



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 26 2012

THE INSPECTOR GENERAL

MEMORANDUM

SUBJECT: Evaluation of Region 3's Response to Resolve OIG Report No. 12-R-0321, *American Recovery and Reinvestment Act Site Visit of the Botanic Garden of Western Pennsylvania*, March 8, 2012

TO: James Newsom
Assistant Regional Administrator for Policy and Management, Region 3

We have received your response, dated August 3, 2012, which provided additional information as requested in our memorandum of July 20, 2012. We appreciate that all information requested has been provided or an explanation given for missing information. Based on our review of the additional documentation, along with a site visit of current activities to the Botanic Garden, we have reached a conclusion relating to your response. We will not contest Region 3's disagreement with our recommendations; however, we would like to address some of the statements made in your response.

Region 3's Response to Final Report Recommendation 1: The region disagreed with the recommendation to recover from the Pennsylvania Infrastructure Investment Authority (Pennvest) all Recovery Act funds awarded to the Botanic Garden of Western Pennsylvania totaling \$1,368,894. The region's position is based upon the following:

- The project met the eligibility criteria for the Clean Water State Revolving Fund (CWSRF) by addressing an existing water quality problem.
- The Recovery Act application, the Funding Agreement, and the contract all mention future irrigation needs. From the region's perspective, reference to "future irrigation needs" and "eventually" being turned into irrigation ponds imply that the ponds' use for irrigation is not immediate. The project is expected to be completed by June 2013. To date:
 - A culvert, two permanent ponds, and one temporary pond have been constructed.
 - Although the project is not yet completely constructed, one pond is being used for the irrigation of a tree nursery at the site.
 - A third permanent pond will be constructed, the temporary pond will be made permanent, and underground storage will be installed.

- In response to the OIG report, the region has monitored the project and will continue to closely do so as it proceeds to construction completion.
- The region has requested that Pennvest conduct an interim audit of the costs incurred to date, and that the Pennsylvania Department of Environmental Protection (PADEP) conduct a site inspection.
- The region will continue to obtain quarterly status reports from Pennvest until the project construction is complete.

OIG Comment: We will not contest the region's position to not implement the recommendation to recover from Pennvest all Recovery Act funds awarded to the Botanic Garden of Western Pennsylvania totaling \$1,368,894. Our position is based on the assurance that the project will be used for its intended purpose, and is contingent upon the region tracking the progress of the Botanic Garden to complete the project as scheduled and that the ponds will be used for irrigation of a garden. To ensure that the project is completed in a timely manner, we request that the region track the items listed in appendix A of this letter in the Management Audit Tracking System (MATS). Should the Botanic Garden fail to meet its targets and the project not be used for irrigation of a garden, the region should consider the recovery of all federal funds expended on the project.

Region 3's Response to Final Report Recommendation 2: The region disagreed with the recommendation based on its comments on recommendation 1.

OIG Comment: We will not contest the region's decision to not prevent the continued use of CWSRF funding for this project.

Region 3's Response to Final Report Recommendation 3: The Region disagreed with the recommendation to reduce the project costs to be funded by the Recovery Act by the amount of program income earned by the Botanic Garden from mining operations and recover the amount earned in program income. The region's position is based on the following:

- The Funding Agreement between Pennvest and the Botanic Garden is a loan, not a grant and therefore the OMB Circular does not apply.
- Pennvest stated that it had information technology limitations associated with new Recovery Act requirements and provided several documents demonstrating the state's intent for the funding to be a loan with principal forgiveness.
- The OIG report refers to Addendum Item 19 of the Funding Agreement. The addendum states that the contractor shall comply with all **applicable** [emphasis added] laws, regulations, and program guidance. A non-exclusive list of statutes, regulations, and/or guidance commonly applicable to federal funds is provided. Item 19 lists 10 different statutes, one of which is OMB Circular A-110 (2 CFR Part 215) which includes program

- regulations applicable where they are not applicable under the plain language of the federal grant regulations.

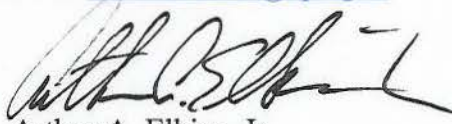
OIG Comment: We will not contest the region's position to not apply the OMB Circular to the funding agreement with the Botanic Garden of Western Pennsylvania. The region and Pennvest believe that since the funding agreement is a loan, the OMB Circulars do not apply. Our recommendation to reduce the project costs was based on the inclusion in the funding agreement addendum of various statutes, including OMB Circular A-110 (2 CFR Part 215). As we stated in our final report,

Regardless of whether the subject award is considered a grant or a loan, the signed funding agreement includes an addendum stating that all contractors must comply with the relevant regulations.

Although the region and Pennvest are entitled to their interpretation and enforcement of the funding document, the inclusion of the addendum causes confusion as to whether the various federal statutes apply.

Also, the region states in attachment 3 that the audit report alleged program income was received. The audit report stated that the Botanic Garden *could* realize an estimated profit of \$1.2 million. The recommendation was made in the event that the Botanic Garden received excess funds. Whether excess funds are received will not be known until the completion of the project.

Based upon our comments above, we will close the report from our tracking system. If you have any questions regarding this memorandum, please contact Melissa Heist, Assistant Inspector General for Audit, at (202) 566-0899 or heist.melissa@epa.gov; or Robert Adachi, Product Line Director, at (415) 947-4537 or adachi.robert@epa.gov.



Arthur A. Elkins, Jr.

cc: Principal Deputy Assistant Administrator, Office of Water
Agency Follow-Up Official (the CFO)
Agency Follow-Up Coordinator
General Counsel
Director, Office of Ground Water and Drinking Water, Office of Water
Deputy Regional Administrator, Region 3
Audit Follow-Up Coordinator, Region 3
Director, Water Division, Region 3

Appendix A

Milestones to be Tracked in MATS

Bid closing date for phase 2 of the project.

Award date of the phase 2 contract.

Dates of any Pennvest inspections.

Date of construction completion and final inspection.

Date of final contractor payment.

Date when the newly constructed underground water storage facility is used as a major irrigation source for the Botanic Garden.