

Appendix G: Fact Sheet on OSM's ACSI Funding

Note: For additional questions on this fact sheet, contact Jim Tait, AMD Program Coordinator, at (412) 937-2106.

Fact Sheet

Frequently Asked Questions About OSM's Appalachian Clean Streams Initiative (ACSI) Funding

Background: The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Abandoned Mine Reclamation Fund, a fund consisting of tonnage-based fees collected from coal producers. This Fund is used to mitigate the effects of past mining practices and protect people, property, and the environment from problems left after coal companies mined lands and left them unreclaimed prior to SMCRA. These problems include subsidence, landslides, mine fires, mine drainage, open shafts, highwalls and other hazards and environmentally degrading effects. Each year Congress appropriates monies from the Fund for abandoned mine land (AML) reclamation as outlined below.

The law requires that one half of the funds collected within a State or Indian tribal boundaries be reserved for use by that State or Indian tribe. These "state share" funds are made available to the States and Indian tribes through grants authorized by the Secretary of the Interior, acting through the Office of Surface Mining Reclamation and Enforcement (OSM). To receive a grant, a State or Indian tribe must have a reclamation plan approved by the Secretary. The other half of the funds collected is divided into "shares" for a variety of uses. For example, funds are used to handle emergency reclamation needs (an AML problem that must be addressed more quickly than could happen under the grants process), for reclamation in States that do not have approved reclamation plans, for expenses associated with operating the AML program, for additional grants to the States and Tribes for their reclamation efforts, and for other purposes authorized by Title IV of SMCRA.

SMCRA establishes a priority system which generally results in reclamation of the most serious eligible AML problems first. The top three priorities in this system are as follows:

- The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;
- ♦ The protection of public health, safety and general welfare from adverse effects of coal mining practices; and
- The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices.

Historically, AML-related water quality problems were generally deemed to be a Priority 3 problem, making it difficult for State and Tribes to fund a significant number of water restoration problems. The 1990 Amendments to SMCRA made specific mention of adverse economic impact upon a local community as a reason for giving priority to the reclamation of certain sites. OSM recognized the importance of acid mine drainage (AMD) problems and the potential impacts AMD has on local communities. Beginning in 1995, OSM encouraged States and Tribes to consider whether their AMD pollution sites could be considered "general welfare" problems that had an adverse economic impact upon a community. Such an interpretation gives these water problems a higher priority and allows them to compete more easily for limited AML dollars. The process has facilitated the funding of Appalachian Clean Streams Initiative projects. For fiscal year (FY) 1997, Congress authorized Clean Streams funding as a supplement to Title IV State grants, i.e., funds earmarked especially for stream clean up.

SMCRA also provides that up to 10 percent of the annual grants to States and Tribes may be set aside in State-managed accounts for use in cleaning up mine drainage problems. Monies deposited in an acid mine drainage set-aside fund may draw interest. The AMD set-aside fund also emphasizes a watershed-based approach to land reclamation and stream clean up. OSM has determined that funds in these accounts be State/Tribal funds and, therefore, can be used to match other Federal grants (e.g., Environmental Protection Agency, Clean Water Act Sec. 319 or Corps of Engineers, Water Resources Development Act Sec. 1165 grants) for stream cleanup activities.

In the FY 1997 appropriation, Congress authorized States and Tribes to use any of their AML grant funds to match other Federal dollars as long as the purpose is environmental restoration-related to treatment or abatement of acid mine drainage from eligible abandoned mines and if the project is consistent with SMCRA's purposes and priorities. This provides even greater flexibility to leverage Federal dollars to cooperate in stream restoration activities. [note: this measure is renewable annually as part of the AML appropriation].

Following are some frequently asked questions concerning the Clean Streams Initiative and project funding.

Question 1: What is the Clean Streams Initiative? What types of projects qualify for funding?

Answer 1: The Clean Streams Initiative (Clean Streams) is a government-public alliance whose goal is to clean up streams and rivers polluted by acid and toxic drainage from abandoned coal mines. This initiative encourages increased information exchange, multi-agency coordination, and the formation of partnerships among government, citizens, and corporations to bring innovative solutions to this national problem.

Basically, any abandoned mine land coal problem area eligible under Title IV of SMCRA, with water pollution related to mine drainage acidity, metals, or toxicity, may be a potential Clean Streams project. Because acid mine drainage problems are often very expensive to clean up and funds are extremely scarce, OSM and the States/Indian tribes are able to provide only limited funding for Clean Streams projects.

Question 2: How does a State/Indian tribe request Clean Streams funds?

Answer 2: After the annual Appropriations Act is signed by the President, OSM makes funding decisions for its various programs based on appropriation mandates and available funding. OSM Headquarters then prepares authorizations to the Regional Coordinating Centers/Field Offices to expend funds and award grants. Assuming that the Federal budget is passed by the beginning of the fiscal year on October 1, the AML grant funds (including Clean Streams funds) are usually available for distribution sometime after December 1 of each year.

For FY 1998, OSM and the States/Indian tribes are developing the process and guidelines that will be used for Clean Streams project submissions. Projects will be submitted to the applicable State/Indian tribe AML agency for funding consideration. After the Appropriation Act is signed, the States/Indian tribes will be notified about the amount of funds earmarked for their clean streams initiative projects. To request grant funds, a State/Indian tribe prepares an AML grant application. Procedures for applying for a grant are outlined in regulations (e.g., 30 CFR 886; 43 CFR 12) and OSM's Federal Assistance Manual. A State/Indian tribe may include its Clean Streams project funding request as a part of its total AML grant request or as a supplemental request to an existing grant. In either case, OSM approves a grant request after all requirements are met, and then a State/Indian tribe may draw AML funds on its established letter-of-credit to meet its program/project needs.

Question 3: Are there differences between the Clean Streams grant requirements and the standard requirements for Abandoned Mine Land projects?

Answer 3: Clean Streams grants may only be used for the reclamation of eligible abandoned sites with acid mine drainage problems from coal mines. Other than that, the Clean Streams grants are a subset of the overall AML grants program; thus, the same requirements apply. The proposed stream clean up project must be eligible to receive Title IV funds. The proposed site must be listed in the national Abandoned Mine Land Inventory System. The State/Indian tribe must follow the procedures found in the Federal Assistance Manual for receiving/administering AML funds and in its approved reclamation plan. This includes the requirements of the National Environmental Policy Act and other applicable Federal and State laws. Upon receiving and finding acceptable the required material from the State/Indian tribe, OSM issues an authorization to proceed.

Question 4: What is the acid mine drainage set aside? When can a State/Indian tribe set aside its AML funds?

Answer 4: The acid mine drainage 10 percent set aside was originally created to give States/Indian tribes more flexibility to address AMD problems. Funds to be set aside are awarded either as part of a State's/Indian tribes new AML grant or as a supplement to an existing grant. [Note: set-aside funds are considered State/Indian tribe money and, thus, earn interest and can be used as matching funds for other Federal dollars.]

Question 5: Can a State/Indian tribe set aside 10 percent of Clean Streams Initiative funding for future reclamation?

While there is no specific written prohibition, OSM encourages States/Indian tribes to use their entire Clean Streams Initiative supplemental funding for direct, construction-related purposes. By doing this, on-the-ground successes can be attained more quickly, which could help generate future funding support from multiple sources.

Question 6: If the State/Indian tribe receives Clean Streams Initiative grant funds, must it be spent within the year the funding was appropriated?

Answer 6: Clean Streams monies do not have to be spent within the fiscal year they are appropriated. However, OSM assumes that projects selected by States/Indian tribes are sufficiently far along in the planning process for construction to proceed quickly.

Question 7: Are there restrictions on utilizing Clean Streams Initiative grant money for overhead costs (e.g., planning, design, long-term monitoring equipment, drilling, office equipment, salaries, mileage, etc.)?

Answer 7: The annual grant comprises several direct and indirect cost components. OSM is encouraging all States/Indian tribes to use the entire Clean Streams supplemental grant for direct, construction-related purposes only, rather than on necessary administrative expenses. In FY 1997, OSM is working with the National Mined Land Reclamation Center (NMLRC) to provide some technical support during the pre-construction, construction, and post-construction phases of the Clean Streams Initiative projects identified for funding. If the States utilize the expertise of the NMLRC to the extent available, design and engineering-related expenses would be reduced and thus the funds devoted to direct construction work would be maximized.

Question 8: Can Clean Streams Initiative funds be used for maintenance?

Answer 8: Clean Streams funds generally are to be used for construction. Funds could be used for maintenance if a State/Indian tribe applies for and received Clean Streams funding for this purpose. Proposed maintenance projects would be ranked and selected according to the same selection criteria applicable to all Clean Streams Initiative projects.

Question 9: Can States/Indian tribes give Clean Streams Initiative funds to a private entity to set up a trust to cover maintenance?

Answer 9: The law does not allow AML funds to be set aside for future use except for approved State/Tribal set-aside programs. A State/Indian tribe could fund maintenance out of its approved set-aside fund or as an annual portion of new grant funds.

Question 10: Can States/Indian tribes utilize Clean Streams Initiative funding that was previously justified for one Clean Streams project on a different Clean Streams project site?

Answer 10: Yes, under certain circumstances and subject to the Clean Streams Initiative special grant condition and the State's/Indian tribe internal procedures. For example, if a State obtains funding for Clean Streams Project #1 from another source prior to OSM's appropriation then it would be appropriate for Project #2 to receive an Clean Streams dollars that remain after meeting Project #1's needs.

Question 11: If a Clean Streams Initiative project is funded in one fiscal year, but does not receive enough funding to be completed, will additional Clean Streams fund automatically follow in successive fiscal years?

Answer 11: The purpose of the supplemental Clean Streams Initiative funds is not to fund projects at 100 percent of anticipated reclamation costs. The Clean Streams funds are "challenge grants," providing seed money that can be used to attract additional financial support from other public and private sources. Partially funded projects will have to compete on their merits with other potential clean streams projects in a State/Indian tribe for any funds appropriated by Congress.

Question 12: How can funding be obtained for cleaning up a mine drainage problem in my community?

Answer 12: State Abandoned Mine Land reclamation programs identify, set priorities, and make funding decisions for all AML reclamation operations, including Clean Stream projects. In a few states, e.g., Tennessee, OSM directly administers a Federal Reclamation Program and has some limited funds for AML reclamation. The best way to get a stream considered for funding is to demonstrate to the State reclamation authority that you have a grassroots organization serious about cleaning up the problem. For example, watershed groups can demonstrate this commitment by showing that they have broad community support and have identified other potential funding partners (Federal or State agencies, foundations, local governments, private contributions, etc.) Contact your State AML agency for a complete list of its criteria and stream nomination procedures.

Question 13: I belong to watershed organizations and other private groups advocating clean streams projects. Will my organization ever be able to receive Clean Streams funding directly from OSM?

Answer 13: OSM is authorized to provide funding in the form of grants and cooperative agreements to eligible States and Indian tribes only. Each State operates its AML program under State laws, regulations, and policies governing expenditure of funds. So, the distribution of Clean Streams monies to a construction contractor or consultant, the U.S. Department of Agriculture's Natural Resources Conservation Service, a State agency, local government, an individual, a college, or any other bona fide entity that will perform some aspect of Clean Streams work is set by the State process. To determine whether your organization can receive money from the State, contact your State AML program agency.

Question 14: What must be done to assure the long-term viability of funding for Clean Streams projects?

Answer 14: OSM depends on the Congressional appropriation to provide its portion of Clean Streams funding. However, this was never intended to be more than seed money to generate additional interest and attract other sources of funding. OSM anticipates that AMD reclamation successes in 1997 will help generate future support from multiple sources. The best way to guarantee long-term viability is to establish diverse sources of funding.

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