

# STATEMENTS OF POLICY

## Title 25—ENVIRONMENTAL PROTECTION

### STATE CONSERVATION COMMISSION [25 PA. CODE CH. 83]

#### Dirt and Gravel Road Maintenance Program

The State Conservation Commission (Commission), under the authority contained in the Conservation District Law (3 P. S. §§ 849—864), and 75 Pa.C.S. § 9106 (relating to dirt and gravel road maintenance) adopts Subchapter F (relating to Dirt and Gravel Road Maintenance Program—statement of policy) to read as set forth in Annex A. This statement of policy implements the new dirt and gravel road maintenance provisions of 75 Pa.C.S. (relating to Vehicle Code). It allows the Commission to: 1) fund safe, efficient and environmentally sound maintenance of sections of dirt and gravel roads which have been identified as sources of dust and sediment pollution; and 2) establish a dedicated and earmarked funding mechanism that provides streamlined appropriation to county conservation districts and enables local officials to establish fiscal and environmental controls.

#### *Effective Date*

This statement of policy is effective upon publication in the *Pennsylvania Bulletin*.

#### *Contact Person*

For further information, contact Karl Brown, Executive Secretary, State Conservation Commission, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110, (717) 787-8821. Persons with a disability may use the AT&T Relay Services by calling (800) 654-9584 (TDD users) or (800) 654-5788 (voice users) and request that they relay the call. In support of the State Conservation Commission, the Department of Environmental Protection (Department) has made this statement of policy available electronically through the Department's Website (<http://www.dep.state.pa.us>).

#### *Statutory Authority*

This statement of policy is published by the Commission under the authority of sections 4(1), (5)(c) and (6) of the Conservation District Law (3 P. S. §§ 852(1), (5)(c) and (6)), which establishes the Commission and grants it the power to approve conservation district programs and allocate funds it deems appropriate, and under the authority of 75 Pa.C.S. § 9106 which requires the Commission to: 1) apportion available Dirt and Gravel Road Maintenance Program (Program) funds to local officials in a streamlined fashion; 2) adopt program performance standards; 3) provide for a system of audit; and 4) annually assess and report on the program.

#### *Background*

The Program is a new and innovative approach to controlling dust and sediment pollution. It is built on the premise that local officials are best suited to establish the fiscal and environmental controls necessary to address pollution that emanates from the Commonwealth's dirt and gravel roads. The Program stresses simplicity, education, pollution prevention and low-cost common sense solutions in the environmentally sound maintenance of this Commonwealth's 28,000 miles of dirt and gravel roads.

The Commission is charged under 75 Pa.C.S. § 9106 to administer the Program. The Program is implemented at

the local level by county conservation districts in cooperation with a Quality Assurance Board (QAB) created by each district.

The purpose of the Program is two-fold:

(1) First, to fund safe, efficient and environmentally sound maintenance of sections of dirt and gravel roads which have been identified as sources of dust and sediment pollution.

(2) Second, to establish a dedicated and earmarked funding mechanism that provides streamlined appropriation to county conservation districts and enables local officials to establish fiscal and environmental controls.

The enabling Legislation provides funding for the program through an annual appropriation of \$5 million from the Commonwealth's motor license fund. Of the funds available, \$1 million is annually distributed to the Department of Conservation and Natural Resources for the maintenance and mitigation of dust and sediment pollution that emanates from forestry roads. Funds in the amount of \$4 million are provided annually to the Commission and administered in a nonlapsing, nontransferable account restricted to maintenance and improvement of dirt and gravel roads.

The Commission must apportion program funds based on written criteria it develops to establish priorities based on preventing dust and sediment pollution. In the first fiscal year, top priority will be given to specific trouble spot locations already mapped by the Task Force on Dirt and Gravel Roads. Copies of the Task Force's 1997 Status Report are available from the Commission upon request. The apportionment criteria shall: 1) be based on verified need to correct pollution problems related to the road; 2) consider the total miles of dirt and gravel roads maintained by local municipalities or State agencies that are open to the public during any period of the year; 3) consider total miles of dirt and gravel roads within watersheds protected as of November 1996 as exceptional value or high quality waters of this Commonwealth; 4) consider allowances for the local costs of limestone aggregate; and 5) consider the commitments of grant applicants to comply with the established nonpollution requirements.

The Commission is required to: 1) adopt performance standards; 2) provide for a system of audit; 3) annually assess the Program and report to the Transportation Committee of the Senate and the House of Representatives on its acceptance and effectiveness. The Commission is entitled to withhold and expend the costs of the audit and report preparation up to the maximum limit of 2% of funds administered.

At the local level, apportioned funds are dispersed to county conservation districts for distribution to eligible project participants (local municipalities or State agencies) who maintain dirt and gravel roads that are open to the public during any period of the year. The conservation district must form a four member QAB to establish and administer the grant program. QAB members include: 1) a nonvoting chairperson appointed by the conservation district; 2) a local representative of the Natural Resource Conservation Service; 3) a local representative of the Fish and Boat Commission; and 4) a representative of the county conservation district. If circumstances require, the Chairperson may vote to decide a tie vote.

In administering the Program at the county level, QABs must do the following: 1) adopt written criteria to assure equal access for all eligible applicants; 2) ensure

that all required permits are obtained; 3) adopt procedures to assure a minimal amount of paperwork; 3) adopt written criteria to specify funding priorities; 4) adopt funding and budgeting procedures; 5) adopt incentives for training road managers and equipment operators; 6) adopt standards that prohibit use of materials or practices which are environmentally harmful; and 7) adopt site inspection requirements to verify completion of work.

A very unique aspect of the Program is the emphasis to minimize paperwork and to keep the project application process as simple as possible as dictated by 75 Pa.C.S. § 9106. For example, the grant application shall not exceed one page and require only minimal handwritten information such as location, problem being solved, basis of cost estimate, project work schedule, basis of successful completion and type and amount of pollution reduced. QABs are required by law to expedite the approval process by inserting, where appropriate, additional requirements that complete and qualify the grant for approval and which, when accepted by the applicant, become a binding obligation on the applicant.

This statement of policy was developed in cooperation with the Commission's Program QAB Advisory Committee. Members of this 15-person advisory committee have expertise in conservation district operations and management, as well as expertise in municipal government management and operations. Staff from the Commission, the Department, NRCs, Fish and Boat Commission and Penn State's Local Transportation Assistance Program (LTAP) provided assistance to the advisory committee in the development of this document. In addition, a number of the advisory committee members and staff advisors also serve on the original Dirt and Gravel Road Task Force which championed the development and implementation of this program. The draft statement of policy was circulated to conservation districts and other interested parties for review and comment. When possible and appropriate, suggested changes were incorporated into the final version of this document. This statement of policy was approved for publication by a formal action of the Commission at its May 7, 1998, meeting.

JAMES M. SEIF,  
*Chairperson*

*(Editor's Note: The Commission has amended 25 Pa. Code Chapter 83 (relating to State Conservation Commission), by adding a statement of policy in §§ 83.601—83.614 to read as set forth in Annex A.)*

**Fiscal Note:** 7-508. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**  
**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Subpart C. PROTECTION OF NATURAL RESOURCES**  
**ARTICLE I. LAND RESOURCES**  
**CHAPTER 83. STATE CONSERVATION COMMISSION**  
**Subchapter F. DIRT AND GRAVEL ROAD MAINTENANCE PROGRAM—STATEMENT OF POLICY**  
**GENERAL PROVISIONS**

Sec.  
83.601. Purpose.  
83.602. Definitions.

- 83.603. Cooperation.
- 83.604. Appointment criteria.
- 83.605. Payments by the Commission to districts.
- 83.606. QAB Advisory Committee responsibility.
- 83.607. District responsibility.
- 83.608. QAB responsibility.
- 83.609. Application by project participants.
- 83.610. Agreements.
- 83.611. Eligible expenses.
- 83.612. Project participant responsibilities.
- 83.613. Performance standards.
- 83.614. Payment of eligible expenses to project participants.

**§ 83.601. Purpose.**

It is the intention of the Commission to provide local governments and other eligible entities with funds to:

- (1) Fund safe, efficient and environmentally sound maintenance of sections of dirt and gravel roads which have been identified as sources of dust and sediment pollution.
- (2) Establish a dedicated and earmarked funding mechanism that provides streamlined apportionment to the county level and enables local officials to establish fiscal and environmental controls.
- (3) Provide training to road crews on techniques of dirt and gravel road maintenance which minimize negative environmental impact.
- (4) Conduct demonstrations of new and innovative techniques of dirt and gravel road maintenance to assist in training of road crews and educate the general public on this matter.

**§ 83.602. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The act of April 17, 1997 (P. L. 6, No. 3) which amended 75 Pa.C.S. (relating to the Vehicle Code) by adding 75 Pa.C.S. § 9106 (relating to dirt and gravel road maintenance).

*Commission*—The State Conservation Commission created by the Conservation District Law (3 P. S. §§ 849—864).

*Cooperating organization*—An organization approved by the Commission to assist in implementing the act.

*District*—A conservation district as defined in the Conservation District Law (3 P. S. §§ 847—864).

*Exceptional value*—A stream or watershed which is designated as an exceptional value water under Chapter 93 (relating to water quality standards).

*High quality*—A stream or watershed which is designated as a high quality water under Chapter 93.

*Performance standards*—The administrative policies or technical requirements, or both, adopted by the Commission for the implementation of the Program, including standards that prohibit the use of materials or practices which are environmentally harmful.

*Program*—The Dirt and Gravel Road Maintenance Program.

*Project area*—A designated area where critical sediment or dust, or both, pollution problems have been identified.

*Project participant*—A municipality or State agency eligible to participate in a Program project under the act.

*QAB—Quality Assurance Board*—The administrative board impaneled by a district to administer the Program locally, under 75 Pa.C.S. § 9106(e).

*QAB Advisory Committee*—The advisory committee established by the Commission to assist and advise the Commission on the implementation and administration of the Program by local QABs.

*Task Force on Dirt and Gravel Roads*—The public/private sector, multi-agency task force which provides program guidance to the Commission on technical standards and other aspects of the Program.

**§ 83.603. Cooperation.**

(a) The Commission will encourage cooperation between Commonwealth and Federal agencies and other organizations including the Task Force on Dirt and Gravel Roads which have either direct or indirect involvement in the program to achieve the objectives to reduce sediment or dust, or both, pollution originating from dirt and gravel roads.

(b) Agencies other than conservation districts will be encouraged to work closely with the appropriate conservation districts to promote local awareness of the projects and to effectuate the purposes of this program.

**§ 83.604. Apportionment criteria.**

(a) The Commission will apportion the amount of funds for each participating district under the program, based on the act and the criteria in subsection (c).

(b) The Commission may reallocate funds if an agreement cannot be fulfilled by the district, local government, contractor, and agency or cooperating organization.

(c) Apportionment criteria shall be based on the verified need to correct pollution problems related to the road and shall include consideration of the following:

(1) The total number of miles of dirt and gravel roads maintained by local municipalities or State agencies that are open to the public during any period of the year.

(2) The total miles of dirt and gravel roads within watersheds protected as of November 1996 as exceptional value or high quality waters of this Commonwealth.

(3) Allowances for the local costs of limestone aggregate.

(4) The commitments of grant applicants to comply with the nonpollution requirements established.

(5) Other factors determined by the Commission to be appropriate.

(d) In the first fiscal year, top priority shall be given to specific trouble spot locations already mapped by the Task Force on Dirt and Gravel Roads. The Commission may extend this priority beyond the first fiscal year.

(e) The Commission may allocate funds for training or road demonstration project, or both, to an aggregated budget managed by the Commission and may establish spending limits, consistent with the act, which includes the portion of the aggregated funds administered by the Commission.

(f) Public notice of the apportionment of funds for this Program will be published by the Commission in the *Pennsylvania Bulletin*.

**§ 83.605. Payments by the Commission to districts.**

(a) State funds apportioned to districts under this Program will be utilized solely for implementing a county level Program.

(b) The Commission will provide apportioned funds to a participating district through an agreement between the Commission and each participating district.

(c) The Commission may withhold funds until the Commission has received any overdue Program reports and audit statements as required by the Commission.

(d) For purposes of disbursing funds to participating conservation districts, the Commission may process an advanced working capital payment as follows:

(1) Upon the full execution of the grant agreement, the Commission may process up to 50% of the approved grant amount. Subsequent payments to the districts will be made on an "actual cash expended" basis to replenish the working capital advance.

(2) Advance payments by a conservation district to an eligible project participant under a project agreement shall be considered "actual cash expended" when the advance is paid by the conservation district.

(3) The district shall request the payments to replenish working capital in writing to the Commission in a format and time frame as prescribed by the Commission. The Commission may set a minimum payment level or time frequency, or both, for each request for payment.

(4) Notwithstanding the provisions of paragraph (1), (2) or (3), grant awards apportioned by the Commission to a conservation district and any advanced working capital payments made to conservation districts which will be \$25,000 or less for any 1 fiscal year may be advanced in total to the district.

**§ 83.606. QAB Advisory Committee responsibilities.**

The QAB Advisory Committee shall advise the Commission on the following:

(1) Allocation of funds from the State level to conservation districts.

(2) Development of Program and administrative procedures for QABs.

(3) Review of administrative and technical guidance for the Program.

(4) Other matters relating to the administration of this Program.

**§ 83.607. District responsibilities.**

(a) A district participating in the Program shall enter into an agreement with the Commission establishing the duties and responsibilities of each entity.

(b) The district shall receive and manage funds for the Program that have been apportioned by the Commission to the district.

(c) The district is responsible for all aspects of the management and administration of the Program within that county.

(d) A participating district shall conduct its Program consistent with the act, this subchapter and all other policies and regulations established by the Commission.

(e) The district shall appoint and impanel a four-member QAB to administer the Grant Program within the county, under the supervision and direction of the district board of directors. The QAB is to be comprised of a nonvoting chairperson appointed by the district and one local representative appointed by each of the following entities:

(1) The Federal Natural Resource Conservation Service.

(2) The Fish and Boat Commission.

(3) The district.

(f) The district shall develop a fair and open project selection process, consistent with Commission policy, that provides general program information to all eligible project participants and includes sign-up periods necessary to receive requests for road maintenance and repair work from eligible project participants. Special efforts will be made to enlist the cooperation of project participants with identified critical erosion or dust problems.

(g) Work completion by project participants will be subject to approval by the district under the performance standards adopted by the QAB.

(h) The district shall conduct an annual audit of Program expenditures in accordance with guidance provided by the Commission.

(i) The district shall submit the results of its annual audit to the Commission in a manner and time frame established by the Commission. The Commission reserves the right to audit all Program-related accounts and records to determine if funds were expended in accordance with Commission policies and the act.

(j) The district shall report Program accomplishments to the Commission on prescribed forms at times as specified by the Commission.

(k) The district shall maintain a separate accounting of funds received under the Program. The district shall maintain an itemized accounting of administrative costs claimed. Districts shall deposit funds in a Federally insured interest bearing account. Interest earnings from the account shall be applied only to the Program. The percent of apportioned funds utilized by the district for administration or training grants may not exceed those limits established by the Commission or the act, or both.

(l) Records shall be retained by districts for 3 years after completion of the work.

(m) The Commission reserves the right to examine all records and files maintained by the district related to the administration of the district's Program.

#### **§ 83.608. QAB responsibilities.**

(a) The QAB impaneled by a district shall establish and administer the Program for the district under the direction of the board of directors of the district and consistent with the policies adopted by the Commission.

(b) The QAB shall consider and adopt the following:

(1) Written criteria to assure equal access for all eligible applicants within each funding category.

(2) Procedures that assure a minimum amount of procedural paperwork.

(3) Written criteria to specify priorities.

(4) Funding categories to provide separate budgeting for road maintenance projects, road demonstration projects, training grants and administrative costs:

(i) QAB training grants may not exceed limits established by the Commission.

(ii) Administrative costs may not exceed 10%.

(5) Incentives for training road managers and equipment operators.

(6) Standards that prohibit use of materials or practices which are environmentally harmful.

(7) Site inspection requirements to verify completion of work.

(c) The QAB shall review applications and recommend project participants to be funded through the Program.

(d) The QAB shall consider and adopt procedures for the conduct of business by the Board, including the following:

(1) Meeting schedules and procedures for public notice of meetings.

(2) Recordkeeping and provisions to make minutes and records available to the public.

(3) Rules of conduct, including rules necessary to avoid conflicts of interest by members of the QAB.

#### **§ 83.609. Application by project participants.**

(a) Applications will be on a one-page form approved by the Commission. Applications should be submitted to the local conservation district at the times designated by the local district. Handwritten applications will be acceptable.

(b) An application shall be specific to one work location or one type of work and shall include the following:

(1) A short description of the problem being solved.

(2) The basis of the cost estimate.

(3) The proposed project work schedule.

(4) The basis for successful completion.

(5) The type of pollution to be reduced.

(6) Other items specified by the Commission.

(c) The QAB shall expedite the approval process by inserting additional requirements which become binding when accepted by the applicant.

#### **§ 83.610. Agreements.**

(a) An agreement is required between a district and project participants.

(b) The form of agreements between the district and project participants shall be approved by the Commission.

(c) Each agreement shall provide that the parties agree to comply with the conditions in this subchapter, the general contract conditions adopted by the Commission and the performance criteria adopted by the QAB of the district.

(d) The term of the agreement shall be sufficient to cover the duration of work implemented under the agreement.

#### **§ 83.611. Eligible expenses.**

(a) Eligible expenses include all Program and project costs associated with the administration and implementation of the Program, and the design, review, approval, implementation and maintenance of any project approved and funded by the Program. Eligible costs payable to project participants for Program projects and eligible costs payable to conservation districts for the overall administration and implementation of the Program will be determined by the Commission.

(b) Eligible expenses for project participants include the materials, services and labor required to design and implement a project, including, but not limited to, construction and maintenance supplies and materials, equipment rental and transportation charges, demurrage, reimbursement for use of participant owned equipment, salaries and benefits, automotive and hauling travel including room and board expenses, contracted specialized services, miscellaneous expenses, certain engineering and technical fees as determined by the Commission and other expenses necessary for the satisfactory completion of a project as determined by the Commission.

(c) Eligible expenses for participating conservation districts shall include eligible costs defined in subsections (a) and (b) for project participants, plus materials, services, labor, insurance/liability coverage and all other expenses necessary for the overall administration and implementation of the Program, the development and delivery of training/education programs, demonstration projects, resource assessment, site inspections and other expenses determined by the Commission to be necessary to administer and implement the Program.

**§ 83.612. Project participant responsibilities.**

(a) Project participants shall conduct the dirt and gravel road maintenance project in accordance with the project agreement with the district, the work plan for the project, the standards established by the QAB for the district, and the policies adopted by the Commission.

(b) Project participants may not use materials or practices that are environmentally harmful.

(c) Project participants shall apply for necessary local, State and Federal permits required for the project and provide the district with suitable documentation of permit issuance and requirements.

(d) Project participants shall report Program accomplishments to the district in a manner prescribed in the agreement.

(e) Claims for payment shall be submitted to the district in accordance with the schedule contained in the agreement. The claims shall be itemized and show that the utilization of funds are in accordance with the budget outlined in the agreement. The claims shall also include receipts, weigh slips or other appropriate supporting information, as determined by the Commission, to document actual expenditures by the project participant.

(f) The district and the Commission reserve the right to audit project related accounts and records to determine if funds were expended in conformance with the agreement.

(g) A project participant shall maintain a separate accounting of the funds received under the Program.

(h) Records shall be retained for 3 years following the last payment for the project.

(i) Upon the request of the district or the Commission, or both, project participants shall provide access to all records, files and documents related to Program projects.

**§ 83.613. Performance standards.**

(a) The Commission will establish, as it deems appropriate, performance standards for the implementation of the Program. These standards may include specific administrative policies or technical requirements, or both, adopted by the Commission for the implementation and

administration of the Program, including standards which prohibit the use of materials or practices which are environmentally harmful.

(b) Standards which prohibit the use of materials or practices which are environmentally harmful shall include the following minimum requirements:

(1) The commercial products used by project participants within a project area shall be used or installed, or both, according to manufacturer's recommendations and label requirements.

(2) Materials toxic to aquatic life, as defined by The Clean Streams Law (35 P. S. §§ 691.1—691.1001), may not be used where surface runoff may enter surface or ground waters.

(3) Compliance with applicable Federal, State and local laws, regulations and permit requirements.

**§ 83.614. Payment of eligible expenses to project participants.**

(a) Payments made by a district pursuant to a project agreement shall be solely for eligible expenses.

(b) Claims for payment shall be submitted by a project participant to the district in accordance with the schedule and terms contained in the approved project agreement. The claims shall be itemized and show that the utilization of funds are in accordance with the project cost summary contained in the approved project application and work plan. Claims shall include receipts, weigh slips, equipment use time sheets, employe time sheets or other appropriate supporting information to document actual expenditures by the project participants.

(c) For the purpose of dispersing funds to a project participant under a project agreement, the district may process an advanced working capital payment as follows:

(1) Upon the full execution of the project agreement, the district may process an advanced payment to a project participant of up to 50% of the approved project expenses.

(2) Subsequent payments to the project participant will be made on an actual cash expended basis.

(3) In all cases, the district shall withhold payment of at least 30% of the approved project expenses until the satisfactory completion of the project. Final payment for the project expenses shall be made only after a final inspection by the district determines that the work was performed consistent with the project application and the work plan, and to the satisfaction of the district.

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