

DRAFT

MINING AND RECLAMATION ADVISORY BOARD (MRAB)

**Thursday, October 24, 2002
Rachel Carson State Office Building
10:00 a.m.**

Members/alternates in attendance: Fred Wolf (Chair), Jack Chamberlin (Member); Wayne Crawford (Alternate); Duane Feagley (Alternate), Richard Fox (Alternate), Sue Germanio (Member), David Mankamyer (Member), Dan Snowden (Member), Mark Snyder (Member), Dave Strong (Member); Margaret Urban (Member), Sue Wilson (Alternate); and Mike Young (Alternate)

Others in attendance: Ed Bohan (DEP), Catherine Brownlee (DEP), Sam Faith (DEP), Rod Fletcher (DEP), Paul Linnan (DEP), Jim Brahosky (DEP), Bill Capouillez (Game Commission) Bruce Golden (WPCAMR), Bernie Hoffnar (DEP), Elaine Holland (DEP), Steve Jones (DEP), Karl Lasher (DEP), Jim Leigley (Game Commission), Dave Martin (Gilberton Power Company), Scott Roberts (DEP), Joe Pizarchik (DEP), Billie Ramsey (ARIPPA), George Rieger (OSM-Harrisburg), Marc Roda (DEP), Joe Sieber (DEP), Evan Shuster (DEP), Nevin Strock (DEP) and Pete Trafahnestock (PennFuture)

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 Board members, alternates, and guests introduce themselves.

After introductions, Mark Snyder made a motion to accept the minutes from the July 12, 2002 meeting. Dave Mankamyer seconded the motion. There were no corrections; the minutes were adopted.

Committee Reports:

The *Policy Committee* (Mark Snyder, Committee Chair) has not met since the last Board meeting.

The *Reclamation Committee* (Dave Strong, Committee Chair) has not met formally but had some events pertaining to reclamation: 1.) Both Dave Strong and Paul Linnan attended the Manufactured Soils Conference. Manufactured soils hold a tremendous potential for assisting the mining industry with the utilization of ash and creating methodologies for reclamation (e.g., Bark Camp & Tamaqua). Next year's conference will be a multi-state conference. 2.) There is currently a patent through Penn State University that covers manufactured soils made from dredge material. He asked the Department to review this patent and give advice as to whether it will be necessary to pay royalties for reclamation

DRAFT

done with these soils. Scott Roberts and Joe Pizarchik agreed that the Department could look into the patent as far as what it entails, however, the patent office makes no judgment on the validity of the patent.

The *Regulation, Legislation and Technical Committee* (Mike Young, in Dave Ozikowicz's absence) met prior to the Board meeting to discuss the technical guidance draft on insurance requirements pertaining to liability insurance for water supply replacement for surface coal mine and large non-coal mines. This was due to the insurance requirements are not general considered because operators will often replace the water supply without making an insurance claim. After discussing this with members of the industry it does not appear that it would be a significant problem due to the high liability limits currently required. If it would be an issue, the additional costs for coverage would be manageable. The only caution is that the bonding climate is difficult at the present time due to surety companies leaving the market. The guidance does not appear to require additional bond for coverage. It is an option to the operator. If that were to change, the Committee's position would change. The Committee voted unanimously and Mike Young made the motion for the Board to approve the guidance. Dave Mankamyer seconded the motion. The Board voted to approve the guidance.

The *Ad Hoc Committee* (Dave Mankamyer, Committee Chair) – The primary purpose of the Ad Hoc Committee was to review the by-laws to determine if the Board could be more effective, primarily in the area of water. The Board was set up May 31, 1945, and the by-laws were amended in 1972 and again in 1996 or 1998. The Act provides for the conservation and improvement of land affected by and connected with surface mining, regulating such mining and providing penalties and in this act it set up the makeup of the Board. Since mining characteristics have changed, however, the Ad Hoc Committee would like to ask the full Board if they could request a legal review and interpretation from DEP's Counsel as to the extent of the Board's empowerment with reclamation issues as they pertain to water.

Margaret Urban shared with the Board a September Philadelphia Inquirer article regarding using mine pools for energy and a 4-part article put out by Bruce Golden on the WPCAMR website with respect to the LTV Steel bankruptcy case and its effects on counties where mines exist. Dave Strong raised concerns that new issues such as these will change the Board's area of jurisdiction as well as available money for deep mine reclamation. After a lengthy discussion regarding various reclamation funding, priorities and long-term liability, it was determined that the Reclamation Committee should meet within the next six weeks to have the Department address them regarding the full liability, costs and where the money is coming from. Scott Roberts offered his assistance in the Ad Hoc review. Dave Strong and Mark Snyder also suggested that the Board create a transition statement and meet with the new administration.

Obligations: 1.) Joe Pizarchik to look for possible documentation from years ago where the DEP legal office determined the scope of the MRAB's lack of authority regarding underground mines, obtain legal opinion on MRAB's authority regarding reclamation

DRAFT

issues as they pertain to water and report to the Board in writing within the next three weeks. 2.) Reclamation Committee to meet in mid-December.

Scott Roberts announced Joe Pizarchik's acceptance of the Mining and Reclamation Bureau Director position. Ed Bohan was also welcomed to the group as counsel.

Chapter 86 (Evan Shuster) - This Regulation Package was brought to the Board last year as a request from Penn DOT for highway construction. The Board supported the proposed revision; it went to the EQB and was published this summer as proposed rulemaking. The Department received comments from four different entities: Pa. Game Commission, Pa. Fish and Boat Commission, Pennsylvania Coal Association and the Independent Regulatory Review Commission. As a result of these comments, the Department proposes a change to expand the exemption from Government Financed Highway construction to Government Financed Highway construction **and** other types of government-financed construction for reclamation projects. The Board received a handout showing the changes from proposed to final rulemaking in capital letters and Evan asked for a motion from the Board to make a recommendation for approval from the EQB.

Sue Wilson voiced her concern with handling items on a case-by-case basis. Bill Capouillez stated that the issue with the NEPA process, to which PennDOT adheres, allows for data to be incorporated in the Environmental Impact Statement, however, does not demand it. There could be a duplication of effort and money spent to acquire that information again. It was agreed that the Board would support the regulation provided the information from the Unsuitable for Mining report is available at the site of the construction project. Sue Germanio made the motion to recommend to amend Subsection 3C, paragraph 4, to state that the Department will provide such information. Sue Wilson seconded the motion. The motion was carried.

Fred Wolf distributed a handout on LTV Steel bankruptcy.

Bonding Update (Jim Brahosky/Sam Faith) – In May 2002, a June 30 deadline was established to get the conversion bonding figures back. Jim was pleased to report that the deadline not only was met but the numbers came back better than anticipated. Because Jim was on leave recovering from heart surgery during this time, he turned the report over to Sam Faith, his assistant, who put the information together in Jim's absence.

Sam stated that for quite some time concerns have been raised about the Commonwealth alternative bonding system, in which a portion of the operator's reclamation obligations are covered by a bond pool. Back in October 1999 the Department announced its decision to switch from that alternative bonding system to a conventional bonding system, or Full Cost Bonding (FCB) in which 100 percent of necessary funds to complete reclamation are to be covered by operator-provided bonds. There were major concerns by the coal industry, the surety industry, the Department and assistance groups that applications, which were already laid out were not designed financially for the new system where it would cost much more in bonds. Thus, the Legislature appropriated funds of \$12 million. Of that

DRAFT

amount \$7 million was put into conversion assistance, which will underwrite up to \$70 million in financial guarantees. Of 2,700 inspectable units on the list, the breakdown is as follows. (Jim clarified that all figures submitted were checked for accuracy by the Bureau prior to the draft report.)

805 sites had reclamation obligation great enough for conversion to FCB
118 will be backfilled prior to the deadline date and will not require bonding
The first inspection of these sites is completed
Orders were issued for a couple of these for reclamation or bond
20 sites did not respond (15 in anthracite region); appropriate action will be taken
664 calculations submitted by operators for conversion assistance.
234 had bonds reduced.
64 sites did not need additional bonding
366 sites needed increased bonds; 364 of these requested assistance
Special conditioned 324 permits to include requirements under bonding
The total amount of conversion \$60.2 million
Over \$57 million has been issued
8 sites pending with close to \$2.5 million assistance
(1 Cambria DMO, 1 Hawk Run, 3 Knox, 3 Pottsville;
all to be issued except one)
14 operators have in excess of \$1M conversion assistance
Received over \$900K in premiums to be returned

The Bureau has set up the Commonwealth eFACTS mainframe system to track annual reviews and also created a separate database within the Bureau to track conversion assistance bonds. The monitoring and compliance phase is the most important in that the operator may not exceed the maximum pit size for which he/she is bonded. All inspectors will be provided with laser range finders to monitor the pit sizes. The BDMO has already experienced one operator's successful FCB conversion from the beginning to closing.

Jim concluded by stating that FCB will have an impact on the industry, since surety companies are more reluctant to write bonds for mining purposes. New applicants from this point must come up with their own, independent bonds. In conjunction with this, the next challenge will be to obtain funds for long-term discharge treatment. The Department is proceeding with the concept of inviting companies to negotiate trust funds. They are also exploring other assets (i.e., coal reserves, converting property to liquid assets). At the next District Mining Managers meeting they will establish priority schedules on contacting operators. Jim also offered to keep the Board apprised on future events.

BAMR Project Status Report (Steve Jones) – Steve reviewed July through September 2002 months worth of reports to the Board, per the Board's request. Of those three months of reports, there were four projects that were open. These were all awarded.

Environmentally Preferable Electricity (Catherine Brownlee) – This project was initiated by the Governor's Green Government Council to persuade the Commonwealth

DRAFT

Agencies to set leadership examples in raising public awareness and send a signal to the large generators for cleaner generation. The Department's role is as a catalyst through partnerships with the Department of General Services, which buys electricity on behalf of large Commonwealth agencies (e.g., State System of Higher Education). There is a mandate to move toward sustainability; however, there is no budget. DGC put out an RFP four years ago to promote green energy and left it up to the market to compete. This has worked well. DGS has determined that 5 percent of the Commonwealth's use is to come from cleaner sources. Green Mountain first won the contract with 100 renewable hydro-power. More recently, Community Energy won the 2002-2003 contract with 100 percent renewables, with 23 percent coming from Pennsylvania.

EMap PA Demonstration (Ron Hermany (filling in for Ebbey Abraham, DEP Information Technology), gave a demonstration of the Areas Unsuitable for Mining data layer in the geospatial database eMapPA available on the DEP Web site.

Biosolids Presentation (Diane Garvey, President, Garvey Resources, Inc.) – Diane gave an interesting presentation on biosolids recycling. The presentation focused on the beneficial uses of biosolids for land reclamation. She also gave results of various research conducted, which shows that there are no human health or environmental impacts from biosolids. Wastewater treatment processes for producing a biosolids product with enhanced capabilities for land reclamation were discussed.

Obligation: Fred Wolf to send a thank you letter on behalf of the Board to Diane Garvey.

Draft SMCRA Remining Incentives Report (John Meehan, The Bureau of Mining & Reclamation) – This report includes a summary of four programs as of June 30: Government Financed Reclamation Contracts (“No Cost”), Remaining Operator’s Assistance, the Financial Guarantee and Bond Credits. These are structured to encourage remining of abandoned mine lands and, already has saved the Commonwealth \$19 million in reclamation funds. The MRAB requested that the report include suggestions for additional remining incentives.

New Business:

2003 Meeting Dates - The dates are January 9, April 24, July 10, and October 23. A field trip is also planned in July.

The next Committee meeting will be held at 10:00 a.m. on January 9, 2003 in the Rachel Carson State Office Building in Harrisburg.

Safe Fill Update (Bill Pounds, Land Recycling) – Bill stated that he hopes to have a regulation package for review and comment period in November. It is anticipated that the final regulation package will be complete in Spring or Summer 2003.

DRAFT

Misc. - The Board expressed interest in having the Department's staff email addresses and phone numbers posted on DEP's web site. ***Obligation: Jim Brahosky to check on getting DEP staff email addresses on the web and report back to Bruce Tetkoskie.***

Jim Brahosky asked the Board if anyone would be interested in participating in the Abandoned Deep Mines Task Force. Dave Strong and Margaret Urban volunteered. Sue Wilson stated that CAC would also be involved.

Adjournment:

There was a motion by David Mankaymer, seconded by Margaret Urban to adjourn the meeting. The meeting was adjourned at 2:30 p.m.