

MINING AND RECLAMATION ADVISORY BOARD (BOARD)

Thursday, October 23, 2014
Harrisburg, PA

Rachel Carson State Office Building
Conference Room 105

Voting Members/Alternates: Bob Burns (Member), Cynthia Carrow (Member), Jack Chamberlin (Member), George Ellis (Alternate), Duane Feagley (Alternate), Michael Kishbaugh (Alternate), Darrel Lewis (Alternate), Jonathan Lutz (Alternate), Dave Osikowicz (Member – Chair), Tara Smith (Alternate) and Michele Tate (Alternate).

Other Attendees: Bill Allen (DEP), Tom Callaghan (DEP), Bruce Carl (DEP), Sarah Clark (PA House of Representatives), Laura Edinger (DEP –Policy Office), Dawn Hopp (DEP – Construction Contracts), Rachel Hursh (PA Coal Alliance), Gerald Jackson (DEP), Paul Pocavich (DEP), Shuvonna Perry (DEP), Robert “Bo” Reilly (DEP – Chief Counsel), and Dan Snowden (DEP – MRAB Liaison).

Meeting Called to Order/Introductions

Mr. Osikowicz called the meeting to order at approximately 10:15 A.M. Board members and alternates, DEP staff and other meeting attendees introduced themselves.

Adoption of Minutes

The Board voted to approve the minutes from both its April 24th, 2014 meeting and, its July 17th, 2014 meeting.

Correspondence

Mr. Osikowicz reported on an effort from the Citizens Advisory Council’s (CAC) Public Participation Committee to evaluate the Advisory Committee Guidelines Policy. The CAC sent out e-mail surveys to the Chairs of DEP’s Advisory Committees to determine how the aforementioned policy was working and, how Committees could change this Policy to help them work more efficiently with DEP.

In the case of the Board, the following findings in the survey were reported, per its answers to the CAC’s questions, as provided by Mr. Osikowicz:

- How could DEP make better use of the expertise on your advisory Committee? – ***By having higher-level DEP personnel attend the MRAB meetings.***
- Does your advisory committee receive feedback from DEP when it provides comments to the agency? ***Most of the time, DEP provides feedback to the MRAB in these situations.***

- How well is your advisory committee being supported by DEP, including the timely notice of meetings, distribution and posting of meeting handouts and, reimbursement for expenses? *DEP provides excellent support to the MRAB in all of these matters.*
- What comment do you or your advisory committee have on DEP's Advisory Committee Guidelines policy (1998)? *The MRAB did not provide any comments on the aforementioned document.*
- What does your advisory committee believe are its most significant accomplishment or, where does your advisory committee believe it has made its most significant impact? *The MRAB believes that its most significant accomplishment/impact is its acting as liaison between DEP, the mining industry and the environmental community.*

Committee Reports

- Policy Committee: No report.
- Regulation, Legislation and Technical Committee: Mr. Chamberlin reported that this Committee met on September 9th, 2014 to further discuss the proposed revisions to the remaining regulations (25 PA Code, Chapter 87, Sections 87.201 – 87.209). These revisions involve the incorporation of United States Environmental Protection Agency (US EPA) statistical methods into these regulations. The next phase will be to incorporate these changes into the regulations for Anthracite Coal (25 PA Code, Chapter 88, Subchapter G) and Coal Refuse Disposal (25 PA Code, Chapter 90, Subchapter F), as applicable. A determination will have to be made as to whether the proposed revisions to the Chapter 87 regulations should be incorporated in their entirety in Chapters 88 and 90, or simply referenced in the same. This Committee also discussed the status of additional regulatory proposals/revisions (i.e., Federal Office of Surface Mining (OSM) Consistency), Water Supply Replacement, Legacy Sites, and, the Reclamation Fee Report). The final version of the remaining regulatory package was discussed at a later point during the meeting.
- Reclamation: No report.

Permit Decision Guarantee Update

Mr. Allen presented information on technical guidance documents related to the Permit Decision Guarantee. The guidance documents that will be revised and, those that have been revised recently include the following:

- Pre-applications (guidance document number 563-2112-214) (revision forthcoming)
- Engineering Manual (revision forthcoming)
- Transfers (revision forthcoming)
- Blaster's License Suspension (revised recently)
- Coal Ash (revised recently)

National Pollutant Discharge Elimination System (NPDES) Permitting Update

Mr. Allen reported on the progress of mining-related NPDES permits. Currently (as of September 30th, 2014), a total of 513 draft NPDES permits have been sent to the United States Environmental Protection Agency (US EPA). The US EPA has provided comments on approximately 61% (312) of these permits. Remaining issues regarding these NPDES permits relate to the checklist, Total Maximum Daily Loads (TMDLs) for remining and, the matter of TMDL Endpoints vs. Limits at Criteria (this is all about interpretation).

The breakdown for mining-related NPDES permits was also provided – these are as follows:

- *Two hundred seventy NPDES permits have been issued with comments from US EPA, while 30 NPDES could be issued with comments, and 12 NPDES permits pending with comments.*
- *One hundred sixty four NPDES permits have been issued with no comments from US EPA (including 91 no comment letters), with 28 NPDES permits that could be issued without comments and, 9 NPDES permits pending (with a 30-day waiting period).*

Historical Permit Application Progress (Coal Mining)

Mr. Allen reported that as of September 30th, 2014, 1,390 coal mining permit applications had been disposed, and 239 permits remained for action. Of the permit applications awaiting action, 130 are renewals and 7 are annual bond reviews. The breakdown of permit applications via the District Mining Offices is as follows:

- *California:* 135 Permit applications.
- *Pottsville:* 90 permit applications.
- *Cambria:* 7 permit applications.
- *Greensburg/New Stanton:* 3 permit applications.
- *Moshannon:* 2 permit applications.
- *Knox:* 0 permit applications.

ABS Legacy Trust Account Update

Mr. Allen provided basic and financial statistics regarding the ABS Legacy Trust Account, in terms of trust agreements and bond statuses:

- *January 2007:* 56 total agreements; 31 bonds (worth \$84.1 million); 14 fully-funded trusts (worth \$38.6 million); and 11 partially-funded trusts (worth \$39 million).
- *January 2009:* 96 total agreements; 56 bonds (worth \$118.4 million); 14 fully-funded trusts (worth \$57.6 million); and 6 partially-funded trusts (with 3 ABS-related – worth \$36.8 million)

- January 2011: 106 total agreements; 64 bonds (worth \$192 million); 30 fully-funded trusts (worth \$52.5 million – down from the projected \$69.1 million); and 10 partially-funded trusts (with 3 ABS-related – worth \$18.5 million, down from the projected \$52.8 million)
- September 2014: 127 total agreements; 73 bonds (worth \$222 million); 36 fully-funded trusts (worth \$69.1 million – down from the projected \$76.5 million); and 15 partially-funded trusts (with 3 ABS-related – worth \$52.1 million – down from the projected \$109 million).

Financial Guarantees (FGs)

Mr. Allen reported the following:

- Remining FG Operators: There are 94 of these, with an average FG amount of \$118,163.00.
- Remining FG Permits: There are 156 of these, averaging \$71,558.00/FG permit.
- Land Reclamation Financial Guarantee (LRFG) Operators: There are 63 of these, with an average LRFG amount of \$320,787.00.
- LRFG Permits: There are 97 of these, averaging \$196,655.00/LRFG permit.

Reclamation Fee Operations and Maintenance (O & M) Status

Mr. Allen provided an update for the 3rd quarter 2014 of activity for the Reclamation Fee O & M Fund, in terms of coal civil penalties collected and interest accumulated:

- July 2014: \$10,967.50 collected for civil penalties, with \$426.05 earned in interest.
- August 2014: \$8,050.00 collected for civil penalties, with \$0 earned in interest.
- September 2014: \$10,200.50 collected for civil penalties, with \$927.67 earned in interest.
- Totals for the 3rd Quarter 2014: \$29,218.00 collected for civil penalties (up from the \$27,757.10 initially projected), with \$1,353.72 earned in interest.

Regulatory Update

Mr. Allen reported that the regulatory packages for Act 95 and 157 were published in the Pennsylvania Bulletin on October 25th, 2014, with the comment deadline of November 24th, 2014. He also mentioned that the Remining regulatory package was in its final stages, thanks to the work of the RLT Committee. The other regulatory matters mentioned included OSM program consistency (alignment/clean-up items), water supply replacement and explosives (25 PA Code, Chapter 211 – applicability parallel of blasting regulations to mining activities versus. construction activities).

Reclamation Fee Report Discussion

Mr. Allen provided significant details about the Reclamation Fee O & M Report. These included the following:

- *Current Status:* As of June 30th, 2014, the balance of the Reclamation Fee account was \$3,311,866.28. Expenses during the 2013-2014 fiscal year totaled \$499,122.48. Interest from the LRFG program totaled \$21,961.74 from the 2013-2014 fiscal year (additional interest earned came during the 2012-2013 fiscal year, to the tune of \$10,193.82). The funds available from the LRFG account stood at \$71,988.70 in the 2012-2013 fiscal year, and \$276,563.94 in the 2013-2014 fiscal year.
- *Projects:* To date, there are 30 LRFG permits under contract, and 10 LRFG permits under grant agreements. A total of \$850,000.00 in contract monies is projected for the 2014-2014 fiscal year (with \$250,000.00 set aside for contingencies), with an additional \$224,500.00 in grant agreement monies.
- *Fund Estimates for the 2015 Fiscal Year:* Beginning with a balance of \$3,311,866.28 (June 30th, 2014), LRFG expenditures will include contracts (\$600,000.00) and grants (\$224,500.00). Income projected for the LRFG fund is projected to be \$326,000.00, and penalties collected during the 2013-2014 fiscal year are projected to be \$298,650.22. Totaled together (minus the expenditures), the LRFG account balance for June 30th, 2015 is projected to be \$3.1 million.
- *Progress on the Reclamation Fee O & M Report:* The report was announced in the Pennsylvania Bulletin on September 20th, 2014, with comments due by October 17th, 2014 (only one commenter has come forward – Penn Future).
- *Reclamation Fee O & M Report Comments:* The single comment from Penn Future regarding AMD treatment projects will be reviewed. A discussion of whether the report accomplishes the requirements in the proposed FG regulations will also take place – it is likely to be an agenda item for the January 22nd, 2015 MRAB meeting.

Issue with Sites Visited During the July Field Trip

As recounted in the July 17th, 2014 Board meeting minutes, the Moshannon District Mining Office coordinated visits to several AMD treatment facilities in Centre and Clearfield Counties on July 16th, 2014; the sites included: 1) *Pine Glen Active Treatment System (Burnside Township, Centre County)*; 2) *Avery Coal Company – Dugan #2 and #4 (Power Lake) Passive Treatment Systems (Rush Township, Centre County)*; and 3) *Avery Coal Company – Victoria/Diemling Passive Treatment System*. While there was mostly positive feedback on these AMD treatment facility visits, the matter of how these treatment facilities are paid for remained a concern for some Board members. Specific concerns were as follows:

- Whether current operators should be paying for AMD treatment facilities that are similar to the ones visited on the field trip.
- Whether the facilities visited actually qualify as full Alternative Bond System (ABS) Legacy sites.

- Design matters – whether to pay for some AMD treatment facilities (mainly the passive ones that have little to no redesign at all) from a separate pool of funds.

The Board voted to audit the aforementioned AMD treatment facilities, in terms of water quality monitoring effectiveness, prioritization in the ABS Legacy site universe, funding choices and documentation of progress to the OSM on a regular basis.

Bond Rate Guidelines

Mr. Carl reported on matters regarding the reclamation of Abandoned Mine Lands (AMLs):

- *AML Reclamation Grading Costs for 2014:* There was one bid in October for reclaiming 1 million cubic yards of AML; also there are two bids forthcoming in November for reclaiming 1.5 million cubic yards of AML. Overall, there are 7 AML reclamation projects with grading, covering 1,968,157 total cubic yards. The average of the 3 lowest bids for these projects was \$.87/cubic yard.
- *Comparisons of AML Reclamation Grading Costs from 2012 to 2014:* To date, grading costs have ranged from \$.40/cubic yard to \$6.00/cubic yard (depending upon project size). There has been an even distribution in the frequency of AML reclamation grading costs – these fell between \$.80/cubic yard and \$1.00/cubic yard.
- *Bond Rate Summaries for 2015 (based on current values):*
 - Grading costs for projects with < 500-foot push will be \$.95/cubic yard (up \$.05 from 2014) and similar costs for projects with > 500-foot push will be \$1.20/cubic yard (this is similar to 2014 costs).
 - Selective grading will cost \$1,700.00/acre (up \$700.00 from 2014). This represents a large increase with a small amount of data. There are plans to look at additional data/methods of calculation.
 - Revegetation costs will be \$1,900.00/acre (up \$100.00 from 2014).
 - Tree planting costs will be \$2.00/tree (up from \$.15/tree, per the PA Department of Conservation and Natural Resources (PA DCNR) nursery providing these trees for AML reclamation projects. As per policy, DCNR is no longer providing nursery stock for planting on private property. It was recommended that the Board's Reclamation Committee meet for the purpose of looking into this matter further and, invite a PA DCNR representative to this meeting).
 - Ditch excavation costs will be \$7.00/cubic yard.
 - Jute matting costs will be \$4.00/square yard (up \$.20 from 2014 and previous years).
 - HV erosion costs will be \$3.80/square yard.
 - American Association of State and Highway Transportation Officials (AASHTO) Number 1 Stone costs will be \$29.00/ton.
 - AASHTO Number 57 Stone costs will be \$30.00/ton.

- R3 Rock Lining costs will be \$33.00/ton.
- R4 Rock Lining costs will be \$25.00/ton.
- R5 Rock Lining costs will be \$27.00/ton (up \$2.00 from 2014 and previous years).
- Geotextile/filter fabric costs will be \$2.80/square yard.
- PVC lining costs will be \$12.00/square yard.
- Lime costs will be \$45.00/ton. This cost is for lime addition. Plans are as yet undecided on whether to add to bond rate guidelines or provide separate notice to DMO staff.
- Subsurface drain costs will be \$19.00/lineal foot.
- Stage 3 maintenance bond costs for non-cropland projects will be \$100.00/acre (up \$50.00 from 2014 and previous years).
- Stage 3 maintenance bond costs for pastureland or hay projects will be \$550.00/acre. This is \$50.00 more than 2014.
- Stage 3 maintenance bond costs for cropland row crop projects will be \$850.00/acre (up \$70.00 from 2014 and previous years).
- *Bond Rate Effective Date for 2015:* The 2015 AML reclamation bond rates will be published in the Pennsylvania Bulletin in February or March 2015, and will take effect on April 1st, 2015.

Bureau of Abandoned Mine Reclamation (BAMR) Status Report

Mr. Jackson reported on the following BAMR project types:

- *Projects Completed During 2013:* There were 81 BAMR projects in all for 2013, reclaiming 647.3 acres and, with a total cost of \$28,723,314.00. The funding breakdown for these projects was \$12,717,435.00 for the Title IV Program; \$1,745,162.00 for the Acid Mine Drainage (AMD) Set-Aside Program; \$12,125,000.00 for Bond Forfeiture and State Programs; and, \$2,142,061.00 for the Growing Greener Program.
- *Projects Completed During 2014:* To date, 23 projects have been completed in 2014. The projects reclaimed 206.7 acres, with a total cost of \$6,502,301.00. The funding breakdown was as follows: \$6,410,184.00 for Title IV; and, \$87,627.00 for Bond Forfeiture and State Programs.
- *Projects that are Active or Under Construction for Future Completion:* There are 49 BAMR projects that remain to be completed; these will reclaim 1,607 acres, with a total cost of \$50,779,264.00. The funding breakdown for these projects is as follows: \$45,166,040.00 for Title IV; \$2,000,000.00 for AMD Set-Asides; \$11,046.00 for Collected Bonds; \$32,754.00 for Bond Forfeiture and State Programs; and \$3,498,591.00 for Growing Greener.
- *Projects for 2015:* There are 71 BAMR projects planned so far for 2015. The projects will reclaim 2,165.9 acres at a total cost of \$76,242,623.00. The funding breakdown for

these projects is as follows: \$74,652,123.00 for Title IV; \$1,500,000.00 for AMD Set-Asides; and, \$90,500.00 for Bond Forfeiture and State Programs.

New Business

The Board discussed the following matters:

- *Meeting Dates for 2015:* The Board decided to hold its quarterly meetings for 2015 on the following dates: January 22nd; April 23rd; July 9th; and October 22nd.
- *Remining Regulations:* Mr. Allen shared his compilation of the remining regulations with the Board. The matter regarding the incorporation of specific sections from Chapter 87 into Chapters 88 (anthracite coal) and 90 (coal refuse disposal) was explained. Anthracite citations were included for Chapter 88, in order to make the distinction between anthracite and bituminous coal regulatory citations. Also, information has been included on the steps to take when using the alternate method used for statistical calculations at water body discharge points where samples cannot be collected (this is from Project XL). Lastly, provisions for developing baseline stream water quality are included in the regulatory package. The Board voted to move this regulatory package to the Environmental Quality Board (EQB) as a proposed rulemaking.

Open Time

No comments were received from the audience.

Next Meeting

The Board will meet again on January 22nd, 2015.

Adjournment

With no further questions or comments, the Chair called for the meeting to be adjourned at around 11:55 a.m.