

MINING AND RECLAMATION ADVISORY BOARD

Thursday, January 21, 2016

Rachel Carson State Office Building

2nd Floor Training Room

Harrisburg, PA

Voting Members/Alternates: Robert Burns (Member – Vice-Chairperson); Jack Chamberlin (Member); Duane Feagley (Alternate); Richard Fox (Alternate); Katherine Hetherington-Cunfer (Alternate); Robert Hughes (Member); Rachel Hursh (Alternate); Darrel K. Lewis (Alternate); and Tara Smith (Alternate)

Other Attendees: Bill Allen (DEP – Mining Programs); Connie Brandt, Independent Regulatory Review Commission (IRRC); Tom Callaghan (DEP – Mining Programs, Director); Tammy Cree (DEP – Active and Abandoned Mine Operations); Josie Gaskey (PA Aggregates and Concrete Association (PACA)); Jennifer Gulden (DEP – Mining Programs); Joseph Iole (DEP – Regulatory Counsel); Gerald Jackson (DEP – Abandoned Mine Reclamation); Shuvonna Perry (DEP – Mining Programs); Paul Pocavich (DEP – Mining Programs); Dan Snowden (DEP – Mining Programs; MRAB Liaison); and John Stefanko (DEP – Executive Deputy Secretary for Programs/Acting Deputy Secretary – Active and Abandoned Mine Operations)

Meeting Called to Order/Introductions

In the absence of Board Chairperson David Osikowicz, Mr. Burns called the meeting to order at approximately 10:00 a.m. Board members introduced themselves, as did all DEP personnel and visitors in the audience.

Approval of Minutes

The Board voted unanimously to approve the minutes from its October 22, 2015 meeting.

Correspondence

There was no correspondence recorded.

Committee Reports

- **Policy Committee:** No report.
- **Regulation, Legislation and Technical (RLT) Committee:** This Board Committee met shortly before the full Board meeting to discuss the proposed increases to permitting fees in the Coal Program. As a whole, the Committee believed that the fee proposals would be problematic and unrealistic to implement, due to their severely negative impacts to the coal mining industry in Pennsylvania (per the substantial permitting cost increases). The Committee could not make a recommendation to the full Board in moving the fee proposal package forward. When this news was shared with the Board, Mr. Burns recommended that the full Board hold a special meeting to discuss the fee proposal package further and, come to a final decision on whether to accept it or reject it. The Board agreed with this recommendation, and selected a date of February 23, 2016 as the meeting date, and a

meeting time of 10:00 am. The Committee will also meet on this date at 9:00 a.m. in order to develop an alternate/common ground fee proposal to share at the full Board meeting. It was recommended that all Board members be in attendance at both meetings, if possible.

- **Reclamation Committee:** The Federal proposal, Power Plus (POWER +) program was mentioned, with an update. This program was slated to include a release of \$1 billion from the unappropriated balance of the Abandoned Mine Reclamation Fund to support reclamation work in the mined-out areas, as well as economic development in areas affected by mining. However, the original amount (\$1 billion) was not passed, nor was the amount set aside for Pennsylvania (\$60 million). In any case, the State of Kentucky will receive \$60 million in POWER + monies, while the Commonwealth of Pennsylvania's share of these funds will be \$30 million.

Technical Guidance Document (TGD) Update

Mr. Allen began his standard presentation with an update on DEP TGDs. These included the following:

- **Pre-Applications:** This TGD is still in the review stage; it will be presented during to the Board during its April 21st, 2016 meeting.
- **Engineering Manual:** This TGD is being held up due to the collection of comments from the oil and gas industry – minor changes to this TGD are expected, due to this effort.
- **Blaster's License Suspension, Coal Ash, General Permit (GP) Materials, Civil Penalties and Government-Financed Construction Contracts (GFCCs):** These TGDs are all still in the review stage.
- **Others:** TGDs are being developed for Processing of Completion Reports; Bonding (Submittal of Bonds); Industrial Mineral Underground Mining; and Beneficial Use of Sewage Sludge.

National Pollutant Discharge Elimination System (NPDES) Permitting Update

Mr. Allen reported that 642 draft NPDES permits had been sent to the United States Environmental Protection Agency (US EPA), which commented on or, objected to, 359 of them (of those permits with comments, 328 were issued, 24 could be issued and, 7 are pending). For all NPDES permits, 236 were issued (102 with "No Comment" letters), while 38 could be issued, and 9 awaiting 30 days.

The outstanding issues surrounding the NPDES permits included:

- **Checklist:** The US EPA is finalizing this.
- **Remining and Total Maximum Daily Loads (TMDLs):** Application to streams.
- **Sediment Pond Sampling on TMDLs**
- **Detection Limits:** Data improvements are forthcoming here.
- **US EPA Letter from June 11th, 2014:** The matter of obtaining relief from sending in applications if they are not needed is still outstanding.

- **Meeting with US EPA from December 15th, 2014:** The discussion of draft permits and their relation to Non-Point Sources is ongoing.

Historical Application Progress

Mr. Allen reported that 92.1% (1,500 of 1629) of coal mining permit applications had been disposed, with 7.9% of these applications (129; 83 renewals and 4 annual bond reviews) still pending. Of those permit applications still pending, Pottsville District Mining Office (DMO) has 44 and California DMO has 85; there are no such applications in the other DMOs (Cambria, Greensburg, Moshannon and Knox).

Permit Decision Guarantee (PDG) (Coal Mining Permit Applications)

Mr. Allen continued with the permitting subject by reporting on the progress of the PDG with coal mining permit applications. The DMOs have on-time percentages ranging from 66.7% (Pottsville DMO: 843 applications disposed of 1,184 received) to 93.8% (Knox DMO: 746 applications disposed of 833 received). Further details can be found in the presentation itself, which is online.

Trust Agreement/Bond Status

Mr. Allen then moved to the report on the Trust Agreement/Bond Status matter, and how this changed at intervals of January 2007; January 2011; September 2015; and December 2015. Initially (January 2007), there were 56 total agreements with varied values (31 bonds at \$84.1 million; 14 fully-funded trusts at \$38.6 million; and 11 partially-funded trusts at \$39 million). This changed in January 2011, with 107 total agreements (64 bonds at \$192 million; 30 fully-funded trusts at \$52.5 million – below the \$69.1 million expected; and 10 partially-funded trusts (including 3 Alternative Bond System sites) at \$18.5 million).

In September 2015, the situation changed again, with 133 total agreements (75 bonds at \$224.5 million; 40 fully-funded trusts at \$73 million (below the \$75 million expected); and 15 partially-funded trusts (including the 3 ABS sites mentioned above) at \$60.9 million (below the \$142 million expected). Finally, in December 2015, there were 132 total agreements (75 bonds at \$226 million; 44 fully-funded trusts at \$72.9 million (below the \$82.6 million expected); and 11 partially-funded trusts (including the 3 ABS sites mentioned above) at \$62.2 million (below the \$124 million expected)).

Land Reclamation Financial Guarantees (LRFG)

Mr. Allen reported on the LRFG, in terms of operators and permits. To date, there are 89 LRFG operators (up from 88), averaging \$256,737.00 (maximum: \$2.6 million) and, 143 LRFG permits (up from 136), averaging \$159,787.00 (maximum: \$2.1 million). The total amount underwritten for LRFG stood at \$21.7 million in October 2015 and, at \$22.8 million in January 2016.

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

Mr. Allen reported on the financial standing (per coal civil penalties collected and interest accrued) of the Reclamation Fee O & M Trust Account. To date, this account stands at \$124,567.00

collected in coal civil penalties and, \$3,331.77 accrued in interest. Further details can be found in the presentation itself, which is online.

Mr. Allen also reported that \$51,028.85 in interest from the LRFG was transferred to the Reclamation Fee O & M Trust Account and, that an addition \$13,515.99 in interest had accrued to date. The initial balance in the Reclamation Fee O & m Trust Account stood at \$3,204,097.63 (12/31/15), with FY 2015-2016 expenditures (as of December 2016) of \$236,665.89. Future FY 2015-2016 expenditures are slated to be \$941,785.00.

Regulatory Update

Mr. Allen reported on the following regulatory packages:

- **Remining Regulations:** These were reviewed separately by the Board's RLT Committee, and would be presented to the full Board later in the meeting.
- **OSM Program Consistency:** This regulatory package is under review by the Board's RLT Committee.
- **Water Supply Replacement (25 PA Code, Chapters 87 and 88):** This regulatory package will be moved to the Environmental Quality Board (EQB) soon.
- **Blasters' Licensing (25 PA Code Chapter 210) and Explosives (25 PA Code, Chapter 211):** This regulatory package was approved as a proposed rulemaking at the September 15th, 2015 EQB meeting. This package is under review by the Attorney General's Office. The outstanding issue is about imposing civil penalties upon those who use explosives during non-mining activities in a similar fashion as those who use explosives during mining activities.
- **Coal Fees:** This regulatory package is under review by the Board's RLT Committee; a special meeting of this Committee will take place on February 23rd, 2016, shortly before a special meeting of the full Board – all for the purpose of coming to a consensus with DEP regarding the regulatory package.

Coal Fees

Mr. Allen reported that the 3-year report on Coal Fees was presented at the May 2015 EQB meeting. He mentioned the 4 funds where monies from coal fees are deposited (i.e., Surface Mining Conservation and Reclamation Act (SMCRA) Fund; Coal Refuse Fund; Bituminous Mine Subsidence and Land Conservation Act (BMCSLA) Fund; and the Clean Water Fund (CWF) – for NPDES Fees).

Mr. Allen also reported on the revenues received from Coal Fees (i.e., \$54,417 .00 in FY 2012-2013; \$166,100.00 in FY 2013-2014; \$100,962.43 in FY 2014-2015; and \$94,945.24 for the first half of FY 2015-2016) and, the CWF (i.e., \$247,800.00 in FY 2012-2013; \$523,296 in FY 2013-2014; \$474,729.00 in FY 2014-2015; and \$328,221.00 for the first half of FY 2015-2016).

Remining Regulations Update

Mr. Allen discussed the changes proposed for the remaining regulations (mainly related to mine discharge pollution abatement) in various sections of 25 PA Code, Chapters 87 (Surface Mining of Coal), 88 (Anthracite Coal) and 90 (Coal Refuse Disposal). Upon hearing these proposed regulatory changes, the Board voted unanimously to approve this regulatory package.

Bond Rate Guidelines Update

Mr. Carl provided status report on AML bond rate guidelines, in terms of all the elements involved in the calculation of reclamation grading costs (i.e., whether prices for these elements increased or decreased). The rates will take effect on April 5th, 2016 and will be published in the PA Bulletin in February or March of 2016.

The main elements of the bond rate guidelines include the following:

- **AML Reclamation Projects/Summary:** There were 12 such projects in 2015, reclaiming a total of 3,047,579 cubic yards of AMLs (cost: between \$.67/cubic yard and \$1.70/cubic yard – weighted average: \$.95/cubic yard, from lowest bids of \$.89/cubic yard, \$1.06/cubic yard, and \$.91/cubic yard). There was also additional AML reclamation yardage of 913,610 cubic yards (cost between \$1.50/cubic yard and \$4.00/cubic yard, with a weighted average of \$3.17/cubic yard – based on lowest bids of \$2.89/cubic yard; \$2.88/cubic yard; and \$3.74/cubic yard).
- **Grading and Re-vegetation:** Costs for grading were between \$.90/cubic yard (for less than 500-foot push) and \$1.50/cubic yard (for greater than 500-foot push/haul); selective grading costs were \$1,700/acre and re-vegetation costs were \$1,900.00/acre.
- **Tree Planting** (at \$2.23/tree, based on reclamation contract amounts and, annual averages over 3 years (\$2.16/tree for 2013; \$2.08/tree for 2014; and \$2.41/tree for 2015); looking to keep cost at \$.75/tree (as the contract costs were not significantly greater this year over the past year; the \$.75 per tree is based on the PA Department of Conservation and Natural Resources (PA DCNR) tree price).
- **Earth Work** (ditch excavation at \$6.25/cubic yard – down from \$7.00/cubic yard); jute matting at \$3.80/square yard – down from \$4.00/square yard); and HV erosion control at \$3.00/square yard – down from \$3.80/square yard).
- **Stone Types (all AASHTO) and Fabrics** – No. 1 at \$29.00/ton (down from \$30.00/ton); No. 57 at \$33.00/ton (up from \$30.00/ton); R3 Rock Lining at \$37.00/ton (up from \$33.00/ton); R4 Rock Lining at \$28.00/ton (up from \$25.00/ton);
- **Mulch, Seed Bed Preparation and Seed Costs** – for mulch, \$853.13/acre (down from \$865.00/acre, with a 3-year weighted average at \$837.18/acre); for seed bed preparation, \$179.94/acre (down significantly, from \$304.00/acre, with a 3-year weighted average at \$239.33/acre); and, for seed, \$256.74/acre (down from \$326.00/acre, with a 3-year weighted average at \$287.39/acre).
- **Additional Elements** –Subsurface Drains at \$19.00/lineal foot; and Stage 3 Maintenance Bonds - Non-Cropland at \$100.00/acre; Pastureland or Hay at \$500.00/acre (down from \$550.00/acre; and Cropland Row at \$800.00/acre (down from \$850.00/acre).

Bureau of Abandoned Mine Reclamation (BAMR) and Abandoned Mine Lands (AML) Grant Funding Status Reports

Mr. Jackson first provided an update on BAMR projects that were completed, active, or involving future construction. During the 2014 calendar year, BAMR completed 220 projects to reclaim 1,146.9 acres of mined lands, at a cost of \$30,704,139.00. The funding for these projects came from: Collected Bonds (\$28,816.00); Bond Forfeitures (\$123,789.00) and Growing Greener grants (\$1,413,878.00). During the 2015 calendar year, BAMR completed 31 projects to reclaim 364.9 acres of mined lands, at a cost of \$12,447,239.00. The funding for these projects came from Title IV monies (\$11,974,168.00); Acid Mine Drainage (AMD) Set-Asides (\$45,807.00); and Collected Bonds (\$7,263.00).

BAMR currently has 34 project contracts to reclaim 995.9 acres of mined lands, at a cost of \$45,918,943.00. The funding for these projects comes from Title IV monies (\$40,620,351.00); AMD Set-Asides (\$3,000,000.00); and Growing Greener grants (\$2,298,591.00). Lastly, BAMR has 91 future project contracts to reclaim 2,799 acres of mined lands, at a cost of \$134,727,180.00. The funding for these projects will come from Title IV monies (\$134,136,680.00); AMD Set-Asides (\$500,000.00); and Collected Bonds (\$90,500.00).

Mr. Jackson then stated that as part of the recent DEP reorganization, the acid mine drainage program that had been in the Water Deputate's Bureau of Conservation and Restoration initially, was returned to BAMR. He also reported on the status of the Federal Office of Surface Mining (OSM) grants. Here, \$46,118,227.00 in OSM grant monies was initially requested, but only \$42,982,188.00 was granted, leaving a little over \$3 million lost to sequestration. Lastly, he mentioned the Federal Omnibus Bill, which will provide \$30 million each to the following States: Pennsylvania, West Virginia and Kentucky – all for reclaiming abandoned mine lands and community/economic development in these same areas. BAMR is still working with OSM to determine criteria for this pilot program.

New Business

Mr. Hughes mentioned that the PA Statewide Conference on Abandoned Mine Reclamation would take place on June 22-23, 2016, in western Pennsylvania. He stated that there would be a number of projects and facilities to showcase, all under the theme, "*Economics and the Environment.*" The topic of field trip options for the July Board meeting was mentioned. Ms. Hursh stated that she would look into this matter further with the PA Coal Alliance.

Open Time

There were no questions or comments received from the audience.

Adjournment/Next Meeting

The meeting adjourned at approximately 12:00 p.m. The Board will hold a special meeting in Harrisburg (Rachel Carson State Office Building, 2nd Floor Training Room) regarding coal fees on February 23, 2016, at 10:00 a.m., directly following a meeting of the Board's RLT Committee, at 9:00 a.m.