

Annual Report July 2009 – June 2010



Commonwealth of Pennsylvania
Thomas W. Corbett, Governor
Department of Environmental Protection
Michael Krancer, Secretary



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

EDITOR'S NOTE: All references in this report - including position titles held by individuals, legislative references and time references - are current for the time period ending June 2010.

A Message from MRAB Chairman David Osikowicz

October 2010

On behalf of the Mining and Reclamation Advisory Board (MRAB) members, I am pleased to present for your review the Board's Annual Report, documenting the Board's activities from July 2009 through June 2010. The Board continues to address environmental problems related to past coal mining practices and to assist the Department in ensuring that current industry practices represent an environmentally responsible approach to mining.

This was a busy year for MRAB due to the proposed regulatory rulemaking package on permit fees, financial guarantees and Office of Surface Mining, Reclamation and Enforcement (OSMRE) deficiencies and the Chapter 95 Total Dissolved Solids (TDS) issues. The Board held three full board meetings and four Regulation, Legislation and Technical Committee meetings during the reporting period, as outlined in the by-laws. Full Board meeting dates were held October 22, 2009, January 7, 2010 and April 22, 2010. The Regulation, Legislation and Technical Committee meetings were held November 20, 2009, December 14, 2009, March 15, 2010 and June 18, 2010.

The October 22, 2009 meeting was held at the Knox District Mining Office in connection with the annual field trip the following day. The Board toured several Alternative Bonding System (ABS) reclamation projects in the area to observe the treatment of acid mine discharges.

During the time frame of this report, DEP staff provided the Board with regular updates on the status of Bond Rate Guidelines, BAMR Projects and the ABS Legacy Sites. DEP also provided updates on the beneficial use of coal ash, Indiana Bat, Chapter 95 TDS, the Remining Operator Assistance Program, PA's bonding program, and the proposed permit fees, financial guarantees and OSM deficiencies rulemaking package.

The Regulation, Legislation and Technical Committee focused their efforts on the proposed increased permit fees and provided their recommendations to the MRAB at the April 22, 2010 Board meeting.

The Board continues to provide advice and technical input to the Department with regard to expenditures and program administration of abandoned mine lands (AML)

Title IV monies, proposed regulatory rulemaking issues including TDS, permit fees, financial guarantee and OSM deficiencies, and other environmental issues.

The dedication and support of all Board members and alternates, ongoing contributions by both DEP staff and Board members, and the significant knowledge transfer in a productive, respectful manner is fully appreciated. The Board remains highly committed to advising and working with the department in carrying out its mission, evaluating the rights and responsibilities of industry, and making responsible, calculated recommendations for the citizens of the Commonwealth.

Sincerely,

A handwritten signature in black ink, appearing to read "David Osikowicz". The signature is fluid and cursive, with a large, stylized initial "D".

David Osikowicz,
Chairman

DRAFT

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Introduction

The Mining and Reclamation Advisory Board (MRAB) was created in 1984 by Act 181 of the Pennsylvania General Assembly, which amended the Surface Mining Conservation and Reclamation Act (SMCRA). The Board's purpose is to assist the Secretary of the Department of Environmental Protection (DEP) in expending reclamation funds for the purposes provided by SMCRA and to advise the secretary on all matters pertaining to mining and reclamation. The advisory role of the Board also covers Title IV of the federal Surface Mining Control and Reclamation Act, which relates to abandoned mine land reclamation issues.

The Board is comprised of the following members:

- Two licensed bituminous surface mine operators;
- One licensed anthracite surface mine operator;
- Four public members of the Citizens Advisory Council, elected by the Council;
- One anthracite or one bituminous licensed professional engineer;
- One county conservation district representative, appointed by the Pennsylvania State Conservation Commission;
- One majority party state senator, appointed by the president pro tempore of the Senate;
- One minority party state senator, appointed by the president pro tempore of the Senate;
- One majority party state representative, appointed by the speaker of the House of Representatives; and
- One minority party state representative, appointed by the speaker of the House of Representatives.

The Board operates under bylaws adopted in January 1989 and amended in October 1993 and December 1996. The bylaws establish a committee structure and other operational procedures, including a minimum of four meetings per year, held in January, April, July and October, as required by SMCRA. *The bylaws current for the time period covered by this report are found in Appendix A.*

The Board's Committees

- **Annual Report Committee**

As mandated by Section 18(g)(5) of SMCRA, "The Board shall prepare an annual report on its activities and submit the report to the Senate Environmental Resources and Energy Committee and the House Conservation Committee." Throughout the reporting period, the committee compiles and summarizes information for inclusion in the Annual Report.

Members of the committee:

Josie Gaskey, Chairperson
Richard Fox
Joseph A. Deklinski
Susan M. Wilson

- **Policy Committee**

The Policy Committee held its initial meeting in October 1993 (then called the Policy and General Issues Committee). Its mission is to consider mining and reclamation policies identified as integral to the timely and efficient administration and operation of DEP's mining regulatory and abandoned mine reclamation programs.

Members of the committee:

Mark A. Snyder, Chairperson
Curtis Kratz

- **Reclamation Committee**

The Ad Hoc Committee on Reclamation Issues was originally formed at the July 1997 Board meeting in response to concerns regarding the Bark Camp Mine Reclamation Laboratory in Clearfield County, the Reed and Strattanville sites in Clarion County and a package of reclamation initiatives being developed under DEP's "Reclaim PA" program.

At the Oct. 22, 1999 MRAB quarterly meeting, the Board voted unanimously to change the name to the Reclamation Committee to reflect the committee's ongoing work. The committee addresses reclamation issues, initiatives and activities.

Members of the committee:

David L. Strong, Chairperson
Eric Conrad
Robert E. Hughes
Bruce Golden
Susan M. Wilson (Alternate)

- **Regulation, Legislation and Technical Committee**

The Regulation, Legislation and Technical Committee reviews all major regulatory packages coming before the Board during the reporting period and reports back to the full Board.

Members of the committee:

Jack R. Chamberlin, Chairperson
The Honorable Raphael Musto
The Honorable Jeffrey P. Pyle
The Honorable Donald C. White
David D. Osikowicz
David L. Strong
Susan M. Wilson (alternate)

FULL BOARD

SMCRA mandates that the MRAB meet four times per year. However, because of state budgetary problems and the possibility of state office closures, the July 23, 2009, full Board meeting was cancelled. Throughout the reporting period, the full Board met four times. The following sections provide a detailed summary of the activities of the full Board. For a complete list of meeting dates and locations, see **Appendix D**.

2009-2010 MAIN AGENDA TOPICS (Presented Alphabetically)

ABS Progress Report

As of December 31, 2009, there was approximately \$4.1 million in the Reclamation Fee O&M Trust Account. \$300,000 was transferred into the Legacy account from the O&M account. The reclamation fee for 2010 was \$0 based on dollar amount being above required \$3 million level.

DEP submitted a program revision to OSM August 2008 regarding the reclamation fee and is awaiting their approval.

Bond Rate Guidelines (BRG)

Bruce Carl, DEP, attended the Board meetings and provided the Board with the Department's updated projection of the 2010 bond rates based on the average costs of recent reclamation projects. At the January 2010 meeting, Mr. Carl presented the proposed Land Reclamation Bond Rate Guidelines for 2010, indicating that revegetation costs remained largely unchanged; however, pasture costs have increased due in part to increased mulch costs.

The 2010 bond rates went into effect on April 1, 2010.

Bureau of Abandoned Mines Reclamation (BAMR) Projects/Status Report

Updates on reclamation projects were supplied by Brian Bradley, DEP Bureau of Abandoned Mine Reclamation. As of April 22, 2010, completions were as follows: 36 projects with a total of 836 acres of abandoned mine reclaimed at a cost of \$19,159,250. There are 188 future contracts planned with 4,649 acres to be reclaimed at a cost of \$111,181,791.

Commonwealth Bonding Program

William Allen, DEP lead many discussions over the year including whether there was a need to revise or add a program similar to the Conversion Assistance Program in an effort to assist operators in the current weak economy. As of December 31 2009, the Conversion Assistance Reserves held approximately \$12 million based on a ten percent forfeiture rate. The Board referred the matter to the Regulation, Legislation and Technical Committee and they are continuing to work on this issue.

Field Trip

The MRAB holds an annual field trip. The 2009 field trip was held on October 23, 2009. The Board toured several of the Department's reclamation project sites in and around the Knox District Mining Office to observe the treatment of acid mine discharges.

OSM Oversight Activities

Mr. Rieger updated the Board on OSM oversight activities including the more comprehensive approach for stream protection and increased oversight inspections.

Reclamation and Remining Incentives Report

John Meehan, DEP, updated the Board on Pennsylvania's reclamation and remining incentives programs which have been very successful. Coal mine operators using these programs have reclaimed 5,221.3 AML acres equivalent to more than \$28 million in reclamation value.

The Government-Financed Reclamation Construction Contracts program benefits the public and the mining operators by establishing contracts for mining companies to conduct operations that will reclaim abandoned mine lands sites at little or no cost to the public. Between Jan. 1991 and Dec. 31, 2009, 210 contracts were issued, with a total reclamation value of over \$8 million.

The Remining Operator Assistance Program (ROAP) creates an incentive to remine and reclaim abandoned mine land areas by providing financial assistance for most of the cost of permitting the remining area. Between Aug. 1996 and Dec. 31, 2009, 30 operators requested participation in this program on 60 remining sites. Through Dec. 31, 2009, 45 projects have resulted in approved remining permits that have reclaimed 371.1 acres of abandoned mine land with an approximate reclamation value of \$2.4 million.

Under the Financial Guarantees program, DEP provides low cost bonding of remining areas. As of Dec. 31, 2009, 163 coal mine operators used financial guarantees to bond 622 mining permit increments. Those operations have reclaimed 2,927.2 acres of abandoned mine land, saving the commonwealth an estimated \$17.5 million.

The Bond Credits program also provides an incentive for operators to reclaim an abandoned area by earning a "bond credit" under a Consent Order and Agreement with the department. Four licensed mine operators have completed five bond credit projects. Five projects have been completed under this program, reclaiming 31 acres. The five completed projects represent a reclamation value of \$217,271.

Regulatory Updates

Indiana Bat - Geoff Lincoln, DEP, updated the Board with respect to the issues surrounding the Indiana Bat. Federal Range-wide Indiana Bat Protection and Enhancement Plan Guidelines were issued by a team comprised of representatives from the OSMRE, the U.S. Fish and Wildlife Service (FWS), and a representative group on behalf of the Interstate Mining Compact Commission (IMCC).

Beneficial Coal Ash – Keith Brady, DEP, updated the Board on the proposed guidelines for beneficial use of coal ash. PA DEP held four public meetings and a 45-day comment period on the proposed regulation package. Approximately 1,100 comments were received.

Total Dissolved Solids – The Board was updated at several meetings regarding the proposed rulemaking for Chapter 95 Total Dissolved Solids. Discussion centered on the need for the rulemaking, the potential costs to industries across the Commonwealth and the implementation schedule. There was significant discussion as to the effects on the mining industry.

Proposed Rulemaking on Fees, Financial Guarantees and OSMRE Deficiencies – Bill Allen presented DEP's proposed rulemaking package involving changes to remining financial guarantees, program deficiencies and mining program fees. The financial guarantee changes reflect the shift to a conventional bonding system, with letters of credit no longer being accepted. Several corrections to align with the federal program are included, as well as revisions to permit fees.

The permitting fee issue was separated from the overall package to allow the remaining issues to move forward in the regulatory process. The permit fees issue was assigned to the Regulation, Legislation and Technical Committee for further discussion and evaluation. Meetings of this Committee were held in November, December, January and March. The Committee recommended that the Board accept the regulation change as stated in proposed Sections 86.17(b) and (c), but not the annual administrative fee as stated in proposed Sections 86.17(d) and (f). Members of the Board made additional motions to increase the permit fees such that they would provide \$400,000 in revenue to the Department in lieu of annual administrative fees, as well as require monitoring and evaluation every 3 years.

Remining Operator Assistance Program (ROAP)

James Charowsky gave an overview of ROAP and a study performed to determine the benefits of the program. The purpose of the program was to provide incentives to coal operators to remine abandoned mine lands. The study was inconclusive due to a lack of accurate acreage readings prior to the start of the program.

Treatment Trust Fund Status Report

The MRAB received regular updates from the Bureau of Mining Programs on the status of the Treatment Trust Fund throughout the time frame covered by this Annual Report. The Department continues to work to secure trusts and bonds to guarantee that sites with post-mining discharges are capable of treatment in perpetuity. The Department also continues to make progress with respect to the perpetual treatment of these sites and the number of trusts that are fully funded.

PRESENTATIONS

Alternative Mine Reclamation Techniques

Scott Van De Mark from the PA Environmental Council and Dr. Rick Stehouwer of Penn State University, gave a presentation on the use of poultry manure combined with paper mill sludge used in the reclamation of mine sites. Warm season grasses were grown in the mix to produce a biomass crop that can be used in biofuel applications and usually takes approximately three years to become established. Crop yields produced roughly twice what was accomplished with conventional techniques and were more than two tons per acre. Cost per acre for this process is approximately \$1,000 per acre compared to the conventional \$600 per acre cost.

Project XL Report

Mike Smith, Moshannon District Mining Office, presented the results of a study designed to evaluate in-stream water quality to determine the performance of alternative methods for treating acid mine discharges of re-mining operations. The Board gave favorable recommendation to the project.

Reclaiming Primacy Bond Forfeiture Sites

Joe Ferrara and Mark Odentahl discussed several projects where acid mine drainage discharges are being treated. They presented the statistics associated with the several sites and the dollars associated with the sites.

At the April meeting, John Varner and Malcolm Crittenden presented reclamation efforts in the Cambria District.

Appendix A

BYLAWS OF THE MINING AND RECLAMATION ADVISORY BOARD

As Amended Dec. 12, 1996

ARTICLE I

Authorization

The Mining and Reclamation Advisory Board is authorized and organized pursuant to Section 18(g) of the Pennsylvania Surface Mining Conservation and Reclamation Act (Act 181 of 1984) as amended by Act 173 of 1992.

ARTICLE II

Purpose

The advisory Board is charged to assist the secretary to expend the funds for the purposes provided by this act and to advise the secretary on all matters pertaining to surface coal mining and reclamation which shall include, but not be limited to, experimental practices, alternate methods of backfilling, selection of reclamation projects, alternate reclamation methods, obligations for pre-existing pollution liability, alteration of reclamation loans, reclamation fees and bonding rates and methods.

ARTICLE III

Membership

The Board shall be comprised of three coal operators, two of whom shall be licensed bituminous surface mine operators and one of whom shall be a licensed anthracite surface mine operator; four public members from the Citizens Advisory Council, who shall be appointed by the council; two members, one from the Anthracite and Bituminous Licensed Professional Engineers, and one from the County Conservation Districts, who shall be appointed by the State Conservation District Commission; four members of the General Assembly, two from the Senate, one member from the majority party and one member from the minority party, who shall be appointed by the president pro tempore; and two from the House of Representatives, one from the majority party and one from the minority party, who shall be appointed by the speaker of the House of Representatives.

A. Board members shall designate an alternate. The chairperson shall be notified, in writing, of such alternate.

B. The Board may recommend to the appointing authority removal of any member not attending, or not represented by a designee, at two Board meetings in a year.

ARTICLE IV

Voting

Members, or designated alternates, shall be entitled to one vote, in person, on all matters that shall come before the Board. No voting shall be done without a quorum, unless otherwise indicated in these bylaws. A majority of the membership of the Board shall constitute a quorum.

ARTICLE V

Officers

The officers of the Board shall be a chairperson and a vice-chairperson.

The chairperson and vice chairperson shall be elected from the membership of the Board, as defined in the Pennsylvania Surface Mining Conservation and Reclamation Act, as amended, and may not be the secretary of the Department of Environmental Protection, or his designee. They shall hold office for a term of one year, or until a successor is elected.

It shall be the duty of the chairperson to preside at all meetings of the Board, call special meetings, prepare and distribute the meeting agenda and perform such other duties as pertain to the office.

It shall be the duty of the vice-chairperson to perform the duties of the chairperson in his/her absence.

ARTICLE VI

Administration

Administrative and clerical duties shall be performed by the Office of Mineral Resources Management, Department of Environmental Protection. A department staff person shall function as a recording and corresponding secretary. Included among these administrative duties shall be:

- A. To give timely notice of meetings of the Board and committees.
- B. To record full Board and committee meeting minutes and keep a permanent file. Board and committee meeting minutes shall be distributed to the full membership. Minutes should be reviewed by the chairperson or vice-chairperson prior to distribution.
- C. To conduct both outgoing and incoming correspondence and maintain a permanent file of such correspondence, and
- D. To perform such other duties as may be requested by the Board, including, but not limited to, travel arrangements, conference calls, etc.

In addition, staff representatives from the Office of Mineral Resources Management shall serve as staff liaison to the Board.

ARTICLE VII

Committees

The Board may establish committees to assist in performing its advisory duties.

- A. Committees shall be established by a majority vote of those members attending a regular or special meeting of the Board.
- B. The Board chairperson shall appoint committee members. The committee chairperson shall be selected by its members. The committee chairperson will be responsible for calling committee meetings, requesting needed assistance from DEP, and reporting to the Board, and shall receive necessary administrative and clerical support from DEP.
- C. Each committee shall develop and adopt a statement of purpose or objective of the committee at a meeting of that committee after its creation.
- D. The chairperson of the Board shall appoint a committee to prepare the Annual Report, as mandated by Section 18(g) of the Pennsylvania Surface Mining Conservation and Reclamation Act.
- E. A listing of the committees and their statements of purpose shall be maintained as an appendix to these bylaws. Changes to the appendix shall not constitute a change to the bylaws.

ARTICLE VIII

Meetings

The Board shall meet on the first Thursday of the months of January and July and the fourth Thursday of the months of April and October, unless changed by a majority of the members. Alternate meeting dates and special meetings shall be called by the chairperson, in consultation with the vice-chairperson. Committee meetings shall be called by committee chairpersons, who shall also notify the full Board.

ARTICLE IX

Participation by Non-Board Members

- A. Formal Presentation

Any person may ask the Board for time on the formal agenda to present policy, regulatory or legislative concerns for the Board to consider. The request shall be made in writing to the chairperson and include a summary of the presentation. The chairperson shall determine the interest of the Board in the subject and decide if the presentation will be allowed during the formal

agenda. Requests shall be submitted at least one month prior to a Board meeting.

B. Informal Discussion

At the discretion of the chairperson, any person present at the meeting shall be afforded the opportunity to speak to the Board or ask questions of Board members.

ARTICLE X

Amendments

The bylaws may be amended, repealed or suspended at any meeting of the Board by a two-thirds vote of the members of the Board, provided that written notice of such amendment, repeal or suspension shall have been sent to each member at least one week prior to said meeting.

ARTICLE XI

Board Representation

The Board shall act as a body in all matters before it and only the chairperson, or his or her designee, the vice-chairperson or the Board's designee shall speak on behalf of the Board.

Appendix B

OFFICERS OF THE BOARD FOR THE REPORTING PERIOD July 2009 – June 2010

Board Chairperson	David Osikowicz
Board Vice Chairperson	Dave Strong
Annual Report Committee Chairperson	Josie Gaskey
Policy Committee Chairperson	Mark Snyder
Reclamation Committee Chairperson	David Strong
Regulation, Legislation and Technical Committee Chairperson	Jack Chamberlin

Appendix C

**BOARD MEMBERSHIP FOR THE REPORTING PERIOD
July 2009 – June 2010**

Board Member	Position	Alternate
David Osikowicz	Bituminous Surface Mine Operator	George Ellis
Mark Snyder	Bituminous Surface Mine Operator	George Ellis, Darrel Lewis
Jack Chamberlin	Licensed Professional Engineer	George Ellis, Josie Gaskey
Edward Helfrick, Jr.	Anthracite Surface Mine Operator	Bob Burns, Duane Feagley
Sen. Raphael Musto	General Assembly	Richard Fox
Sen. Donald White	General Assembly	Allison Dutrey
Rep. Jeffrey Pyle	General Assembly	Joe Deklinski
Rep. Deberah Kula	General Assembly	Joyce Martin, Tara Smith
Burt Waite	Citizens Advisory Council	Susan Wilson, Mark Killar
David Strong	Citizens Advisory Council	Susan Wilson, Mark Killar
Curtis Kratz	Citizens Advisory Council	Susan Wilson, Mark Killar
Eric Conrad	Citizens Advisory Council	Susan Wilson, Mark Killar
Bruce Golden	State Conservation Commission	Bob Hughes

Appendix D

MEETING DATES DURING THE REPORTING PERIOD July 2009 – June 2010

Date	Location	Meeting
October 22, 2009	Knox DMO	Full Board (Annual Field Trip Meeting)
November 20, 2009	Harrisburg, PA	Regulation, Legislation and Technical Committee
December 14, 2009	Harrisburg, PA	Regulation, Legislation and Technical Committee
January 7, 2010	Harrisburg, PA	Full Board
March 15, 2010	Harrisburg, PA	Regulation, Legislation and Technical Committee
April 22, 2010	Harrisburg, PA	Full Board
June 18, 2010	Harrisburg, PA	Regulation, Legislation and Technical Committee

Appendix E

MRAB COMMITTEES FOR THE REPORTING PERIOD July 2009 – June 2010

Annual Report Committee

<p>Josie Gaskey, Chairperson Pennsylvania Coal Association 212 North Third Street Suite 102 Harrisburg, PA 17101 Tel: 717-233-7900 ex 24</p>	<p>Joseph A. Deklinski (Alternate) PA House of Representatives 240 Ryan House Office Building House Box 202020 Harrisburg, PA 17120-2020 Tel: 717-783-4707 Fax: 717-705-2095</p>
<p>Susan M. Wilson (Alternate) Citizens Advisory Council P.O. Box 8459 13th FL RCSOB Harrisburg, PA 17105-8459 Tel: 717-787-4527 Fax: 717-772-5748</p>	<p>Mr. Richard Fox (Alternate) PA State Senate Rm. 17, E. Wing, Main Capitol Building Harrisburg, PA 17120-3014 Tel: 717-787-7105 Fax: 717-783-4141</p>

Reclamation Committee

<p>David L. Strong, Chairperson P.O. Box 162 Brockway, PA 15824 Tel: 814-371-6142</p>	<p>Eric Conrad ER Conrad & Associates One Memory Lane Enola, PA 17025 Tel: 717-773-0913</p>
<p>Robert E. Hughes (Alternate) EPCAMR 485 Smith Pond Road Shavertown, PA 18704 Tel: 570-674-3411 Fax: 570-674-7989</p>	<p>Susan M. Wilson (Alternate) Citizens Advisory Council P.O. Box 8459 13th FL RCSOB Harrisburg, PA 17105-8459 Tel: 717-787-4527</p>
<p>Bruce Golden WPCAMR Green Forge Building 226 Donohoe Road, Suite 110 Greensburg, PA 15601</p>	

Regulation, Legislation and Technical Committee

<p>Jack R. Chamberlin, Chairperson 702 Chamberlin Road Brookville, PA 15825 Tel: 814-849-4181 Fax: 814-849-7166</p>	<p>David L. Strong P.O. Box 162 Brockway, PA 15824 Tel: 814-371-6142</p>
<p>The Honorable Raphael Musto Senate of Pennsylvania Senate Post Office Box 203014 Harrisburg, PA 17120-3014 Tel: 717-787-7105 Fax: 717-783-4141</p>	<p>Susan M. Wilson (Alternate) Citizens Advisory Council P.O. Box 8459 13th FL RCSOB Harrisburg, PA 17105-8459 Tel: 717-787-4527</p>
<p>David D. Osikowicz Original Fuels, Inc. P.O. ox 343 Punxsutawney, PA 15767 Tel: 814-938-5171 Fax: 814-938-5008</p>	<p>The Honorable Jeffrey P. Pyle Pennsylvania House of Representatives House Post Office Box 202060 Harrisburg, PA 17120-2060 Tel: 717-783-5327 Fax: 717-260-6511</p>
<p>The Honorable Donald White Main Capitol Building Room 281 Harrisburg, PA 17120-3041 Tel: 717-787-8724</p>	

Policy Committee

<p>Mark A. Snyder, Chairperson State Industries, Inc. P.O. Box 1022 Kittanning, PA 16201 Tel: 724-548-8101 Fax: 724-545-2989</p>	<p>Curtis Kratz Kratz Consulting 22 Elroy Road Souderton, PA 18964 Tel: 215-723-4952</p>
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