

MINING AND RECLAMATION ADVISORY BOARD (BOARD)

Thursday, January 25, 2007

10:00 A.M.

**Delaware Room, Rachel Carson State Office Building
Harrisburg, PA**

Members/Alternates in attendance: David Osikowicz (Chair), David Strong (Member), Janis Dean (Alternate), Duane Feagley (Alternate), Jack Chamberlin (Member), Stan Geary (Alternate), Susan Wilson (Member), and Walter Heine (Member).

Others in attendance: Jim Charowsky (DEP), Mike Terretti (DEP), Joe Pizarchik (DEP), Richard Morrison (DEP), Marc Roda (DEP), John Meehan (DEP), Curtis Kratz (Penn E & R), George Rieger (OSM), Bruce Carl (DEP), Patricia Davenport (DEP), Bill Allen (DEP), Tara Smith (Representative DeWeese's Office), Don Barnes (DEP), Jeff Kost (PA Game Commission), Fred Sherfy (OSM), Brian Bradley (DEP), Scott Roberts (DEP), Zack Church (DEP), Randy Lindenmuth (Lehigh Engineering), Robert Allen (Reading Anthracite), Bruce Golden (WPCAMR), Richard Lamkie (DEP), Roderick Fletcher (DEP), Eric Conrad, and Jeff McNally.

Meeting Called to Order

Chairman David Osikowicz called the meeting to order at 10:00 a.m. He welcomed everyone and asked that they introduce themselves.

Dave asked for a motion to approve the October Mining and Reclamation Advisory Board (Board) meeting minutes and the January 18 committee meeting minutes. Jack moved to approve all the minutes as presented. Dave Strong seconded the motion. The motion was made and the Board unanimously agreed to accept the Board and Committee meeting minutes.

Correspondence

The Board was not in receipt of any correspondence.

Committee Reports

- No Policy Committee report.
- Reclamation Committee report.

Dave Strong reviewed the committee meeting held at the Moshannon District Office January 18. The meeting focused on the orphan mine discharge resolution action plan, which ties in very closely to the AML funding issues. It was felt that the Department's resolutions should be reviewed and refined in light of the new funding. A majority of the

meeting focused on discussion about the funding. The Secretary has asked CAC to get involved in soliciting input. Dave Strong said they are hoping to have more precise refined recommendations for the Department at the next meeting. Dave will be holding another committee meeting to finalize the committee's recommendations to the full Board after meeting with both the CAC and Scott Roberts, Deputy Secretary, Mineral Resources Management.

BAMR Project Status Report provided by Brian Bradley.

Committee Reports Continued

- Regulation, Legislation and Technical Committee report.

Jack Chamberlin provided a report to the Board on the meeting held in the Moshannon District Mining office on January 18 to discuss the 2007 Bond Rate Guidelines (BRG's). Several suggestions were made on how the statistical analysis could be looked at differently. One suggestion was using the actual lowest bid received instead of averaging the three lowest bids received. The use of 2 years of statistics instead of the use of 3 years of statistics was looked at in addition to the comparison of BAMR sites to a current mining sites and the differences between them (perhaps some considerations that should be taken into account). The committee also felt that some sites should be removed from the statistics completely because they do not accurately depict mining activities the way things are being done now.

Jack requested Bruce Carl give his report on the Bond Rate Guidelines (BRG's) to the Board.

2007 Bond Rate Guidelines

- Bruce Carl, DEP, reviewed the figures that were compiled at the suggestion of the committee. He also briefly reviewed how the numbers were calculated and provided a Power Point presentation. Bruce mentioned that mine sealing costs have not been looked at for sometime. The Department will be looking at this data and may be amending the guidelines. Bruce requested input from the Board on how mine sealing should be addressed.

Walter Heine asked what the Department's experience with forfeitures has been over the past few years. Has the amount of money generally been sufficient? Mike Terretti said there have been several forfeitures. Some have been adequately bonded but many have not. Some sites have had enough coal reserves remaining to have other operators come in and re-permit the area.

Dave Osikowicz questioned how many total permits have been affected by Conventional Bonding. He also asked how many total permits were converted or issued, how many forfeitures there have been, and how many sites have not been resolved by either transfer,

the bonding company doing them, etc. Bill Allen said there have been 8 sites forfeited. Joe Pizarchik stated that 2 of the forfeited sites were oddities, which had been discussed with the Board at previous meetings.

Dave Osikowicz turned the meeting back over to Jack. Jack recommended the full Board endorse the Bond Rate Guidelines as presented. Stan motioned that the MRAB endorse the BRG's with the understanding that between now and the creation of the 2008 BRG's that the Department work with the Regulation, Legislation, and Technical Committee to make sure that the BRG's are reflective of conventionally bonded sites.

Stan felt a few items that should be taken into consideration are, how selective grading is being applied, identifying bid contracts that are comparable to conventionally bonded sites, and comparing bituminous and anthracite contracts for significant differences. Walter Heine seconded Stan's motion.

Dave Osikowicz applauded the Department for hearing the Board and being open to ideas and concepts. Duane agreed with Stan's motion and said he feels that the Regulation, Legislation, and Technical Committee and the Department should begin working on the 2008 BRG's right away. Joe Pizarchik suggested the Department collect the first quarter data from 2007 prior to meeting, with a quarterly break down of data from that point.

Key Obligation: The Department will try to have a preliminary report on the 2008 BRG's for the Board at the April 26 meeting.

The Board voted unanimously to endorse the Department's 2007 BRG's.

OSM's Revegetation Regulation Changes – Effect on DEP Regulations

- Bill Allen provided the Board and update on OSM's revegetation regulation changes and the effect these changes will have on DEP regulations.

The four areas affected by the changes were topsoil thickness, success standards for revegetation, land uses, and revegetation standards for trees.

Regarding topsoil thickness, the Department does not see a benefit to adopting OSM's additional wording. Regarding success standards, the federal regulation change was revised to relieve an administrative burden on the Commonwealth and other regulatory authorities and will not result in a regulatory change in Pennsylvania. With respect to land uses, the concept of shelterbelts was eliminated as a land use and undeveloped land was added. This should not impact Pennsylvania because the Commonwealth did not list shelterbelts as a land use and does have a land use similar to undeveloped land. In regards to the revegetation standards for trees, OSM has identified a program deficiency where Pennsylvania's program is not as effective as the federal regulations. It relates to the 80/60 standard, which is that 80 percent of the trees must be in place for 60 percent of

the liability period in order to qualify for final bond release. Pennsylvania may have to look at updating the revegetation standards for trees.

Walter Heine questioned whether or not any of these regulations have an affect on the Chesapeake Bay Initiative. Joe Pizarchik explained that mining is not authorized within a stream buffer zone without a special approval process being followed. The Department is trying to encourage reforestation for any areas mined within a stream buffer zone (this has to consider the land owners wishes and post mining land use as well).

Bruce Golden asked if the Department has taken the Appalachian Reforestation Initiative into consideration. Bill Allen confirmed that the Department does. Pennsylvania has been fairly successful in getting reforestation completed. The District Mining Offices are being encouraged to look for opportunities for reforestation to be included in primacy bond forfeiture site reclamation contracts.

Surface Mine Safety Regulations

- Bill Allen, DEP, explained that the Commonwealth is looking to update Pennsylvania regulations through the adoption of specific federal MSHA regulations.

Bill said that the Department reviewed a Penn State study titled "*Safety Conditions in Small Bituminous Surface Mines in Pennsylvania*". The conclusions of the report identified the following areas that result in accidents: Failure to maintain machinery and equipment in a safe condition, operating equipment that is not in a safe condition, housekeeping issues, and fire hazards. The Department recognizes that regulations will not prevent all accidents, however the existing regulations are old. The Department is looking at this as an opportunity for mine inspectors to focus on safety and improve working conditions at mining operations.

Many of the revisions will consist of the adoption of MSHA regulations. For some of the revisions however, rather than simply adopt the MSHA regulations, Pennsylvania specific regulations are needed. The Department is focusing on items the mine inspectors see when they are at the mine sites and have the expertise to deal with. A total of 13 outreach meetings were held to garner input from the regulated community and industry. Mike Terretti stated that the Department's focus is on preventable accidents and assisting with general safety issues and keeping a focus on safety.

Stan asked if the Department was looking for the MRAB's endorsement, Joe Pizarchik confirmed that the Department was. Stan shared a few general comments about the regulations as written for the Departments consideration prior to forwarding the regulations to the EQB.

Dave Osikowicz asked for a motion. Walter Heine abstained from the vote as he is a member of the EQB and has not had an opportunity to review the proposed regulation. Stan moved to endorse the regulations to the EQB. Jack Chamberlin seconded Stan's

motion. Susan Wilson asked the Department to describe what things were not incorporated by reference from the MSHA regulations. Bill Allen used gas monitoring as an example. The Department does not have the equipment or training required to do gas monitoring. Electrical inspection would be another example of where staff does not have the expertise to monitor. The Department is focusing more on common sense items, general issues, and working toward compliance assistance. The motion to endorse the regulations carried unanimously.

Mine Opening Blasting

- Rick Lamkie reviewed a Power Point on the mine opening blasting regulations. Rick explained that this proposed rulemaking addresses blasting that is close enough to the surface to affect the public. Dual regulation in this area has led to confusion and standards not being effectively enforced. Part of the clarification provided is that surface blasting regulations apply to mine opening blasting throughout the entire shaft development. Also clarified was that ground vibration regulations in Chapter 211 apply to all mining and blasting operations. Mine opening blasters must have both the skills necessary and a complete understanding of both surface and underground effects that can occur from blasting. An additional change was made in regards to barricading roads, as this is not always the safest alternative for the public. The proposed regulations allow for both day and night blasting so that the construction of the shaft can be continuous. This is necessary to provide for the stabilization of the walls in the shaft to protect the workers in the shaft. Further clarification was provided on “noise” and “air-blast” as well. All blasting in connection with the construction of an underground mine opening is surface coal mine blasting. This regulation package is in compliance with Executive Order 1996-1. Rick explained that the Department has provided vibration limits since 2001 that have been adhered to, so that damage does not occur to buildings. Any waiver from these limits is a civil matter between the permittee and the building owner. The Department received a comment asking whether or not a waiver of regulatory limits would negate insurance coverage. The Department cannot make this determination, as it is beyond the scope the Department.

Walter Heine questioned whether or not a waiver form to the homeowner would include language informing the homeowner that this waiver may affect his homeowner insurance coverage. Rick explained that this is strictly a civil issue. Joe Pizarchik informed the Board that the Department would not be creating a waiver form. It is felt that this is beyond the Department’s scope and would strictly be a civil matter. Any questions a building owner would have in regards to insurance coverage should be directed to their provider.

Stan stated that these regulations have already been approved by the EQB. Joe Pizarchik clarified that they have been approved as proposed rulemaking and were reviewed by the IRRC last week. The Department’s current step is to bring the package back to the Board for its action on the regulations as a final rulemaking. After the Board’s action, the next step for the package is to be taken back to the EQB as final rulemaking.

Stan stated that there had been long discussions previously in regards to this proposed rulemaking, which resulted in a 4-4 vote. The Department had then moved forward to the EQB. He reiterated his submitted comments. Stan does not feel this activity should be considered a surface mining operation. Stan feels that the Bituminous Coal Mine Act as an underground activity has covered this activity for decades. He further stated that if up for vote, he would vote against these regulations being presented to the EQB as a final rulemaking.

Joe Pizarchik stated that the Department has a different perspective. The Department would not be presenting it if it were felt that we did not have the legal authority to do so. The Department feels this regulation is appropriate and requested the Boards endorsement to move forward.

Stan moved not to endorse the proposed final regulations. Jack Chamberlin seconded Stan's motion. Sue Wilson questioned the existing timeframe for this regulation. Joe Pizarchik thought that time probably will not resolve this issue as it is a difference of interpretation.

The Board took a vote on not endorsing the proposed final regulation. The motion not to endorse the rulemaking carried 4-3, with Walter Heine abstaining from the vote.

Reauthorization of the Abandoned Mine Fund

- Rod Fletcher, DEP, reviewed the Abandoned Mine Fund (Fund), which was reauthorized by the President of the United States on December 8. This will go into effect with the start of the 2008 federal fiscal year (October 2007). The states will receive funding that is not based on congressional appropriation. Also, the collection of fees has been authorized to continue for 14 years. This reauthorization means an approximate increase in revenue of 2 billion dollars. The states have been given the opportunity to set aside up to 30 percent of their annual distribution to apply toward watershed and AMD issues. The funding received is based upon P1 and P2 projects. Decisions will need to be made on how this resource should be used. Another important provision for Pennsylvania is the law requires OSM develop regulations specific to providing remaining incentives. The money Pennsylvania is to receive through the Fund will be phased in.

Scott Roberts, DEP, talked about implementing public participation in the process. Scott thanked everyone involved and those that worked hard on getting this through. Scott explained that the Department's efforts directed through BAMR are guided by "Pennsylvania's Comprehensive Plan on Abandoned Mine Reclamation" which was approved by OSM's abandoned mine reclamation program. Public participation is important to the Department in deciding how to use the money received to get the biggest bang for the buck. This is a great opportunity and it needs to be done right. The Department may not have an opportunity like this again.

Dave Osikowicz questioned what was happening with the money that was set aside for the combined fund payments to the orphan miners, are there any provisions for what happens when there is no longer an obligation there? What will happen to that money? Rod explained that once the needs are satisfied the funding would end. Rod further explained that this is not money that comes in and is then set aside. It is money that is appropriated pending a need. When there is no longer a need there, the money will stay in the treasury, it will not be transferred.

Dave Osikowicz also questioned, if with the money Pennsylvania is receiving, there is a provision to use some of the money to increase staffing to develop these projects. Rod confirmed that a portion of the money being put toward increased staffing was a possibility.

Primacy Bond Forfeiture Update

- Don Barnes, DEP, provided an update and Power Point presentation to the Board on primacy bond forfeitures. Don referenced the July 8, 2004, presentation given in Hazelton that introduced the transition of the Primacy Bond Forfeiture Program to District Mining Operations.

Primacy bond forfeited sites are those mine sites that have failed and been abandoned after the effective date of primacy in the 1980's. The first thing DMO did was create an accurate inventory of these sites. Statewide there were 111 primacy bond forfeited sites. There has only been 1 project competitively bid under the three-year plan. There have been 11 sites that have not been advanced. Of these sites, 5 are large refuse piles and 6 have not yet been advanced. The Department has until July 1 to get these six sites on track (in keeping with the three year plan). There has been 1 conventionally bonded site under primacy bond forfeiture that has been competitively bid. In this case, the bid amount far exceeded the amount of the bond.

The system has been improved by the development of a more effective tracking system, streamlining the procedure for collecting forfeited bonds, simplifying bid packages, preparing supplemental permits internally, exhausting all other options before utilizing a contract, and making the frequencies of inspection fit with the activity on the site. Don said the Department has appreciated the support of the Board and he hopes that it has been successfully demonstrated that their trust has been rewarded.

Proposed Final Reclamation Fee and Bond Forfeiture Package

- Bill Allen, DEP, provided a Power Point presentation that summarized the comments and responses received on the reclamation fee and bond forfeiture proposed rulemaking.

There was one commentator, Citizens for Pennsylvania's Future. The comments seemed to revolve around 4 basic areas. They felt that the elimination of the reclamation fee would violate federal law, discontinuation of the fee would be unwise, challenged the

Department's rationale in the Preamble for the repeal of the fee, and they pointed out that there is currently outstanding litigation regarding the reclamation fee and the alternate bonding system. They felt the impact of the litigation should be accounted for.

With respect to the elimination of the fee violating federal law, the Department disagrees. The alternate bonding system does not specifically require a reclamation fee and a conventional bonding system and reclamation fee seem to be inconsistent.

In regards to the comment that discontinuing collections would be unwise, in an alternate bonding system, the bond should be adequate to accomplish the objectives of full-cost bonding. When the Department began the conversion process, we were looking at sites that were actively mining coal. These sites were all converted within a 1-year period. The Department would be foregoing approximately \$200,000 per year by no longer collecting reclamation fees.

In reference to the challenge to the rationale in the repeal, in the Preamble, the Department refers to the commitment to repeal the reclamation fee with conversion to a conventional bonding system. The Department's commitment was to propose the elimination of the reclamation fee once the conversion of the active surface coal mining sites was complete. That was done Aug 2001 – mid 2002. Under full cost bonding, a reclamation fee should not be necessary and is inconsistent with the whole idea.

The Department agrees with the comment that the EQB is not bound by the commitment. In regards to the comment regarding the impact of the outstanding litigation, the court has granted a motion requesting the dismissal of the case.

The progress report, as of a week ago, on how the Department is doing with getting the financial assurance for the alternative bonding system on active mine discharge permits was provided as well. There are 128 agreements the Department feels will be needed that will cover 270 facilities treating approximately 400 discharges. Of these agreements, 56 have been finalized. Of the 56 that are finalized, 31 have been bonded. There were 14 fully-funded trusts in place and 11 partially funded trusts that are working on a payment schedule.

The IRRC did not submit comments on this proposed rulemaking package. The Department is bringing this package back to the Board for its recommendation on the final rulemaking. No changes were made on this package between the proposed and final rulemaking package.

Susan Wilson made the comment that based upon the information provided, she felt that there was still a lot of work to be done. It appears the Department is about halfway to where it needs to be with this. She feels that proposing the elimination of the reclamation fee may be premature at this point.

Joseph Pizarchik responded by explaining the commitment was made by the Department to eliminate the fee once the active operators had their sites fully converted to the Conventional Bonding System and were fully-bonded and the Department is looking to follow through on that commitment.

One comment made by Dave Osikowicz was that continuation of the fee is taxing operators for a liability they did not commit.

Susan Wilson moved that the rulemaking be held until conversion is more complete. She feels it is premature to eliminate the fee at this time and recommends the rulemaking not be moved forward at this time. Walter Heine seconded Sue's motion. A vote was taken on the motion 4 in favor, 4 opposed.

Stan then made a motion that the Department move forward with the rulemaking. Jack Chamberlin seconded Stan's motion. The vote once again was 4 in favor and 4 opposed.

New Business

Dave Osikowicz mentioned the need for someone to develop the annual report.

Duane Feagley told those present that PAC will be hosting a dinner on April 12, in Hazelton, to honor Fred Wolfe, former Chairman of the MRAB. Anyone who may want to attend should let Duane know.

Bruce Golden, WPCAMR, provided their newsletter Web site and offered copies of a draft informational pamphlet they have created to extend their outreach to anyone interested.

Joseph Pizarchik thanked everyone on the Board for there input, advice, and recommendations.

David Osikowicz requested a motion for adjournment. David Strong motioned and the meeting was adjourned.