

MINING AND RECLAMATION ADVISORY BOARD (BOARD)

Thursday, October 25, 2007

10:00 A.M.

**Conference Room, Cambria District Mining Office
Ebensburg, Pennsylvania**

Voting Members/Alternates in attendance: David Osikowicz (Chairman), Jack Chamberlin (Member), David Strong (Member), Edward Helfrick (Member), Mark Snyder (Member), David Mankamyer (Member), Susan Wilson (Alternate), Patricia Davenport (Alternate), Janice Dean (Alternate)

Others in attendance: Duane Feagley (Alternate), Darrel Lewis (Alternate), George Ellis (Alternate), Joseph Pizarchik (DEP), William Allen (DEP), Bruce Carl (DEP), Malcolm Crittenden (DEP), Rich Beam (DEP), Dan Sammarco (DEP), Christina Simeone (DEP), John Stefanko (DEP), Jim Charowsky (DEP), Richard Morrison (DEP), Mike Terretti (DEP), Andrew Signore (DEP), Andy McAllister (WPCAMR), George Rieger (OSM), Curtis Kratz (Penn E & R), Roger Harrison, Todd Beers (Winner Global Energy, LLC), Rod Wilt (Winner Global Energy, LLC)

Meeting Called to Order

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

Correspondence Received

- A letter was received from Senator James J. Rhoades designating Clyde "Champ" Holman as his alternate to the Mining and Reclamation Advisory Board (MRAB)
- A letter was received from Cynthia Carrow, Citizens Advisory Council Chair, designating Patricia Davenport as an MRAB alternate for Walter Heine, David Strong, Bruce Tetkoskie, or Burt Waite

Committee Reports

Policy Committee

No report

Reclamation Committee

David Strong opened his report to the Board by explaining that he would defer comments related to the Committee's October 17th meeting with representatives of the Pennsylvania Treasury Department regarding Abandoned Mine Lands (AML) investment options until later in the agenda. Specifically, he explained that his report, along with related comments and discussion, would be discussed during the AML Funds Investment Options agenda topic scheduled later in the Board meeting.

Mr. Strong continued by explaining that the scheduled field trip to the St. Michael's site should suffice to exemplify the Department's commitment to provide technical grants.

While discussing action items from past MRAB meetings, Mr. Strong specifically mentioned beneficial use issues, particularly the fluidized bed fly ash issue. Mr. Duane Feagley, when recognized by Mr. Strong, voiced his concern that one of the beneficial use permits, alkaline addition, is not being used at all. Mr. Joseph Pizarchik, Department of Environmental Protection (DEP), responded by explaining that the Department has found that using coal ash for alkaline addition does not work. He assured the Board that the Department is looking to revise the guidance documents once the federal government releases the new regulations governing the use of coal ash at mine sites.

Regulation, Legislation, and Technical Committee

Mr. Jack Chamberlin summarized a recent Committee meeting during which the topics of bonding litigation and reclamation fee rulemaking were discussed. He explained that during that meeting there were questions regarding the methodology used to calculate bond rate guidelines, and that the Department was open to suggestions of other justified methodologies. He noted that Mr. Bruce Carl, DEP, was scheduled to make a presentation later in the Board meeting and deferred further discussion until that time.

Mr. Chamberlin continued by explaining that during the same Committee meeting there were questions concerning the Alternate Bonding System (ABS) and the court ruling regarding ABS forfeiture sites. The committee had recommended that one party should not be solely responsible for funding these forfeitures, and had requested that the Department provide information and options, such as using existing revenues, to help with the needed funding as required by the court. The Committee also requested that the Department present information and details of the negative effects of the loss of monies under the existing programs, and further provide the merits of resubmitting the program enhancement document to the Office of Surface Mining (OSM) as a program amendment to satisfy the court's decision. It was noted that Mr. Pizarchik was scheduled to address these matters later in the Board meeting, and Mr. Chamberlin deferred further discussion until that time.

Bonding Litigation & Reclamation Fee Rulemaking

Joseph Pizarchik, DEP, was recognized by the Board Chairman and asked to brief the members on the issues of bond litigation and reclamation fee rulemaking.

Mr. Pizarchik began by providing a summary of the litigation regarding the termination of the Alternate Bonding System (ABS). He explained that in order to address ABS deficiencies, the Department terminated the ABS and converted to conventional bonding. This was done to ensure adequate funding to complete land reclamation at forfeited sites, as well as to address discharges on those sites. The Department submitted the Program Enhancement Document (PED) which explained how the ABS legacy would be addressed. OSM's approval of the PED and removal of the 732 letter was challenged in court and overturned on appeal. The court ruled the federal regulation requires Pennsylvania submit a formal program amendment that would ensure a funding stream to address the ABS legacy discharges, and that it be legally enforceable. The Department provided numerous options for the Board's consideration including retaining the reclamation fee, applying the reclamation fee to the entire Surface Mining Permit (SMP), increasing the reclamation fee, applying earned interest on conversion assistance principle to ABS forfeiture, utilizing excess conversion assistance funds, adding a civil penalty surcharge to assessed penalties, production fees, utilizing interest on ABS collected bonds, and ideas submitted by the Board.

Mr. Pizarchik responded to the Committee's previous request for information regarding utilizing existing program funds to address the ABS legacy, and the negative effects on these various programs if monies were diverted for this purpose. Also, he addressed the Committee's inquiry of the merits of resubmitting a program enhancement document to OSM as a formal program amendment.

After much deliberation on the issue, Mr. Chamberlin moved to schedule a Regulation, Legislation, and Technical Committee meeting on November 15, 2007 in order to continue the discussion. All present were also reminded of an MRAB special meeting scheduled on November 29, 2007 which is limited to members providing advice to the Department regarding the funding of the ABS legacy.

2008 Bond Rate

The Chairman recognized Bruce Carl, DEP, who presented information related to the calculations used by the Department to project 2008 bond rates. He explained that reclamation contracts and the average of grading costs were factored in when projecting the upcoming rates. Also, he noted the increase in the number of reclamation bids during the current year as a potentially positive indication of future projects and associated costs.

Adoption of July Minutes

David Osikowicz asked for a motion to approve the July MRAB meeting minutes. Jack Chamberlin moved to approve the minutes as presented. Mark Snyder seconded the motion. The motion was made and the Board unanimously agreed to adopt the July meeting minutes.

Total Maximum Daily Load Update

Bill Allen, DEP, explained to the Board that the Department is continuing its efforts to determine the number to use when calculating aluminum effluent limits. He confirmed that the Department considered solubility curves for aluminum, and from that analysis it appears that a value of 20mg per liter is a starting point to use when calculating whether there will be an in-stream impact. Since there is no mining effluent guideline for aluminum, the Department is considering using this number for their initial calculations with respect to permitting.

Rulemaking Package

While discussing the Surface Mine Safety Package, Mr. Allen noted that the Department had received only one comment from a citizen regarding the requirement to report mining injuries. Based on that comment, a revision is being prepared to ensure the lost time accidents are reported rather than all mine employee mishaps.

Mr. Allen reported no news on the Mining Opening Blasting Package, as the Department is still between proposed and final draft of this item.

Trust Funds Update

Mr. Allen reported that there are currently 72 completed agreements of which either the bond has been posted or the trust has been fully funded. A total of 125 are needed. He did note that the Department is not tracking partially funded individuals or companies.

AML Funds

Joseph Pizarchik advised the Board that the Department had received requests to form a new advisory group related to the Title IV AML funds. Mr. Pizarchik asked the Board to consider these requests and how to respond in light of the fact that the statute already authorizes the MRAB to provide advice to DEP in this area.

AML Investment Options

David Strong provided an overview of the October 17th Reclamation Committee meeting during which members of the Commonwealth Treasury Department outlined investment programs which were available, specifically the “Pool 98” portfolio. He agreed to keep the Board updated as more information became available.

Field Trip Briefing

Mr. Todd Beers, Winner Global, LLC, provided a briefing of his organization’s Acid Mine Drainage Value Extraction Process project. The project, which is partially funded Growing Greener II pilot program, is designed to treat a portion of the polluted St. Michael mineshaft discharge while extracting pollutants and materials that can be used for other products.

New Business

There was no new business presented or discussed at the meeting.

Adjournment

In consideration of the unexpected length of the meeting, and the scheduled field trip to St. Michael’s mineshaft, David Osikowicz adjourned the meeting at 12:40 p.m.