

# ABANDONED MINE DRAINAGE ABATEMENT & TREATMENT PROGRAM

Program Guidelines | November 2019



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## Section I – Statement of Purpose

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Act 13 of 2012 (Act of February 14, 2012 (P.L. 87, No. 13) (58 Pa.C.S. §2315(a) and (a.1)(1)(i)) establishes the Marcellus Legacy Fund and allocates funds to the Commonwealth Financing Authority (the “Authority”) for abandoned mine drainage abatement and treatment. Abandoned Mine Drainage (AMD) is one of the largest sources of stream impairment in Pennsylvania. Billions of gallons of AMD impair over 5,500 miles of streams within the commonwealth. The overall goal of the AMD Abatement and Treatment Program (AMDATP) is to restore and maintain restored stream reaches impaired by AMD and, ultimately, to remove these streams from the Department of Environmental Protection’s (DEP’s) Impaired Waters list. This may be accomplished by reclamation of abandoned mine lands to abate AMD and by treating AMD, either passively or actively. Another important goal of this program is to encourage the use of treated AMD for deep well hydrologic fracturing for oil and gas development.

The primary focus of these grants is abatement of AMD and/or treatment of AMD through treatment facility system construction. Grants may also be awarded for treatment system repair, upgrade or operation and maintenance of existing passive and active treatment systems. Priority will be given to projects that treat AMD for use in oil and gas drilling operations.

## Section II – Eligibility

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### A. Eligible Applicants

Any of the following entities may apply for a grant under the Abandoned Mine Drainage Abatement and Treatment Program (AMDATP):

1. **Municipality** – Any county, city, borough, incorporated town, township or home rule municipality.
2. **Councils of Governments** – An entity organized by units of local government under an intergovernmental agreement, which provides cooperative planning, coordination and technical assistance to its member governments on issues of mutual concern that cross jurisdictional lines, and which does not act under the direction and control of any single member government.
3. **Authorized Organization** – An entity involved in research, restoration, rehabilitation, planning, acquisition, development, education or other activities, which furthers the protection, enhancement, conservation, preservation or enjoyment of this commonwealth's environmental, conservation, recreation or similar resources. The organization must be a tax-exempt institution under section 501(c) (3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c) (3)) and registered with the Bureau of Charitable Organizations or an educational institution involved in these authorized activities or a municipal authority.
4. **Institution of Higher Education** – An entity that is an accredited university, college, seminary college, community college or two-year college.
5. **Watershed Organization** – An entity recognized by the PA Department of Conservation and Natural Resources or the PA Department of Environmental Protection that was established to promote local watershed conservation efforts in an identified watershed.
6. **For Profit Businesses** – other than “producers” of natural gas as defined in Act 13.

## **B. Eligible Projects**

1. Abandoned Mine Land (AML) reclamation projects that will result in abatement and/or reduction of AMD.
2. Construction of a new AMD remediation project. This would include passive treatment systems but may also support the construction of select small scale active treatment systems justified as being cost effective and practical over the long term for the given situation.
3. Repair of existing AMD remediation project sites.
4. Operations and Maintenance costs associated with maintaining a currently operating AMD remediation project and the establishment of a trust fund to ensure ongoing maintenance is achieved.
5. Monitoring of water quality to track, or continue to track, nonpoint source (NPS) load reductions resulting from AMD remediation projects.
6. Projects that use AMD for oil and gas well development.
7. Projects that utilize new technology or research methods to study or design new treatment measures to abate and/or reduce AMD

## **C. Eligible Use of Funds**

Funds may be used by the applicant to pay for any of the following project costs:

1. Acquisition of land, rights-of-way and easements necessary to construct an eligible project.
2. Construction, improvement, expansion, repair, or rehabilitation of new or existing AMD remediation sites. Construction contingencies are limited to 5% of the actual construction costs.
3. For construction projects, no more than 10% of the grant award may be used for engineering and construction oversight, inspection and performance monitoring costs (final engineer drawings, along with permit approvals detailing the work planned to be done for the project).
4. In-stream monitoring to assess stream restoration status.
5. Operating and Maintenance costs for active or semi-active systems. In addition, up to 65% of the grant award may be used to establish trust funds for operations and maintenance. Trust funds may be established for a period of no more than 20 years.
6. Costs to secure land acquisition and right of ways.
7. Administrative costs of the applicant necessary to administer the grant. Administrative costs will include advertising, legal, and audit costs as well as documented staff expenses. Administrative costs shall not exceed 2% of the grant.

Ineligible costs include but are not limited to public relations, outreach, communications, lobbying, litigation, fees for securing other financing, interest on borrowed funds, application preparation fees and other costs incurred prior to the approval of grant funds.

## Section III – Program Requirements

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### A. Applicant Cost Share Requirements

A 15% cash match of the total project cost or cash equivalents for the appraised value of real estate is required. Eligible match contributions will be permitted for up to one year prior to the grant submittal deadline date through the life of the grant agreement as long as the eligible match expenditures are directly related to the project. If using the value of real estate as match, **an appraisal not older than 1 year will be required.** Match commitment documentation is required to be provided along with the application (see Appendix 1, Exhibit 4).

### B. Planning and Permit Requirements

All recipients of funding for construction projects where federal, state, or local planning or permit approvals are required, must state in the application that the project will secure the necessary planning and permit approvals for the project prior to beginning construction. The project applicant must document in the application that the project generally is in compliance with any applicable county or local comprehensive plans as evidenced by a letter from the appropriate local planning agency.

### C. Other Requirements

#### 1. Conflicts of Interest

An officer, director, or employee of an applicant who is a party to or who has a private interest in a project shall disclose the nature and extent of the interest to the governing body of the applicant and may not vote on any action of the applicant concerning the project, nor participate in the deliberations of the applicant concerning the project.

#### 2. Nondiscrimination

No assistance shall be awarded to an applicant under this program unless the applicant certifies that the applicant shall not discriminate against any employee or against any person seeking employment by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act, which prohibits discrimination on the basis of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, or in violation of any applicable federal laws. All contracts for work to be paid with grant funds must contain the commonwealth's official nondiscrimination clause.

#### 3. Project Records

The applicant must maintain full and accurate records with respect to the project and must ensure adequate control over related parties in the project. The Authority requires access to such records, as well as the ability to inspect all work, invoices, materials, and other relevant records at reasonable times and places. Upon request of the Authority, the applicant must furnish all data, reports, contracts, documents, and other information relevant to the project.

#### 4. Certification of Expenses

The applicant shall sign a payment request form certifying that the expenses were incurred and were in accordance with the scope of work approved by the CFA. In lieu of a formal project audit and prior to final closeout of the grant agreement, the applicant shall be required to submit copies of all canceled checks verifying the expenditure of the Abandoned Mine Drainage Abatement and Treatment Program proceeds. Bank statements may also be submitted if electronic payment of the expenditure occurred.

5. **Bidding Requirements**

Applicants must comply with all applicable federal, state, and local laws and regulations dealing with bidding and procurement.

6. **Pennsylvania Prevailing Wage Act**

All the construction work associated with the project may be subject to the Pennsylvania Prevailing Wage Act, as determined by the Pennsylvania Department of Labor and Industry.

7. **Final Report**

Successful applicants will be required to provide a final report at the end of implementing the grant project. This final report will outline the activities that took place during the project, what facilities were installed, total costs for the project, a completed Datashed form, and a description of the water quality improvements that resulted from the implementation of the project.

8. **Guideline Provisions**

These guideline provisions may be modified or waived by the Authority unless otherwise required by law.

9. **Maintenance of Easements**

An eligible applicant shall provide for or ensure maintenance of easements of rights-of-way, following project completion.

**D. Fees**

The Commonwealth Financing Authority charges a \$100 non-refundable application fee for Abandoned Mine Drainage Abatement and Treatment Program applications. The application fee must be paid electronically by credit or debit card or electronic check through our secure, third-party vendor. Payment of the application fee must be completed prior to the certification and submission of the Electronic Single Application. Detailed payment instructions will be provided on the Certification Tab of the Electronic Single Application once all required fields have been completed.

## **Section IV – Grants**

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1. Grants shall not exceed \$1,000,000.
2. To be eligible for reimbursement, project costs must be incurred within the time frame established by the grant agreement.

## Section V – Application Procedures

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1. To apply for funding, the applicant must submit the electronic on-line PA Department of Community and Economic Development Single Application for Assistance located at [www.esa.dced.state.pa.us](http://www.esa.dced.state.pa.us). Required supplemental information outlined in Appendix I of these guidelines must be attached electronically to the application as directed on the Addenda tab. For technical inquiries regarding the submission of the on-line application, contact the Customer Service Center at (800) 379-7448 or (717) 787-3405. Once submitted, please print one (1) copy of the application, including the supplemental information, and mail to:

PA Department of Community and Economic Development  
Office of Business Financing – CFA Programs Division  
AMD Abatement and Treatment Program  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

Please reference the application ID number on any documents sent with the signature page.

2. Applications will be accepted between February 1st and May 31st of each year. All applications and required supplemental information must be received by May 31st.

## Section VI – Application Evaluation

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All applications for financial assistance will be reviewed by the Authority in conjunction with the PA Department of Community and Economic Development and the PA Department of Environmental Protection to determine eligibility of the proposed project as well as the competitiveness of the proposal. Applications are evaluated on a competitive basis using the following criteria:

1. The number of municipalities that will potentially benefit from the project.
2. The number of homes, businesses, and/or industrial sites that will benefit from a project.
3. The demonstrated need for this project indicating the current water quality status of the receiving streams in the area, how the project area currently contributes to stream degradation, and the expected quantifiable improvements. For projects relating to repair or maintenance of an existing project site, indicate the expected stream degradation if the facility were to become ineffective.
4. The ability of the project to result in waters being taken out of the “impaired” status on Pennsylvania’s Integrated List of All Waters (formerly known as the 303(d) report).
5. The miles of stream expected to be fully or partially restored, or continued to remain restored, through the implementation of this proposed project.
6. Whether the project falls within any of the following: 1) PA DEP designated high priority watersheds identified as a priority for NPS remediation (as identified in the most current Watershed Protection Grants package, commonly referred to as the Growing Greener grant application package), 2) Qualified Hydrologic Units (as defined by the PA DEP Bureau of Conservation and Restoration), or 3) watersheds with a U.S. EPA approved federal Clean Water Act, Section 319 Watershed Implementation Plan, or 4) watersheds for which a Total Maximum Daily Loads (TMDL) and implementation plan has been developed.

7. The ability of the project to successfully address AMD abatement and treatment, and mine reclamation, with priority given to projects that recycle and treat AMD for oil and gas well development and those which provide water for use in oil and gas drilling operations.
8. The cost-effectiveness of the project. Eligible projects must show that a problem exists within a municipality and that the costs can be economically justified when compared to the benefits a project provides in NPS load reduction and stream restoration.
9. Whether the eligible applicant has secured required planning and permit approvals for the project from PA DEP, and other relevant jurisdictions.
10. Whether the project is consistent with any applicable county or local comprehensive plans.
11. Project readiness.

## **Section VII – Procedure for Accessing Funds**

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Upon approval of an application by the CFA, a grant agreement and commitment letter will be electronically issued to the applicant explaining the terms and conditions of the grant. The Grantee must provide the names, titles and e-mail addresses for two authorized individuals to receive and electronically sign the grant agreement. The grant agreement must be electronically signed and returned to the CFA within 45 days of the date of the commitment letter or the offer may be withdrawn by the CFA.

The applicant shall obtain the services of a professional engineer licensed in Pennsylvania who will certify to the Authority during construction that the expenses were incurred and were in accordance with the plans approved by the Authority. The Authority will release funds to the applicant at not less than 30-day intervals.

## **Section VIII – Program Inquiries**

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Program inquiries should be directed to:

PA Department of Community and Economic Development  
Office of Business Financing – CFA Programs Division  
AMD Abatement and Treatment Program  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

Telephone: (717) 787-6245  
Fax: (717) 772-3581  
E-mail: [ra-dcedsitedvpt@pa.gov](mailto:ra-dcedsitedvpt@pa.gov)

These guidelines can also be accessed online at [dced.pa.gov](http://dced.pa.gov)

## Appendix I – Supplemental Information

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When applying for a grant under this program, the applicant must complete the PA Department of Community and Economic Development Single Application for Assistance, and provide additional items that adequately address the application evaluation criteria in Section VI including:

### **Exhibit 1: Project Description**

A descriptive narrative, including the following information:

- a) the number of municipalities that will potentially benefit from the project; the number of homes, businesses, and/or industrial sites that will benefit from a project;
- b) the demonstrated need for this project indicating the current water quality status of the receiving streams in the area;
- c) how the project area currently contributes to stream degradation, and the expected quantifiable improvements;
- d) for projects relating to repair or maintenance of an existing project site, indicate the expected stream degradation if the facility were to become ineffective;
- e) the ability of the project to result in waters being taken out of the “impaired” status on Pennsylvania’s Integrated List of All Waters (formerly known as the 303(d) report);
- f) the miles of stream expected to be fully or partially restored, or continued to remain restored, through the implementation of this proposed project;
- g) the cost-effectiveness of the project.
- h) whether the project falls within any of the following:
  - 1) PA DEP designated high priority watersheds identified as a priority for NPS remediation (as identified in the most current Watershed Protection Grants package, commonly referred to as the Growing Greener grant application package),
  - 2) Qualified Hydrologic Units (as defined by the PA DEP Bureau of Conservation and Restoration), or
  - 3) watersheds with a U.S. EPA approved Federal Clean Water Act, Section 319 Watershed Implementation Plan, or
  - 4) watersheds for which a Total Maximum Daily Loads (TMDL) and implementation plan has been developed;

Eligible projects must show that a problem exists within a municipality and that the costs can be economically justified when compared to the benefits a project provides in NPS load reduction and stream restoration.

### **Exhibit 2: Cost Estimate**

A thorough and detailed estimate for the total project cost. The estimate must be prepared by an engineer or other qualified professional and should be accompanied where appropriate by copies of the signed bid/quotations, contractor estimates, sales agreements or other documentation that verify project cost estimates.

**Exhibit 3: Matching Funds Commitment**

Provide funding commitment letters from all other project funding sources (including equity commitments).

- Funding commitments or term sheets provided by lending institutions must include the term, rate, and collateral conditions, and must be signed and dated.
- Funding commitments of equity from the applicant or private third party must be signed and dated (indicating the amount of funds being committed) and be accompanied by documentation (such as audited financial statements) showing the ability to commit such funds.
- If using the value of real estate as match, an appraisal not older than 1 year will be required.

**Exhibit 4: Project Concept Design and Analysis**

A conceptual project design that includes a cost estimate determined by using AMD treatment as well as a detailed narrative of the proposed treatment/abatement method, why it is expected to be successful, a detailed analysis of O&M needs, an identification of who will be responsible for O&M, and an identification of who provided the analysis and what experience they have with AMD abatement and treatment projects.

**Exhibit 5: Color-Coded Map**

A copy of a map showing property boundaries and the various property easements (both temporary and permanent) required to construct the project.

**Exhibit 6: Landowner Consent Letter**

A letter from the landowner giving the applicant consent to entry.

**Exhibit 7: Permits**

List of all state, federal, and local planning and permit approvals that will need to be obtained.

**Exhibit 8: Planning Letter**

A letter from the local planning agency stating the project is consistent with county and local plans.

**Exhibit 9: Resolution**

For public sector applicants, provide a resolution duly adopted by the applicant's governing board formally requesting the grant, designating an official to execute all documents, describing briefly the project scope, and identifying the grant amount.

**Exhibit 10: Acquisition Consent Letter**

For Authorized Organizations who are using grant funds for acquisition, provide copies of written consent from the county and municipality in which the land is situated.

## Appendix II – Authorized Official Resolution

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Be it RESOLVED, that the \_\_\_\_\_ (Name of Applicant) of \_\_\_\_\_ (Name of County) hereby request an Abandoned Mine Drainage Abatement and Treatment Program (AMDATP) grant of \$ \_\_\_\_\_ from the Commonwealth Financing Authority of the Commonwealth of Pennsylvania to be used for \_\_\_\_\_.

Be it FURTHER RESOLVED, that the Applicant does hereby designate \_\_\_\_\_ (Name and Title) and \_\_\_\_\_ (Name and Title) as the official(s) to execute all documents and agreements between the \_\_\_\_\_ (Name of Applicant) and the Commonwealth Financing Authority to facilitate and assist in obtaining the requested grant.

I, \_\_\_\_\_, duly qualified Secretary of the \_\_\_\_\_ (Name of Applicant), \_\_\_\_\_ (Name of County) \_\_\_\_\_, PA, hereby certify that the forgoing is a true and correct copy of a Resolution duly adopted by a majority vote of the \_\_\_\_\_ (Governing Body) at a regular meeting held \_\_\_\_\_ (Date) and said Resolution has been recorded in the Minutes of the \_\_\_\_\_ (Applicant) and remains in effect as of this date.

IN WITNESS THEREOF, I affix my hand and attach the seal of the \_\_\_\_\_ (Applicant), this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
County

\_\_\_\_\_  
Secretary