

## MINUTES

### COMMONWEALTH OF PENNSYLVANIA COAL AND CLAY MINE SUBSIDENCE INSURANCE BOARD MEETING

December 18, 2003

A meeting of the Mine Subsidence Insurance (MSI) Board (Board) was called to order at 10:00 a.m. on December 18, 2003, in the Department of Environmental Protection's Conference Room located on the 10th Floor of the Rachel Carson State Office Building, Harrisburg, Pennsylvania. Board members present at the meeting were: Joseph G. Pizarchik, Esq., Director, Bureau of Mining and Reclamation, Designated Chairman for Kathleen McGinty, Secretary of the Department of Environmental Protection (DEP); Michael Burkett, Actuary, Designated Representative for Board Member M. Diane Koken, Commissioner of Insurance; and Michael Dillon, Assistant General Counsel, Designated Representative for Board Member Barbara Hafer, State Treasurer. Also attending were the following DEP employees: Joseph Taranto, Subsidence Section, California District Mining Office; Edward Motycki, Permitting Section, California District Mining Office; Marc Roda, Assistant Counsel; Robert W. Agnew, Chief, Division of Environmental Analysis and Support; Joseph Seiber, Environmental Policy Specialist, Lawrence Ruane, MSI Program Administrator, and Lara Logan, Bureau of Mining and Reclamation, Clerical Support.

The following is a summary of the issues discussed and actions taken at the meeting:

I. Approval of the Minutes of Previous Meeting

The Board reviewed the minutes of the May 13, 2003 MSI Regular Board Meeting. Mr. Burkett made a motion to approve the minutes of the May 13, 2003, meeting. Mr. Dillon seconded the motion, which then passed unanimously.

II. Review of Draft Report for the Legislature and Commission Rate Review

The Board reviewed and commented on a draft of a report regarding the MSI Program and the experience of sales through Insurance Producers that DEP is obligated under Section 20 of Act 484 of 1961, as amended, to provide annually to the legislature. The draft report provides basic statistical and financial information that demonstrates the effectiveness of the program's operations, its financial position, and the contributions to the MSI Fund that are being made by the insurance producers. DEP staff noted that the level of the insurance producer's participation in the MSI Program would likely rise slowly, even with extensive marketing efforts to promote the insurance producer's participation. That is primarily because the insurance producers were excluded from doing business with the MSI Fund for more than 40 years. Mr. Burkett recommended that the final report fully comply with the requirements of the law and that the report provide information on a year-to-year basis so that the legislature will be able to track the

performance of the Fund and the insurance producers. The Board then determined that a review of the draft report should be added to the Board's annual business that is conducted in its regular meetings.

### III. Update on MSI Marketing Campaign

DEP staff presented two marketing reports for Fiscal Year (FY) 2002-2003. One report listed marketing expenditures. It demonstrated that \$197,003 of the \$200,000 marketing budget was expended, and that expenditures were split about evenly between the development of marketing materials and strategies and the placement of advertisements. The current marketing plan emphasizes the development of marketing materials that promote the registration of insurance producers so that they are eligible to take and submit MSI applications. The marketing plan also promotes the submission of applications by the insurance producers. The other marketing report compares activities, such as the placement of MSI advertisements and the coverage of mine subsidence events by the news media, with the number of MSI applications submitted and the number of insurance policies sold. That report demonstrated that the most significant increases to the numbers of MSI applications and policies continues to be associated with major subsidence events that are covered by the news media, which are then followed by advertising campaigns.

### IV. Review of Operational and Financial Performance

The Board reviewed information that demonstrates the operational and financial performance of the MSI Fund and Program. The number of active policies at the end of FY 2002-2003 was 53,289, down slightly from the 53,309 in the previous year. However, during the same period, the average value of a policy rose from \$92,869 to \$96,374, which increased the underwritten value of the MSI Fund from \$4.85 billion to \$5.1 billion. The number of paid claims in FY 2002-2003 was 24, up from 14 in the previous year. Mr. Burkett noted that for fiscal year ending June 2003 the Comptroller's Office reported "Interest Income" of \$875,036.06 and that the Treasury provided an amount for "Net Income/Gain" of about \$1.6 million. He asked that these amounts be researched and that information be provided to the Board that clarifies the amount of interest income for FY 2002-2003.

### V. Review of Investments

The Board discussed the financial information provided by the Treasury that demonstrated the performance of the Fund's investments over the past fiscal year. Mr. Dillon noted that the investments now include equities, such as stocks, in addition to the traditional types of investments, such as bonds. In response to Mr. Burkett's question regarding negative rates of return for July, September and January of 2002, Mr. Dillon further explained that although the inclusion of equities will improve the long-term return on the MSI Fund's investments, returns for any given month may be adversely impacted by the need to liquidate unproductive

equities, as was the case for those months. The average monthly rate of return of 4.3% compared well to the financial markets, which indicates that a more balanced investment portfolio that includes equities will, over time, out perform a more conservative portfolio that is restricted to less volatile investments.

VI. Premium Rates and Coverage Limits

The Board reviewed the premium rates and coverage limits offered during FY 2002-2003. After a general discussion of the adequacy of the rates and coverage limits, in which Mr. Burkett made a correction to the calculation for “Nonresidential Rates,” the Board unanimously voted to retain the current premium rates and coverage limits.

VII. Budget and Authorization to Spend

The Board reviewed projected expenditures for the administrative costs of the MSI Program for Fiscal Year 2004-2005. After a general discussion of the costs, especially computer costs, Mr. Burkett introduced a motion to provide up to \$3,001,689 from the MSI Fund to reimburse DEP for the administrative costs of the MSI Program that it may incur during Fiscal Year 2004-2005. Mr. Dillon seconded the motion, which was then passed unanimously.

VIII. Inflation Factor

The Board reviewed a preliminary calculation of the inflation factor that would be provided for calendar year 2004. The inflation factor is used to adjust coverage amounts so that coverage keeps pace with the increased costs of repairs. Policyholders are provided the option to select either the coverage in force or the inflationary coverage amount when they renew their policy. The projected inflation factor was calculated using the most recent 12 months of data from the Boeckh Index, an index of construction materials costs. As directed by the Board in a previous meeting, the actual inflation index will be calculated using the most recent Boeckh Index information that is available prior to the end of the calendar year. The inflation index will then be applied to renewals in calendar year 2004.

IX. 25 Pa. Code Chapter 401 Proposed Rulemaking

The Board reviewed proposed amendments to 25 Pa. Code, Chapter 401, the regulations that govern the administration of the MSI Fund and Program. Changes are proposed to be made to the definition of “Mine Subsidence” so that it better conforms with the definition that is used in the MSI Program’s operations and that is contained in the “Insuring Agreement,” a part of the insurance policy and a document that is also developed by the Board. The proposed definition of “Mine Subsidence” includes the term “Mine Workings,” which is also defined in the proposed rulemaking. The Chapter 401 amendments would also remove provisions that, by their nature, must be provided in the insurance policy, such as the duration

of a policy, or that are reviewed and established by the Board each year in its regular meeting that is open public, such as the maximum amount of coverage. Removing those provisions will eliminate obsolete language and the potential for conflicts between provisions contained in both Chapter 401 and in the insurance policy. The process of adopting provisions of coverage in open meetings is also much more expedient than by doing so through regulations. As a result, the policyholders will benefit from the Board's ability to more quickly implement policy that directly affects their insurance coverage.

After a general discussion of the proposed rulemaking and the rulemaking process, including the role of the Independent Regulatory Review Commission, the Board unanimously adopted the proposed regulations.

X. Other Business and Adjournment

With no other business before the Board, Mr. Burkett made a motion to adjourn, which was seconded by Mr. Dillon and passed unanimously. The meeting concluded at 11:30 a.m.

SUMMARY OF ACTIONS TAKEN BY THE BOARD:

1. Approved the minutes of the December 18, 2003 MSI Board Meeting.
2. Established that premium rates and coverage limits would not change from those that were effective in the previous year.
3. Authorized that up to \$3,001,689 of MSI Funds may be used to reimburse DEP for the administrative costs of the MSI Program in FY 2004-2005.
4. Approved the proposed amendments to Chapter 401 regulations.

KEY OBLIGATIONS:

1. MSI Board to review the annual report provided by DEP to the legislature.
2. Treasury to provide MSI Board with information regarding investment income.
3. DEP to calculate and post the inflation factor at the end of the calendar year.
4. DEP to promote the Proposed Regulations for review and approvals and provide the Board with a final regulation that the Board, at its discretion, may promulgate.