

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-010 Purpose and authority.** (1) The department is directed by ~~((the))~~ chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act to provide grants up to sixty thousand dollars to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest groups. The purpose of these grants ~~((shall be used))~~ is to facilitate public participation in the investigation and ~~((remediation))~~ remedying of a release or threatened release of a hazardous substance and to facilitate ~~((public participation in the))~~ implementation of the state's solid and hazardous waste management priorities.

(2) The department will give priority consideration for public participation grant funding to applicants who meet any of the following criteria:

(a) Facilitate public participation in hazardous substance release sites;

(b) Facilitate public participation in highly impacted or low-income communities;

(c) Have not received funding in the last two biennia.

(3) The purpose of this chapter is to ~~((set forth))~~ provide eligibility criteria and funding requirements for grant projects.

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**WAC 173-321-020 Definitions.** As used in this chapter:

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or ~~((such person authorized to act for the director))~~ designee.

(3) "Emergency" means an occurrence warranting public participation ~~((which))~~ that occurs after the deadline for grant applications and before the opening of a new grant application period, such as:

(a) An unforeseen release of a hazardous substance at an existing site or a newly discovered site;

(b) An unanticipated decision by the department concerning remedial action at a site or publication of a remedial ~~((investigation, feasibility))~~ investigation/feasibility study or risk assessment; or

(c) Discovery of a technical assistance need ~~((which))~~ that could not have been foreseen before the grant application deadline.

(4) "Emergency grant" means a public participation grant in the hazardous substance release category for an emergency as defined in this section.

(5) ~~(("Expendable personal property" means all tangible personal property other than nonexpendable personal property.))~~ "Equipment" means tangible, personal property having a useful life of more than one year and an acquisition cost of more than five thousand dollars per functional unit.

(6) "Facility" means:

(a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment

works), well, pit, waste pile, pond, lagoon, impoundment, ditch, land-fill, tank, storage container, motor vehicle, rolling stock, vessel, or aircraft; or

(b) Any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(7) "Grant applicant" means any ~~((person))~~ individual or organization requesting a public participation grant.

(8) "Hazardous substance" means ~~((~~

~~(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6) or any dangerous or extremely hazardous waste designated by rule pursuant to chapter 70.105 RCW;~~

~~(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;~~

~~(c) Any substance that, on March 1, 1989, is a hazardous substance under 101 (14) of the Federal Cleanup Law, 42 U.S.C. Sec. 960(14);~~

~~(d) Petroleum or petroleum products; and~~

~~(e) Any substance or category of substances including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment. Except that:~~

~~The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local laws.)~~ any hazardous substance as defined in chapter 70.105 RCW.

(9) "Hazardous waste management priorities" as defined in ~~((RCW 70.105.150 are the priorities in the management of hazardous waste which should be followed))~~ chapter 70.105 RCW are in descending order ((as applicable)):

(a) Waste reduction;

(b) Waste recycling;

(c) Physical, chemical, and biological treatment;

(d) Incineration;

(e) Solidification/stabilization treatment;

(f) Landfill.

(10) ~~((("Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of three hundred dollars or more per unit.~~

~~(11))~~ "Highly impacted community" means a community that the department of health has determined is likely to bear a disproportionate burden of public health and economic risks from environmental pollution.

(11) "Individual" means a natural person.

(12) "Lobbying" means attempting to influence the passage or defeat of any legislation by the legislature or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Lobbying does not include an organization's act of communicating with the members of that organization unless the communication is for the purpose of influencing legislation.

(13) "Low-income" means households where the household income is less than or equal to twice the federal poverty level.

(14) "Low-income community" means a community where the proportion of an area's low-income population is greater than the comparison area (for example, city, county, state).

(15) "Not-for-profit public interest organization" means any corporation, trust, association, cooperative, or other organization ((which)) that:

(a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(b) Is not organized primarily for profit; and

(c) Uses its net proceeds to maintain, improve, and/or expand its operations.

~~((12))~~ (16) "Owner/operator" means any person defined as an owner or operator under RCW 70.105D.020(12).

~~((13) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.~~

~~(14))~~ (17) "Personal property" means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence), such as patents, inventions, and copyrights.

~~((15))~~ (18) "Potentially liable person" means any person ((whom)) the department finds, based on credible evidence, to be liable under RCW 70.105D.040. ((The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

~~(16))~~ (19) "Real property" means land, ((land)) improvements, structures, and ((appurtenances thereto, excluding moveable machinery and equipment)) additional pieces associated to them.

~~((17))~~ (20) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

~~((18))~~ (21) "Remedy((, remediation,)) or remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities ((with respect to)) of any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

~~((19))~~ (22) "Solid waste management priorities" as defined in chapter 70.95 RCW are ((the priorities in the management of solid waste which should be followed)) in order of descending priority ((as applicable)):

(a) Waste reduction;

(b) Recycling with source separation of recyclable materials as the preferred method;

(c) Energy recovery, incineration, or landfill of separated waste;

(d) Energy recovery, incineration, or landfill of mixed waste.

(23) "Supplies" means all tangible personal property other than tools or equipment necessary to carry out a scope of work with a useful life of less than one year and an acquisition cost of less than one thousand dollars.

(24) "Tools" means tangible, personal property having a useful life of more than one year and an acquisition cost of less than five thousand dollars per functional unit.

AMENDATORY SECTION (Amending WSR 89-21-072, filed 10/17/89, effective 11/17/89)

**WAC 173-321-030 Relationship to other legislation and administrative rules.** (1) The individuals or organizations receiving a grant (~~shall~~) must comply fully with all applicable federal, state, and local laws, orders, regulations, and permits.

(2) Nothing in this chapter (~~shall~~) will influence, affect, or modify existing department programs, regulations, or enforcement of applicable laws relating to solid and hazardous waste management and cleanup.

(3) All grants (~~shall be~~) are subject to the existing, applicable accounting and auditing requirements of state laws and regulations.

(4) The department will prepare (~~a guidance manual~~) guidelines to facilitate compliance with these regulations. Guidelines will be updated each biennium.

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-040 Applicant eligibility.** (1) Public participation grants (~~may only be awarded to groups of three or more unrelated persons or~~) are awarded only to individuals who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations.

(2) (~~All applicants must demonstrate their ability to appropriately administer grant funds.~~

(3) ~~Applications for a hazardous substance release grant, including emergency grants, must include information on:~~

(a) ~~The nature of the release or threatened release of the hazardous substance;~~

(b) ~~The location of the release or threatened release of the hazardous substance;~~

(c) ~~How the applicant group may be adversely affected by the release or threatened release of the hazardous substance;~~

(d) ~~How the applicant group will promote public participation in the investigation or remediation of the release or threatened release of the hazardous substance;~~

(e) ~~A complete project description;~~

(f) ~~How the applicant group represents the environmental, health, and economic interests of individuals affected by the release or threatened release of the hazardous substance;~~

(g) ~~The applicant group's history and experience, if any, in conducting activities similar to those described in the grant application;~~

~~(h) For emergency grants, a description of why an emergency exists, as defined in WAC 173-321-020(3); and~~

~~(i) Any other information specified by the department as needed to award a grant.~~

~~(4) Applications for a waste management priorities grant must include information on:~~

~~(a) How the applicant group will promote or implement the state solid or hazardous waste management priorities;~~

~~(b) How the applicant group will promote public participation in the grant project described in the application;~~

~~(c) A complete project description;~~

~~(d) The applicant group's history and experience, if any, in conducting activities similar to those described in the grant application;~~

~~(e) Any other information specified by the department as needed to award a grant.~~

~~(5)) The following ((persons or groups of persons shall be)) individuals or organizations are ineligible for grant funding:~~

~~(a) Any person potentially liable, as defined under RCW 70.105D.040;~~

~~(b) Local governments including any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county;~~

~~(c) Federal and state governments, or agencies thereof;~~

~~(d) Federally recognized Indian tribes, as a governing body((-)) with the following exceptions:~~

~~(i) Individual tribe members ((of three or more persons are eligible to apply for a public participation grant;~~

~~(e) Organizations sustained by public funding;~~

~~(f)) who may be adversely affected by the release or threatened release of a hazardous substance; and~~

~~(ii) Not-for-profit tribal organizations.~~

~~(e) Public and private universities; and~~

~~((g)) (f) Any organization located outside of Washington state boundaries.~~

~~((6) Grant applications failing to qualify may be resubmitted.)~~

~~(g) Any individual or organization that does not meet the eligibility requirements of subsection (1) of this section.~~

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-050 Application evaluation criteria.** (1) The department will provide public notice of the application period, deadlines, and guidelines. The department will provide multi-lingual and culturally appropriate outreach to potential grant applicants.

(2) Applications will only be accepted through the department's online application system.

(3) Grant applications will be evaluated by the department. To be funded, applications must include all required elements as outlined in the guidelines.

~~(4) Except for emergency grants ((which will be reviewed and evaluated by the department within twenty working days of receipt of the application, all other)), grant applications must be received ((will be reviewed and evaluated by the department within thirty working days after the close of the regular grant application period. Incomplete applications will not be evaluated)) by the application deadline in order to be considered.~~

~~(5) Applications will be ranked ((according to how each application meets the criteria set forth below)) by the numerical value calculated using evaluation criteria set out in the guidelines provided to potential grant applicants.~~

~~(6) Grants will be awarded, within the limits of available funds, to the highest ranking applications. The department may fund all or portions of eligible grant applications.~~

~~((2) Priority consideration for public participation grant funding will be given to:~~

~~(a) Applicants requesting a hazardous substance release grant;~~

~~(b) New applicants; and~~

~~(c) Applicants that demonstrate the ability to provide accurate technical information on complex waste management issues.~~

~~(3) General criteria. All public participation grants will be evaluated against the following criteria:~~

~~(a) The type and extent of the applicant group's past history and experience conducting activities similar to those described in the grant application;~~

~~(b) The group's basic funding, with consideration given to groups with limited resources;~~

~~(c) The group's ability to appropriately manage grant funds;~~

~~(d) Except for emergency grants, if more than one group is interested in the same project, priority consideration will be given to groups who consolidate;~~

~~(e) Availability of funding sources for the project;~~

~~(f) Past performance under a public participation grant;~~

~~(g) The group's ability to define the environmental issue and identify what changes will occur in the problem as a result of the project; and~~

~~(h) Demonstration of the use of Bennett's hierarchy or similar methodology with a focus on outcome and clear commitment to follow through to end results.~~

~~(4) Special criteria.~~

~~(a) Hazardous substance release grants. Hazardous substance release grants, including emergency grants, will be evaluated against the following criteria:~~

~~(i) The degree to which the applicant group may be adversely or potentially adversely impacted by the release or threatened release of the hazardous substance, including but not limited to adverse or potential adverse impacts to surface and drinking waters, soils, flora or fauna, species diversity, air quality, property values, marketability of agricultural crops, and recreational areas;~~

~~(ii) The degree to which the applicant group represents the environmental, health, and economic interests of individual group members;~~

~~(iii) The degree to which the proposed project will promote public participation in the investigation or remediation of the release or threatened release of the hazardous substance.~~

~~(b) Waste management priorities grants. Waste management priorities grants will be evaluated against the following criteria:~~

~~(i) The degree to which the proposed public participation activity will promote or implement the state solid or hazardous waste management priorities;~~

~~(ii) The degree to which the proposed project will facilitate public understanding of the state solid and hazardous waste management priorities;~~

~~(iii) The degree to which the proposed public participation activities are consistent with or improve upon existing solid or hazardous waste management plans.)~~ (7) The department will not fund applications failing to meet the grant eligibility criteria and may reopen the application period for additional applications.

(8) The evaluation criteria will include at a minimum:

(a) Whether the applicant meets one or more of the priority considerations outlined in WAC 173-321-010(2);

(b) The extent to which the individual applicant or the community served by the not-for-profit organization applicant is impacted by the hazardous substance release or the waste management issue addressed by the project;

(c) The extent to which the applicant has demonstrated the ability to manage grant funds in compliance with applicable requirements and in a cost-effective manner;

(d) The extent to which the applicant has demonstrated the ability to measure the project's outcomes;

(e) The applicant's past performance under a public participation grant, including whether the applicant appropriately managed grant funds, complied with grant requirements, and was able to demonstrate achievement of project goals. Only past grant recipients will be evaluated under this criterion.

(9) The department's announcement of the grants awarded will include:

(a) The public notice used to announce the application period;

(b) A ranked list of all applicants and a description of their proposed projects;

(c) How the applications were evaluated; and

(d) The amount awarded to each recipient.

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-060 Eligible project costs.** (1) ~~Eligible project costs ((for substance release grants shall include but not be limited to))~~ include costs associated with:

~~(a) Hiring technical assistants to review and interpret documents;~~

~~(b) Public involvement and public education activities;~~

~~(c) Reviewing specific plans for environmental testing and analysis, reviewing reports summarizing the results of such plans and making recommendations for modifications to such plans((-));~~

~~(d) ((Expendable personal property);~~

~~(e) Other public participation activities as determined by the department on a case by case basis.~~

~~(2) Eligible project costs for waste management priority grants shall include but not be limited to:~~

~~(a))~~ Assisting in developing and implementing programs that promote or improve state or local solid or hazardous waste management plans;

~~((b))~~ (e) Assisting in developing programs or activities that promote and are consistent with the state solid or hazardous waste management priorities;

~~((c) Expendable personal property;~~

~~(d))~~ (f) Other ~~((public participation))~~ activities as determined by the department on a case-by-case basis;

(g) Supplies and tools necessary to the foregoing activities. All costs must be in compliance with the department's "Administrative Requirements for Recipients of Ecology Grants and Loans" and the funding program guidelines.

~~((3))~~ (2) Ineligible projects and grant costs ~~((shall))~~ include but are not ~~((be))~~ limited to:

(a) Independently collecting or analyzing samples at a facility ~~((sites))~~;

(b) Hiring attorneys for legal actions against potentially liable persons, facility owners, or the department. Applicants ~~((who receive a grant award shall))~~ must notify the department if legal action is intended or taken on the subject of the grant project ~~((or application))~~;

(c) ~~((Legislative))~~ Lobbying ~~((activities))~~;

(d) Real property;

(e) ~~((Nonexpendable personal property))~~ Equipment.

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-070 Grant funding.** ~~(1) The department ((may fund up to one hundred percent of eligible project costs))~~ will determine the amount of funding available for public participation grants and establish an application and funding cycle on a biennial basis.

~~(2) The maximum grant allowance ((shall be))~~ is sixty thousand dollars per year.

~~(3) Public participation grants may be renewed annually. ((A new grant application must be submitted to be evaluated and ranked for additional funding.~~

~~(4) The department reserves the right to refuse funding to any and all applications failing to meet the grant eligibility criteria and may reopen the application period for additional applications.))~~ Grant renewal criteria will be outlined in the program guidelines.

(4) If the total amount of funding requested by all applicants exceeds the biennial budget, the department may limit the number of grants awarded to individual persons or organizations, regardless of ranking.

(5) Grant funds that are not used by a recipient will be offered to other grant recipients or applicants based on the original application ranking. However, additional funding cannot result in a grant that exceeds sixty thousand dollars per year.

(6) The department will produce a report at the close of the biennium outlining the grant program performance. The report will include, at minimum, the type and location of grant projects and the outcomes achieved.

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-080 Grant administration.** (1) ~~((The department shall establish grant application funding cycles each year.~~

~~(2) Public notice of application funding cycles shall be published statewide.~~

~~(3) A grant application package will be sent to all persons interested in applying for public participation grants. Grant application packages will include notice of grant application deadlines, grant guidelines, and application forms.~~

~~(4) Grant applications will be evaluated by the department. To be funded, applications must include all required elements as outlined in the guidelines.~~

~~(5)) The obligation of the department to make grant payments is contingent upon the availability of funds through legislative appropriation, and such other conditions not reasonably foreseeable which may preclude awarding such grants.~~

~~((6) The department, on at least a biennial basis, will determine the amount of funding available for public participation grants and establish an application and funding cycle. The minimum amount of money available for public participation grants established by the Model Toxics Control Act shall be one percent of the moneys deposited into the state and the local toxics control accounts.~~

~~(7)) (2) The department ((shall)) is not ((be held)) responsible for payment of salaries, consultant fees, or other costs related to a contract of the grantee.~~

~~((8) To the extent that the Constitution and laws of the state of Washington permit,)) (3) The grantee ((shall)) must indemnify and hold the department harmless((7)) from and against((7)) any liability for any or all injuries to persons or property arising from the negligent act or omission of the grantee arising out of a grant contract.~~

~~((9)) (4) All grants under this chapter ((shall)) must be consistent with the department's "Administrative Requirements for Recipients of Ecology Grants and Loans" ((WDOE publication No. 91-18, revised October 2000)) and the funding program guidelines.~~