

## **MINING AND RECLAMATION ADVISORY BOARD (BOARD)**

**Thursday, July 21, 2016  
Cambria District Mining Office  
Main Conference Room  
286 Industrial Park Road  
Ebensburg, PA**

**Voting Members/Alternates:** Jack Chamberlin (Member); Duane Feagley (Alternate); Rachel Gleason (Alternate; on conference call); Katie Hetherington-Cunfer (Alternate); Mark Killar (Member); Darrel K. Lewis (Alternate); Joanne Manganello (Alternate; on conference call); David Osikowicz (Member; Chairperson); and Benjamin Wren (Alternate)

**Other Attendees:** Bill Allen (DEP – Mining Programs); Abbey Cadden (DEP – Policy Office); Tom Callaghan (DEP – Mining Programs, Director); Bruce Carl (DEP – Mining Programs); Josie Gaskey (PA Aggregates and Concrete Association (PACA)); Rick Lamkie (DEP – Mining Programs); Shuvonna Perry (DEP – Mining Programs; on conference call); Paul Pocavich (DEP – Mining Programs; on conference call); Daniel E. Snowden, D.Ed. (DEP – Mining Programs; MRAB Liaison); and Jason Steloski (PA House of Representatives – Legal Counsel; on conference call)

### **Meeting Called to Order/Introductions**

Mr. Osikowicz called the meeting to order at approximately 9:00 a.m. Board members, DEP personnel and visitors introduced themselves.

### **Approval of Minutes**

The Board voted unanimously to approve the minutes from its April 25, 2016 meeting.

### **Correspondence**

Mr. Osikowicz asked if any correspondence was received by the Board since its last meeting. Dr. Snowden reported that no correspondence was received during that time.

### **Committee Reports**

The Regulation, Legislation and Technical Committee met on June 6, 2016 and developed recommendations regarding the Coal Fees regulatory package. This matter was discussed later during the meeting.

### **Feedback on the Board's Field Trip**

Mr. Osikowicz requested feedback on the Board's trip to several acid mine drainage (AMD) treatment facilities under the auspices of the Cambria District Mining Office (i.e., Big J Mining Alternative Bond System (ABS) Site; Fetterolf Mining Refuse Site; Shade Mining Site) and the National Park Service (i.e., Flight 93 Pump Well Site). Overall, positive feedback was offered for the field trip and Mr. Osikowicz recommended that the Board send thank-you letters to the Cambria District Mining Office and the National Park Service for their efforts in making the field trip

possible. Dr. Snowden stated that he would work with other DEP staff to draft the thank-you letters for Mr. Osikowicz's review.

## **Updates**

Mr. Allen provided updates to the Board regarding the coal mining program:

- Non-Regulatory Agenda: 1) the Engineering Manual, which was reviewed by other DEP programs last year and will be available for public comment in a few months; and 2) Bonding – Direct Submittal of Bonds is being updated to include the current address for where bonds may be submitted.
- National Pollutant Discharge Elimination System (NPDES) Permitting:
  - To date (6/30/16), 685 draft permits have been sent to the United States Environmental Protection Agency (US EPA), which has commented on 373 of them
  - Of all permits with US EPA comments, 342 have been issued, 26 could be issued and 5 are pending.
  - Of all permits without EPA comments, 268 have been issued (103 of these with No Comment letters), 35 could be issued and 9 are pending.
- Permit Decision Guarantee (PDG) Program:
  - Approximately 93.4% of permits under the PDG program (1,521 of 1,629 permits) have been disposed, with 6.6% remaining for action (108 permits; these include 72 renewals and 3 annual bond reviews – the latter type is no longer processed).
  - The Pottsville and California District Mining Offices are the ones with the permits that remain to be issued under the PDG program, with 39 permits and 69 permits, respectively.
  - For on-time PDG program performance, the percentages ranged from a low of 62% (1,020 of 1,368 permits processed) at the Pottsville District Mining Office to a high of 94% (836 of 899 permits processed) at the Knox District Mining Office.
- Trust Agreement and Bond Status:
  - December 2015: During this period, there were 132 total agreements, with 75 bonds (worth \$226.2 million), 44 fully-funded trusts (worth \$72.9 million) and 11 partially-funded trusts (along with 2 Alternative Bonding System (ABS) sites, worth \$62.2 million).
  - March 2016: During this period, there were 132 total agreements, with 75 bonds (worth \$237 million), 44 fully-funded trusts (worth \$74.7 million) and 11 partially-funded trusts (along with 2 ABS sites, worth \$65.2 million).
  - June 2016: During this period, there were 136 total agreements, with 77 bonds (worth \$239 million), 43 fully-funded trusts (worth \$73 million) and 13 partially-funded trusts (with 3 ABS sites), worth \$73 million).
- Land Reclamation Financial Guarantees (LRFGs):
  - To date, there are 106 LRFG operators, averaging \$299,000.00. These LRFG operators have 177 permits averaging \$179,000.00.

- The amount underwritten for the LRFG has increased from \$26.2 million in March 2016 to \$31.7 million in June 2016.
- Reclamation Fee Accounts:
  - For the second quarter of the 2016 calendar year, coal civil penalties collected for the Reclamation Fee totaled \$87,359.50, with \$10,086.71 collected in interest.
  - Interest from the LRFG program totaled \$51,028.85, which was transferred to the Reclamation Fee account in August of 2015; additional interest of \$42,325.40 has accumulated during FY 2016-2017 (to date). Additionally, \$300,000.00 of LRFG premiums were also transferred to the Reclamation Fee account in June of 2016.
  - To date, additional revenues from the \$100.00/acre reclamation fee ranged from \$830.00 in January of 2016 to \$4,390.00 in June of 2016.
  - The balance in the Reclamation Fee account (as of 6/30/16) stands at \$3,309,951.07. Account expenditures during FY 2015-2016 totaled \$501,358.59 and projected expenditures for FY 2016-2017 will be \$980,499.00.
  - A Federal lawsuit regarding the Reclamation Fee account has stagnated to date.
- Regulatory Agenda:
  - Remining: This regulatory package was approved by the Environmental Quality Board (EQB) as a final rulemaking package on May 17, 2016. The Independent Regulatory Review Commission (IRRC) plans to review the regulatory package during its August 18, 2016 meeting, and the regulations could take effect as soon as October 2016.
  - Office of Surface Mining (OSM) Program Consistency: This regulatory package was noted as an agenda item for the meeting and after its presentation, it will be discussed further with the Board's RLT Committee.
  - Water Supply Replacement (25 PA Code, Chapters 87 and 88): This regulatory package is still under development.
  - Blasting and Explosives (25 PA Code, Chapters 210 and 211): This regulatory package was noted as an agenda item for the meeting. The regulations were published on February 27, 2016 as a proposed rulemaking package, with the final rulemaking submission forthcoming.
  - Coal Fees: This regulatory package was noted as an agenda item for the meeting, and was discussed during its time slot.
- Revenue:
  - Surface Mining Conservation and Reclamation Act (SMCRA) Coal Fees (this includes fees from new permits and revisions): Revenues from this source ranged from \$54,417.00 in FY 2012-2013 to \$171,235.24 in FY 2015-2016.
  - Clean Water Fund (CWF) Mining Fees: Revenues from this source ranged from \$247,800.00 in FY 2012-2013 to \$646,950.00 in FY 2015-2016.

**Revisions to Blasting and Explosives Regulations (25 PA Code, Chapters 210 and 211)**

Mr. Allen (with some technical input from Mr. Lamkie) provided information on proposed revisions to 25 PA Code, Chapters 210 (Blaster's Licenses) and 211 (Storage, Handling and Use of Explosives). The following revisions were highlighted:

- Definitions (Chapter 210): One will be added for the term “explosives” and those for the terms “employee possessor,” “explosives materials” and “responsible person” will be removed, as these are Federal Bureau of Alcohol, Tobacco and Firearms (ATF) terms. The language for “background check” will be replaced with “compliance” (present tense) (210.13).
- Definitions (Chapter 211): As in Chapter 210, the definitions for “employee possessor,” “explosives materials” and “responsible person” will be removed, along with definitions for the terms “nuisance” and “unauthorized actions.” A definition for the term “explosives” will be added as in Chapter 210, along with one for the term “at-the-hole communication,” “MSHA” and “OSHA (these will be spelled out as “Mine Safety and Health Administration” and Occupation Health and Safety Administration”), “Square Root Scaled Distance” and “Cubed Root Scale Distance” (context).
- Enforcement (211.103) and Daily Summary Magazine Transactions (211.117): Language regarding employee possessors and responsible persons will be removed, along with the daily summary magazine transactions (these are ATF terms).
- General Requirements (211.121): All contexts will be changed to the present tense and the term “all contractors” will be changed to “blasting subcontractor.”
- Blasting Activity Permits (211.124): The terms “contract blaster” and “independent contractors” will be changed to “blasting contractor”; the square root scaled distance will be specified (exception: demolition blasting); and the notification requirement will be eliminated (due to the question of its usefulness overall).
- Blast Reports (211.133): The description of conditions in the area around the blast site will be clarified; the square root scaled distance will be specified (exception: demolition blasting); and the reference to the purpose of drill holes will be removed.
- Transportation (211.141): Federal vehicle inspection option will be added.
- Blasting Activities (211.151): The “nuisance” reference will be removed and the term “peaks” (referring to modifying particle velocity) will be removed.
- Gases (211.152): The terms “toxic” and “noxious” will be removed.
- Pre-Blast Measures (211.155): Signage will be revised to comply with applicable MSHA or OSHA regulations.
- Civil Penalties (211.201): The reference to “unauthorized activities” will be removed (this is an ATF term).

### **OSM Program Consistency**

Mr. Allen reported on DEP's efforts to revise selected regulatory citations from 25 PA Code, Chapters 86 (Surface and Underground Mining of Coal – General), 87 (Surface Mining of Coal), 88 (Anthracite Coal), 89 (Underground Mining of Coal and Coal Preparation Facilities) and 90 (Coal

Refuse Disposal) to make them more consistent with those of OSM, via incorporation by reference. This move is due to a recent court decision that was meant to define surface mining activities.

The following changes proposed relate to sections of Chapter 86:

- Permitting:
  - Elimination of the certified mail requirement (with the advent of e-permitting)
  - Change fly ash disposal to a beneficial use
  - Remove report date of MSHA identification issuance
  - Correct the term for MSHA
  - Remove the word “augmented” (this term is not in the OSM regulations)
- Temporary Cessation:
  - Incorporation of legislative change (per Federal or State statute)
  - Allowance of 180 days or more (some District Mining Offices require additional time frames for temporary cessation).
- Bonding:
  - Review the value of Negotiable Securities (a required program amendment)
  - Inclusion of legal and liquidation costs (a required program amendment)
  - Removal of deep mining for the Anthracite Miner’s Emergency Bond Loan (AEBL) Program (required program amendment)
- Civil Penalties: Update the threshold for assessment (this new threshold will be \$1,100.00 – consistent with the OSM figure).
- Cleanups: This revision is logistical and involves a simple change in agency name (“DER” is now “DEP”) and reporting form number.
- Reclamation Financial Guarantees (RFGs):
  - Inserting language ensuring that a certain amount of funds will be designated back to financial guarantees
  - Inclusion of a reference to a reserve
  - Changing the bond forfeiture language to match the OSM statute

The following changes proposed relate to sections of Chapter 87:

- Addition of a reference to Chapter 96 (Water Quality Standards Implementation)
- Addition of language for 10-year storm events (per National Oceanic and Atmospheric Administration (NOAA) rule that matches 10-year storm event thresholds)
- Updating a reference to Chapter 92a (NPDES) (formerly Chapter 92)

The following changes proposed relate to sections of Chapter 88:

- Updating “haul road” definition to include certain public roads

- Addition of a reference to Chapter 96 (Water Quality Standards Implementation)
- Addition of language for 10-year storm events (per National Oceanic and Atmospheric Administration (NOAA) rule that matches 10-year storm event thresholds)
- Updating a reference to Chapter 92a (NPDES) (formerly Chapter 92)
- Deletion of a reference to expert witness fees

The following changes proposed relate to sections of Chapter 89:

- Adjusting the limit for removing manganese; passive treatment options
- Addition of a reference to Chapter 96 (Water Quality Standards Implementation)
- Addition of language for 10-year storm events (per National Oceanic and Atmospheric Administration (NOAA) rule that matches 10-year storm event thresholds)
- Updating a reference to Chapter 92a (NPDES) (formerly Chapter 92)

The following changes proposed relate to sections of Chapter 90:

- Addition of a reference to Chapter 96 (Water Quality Standards Implementation)
- Addition of language for 10-year storm events (per National Oceanic and Atmospheric Administration (NOAA) rule that matches 10-year storm event thresholds)
- Updating a reference to Chapter 92a (NPDES) (formerly Chapter 92)
- Addition of preferred site adjacent areas

### **Coal Fees Regulatory Package**

Mr. Callaghan reported on the status of the Coal Fees Regulatory Package – based upon comments from the Board’s RLT Committee. The Annex will be revisited, with the proposed fee schedule to be rewritten in order to reflect a shift from a 6-year schedule to a 3-year schedule. Disproportionate fee increases (surface mining vs. underground mining), development of permit fee tiers (pre-application vs. full application), administrative fees and the incorporation of remaining incentives will also be reviewed. The Board’s RLT Committee will meet to develop a draft document that will be available to the full Board in October.

### **Bond Rate Guidelines**

Mr. Carl reported on the 2016 bonding rates for land reclamation on coal mining operations, in terms of costs for grading, revegetation, mulch, seed and bed preparation. To date, there are 4 reclamation projects that cover 379,269 cubic yards. The grading costs for these averaged out (low-bid, weighted) to \$.88/cubic yard (derived from initial costs between \$.77/cubic yard and \$.96/cubic yard; for 2014-2016, the grading cost weighted average for projects at 500 feet or less was \$.93/cubic yard). There are 2 additional reclamation projects open for bid that will cover 288,000 cubic yards.

For revegetation, there are 4 projects covering 197.2 acres. The revegetation costs ranged between \$808.63/acre and \$3,312.26/acre, with an average revegetation cost of \$1,680.34 (below the previous average of \$1,800.00/acre).

Average mulch costs were \$918.32/acre with a three-year weighted average of \$872.79/acre (this represents an increase from previous years). Average seed bed preparation costs were \$308.92/acre with a three-year weighed average of \$269.10/acre (this represents a stable cost situation); and average seed costs were \$288.57/acre, with a 3-year weighted average of \$294.90/acre (this represents a stable situation).

Projected bond rates for 2017 showed a mixed bag of increases and decreases. For grading 1, the weighted average will decrease from \$.95/cubic yard (2015) to \$.90/cubic yard (2017) and for grading 2, the average will increase from \$1.20/cubic yard (2015) to \$1.55/cubic yard (2017). Selected grading per acre has increased from \$1,250.00/acre (2015) to \$1,700.00/acre (2016), with 2017 yet to come. Revegetation costs will decrease slightly, from \$1,900.00/acre (2015) to \$1,850.00/acre (2017). Mulch costs will increase slightly, from \$850.00/acre (2015) to \$870.00/acre (2017). Seed bed costs will increase slightly, from \$250.00/acre (2015) to \$270.00/acre (2017).

### **New Business**

Ms. Perry shared information regarding Travel Expenses with the Board. The discussion was about the various forms that Board members and alternates should use when traveling and how to complete these forms correctly.

Mr. Callaghan reported on the status of the PA Reclamation Plan Amendments to the Abandoned Mine Lands (AML) Emergency Program. Presently, these plan amendments are being circulated to various parties via the PA DEP's eComment method and, the Board will be informed on the status at a later date.

A presentation on the Remining Financial Assurance Fund (RFAF) was also on the agenda. However, the presenter for that topic - Christopher Yeakle (PA DEP – Bureau of Mining Programs) - was absent, and this agenda item was deferred to the next Board meeting (October 20, 2016).

### **Open Time**

Mr. Feagley made a recommendation that iPads be supplied during meetings, in order to reduce the volume of paper generated from making multiple copies of meeting documents. It was noted that for future meetings, options for reducing paper volume would be explored and shared with the Board.

### **Adjournment/Next Meeting**

The Board adjourned its meeting at 10:45 a.m. The Board will hold its next meeting on October 20, 2016 at 10:00 a.m. at the Rachel Carson State Office Building (Conference Room 105) in Harrisburg.