

LEGISLATIVE POST AUDIT FOLLOW-UP REPORT

West Virginia Department of Environmental Protection Special Reclamation Funds and Fund 8796

REPORT OVERVIEW

- DEP is unable to provide a reliable list of valid (open) mining permits from the ERIS database and proper internal controls are not in place over information going into and coming out of ERIS
- While it appears some corrective action has been taken for the 21 other findings and three informational findings in the previous audit report, DEP has not fully addressed all of the concerns mentioned in the previous audit report.



WEST VIRGINIA LEGISLATIVE AUDITOR POST AUDIT DIVISION



Aaron Allred - *Legislative Auditor*
Stacy Sneed, CPA - *Director*

*Room 329 W, Building 1
1900 Kanawha Boulevard East
Charleston, West Virginia 25305
phone: (304) 347 - 4880*

LEGISLATIVE POST AUDITS SUBCOMMITTEE

Senate

President Jeff Kessler, Chairman
Roman Prezioso
Mike Hall

House

Speaker Richard Thompson, Chairman
Harry Keith White
Tim Armstead

WEST VIRGINIA LEGISLATIVE AUDITOR LEGISLATIVE POST AUDIT DIVISION

Aaron Allred
Legislative Auditor

Stacy L. Sneed, CPA, CICA
Director

Amber Shirkey, CPA, CICA
Audit Manager

Joshua Potter, CPA
Auditor-in-Charge

Elizabeth Kinsey, Auditor II
Kristina Taylor, Auditor I
Staff Auditors

Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd., East
Charleston, WV 25305-0610
(304) 347-4880

Post audit reports are available on-line at
www.legis.state.wv.us/Joint/postaudit/reports.cfm.

For more information about the Legislative Post Audit Division, please visit our website at
www.legis.state.wv.us/Joint/postaudit/postaudit.cfm.

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W- 329
1900 Kanawha Blvd. East
Charleston, WV 25305-0610



Area Code: (304)
Phone: 347-4880
Fax: 347-4889

The Joint Committee on Government and Finance:

In compliance with the provisions of the WV Code, §4-2, as amended, we conducted a follow-up post audit to Finding 6 – Unable to Determine Adequacy of Bond Amounts and a review of corrective action taken on the additional 21 Findings and three Informational Findings in the West Virginia Department of Environmental Protection (DEP), Division of Land Restoration (DLR) - Special Reclamation Funds (Funds 3312, 3317, 3321, and 3345) and Acid Mine Drainage Abatement and Treatment Fund (Fund 8796) audit report, which was released on January 9, 2012. Finding 6 relates to the inability to determine adequacy of bond amounts posted for mining permits based on the information provided by DEP during the DEP-DLR audit. To perform this follow-up post audit we reviewed files obtained from the Division of Mining and Reclamation (DMR) only as they pertained to reclamation bonding for Finding 6 and reviewed updated responses and documentation received for the additional 21 Findings and three Informational Findings. Although our previous audit consisted of the DLR Special Reclamation Funds and Acid Mine Drainage Abatement and Treatment Fund, this follow-up post audit was still applicable to the DLR because when a mine permit is revoked the subsequent bond is forfeited and the amount collected from the bond is deposited into the special reclamation funds. In addition to the January 2012 report, we also previously issued a report on the Division of Land Restoration in January 2011 and issued five reports for the DEP Division of Water and Waste Management.

The prior audit report on the DEP-DLR Special Reclamation Funds and Fund 8796, released on January 9, 2012, was conducted in accordance with Generally Accepted Governmental Auditing Standards (GAGAS). Since this audit was only a follow-up to the previous report, it was not conducted in accordance with GAGAS.

A copy of this report was provided to management of DEP on July 11, 2012.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stacy L. Sneed".

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

SLS/jap

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT**

TABLE OF CONTENTS

INTRODUCTION	- 1 -
PRIOR AUDIT REPORT BACKGROUND	- 1 -
POST AUDIT AUTHORITY	- 1 -
SPENDING UNIT CONTACTS	- 2 -
AUDIT SCOPE	- 3 -
OBJECTIVE AND METHODOLOGIES	- 3 -
CONCLUSIONS	- 4 -
PART 1 - PREVIOUS REPORT FINDING 6 WORK PERFORMED AND ITEMS NOTED	- 5 -
PART 2 - PREVIOUS REPORT OTHER FINDINGS UPDATED RESPONSES AND CORRECTIVE ACTION	- 10 -
APPENDIX A – PREVIOUS REPORT FINDING 6	- 19 -
APPENDIX B – LEGAL OPINION OVER COLLECTION OF BOND FORFEITURES	- 22 -
APPENDIX C – CONFIRMATION WITH ATTORNEY GENERAL OVER BOND FORFEITURES.....	- 25 -
APPENDIX D – UPDATED DEP RESPONSES FOR PREVIOUS REPORT FINDINGS	-27 -
CERTIFICATE OF DIRECTOR, LEGISLATIVE POST AUDIT DIVISION	- 34 -

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT**

INTRODUCTION

PRIOR AUDIT REPORT BACKGROUND

This is the report on the follow-up post audit to Finding 6¹ – Unable to Determine Adequacy of Bond Amounts and review of corrective action taken on the additional 21 Findings and three Informational Findings in the West Virginia Department of Environmental Protection (DEP), Division of Land Restoration (DLR) - Special Reclamation Funds (Funds 3312, 3317, 3321, and 3345) and Acid Mine Drainage Abatement and Treatment Fund (Fund 8796) audit report, which was released on January 9, 2012. Finding 2 relates to reclamation surety bonds from an insolvent surety company being held by DEP for mining permits. Finding 6 relates to the inability to determine adequacy of bond amounts posted for mining permits based on the information provided by DEP during the DEP-DLR audit. In addition to Finding 6, DEP provided us with updated responses to the three informational findings and the 21 other findings in the previous report. We have included our comments on the adequacy of corrective action taken for these findings. DEP disagreed with a total of 13 out of the 22 findings and all three informational findings from the previous audit report.

POST AUDIT AUTHORITY

The follow-up post audit to Finding 6 and review of corrective actions taken was conducted pursuant to §4-2, as amended, of the WV Code, which requires the Legislative Auditor to “make post audits of the revenues and funds of the spending units of the state government, at least once every two years, if practicable, to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit, to ascertain facts and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the State and of the organization and functions of the State and its spending units.”

¹ The original Finding 6 from our previous DEP-DLR Special Reclamation Funds and Fund 8796 audit report is located in Appendix A of this report.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT**

SPENDING UNIT CONTACTS

West Virginia Department of Environmental Protection – Follow-up Audit Contacts

Randy C. Huffman Cabinet Secretary (May 2008 – Present)

Lisa A. McClung Deputy Cabinet Secretary (May 2008 – Present)

June Casto Chief, Office of Administration (April 2008 – Present)

Jean Sheppard Controller (January 2010 – Present)

Ken Ellison Director, Division of Land Restoration (March 2003 - Present)

Thomas L. Clarke Director, Division of Mining and Reclamation (March 2008 - Present)

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT**

AUDIT SCOPE

We have performed a follow-up post audit to Finding 6 – Unable to Determine Adequacy of Bond Amounts in the West Virginia Department of Environmental Protection (DEP), Division of Land Restoration (DLR) – Special Reclamation Funds (Funds 3312, 3317, 3321, & 3345) and Acid Mine Drainage Abatement & Treatment Fund (Fund 8796) audit report, which was released on January 9, 2012. Our audit scope included a review of internal control and compliance with applicable sections of WV Code Chapter 22, Article 3 and Legislative Rule Title 38, Series 2. We looked at files obtained from the Division of Mining & Reclamation (DMR) only as they pertained to reclamation bonding. The scope of our audit was limited and we could not test the adequacy of reclamation bonds because DEP was unable to provide us with reliable reports from the ERIS database and there was a lack of internal controls over the database.

We have received updated responses for the 21 other findings and three informational findings in the previous audit report and included our comments on the adequacy of corrective action taken. Our scope was limited because some of the corrective actions have not yet been designed and/or implemented.

OBJECTIVES AND METHODOLOGIES

The initial objectives of the follow-up post audit were to determine if DEP would be able to provide a reliable list of valid (open) mining permits from the Environmental Resources Information System (ERIS) database and ensure proper internal controls were in place over information going into and coming out of ERIS. If the list of mining permits was deemed reliable and proper internal controls were in place, we planned to pull a sample of mining permits and test² the adequacy of the reclamation bonds from the inception of the permit to current in accordance with applicable sections of WV Code Chapter 22, Article 3 and Legislative Rule Title 38, Series 2.

In order to meet our objectives, we studied applicable sections of WV Code Chapter 22, Article 3 and Legislative Rule Title 38, Series 2. Provisions that we considered significant were documented and compliance with those requirements was verified by interviews, observations of DEP's operations, and through inspections of documents and records. We also interviewed DEP personnel to obtain an understanding of the programs and the internal controls respective to the scope of our audit and performed other auditing procedures that we considered necessary to achieve our objectives.

For the review of corrective action, we obtained and reviewed copies of updated procedures, interviewed agency personnel, and made observations.

The prior audit report on the DEP-DLR Special Reclamation Funds and Fund 8796, released on January 9, 2012, was conducted in accordance with Generally Accepted Governmental Auditing Standards

² See the Audit Scope and Work Performed and Items Noted sections for more details on why we were unable to test.

(GAGAS). Since this audit was only a follow-up to the previous report, it was not conducted in accordance with GAGAS.

DEP's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved. Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

This communication is intended solely for the information and use of the Post Audits Subcommittee, the members of the WV Legislature, and management of DEP. However, once presented to the Post Audits Subcommittee, this report is a matter of public record and its distribution is not limited. Our reports are designed to assist the Post Audits Subcommittee in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

CONCLUSIONS

PREVIOUS REPORT FINDING 6

We have determined DEP is not able to provide a reliable list of valid (open) mining permits from the ERIS database and proper internal controls are not in place over information going into and coming out of ERIS. As a result of DEP's inability to provide a reliable list of valid (open) mining permits from the ERIS database and a lack of internal controls in place over information going into and coming out of ERIS, we are unable to obtain a true population of permits and are unable to test to determine the adequacy of reclamation bonds.

During the January 2012 Post Audits Subcommittee meeting the Legislature inquired about other instances of underbonding at DEP. Based on our preliminary work we found one instance of a permit being underbonded by \$3,560.00 and one instance of a permit which had its bond prematurely released, resulting in the permit having no bond. Thus, there is evidence showing inadequate bonding is occurring.

PREVIOUS REPORT OTHER FINDINGS

DEP has provided us with updated responses for the 21 other findings and three informational findings in the previous audit report. While it appears some corrective action has been taken, DEP has not fully addressed all of the concerns mentioned in the previous audit report.

Based on our review of the additional documentation provided by DEP for Finding 2 of the previous report and a review of the current Bond Inventory listing provided by DEP as of February 1, 2012, we determined the agency has received replacement bonds for all surety bonds held by United Pacific Insurance Company and there are no longer any bonds listed in the ERIS database as being held by this insolvent insurance company.

A copy of this report was provided to management of DEP on July 11, 2012.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT

Part 1
PREVIOUS REPORT FINDING 6

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT**

WORK PERFORMED AND ITEMS NOTED

FINDING 6

We inquired with DEP personnel to obtain an understanding of the procedures over the permitting process and documented them in order to determine if proper internal controls were in place over information going into and coming out of the ERIS database. During this process, we noted the following:

- There are no procedures for entering information into ERIS or changing information in ERIS;
- There is not adequate internal control or management oversight over the information going in and out of ERIS;
- There are multiple employees with access to make changes in ERIS and the changes are not reviewed;
- Management is not notified when changes are made;
- Information can be manually entered and there are no edits/checks to ensure the data entry is accurate. DEP stated they are currently adding an edit to ERIS which will not allow an open permit without an active bond (excluding prospects and quarries), and an edit that will warn data entry personnel doing a phase 3 release if there is no previous phase 1 or 2. Since these edits have not yet been implemented, we cannot determine if they will work properly;
- A majority of the employees have access rights in ERIS to make changes to the permits, and the Assistant Director or the programmers can add or remove privileges as deemed necessary;
- According to DEP, the data in ERIS is reviewed and verified every five years upon permit renewal, however, we noted multiple occasions³ where a permit had gone through one or more renewals and the information in ERIS was still inaccurate (one permit went through at least two renewals with the incorrect current bond rate listed for one of its bonds, two permits went through a renewal with incorrect bond status of Inactive and were not corrected, one permit was under bonded during at least one renewal, one permit was under bonded prior to renewal and was not caught during renewal, and the United Pacific bonds that did have riders replacing the old bonds never got updated in the ERIS database during renewal);
- ERIS is limited in its ability to pull reliable reports. For example, one permit states it is an open permit on the permit details tab, but states a phase III release has occurred on the bond activities tab. This permit shows up on the list pulled for open permits, but does not appear to actually be an open permit. Upon further inquiry with the agency it was determined this was

³ Some of these items were found during the current follow-up audit and others were from knowledge obtained from the prior audit. The prior audit information is included to show further evidence the internal control where 'errors will be caught at least every five years' is not functioning properly.

indeed a released permit, but the permit details tab in ERIS was not updated to reflect this. Reports are pulled based on information entered in the ERIS database and when tabs are inconsistent, it is difficult to determine which tab's information is correct. If a report pulls from a field that is incorrect, the report itself becomes incorrect; and

- ERIS does not produce exception reports for unusual data being generated, nor does management do a review for unusual data. DEP stated DMR is working with ITO to develop reports that will help identify problem issues. DMR is in the process of determining the information needed on the reports and ITO has agreed to implement them. Since these reports have not yet been implemented, we can comment if they will be adequate.

During a walkthrough of the ERIS database we looked at eight permits, which were selected using professional judgment. Of those eight permits we found the following:

- One permit had documentation showing it had been Phase III Released (Completely Released) but it was still on the Open Permit Listing (upon further inquiry with the agency it was determined this permit was indeed released, but the permit details tab in ERIS was not updated to reflect this);
- One permit had the permit acreage rounded down instead of up, as required by the Code, and resulted in the permit being under bonded by \$3,560;
- Various discrepancies between the multiple tabs in ERIS, which DEP insisted were simply data entry errors; however, the reports are pulled from these various inconsistent tabs, resulting in questionable reports;
- One permit did not have a bond, however, DEP was able to provide information on why the permit was not required to have a bond (this permit was a "Y" permit); We have no issue with this item; and
- One permit had the bond in ERIS listed as inactive, however, when we pulled the bond from the files it had what appeared to be an active bond. Thus, providing even more evidence the list is questionable.

We also ran a report of all Surface Mine Applications (SMA) submitted in the past five years for each region out of the ERIS database and reviewed DEP's permit numbering system for reasonableness. During the review we determined DEP's permit numbering system is reasonable, however, we could not rely solely on the numbering review to determine the reliability of the open permit listing.

Further, we attempted to compare the permits from the Active Bond Listing provided during our previous audit to the Open Permit List and found multiple discrepancies; however, we had previously been informed the listing report we were provided was a "bad run". Because of this we contacted the Assistant Director of DMR and requested a new Active Bond Listing as of February 1, 2012, which she provided and we again did a comparison between the two lists and found the following 16 issues:

- Seven permits⁴ on the Open Permit Listing were not listed as having an Active Bond on the ERIS Active Bond Inventory List.

⁴ Three of the seven permits listed were also found during the ERIS tutorial.

- One permit (a “Y” permit) does not require a bond;
- Two permits were not on the active bond list and the bond tab said inactive, but both had what appeared to be an active bond in the file cabinet, upon further inquiry the agency stated the bond had been marked as inactive by mistake upon entry;
- One permit had documentation showing it had been Phase III released, but was on the Open list (upon further inquiry the agency stated this permit was indeed released, but the permit details tab in ERIS was not updated to reflect this);
- Two permits stated active on the bond tab, but were not on the active bond list and according to the agency have been completely released on 2/13/12. We requested the active bond list on February 29th to be pulled as of February 1, 2012. We received this information on March 2nd. Lists were run as of February 1, 2012 and thus, these items should have been on the active bond list and the open list. Thus, it appears the database may not be able to produce a reliable report for a specific historical point in time.
- One permit was Phase 1 released, but processed as a Phase 3 and bond was completely released (DEP is currently seeking a \$10,000 replacement bond ASAP; the required bond may be higher, but we have not looked into this item further).
- Nine permits on the Active Bond Inventory List were not on the Open Permit Listing.
 - Eight of the differences were revoked permits still showing an active bond.
 - Two permits are pending a surface mine board hearing;
 - Two permits are awaiting a surety company agreement;
 - Three permits are pending collection by the DEP Office of Legal Services; and
 - One permit was revoked in 1998 and the bond amount of \$10,000 was collected in 1998, but the permit still shows an active bond which the agency states are actually two checks (\$79.40 and \$43.98) of which were submitted along with the \$10,000 CD to cover early withdrawal penalties (these are not bonds and should not be on the bond listing).
 - According to the agency, one of these differences occurred because of timing differences between the bond being entered into ERIS and final permit approval.

Additionally, we contacted outside agencies in an attempt to obtain a list which could be compared with DEP’s Open Permit Listing to determine if DEP provided us with a reliable list of valid (open) mining permits from the ERIS database. We were able to obtain a list of coal severance tax filers from the Tax Department, but we were unable to compare this list to anything in ERIS for various reasons. Also, we were able to obtain a list from West Virginia Miners’ Health, Safety, and Training (WV MHS&T) and do a comparison; however, we are unable to use the comparison to determine the reliability of the ERIS listing for the following reasons:

- Five permits on the WV MHS&T list were Completely Released including the bond according to ERIS, but the permittee and/or operator of the permit had a 2011 renewal with WV MHS&T which stated they were actively mining;
- Of those five permits, one permit has a different Mine Name listed in ERIS from what is on the MHS&T list and two permits do not have a Mine Name listed in ERIS;

- 13 permits on the WV MHS&T list were not in the ERIS database;
 - Of those 13 permits, we were able to find seven of the permits in ERIS based on the Company Name and the Mine Name which could be possibilities, but had different permit numbers;
- ERIS does not require a Mine Name (Facility Name) to be entered and this field is frequently left blank; and
- WV MHS&T's permit numbering system appeared to be inconsistent and it is possible for a DEP and WV MHS&T permit number to be the same, although the sites are different.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT

Part 2
PREVIOUS REPORT OTHER FINDINGS

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT**

UPDATED RESPONSES AND CORRECTIVE ACTION TAKEN

**Informational
Finding 1**

Lack of Communication with Special Reclamation Fund Advisory Council

Spending Unit's

Updated Response: DEP legal counsel attended the most recent council meeting to provide an update on pending and potential litigation. In addition, DEP is attempting to better document working decisions made by the SRFAC in the meeting minutes.

Auditor's Comment: The meeting minutes for the Special Reclamation Fund Advisory Council (SRFAC) meeting on May 2, 2012 were reviewed. It was established at that time, DEP's General Counsel addressed the SRFAC concerning litigation impacting the Special Reclamation Funds and the SRFAC's responsibility in any pending or potential litigation.

**Informational
Finding 2**

No Aggregate Limit for Reclamation Sites Liability Insurance

Spending Unit's

Updated Response: The limits are what the legislature and BRIM have decided is appropriate for all of state government. DEP will provide BRIM coverage required by the legislature.

Auditor's Comment: For this finding, it was only recommended the Legislature determine if a separate policy from BRIM for the reclamation sites is necessary. Further, it was recommended the Legislature determine if an aggregate limit for the insurance coverage should be established to protect the interest of the State. It was never stated DEP did not have appropriate coverage.

**Informational
Finding 3**

Lack of Documentation for Oaths and Reappointments to the Special Reclamation Fund Advisory Council

Spending Unit's

Updated Response: Relating to reappointments – All reappointments have been made except the citizen representative. A recommendation for this position was submitted to the Governor's Office on April 22, 2009.

Auditor's Comment: A letter from DEP's Cabinet Secretary dated February 1, 2011 addressed to both the Governor and the Legislature stated "The Agency will work closely with the Governor's Office to fill the vacancies on the Council and reappoint existing

Finding 3 Lack of Safeguarding of Certificates of Deposit & Letters of Credit

Spending Unit's

Updated Response: The coverage provided by FDIC would not extend to DEP in these situations.

Auditor's Comment: The auditors are aware the coverage provided by the FDIC would not extend to DEP in these situations. However, we observed several instances of Certificate of Deposits in amounts greater than the \$250,000 insurable amount covered by the FDIC. WV Code §11-3-b-4 states in part, as amended, "...The secretary shall not accept an individual certificate for a denomination in excess of maximum insurable amount as determined by F.D.I.C..." Further, when DEP accepts Certificate of Deposits and Letters of Credit in excess of the FDIC insurable amount, they increase the risk of not being able to recover the monies because the companies holding the Certificate of Deposit or Letter of Credit would not be able to recover anything in excess of \$250,000, therefore leaving DEP with little to no monies to collect from the company.

Finding 4 Vague Authorities to Collect Bond Forfeitures and Write-off of Uncollectible Securities

Spending Unit's

Updated Response: DEP has established that our in-house legal staff has authority to collect bond forfeitures. DEP will begin following the write-off process required by WV State Code for any of these items that are uncollectible. In addition, DMR staff will be working with the Information Technology Office (ITO) staff to develop a report based in the 'referred to OLS' comment in ERIS to periodically review bond forfeitures that have been referred to Legal for collection. This should help prevent delays in collection.

Auditor's Comment: Based on a legal opinion from the Legislative Attorney (**Appendix B**) as well as confirmation with the Attorney General (**Appendix C**), DEP does not have the authority to collect bond forfeitures.

Finding 5 Weaknesses over Maintenance & Monitoring of Bonds totaling \$905,711,559.89

Spending Unit's

Updated Response: Due to the process involved in every phase of the permitting process, segregation of duties does occur. This may not be obvious when looking at pieces of the process.

DMR has moved pending bond instruments into a locked file cabinet and has initiated a logbook to record when a file is removed. In addition, there is a color-coded filing system being implemented as files are updated to allow quick and easy reference, along with a sheet in the front of each folder that tracks activity from the beginning until current.

Pending bond instruments are tracked by SMA # on the application side. They can and do change until the permit is issued. There is no place in ERIS to capture pending items so an excel spreadsheet log has been implemented to track these.

The bond is added in ERIS once the permit is issued.

A written procedure for receipt of bonds has been developed and is available for review. It takes into account various scenarios.

In the permitting handbook, Section 7 goes through each type of bonding.

The safekeeping spreadsheet has been implemented for the Kanawha City Office and accessibility issues are being worked out for the remote locations. In the meantime, the accounts receivable staff are entering the remote office deposit information.

The premature cashing of a bond instrument was a criminal act. Existing procedures enabled DEP to promptly discover this and obtain replacement bonds. No additional procedures are necessary to address the possibility of a reoccurrence.

Auditor's Comment:

The issue of the lack of segregation of duties for maintenance and monitoring of bonds has not been addressed. The Environmental Resources Associate in charge of maintaining and monitoring posted reclamation bond instruments mentioned in the previous report still handles the entire process, from opening the mail, entering/editing the bond information in ERIS, filing pending and approved permits to making cash deposits with the State Treasurer's Office.

While moving the pending bond instruments into a locked file cabinet was a step in the right direction, the employees who need their duties adequately segregated have keys to the cabinet. This increases the risk of fraud, theft, loss, misappropriation, etc. which could go unnoticed by management.

The safekeeping spreadsheet (revenue tracking spreadsheet) which logs the receipt of checks was reviewed. It appeared to be sufficient; however, there is still an accessibility issue with remote office locations which needs to be addressed so the remote DEP field offices can also log checks into the spreadsheet. DEP states the ITO has identified the accessibility problem as of May 31, 2012.

DEP is still in need of internal controls that would prevent the premature cashing of bond instruments by mining companies. Although this act may have been discovered promptly, additional safeguards should be put in place to prevent this from occurring in the future.

Finding 6

Unable to Determine Adequacy of Bond Amounts

See **Part A**.

Finding 7 Significant Weaknesses over Self-Bonding

Spending Unit's

Updated Response: Section 7 of the permitting handbook documents the self-bonding process. In addition, Fiscal Services has a SOP and flow chart for their part of the self-bond evaluation process.

Auditor's Comment: The procedures and flow chart provided by DEP were reviewed but remain to be insufficient. DEP is at risk of losing millions of the State's dollars if the single guarantor holding all the self-bonds declared bankruptcy or became insolvent.

Finding 8 Inaccurate Estimated Liabilities

Spending Unit's

Updated Response: No further update.

Auditor's Comment: DEP did not provide updated estimated liability records to reflect the loss of the NPDES lawsuit, which adds millions of dollars to the estimated liabilities, requires DEP to obtain an NPDES permit for reclamation sites, and requires DEP to reclaim the water at the same standards DEP requires of mining companies who damage the waters of the State.

Finding 9 Discrepancies of Bond Inventory Records

Spending Unit's

Updated Response: DMR will be working with ITO to implement system changes, edits, and reports that will help prevent and/or catch entry errors in ERIS.

Auditor's Comment: The proposed system changes, edits, and reports may alleviate some of the discrepancies in the bond inventory records; however, since they have not been implemented yet, we were unable to review them in production. Thus, we still recommend DEP perform an inventory of all bonds and compare it to the bond listing in ERIS to ensure the records accurately reflect the actual bonds DEP holds.

Finding 10 Differences in DEP & STO Records

Spending Unit's

Updated Response: Information is now being verified when a permit is released, transferred, or any question arises.

Auditor's Comment: Verifying the information as it is updated is a positive step, but we still recommend DEP perform an inventory of all bonds they hold and continue to perform a proper reconciliation between ERIS and the STO listing regularly to identify and correct any differences in a timely manner.

Finding 11 **Improper Accounting and Application of Forfeited Bonds**

Spending Unit's

Updated Response: DEP will research the capabilities of the new financial system, OASIS.

Auditor's Comment: We still recommend DEP commit and apply bonds to the site which originally posted the bond in order to comply with the statute.

Finding 12 **Noncompliance with WV Code §12-2-2**

Spending Unit's

Updated Response: DEP has instituted a shared safekeeping spreadsheet to log deposits. It is shared between the DMR and fiscal services. We are still working out problems with the remote offices accessing the folder, but the accounts receivable unit has been logging in the information for the remote locations in the meantime. As of 5/31/12, ITO has identified the accessibility problem.

Auditor's Comment: The safekeeping spreadsheet (revenue tracking spreadsheet) which logs the receipt of checks was reviewed. As long as the accessibility issue for the remote offices gets resolved, the spreadsheet appears to be sufficient and will enable DEP to comply with the statute.

Finding 13 **Weakness over Liability Reports**

Spending Unit's

Updated Response: DEP agreed with this finding.

Finding 14 **Weakness over Inspections and Inspection Reports at Reclamation Sites**

Spending Unit's

Updated Response: DEP agreed with this finding and is working on the development and implementation of an automated inspection reporting system.

Finding 15 **Noncompliance with 180 Day Reclamation Requirement**

Spending Unit's

Updated Response: DEP agreed with this finding. DEP is working on a reclamation schedule that will eliminate the backlog by 2015 and allow DEP to comply with the 180-day requirement.

Finding 16 **Noncompliance with Reclamation Plans & Lack of Documenting Changes**

Spending Unit's

Updated Response: DEP does not continue the mining operation. Instead, the site is reclaimed in compliance with applicable regulatory requirements. The Federal Office of Surface Mining (OSM) oversees this process.

Auditor's Comment: We still recommend DEP document any and all changes or modifications to the initial reclamation plan and indicate the reason the changes or modifications occurred.

Finding 17 Lack of Official Procedures

Spending Unit's
Updated Response: Special Reclamation is aware of the issue and had already been working on a manual to address the issue. It is possible that, in this manual, special reclamation could address the inspection frequency and inspection record keeping issues, changes to the reclamation plan and documentation of this, liability estimate methodology, updates of liability estimates & actual reclamation cost issues.

Auditor's Comment: While the manual the Office of Special Reclamation is working on may alleviate some of the problems mentioned, nothing was available for review; therefore, no comment can be made on the sufficiency of this manual.

Finding 18 Weakness Over Legislative Rule §38-2-20

Spending Unit's
Updated Response: This section of code specifies inspection frequency for active and inactive permitted mining sites. It was not intended to apply to bond forfeiture sites. This change would require additional legislation to add bond forfeiture sites without changing the requirements on permitted sites.

Auditor's Comment: We recommend the DEP Cabinet Secretary work with the Legislature to modify the existing rule or create a new rule to address the issues of bond forfeited site reclamation and inspection of these sites.

Finding 19 Noncompliance with Administrative Settlement Agreements

Spending Unit's
Updated Response: DEP has instituted a process where the accounts receivable manager notifies the Director of DMR and the Company representative by email and lets them know when a payment has not been received. This is done immediately after the payment due date has been missed.

Finding 20 Noncompliance with Court Settlement Agreement

Spending Unit's
Updated Response: The agreement was paid in full. No further action is required.

Auditor's Comment: We still recommend DEP not enter into any agreements in the future with a company when it is known or likely the company will not be able to make payments in accordance with the agreement, or DEP needs to make and maintain adequate documentation to support changes to the agreement.

Finding 21 **Revenue and Expenditure Misclassification**

Spending Unit's

Updated Response: Fiscal Services has instituted the use of 874 coding.

Auditor's Comment: A review of revenue codes 282 and 874 for Fiscal Year 2012 showed DEP is no longer using the incorrect revenue code 282 and is now utilizing the proper revenue code 874 for Court Settlements.

Finding 22 **Travel Reimbursements Not Submitted Within 15 Days**

Spending Unit's

Updated Response: DEP makes every effort to comply with the 15-day submission requirement. It is more difficult when dealing with board member as they are not located within our office and we must rely upon them to submit their travel timely. However, DEP will attempt to remind all committee members of the need to submit timely travel reimbursement requests. The DMR Director did speak directly to the board member to remind him of the 15-day submission time.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT**

APPENDIX A
PREVIOUS REPORT FINDING 6

Recommendation: We recommend DEP comply with W.Va. Code §22-3-11, as amended, and compare the official records to the ERIS database (unofficial record) and determine whether bond amounts have been appropriately calculated and determine whether sufficient bonds have been posted. If bonds are not sufficient, we recommend DEP notify the permit holders of their insufficient bonds and request immediate action to provide adequate bond amounts. If a permit holder fails to do so, DEP should notify said permit holder to cease operation and immediately begin reclamation. Furthermore, we recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate records. In addition, DEP should revise the current ERIS database or adopt a new system for entering, calculating, and monitoring bond instruments. Information should be updated as changes occur and the changes should be documented.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT

APPENDIX B

LEGAL OPINION OVER COLLECTION OF BOND FORFEITURES

I N T E R

L E G I S L A T I V E
S E R V I C E S

O F F I C E

MEMO

**To: Stacy Sneed, CPA, CICA, Director
Amber Shirkey, CPA, CICA, Audit Manager
Joshua Potter, Auditor III**

From: Maureen Robinson, Attorney

Subject: Statutory authority to collect bond forfeitures

Date: January 9, 2012

You have requested a legal opinion concerning the statutory authority to collect bond forfeiture revenues. Specifically you have asked us to address three questions:

- (1) Whether the Attorney General should be collecting bond forfeitures, and what the DEP's involvement in the collection process should be;
- (2) The meaning of W. Va. Code §22-1-6(d)(8); and
- (3) Whether W. Va. Code §22-1-6(d)(8) is applicable to normal bond forfeitures.

The short answer is that although the secretary of the DEP is authorized to employ lawyers within the department, the DEP cannot circumvent the statutory requirement that the Attorney General collect bond forfeitures by substituting its own lawyers for the AG's.

(1) Whether the Attorney General should be collecting bond forfeitures and what the DEP's involvement should be in the collection process.

W. Va. Code §22-3-17(b) states in pertinent part that:

"If the [operator's] permit is revoked, the director shall initiate procedures in accordance with rules promulgated by the director to forfeit the entire amount of the operator's bond . . . **and give notice to the Attorney General, who shall collect the forfeiture without delay.** . . ."

The director of the DEP is given the authority to determine whether or not the operator's permit should be suspended or revoked, however, after it has been determined that the permit is to be revoked the statute dictates that the director give notice to the AG who "shall collect the forfeiture." The three provisos following the above cited statutory language do nothing to alter the authority of the AG to collect bond forfeitures, but merely directs into which fund the forfeited proceeds should be deposited in the State Treasury.

The DEP rule for surface mining reclamation, referenced in §17(b) above, provides even less clarity. It states: "In the event forfeiture of the bond is required by this section, the Secretary shall

Joshua Porter, Auditor III
Page 2
July 3, 2012

proceed to collect the forfeiture amount as provided for in subsection b, section 17 of the Act.” 38 CSR 2.12.4.b. Although the rule states that the secretary “shall proceed to collect the forfeiture amount,” it is qualified by the statement “as provided for in subsection b, section 17 of the Act,” which clearly states that the Attorney General shall collect the forfeiture.

(2) The meaning of W. Va. Code §22-1-6(d)(8)

W. Va. Code §22-1-6(d)(8) states that “notwithstanding any provisions of the code to the contrary” the Secretary of the DEP has the authority to:

“**employ in-house counsel to perform all legal services for the secretary and the department**, including, but not limited to, representing the secretary, any chief, the department or any office thereof in any administrative proceeding or in any proceeding in any state or federal court.”

The clause “notwithstanding any provisions of this code to the contrary” (meaning ‘regardless of any provision of the code to the contrary’) applies to the director’s authority to employ in-house counsel, and not to those services the DEP lawyers may perform. While DEP’s in-house counsel may “perform all legal services for the secretary and the department,” this authorization does not extend to the performance of legal services for the Attorney General, who is required by W. Va. Code §22-3-17(b) to collect bond forfeitures.

(3) Whether W. Va. Code §22-1-6(d)(8) is applicable to normal bond forfeitures

Based on my level of knowledge of the bonding process I am hesitant to state with certainty whether this provision of the code could be applicable to normal bond forfeitures.

I hope that I have adequately answered your questions. Please do not hesitate to call me if you would like further clarification.

Yours truly,

Maureen Robinson
Attorney, Legislative Services

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT**

APPENDIX C

CONFIRMATION WITH ATTORNEY GENERAL OVER BOND FORFEITURES



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

(304) 558-2021
FAX (304) 558-0140

November 8, 2011

Aaron Allred, Legislative Auditor
West Virginia Legislature
Joint Committee on Government and Finance
State Capitol, Room E-132
Charleston, WV 25305-0610

Dear Mr. Allred:

This is in response to your letter of November 7, 2011, asking about the involvement of the Attorney General's office with bond forfeiture.

A review of West Virginia Code § 23-3-17(b) indicates the Attorney General's involvement is triggered upon notice to him of such forfeiture. We have not received notice of any forfeiture.

Further, before a claim or debt in favor of the State can be dismissed or written off, certain procedures are required. These procedures are set forth in West Virginia Code §§ 14-1-18 and -18a. As you will note, DEP does not have the authority to dismiss such a claim without the approval of the Secretary of Administration and the Attorney General unless it has been "standing upon the books" for more than five years.

Very truly yours,

FRANCES A. HUGHES
CHIEF DEPUTY ATTORNEY GENERAL

FAH/jy

LEGISLATIVE

NOV - 9 2011

MANAGER

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOLLOW-UP POST AUDIT TO
SPECIAL RECLAMATION FUNDS & FUND 8796 AUDIT REPORT**

APPENDIX D

UPDATED DEP RESPONSES FOR PREVIOUS REPORT FINDINGS



west virginia department of environmental protection

Office of Administration-Fiscal Services
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0480
Fax: (304) 926-0481

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

June 13, 2012

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

Re: Updated DLR Audit Responses

Stacy
Dear Ms. Sneed:

Included are our updated responses to the audit findings for the Division of Land Restoration's audit covering July 2009 through June 2010. We have provided current information on the status of each item; excluding Finding 2 and Finding 6 which were the focus of the follow-up review. The responses to these two items were provided previously.

Thank you for giving us the opportunity to submit an updated response to these findings and for your willingness to review the progress that we have made. If you have any questions, I can be reached at (304) 926-0499, extension 1551.

Sincerely,

Jean Sheppard
Jean Sheppard
Controller

cc: Tom Clarke, Director, Division of Mining and Reclamation
Ken Ellison, Director, DLR
June Casto, Chief, Office of Administration

Promoting a healthy environment.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
SPECIAL RECLAMATION FUNDS & FUND 8796
JULY 1, 2009 – JUNE 30, 2010

FINDINGS AND RECOMMENDATIONS

DEP has not provided us with any information concerning the 11 other findings and three informational findings they disagreed with in the previous audit report. Therefore, we can only report on the documentation the agency has provided us for Finding 2 and the follow-up we performed for Finding 6.

See updated responses below:

Informational

Finding 1

Lack of Communication with Special Reclamation Fund Advisory Council

DEP is providing updated information to the Council on any pending items. DEP legal counsel attended the most recent council meeting to provide an update on pending and potential litigation. In addition, DEP is attempting to better document working decisions made by the SRFAC in the meeting minutes.

Informational

Finding 2

No Aggregate Limit for Reclamation Sites Liability Insurance

The limits are what the Legislature and BRIM have decided is appropriate for all of state government. DEP will provide BRIM coverage required by the Legislature.

Informational

Finding 3

Lack of Documentation for Oaths and Reappointments to the Special Reclamation Fund Advisory Council

Related to reappointments - All reappointments to the Council have been made except the citizen representative. A recommendation for this position was submitted to the Governor's Office on April 22, 2009.

Finding 1

Scope Limitation over Revenues Received

DEP reviews this information for reasonableness based on monies previously collected. The originating information is reported to the State Tax Department to allow them to make the allocation to DEP. DEP does not have sufficient information available to reconcile this information further. DEP Fiscal Services has a standard operating procedure (SOP) established for the process we use to transfer the coal tax to the various funds. This SOP is available for review. DMR has a written procedure for how bond forfeitures are handled. It is included in the procedure for Show Cause items. This procedure is available for review.

Finding 2

Finding has been resolved.

Finding 3

Lack of Safeguarding of Certificates of Deposit & Letters of Credit

The coverage provided by FDIC would not extend to DEP in these situations.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
SPECIAL RECLAMATION FUNDS & FUND 8796
JULY 1, 2009 – JUNE 30, 2010

FINDINGS AND RECOMMENDATIONS

Finding 4 **Vague Authority to Collect Bond Forfeitures and Write-off of
Uncollectible Securities**

DEP has established that our in-house legal staff has authority to collect bond forfeitures. DEP will begin following the write-off process required by WV State Code for any of these items that are uncollectible. In addition, DMR staff will be working with the Information Technology Office (ITO) staff to develop a report based on the 'referred to OLS' comment in ERIS to periodically review bond forfeitures that have been referred to Legal for collection. This should help prevent delays in collection.

Finding 5 **Weaknesses over Maintenance & Monitoring of Bonds totaling
\$905,711,559.89**

Due to the process involved in every phase of the permitting process, segregation of duties does occur. This may not be obvious when looking at pieces of the process.

DMR has moved pending bond instruments into a locked file cabinet and has initiated a logbook to record when a file is removed. In addition, there is a color-coded filing system being implemented as files are updated to allow quick and easy reference, along with a sheet in the front of each folder that tracks activity from the beginning until current.

Pending bond instruments are tracked by SMA # on the application side. They can and do change until the permit is issued. There is no place in ERIS to capture pending items so an excel spreadsheet log has been implemented to track these.

The bond is added in ERIS once the permit is issued.

A written procedure for receipt of bonds has been developed and is available for review. It takes into account various scenarios.

In the permitting handbook, Section 7 goes through each type of bonding.

The safekeeping spreadsheet has been implemented for the Kanawha City Office and accessibility issues are being worked out for the remote locations. In the meantime, the accounts receivable staff are entering the remote office deposit information.

The premature cashing of a bond instrument was a criminal act. Existing procedures enabled DEP to promptly discover this and obtain replacements bonds. No additional procedures are necessary to address the possibility of a reoccurrence.

Finding 6 **Unable to Determine Adequacy of Bond Amounts**

DEP is adding an edit to ERIS which will not allow an open permit without an active bond (excluding prospects and quarries), and an edit that will warn data entry personnel doing a phase 3 release if there is no previous phase 1 or 2.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
SPECIAL RECLAMATION FUNDS & FUND 8796
JULY 1, 2009 – JUNE 30, 2010

FINDINGS AND RECOMMENDATIONS

The bond calculation sheet has been automated in the renewal application. This system now rounds up automatically on the permit increment level. DMR is working with ITO to be sure this automated calculation is in all relevant applications, i.e. new permits, renewals, etc.

The system automatically sets the amount to the \$10,000 minimum for the permit.

Our internal programmer has provided a document that tells how the automated system works and the edits that have been implemented to prevent mistakes. This is available for review.

Procedures are available for bond forfeitures under Show Cause Hearing procedures. We have modified it to take out specific names and instead use job titles to make it more generic. This is available for review.

We have documented the process for receiving bonds. This is available for review.

DMR is in the process of updating the permitting handbook to reflect the changes in procedures that go with the new automated application process. The document is incomplete but the part that has been completed is available for review.

DMR is working with the ITO to develop reports that will help identify problem issues. Reports discussed include: (1) active bond to forfeit date, on an open permit (except quarry-if before required permits, prospects-no disturbance so no permit required, Y=mining over state line, W exceptions of all-just assigned #, no permit), (2) open permit with no bond, or all bonds marked inactive (OK=Y, W, Prospects, old Q), (3) closed permit with active bond, (4) total active bonds less than \$10,000 for total permit, (5) revoked permits w/active bond, (6) bond not collected without a valid comment, (7) permit acres greater than 10,000, (8) active bonds less than \$10,000 on an increment (consider phase release), (9) revoked but uncollected. DMR is in the process of determining the information needed on the reports and ITO has agreed to implement them.

One person assigns security levels for DMR in the ERIS system. A supervisor sends the request to the database manager to establish their employee's security in ERIS. The options available are by job classification. In the absence of the database manager, the Director can approve changes.

Finding 7 Significant Weaknesses over Self-Bonding

Section 7 of the permitting handbook documents the self-bonding process. In addition, Fiscal Services has a SOP and flow chart for their part of the self-bond evaluation process. These are available for review.

Finding 8 Inaccurate Estimated Liabilities

No further update.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
SPECIAL RECLAMATION FUNDS & FUND 8796
JULY 1, 2009 – JUNE 30, 2010

FINDINGS AND RECOMMENDATIONS

Finding 9 **Discrepancies of Bond Inventory Records**

DMR will be working with ITO to implement system changes, edits and reports that will help prevent and/or catch entry errors in ERIS.

Finding 10 **Differences in DEP & STO Records**

Information is now being verified when a permit is released, transferred, or any question arises.

Finding 11 **Improper Accounting and Application of Forfeited Bonds**

DEP will research the capabilities of the new financial system, OASIS.

Finding 12 **Noncompliance with W.Va. Code §12-2-2**

DEP has instituted a shared safekeeping spreadsheet to log deposits. It is shared between the DMR and fiscal services. We are still working out problems with the remote offices accessing the folder but the accounts receivable unit has been logging in the information for the remote locations in the meantime. As of 5/31/12 ITO has identified the accessibility problem.

Finding 13 **Weakness over Liability Reports**

DEP agreed with this finding.

Finding 14 **Weakness over Inspections and Inspection Reports at Reclamation Sites**

DEP agreed with this finding and is working on the development and implementation of an automated inspection reporting system.

Finding 15 **Noncompliance with 180 Day Reclamation Requirement**

DEP agreed with this finding. DEP is working on a reclamation schedule that will eliminate the backlog by 2015 and allow DEP to comply with the 180-day requirement.

Finding 16 **Noncompliance with Reclamation Plans & Lack of Documenting Changes**

DEP does not continue the mining operation. Instead, the site is reclaimed in compliance with applicable regulatory requirements. The Federal Office of Surface Mining (OSM) oversees this process.

Finding 17 **Lack of Official Procedures**

Special Reclamation is aware of this issue and had already been working on a manual to address the issue. It is possible that, in this manual, special reclamation could address the inspection frequency and inspection record keeping issues, changes to the reclamation plan and documentation of this, liability estimate methodology, updates of liability estimates & actual reclamation cost issues.

Finding 18 **Weakness Over Legislative Rule §38-2-20**

This section of code specifies inspection frequency for active and inactive permitted mining sites. It was not intended to apply to bond forfeiture sites. This change would require additional legislation to add bond forfeiture sites without changing the requirements on permitted sites.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
SPECIAL RECLAMATION FUNDS & FUND 8796
JULY 1, 2009 – JUNE 30, 2010

FINDINGS AND RECOMMENDATIONS

Finding 19 **Noncompliance with Administrative Settlement Agreements**

DEP has instituted a process where the accounts receivable manager notifies the Director of DMR and the Company representative by email and lets them know when a payment has not been received. This is done immediately after the payment due date has been missed.

Finding 20 **Noncompliance with Court Settlement Agreement**

This agreement was paid in full. No further action is required.

Finding 21 **Revenue and Expenditure Misclassification**

Fiscal services has instituted the use of the 874 coding.

Finding 22 **Travel Reimbursements Not Submitted Within 15 Days**

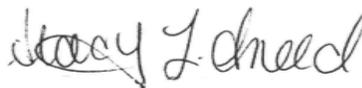
DEP makes every effort to comply with the 15-day submission requirement. It is more difficult when dealing with board members as they are not located within our office and we must rely upon them to submit their travel timely. However, DEP will attempt to remind all committee members of the need to submit timely travel reimbursement requests. The DMR Director did speak directly to the board member to remind him of the 15-day submission time.

STATE OF WEST VIRGINIA

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Stacy L. Sneed, CPA, CICA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 24th day of July 2012.



Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

Notification of when the report was released and the location of the report on our website was sent to the Secretary of the Department of Administration to be filed as a public record. Report release notifications were also sent to the Special Reclamation Fund Advisory Fund Council; West Virginia Department of Environmental Protection; Federal Office of Surface Mining; Pinnacle Actuarial Resources, Inc.; Governor; Attorney General; and State Auditor.