

MINING AND RECLAMATION ADVISORY BOARD (BOARD)

Thursday, October 24, 2013
Harrisburg, PA

Rachel Carson State Office Building
Conference Room 105

Voting Members/Alternates: Bob Burns (Member), Jack Chamberlin (Member), George Ellis (Alternate), Duane Feagley (Alternate), Josie Gaskey (Alternate), Dave Hess (Member), Marjorie Hughes (Alternate), Bob Hughes (Member), Mark Killar (Alternate), Darrel Lewis (Alternate), Carlton Logue (Alternate), Jonathan Lutz (Alternate), Dave Osikowicz (Member – Chair), and Tara Smith (Alternate).

Other Attendees: E. Christopher Abruzzo (Acting DEP Secretary), Bill Allen (DEP), Tom Callaghan (DEP), Bruce Carl (DEP), Susan Clark (PA House of Representatives), A. J. Jenkins (DEP), Gerald Jackson (DEP), Jeff McNelly (Anthracite Region Independent Power Producers' Association - ARIPPA), Paul Pocavich (DEP), Shuvonna Perry (DEP), and Dan Snowden (DEP – MRAB Liaison).

Meeting Called to Order/Introductions

Mr. Osikowicz called the meeting to order at approximately 10:30 A.M. In anticipation of Acting DEP Secretary Abruzzo's attendance at this meeting, he recommended that the Board go directly into the meeting agenda, and that Board members and alternates, along with audience members, introduce themselves when Mr. Abruzzo arrived.

Adoption of Minutes

The Board voted to approve the July 11th, 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 had held several meetings and conference calls on the subject of incorporating provisions of Acts 157 (Land Reclamation Financial Guarantees (LRF) Program) and 95 (Bioenergy) into Pennsylvania's coal mining regulations. The meetings culminated with the development of a regulatory package, which was discussed among DEP and the Committee. This regulatory package was to be shared with the full Board for additional discussion during the meeting.
- Reclamation: No report.

Visit from Acting DEP Secretary E. Christopher Abruzzo

The Acting DEP Secretary greeted all meeting attendees. He stressed the importance of the work that the Board does and was interested in learning more. After all attendees introduced themselves, Mr. Abruzzo remained at the meeting for a while to observe the Board in action.

Permit Decision Guarantee (PDG) Update

Mr. Allen began his standard presentation by reporting that PDG Checklists had been posted, and PDG Guidance documents were under revision, with the 3rd Quarter PDG report issued in August 2013. Regarding the historical PDG application progress with coal-related permit applications, 1,097 of these have been disposed, with 532 (around 33%) remaining for action. These PDG applications include renewals (210), annual bond reviews (67), and, are distributed among the DEP District Mining Offices (Pottsville: 220; California: 221; Cambria: 39; Greensburg: 44; Moshannon: 5; and Knox: 0).

National Pollutant Discharge Elimination System (NPDES) Permitting Update

Mr. Allen continued by reporting that as of October 17th, 2013, 399 draft NPDES permits had been sent to the United States Environmental Protection Agency (US EPA) for review. The US EPA provided comments and/or objections to 234 of these draft NPDES permits. Also, a fact sheet regarding these NPDES applications has been developed.

The NPDES permitting statistics state that there are 196 permits issued with comments, and 113 issued without comments (including 75 “no comment” letters from US EPA). Also, there are 7 permits that could be issued with comments and 42 issued without comments. Finally, there are 31 permits pending with comments and 10 permit without comments (the latter are all awaiting 30 days with US EPA review).

Alternative Bonding System (ABS) Legacy Trust Account Update

Mr. Allen continued by reporting that there were 132 ABS Legacy Trust Account agreements in all. Fifty-six of these were completed by January 2007, accompanied by 31 bonds, 14 full—funded trusts and 11 partially-funded trusts. Progressively, the figures for January 2010 include 96 total agreements; 56 bonds, 31 fully-funded trusts and 6 partially funded trusts (with 3 of these being ABS). Further, in January 2011, the number of total agreements was 107, accompanied by 64 bonds, 30 fully-funded trusts and 10 partially-funded trusts (again, with 3 of these being ABS). Lastly, as of October 2013, there are 117 total agreements, 66 bonds, 33 fully-funded trusts and 15 partially-funded trusts (again, with 3 of these being ABS).

Looking at the overall finances of ABS Trust Legacy Account, the bonds ranged from \$84.1 million (January 2007) to \$118.4 million (January 2009), and increased to levels of \$192 million (January 2011) and \$205.6 million (October 2013). Figures for the fully-funded trusts ranged from \$38.6 million (January 2007) to \$57.6 million (January 2009), and decreased to levels of \$52.5 million (January 2011 – the figure was initially projected to \$69.1 million for this period) and then, increased to \$59.6 million (October 2013 – the figure was initially projected to \$72 million for this period). Lastly, the figures for partially-funded trusts ranged from \$39 million (January 2007) to \$36.8 million (January 2009) and decreased to \$18.5 million (January 2011 – this figure was initially projected to \$52.8 million for this period) and, increased to \$52.4 million (October 2013 – this figure was initially projected to \$104.6 million for this period).

Reclamation Fee Operations and Maintenance (O & M) Account and Report Update

Mr. Allen continued with a report on the Reclamation Fee O & M Account. For the 3rd Quarter of 2013, revenues for the Reclamation Fee O & M Account were as follows: in July 2013, \$43,300.00 in coal civil penalties was collected, with \$537.91 earned for interest; for August 2013, the amount collected and interest earned were \$56,319.00 and \$547.82, respectively; for September 2013, the respective amounts for coal civil penalties collected and interest earned were \$20,362.50 and \$561.30. For the year to date, \$119,982.00 in coal civil penalties has been collected for the Reclamation Fee O & M Account. It should be noted that there was a difference between the total penalties collected (again, the \$119,982.00) and the amount available to the Reclamation Fee O & M Account (this amount is \$113,982.90). The reason for this difference is that 5% of all penalties collected must be transferred to the Environmental Education Fund, leaving the remaining 95% of these penalties collected available to the Reclamation Fee O & M Account. Also, \$1,647.03 in interest was earned for the Reclamation Fee O & M Account.

Mr. Allen then mentioned that the draft report for the Reclamation Fee O & M Account was posted for comment, with a posting in the Pennsylvania Bulletin on September 21st, 2013. Comments on the report were due by October 15th, 2013 – one party provided comments on this report. Mr. Allen continued with a summary of the Reclamation Fee O & M Account Report. As of June 30th, 2013, the balance in the account was \$3,557,623.12. Revenue for fiscal year 2012-2013 included \$247,178.22 in coal civil penalties and \$8,533.04 in earned interest, with an additional \$5,096.91 in interest earned from the LRFG Program. It should be noted that the civil penalties and LRFG interest were not transferred as of June 30th, 2013, (this would happen later), which made the Reclamation Fee O & M Account's initial balance stand at \$3,809,898.25.

Regarding the future revenue and expenses related to the Reclamation Fee O & M Account, Mr. Allen reported that for fiscal year 2013-2014, estimated expenses are projected to be \$959,334.00, while estimated revenue for the same period are projected to include \$250,000.00 in coal civil penalties; \$8,000.00 in earned interest; and \$25,000.00 in interest earned from the LRFG Program. Overall, the projected Reclamation Fee Account balance for fiscal year 2013-2014 will be \$3,133,564.25. The plan will be to monitor the balance with the transfer for funds from LRFG Program premiums to the Reclamation Fee Trust Account (RFTA). The available funds from the LRFG Program include \$71,988.70 from fiscal year 2012-2013, and, an estimated \$300,000.00 from fiscal year 2013-2014.

Regulatory Update

Mr. Allen continued his presentation by reporting that the items for the current regulatory agenda were related to changes for the Surface and Underground Coal Mining – General (25 PA Code, Chapter 86) regulations involving the incorporation of elements from Acts 95 (Bioenergy) and 157 (LRFG Program). Other elements slated for incorporation into the Chapter 86 regulations are related to remining (Chapter 86, Subchapters F and G); making specific regulations for Pennsylvania's mining programs consistent with those of the Federal Office of Surface Mining (OSM). An element regarding water supply replacement is slated for additions to the regulations for the Surface Mining of Coal (25 PA Code, Chapter 87) and Anthracite Coal Mining (25 PA Code, Chapter 88).

Act 157 – LRFG Program Implementation Update

Mr. Allen continued by reporting that Act 157 regulations had been developed through several meetings and conference calls with the Board's RLT Committee. The resulting regulatory package

was further discussed with the full Board; this discussion is shown below as the first item under “New Business.”

Bond Rate Guidelines Update

Mr. Carl reported that for the three lowest project bids, the 2013, AML reclamation grading costs ranged from \$.80 per cubic yard (at an overall project bid cost of \$1,1915,520.40) to \$.93 per cubic yard (at an overall project bid cost of \$2,207,769.30). These costs averaged around \$2,054,610.10 for 2013, and the amount of area covered was 2,382,557 cubic yards. For 2013 grading (per frequency and cubic yards), the costs per cubic yards ranged from \$.70/cubic yard to \$.90 per cubic yard (for the projects with large cubic yardage and frequencies); there were some projects at \$1.50 and \$2.00/cubic yard, but these projects had limited frequencies and cubic yard coverage.

Mr. Carl continued by reporting that for the total grading costs for the 2011 to 2013 period, most projects fell into the categories between \$.48 per cubic yard and \$1.00 per cubic yard, with a few falling outside of this range; overall average grading costs for this period ranged between \$.93 per cubic yard and \$1.23 per cubic yard. For the 2011-2012 period, the most frequent grading projects were within the \$1.00 per cubic yard category (with a fair amount of projects at the \$.75 per cubic yard and \$.85 per cubic yard categories); there were also some projects in the \$1.20 per cubic yard and the \$1.50 per cubic yard categories – these had extensive cubic yard coverage, but little frequency overall.

Further, Mr. Carl reported that the revegetation cost trends from 2003 through 2013 ranged from \$1,259.00 (2003) to \$1,967 per acre (2012); the figure for 2013, which is \$1,910.00 per acre, represents a slight decrease in revegetation cost trends. Lastly, he stated that the calculated bond rates proposed for 2014 would fall between \$.95 and \$1.20 per cubic yard, with grading costs of \$1,075.00 per acre and revegetation costs of \$1,800.00 per acre. The revegetation costs account for the costs of seed, mulch, and pasture land needed for reclamation.

Bureau of Abandoned Mine Reclamation (BAMR) Status Report

Substituting for Brian Bradley, Mr. Jackson provided an update on BAMR projects. Overall, 171 reclamation projects have been completed, encompassing 733 acres, with a cost of \$15 million. In 2013, BAMR completed 30 projects, covering 284 acres, and costing \$6.4 million. In the future, BAMR has 36 projects planned, covering 1,364 acres, and costing \$60 million. There are also 136 BAMR design projects that are slated to cover 4,560 acres, and cost \$174 million. Mr. Jackson also reported that Federal grant funding for the Abandoned Mine Land (AML) projects is \$61.7 million (this is about 5.1% less than the original amount – the 5.1% is being withheld due to Federal sequestration matters, which are unresolved as yet) for the 2013 calendar year, ending on December 31st. For the 2014 calendar year, the AML grant funding levels is expected to be similar to 2013; the application deadline for this is November 1st, 2013, with funds allocated by January 1st, 2014. However, this will be subject to whether the sequestration situation at the Federal government level is resolved.

New Business

Discussion of the LRFG Program Regulations

The draft regulations for the LRFG Program were discussed before the full Board, with Mr. Allen providing an explanation of the regulatory package that was prepared through previous and extensive

consultation with the Board's RLT Committee. A remaining issue regarding the transfer of the Gross Receipts Tax from the LRFG Program (around \$2 million per year) into the RF O&M TA was discussed. Here, the Board was concerned as to whether DEP had an internal process to help make this funds transfer happen, so that it would be ensured that the funds would be available on a year-to-year basis. The requirement for this LRFG-RF O&M TA fund transfer of \$2 million comes from the Act 157 legislation and, although the General Assembly has not appropriated funds from this, a process could be placed in the preamble of the forthcoming LRFG Program regulations.

After some additional discussion, the Board recommended the inclusion of specific language regarding the aforementioned funds transfer in a section of the forthcoming LRFG regulations, in order to make the matter more understandable. The language will read as follows: "*No later than _____ of any given year, the Department shall report to the MRAB as to when a transfer from the Gross Receipts Tax to the Reclamation Fee O & M Trust Account is necessary to supplement the funding of the O & M Trust Account in order to offset an increase in the reclamation fee in a subsequent year.*" The Board voted to approve this language.

Quarterly Board Meetings for 2014

Quarterly Board meeting dates for the 2014 calendar year were considered. The dates offered initially included January 2nd, April 24th, July 3rd, and October 23rd. Recommendations were made to change the January and July 2014 Board meeting dates to January 9th and July 17th, respectively. The Board voted to approve these changes to its 2014 quarterly meeting schedule and, to accept the April and October 2014 Board meeting dates as stated. Therefore, the Board's quarterly meeting dates for 2014 will be:

- January 9th, 2014
- April 24th, 2014
- July 17th, 2014
- October 23rd, 2014.

Conference Announcement

An announcement was made regarding the 16th Annual Pennsylvania Abandoned Mine Reclamation Conference. This event will be held on June 26th through June 28th, 2014, at the Ramada Inn in State College, PA. Board members were encouraged to attend, as their individual schedules permit.

Marjorie Hughes' Retirement

An announcement was made that Ms. Hughes, Executive Director of the Citizens Advisory Council (CAC) to DEP and, an alternate for CAC members on the Board, would be retiring at the end of the year. This Board meeting served as the final one that she would attend.

Adjourn

With no further questions or comments, the Chair called for the meeting to be adjourned at around 11:45 a.m.