

MINUTES
MINING AND RECLAMATION ADVISORY BOARD (BOARD)
October 20, 2016

VOTING MEMBERS OR ALTERNATES PRESENT:

Bobby Burns (Keystone Anthracite Company)
Duane Feagley (PA Anthracite Council)
Rachel Gleason (PA Coal Alliance)
Katie Hetherington-Cunfer (CAC)
Mark Killar (CAC)
Darrel K. Lewis (Allegheny Mineral Corporation)
David Osikowicz (Original Fuels, Inc.; Board Chairperson)
Benjamin Wren (PA Senate)

OTHER ATTENDEES

Bill Allen (DEP – Mining Programs)
Abbey Cadden (DEP – Policy Office)
Bruce Carl (DEP – Mining Programs)
Josie Gaskey (PA Aggregates and Concrete Association (PACA))
Jennifer Gulden (DEP – Mining Programs)
Joseph Iole (DEP – Regulatory Counsel)
Gerald Jackson (DEP – Bureau of Abandoned Mine Reclamation (BAMR))
Shuvonna Perry (DEP – Mining Programs)
Paul Pocavich (DEP – Mining Programs)
Daniel E. Snowden, D.Ed. (DEP – Mining Programs; Board Liaison)
Jason Steloski (PA House of Representatives)
Christopher Yeakle (DEP – Mining Programs)

MEETING CALLED TO ORDER/INTRODUCTIONS

Mr. Osikowicz called the meeting to order at approximately 10:00 a.m. Board members, DEP personnel and visitors introduced themselves.

APPROVAL OF MINUTES

One change was mentioned for the July 21, 2016 meeting minutes: to include the fact that the Board had voted to move the Chapter 210/Chapter 211 regulatory package to the Environmental Quality Board (EQB) as a proposed rulemaking. Dr. Snowden made note of this change; afterwards, the Board voted unanimously to approve the minutes from its July 21, 2016 meeting.

CORRESPONDENCE

Mr. Osikowicz stated that no correspondence was received by the Board since its last meeting. He then mentioned that he had worked with Dr. Snowden to ensure that thank-you letters from the Board were sent to the appropriate parties from the DEP Cambria District Mining Office and,

the National Park Service, for their assistance in provided AMD treatment facilities to visit during the Board's field trip from July 20, 2016.

COMMITTEE REPORTS

Ms. Gleason reported that the Board's Regulation, Legislation and Technical (RLT) Committee met on September 22, 2016 and developed recommendations regarding the Coal Fees regulatory package and, that this Committee voted to approve the surface coal mining permit component of proposed coal fees regulatory package, with the understanding that the underground coal mining permit fees portion should be worked out between DEP and the PA Coal Alliance (PCA) and, that the completion report language be revised to include any surface mine permit where remaining occurred. This matter was discussed later in the meeting, as the Board had prepared a letter regarding it.

For the Board's Reclamation Committee, Mr. Feagley reported that a couple of Pennsylvania projects had received awards in the areas of Abandoned Mine Land (AML) Reclamation (i.e., *"Reclaiming a Company Town: Morgan Township, Greene County, Pennsylvania"*) and, Excellence in Surface Coal Mining (i.e., *"Northampton Fuels Supply Company, Nanticoke, Pennsylvania"*). Mr. Feagley recommended that the Board send thank-you letters to the parties responsible for the successes of these projects. Mr. Osikowicz stated that he would work with Mr. Feagley and Dr. Snowden, to ensure that these thank-you letters are sent out.

UPDATES

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

- Non-Regulatory Agenda: One item noted was the Engineering Manual – an internal DEP meeting will be held regarding this technical guidance document, with an emphasis on the Chapter 102 requirements.
- National Pollutant Discharge Elimination System (NPDES) Permitting: Mr. Allen made note of the following matters regarding this topic:
 - Number of NPDES permits sent to the United States Environmental Protection Agency (US EPA) and disposed, with or without comments.
 - Outstanding issues:
 - Checklist (this has not been finalized as yet).
 - Sufficiently Sensitive Methods (addressing the matter of protection limits for pollutants, where the "<" (less than) values are not low enough); and,
 - Whole Effluent Toxicity Testing (WETT) in draft permits.
- Historical Application Progress and the Permit Decision Guarantee (PDG): Mr. Allen mentioned the following matters regarding this topic:
 - Number of coal-related permit applications disposed, along with those remaining for action and their specific District Mining Office locations.
 - On-time percentages under the PDG program for District Mining Offices.

- Trust Agreements/Bond Status: Mr. Allen provided details on a variety of items regarding this topic:
 - Number of total agreements (between December 2015 and September 2016), total (i.e., bonds, fully-funded trusts, partially-funded trusts (including Alternative Bond System (ABS) sites).
 - Values of the aforementioned agreements (between December 2016 and September 2016)
 - Changes to some of the aforementioned values, due to the transfer of \$17 million bond monies to the Clean Streams Foundation (CSF).
- Land Reclamation Financial Guarantees (LRFG): Mr. Allen mentioned the following matters regarding this topic:
 - Change in the number of LRFG operators and permits.
 - Change in LRFG values underwritten (between June 2016 and September 2016).
- Reclamation Fee Operations and Maintenance (O & M) Trust Accounts: Mr. Allen mentioned the following items regarding this topic
 - Coal Civil Penalties and Interest (3rd Quarter of 2016)
 - LFRG Premiums and LFRG Interest (as of October 2016)
 - Additional Revenue Transactions
- Regulatory Agenda: Mr. Allen mentioned developments with the following items:
 - Remining Regulations
 - OSM Program Consistency Committee
 - Water Supply Replacement Regulations (25 PA Code, Chapters 287 and 288)
 - Blasting and Explosives Regulations (25 PA Code, Chapters 210 and 211)
- Application Fee Revenues: Mr. Allen mentioned additional revenues from the following funds (between FY 2012-2013 and FY 2016-2017 (to date):
 - Surface Mining Conservation and Reclamation Act (SMCRA) Fund
 - Clean Water Fund (CWF)

Bond Rate Guidelines

Mr. Carl reported on reclamation bond rate guidelines, in terms of the 2016 calendar year costs for the following elements:

- Grading (rates for 2016):
- Revegetation (rates for 2016):
- Mulch, Seed Bed Preparation and Seed (rates for 2016):
- Projected Rates for 2017

BAMR Status Report/AML Grant Funding Status

Mr. Jackson (substituting for Brian Bradley) provided an update on BAMR projects (i.e., number of projects completed for 2015 and 2016, along with their costs, acres reclaimed and source monies (i.e., Title IV Funds, AMD Set-Aside Funds, Collected Bonds, Growing Greener Funds), and, future projects and awards). Mr. Jackson also noted that BAMR plans to award \$5,500,000.00 in AML Economic Development Pilot Program funds for 2 specific projects: the Powderly Creek Northeast UMF – Lackawanna County (\$2,000,000.00) and the Ehrenfield project – Cambria County (\$3,500,000.00) and, that an additional \$640,000.00 in funds from this program would be included among the 98 contracts for future reclamation projects.

New Business

- Reclamation Fee Report: Mr. Allen covered this topic, highlighting the following points:
 - LRFG Program Approval (forthcoming, as are additional revenues).
 - Transfers: the first \$500,000.00 of revenues from civil penalties will be transferred to the O & M Trust Account. Further discussion is needed as to whether more monies should be transferred here, or to another account – the ABS Legacy Account.
 - Long-Term Sustainable Revenues: this will require more than \$200,000.00/year in receipts from penalties.
 - Comments from Penn Future:
 - Acreage estimates for bonding are optimistic.
 - Other funding sources are needed.
 - More facilities for acid mine drainage (AMD) treatment are needed.
 - Comments from PA Coal Alliance:
 - Re-evaluate the threshold of \$3 million.
 - More funding sources are needed.
 - Projections are said to be inflated.
 - Reporting should occur in January of each year.
 - Report Changes:
 - Revenue Projections: These have been reduced to \$50,000.00 from \$100,000.00 initially.
 - Civil Penalties: This will be adjusted from \$200,000.00 to \$500,000.00
 - LRFG Interest: This will be to \$85,000.00 from \$40,000.00.
 - Final Disposition of Report: The Reclamation Fee Report will be finalized for the PA Bulletin, the result of which the fee zeroes out on January 1, 2017.

- Remining Financial Guarantees: Mr. Yeakle provided a report on the status of remining financial guarantees in order to provide the Board with an understanding on the history of bond forfeitures and their impacts on the Remining Financial Assurance Fund (RFAF):
 - Forfeitures to Date
 - Forfeitures Status
 - Costs for Reclaimed Sites Using Financial Guarantees
 - Outstanding Reclamation Obligations
 - Anticipated Forfeitures
 - RFAF
 - Possible Discontinuance of Financial Guarantees
 - Possible Suspension of Financial Guarantees
 - Permits with Financial Guarantees and Forfeiture Rates
 - True Forfeiture Picture
- MRAB Annual Reports: Dr. Snowden mentioned that annual reports from the MRAB had not been completed for several years. As such, the Board recommended that this topic become a regular agenda item for future meetings, in order to ensure that it is addressed promptly.
- Board Meeting Dates for 2017: The Board agreed upon the following dates for holding meetings during 2017: January 19; April 20; July 20 (field trip/meeting); and October 19.

Coal Fees – Continued Discussion

Board members discussed the proposed coal fees regulatory package, based on the September 22, 2016 meeting of the Board’s RLT Committee and a recent letter from the Board. The letter was meant to address the outstanding issues that underground mining operators have with the aforementioned regulatory package – all related to the permitting processes and the number of hours taken to complete permitting actions.

Specific requests in the letter included:

- Establishing a checklist for NPDES permit requirements applicable to underground operators for submission to the US EPA.
- Eliminating the requirement for a Cumulative Hydrologic Impact Assessment (CHIA) at every permit renewal.
- Reassessing the hours needed to review certain elements of bituminous underground mining permits (i.e., six-month maps; major revisions, renewals; new applications).
- Expanding fee categories for new bituminous underground mining permit applications (e.g., mine shafts; room and pillar mining; longwall mine/room and pillar mine with secondary mining under streams).

- Expanding fee categories in major permit revisions (i.e., boreholes; new NPDES outfall; surface site revision; new surface mining opening site; underground acreage addition).
- Expanding fee categories in permit renewals to include mine shaft sites.
- Commitment to continued interaction with industry to examine the permit renewal process and, to identify efficiencies to improve this process.

After some extensive discussions, the Board voted to accept the surface mining permit component of the coal fees regulatory package, with the following caveats:

- Underground coal mining permit fees should be kept off the table and discussed further separately with the industry, per the PA Coal Alliance (PCA); and
- The matter regarding whether remaining activities would be affected under the completion report fees in the proposed regulations should be addressed.

Open Time

Dr. Snowden mentioned the availability of conference room space at the Harrisburg University, which is located right next to the Rachel Carson State Office Building. He invited all interested Board members and alternates, following the meeting, to take a look at this facility as a possibility for hosting future Board meetings, in the event that Conference Room 105 is unavailable on a meeting date.

Adjournment/Next Meeting

The Board adjourned its meeting at approximately 11:45 a.m. The Board will meet again on January 19, 2017 in Harrisburg (Rachel Carson State Office Building, Conference Room 105).