

DRAFT

MINING AND RECLAMATION ADVISORY BOARD (MRAB) MINUTES

**Thursday, January 9, 2003
Rachel Carson State Office Building
10:00 a.m.**

Members/Alternatives in attendance: Fred Wolf (Chair), Jack Chamberlin (Member); Duane Feagley (Alternate), Richard Fox (Alternate), Sue Germanio (Alternate), Walter Heine (Member), Pat Krommes (Alternate), David Mankamyer (Member), David Osikowicz (Member), Steve Shrawder (Member), Representative Sam Smith (Member), David Strong (Member); Margaret Urban (Member), Burt Waite (Member), and Mike Young (Alternate).

Others in attendance: Bill Achor (Wenger's Feed Mill, Inc.), Dennis Bell (Skelly and Loy, Inc.), Ed Bohan (DEP), Richard Boyer (Governor's Action Team), Brian Bradley (DEP), Bill Capouillez (Game Commission), Sam Faith (DEP), Stu Gansell (DEP), Kerry Harner (Environmental Restoration Solutions), Bernie Hoffnar (DEP), Mary Ann Ingreem (DEP), Steve Kepler (Fish and Boat Commission), James Leigey (Game Commission), Paul Linnan (DEP), Joe Pizarchik (DEP), George Reiger (OSM), Scott Roberts (DEP), Marc Roda (DEP), Guy Sheets (Montgomery Watson Harza), Evan Shuster (DEP), Joe Sieber (DEP), Deb Simko (WPCAMR), Nevin Strock (DEP), Kurt Weist (PennFuture) and Sue Wilson (CAC).

Meeting Called to Order

MRAB Board Chairman Fred Wolf called the meeting to order at 10:05 a.m. Chairman Wolf welcomed everyone and asked that all present introduce themselves.

A motion was made by Dave Strong, seconded by Dave Mankamyer, and approved by the Board to accept the minutes of the October 24, 2002 meeting with the stipulation that there be a correction to page 2 of the minutes.

Obligation: Correct the date the Board was set up.

Committee Reports:

The *Policy Committee* (Mike Young reporting) had no report.

The *Reclamation Committee* (Dave Strong, Committee Chair).

Dave Strong asked Deb Simko to report. She reported the AML trust fund is up for reauthorization in year 2004 and the western states have formed a Western Governor's Association to fight the reauthorization. Scott Roberts reported that Pennsylvania is a member of the Interstate Mining Compact Commission (IMCC), which at its November meeting voted to push for reauthorization. The IMCC along with the National Association of State

Reclamationists is working to put together a position statement to be presented to the committee that is reviewing this in the U.S. House of Representatives. Some of IMCC's thoughts were that there should be more flexibility in the granting of money to the states and, perhaps, a way for companies who pay the tax to work it off rather than to pay it to Washington. Local watershed groups could contact their governmental representatives to indicate that it's an important issue for Pennsylvania since Pennsylvania has a \$4.6 billion reclamation problem and gets \$25 million/year. Some western states have completed their Priorities 1 and 2 abandoned mine reclamation sites. A motion was made by Dave Mankamyer, seconded by Peg Urban, and approved, that the *Reclamation Committee* consider at its next meeting the AML fee authorization issue and offer recommendations for possible action by the MRAB. The Committee was asked to take input on what the resolution would say including how the money is spent or to be distributed. Deb Simko reported she is writing a Growing Greener grant request for the Ohio River basin headwaters because the basin has almost 2,000 miles of streams affected by AMD. The purpose is to organize many smaller organizations to better represent rural western Pennsylvania.

Bill Achor reported the Organic Recycling Task Force has a subcommittee looking at organic recycling to include manufactured soils and other materials and to develop markets for the manufactured products. The subcommittee is scheduled to meet January 22. Industry would have to pay for the reclamation.

Paul Linnan reported the Tamaqua project involving abandoned mine reclamation using dredged sediment is going well. The project started around Thanksgiving. Five random samples of the dredged sediment are taken each day when the material arrives on site. The samples go to local labs, which analyze one of the samples. All parameters for safe fill are being met except cobalt, which is a little high. There may be an additional 50,000 yards purchased from the same vendor for Bark Camp. There is no dredged material coming into Bark Camp.

Marc Roda reported there are patents for three types of manufactured soils. These patents are for the process and a license would have to be obtained from the patent holder. The patents cover only topsoil and some cover-dredged material. Some companies are making soils not under the patents. Concern is to let bidders on state contract know about the patents up front because of the royalty fees involved.

Obligation: Marc Roda to see that Scott Roberts and the Board get copies of the three patented processes.

The *Regulation, Legislation and Technical Committee* (Dave Osikowicz, Chair) had no report.

The *Ad Hoc Committee* (Dave Mankamyer, Chair) report was given. 1) A legal interpretation was received from DEP counsel indicating the MRAB has the authority to advise DEP on the surface discharge of acid mine drainage from abandoned deep mines. 2) The Committee felt the MRAB is not supported as strongly as it could be and wants to look into replacing a liaison person with an executive director and secretary. They would like to meet with the new Secretary to have this addressed. It was made clear that the work done by Nevin Strock for the Board had been great but the Board wants to make sure that he gets the support he needs from DEP to allow

him to support the Board especially since the Board has to coordinate with the various river groups, etc. Scott, Linda, and Elaine were also thanked for their helpful assistance to the Board.

Request for Committee on AML priorities

Scott Roberts reported the LTV Chapter 7 Liquidation is in the last stages of liquidation, and the Beth Energy's Chapter 11 Reorganization financial picture is bleak. Because of these cases and others, it is necessary to think about how to fund treatment of long-term discharges. It can be done on quality of discharges, quantity, impacts, or other considerations. DEP will focus on whether or not there is a responsible party treating the water and whether or not it is a primacy case. Currently in Pennsylvania there is about 25 billion gallons of mine drainage treated each year by mine operators mostly at sites mined more than 10 years ago. DEP has to be careful that the treatment will continue. Discharges will cease being treated with the end of the entity, i.e. the LTV situation. Although DEP has been careful to secure additional money from bankruptcy, it is going to be an additional reclamation responsibility and it's time for debate on how to prioritize reclamation. A year ago DEP started getting contacts from people interested in the utilization of mine water rather than using clean water. For instance a power plant in West Virginia asked to pump, treat, and evaporate 7,700 gallons/minute of mine drainage that eventually will flow into the Monongahela River. DEP has been working with legislators and local governments to make this happen. DEP needs to look at reuse and recycling of mine drainage particularly if this is tied into water resources legislation. DEP also needs to look at ways to reduce costs of water treatment. BAMR is looking at wind turbines to create electricity to pump water out of a mine in Warren County. It became clear that the Board was the entity to guide the debate and frame public policy and therefore a letter was drafted from Secretary Hess to Fred Wolf to that affect.

Mr. Wolf offered the following slate for the Task Force on abandoned mine land priorities and treating orphan mine discharges: Dave Strong as Chairman, Dave Mankamyer, Vice Chairman, and Dave Osikowicz, Burt Waite, Mike Young, and Jack Chamberlin. Legislative members will serve as ad hoc members of the Task Force. The Task Force has been designated to serve as advisor to the Board. A motion was made by Walter Heine to accept the members nominated to serve on the Task Force. The motion was seconded and approved.

Various comments were made regarding water being pumped from a deep mine, treated water being used at a fish farm, determining the cost of using water by large users such as agriculture, electric utilities, and golf courses and weighing that against the cost of water treatment. The hope was that a market could be found for the mine drainage.

Obligation: Scott Roberts will get a list of those who are currently treating water.

Draft Final Rulemaking - Coal Mining, Chapter 86

Evan Shuster presented the draft final rule for exempting coal extraction incidental to government-financed highway construction from the coal mining regulations. The draft incorporated changes requested by the Board at its October 24, 2002 meeting and includes language suggested by the Pa. Game Commission whereby a government-financed project on an

area unsuitable for mining (UFM) is required to maintain on the UFM site the detailed statement developed during the UFM petition process. Board approval was requested so the rulemaking could be taken to the EQB. A motion in favor of the final rulemaking was made by Peg Urban, seconded by Dave Strong, and approved.

Preliminary Discussion of Planned Proposed Rulemaking - Re: Bond Adjustments, Section 86.152(a)

Mr. Pizarchik asked for input concerning changes to Section 86.152(a) that states “the Department **may** require a permittee to deposit additional bonding” if the method of mining, reclamation standards, or other changes occur on a mine site. As part of the conversion to full-cost bonding, DEP needs to provide for something more definitive on this - perhaps change “may” to “will” to make it more of an absolute position for the Department to request additional bonding when a change occurs on the mine site. DEP wants to be sure it has adequate bonding if the amount needs to be adjusted upward. This is a provision in the regulation that is discretionary on the Department’s part. A change may be in order to maintain the integrity of the conventional bonding system. DEP believes it needs to make a change there. The thought was to change “may” to “will” then when there is a situation where circumstances change and additional bond is necessary to complete reclamation, DEP will be obligated to require the operator to provide the additional bond. It was pointed out that OSM provides that bond will be recalculated and from time to time shall be adjusted and that perhaps we should look at the federal regulation and consider changing our regulations to more closely follow the federal regulation.

Obligation: Dave Osikowicz’s Regulation, Legislation and Technical Committee will review this and report back to the Board.

New Water Resources Planning Legislation

Stu Gansell reported on the Water Resources Planning Legislation (Act 220), which will take effect March 16, 2003. The legislation provides for the establishment of an Agricultural Advisory Board and for water resources planning. It enables DEP to get information on water units, which will be the building block for updating the State Water Plan. It requires the plan to be updated within five years from the effective date of the Act and updated every five years thereafter. The State Water Plan will include the identification of Critical Water Planning Areas, where water demands are projected to exceed water availability. Within those Areas, there is a requirement to develop a Critical Area Resource Plan. Both the Critical Water Planning Areas and Critical Area Resource Plan will be part of the State Water Plan. Implementation is voluntary. Within one year of March 16, 2003 all public water supply agencies, hydropower agencies, and users of water over 10,000 gallons/day over a 30-day period will be required to register with DEP. Thereafter there will be reporting and record keeping requirements to report how much water they use, where, and how it is being used. Six regional committees will be responsible for guiding development of regional components of the State Water Plan. The regional committees will be comprised of 23 members. The six regional committees will be the Delaware River Basin, Upper and Lower Susquehanna River Basins, Ohio Basin, Potomac Basin, and Great Lakes Basin. Each will have a planning committee with 21 members appointed

by the Governor although regional/state-wide groups may recommend someone to serve on the committees. There will be a DEP non-voting member and a River Basin Commission voting member. Currently the Bureau of Watershed Management is in the process of sending out letters to organizations and county governments asking for recommendations for people to serve on the regional committees and asking for response by March 17.

The state-wide committee will be made up of 31 members: 23 voting, 6 from Regional Committees, who will be appointed by leadership of House and Senate, 12 members appointed by Governor. DEP, PEMA, Agriculture, Fish & Boat Commission, PUC will have voting members. Department of Community and Economic Development, Governor's Center for Local Services, and the River Basin Commission will have non-voting members.

The Bureau is meeting with other interested agencies such as the U.S. Army Corps of Engineers and USGS to see if they are willing to help in the update process.

BAMR Projects/Status Report

Brian Bradley gave a summary report of BAMR projects for the last quarter of 2002. He reported 1 project in open advertisement, 9 bid openings, 26 contracts in place at a cost of \$23.3 million, and 11 completed projects at a cost of \$5.9 million.

Bond Rate Guidelines - 2003

Evan Shuster reported that the guidelines would be published in the *Pennsylvania Bulletin* on January 18 and go into effect 30 days later. The short distance grading costs will go up from 50 cents to 55 cents, the distance grading costs will stay at 80 cents/cubic foot, selective grading will go up from \$625/acre to \$800/acre and revegetation will go up from \$1,000/acre to \$1,500/acre. DEP will look at each bond at permit renewal and may do something similar at mid-term or before issuing a new permit. The increase in fees was based on costs used in BAMR contracts.

Obligation: Evan will supply background information on the increases to Mike Young and Duane Feagley.

New Business

There was no new information on the pollution trading issue but Evan Shuster had talked to staff in the Bureau of Water Management about the Board's concerns.

Scott Roberts gave an update on the Washington County mine fire. On January 6 the carbon monoxide monitors went off at the Eighty-Four Mine. The mine was evacuated. A Consol team arrived and went in and by the afternoon pushed the fire back. The fire is currently contained to less than 200 feet. The cause is unknown although it started along the belt line.

At the October 24, 2002 MRAB meeting, John Meehan asked for comments on a draft of the Remining Incentives Report. Mike Young distributed PCA's comments on the draft Report.

Sam Faith gave a status report on conventional bonding at the October 24, 2002 meeting. The original copy was sent out but the attachments were not. They were made available as a handout for this meeting. The first attachment is a status of conversion; second is a copy of tickler report that offices use to remind them when financial guarantees come due, third is a listing by status of all financial guarantees DEP has written, fourth is a listing of premiums paid during first fiscal year, and fifth is a report of payments that have been made. Any questions may be directed to Sam. This information will soon be on the DEP web site.

Mr. Wolf told the Board it was difficult to grow trees on areas revegetated with biosolids so maybe the number of trees should be limited because it's an extra expense to the operator. Scott Roberts agreed that the way the federal and state regulations were structured did create a disincentive for people to plant trees because you have to have 70% ground cover and certain grasses are so aggressive that they choke out the trees. Warm season grasses don't seem to cause the same problem but they're slow germinating and slow growing and don't provide the same erosion protection. He suggested putting a pound of black locust seeds in with the grass. Nevin Strock said that black locust could be successfully direct seeded but the seeds had to be scarified before they would germinate and that would happen naturally over the winter. In spring the operator could get a good grass cover but would have to wait until after winter for locust seed germination unless the seed is scarified. Other problems were mice and deer eating the seedlings.

Sue Germanio reported HB401 allows independent insurance agents to sell subsidence insurance. This will take affect in June. The MSI Board voted to raise limits from \$150,000 to \$250,000. The insurance agent should be able to log on to DEP to determine if a house is in a subsidence area.

A statewide AMD conference will be held May 16-17, 2003 in Lackawanna County.

Next MRAB scheduled meeting is April 24 in Room 105, RCSOB.

Upon motion made, seconded, and approved the meeting adjourned at 1:30 p.m..