



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 19 2022

Acting Secretary Ramez Ziadeah
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, Pennsylvania 17101

Dear Acting Secretary Ziadeh:

I am writing today regarding the Commonwealth of Pennsylvania's implementation of the state orphaned well program as created in the Bipartisan Infrastructure Law (the law).

I want to express my appreciation for the Commonwealth's participation in the development of the law's legacy pollution programs, which include the orphaned well and abandoned mine land programs. The Pennsylvania Department of Environmental Protection (PA DEP) was a gracious host when Secretary Haaland visited the legacy pollution sites your agency manages and a constructive partner during the development of program guidance. Pennsylvanians made clear during the public comment periods for these programs their desire to ensure the Commonwealth's role in putting Americans to work with this once-in-a-generation opportunity to engage in legacy pollution cleanup, all with the tremendous benefit these programs can have for the economy and environment of the Commonwealth.

October 1 is the anticipated effective date of Fiscal Year 2022 orphaned well Initial Grant state program funds. Pennsylvania is eligible for \$25,000,000 in initial state grants and \$79,178,000 in Phase One formula grants, for a total of \$104,178,000 in Fiscal Year 2022 funding.

As the Department indicated in its guidance on the Initial Grant component of the orphaned well program, the law imposes several substantive requirements governing recipients' use of Bipartisan Infrastructure Law grant funds, including compliance with the Build America, Buy America Act and the Davis-Bacon Act. These requirements in the law are designed to make a positive economic impact for working families, as well as for our country.

The consistent implementation of these provisions across states is vital to meeting Congress' goals and to complying with the law's text. The Department is fully committed to ensuring proper implementation throughout grant awards, monitoring, and closeout phases of the law's life.

The Department of the Interior has recently become aware of legislation enacted by the Commonwealth (House Bill 2644) that, depending on its implementation and the construction of state law, may be inconsistent with the Bipartisan Infrastructure Law. In particular, a state law is

inconsistent with the Bipartisan Infrastructure Law insofar as it is interpreted as precluding state compliance with the Davis-Bacon Act or the Build America, Buy American Act. Section 2822 of House Bill 2644 appears to govern Pennsylvania's receipt and use of certain funds provided by the Orphaned Well Program, and our initial analysis suggests it may restrict the Commonwealth's capacity to comply with the aforementioned Congressionally-imposed statutory requirements in the Bipartisan Infrastructure Law when awarding Oil and Gas Well Plugging Grant Program grants.

Given the importance of the program to both the Commonwealth and the Department, it is our goal to make you aware of these concerns so that you are able to take appropriate action to ensure that Pennsylvania is fully compliant with requirements for orphaned well plugging and related activities in Fiscal Year 2022 and beyond.

Leadership at the Department shares Pennsylvanians' desire to use these legacy pollution cleanup programs to improve air and water quality for communities, while creating good-paying jobs. We look forward to working with you further on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Winnie Stachelberg', with a long horizontal flourish extending to the right.

Winnie Stachelberg
Infrastructure Coordinator

Cc: Gov. Tom Wolf
Pennsylvania State Senate President John Fetterman
Pennsylvania State Senate President Pro Tempore Jake Corman
Pennsylvania State Senate Majority Leader Kim Ward
Pennsylvania State Senate Minority Leader Jay Costa
Pennsylvania House of Representatives Speaker of the House Bryan Cutler
Pennsylvania House of Representatives Speaker Pro Tempore John Lawrence
Pennsylvania House of Representatives Majority Leader Kerry Benninghoff
Pennsylvania House of Representatives Minority Leader Joanna McClinton