

JOINT COMMITTEE ON GOVERNMENT AND FINANCE  
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

# POST AUDIT DIVISION

LEGISLATIVE AUDIT REPORT

## Department of Environmental Protection - Division of Mining & Reclamation

*Follow-up Report on  
Prior Audit Findings  
& Recommendations*

Legislative Auditor: Aaron Allred  
Post Audit Division Director: Justin Robinson



GENERALLY ACCEPTED GOVERNMENT  
AUDITING STANDARDS STATEMENT

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (**GAGAS**). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

POST AUDIT DIVISION  
Justin Robinson, Director

# POST AUDIT DIVISION

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## Post Audit Report

### Department of Environmental Protection - Division of Mining & Reclamation:

### *Follow-up Report on Prior Audit Findings & Recommendations*

December 17, 2019

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This report is the first of two following-up on issues and recommendations reported to the Post Audits Subcommittee in audit reports issued in January 2012 and July 2012. The previous audits covered the Department of Environmental Protection's (DEP) Division of Mining and Reclamation (DMR) bonding process, Special Reclamation Funds, and internal permitting software, ERIS<sup>1</sup>. A multitude of issues were identified in the previous reports including, but not limited to, incomplete, inaccurate, and somewhat inaccessible computer record-keeping for bond transactions, as well as a lack of official DMR documented procedures related to the oversight of mining operations and bonding requirements.

Our follow up review of the 2012 audit reports identified findings and issues deemed significant for further follow-up analysis. For each finding or issue considered significant, the DEP was requested to provide the Legislative Auditor a status update to determine the DEP's compliance, partial compliance, or non-compliance with the corresponding recommendation. Once provided by the DEP, we performed various audit techniques to substantiate DEP's assertions regarding compliance. The Legislative Auditor's conclusions regarding the DEP's compliance are detailed in this report. Also, included in this report is an informational finding identified during the audit that was not addressed in the 2012 audit reports.

## **Background**

In 1977, the United States passed the Surface Mining Control and Reclamation Act (SMCRA). This created a federal program to help regulate the mining and reclamation industries. The act gives states the right to create their own oversight programs, with their own rules and regulations, as long as the U.S. Office of Surface Mining, Reclamation, and Enforcement (OSMRE) approves them. The SMCRA requires reclamation bonds be provided to ensure mined land is returned to the state it was in before mining started. States are allowed to provide bonding programs that are no less stringent than federal guidelines.

The West Virginia reclamation bonding system is administered by the (DEP) and involves two separate portions:

1. The mine operator is required to post a site-specific reclamation bond between \$1,000 and \$5,000<sup>2</sup> per acre with a minimum bond amount set at \$10,000. However, it is acknowledged by the State and the DEP that site-specific bonds will not cover the full costs of reclamation in the event of permit forfeiture.
2. The second portion of the State's bonding system is the "*alternative bonding system*." The *alternative bonding system* provides additional funding for reclamation costs to supplement those not covered by site specific bonds through a Special Reclamation Tax imposed on each ton of coal mined in the State. The current tax is 27.9 cents per ton, with 12.9 cents dedicated to the Special Reclamation Trust Fund (Fund #3321)

<sup>1</sup> ERIS is the software the DEP uses to track, record, and issue reports regarding permits and bonds. The report generated from ERIS for review by the Post Audit team is referred to as the *All Bond Report*.

<sup>2</sup> This dollar amount applies to all permits except prospecting permits. Prospecting permits have no minimum required amount, and the rate is a flat cost of \$500 per acre.

and 15 cents to the Special Reclamation Water Trust Fund (Fund #3482). In this report, the two funds are jointly referred to as the Special Reclamation Funds.

## **Previous Finding – Significant Weaknesses Over Self-Bonding**

Self-bonding is a type of bonding instrument that allows larger coal companies to utilize their size and capital as a collateral bond or a “guarantee” when obtaining mining permits. When a coal company is self-bonded, the company is permitted to operate without posting any surety or collateral—in effect, offering only their promise to reclaim the property or pay the bond amount once mining operations have concluded. If a company were to become insolvent and not honor their promise to reclaim the mine site, the full cost of reclamation must be borne by the Special Reclamation Funds.

W.Va. Code §22-3-11(c)(1), which currently allows the DEP Secretary the option to allow coal operators to self-bond, states in part:

*The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, **self-bonding**, or a combination of these methods....(Emphasis Added)*

The previous 2012 Post Audit reports cite the risk of self-bonding if a single guarantor of this type of bonding instrument were to go bankrupt. In 2015, Alpha Natural Resources, one of the State’s largest coal companies and the only one with self-bonds on file with the DEP at the time, filed for bankruptcy. Alpha had approximately \$244 million in self-bonds for approximately 500 mining sites, which exceeded the entire balance of the special reclamation funds<sup>3</sup>. However, Alpha was able to establish a consent order<sup>4</sup> with the DEP and avoid forfeiting the bonds. Had this consent order not been rendered, the potential reclamation costs that could have ensued as a result of the bond forfeiture had the capacity to critically deplete the reclamation funds. If this would have occurred, the State would either had to bear the additional costs to complete the reclamation or be in non-compliance with federal mining reclamation law. Since the Alpha bankruptcy filing, the DEP made an administrative decision to discontinue the practice of accepting self-bonding.

### **Recommendations:**

1. The Legislative Auditor recommends the DEP seek to amend W.Va. Code §22-3-11 and remove the language allowing for the option of self-bonding from the statute in support of the DEP’s decision to discontinue the practice and to prevent it from being reinstated.

<sup>3</sup> The balance of the Special Reclamation Funds totaled approximately \$156.5 million as of December 1, 2015.

<sup>4</sup> The consent order with Alpha Natural Resources Inc. required Alpha to continue to reduce the amount of self-bonding it had for mine site reclamation and provide financial assurances to back the company’s legal obligation to reclaim its West Virginia operations. <https://dep.wv.gov/news/Pages/WVDEP-and-Alpha-Natural-Resources-Reach-Agreement-Related-to-Self-Bonded-Mine-Reclamation-Obligations.aspx>

## **Previous Finding – Scope Limitation Over Revenues Received**

The previous Post Audit reports identified weaknesses over money received from the State Tax Department. The DEP was cited for non-compliance with W. Va. Code §5A-8-9(b) which states, in part:

*The head of each agency shall...(b)make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities...*

Specifically, the DEP does not have a reconciliation procedure in place to verify the money received from the WV Tax Department for the Special Reclamation Tax is consistent with the tonnage of coal mined. The Special Reclamation Tax is a tax imposed on coal by W. Va. Code §22-3-11 at the rate of 27.9 cents per ton of clean coal mined. The coal tax is collected by the State Tax Department and then deposited to the DEP's Special Reclamation Funds. These taxes are then used to fund reclamation on forfeited sites when bonds do not cover the full cost of reclamation. As part of our follow-up of this issue, an inquiry was made to the DEP for any updates on the original finding. The DEP stated that:

*The DEP continues to rely on the internal controls of the State Tax Department to ensure the correct amounts are deposited into the appropriate funds. Agency staff does not consider available information sufficient to complete a reconciliation. As a compensating measure, DEP reviews money collected by the Tax Department and transferred to DEP for reasonableness, based on previous collections.*

Additionally, the DEP disclosed to the Legislative Auditor they do not track tonnage of coal mined, stating it is “*Not applicable to DEP processes.*”

The Legislative Auditor believes this information being provided by the coal companies could be very beneficial. If the DEP were to track the tonnage of coal mined, the agency would be able to verify and reconcile funds received from the Tax Department, identify companies not current with Special Reclamation Tax payments, and track historic trends of coal production. Further, coal companies are required by the federally mandated, OSM *Payer Handbook*, to report coal tonnage to the federal office on a quarterly basis. Given that this information is provided to the OSM, the Legislative Auditor believes it could be easily provided to the DEP as well.

### **Recommendations**

1. The Legislative Auditor recommends the DEP require coal companies to report tonnage of coal mined on a quarterly basis.

2. The Legislative Auditor recommends the DEP comply with W. Va. Code §5A-8-9(b) by performing periodic reconciliations of coal tonnage mined in the State to the Special Reclamation Taxes received from the State Tax Department.

### **Previous Finding – Weaknesses Over Maintenance & Monitoring of Bonds**

The previous Post Audit report issued in January 2012 cited the DEP for several weaknesses over the maintenance and monitoring of bonds and cash handling procedures related to the bonding process. Specifically, the prior reports cite DEP for:

- A lack of segregation of duties within the bonding process,
- A lack of a remotely capable daily tracking system for cash receipts, and
- An inability to determine if cash and cash equivalents were being deposited within 24-hours as required by W. Va. Code §12-2-2.

The Legislative Auditor performed three on-site inspections of regional Division of Mining and Reclamation (DMR) offices. Three teams of auditors visited DMR offices in Philippi, Logan, and Fayetteville on November 14<sup>th</sup>, 2019 to inspect procedures in place to safeguard cash receipts. The review of these procedures was graded by a standardized questionnaire developed by the Legislative Auditor using the guidelines laid out by the West Virginia State Treasurer’s Office *Cash Receipts Handbook*. The Treasurer’s Office issued the handbook to:

*Document the procedures for processing cash receipts and provide guidelines for the proper receiving, handling, and safeguarding of cash and cash equivalents by spending units and employees.*

Upon completion of the inspection and review of the responses from the three regional offices, it was determined that the DEP regional offices are in compliance with all applicable sections of the *Cash Receipts Handbook*.

During the audit, physical inspections were conducted at the Charleston office to verify controls and processes regarding cash receipts and to ensure adequate segregation of duties throughout the bonding process. The Legislative Auditor utilized the same standardized questionnaire used to analyze the cash receipt process in the regional inspections. All the departments in the Charleston office that collect cash as a part of the DMR department, including employees who work at the front desk, an employee in the mail room, and the head of the Accounts Receivable department were interviewed. The result of this inspection corroborates that the DEP Charleston and regional office processes are in compliance with those of the *Cash Receipts Handbook*. No further action is needed as pertains to DMR cash receipts.

The next step of the Legislative Auditor’s follow-up on this finding set out to verify the remote capabilities of the DMR Revenue Tracking Spreadsheet and to review if transactions within the spreadsheet are in compliance with W. Va. Code §12-2-2(a). Since the previous Post Audit report was released, W. Va. Code §12-2-2(a) has been updated to require deposits be made within

one business day, rather than within 24-hours of receipt. The amended version of W. Va. Code §12-2-2(a) states, in part that;

*All officials and employees of the state authorized by statute to accept moneys on behalf of the State of West Virginia shall keep a daily itemized record of moneys received for deposit in the State Treasury and shall deposit within one business day with the State Treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever.*

The DEP supplied the Legislative Auditor with an exported version of the Revenue Tracking Spreadsheet. The DEP stated that *“The original spreadsheet is located on a shared network drive. The drive is security driven and rights must be granted in order to access folders. Thus, field staff with the appropriate rights can access the revenue tracking sheet.”* It has been confirmed that the spreadsheet is accessible by the remote locations and that regional offices are now responsible for their own revenue entries to the spreadsheet.

A review for compliance with the one business day statutory requirement was performed on a sample of 226 payments listed in the Revenue Tracking Spreadsheet between August 1<sup>st</sup>, 2019 and October 9<sup>th</sup>, 2019. Of the 226 payments, 177 (78.3%) had a deposit slip on file and were deposited within one business day, 21 (9.3%) payments had a deposit slip on file but were deposited outside of the one business day requirement, and 28 (12.4%) payments were unable to be analyzed because a transaction ID number was not completed in the spreadsheet. Ensuring that deposits are made within one business day helps mitigate the risk of fraud and the misappropriation of funds, while providing an additional control mechanism over funds due to the agency.

<b>Sample of 226 Payments from Revenue Tracking Spreadsheet</b>		
<b>Results</b>	<b>Sampled Payments</b>	<b>Percentage</b>
<b>Payments with no Transaction ID</b>	28	12.4%
<b>Payments with Deposit Slip, Deposited in excess of 1 Business Day</b>	21	9.3%
<b>Payments with Deposit slip, Deposited in 1 Business Day</b>	<u>177</u>	<u>78.3%</u>
<b>Total</b>	<u>226</u>	<u>100%</u>
<i>*Information provided by DEP (Revenue Tacking Spreadsheet), calculations performed by Post Audit team.</i>		

In conclusion, the DEP has made significant changes to address the previous recommendations and has established safeguards over the process and procedures regarding cash handling. DEP has established an agency-wide Revenue Tracking System that remote offices can access and input data. However, incomplete data within the spreadsheet and noncompliance with W. Va. Code §12-2-2(a) was identified in 49 of the 226 payments sampled.

### **Recommendations**

1. The Legislative Auditor recommends the DEP comply with W. Va. Code §12-2-2(a) and deposit cash and cash equivalents within one business day.

2. The Legislative Auditor recommends the DEP comply with W. Va. Code §5A-8-9 and maintain records containing adequate and proper documentation by ensuring all fields within the Revenue Tracking Spreadsheet are completed.

### **Previous Finding – Lack of Official Procedures**

The previous audit found that the DEP did not have procedures in place to ensure “adequate and complete inspections” of reclamation sites. The DEP’s response to the 2012 reports was that “Special Reclamation is aware of the issue and had already been working on a manual to address the issue.”

During the current analysis of the DEP bonding process and procedures, we were informed the *Manual of the Office of Reclamation* and the *Reclamation Prioritization Procedures* are still in draft format, roughly seven years after the previous audit. Additionally, the Legislative Auditor reviewed DEP’s *Permitting Handbook* and identified several instances where procedures do not align with requirements laid out by W. Va. Code, or instances where the DEP did not abide by their own procedures. Below are the issues we have identified:

- *DEP Permitting Handbook* states on page 74 that “The DEP shall obtain possession of and keep in custody all collateral submitted by applicant until authorized for release or replacement.” The Legislative Auditor believes this procedure is unclear and should be updated to clarify the requirements of W. Va. Code §22-3-11(c)(1). W. Va. Code §22-3-11(c)(1) states, in part;

*The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly **place the same with the Treasurer of the state of West Virginia...** (Emphasis Added)*

A physical inspection concluded that collateral bonds have been remitted to the State Treasurer’s Office despite this procedure conflicting with W.Va. Code.

- The *DEP Permitting Handbook* outlines on page 12 that prep plants are to be classified as “O-permits” and that prospecting sites are to be classified as “P-Permits.” The current analysis identified 29 prep plant permits incorrectly listed as “P-Permits” in the **All Bond Report**. Bonds for prospecting sites have specific criteria regarding the calculation of bond amounts that does not apply to prep plants. The improper classification of these two types of permits may lead to inaccurate reports or improper permit classification in the future.
- There is a conflict within the *Permitting Handbook* regarding when verification of a company’s status with the Secretary of State is required for a permit. Page 38 does not include permit renewals as requiring verification, while page 41 does include permit renewals as requiring verification. Additionally, it was identified through the DEP

ESS<sup>5</sup> website, on the “Facts & Findings” tab, there is a field titled “U,” indicating verification with the Secretary of State is required when a permit is renewed. These conflicting procedures can lead to companies not being verified with the Secretary of State when required and companies operating within the state with a terminated or revoked status.

### **Recommendations:**

1. The Legislative Auditor recommends the DEP review and update their *Permitting Handbook* to ensure that procedures are clear and comply with current W. Va. Code and Legislative Rules.
2. The Legislative Auditor recommends the DEP update all prep plants classified as “P-Permits” with the correct “O-Permit” coding or note in the *Permitting Handbook* that older prep plant permits are included in the *All Bond Report* as “P-Permits.”
3. The Legislative Auditor recommends the DEP resolve the conflicting sections of the handbook regarding verification with the Secretary of State by amending page 38 to stipulate that permit renewals are contingent on status verification with the Secretary of State.
4. The Legislative Auditor recommends the DEP complete the *Manual of the Office of Reclamation* and the *Reclamation Prioritization Procedures*.

### **Previous Finding – Lack of Safeguarding of Certificates of Deposit and Letters of Credit**

The previous Post Audit reports state the DEP had multiple certificates of deposit (CDs) and letters of credit (LoC) over the \$250,000 FDIC insurable limit. The Legislative Auditor’s analysis of the *All Bond Report* discovered the DEP has made significant strides to replace these bonds in order to comply with the recommendations made in the 2012 report. However, the analysis identified one CD in violation of Legislative Rule 38-02 11.3.b.4 amounting to \$434,520, which is \$184,520 over the statutory limit. Legislative Rule 38-02 11.3.b.4 is as stated;

*The Secretary [DEP Cabinet Secretary] shall not accept an individual certificate for a denomination in excess of maximum insurable amount as determined by F.D.I.C.;*

<sup>5</sup> ESS is the DEP’s Electronic Submission System. ESS is a remotely capable system used for the submission and storage of DEP forms associated with permits.

<b>Bond Over \$250,000</b>			
<b>Permit Number</b>	<b>Bond Type</b>	<b>Issuing Bank</b>	<b>Amount of Bond</b>
S302288	Certificate of Deposit	Pioneer Community Bank	\$434,520
<i>*Information provided by DEP (All Bond Report 8/20/19), analysis performed by Post Audit team.</i>			

**Recommendations:**

1. The Legislative Auditor recommends the DEP replace the CD in question with a bonding instrument that meets all requirements laid out by W. Va. Code and Legislative rule 38-02.

**New Informational Finding – Physical Inspection of DEP Offices**

The Legislative Auditor visited the DEP Charleston office on October 30<sup>th</sup> and 31<sup>st</sup> of 2019, to inspect the physical controls over bonds and to perform a reconciliation of physical bond information. During the inspection, DEP staff performed a walkthrough of the process for when a new bond is received and how a bond is handled while going through the permitting process. Since the previous audit in 2012, the DEP has established a system of bond tracking spreadsheets that detail when a bond is received, which bonds have been sent to the Attorney General for approval, and which bonds can be entered into ERIS and prepared for safekeeping. The Legislative Auditor determined that the control mechanisms established by DEP provides additional oversight of the permitting process to adequately mitigate the risk of misplaced bonds.

However, the inspection included reviewing 93 sampled permits from the *All Bond Report* and verifying the bond amount, bond type (CD, Surety, Check, Etc.), and any companies associated with the permit. Of the 93 permits reviewed, nine had discrepancies between the physical permit file and the information listed in the *All Bond Report*, which could not be verified by inspection or the DEP’s digital file database, *Application Xtender*<sup>6</sup>.

**Recommendation**

1. The Legislative Auditor recommends the DEP comply with W. Va. Code §5A-8-9, and maintain records containing adequate and proper documentation regarding the *All Bond Report* and physical permit files.

<sup>6</sup> *Application Xtender* is an online document management system used by the DEP to digitally file copies of documents.

## **Previous Finding – Unable to Determine Adequacy of Bond Amounts**

The 2012 audit reports stated that the DEP was unable to “*produce relevant, reliable reports from the ERIS database,*” and therefore, bond amounts were deemed as being incorrectly calculated. In response to this finding, the DEP stated that:

*The DEP disagrees with this finding. The analysis conducted by Legislative Post Audit does not indicate their understanding of the complexity of bonding for surface mine permits. As indicated by its footnote to this finding, Legislative Post Audit has simply multiplied the permit acreage listed in one field of the ERIS database by the bond rate listed in another field of the ERIS database and compared the result to the dollar amount listed in a third field in the ERIS database, ignoring information on different phases of bond release that had been granted, bond releases granted on permit increments, permit revisions or amendments, incremental bonding and the existence of multiple bonding instruments covering an individual permit.*

A current analysis of the ERIS-produced **All Bond Report** was conducted, and it was determined that bond amounts as reported have been accurately calculated. As the DEP response states, there are instances where permits are incrementally bonded, have gone through a phase release, or have several types of bonding instruments associated with the permit. In these occasions, simply calculating the acreage of the permit site and multiplying it by the per acre rate will cause a permit to appear to be under bonded, when it is not. The Legislative Auditor has reviewed bond amounts in the **All Bond Report** and the dollar amounts of bonds are accurate and no further action on this finding is necessary.

## **Previous Finding – Difference in DEP and State Treasurer’s Office Records**

In the previous Post Audit reports from 2012, the DEP was cited for having multiple discrepancies between the ERIS bond database [**All Bond Report**] and the State Treasurer’s Office (STO) safekeeping database. These issues ranged from:

- Bonds listed in the STO database were not listed in the DEP database,
- Nine bonds were in the DEP database that could not be found in the STO database, and
- The total dollar value of bonds held by the STO exceeded the value of bonds in the DEP database.

As a follow up to this finding, the Legislative Auditor randomly sampled 50 permits from the **All Bond Report** and reconciled these permits to the STO safekeeping database. Of the 50 permits tested, 49 were correctly located in the STO database. The DEP web-based Permit Search was utilized to follow up on the one permit that could not be located in the Treasurer’s files. Using this search, it was determined the permit had been released to the permit holder. The release took place in the timeframe between the running of the **All Bond Report**, which was August 20, 2019,

and the listing of the STO database, which was accessed as of September 26, 2019. As a result, the current analysis establishes a 100% accuracy rate for the reconciliation.

Responding to the issue of the total dollar value of bonds held by the STO and the total dollar values of bonds required to be held by the STO in the **All Bond Report**, the DEP stated:

*...there are instances where there will be differences between the ERIS current bond amount and the STO bond holding amount. This could occur when an applicant decides to over-bond an incremental permit. This is something the permit holder may do for convenience. Likewise, if a bond is in a form of the CD or LOC, and the permittee is in phase release, a difference between the two systems will occur. ERIS [All Bond Report] shows the current amount of the bond (what would be due to the State should the permittee forfeit the bond), and the STO shows the amount of the instrument being held. These amounts will not match until such time as the permittee submits a new bond...*

The Legislative Auditor has determined the DEP has corrected the prior discrepancies and no further action is necessary.

### **Previous Finding – Weaknesses Over Inspections and Inspection Reports**

The previous Post Audit reports cited the DEP for having significant weaknesses over the inspections of permit sites. Some of the weaknesses identified included:

- A lack of a uniform inspection form;
- Inspections not being performed on time;
- Partial inspections being performed when complete inspections were required;
- Reports were lacking required signatures; and
- Reports were missing or not assigned a report number.

Since the previous report, the DEP has implemented a web-based system that includes a standardized inspection template and allows inspectors to upload inspection reports remotely from the jobsite as inspections are completed. This has assisted the DEP in addressing some of the aforementioned issues including lost reports and improper filing.

As a follow-up of the previous finding, the Legislative Auditor sampled and reviewed 50 permits from the **All Bond Report** for the purpose of determining that inspections are performed in compliance with Legislative Rule 38CSR2, Section 20, which outlines inspection requirements for permit sites. Section 20 of the rule requires the DEP perform regular inspections of mine sites to monitor environmental effects and ensure compliance with Federal and State regulations. Section 20 outlines the requirements for the frequency of inspections as follows:

- All active underground and surface permits have an average of one partial inspection per month and one complete inspection per calendar quarter;
- Inactive underground and surface permits are required to have one complete inspection per calendar quarter; and
- Prospecting permits require inspections if the permit has been approved for coal removal in excess of 250 tons, otherwise an inspection on this type of permit is not statutorily required.

Upon completion of the Legislative Auditor's analysis, all 50 permits reviewed had the required amount and correct type of inspections performed. The Legislative Auditor believes the steps taken by the DEP to address this finding are sufficient and no further analysis is necessary.

## **Conclusion**

In conclusion, the Legislative Auditor commends the DEP on the steps taken to address previous recommendations. However, it is the opinion of the Legislative Auditor that weaknesses are still evident in some of the previous findings and further steps toward compliance with recommendations can be taken. A complete list of findings requiring further attention and the corresponding recommendations can be found below.

### **Previous Finding – Significant Weaknesses Over Self-Bonding**

1. The Legislative Auditor recommends the DEP seek to amend W.Va. Code §22-3-11 and remove the language allowing for the option of self-bonding from the statute in support of the DEP’s decision to discontinue the practice and to prevent it from being reinstated.

### **Previous Finding – Scope Limitation Over Revenues Received**

1. The Legislative Auditor recommends the DEP require coal companies to report tonnage of coal mined on a quarterly basis.
2. The Legislative Auditor recommends the DEP comply with W. Va. Code §5A-8-9(b) by performing periodic reconciliations of coal tonnage mined in the State to the Special Reclamation Taxes received from the State Tax Department.

### **Previous Finding – Weaknesses Over Maintenance & Monitoring of Bonds**

1. The Legislative Auditor recommends the DEP comply with W. Va. Code §12-2-2(a) and deposit cash and cash equivalents within one business day.
2. The Legislative Auditor recommends the DEP comply with W. Va. Code §5A-8-9 and maintain records containing adequate and proper documentation.

### **Previous Finding – Lack of Official Procedures**

1. The Legislative Auditor recommends the DEP review and update their *Permitting Handbook* to ensure that procedures are clear and comply with current W. Va. Code and Legislative Rules.
2. The Legislative Auditor recommends the DEP update all prep plants classified as “P-Permits” with the correct “O-Permit” coding or note in the *Permitting Handbook* that older prep plant permits are included in the *All Bond Report* as “P-Permits.”
3. The Legislative Auditor recommends the DEP resolve the conflicting sections of the handbook regarding verification with the Secretary of State by amending page 38 to stipulate that permit renewals are contingent on license verification with the Secretary of State.

4. The Legislative Auditor recommends the DEP complete the *Manual of the Office of Reclamation* and the *Reclamation Prioritization Procedures*.

**Previous Finding – Lack of Safeguarding of Certificates of Deposit and Letters of Credit**

1. The Legislative Auditor recommends the DEP replace the CD in question with a bonding instrument that meets all requirements laid out by W. Va. Code and Legislative rule 38-02.

**New Informational Finding – Physical Inspection of DEP Offices**

1. The Legislative Auditor recommends the DEP comply with W. Va. Code §5A-8-9, and maintain records containing adequate and proper documentation regarding the *All Bond Report* and Physical permit files.

Appendix A

**WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE**

*Post Audit Division*

1900 Kanawha Blvd. East, Room W-329  
Charleston, WV 25305-0610  
(304) 347-4880

**Justin Roblson**  
Director



December 5, 2019

Austin Caperton, Cabinet Secretary  
WV Department of Environmental Protection  
601 57<sup>th</sup> Street South East  
Charleston, WV 25304

Dear Cabinet Secretary Caperton:

This is to transmit a draft copy of the Post Audit Division's report on the Department of Environmental Protection – Division of Mining and Reclamation. This report is a follow-up to two previous Post Audit Division reports released in 2012. This report is scheduled to be presented during the Tuesday, December 17, 2019 interim meeting of the Post Audits Subcommittee, which is currently scheduled for 1:00 p.m. in the Senate Finance Committee Room (451-M). We recommend a representative from your agency be present for the meeting to respond to the report and answer any questions committee members may have during or after the meeting.

If you would like to schedule a meeting to discuss the report prior to its release, please contact Terri Stowers, Executive Assistant, at 304-347-4880 at your earliest convenience to schedule the meeting prior to the interim meeting date. In addition, if you would like to provide a response to the report to be included in the final draft, please provide your written response to us no later than noon on Friday, December 13, 2019 in order for it to be included in the final report. Thank you in advance for your cooperation, and feel free to contact me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin Roblson".

Justin Roblson

C. Jamie Chambers, Internal Auditor, WVDEP

## Appendix B

### **Objective, Scope, and Methodology**

The Post Audit Division within the Office of the Legislative Auditor conducted this review as authorized by Chapter 4, Article 2, Section 5 of the *West Virginia Code*, as amended.

#### **Objective**

The objective of this review is to determine the status of findings and recommendations from prior Post Audit reports concerning the Department of Environmental Protection's (DEP) Special Reclamation Funds.

#### **Scope**

The scope of this objective will be limited to the subject area (findings) from prior reports, and any company currently listed in the *All Bond Report* as a mining company or bonding institution. The time period will cover the history of the Special Reclamation Funds, state agency reports from 2012-2019, and *West Virginia Code* and rules including amendments, changes, and any other documentation from 2012-2019.

#### **Methodology**

Post Audit staff gathered and analyzed several sources of information and assessed the sufficiency and appropriateness of the information used as evidence. Testimonial evidence was gathered through correspondence with various agencies that oversee, collect, or maintain information. The purpose for testimonial evidence was to gain a better understanding or clarification of certain issues, to confirm the existence or non-existence of a condition, or to understand the respective agency's position on an issue. Such testimonial evidence was confirmed by either written statements or the receipt of corroborating or physical evidence.

Audit staff examined the records and responses to previous findings regarding the DEP Division of Mining and Reclamation and verified these records with updated information on file with the DEP, the Office of the Secretary of State, and *West Virginia Code*.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix C



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west virginia department of environmental protection

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601 57<sup>th</sup> Street, SE  
Charleston, WV 25304  
Office: 304-926-0440

Austin Caperton, Cabinet Secretary  
dep.wv.gov

December 9, 2019

Justin D. Robinson, Director  
Legislative Auditor's Office  
Post Audit Division  
1900 Kanawha Blvd. East  
Building 1, Room W-329  
Charleston, WV 25305-0610

Dear Mr. Robinson:

Thank you for providing the December 5, 2019 draft of the Post Audit Division's report on the Department of Environmental Protection – Division of Mining and Reclamation. We appreciate the time, effort and professionalism of the audit team conducting this audit.

As a state agency, we are committed to ensuring the funds entrusted to our agency are utilized in an efficient and effective manner. The DEP will evaluate the recommendations and implement corrective actions where appropriate.

The agency will have a representative present to attend and respond to questions posed by the Post Audit Subcommittee at the December 17 meeting. If you have additional comments or questions before hand, please feel free to contact me or Jamie Chambers, our Internal Auditor. Thank you for your time and efforts.

Sincerely,

Austin Caperton  
Cabinet Secretary

cc: Harold Ward, Deputy Cabinet Secretary  
Scott Mandirola, Deputy Cabinet Secretary  
Melinda Campbell, Chief Executive Officer  
Jason Wandling, General Counsel  
Jamie Lenore Chambers, Internal Auditor





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JOINT COMMITTEE ON GOVERNMENT AND FINANCE  
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR  
- POST AUDIT DIVISION -

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