500.00 per acre and, the Stage 3 Maintenance Bond for Cropland Row Crops was \$780.00 per acre (up from \$700.00 per acre). The effective date for the 2014 Bond Rates is April 1st, 2014, and this will be published in the Pennsylvania Bulletin during February 2014.

Bureau of Abandoned Mine Reclamation (BAMR) Status Report

Mr. Bradley provided the Board with a summary of BAMR projects that were completed, active, or upcoming during the 2012, 2013 and 2014 calendar years. For 2012, 222 projects were completed, covering 741.9 acres and costing \$15,044,479.00. Of that total, \$14,091,901.00 came from the Title IV Program, \$52,782.00 came from the Acid Mine Drainage (AMD) Set-Aside Program, \$19,400.00 came from bonds collected and, \$924,466.00 came from the Growing Greener Program. For 2013, there were 44 projects completed, covering 475.9 acres and costing \$13,377,824.00. Of this total, \$11,982,574.00 came from the Title IV Program, \$1,255,930.00 came from the AMD Set-Aside Program, and \$142,061.00 came from the Growing Greener Program. Future (2014 calendar year) projects will occur in 40 counties and cover 1,356.2 acres. The costs for these projects are estimated to be \$56,302,987.00. This total will come from the Title IV Program (\$37,668,800.00); the AMD Set-Aside Program (\$2,588,734.00); collected bonds (\$11,046.00); Bod Forfeiture and State Programs (\$12,157,754.00); and, the Growing Greener Program (\$3,876,652.00).

New Business

Mr. Brady shared a summary document regarding the beneficial use of coal ash at mine sites with the Board. The summary document is meant to highlight the guidelines in the draft Technical Guidance Document (TGD) (i.e., 563-2112-228) for this subject and, serve as a road map for navigating the entire TGD. Here, background information on the coal ash disposal regulations (25 PA Code, Chapter 290) is provided, as applicable to coal sites only. The document is also meant to serve as a replacement for previous technical guidance documents on coal ash disposal, as well as to address any questions that have arisen since the Chapter 290 regulations were published.

The contents of the proposed TGD include:

- *Coal ash approval is a two-step process – certification and site approval*
- *Certification section: Describes how to apply for and maintain ash certification*
- *Clarification on suitable (but limited) additives to coal ash after it is produced*
- *Coal ash-like materials (ash from other fuels or doesn't meet Chapter 290 ash definition) will require a waste General Permits, do not qualify for certification, but may still be subject to Chapter 290. Ash stored for more than a year does not qualify as "coal ash" but is residual waste.*
- *Define what is "fuel" in "Alternate Fuels"*
- *Extensive section on Hydraulic Conductivity testing: Recommend a test method, what to submit to the Department and how often. Includes a sample template for what information should be submitted to DEP.*
- *What the operator should do when they exceed the Certification requirements in a ash sample. What it means to be "flagged" – relating to a chemical parameter exceedence*
- *Temporary Shutdown is an issue that was unanticipated when the certification program was designed. We recommend how operators should notify DEP of this situation so we can maintain a current status and make their transition back to regular status smooth.*
- *Clarification about how a source gets removed from the certification list and how it can get recertified.*

- *Types of beneficial use of coal ash: placement (which is filling pits and coal refuse pile reclamation), alkaline addition, low-permeability material and soil additive/substitute*
- *Reminder of where coal ash use is NOT appropriate, such as in special protection watersheds*
- *Explanation regarding appropriate ash use for mine land reclamation, alkaline addition, low-permeability material, and as soil substitute or additive, and the loading rates associated with use for soil.*
- *Detailed description of the process of site approval which is the second step after source approval.*
- *Section on Permit Applications and Revisions includes clarification on what actions constitute major vs. minor permit revisions*
- *Instructions about when a Public Notice is necessary with regards to permit actions.*
- *Clarification on bonding at ash beneficial use sites*
- *Recommendations for implementing water monitoring plans and directions on how to conduct proper sample analyses and submit sample results. This includes information regarding frequency of sampling during the life of the permit.*
- *Explanation of the lesser sample frequency exemption for ash monitoring on a “closed loop” site.*
- *Details on conducting Field Density Tests at ash sites*
- *Explanation of reports that are required to be submitted to the DEP yearly including annual ash volume.*
- *Discussion of the importance of Due Diligence by the site operator.*
- *Site Closure: Stage 3 reclamation bonds will be held for 10 years after planting. This is unique to coal ash sites due to the extra years of monitoring. So, a small portion of the bond is retained past the normal 5 years.*
- *Clarification regarding use of coal ash through reclamation contracts on Abandoned Mine Areas.*

Mr. Feagley mentioned his interest in having the July Board meeting and field trip in the Pottsville area. It is likely that this field trip will involve a tour of an anthracite (hard coal) mining operation. Mr. Feagley stated that he would meet with the appropriate operators and arrange with one of them to make this field trip happen. He stated that he would provide an update at the April Board meeting (4-24-14).

Open Time: No comments were received from the audience.

Adjournment: The Board meeting adjourned at 11:10 a.m.