

## CHAPTER 5-130

### SMALL OPERATOR ASSISTANCE PROGRAM (SOAP) GRANTS

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#### **5-130-00 What does this chapter do?**

This chapter explains our policies and procedures for the Small Operator Assistance Program (SOAP) grant awarded by us, the Office of Surface Mining Reclamation and Enforcement (OSM). A SOAP grant provides funds to you, a State or Tribe with an approved permanent coal regulatory program, to operate a program to help small coal mining operators get the scientific and technical information they need to apply to you for a permit to mine coal.

#### **5-130-10 What is the purpose of our SOAP grant?**

Section 507(c) of the Surface Mining Control and Reclamation Act (SMCRA) authorizes us to provide SOAP funding. You use SOAP funds to contract with qualified laboratories and consultants to collect, analyze, and interpret hydrologic and geologic data and produce technical reports for the small mine operators. Surface coal mining operators whose production at all their locations will not exceed 300,000 tons in a continual consecutive 12 month period would be eligible to receive SOAP assistance.

#### **5-130-20 What are the limits on SOAP funding?**

- A. No new SOAP funds have been appropriated since fiscal year 2005.
- B. If funds are available, the following guidelines apply to SOAP funding.
  - 1. You may be reimbursed for up to 100% of your allowable SOAP costs.
  - 2. If the available funds are insufficient to fully fund the grant requests of all the States, we will distribute the available funds based on need or on the proportion of each State's program activity to the total of all SOAP activity nationwide.

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3. If you do not receive sufficient funds to support all the mine operator requests, you must develop and use a formula to allocate the reduced funds among operators as required by 30 CFR 795.11(b).

### 5-130-30 How long is the SOAP grant performance period?

- A. SOAP operational grants have a three-year performance period. We selected the three-year period to allow you to start and complete projects within the same grant.
- B. You should not obligate a new project into a grant that does not have sufficient time remaining to complete the project.
- C. We will not normally extend the three-year grant performance period.

### 5-130-40 What activities can you support with SOAP funds?

- A. Costs must be allowable under Office of Management and Budget (OMB) regulations at 2 CFR 225 (formerly Circular A-87), *Cost Principles for State, Local, and Indian Tribal Governments*.
- B. Only some of the services necessary to meet permit requirements are allowable as SOAP costs.
- C. The following services may be allowable if the State regulatory authority (RA) requires them in order to apply for a permit.
  1. Determination of the Probable Hydrologic Consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas, including the following.
    - a. Gathering baseline ground water and surface water information.
      - (1) Sample collection, field measurements and laboratory analyses.
      - (2) Seasonal flow and quality analyses.
      - (3) Inventory of ground water wells and usage and surface water usage in the permit and adjacent areas by contacting local, State or Federal agencies and a representative portion of local residents or property' owners.
      - (4) Field reconnaissance of the site.
    - b. Well drilling for ground water baseline data on a case-by-case basis.
    - c. Engineering analyses and designs necessary to determine the PHC, including those for sediment ponds and diversion ditches, when approved by our awarding office.

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- d. Supplemental information if PHC indicates adverse impact to hydrologic balance on or off the proposed site or the presence of acid-forming or toxic-forming material that may result in contamination of surface or ground water supplies.
2. Preparation of impact estimates regarding the quality and quantity of surface and ground water under seasonal conditions using best professional judgment as accepted by the RA to prepare the following findings.
  - a. Whether adverse impacts may occur to the hydrologic balance.
  - b. Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground water supplies.
  - c. Whether the proposed operation may result in contamination, diminution or interruption of an underground or surface source of water in the proposed permit or adjacent area that is used for domestic, agricultural, industrial or other legitimate purpose. If findings indicate these outcomes are possible, then additional information on water availability and alternate water sources for existing pre-mining and approved post-mining land uses may be collected.
  - d. Impact of the proposed operation on the following.
    - (1) Sediment yield from the disturbed area.
    - (2) Acidity, total suspended and dissolved solids and other important water quality parameters of a local impact.
    - (3) Flooding or stream flow alteration.
    - (4) Ground water and surface water availability.
    - (5) Other characteristics as required by you as the Regulatory Authority.
3. Statement of results of test borings or core samplings for overburden geology.
  - a. Geologic description of permit and adjacent area, including the areal and structural geology and other parameters which influence reclamation, and the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground waters. This information shall be based on:
    - (1) Cross sections, maps and plans, as described in item c below.
    - (2) Geologic literature and practices.
    - (3) Information described in items b(2) and c below and any additional information required by you to protect the hydrologic balance or meet the performance standards.

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- b. Overburden drilling, sample collection and laboratory analyses from the permit area including either the stratum immediately below the lowest coal seam to be mined or any aquifer below that seam which may be adversely impacted by mining in order to prepare:
- (1) Logs showing lithologic characteristics including physical properties and thickness of each stratum, and location of ground water.
  - (2) Chemical analyses identifying those strata that may contain acid or toxic-forming and alkalinity-producing materials to determine their content, if found necessary by the RA.
  - (3) Chemical analyses of the coal seam for acid or toxic-forming materials including total sulfur and pyritic sulfur, if found necessary by the RA.

The RA may waive all or part of the sampling requirements based on the availability of equivalent information in a satisfactory form.

- c. Development of cross sections, maps, and plans showing:
- (1) Location and elevation of test borings.
  - (2) Locations and elevations of monitoring stations for baseline ground and surface water data, fish and wildlife and, if required, air quality data.
  - (3) Nature, depth and thickness of any coal seams to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined.
  - (4) All crop lines and strike and dip of coal to be mined within the permit area.
  - (5) Location and extent of known workings of active, inactive or abandoned underground mines in the permit and adjacent area including mine openings to the surface.
  - (6) Location and extent of subsurface water, if encountered, within proposed permit or adjacent area.
  - (7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains and irrigation ditches in the proposed permit and adjacent areas.
  - (8) Location and extent of existing or previously surface-mined areas within the proposed permit area.
  - (9) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments and water treatment and air pollution control facilities within the proposed permit area.
  - (10) Location and depth, if available, of gas and oil wells in the proposed permit area and water wells in the permit and adjacent area.

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These maps, plans and cross sections are developed from information already collected under other allowable SOAP services, information provided with the SOAP application, and information collected by the operator to meet regulatory provisions not covered by SOAP. SOAP pays only for the preparation of the maps and cross sections; it does not pay to collect this information except under other allowable SOAP services as discussed above.

4. Collection of archeological and historic information and preparation of related plans sufficient to describe and identify the following.
  - a. The nature of cultural, historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent area.
  - b. Important historic and archeological resources that may be eligible for listing in the National Register by collecting additional information, conducting field investigations or other appropriate analyses as required by the RA.
  - c. Publicly owned parks or any place listed on the National Register that may be adversely impacted. This action may include a plan describing the measures to be used to prevent adverse impacts and minimize adverse impacts where there are valid existing rights or where joint agency approval is required under the coordination provisions of 30 CFR 761.12(f).
5. Pre-blast surveys at the written request of a resident or owner of a dwelling or structure located within 1/2 mile of any part of the permit area.
6. Collection of site-specific fish and wildlife information when such information is necessary to address the respective species or habitats, and the permit or adjacent area is likely to include:
  - a. Listed or proposed endangered or threatened species of plants or animals or their critical habitats protected under the Endangered Species Act of 1973, as amended, or similar State statutes.
  - b. Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction or wintering areas.
  - c. Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

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7. Preparation of protection and enhancement plans for fish and wildlife habitat, including plans to minimize disturbances and adverse impacts. Plans must comply with the Endangered Species Act and should include protective or enhancement measures used during active mining and reclamation.
8. Information and plans *for* any other environmental value required by the RA.

### 5-130-50 What limitations are placed on administrative costs?

- A. Allowable SOAP administration costs are funded in the regulatory Administration and Enforcement (A&E) grant, except as noted below.
- B. Administrative costs (personnel, travel, supplies, notifications, and indirect costs) charged to the SOAP grant are strictly limited. You may only charge the costs for training and outreach as defined in this section. You must not exceed the maximum spending limits for training and outreach explained below. You must also meet each of the following three conditions.
  1. Costs must be necessary and reasonable to meet the objectives of SMCRA.
  2. You must specifically identify the costs in your grant application.
  3. You must document personnel costs with records of specific training, or outreach events. You may not charge them based on a budget estimate or proration.
- C. Training includes services that teach qualified small coal operators how to prepare permit applications and how to comply with the SMCRA regulatory program.
- D. Outreach includes activities to ensure that qualified small coal operators are aware of the assistance available to them from SOAP.
- E. Costs for training and outreach in a SOAP operational grant must be incidental to project costs. We limit training and outreach costs to 1% of the total estimated project costs in the grant application or \$2,000, whichever is greater. Supplies, such as educational pamphlets, brochures, posters, etc., may not exceed 5% of the costs allowed for training and outreach. The following examples illustrate these limits.

Example 1: If you have total project costs of \$500,000, your training and outreach costs cannot exceed \$5,000, bringing the total grant to \$505,000. Supplies cannot exceed \$250 of the \$5,000 total for training and outreach.

Example 2: If you have total project costs of \$100,000, training and outreach cannot exceed \$2,000, bringing the total grant to \$102,000. Supplies cannot exceed \$100 of the \$2,000 total for training and outreach.

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- F. Additional technical services specified by State law or regulation and in accord with 30 CFR 795 are allowed.

### **5-130-60 What costs are unallowable with SOAP funds?**

Federal funds appropriated for SOAP, as mandated by the narrow statutory authorization in SMCRA, are linked precisely to baseline information and reports needed to satisfy hydrologic and geologic permitting requirements for an approval of a permit application by that State RA. The following costs are unallowable under the SOAP operational grant.

- A. You may not charge expenses you incur to administer SOAP, except certain training, and outreach activities as described above. You must fund SOAP administrative costs out of your regulatory A&E grant.
- B. You may not charge costs of exploratory test drilling, core drilling or observation well drilling to define the extent of coal or for sampling overburden materials.
- C. You may not charge costs of collecting data from local or regional sites before you receive applications for assistance.
- D. You may not charge Interest penalties associated with late payments for contractual work with laboratories.

### **5-130-70 How long are you responsible to seek reimbursement from SOAP recipients who are no longer qualified for assistance?**

Operators may become ineligible for SOAP funds after you provide assistance if they subsequently exceed the SOAP tonnage limit for small operators. They may also become ineligible if they fail to apply for a permit within one year, or if they fail to mine after obtaining a permit. You must recover Federal funds which you spent for operators who are no longer qualified to receive SOAP assistance. Your liability period for recovering these funds is the term of the surface mining permit for which you provided assistance, or five years after you issued the permit, whichever is less.

### **5-130-80 How do you process reimbursed SOAP funds?**

Reimbursements are funds you previously expended from a SOAP operational grant which you recover. You must identify and collect funds previously expended for an operator if the operator subsequently exceeds the tonnage limit which makes them eligible for SOAP assistance. We define SOAP reimbursements as program income which you may spend using the addition option. This authorizes you to add all reimbursements you collect to the funds we awarded in an open SOAP grant and to expend them for the purposes of the SOAP.