

GOVERNOR'S MINED LAND RECLAMATION ADVISORY COMMITTEE
January 15, 2004

Present

Bob Brendlinger
Roger Jones
Tommy McAmis
Dan McCoy
Harry Meador
Phil Shelton
Mike Thomas
Les Vincent

Absent

Ed Burns
Keith Horton
Patricia Martin
Candace Morgan
Vanessa Perry

Also Present

Joe Powers, Penn VA
Sandy Smith
Benny Wampler
Roger Williams

A meeting of the Governor's Mined Land Reclamation Advisory Committee was held at the Department of Mines, Minerals and Energy Office on January 15, 2004. Chairman Roger Jones called the meeting to order.

Review of Comments On The Draft Environmental Impact Statement (EIS)

The EIS is an environmental study on mountaintop removal and valley fills that started with litigation in West Virginia. The Army Corps of Engineers (COE), EPA, OSM, and U.S. Fish and Wildlife Service are the Federal agencies involved in the study. A draft EIS has been published for comments, with the deadline being January 21. Les Vincent distributed letters written to John Forren, Environmental Protection Agency, from Greg Conrad, Executive Director of the Interstate Mining Compact Commission (IMCC), and Michael Murphy, Director, Department of Environmental Quality (DEQ). DEQ is the coordinating agency in Virginia that solicited comments on the EIS. The DEQ letters contain combined comments on the Draft EIS from several state agencies and localities.

Most comments endorsed the DMME's preference that the "no action" alternative be modified and adopted. The Haden I and Haden II court decisions that initiated the EIS were overturned, and due to this, the Department believes the EIS process should be stopped. Approximately \$6 million has already been spent and the amount could double if the study continues. There have been significant improvements and changes in the regulatory programs, and changes are still ongoing. It will be difficult to have a set of uniform rules since the conditions and geology of each state are different. That is why Congress set up the primacy system where states could develop state specific programs that were as effective as the federal program.

Other EIS issues of concern were discussed: remining operations (EIS alternatives may negate initiatives to promote remining); none of the studies were performed in Virginia; lack of studies on the extent of impact of fills in streams; different types of benthic in streams; elevated protection of common species found in streams; and the mitigation requirements adopted out West and currently being required by the Norfolk COE District may not be appropriate for steep slope Appalachia.

The EIS study is 13 volumes in size. Les informed Committee members that a hard copy of the study is in the Customer Assistance Center if anyone would like to review them. CDs are also available upon request.

Benny Wampler stated the IMCC filed an Amicus Brief in the Haden I and Haden II lawsuits. The Governor supported those filings. Virginia continues to be on the record opposing the EIS, and particularly the reach of the Federal arm into the State arena of regulations. Even though Haden I was overturned, West Virginia entered into an Agreed Order, thereby leaving West Virginia in an unenviable position.

Les discussed the flawed data of the EIS. Phase I and Phase II Economic Studies were presented at a briefing in West Virginia. Les also talked about the impact on mining studies done by Marshall University and the Mine Technology Team.

Citizens Coal Council SMCRA 522(e) Petition for a Writ of Cortiorari

A copy of a Petition for Cert to the U.S. Supreme Court by the Citizens Coal Council was distributed to members. Les Vincent provided some background information on a previous lawsuit filed by the Citizens Coal Council. The Secretary of the Interior issued an interpretive rule in 1999 that surface and underground mining that leads to subsidence was outside the scope of the prohibition of 522(e). The environmental group disagreed with the Secretary's opinion and filed a lawsuit. A Federal Judge ruled in their favor, stating those prohibitions do apply and mining could not subside under a house.

The IMCC states disagreed with the Judge's ruling and filed an amicus brief. The Appeals Court ruled that the prohibitions do not apply to underground mines and the intent of Congress was rather clear to the opposite. The National Mining Association has also filed an amicus brief. The environmental group has filed a petition with the Supreme Court to have the case heard before them. Congress would not have made provisions in the 1992 EPACT if it had intended there could be no mining under a residence.

OSM PROPOSED RULE CHANGES

Les discussed the OSM Stream Buffer Zone Proposed Rule in the January 7 edition of the Federal Register. Comments are due by March 8. Also, a revised ownership and control settlement rule was published on December 29 with comments due on February 27.

National Level Bonding Issues

Benny Wampler is Virginia's representative with the IMCC on the National Bonding Committee. Benny attended a meeting in Washington with the major surety industries and National Mining Association in June, 2003. The surety industry has been seriously reviewing bonding since 2000, when they had an underwriting loss of \$200 million; \$1.3 billion in 2001; and \$3.5 billion in 2002. The 2003 loss stats have not been turned in. Some of the losses were due to September 11, 2001, hurricanes, etc. The EIS is a concern for surety companies. With four Federal agencies being involved in the EIS, it is hard to define what the ultimate liability will be.

The surety companies are opposed to pool bonds. Self-bonding was discussed at the meeting and is believed by some that self-bonding will lead to more difficulty. Interested parties are working with OSM to see what kind of rule changes may help add more certainty for the surety industry. Deputy Secretary of the Interior, Steve Griles, is interested and looking at ways that may lead to a national solution. A number of surety industries were bluntly saying they want out of the business. Travelers Insurance is the only exception.

Les stated a procedure was implemented last year to streamline the bond release procedures. DMLR's inspectors are now contacting companies that have ponds ready to be removed. DMLR will be

asking companies to submit paper work to pull the ponds and speed along the reclamation and final release process. The pool bond amendment is expected to receive final approval from OSM by summer 2004.

AML Reauthorization

Roger Williams gave an update on the AML extension legislation. The current tax is authorized through September 30, 2004.

Wyoming's Senator Thomas has basically taken last year's failed Rahall legislation and drafted what is now known as the Thomas Bill. Roger believes the new Thomas Bill will be introduced and it changes the AML program in a number of ways. It eliminates the annual transfer of the 20% RAMP funds that went to the U.S. Department of Agriculture and were never appropriated by Congress, in the amount of \$200 million plus. This Bill would transfer the balance of this unobligated money as part of the Combined Benefits bail out. It directs all interest earned in the fund to go to bail out the Combined Benefits Fund permanently. The Bill also eliminates all studies, research, and demonstration projects. It proposes to give industry a 20% reduction in the fee amount. It does extend the program about 25% more than what the previous proposal was (15 years vs. 12 years). The proposed extension would go through September 30, 2016. There are some other provisions in the Bill that would require strict adherence to the Priorities I and II projects. It eliminates Priority III stand-alone projects. It also takes future RAMP collections and puts them into the historic production share to increase State grants from 40% to 60%. The proposed legislation would guarantee small states \$2 million for State programs. The AML Enhancement Provision would be eliminated. The Department would like to see incentives added for remining which are not in the Thomas Bill. It is a compromised piece of legislation. Benny mentioned that Representative Barbara Cubin has been involved as well – it is actually a combination of legislation previously proposed by Representatives Cubin and Rahall that is included in the Thomas piece of legislation.

OSM is drafting legislation that basically reorders money from the West to the East to address the highest Priorities I and II exclusively and puts more emphasis on increase funding for eastern states with the remaining Priorities I and II. The West wants to get immediate access to their large unobligated balances. Wyoming has over \$300 million of unobligated state share money guaranteed to them that has not been appropriated. OSM has come up with a complicated formula to offset the pull down of the money and calls for transferring Federal royalty payments in the West to offset this draw-down so there is actually a revenue neutral transition. There was a lengthy discussion of the Combined Benefits Fund and the AML reauthorization.

There being no further discussions, Chairman Jones asked for a motion to adjourn. The motion was made and passed that the meeting adjourn.