

**Mined Land Reclamation Advisory Committee Meeting
February 23, 2006**

<u>Present</u>	<u>Absent</u>	<u>Also Present</u>
Barbara Altizer	Robert Brendlinger	Bradley Lambert
Terrance Collier	Keith Horton	Dink Shackelford
Jerry Hamilton		Sandy Smith
John Paul Jones		
Tommy McAmis		
Jackson McClanahan		
Vanessa Perry		
Philip Shelton		
Donna Stanley		
Leslie Vincent		
Douglas Wells		

A meeting of the Governor's Mined Land Reclamation Advisory Committee (GAC) was held at the Department of Mines, Minerals and Energy Office on February 23, 2006.

Leslie Vincent called the meeting to order. Committee members were asked to introduce themselves, as there are several new members. The first order of business was the selection of a Chairperson. Committee members nominated and voted for John Paul Jones to serve as Chairman.

Mr. Vincent explained how members are chosen to serve on the GAC. He read the top portion of the Committee members list for the Virginia Code, etc. He expressed his appreciation of members who have served the Committee long-term.

Review of the Interstate Mining Compact Commission (IMCC) Mission and the Governor's Advisory Committee Role

Leslie Vincent referred to a handout, "§ 45.1-271. Interstate Mining Compact. Article I Findings and Purposes" and read portions of the document. Page 3, Paragraph 8 (a) explains the creation/function of the IMCC. The IMCC is a voice for the states in Washington, D.C. It coordinates between the states when issues come up that need to be addressed and convenes work groups of member states that are affected. Benny Wampler is the primary representative for the state of Virginia. Greg Conrad is the Executive Director of the IMCC, headquartered in Herndon, Virginia. Mr. Conrad prepares an annual report to the Governor, legislature and advisory body covering the activities of the Commission for the preceding year and embodying such recommendations as may have been made by the Commission. Mr. Vincent informed copies of the annual report would be available upon request.

IMCC Benchmarking Workshop on "Land Disturbance Impacts at Surface Mines – Challenges and Solutions"

Bradley Lambert welcomed all new members and informed them to feel free to call the office anytime they have questions/concerns dealing with mining issues.

The IMCC Work Group sends out surveys to different states for input on specific issues. The Work Group conducts a benchmarking workshop to discuss the surveys and determine how to make improvements in the system.

Three items that are of importance to all states:

- Subsidence: A survey has been conducted and will be discussed at the IMCC spring meeting.
- Blasting: A blasting proposal was prepared and presented to the National Academy of Sciences (NAS) to open up the old blasting studies that were done back in the 50's and 60's by the U.S. Bureau of Mines. NAS approved the study, but there is no money to pay for the study at the present time. IMCC will continue to "push" for the money to conduct this study.
- Surety Bonds: This issue will be a topic of discussion at the IMCC benchmarking workshop conducted in the fall. Coal company representatives will be invited to the meeting to discuss the issue.

The next IMCC meeting will be held in April in Bismarck, North Dakota.

NWP21 Litigation – November 23, 2005 Ohio Valley v. Bulen Decision

Les Vincent explained that NWP 21 is a general permit issued by the Corps of Engineers (Corps) to allow placement of material in streams deemed to have a minimal impact. He explained the differences between a general permit and an individual permit.

In this litigation, plaintiffs, a coalition of environmental groups, raised various challenges to NWP 21. The validity of the NWP 21 permits was challenged in Federal Court. The Judge ruled that the Corps failed to follow proper procedures in promulgating the NWP 21 permit. The District Court accordingly suspended existing authorizations under the NWP 21 and enjoined the Corps from issuing further NWP 21 authorizations. The district court concluded the NWP conflicts with the unambiguous meaning of section 404 (e) for four reasons (refer to page 7, II. of hand-out, "Ohio Valley Environmental v. Bulen").

The review of the Corps' construction of Section 404 is governed by the Supreme Court's decision in Chevron. Under Chevron, if the requirements of section 404 are unambiguous, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. An appellate Court reviewed the Corps NWP 21 and determined that all four of the findings made by the Federal Judge were erroneous. In response to this determination, NWP 21 permits are only issued for a five-year period. The renewal date for the five-year permits will be February, 2007.

There was a lengthy discussion among Committee members concerning the issuance of NWP 21 permits and the issuance of permits through the Corps and Department of Environmental Quality.

Final Mountaintop Removal/Valley Fills Environmental Impact Statement (EIS)

The EIS is a result of litigation in West Virginia. The Federal Government entered into a Memorandum of Understanding with Fish & Wildlife, Environmental Protection Agency, Corps, and the Office of Surface Mining where they would work toward having a coordinated permit review. They encouraged the states to do so as well. Bradley Lambert is in charge of developing a procedure for the coordinated review with the Federal Government agencies. A meeting is scheduled for March 22 to work out issues with other agencies and how to proceed with that coordinated effort. A report will be provided at the next meeting.

Committee members discussed difficulties with coordinated review/issuance of permits with the Fish & Wildlife Service. John Jones questioned the proposal for stream buffer zones. Mr. Lambert remarked this is an agenda item at the OSM's States Regional meeting on March 6 and 7. He can provide minutes of the meeting as an update. Mr. Vincent advised an EIS CD is available upon request.

Abandoned Mine Land (AML) Reauthorization

Roger Williams reported that AML has been operating under temporary budget appropriation bills that have twice extended the fee collection authority. The latest temporary authorization is through June, 2006. Legislation authorizing AML fee collections expired on September 30, 2004.

Representatives Cubin in Wyoming, Rahall from West Virginia, and major coal companies from five states submitted AML reauthorization legislation proposals last year to meet the needs of the east and west. Congress did not act on any of the proposals. The biggest issues are the linkage to the Combined Benefit Fund and impact to the overall federal budget limits.

The majority of AML money appropriated every year now goes toward hard rock reclamation from uranium/other metals being mined in the West, not towards high priority coal problems. This is due to the large coal production in the West and the current allocation formula that gives weight to returning money to the area from which it was produced. The President's proposed 2007 budget includes a proposal to extend the AML fee collection through September, 2007. Another option for AML to consider would be to attach AML Reauthorization to an existing piece of legislation.

Thirty percent of AML money is used for public water supplies. The largest AML projects will be the public water supply projects and some acid mine drainage projects that will be done in partnership with the Corps and other people. There was discussion of other states' funding. Mr. Vincent stated that a chart showing funding for the different states could be attached to the minutes of the meeting.

There being no further discussions, the meeting was adjourned.