

Date: August 26, 2002
Bulletin 2002-005

AUDITOR OF STATE BULLETIN

TO: CITY AUDITORS
COUNTY AUDITORS
TOWNSHIP CLERKS
VILLAGE CLERKS
INDEPENDENT PUBLIC ACCOUNTANTS

SUBJECT: PUBLIC WORKS COMMISSION CLEAN OHIO GRANTS

Amended Substitute House Bill No. 3, effective July 26, 2001, created the Clean Ohio Program (the Program). The Program provides grants for "Brownfield" environmental clean up projects and "Greenfield" open space and conservation preservation projects.

The Clean Ohio program has four sub-programs providing grants for specific purposes. Information concerning the State agency responsible for the grants, the purpose, applications, and the approval process can be obtained from the following:

Clean Ohio Fund grants now consist of the following 4 grants, based on the website. Information for all 4 grants are at <https://development.ohio.gov/CleanOhio/>.

- Brownfield Revitalization
- Farmland Preservation
- Green Space Conservation
- Recreation Trails

- ~~Clean Ohio Revitalization Grants, Ohio Department of Development
<http://www.odod.state.oh.us/UD/CleanOhioFund.htm>~~
- ~~Clean Ohio Conservation Grants, Ohio Public Works Commission
http://www.pwc.state.oh.us/clean_ohio.htm~~
- ~~Clean Ohio Agricultural Easement Grants, Ohio Department of Agriculture
<http://www.state.oh.us/agr/CleanOhioFund/CleanOhioFundIndex.htm>~~
- ~~Clean Ohio Trail Grants, Department of Natural Resources
<http://www.dnr.state.oh.us/cleanohiofund/admin.htm>~~

The brownfields and open space programs require significant involvement of the district public works integrating committees, natural resource assistance councils and the Ohio Public Works Commission (OPWC). As part of that program, the OPWC will administer the Clean Ohio Conservation Program, which provides grants for qualified land acquisitions and site improvements.

Establishment of Funds

All local governments participating in any Clean Ohio grants must, for each project awarded, establish a capital projects fund to account for both the grant monies and local matching funds. It is not necessary to obtain authorization from the Auditor of State to establish the fund(s) because the authority exists under ~~Section 5705.09~~ of the Ohio Revised Code. The purpose of the fund is to account for the related revenues and expenditures of the grant program.

Date: August 26, 2002
Bulletin 2002-005

AUDITOR OF STATE BULLETIN

The appropriate fund numbers are:	County	Assigned by County
	City	Assigned by City
	Township	21
	Township UAN	4901-4999
	Village	D3
	Village UAN	4901-4999

Local Government Matching Requirement

The local government's matching requirement may be satisfied with note or bond proceeds, loans, other grants designated for the same purpose, monies available from other funds of the local, government, or labor, materials and equipment that will be provided to the project by the local government. The local match may also include in-kind contributions or the donation of equipment, land, easements, labor, or materials necessary to complete the project.

In a case where monies available from other funds (i.e., general fund) will be used to meet matching requirements, the local government shall transfer these monies, providing statutory authority exists for the transfer of the monies, to the capital projects fund. If the statutory authority does not exist for the transfer of monies to the capital projects fund, then the local government shall appropriate and expend its matching requirement directly from the other fund if lawfully permitted. It is the local government's responsibility to establish the appropriate account codes to segregate these expenditures from the other expenditures of the fund. Segregation of these expenditures is essential in demonstrating compliance with the matching requirement.

In a case where the local government has approval to contribute labor, materials and equipment, or engineering costs to meet matching requirements, all efforts should be made to record the costs in the project fund. Labor costs should be supported by time sheets or other appropriate documentation. This situation may require interfund billings.

Certificate of Estimated Resources and Appropriations

The local government shall include in its official or amended certificate of estimated resources the amount of Clean Ohio grant anticipated to be received into the project fund during the fiscal year along with its matching requirements, if appropriate. The fund appropriations should include the amount necessary to meet the obligations to be incurred during the fiscal year. If the project is not expected to be completed in the current year, the remainder of the project must be appropriated immediately in the subsequent year.

Date: August 26, 2002
Bulletin 2002-005

AUDITOR OF STATE BULLETIN

In situations when the grant will be received after the expenditures have been incurred, it is possible that the local government will have appropriated an amount in one fiscal year that is in excess of the amount reflected as available on the amended certificate of estimated resources. This situation will not constitute a noncompliance citation during an audit. This approach is only acceptable when the eventual receipt of the resources to pay for the full amount of the contract is certain, such as when the money will be coming from the State or Federal government based on an approved grant.

Recording of Clean Ohio Grants

OPWC will make payments to the contractor(s) for its share based on invoices submitted by the fiscal officer or to the local government as a reimbursement. For payments made to the contractor, the OPWC will notify the fiscal officer of the amount disbursed. Upon receipt of this notice, each local government shall record a receipt and expenditure to the capital projects fund equal to the amount disbursed by the OPWC.

In the case of a land purchase, OPWC may disburse payment to a title agent based upon an escrow agreement or as a reimbursement to the local government. Grant proceeds disbursed to a title agent shall record a receipt and expenditure to the capital projects fund equal to the amount disbursed by the OPWC.

Clean Ohio Program - Long Term Ownership and Control Requirements

Land, or rights in land acquired with funds from the Clean Ohio Conservation grants shall remain in the ownership and control of the grant recipient in perpetuity. Any future transfer of ownership and control must be approved in writing by the Director of the Ohio Public Works Commission (the Director). Grant recipients shall, at the time of transfer of land or rights to land to the grantee, record deed restrictions or conservation easements which are commensurate with the nature and purpose of the lands, or interests in lands, acquired as stated in the respective project application. Proposed deed restrictions or conservation easements shall be submitted to the Director for written approval prior to the disbursement of Clean Ohio Conservation Fund monies for the proposed acquisition.

Recorded restrictions and conservation easements shall be perpetual and may not be modified or extinguished without the advance written approval of the Director. A copy of the recorded deed restrictions, or conservation easement, shall be provided to the Director within thirty (30) days of their recording. Failure to record deed restrictions or conservation easements approved by the Director within the 30-day time period stated above shall require the grantee to make immediate repayment of all Clean Ohio Conservation Fund monies disbursed for the project. Any future modification or breach of the recorded deed restrictions or conservation easements that occur without the

Date: August 26, 2002
Bulletin 2002-005

AUDITOR OF STATE BULLETIN

advanced written approval of the Director shall result in the imposition of a penalty on the entity responsible for the breach equal to twice the Clean Ohio Conservation Fund monies disbursed for the project, plus compounded interest at six percent (6%) per annum or twice the appraised value of the property or easement, whichever is greater.

In accepting a grant from the Clean Ohio Conservation Fund, the grantee agrees to the conditions stated above as well as the full enforcement authority of the Director of the Ohio Public Works Commission.

Retainage Requirements

Section 153.13 of the Revised Code establishes that for contracts of \$15,000 or greater, the amount of the retainage is to be withheld from the first 50 percent of the payments made. When the invoice which would put the project at or over 50 percent completed is processed, the total contracted retainage amount which has been retained (8 percent from the first 50 percent of payments) should be placed in escrow (in a separate bank account or otherwise in conjunction with the provisions of Section 153.63 of the Revised Code.) Local governments may be required to meet the escrow requirements from the matching funds for the project.

Please note that in regard to the fund to be used, the capital projects fund can and should account for payments and continue to hold the retainage. There is no need for a separate fund. Rather, in the case of complying with Section 153.63 of the Revised Code, the emphasis should be in meeting the escrow requirements.

As an example, if we assume the capital projects fund is being used and a \$100,000 contract exists with a 4 percent retainage, (8 percent of the payments made up to the 50 percent point as described in Sections 153.12 and 153.14 of the Revised Code), one could track through the escrow as follows:

Invoice Received and Payment Requested		Amount Paid	Amount Retained No Escrow	Amount in Escrow
#1	\$20,000	\$18,400	\$1,600	-0-
2	20,000	18,400	1,600	-0-
3*	20,000	19,200	-0-	\$4,000
4	20,000	20,000	-0-	4,000
5	20,000	20,000	-0-	4,000

* At the third payment, the 50 percent completed point was reached and the \$3,200 retained from the first 2 payments, plus the \$800 from the third payment was placed in escrow. Please note that the total retainage of \$4,000 was reached from the first 50 percent of the payments. At the 50 percent completed point, all retainage was placed in escrow.

Date: August 26, 2002
Bulletin 2002-005

AUDITOR OF STATE BULLETIN

Turning our attention to the fund involved, we find the following:

Invoice Received and Payment Requested	Fund Balance	Balance in Regular Bank Account	Balance in Escrow Account
Beginning Balance	\$100,000	\$100,000	-0-
#1 \$20,000	81,600	81,600	-0-
2 20,000	63,200	63,200	-0-
3** 20,000	44,000	40,000	\$4,000
4 20,000	24,000	20,000	4,000
5 20,000	4,000	-0-	4,000
Escrow is paid	-0-	-0-	-0-

** The 50 percent completed point is reached. The governmental entity should obtain a monthly bank statement or other monthly accounting of the escrowed money from the escrow agent to use as a reconciliation item in the monthly cash reconciliation.

Questions concerning this bulletin may be addressed to the Local Government Services Division at ~~(800) 345-2519~~.

 (614)466-4717