

ATTACHMENT 1

DRAFT MINUTES

**DRAFT MINUTES
COMMONWEALTH OF PENNSYLVANIA
COAL AND CLAY MINE SUBSIDENCE INSURANCE FUND
BOARD MEETING**

January 10, 2019

A meeting of the Coal and Clay Mine Subsidence Insurance (MSI) Board (Board) was called to order at 10:00 a.m. on January 10, 2019, in the 12th Floor Conference Room of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, Pennsylvania.

Board members present at the meeting were William Allen, Bureau of Mining Programs, Department of Environmental Protection (DEP), Designated Chair for Patrick McDonnell, Secretary of DEP; Mark Lersch, Director, Bureau of Property and Casualty Insurance, Designated Representative for Board Member Jessica K. Altman, Acting Commissioner of Insurance; and Veronica Hoof, Assistant Counsel, Designated Representative for Board Member Joe Torsella, State Treasurer.

Also, in attendance were Mike Kondrack, Cash Management and Investments, State Treasury; Matthew Rindfuss, PA House, Environmental Resource and Energy Committee, Andy Cameron, Michelle Baker and Becky Medeiros, Comptroller Operations, Office of the Budget. The following DEP employees were also in attendance: Laura Edinger, Office of Policy; Amy Berrios, Active and Abandoned Mine Operations; and, from DEP's Bureau of Mining Programs, Jennifer Gulden, Clerical Support, Cheryl Miller-Laatsch, Clerical Support, Paul Pocavich, Environmental Program Manager, Wendy Taylor, Administrative Office, and Jim Charowsky, MSI Program Administrator.

Following are issues discussed and actions taken at the meeting:

Approval of the January 11, 2018 MSI Board Meeting Minutes

The Board reviewed and unanimously approved as final the draft minutes of the January 11, 2018 MSI Board Meeting.

Program Reports

The Board reviewed reports provided by DEP staff that demonstrated the operational and financial performance of the MSI Fund over the most recent ten fiscal years (FY). The reports showed that there continued to be moderate growth to most of the fundamental program measures during the FY 2017 (July 1, 2017 through June 30, 2018), similar to the performance demonstrated during the nine previous years in the report. During FY 2017, the number of subscriptions rose slightly from 60,526 to 62,441. The average policy value rose from about \$191,000 to about \$198,000 and the underwritten value of all the policies in force rose from about \$11.5 billion in FY 2016 to about \$12.3 billion dollars in FY 2017, while the average premium continued to be very affordable at about 50 cents per \$1,000 of coverage. The number of mine subsidence damage claims filed rose slightly from 197 in FY 2016 to 238 in FY 2017. Additionally, the number of supported claims rose from 8 total supported claims in FY 2016 to 12 for FY 2017. The value of paid claims rose slightly from approximately \$695,000, or about \$87,000 per claim, to approximately \$706,000, or about \$64,000 per claim.

Mr. Lersch requested information from the MSI Program regarding the demonstrated discrepancy between reported claims versus paid out claims. Further details regarding the causes other than mine subsidence of damages was requested.

Financial Reports

Financial reports provided by the Office of Comptroller Operations demonstrated that the financial position of the MSI Fund continued to be sound during FY 2018. The Statement of Cash Flows identified that combined premium and interest income, less cash in transit, was \$9,182,033.69, which was sufficient to offset all administrative and claim expenses of \$4,227,189.73, while also contributing \$4,954,843.96 to the MSI Fund's equity, which is extensively committed to reserves that offset potential losses. Loss reserves include reserves against potential losses that are assumed by the MSI Fund in lieu of the purchase of very costly reinsurance. The "Unreserved Fund Balance" at the close of FY 2017 was \$1,011,432.

Investment Reports

Investment reports provided by the Pennsylvania Treasury demonstrated that the value of the MSI Fund's investments continued to grow at a rate commensurate with other investments of the Commonwealth that are managed and invested by the Treasury Department. On a cost basis, the value of MSI funds invested by the Treasury during FY 2017 in its longer-term pool of funds (Pool 198) rose from \$92,180,98 to \$117,887,232. Pool 198 funds are invested in fixed income investments, equities, cash and cash equivalents, and alternative investments. Those investments had an average yield of 3.07 percent during FY 2017. Also, on a cost basis, the amount of MSI funds invested in Treasury's pool of short-term funds (Pool 99) increased from \$17,789,904 to \$19,917,231 during the FY 2017. At the close of FY 2016, Pool 99 funds were invested entirely in cash and cash equivalents and had an average yield of 1.52 percent.

Routine Business

After the review of the operational and financial performance of the MSI Program and Fund, the Board considered the routine business required for the administration of the MSI Fund and unanimously established the following:

1. A policy coverage Inflation Factor of 7.0 percent would be established;
2. The existing Policy Premium Rates would be maintained;
3. Claim Payment Deductibles would remain at \$0;
4. The Incident Costs calculations would remain unchanged;
5. The existing insurance producing Commission Rates would be maintained;
6. The existing maximum coverage amount of \$500,000 would be maintained;
7. The formula used to calculate the Loan and Grant Funding Limit for grants and loans to improve the MSI Program would remain unchanged;
8. The formula to calculate the Reserves In lieu of Reinsurance would remain unchanged;
9. A Premium Distribution to subscribers was not proposed by the Board; and
10. The DEP proposed an actuarial study to assess the MSI Fund and evaluate the existing premium rates.

Reimbursement for Program Costs

The Board reviewed estimated costs of the MSI Program for FY 2019 and considered a reimbursement to DEP for expenditures it may make as it administers the MSI Program. The estimate includes contingent spending for costs associated with claims and policy applications that would be in excess of normally anticipated levels so that funding is available to provide uninterrupted service. The Board then unanimously approved an expenditure of up to \$3,992,520 from the MSI Fund to reimburse DEP for the administrative costs of the MSI Program during FY 2019.

The Board requested further information regarding an increase in administrative costs.

Other Business, Next Meeting, and Adjournment

The Board established that the next regular meeting of the MSI Board will be held at 10:00 a.m. on January 9, 2020 in the 12th Floor Conference Room of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, Pennsylvania. With no further business before the Board, the meeting was adjourned at approximately 10:45 a.m.

KEY OBLIGATION: DEP will revise program systems to provide a coverage inflation option of 7.0 percent.
DEP provided the Board with information regarding the discrepancy in paid out claims - See Exhibit 1.
DEP provided the Board with information regarding the increase in Administrative costs - See Exhibit 2.

EXHIBIT 1

Evaluation of MSI Claims Opened during Fiscal Year 2017

Prepared by:

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Chief, Mine Subsidence Section

California District Office

Introduction

This report was prepared in response to the Mine Subsidence Insurance (MSI) Board's request to evaluate and further detail the percentage of claims denied by the MSI Fund. The Board requested this evaluation during the January 10, 2019 annual board meeting. To meet this request, all claims opened during Fiscal Year 2017 (July 1, 2017 → June 30, 2018) were reviewed in detail. The MSI engineering reports prepared for each investigated claim were summarized and that data used to compile this report.

Background

Two hundred and two (202) claims were opened with the MSI Fund during FY 2017.¹ A claim is considered 'opened' when a policyholder contacts the California District Office (CDO) and indicates that he or she wishes to file an MSI claim. At that time, a Damage Claim Form is sent to the policyholder via email and/or US Mail. Once the damage claim form is returned, the claim investigation process commences. The MSI Program's claim investigation process includes but is not limited to: a detailed review of available mining information, review of past issues in the area, and a structure investigation conducted by a licensed professional engineer and/or a subsidence investigator (unlicensed engineer). All investigations are conducted by a licensed professional engineer or under the responsible charge of a licensed professional engineer.

The following table summarizes the status of all claims opened in FY 2017.

Denied Claims	150
Supported Claims	13
Investigation Ongoing	2
Claims Abandoned by policyholder	28
Claims Withdrawn by policyholder	9
Total Claims Opened	202

- Denied Claims – Claimed and/or observed damages were not covered by terms of the insuring agreement. The damages were not caused by mine subsidence or an unexpected breakout of mine water during the policy period. Further explanation of denied claims is provided in the Discussion section of this report.

¹ The Program Report (Attachment 2, Page 7) presented at the January 10, 2019 board meeting indicated 238 claims were filed during FY 2017. Accounting differences between the Program Report and this study were found. The Program Report figure was higher than the actual claims opened due to multiple payments on some supported claims being counted as multiple claim filings. This accounting difference will be addressed for the Program Report in the future.

- Supported Claims – Claimed and/or observed damages were covered by terms of the insuring agreement.
- Investigation Ongoing – MSI's investigation is still ongoing. A final decision for the claim has not been made.
- Claim Withdrawn by policyholder – The policyholder requested either verbally or in writing that their claim be withdrawn. A claim investigation was not conducted.
- Claim Abandoned by policyholder – The policyholder failed to return the Damage Claim Form. The claim was closed without investigation.

Discussion

Abandoned or Withdrawn Claims

Of the 202 claims opened with the MSI Fund in FY 2017, 37 (or 18%) of the claims opened were either abandoned or withdrawn by the policyholder. Policyholders abandoned or withdrew their claims for various reasons. Some of these reasons include: no longer wishing to proceed with a claim, further discussion with MSI staff alleviated their initial concerns, and no further communication from the policyholder to the MSI program.

As noted by the figures, policyholders simply failed to return their damage claim form in 28 cases and their claim was considered Abandoned. This does not prevent the policyholder from filing a new claim. The Insuring Agreement requires that policyholders return the Damage Claim Form within 60 days of receipt. However, as a business practice and courtesy to policyholders, MSI routinely provides policyholders at least 120 days to return Damage Claim Forms before a claim is considered Abandoned.

Subtracting out the abandoned and withdrawn claims, Damage Claim Forms were received and claim investigations were conducted for 165 claims opened during FY 2017.

Open Claims

Two (2) claims opened during FY 2017 remain under investigation.

Supported Claims

Thirteen (13) claims were supported during FY 2017. This is approximately 8% of all claims investigated. The damages observed by MSI investigators were covered by terms of the insuring agreement, i.e., the damages were caused by mine subsidence or were the result of a sudden, unexpected outbreak of mine drainage during the policy period. Supported claims also include cases where, in the professional judgement of the investigator, subsidence cannot be ruled out as a possible cause of the damage. As such, the 'benefit of the doubt' is given to the policyholder and the claim is supported.

Denied Claims

One hundred fifty (150) claims were denied during FY 2017. This amounts to 74% of the total claims opened (202) or 91% of the total claims investigated (165). In all 150 cases, the claimed damages and observed issues were not due to mine subsidence damage (or damage related to a mine water breakout) that occurred during the policy period.

Review of the engineering reports for each claim revealed the following:

- In 43 of the denied claims, the investigator determined problems were not related to mine subsidence and were likely a continuation of problems that existed prior to the policy period.
- In 29 of the denied claims, the noted problems were not related to mine subsidence and were at least partially present and noted during an MSI pre-policy inspection.
- In 5 of the denied claims, the structure had unrepaired damages noted during a previous claim investigation and the damage to four of the structures was unrelated to mine subsidence. The remaining structure had mine subsidence related damage that was never repaired after a prior supported claim.
- In 5 of the denied claims, it was determined the structure was not undermined and not at risk of a mine water breakout. Therefore, the claimed damages were not the result of mine subsidence or a mine water breakout. The MSI policy had no value to the policyholder. Policy premium refunds were offered to the policyholder.
- In 1 denied claim, the claimed damages were not apparent to the MSI investigator. The investigator was unable to observe the damages the policyholder believed were present. No damage indicative of mine subsidence was observed.

Undermined buildings are at risk of damage from mine subsidence and mine subsidence damage can be severe. However, there are numerous factors, unrelated to mine subsidence, that can cause damage to a building and many are far more common than mine subsidence. Some common causes of damage observed by MSI engineers and investigators, unrelated to mine subsidence, include:

- Lateral earth pressure.
- Poor surface water drainage conditions.
- Improperly routed downspouts.
- Structural fatigue.
- Corrosion of window lintels due to age and/or lack of maintenance.
- Expansion of concrete subbase.
- Shrinking and swelling of soils due to changing moisture conditions.
- Slope instability.
- Poor construction practices.
- Inadequate main beam support.
- Construction on fill and/or poor soils.

Often, there are multiple non-subsidence related factors damaging a home. Poor drainage conditions can exacerbate lateral earth pressure problems or lead to slope instability. Many older buildings exhibit signs of structure fatigue (sagging) that can be compounded by inadequate beam support. As illustrated by the statistics comparing denied claims versus claims investigated, most buildings MSI investigates are experiencing damages not related to mine subsidence.

There is no monetary cost or risk for policyholders to file an MSI claim. An MSI claim denial does not prevent policyholders from filing future claims. Policyholders often make statements to MSI staff like, "I just wanted to have someone inspect the damages" or "I just wanted to make sure it was not subsidence".

MSI commonly receives claims filed by homeowners at the recommendation of contractors. Homeowners routinely engage contractors to assess existing damages within their homes. Contractors may be unsure of the cause of the damages and suggest that homeowners file a claim with MSI. Mine subsidence damage investigations are a specialized discipline within engineering. MSI staff are trained and experienced in conducting these investigations. Generally, homeowners, contractors, and many other engineers are not trained or familiar with subsidence investigations and are unsure of the movement patterns and damages indicative of mine subsidence. This can lead to homeowner uncertainty regarding the cause of damages in their home. MSI engineers and investigators determine if the damages are related to mine subsidence, and if not, often assist homeowners with finding the cause of the damages.

Conclusion

The MSI fund conducts complete engineering investigations by experienced licensed professional engineers or under the responsible charge of an experienced licensed professional engineer. The percent of denied claims during FY 2017 was 74% of all opened claims and 91% of all investigated claims. Detailed analysis of previous fiscal years was not performed for this report. However, the FY 2017 percentages are in-line with MSI's experience in investigating mine subsidence damage claims. Most of the structures investigated do not have mine subsidence damage. Numerous other and more common factors cause most of the damages the MSI program observes.

EXHIBIT 2

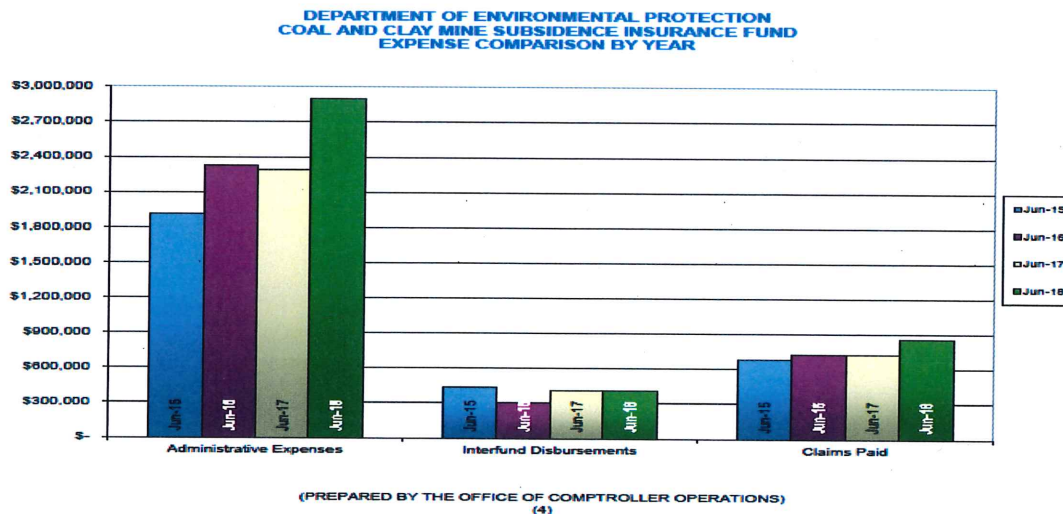
Evaluation of Administrative Expenses Between Fiscal Year 2016 and Fiscal Year 2017 For the Coal and Clay Mine Subsidence Insurance Fund Office of Active and Abandoned Mining Bureau of Mining Programs

Background

The Coal and Clay Mine Subsidence (MSI) Fund (Fund) and Board were created by the Act of August 23, 1961 (P.L. 1068 No. 484), as amended, (52 P.S. §§ 3201-3225) (Act). This Act provided owners of structures located in Pennsylvania with a reliable and affordable source of insurance against losses caused by mine subsidence and mine water breakouts from historic mining activity. The Board consists of the Secretary of Department of Environmental Protection as chair and the Insurance Commissioner and the State Treasurer. The Board has the authority to establish policies that provide for the efficient and effective administration of the Fund. Under the Board's oversight, the Mine Subsidence Insurance Program is implemented by the Department of Environmental Protection (DEP) within the Office of Active and Abandoned Mining.

Introduction

As mandated by the Act, the Board meets annually to be briefed on the operational and financial performance of the Fund. DEP prepares reports for this meeting detailing the financial performance of the Fund, summarizing the operation of the Mine Subsidence Insurance Program, and providing the annual request for approval of a budget proposed for the upcoming fiscal year. One of the attachments for this handout is Attachment 3, Financial Report, prepared by the Office of the Comptroller. During the 2018 Annual meeting held on January 10, 2019 the Board reviewed a chart (see chart below) in the Financial Report showing an increase in administrative expenses from Fiscal Year (FY) 2016 to Fiscal Year 2017. The Board requested an explanation for this increase.



Findings

The increase in Administrative Expenses for FY 2017 of 28% resulted mainly from the 21% increase in claims filed from FY 2016 (197 claims) to FY 2017 (238 claims). As the investigation of filed claims is a primary responsibility of the Mine Subsidence Insurance Program, such an increase results in an increase of workload and time charged to the Fund. The increased number of claims were primarily in the Bituminous Field, the responsibility of the Mine Subsidence Section in the California District Mining Office. Staff in the Mine Subsidence Program also received two pay increases in FY 2017, 2% on July 1, 2017 and 2.25% on January 1, 2018, resulting in increased Personnel, Benefits and Indirect costs during the fiscal year.

It should be noted that staff in the Mine Subsidence Section are responsible for the investigation of damage caused by mine subsidence from both active and historic mining. Once the cause of the damage has been determined the claim is either handled as a Mine Subsidence Insurance Claim or as the responsibility of the permitted mine in accordance with existing statutes. Some functions in the Mine Subsidence Section, such as mine mapping, have costs split between the Mine Subsidence Insurance Program and the active mining program as the functions benefit both programs. Depending upon the current workload, staff in the Mine Subsidence Section can be assigned work in either the active mining program or the Mine Subsidence Insurance Program and charge their time accordingly.

Conclusion

The Mine Subsidence Insurance Section intends to review Work Codes with staff to ensure everyone understands the proper use of the codes. Additionally, Work Code usage during the current fiscal year will be monitored and any inconsistencies resolved before the end of the fiscal year. This will ensure that the Administrative Costs of the Mine Subsidence Insurance Program continue to be valid and appropriate.