

Abandoned Mine Drainage Abatement and Treatment

Program Guidelines | March 2014

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Section I – Statement of Purpose

Act 13 of 2012 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

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**
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 Department of Conservation and Natural Resources or the 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.
3. 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.
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

A. Applicant Cost Share Requirements

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

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. Match commitment documentation is required to be provided along with the application (see Appendix 1, Exhibit 3).

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 and project user certify to the Authority that they shall not discriminate against any employee or against any person seeking employment because of race, color, handicap, national origin, age or sex. 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. Proof of Notification

The applicant must provide proof that the county and host municipality or municipalities have been notified about the intended project.

5. Project Audit

For projects receiving grant funds of \$100,000 or more, an audit from a Certified Public Accountant (CPA) licensed in Pennsylvania listing all project costs must be submitted to the Authority, within 90 days after expiration of the grant. In the opinion section of the audit, a statement shall be made certifying that commonwealth funds were disbursed in accordance with the terms of the grant agreement.

6. Bidding Requirements

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

7. Pennsylvania Prevailing Wage Act

All of 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.

8. Final Report

Successful applicants will be required to provide a final report at the conclusion 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.

9. Guideline Provisions

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

D. Fees

The Commonwealth Financing Authority charges a \$100 non-refundable application fee for AMDATP applications. The application fee is due at the time of submission.

Section IV – Grants

1. Grants shall not exceed \$1,000,000.
2. Commencement of work prior to receiving Authority approval will result in the project being ineligible for funding consideration.
3. To be eligible for reimbursement, project costs must be incurred within the time frame established by the grant agreement.

Section V – Application Procedures

To apply for funding, the applicant must submit the electronic on-line Department of Community and Economic Development Single Application for Assistance located at www.esa.dced.state.pa.us. For inquiries on the application process, contact the Customer Service Center at (800) 379-7448 or (717) 787-3405. Once submitted, please print three (3) copies of the application, and send with the required supplemental information (please see Appendix I of these guidelines) via US Mail along with the signature page to:

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

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

Section VI – Application Evaluation

All applications for financial assistance will be reviewed by the Authority in conjunction with the Department of Community and Economic Development and the 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) 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 an 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 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

Following approval of an application by the Authority, a commitment letter will be issued by the Authority to the applicant explaining the terms and conditions of the grant. The commitment letter must be signed and returned to the Authority within 45 days of the date of the commitment letter or the offer may be withdrawn by the Authority.

Following the acceptance of an offer by the applicant, a grant agreement will be sent by the Authority to the applicant for execution. 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

Program inquiries should be directed to:

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

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

These guidelines can also be accessed online at www.newPA.com

Appendix I – Supplemental Information

When applying for a grant under this program, the applicant must complete the 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** A descriptive narrative, including the following information: a detailed project cost estimate prepared by an engineer or other qualified professional; 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; 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; 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); the miles of stream expected to be fully or partially restored, or continued to remain restored, through the implementation of this proposed project; whether the project falls within any of the following: 1) 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 an 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; 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.
- Exhibit 2** A statement as to the amount of grant funding requested, the amount of match that will be provided and by whom. Include cash match.
- Exhibit 3** Most recent financial statements of the applicant.
- Exhibit 4** Project funding match commitment letters (including cash) from all other project funding sources if applicable (including equity commitments). Letters addressing borrowed funds should include the term, rate, and collateral conditions and must be signed and dated.
- Exhibit 5** 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 6** Copies of land acquisition drawings showing property boundaries and the various property easements (both temporary and permanent) required to construct the project.
- Exhibit 7** A letter from the landowner giving the applicant consent to entry.
- Exhibit 8** List of all state, federal, and local planning and permit approvals that will need to be obtained.

- Exhibit 9** A letter from the local planning agency stating the project is consistent with county and local plans.
- Exhibit 10** 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 11** For all applicants, provide copies of notifications provided to county and municipal governing bodies advising them of the proposed project.
- Exhibit 12** 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

Be it RESOLVED, that the _____ (Name of Applicant) of _____ (Name of County) hereby request an Abandoned Mine Drainage Abatement and Treatment Program 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