

DRAFT TECHNICAL GUIDANCE: Government-Financed Construction Contracts

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION**

DOCUMENT NUMBER: 563-2000-001

TITLE: Government-Financed Construction Contracts

EFFECTIVE DATE: November 10, 2001 (Anticipated)

AUTHORITY: Surface Mining Conservation and Reclamation Act

POLICY:

The Department encourages abandoned mine land reclamation through the use of government-financed construction contracts involving incidental and necessary coal extraction, coal refuse removal and placement of excess spoil from permitted mines.

PURPOSE:

To define procedures for authorizing incidental and necessary coal extraction, coal refuse removal and utilization of excess spoil from an active mine for reclaiming abandoned mine lands under a government-financed construction contract.

APPLICABILITY:

This guidance applies to Department staff and all stakeholders in abandoned mine reclamation, including watershed improvement organizations, reclamation contractors and surface mine operators.

DISCLAIMER:

The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures will affect regulatory requirements.

The policies and procedures included herein are not an adjudication or a regulation. There is no intent on the part of the Department to give these rules that weight or deference. This document establishes the framework, within which the Department will exercise its administrative discretion in the future. The Department reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 24

LOCATION: Volume 12, Tab 41

TECHNICAL GUIDANCE:

BACKGROUND

The Pennsylvania Department of Environmental Protection (DEP) has administered the Title IV Abandoned Mine Lands (AML) Reclamation Program in Pennsylvania since July 31, 1982. One of the requirements for achieving primacy was federal approval of Pennsylvania's Abandoned Mine Reclamation Plan (Plan).

Since the approval of the Pennsylvania AML reclamation program, the Commonwealth has led the nation in identifying and addressing AML problems that affect public health, safety and the environment. Abandoned mine lands in Pennsylvania constitute a significant liability for the citizens of the Commonwealth while funds available through Title IV of the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) are limited. To supplement the limited funds and to better serve the citizens of the Commonwealth, DEP has carefully planned AML program expenditures and has encouraged abatement of AML problems through re-mining. Additionally, the Department continually searches for innovative approaches for reclaiming abandoned coal mining sites. Even with these efforts, large areas of abandoned mine lands will never be reclaimed. To address the shortfall in available funds and to maximize other available resources, the Department proposed AML Program Amendment #2. The amendment allows the Department to enter into contracts with mine operators, individuals and municipalities to reclaim AML that would otherwise remain unreclaimed.

Pennsylvania's long history of mining has left numerous abandoned mine lands. A number of these abandoned sites lack sufficient spoil to allow for proper reclamation, have postmining discharges or contain large amounts of coal refuse, all of which are very expensive to reclaim through traditional methods. Many of these sites provide opportunities for AML reclamation or water pollution abatement through a government-financed construction contract (GFCC) where a portion of the cost of reclamation or abatement can be offset by the sale of the coal and coal refuse that must be removed to complete the reclamation project.

PROCEDURES

A. Eligibility

Any eligible person may submit a proposal to the Department to enter into a GFCC for the purpose of reclaiming AML involving incidental and necessary coal or coal refuse removal or placing excess spoil from a permitted mine.

To be an “eligible person” the person must clear the Department’s standard compliance check and the federal compliance database known as the Applicant Violator System (AVS). Licensed operators, approved contractors and applicants approved by the Division of Monitoring and Compliance, Bureau of Mining and Reclamation through form 5600-FM-MR0001 are considered “eligible persons.” In addition, the person must be cleared through the Commonwealth’s contractor responsibility program. Liability insurance will be required as specified in the GFCC. (See paragraphs 14.a., b., c., d. and e. in the contract document.) An additional AVS check will be completed prior to the execution of the contract by the District Mining Manager.

A GFCC under the terms of this guidance is limited to those situations where a contractor proposes to:

- (1) Reclaim AML or abate mine drainage pollution where coal or coal refuse removal is incidental and necessary to complete the project. Reclamation should also include, where feasible, the installation of passive treatment systems and/or other measures to mitigate pre-existing discharges.
- (2) Place excess spoil from a permitted mine on AML lands. Placement details must be contained in the permitted mine’s approved reclamation plan.

Generally, contracts are for “whole site” reclamation that can be accomplished in a period of five years or less. Phased GFCC projects will be considered as long as the guidelines within parts A-C of this guidance are satisfied. Contractors interested in phased GFCC projects must notify the DMO during the pre-application process.

Coal refuse ash and biosolids may be used for site reclamation consistent with the requirements of the Department.

B. GFCC Pre-Application Process

Upon receipt of a GFCC pre-application, the Bureau of District Mining Operations (DMO) will prepare an OSM Title IV Eligibility Determination, an Environmental Assessment (EA) or a Categorical Exclusion Form (CEF), a Supplemental Determination Form (SDF) (see Appendix A) and obtain an environmental clearance from the U.S. Fish and Wildlife Service.

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The applicant will be required to obtain a clearance from the State Historic Preservation Office (SHPO).

The DMO shall then submit all required forms and clearances along with a copy of the complete GFCC application and three copies of the topographic quadrangle map of the project area with project descriptions and application face sheets to the Division of Mine Hazards, Bureau of Abandoned Mine Reclamation (BAMR–Harrisburg). Upon receipt of all required information for their review, BAMR will update OSM's Abandoned Mine Lands Inventory System (AMLIS) and will submit the environmental assessment package to OSM for their review and approval. The GFCC can be executed when OSM submits an Authorization to Proceed Letter for the project to the appropriate District Mining Office.

C. GFCC Application

A proposal for a GFCC will consist of a facesheet (see Appendix B) and the following applicable Modules:

- ? Extent of Proposal With Project Description Narrative
- ? Ownership and Control (Module 1)
- ? Environmental Resources and Operations Map (Module 2)
- ? Hydrology (Module 3)
- ? Operational Information (Module 4)
- ? Streams (Module 5)
- ? Refuse Ash (Module 25, if proposed)
- ? Biosolids (Module 27, if proposed)

(Note: If the contractor intends to use conventional treatment facilities for treatment of pit water or runoff, depict these facilities on Exhibit 2.2 and include in the operational information (Module 4). A \$250 application fee is required.)

Five copies of the proposal are to be submitted to the appropriate DMO. At the same time, the contractor must file a complete copy of the proposal with the County Conservation District Office in the county where the project is located. Upon receipt, the proposal is to be processed as follows:

- (1) The ownership/control information is to be entered into the Department's compliance database and a compliance check/AVS check run. Proposals will be reviewed regardless of the AVS compliance status unless the applicant is determined to be ineligible as a result of the DEP standard compliance check. The applicant will be notified in writing if he has outstanding violations or if he is determined to be ineligible to participate in the GFCC program.

The Chief, Construction Contracts Unit Purchasing Section, Division of Materials Management, Bureau of Abandoned Mine Reclamation is to be contacted by phone at 717-783-7994 and provided with Module 1 information so that the

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contractor can be checked through the Commonwealth's contractor responsibility program for contract violations or bond debarment. If a "bar" is found, the proposal is to be returned. If "no bar" is found, the proposal may be reviewed for completeness and, if accepted, given an ID number. The number should consist of the county code-year accepted-sequential number for that county. This number will eventually become the contract number upon execution of the contract. The same number is to be assigned to the Small Projects permit application, if submitted, with an "SP" prefix.

- (2) A newspaper notice is to be published by the DMO advertising receipt of the proposal. The notice must be published once a week for two consecutive weeks in a newspaper local to the project area (see Appendix C for sample of newspaper public notice).
- (3) The municipality and county in which the site is located are to be notified, by certified letter, that the Department received a proposal for a GFCC to reclaim AML that involves incidental and necessary removal of coal or coal refuse or use of excess spoil from a permitted mine to reclaim AML within the municipality (see Appendix D for sample of notice to municipality/county).
- (4) The following agencies are to be notified of the proposal (see Appendix E for examples of notification letters):
 - Regional Water Supply Manager
 - Bureau of Abandoned Mine Reclamation
 - County Conservation District
 - Pa. Fish and Boat Commission
 - Pa. Game Commission
 - Pa. Historical and Museum Commission - Notify during pre-application

NOTE: OSM's final approval of the GFCC program included a requirement that subjects GFCCs to the barrier provisions in Pa. SMCRA § 4.2(c). The DMO may grant variances to the distance requirements when satisfied that special circumstances warrant such exceptions. Any requests for variances should be included in the newspaper notice referenced in section C(2) of this guidance.

- (6) The contractor is responsible for securing any necessary highway occupancy permits. The contractor must provide proof that this has been done before the contract can be approved.
- (7) A GFCC cannot be initiated without the written consent of the surface owner for right of entry and consent of the mineral owner for extraction of the coal. A Consent of Landowner form must be completed and recorded with the property deed.

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- (8) When the proposal is determined to be acceptable, the DMO staff will schedule a meeting with the contractor and, if necessary, a staff attorney from the Bureau of Regulatory Counsel to review and assist in the execution of the standard contract document, bond form, and special authorization.
- (9) The performance bond is to be submitted on forms provided by the Department. The amount of the performance bond for projects involving incidental and necessary coal or coal refuse removal is based on the following table:

Project Area (Acres)	Bond Amount
0-5	\$20,000 + \$1,000 per acre
5.1-10	\$40,000 + \$1,000 per acre
10.1-20	\$80,000 + \$1,000 per acre
20.1-40	\$160,000 + \$1,000 per acre
40.1-80	\$320,000 + \$1,000 per acre
80+	to be determined by the Department based on the Department's cost to reclaim

For example, the bond for a project involving 7.35 acres would be \$40,000 + \$7,350 = \$47,350.

NOTE: Bonding for excess spoil placement on adjacent AML will be determined on a case-by-case basis. In addition, this activity may be authorized through a Consent Order and Agreement or a surface mining permit.

- (10) For those projects requiring a Small Projects Permit under Chapter 105, the permit is to be prepared for signatures and issuance with the executed contract.
- (11) When the contractor returns the contract document, bond forms and appropriate exhibits to the DMO, three (3) copies are to be forwarded to the General Law Division, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464 to review for form and legality and execution.
- (12) The District Mining Office executes the contract and notifies the following of its action (see Appendix F for sample notification letter):
- The host municipality and county by certified mail
 - Each agency that submitted comments
 - The Bureau of Abandoned Mine Reclamation
 - Appropriate state legislators.

The DMO must issue a press release of its action. The Regional Community Relations Coordinator or Mineral Resources Management Community Relations Coordinator will assist in preparation of this release (see Appendix G for sample

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press release notice). If a Small Projects Permit is issued with the executed contract, notice must be placed in the *Pennsylvania Bulletin*.

D. Inspections

The DMO must conduct monthly inspections of all GFCCs until the site is determined to be stabilized by vegetation. At that point, the DMO may conduct inspections on a quarterly basis until the terms of the contract are satisfied and the final bond is released (see Appendix H for inspection report form with instructions).

APPENDICES:

Appendix A GFCC Supplemental Determinations

Appendix B Face Sheet: Application

Appendix C Sample Newspaper Notice

Appendix D Sample Municipality/County Notice

Appendix E GFCC Notices

Appendix F Notification of Contract Approval

Appendix G Sample Press Release Notice

Appendix H GFCC Inspection Report

APPENDICES NOT INCLUDED HERE. THEY ARE AVAILABLE ON THE DEP WEBSITE.

**IMPACT ANALYSIS
FOR
DEP DOCUMENT NUMBER 563-2000-001
GOVERNMENT-FINANCED CONSTRUCTION CONTRACTS**

1. Guidance implements laws or regulations more stringent than Federal requirements:

The guidance implements a program which is consistent with Federal SMCRA Section 413(a) Miscellaneous Powers.

2. Prescriptive or technology specific guidance:

The technical guidance is prescriptive to the extent that it prescribes the procedure for securing a Government-Financed Construction Contract.

3. Affected regulated community:

Stakeholders include watershed improvement organizations, reclamation contractors, and surface mine operators.

4. Economic impact – regulated community:

The proposed revisions will have a moderately beneficial economic impact by facilitating incidental and necessary coal or coal refuse removal on larger reclamation projects than had previously been allowed.

5. Economic impact – DEP:

There will be no additional economic impact on the Department.

6. Compliance assistance:

The proposed revisions have no direct relationship to compliance assistance.

7. Pollution prevention:

The proposed revisions will be used in many cases to reduce and eliminate pollutional problems.

8. DEP reviews and approvals:

The proposed revisions will enhance the Department's efforts to restore AML to productive land uses.

9. Relationship to existing guidance:

The existing guidance is an expansion of the No Cost Contract Program for coal refuse pile reclamation.

10. Controversial aspects of guidance:

Phased GFCC projects are open to potential abuse if not properly managed; however, the safeguards built into the program include actual cost bonding and a binding contract. These should offset any concerns and ensure the success of the program.