

MINING AND RECLAMATION ADVISORY BOARD
Thursday, January 22, 2015
Harrisburg, PA

Rachel Carson State Office Building
10th Floor Conference Room

Voting Members/Alternates: Duane Feagley (Alternate), Darrel Lewis (Alternate), George Ellis (Alternate), Rachel Hursh (Alternate), Jonathan Lutz (Alternate), Tara Smith (Alternate), Michele Tate (Alternate), and Burt Waite (Member).

Other Attendees: Bill Allen (DEP), Brian Bradley (DEP – Bureau of Abandoned Mine Reclamation (BAMR)), Tom Callaghan (DEP –Bureau Director, Mining Programs), Mario Carello (DEP – Moshannon District Mining Office), Sarah Clark (PA House of Representatives), Bruce Carl (DEP), Laura Edinger (DEP – Policy Office), Josie Gaskey (Pennsylvania Aggregate and Concrete Association (PACA), Joseph Iole (PA DEP – Regulatory Counsel), Jeff McNally (Anthracite Region Independent Power Producers’ Association (ARIPPA), Paul Pocavich (DEP), Shuvonna Perry (DEP), Maria Reston (DEP), and Dan Snowden (DEP – MRAB Liaison).

Meeting Called to Order/Introductions

Acting in the absence of the Board Chair and Vice-Chair, Mr. Feagley called the meeting to order at approximately 10:15 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 23rd, 2014 meeting minutes.

Correspondence

There was no correspondence reported.

Committee Reports

- *Policy Committee:* No report.
- *Regulation, Legislation and Technical Committee:* Ms. Smith reported that this committee met on November 25th, 2014 to discuss the proposed changes to Pennsylvania’s mining regulations, in order to make them more consistent with those of the Federal Office of Surface Mining (OSM). One concern involved the definition of the term “surface mining activities” (amending the definition for this term in Chapter 86, Section 86.1 (Definitions) aligns it with Part 30, Sections 700.5 of the Code of Federal Regulations (30 CFR 700.5 (Mineral Resources – Definitions) and 701.5 (OSM - Permanent Regulatory Program: Definitions)). This may be delayed due to litigation regarding the term. Other matters discussed during the meeting included: 1) the remaining regulations (submitted to the Environmental Quality Board (EQB) as a proposed rulemaking package); 2) Acts 157 regulations (Land Reclamation Financial Guarantees – these are discussed further below); 3) pre-blast surveys (whether these should be conducted within ½ mile of the proposed permit area or, within ½ mile of the designated blasting area); 4) tree requirements (80% of the tree plantings are currently in place as they relate to mining activities, but for only 60% of the land involved in these same mining activities.; 5) sedimentation ponds (how long these should be kept in place – 2-year limit); and

6) anthracite coal (hydrologic testing requirements to determine adverse impacts from mining). (Note: Mr. Callaghan mentioned that surface mining activities were onsite only at the point of extraction – matters regarding site preparation and timbering will also be considered when amending the “surface mining activities” definition (DEP will discuss this issue with).

- **Reclamation:** Mr. Feagley reported that this committee met on December 16th, 2014 to discuss the DEP bond rate guidelines as applied to tree planting on reclaimed coal mining sites. The original cost was \$.15 per seedling, which could provide 400 trees per acre of coal mining site; the bonding cost for reclamation was \$60.00/acre. Under the new bond rate guidelines, the cost of seedlings increases to \$2.00 per seedling; this increases the bonding costs for reclamation to \$800.00 per acre. Dan Devlin, Deputy Secretary for Parks and Forestry, Department of Conservation and Natural Resources (DCNR), who was present at the meeting, explained that DCNR made an internal decision to stop selling seedlings from its State College nursery to private companies, as this agency is no longer producing any additional seedlings beyond its own needs (the nursery does not have any excess seedlings to sell); also, he stated that the Corbett Administration wished for private industry to fulfill this role. Mr. Carl, who was also present at the meeting, explained that the \$2.00/seedling rate is based on costs presented by BAMR when it completes reclamation jobs and plants seedlings on sites; according to BAMR, the cost to purchase and plant seedlings runs between \$.35 and \$2.00 per seedling. DCNR plans to revisit the issue and discuss it with the Wolf Administration, while DEP plans to take a closer look at the BAMR figures to ensure that they are accurate.

Permit Decision Guarantee (PDG) and Technical Guidance Update

Mr. Allen began his standard report with an update on the PDG process and related guidance documents. He mentioned that the guidance documents regarding pre-applications (563-2112-214), the engineering manual, and transfers were being revised. The pre-applications guidance document is proposed for comment, while the engineering manual is being edited and formatted, with an initial release date of February 2015. Mr. Allen also reported that some additional guidance documents had been revised, including one regarding blaster’s license suspension (a point system will be added to this document) and coal ash (a comment/response document is being prepared for this guidance document).

National Pollutant Discharge Elimination System (NPDES) Permitting Update

Mr. Allen reported that as of December 31st, 2014, 525 draft NPDES permits have been sent to the United States Environmental Protection Agency (EPA), which has commented or objected on 320 of these draft permits. EPA comments or objections related to the checklist; Total Maximum Daily Loads (TMDLs) for remining; and TMDL endpoints vs. limits at criteria; and a discussion of permit populations.

Mr. Allen then reported on the NPDES permitting statistics. There have been 287 permits issued with comments and 179 that have been issued without comments. Further, there have been 28 permits that could be issued with comments and 29 that could be issued without comments. Lastly, there were 5 permits pending issuance with comments and 7 permits pending issuance without comments. The permits in the “no comments” category include 94 no-comment letters.

Mr. Allen also reported on permit applications. As of December 31st, 2014, 1,429 permits were disposed, and 200 permits remained for action (this is 12% of the total number of permits). Among the 200 permits remaining for action, 107 of these are renewals and seven are annual bond renewals. The breakdown of permits by District Mining Offices includes 79 permits for Pottsville; 115 permits for

California; 3 permits for Cambria; 1 permit for New Stanton (Greensburg); and no permits for Moshannon and Knox. The Board requested a full spreadsheet of this report and Mr. Allen stated that he would provide one as soon as becomes available.

Alternative Bond System (ABS) Legacy Trust Account Update

Mr. Allen reported on the status of the ABS Legacy Trust Account, specifically for the periods January 2007; January 2011; September 2014; and December 2014.

For January 2007, there were 56 agreements. Thirty-one agreements were bonds, valued at \$84.1 million; 14 agreements were fully-funded trusts, valued at \$38.6 million; and 11 agreements were partially-funded trusts, valued at \$39 million.

For January 2011, there were 107 agreements. Sixty-four agreements were bonds, valued at \$192 million; 30 agreements were fully-funded trusts, valued at \$52.5 million (down from the expected \$69.1 million); and 10 agreements (including 3 ABS sites) were partially-funded trusts, valued at \$18.5 million (down from the expected \$52.8 million).

For September 2014, there were 127 agreements. Seventy-three agreements were bonds, valued at \$222 million; 36 agreements were fully-funded trusts, valued at \$69.1 million (down from the expected \$76.5 million); and 15 agreements (including 3 ABS sites) were partially-funded trusts, valued at \$52.1 million (down from the expected \$109 million).

For December 2014 there were 130 agreements. Seventy-four agreements were bonds, valued at \$225 million; 37 agreements were fully-funded trusts, valued at \$71.2 million (down from the expected \$75.5 million); and 16 agreements (including 3 ABS sites) were partially-funded trusts, valued at \$60.2 million (down from the expected \$124.3 million).

Land Reclamation Financial Guarantees (LRFG)

Mr. Allen reported on the status of LRFG, in terms of operators and permits. To date, there are 72 LRFG operators (up from 63 at the previous count), collecting an average amount of \$276,175.00. Additionally, there are 109 LRFG permits (up from 97 at the previous count) with an average value of \$182,427.00. The total value of LRFG permits was \$19.1 million at the last quarter of 2014; for January 2015, this figure is \$19.8 million.

Regulatory Update

Mr. Allen reported on the status of various regulatory packages. The remaining regulations (Subchapters F and G), internally reviewed by the Board, will be sent to the EQB as a proposed rulemaking. The regulatory package on OSM Program Consistency is undergoing language revisions. The water supply replacement regulations (Chapters 87 and 88) are on hold. The Chapter 211 regulatory package (blasting) is undergoing some minor changes related to seismic exploration, civil penalties and non-mining use of explosives.

The Act 157/Act 95 regulatory package was discussed including comments received pertaining to the regulation. The Board discussion included comments provided by the Independent Regulatory Review Commission (IRRC). IRRC's comments requested rephrasing "offset an increase" in the Reclamation Fee language in Section 86.17(e)(2); tracking statutory language in Section 86.162b(f)(3) regarding "margin of safety"; clarifying what an operator needs to do to demonstrate eligibility (Section 86.162b(k)(3)); and requiring the payment schedule to be in writing (Section 86.162b(m)(2)). After this

report, the Board voted unanimously to send the Act 157/Act 95 regulatory package to the EQB as a final rulemaking.

Reclamation Fee Account Update

Mr. Allen reported that, as of December 31st, 2014, the balance in the Reclamation Fee Account is \$3,430,085.45. Expenses for FY 2014-2015 currently are \$182,807.19, while LRFG interest earned during the same period is \$8,765.17. In previous fiscal years, the LRFG interest was \$10,193.82 (FY 2012-2013) and \$21,961.74 (FY 2013-2014). LRFG premiums for the current fiscal year are \$185,216.34; in previous fiscal years, these premiums were \$71,988.70 (FY 2012-2013) and \$276,563.94 (FY 2013-2014).

Mr. Allen also reported on Reclamation Fee Operations and Maintenance (O & M) projects during this time. Expenditures on these projects for 2014 totaled \$434,702.89. The value of O & M contracts for 2014 was \$171,841.16, while the value of O & M grants for 2014 was \$248,605.60. Lastly, DEP direct costs for the Reclamation Fee O & M projects during 2014 totaled \$14,256.13.

The Board voted to set up a work group to evaluate the Reclamation Fee Account further. This work group includes of Duane Feagley, Rachel Hursh, Carlton Logue and Tara Smith. Tom Callaghan was named to serve as the DEP liaison to the work group.

ABS Legacy Sites: O & M Costs for 2014

Mr. Allen reported the O & M costs for ABS Legacy Sites. This report provided information pertaining to acid mine drainage (AMD) treatment facilities in the Commonwealth. The number of AMD treatment facility permits was compared to the annual O & M costs by permit. The plurality of the permitted facilities (24) had annual O & M costs that amounted to \$0. Other permitted facilities with varied annual O & M costs fell into the following ranges: a) 13 facilities between \$46.00 and \$1,000.00; b) 10 facilities between \$1,000.00 and \$3,000.00; c) 2 facilities between \$20,000.00 and \$30,000.00; d) 3 facilities between \$30,000.00 and \$40,000.00; e) 2 facilities between \$60,000.00 and \$70,000.00; and f) 1 facility greater than \$100,000.00. Mr. Allen also provided a Site Cost Ranking for the aforementioned facilities, highlighting the ones with the greatest annual O & M costs:

- L & B Mining (No. 5 Site) – Passive Rehabilitation: \$111,000.00
- C & K Mining (Bell Woodcock Site) – Lime Plant: \$69,000.00
- K & J Mining (Gaber Brown Site) – Passive Treatment: \$67,000.00
- C & K Mining (Racic Site) – Caustics: \$35,000.00
- C & K Mining (Cambria 51 Site) – Caustics: \$33,000.00
- K & J Mining (Westover Site) – Passive Treatment: \$29,000.00
- American Development Mining (Job 33 Site) – Caustics: \$26,000.00

Bond Rate Guidelines

Mr. Carl reported the Abandoned Mine Lands (AML) reclamation costs for 2014. In 2014, there were 10 AML reclamation projects with grading that reclaimed 4,612,457 total cubic yards. Bidding for these projects ranged from \$.88/cubic yard to \$1.17/cubic yard, with an average bid of \$.92/cubic yard. Mr. Carl also discussed AML reclamation grading costs from 2013 through 2014. These costs ranged from \$.40/cubic yard to \$6.00/cubic yard. The distribution on bidding was even, ranging between \$.80/cubic yard and \$1.00/cubic yard, with the majority of projects falling within the \$1.00/cubic yard range (there were some bids that were smaller: 17 bids at \$.85/cubic yard and 14 bids at \$.90/cubic yard).

Mr. Carl also reported on the projected bond costs for 2015. Topics mentioned included the following:

- Grading cost at less than a 500-foot push will be \$.95/cubic yard (an increase of \$.05 from 2014);
- Grading costs at greater than a 500-foot push/haul will be \$1.20/cubic yard (the same as 2014);
- Selective grading costs will be \$1,700.00/acre (an increase of \$625.00 from 2014);
- Revegetation costs will be \$1,900.00/acre (an increase of \$100.00 from 2014);
- Tree planting costs were initially going to be \$2.00 per tree based on the 3-year average of tree planting costs for abandoned mine reclamation contracts. However, after discussion on the dramatic increase from \$.15 to \$2.00, it was agreed to transition from \$.15 to \$.75; thus the 2015 bond rates for tree planting will be \$.75 per tree. DEP will continue to review the abandoned mine reclamation contract tree planting costs each year.
- Ditch excavation costs will be \$7.00/cubic yard (the same as 2014);
- Jute matting costs will be \$4.00/square yard (an increase of \$1.00 from 2014);
- HV erosion control costs will be \$3.80/square yard (the same as 2014);
- AASHTO No. 1 Stone costs will be \$29.00/ton (the same as 2014);
- AASHTO No. 57 Stone costs will be \$30.00/ton (the same as 2014);
- R3 Rock Lining costs will be \$33/ton (the same as 2014);
- R4 Rock Lining costs will be \$25.00/ton (the same as 2014);
- R5 Rock Lining costs will be \$27.00/ton (an increase of \$2.00 from 2014)
- Geotextile/Filter Fabric costs will be \$2.80/square yard (the same as 2014);
- PVC Lining costs will be \$12.00/square yard (the same as 2014);
- Subsurface Drain costs will be \$19.00/lineal foot (the same as 2014);
- Stage 3 Maintenance Bond Non-Cropland costs will be \$100.00/acre (the same as 2014);
- Stage 3 Maintenance Bond Pastureland or Hay costs will be \$550.00/acre (an increase of \$50.00 from 2014); and
- Stage 3 Maintenance Bond Cropland Row Crop costs will be \$850.00/acre (an increase of \$70.00 from 2014).

Mr. Carl concluded his report by stating that the effective date for bond rate guidelines was April 1st for years prior to 2014 and, that the 2014 bond rate guidelines became effective on April 5th. He also stated that DEP will continue with the April 5th effective date for the 2015 bond rates as well as future bond rates. The bond rates will be published in the *Pennsylvania Bulletin* in either February 2015 or March 2015.

BAMR Status Report

Mr. Bradley announced that Pennsylvania was allocated \$44 million in Federal grant monies from OSMRE for the AML program in 2015. This represents a decrease of \$8.3 million from 2014. He explained that funding was reduced due to several factors: the planned end of a provision in the Surface Mining Control and Reclamation Act (SMCRA) that allowed for pay-downs of part of the AML Fund balance between 2008 -2014; a decline in coal production nationally; and federal budget sequestration cuts.

Mr. Bradley also reported on the status of BAMR projects. For calendar year 2013, BAMR completed 84 projects that reclaimed 647.4 acres; the cost of these projects was \$29,028,352.00, with funding sources of \$12,724,845.00 in Title IV monies; \$1,745,162.00 in acid mine drainage (AMD) set-aside monies; \$12,125,000.00 in bond forfeiture and State program monies; and \$2,142,061 in Growing Greener monies.

For calendar year 2014, BAMR completed 61 projects that reclaimed 626.8 acres; the cost of these projects totaled \$19,551,060.00. The funding sources for these projects included \$18,774,520.00 in Title IV monies; \$6,000.00 in collected bond monies; \$87,627.00 in bond forfeiture and State program monies; and \$613,878.00 in Growing Greener monies.

For calendar year 2015, BAMR currently has 33 projects under contract that will reclaim 1,320.9 acres, at a cost of \$43,825,682.00. The sources of the funding for these projects will include \$38,618,459.00 in Title IV monies; \$2,000,000.00 in AMD set-aside monies; \$5,046.00 in collected bond monies; \$32,754.00 in bond forfeiture and State program monies; and \$3,098,591.00 in Growing Greener monies.

Lastly, for active design projects BAMR has 78 projects under design that will reclaim 3,217.3 acres, at an estimated cost of \$131,454,459.00. The sources of funding for these projects include \$129,863,959.00 in Title IV monies; \$1,500,000.00 in AMD set-aside monies; and \$90,500.00 in collected bond monies.

MRAB Annual Reports: 2010-2011 and 2012-2013

The Board decided to table these reports and discuss them at the next meeting (April 23rd, 2015).

Open Discussion Time

Mr. McNally made note of the two MRAB Annual Reports presented by stating a need to make these reports more descriptive and educational in the future. He stressed making the reports more representative of the reclamation work that is going on in Pennsylvania. The entire reclamation story should be represented, not just reporting the surface acre reclamation component of this activity. He suggested using cubic yards and/or acre feet to further describe the depth component of reclamation work and, he explained why depth, as well as other factors, makes reclamation per surface acre costs vary widely. He noted that including the reasoning behind why some projects involve greater time and cost should make the report more descriptive.

Next Meeting

The Board will meet again on April 23rd, 2015, in Harrisburg.

Adjournment

The Board meeting adjourned at around 11:30 a.m.