

WAC 173-303-902 Citizen/proponent negotiations. (1) Intent and purpose. Successful siting of dangerous waste management facilities depends on public confidence, which requires affected communities to have opportunities to meet with owners/operators of proposed dangerous waste management facilities to resolve concerns about such facilities. RCW 70.105.260 authorizes the department to specify a procedure for conflict resolution activities for dangerous waste management facility proponents, host communities, citizens and citizen groups, and to expend funds to support such activities. The purpose of this section is to set forth a procedure for negotiations between affected communities and the proponent of a facility, and the eligibility criteria for financial assistance.

(2) Applicability.

(a) This section applies to local governments and citizens potentially affected by the siting and permitting of a dangerous waste management facility, owners and operators of proposed facilities, and owners and operators of facilities for which interim or final status permit applications have been submitted to the department prior to the effective date of this section. This section also applies to existing facilities with interim or final status for which the department receives an application for expansion. This section only applies to the expanded portion of the existing facility.

(b) A modified citizen/proponent negotiations (CPN) process will apply to lead local governments who are also proponents of the facility.

(c) This section does not apply to:

(i) Owners/operators of facilities or portions of facilities applying for research, development and demonstration permits, pursuant to WAC 173-303-809 or section 3005(g) of the Resource Conservation and Recovery Act, codified in 40 C.F.R. Part 270.65;

(ii) Owners/operators of facilities operating under an emergency permit pursuant to WAC 173-303-804;

(iii) Persons at facilities conducting on-site cleanup of sites under the Comprehensive Environmental Response Compensation and Liability Act, Sections 3004(u), 3004(v), and 3008(h) of the Resource Conservation and Recovery Act, chapter 70.105 RCW, or chapter 70.105D RCW, provided the cleanup activities are being conducted under a consent decree, agreed order, or enforcement order, or is being conducted by the department or United States Environmental Protection Agency;

(iv) Persons managing solid wastes who become subject to dangerous waste regulations through amendments to this chapter. This provision applies only to those activities operated in accordance with local, state, and federal requirements and which were being conducted prior to becoming subject to dangerous waste regulations, chapter 173-303 WAC or expansions, if it can be demonstrated to the satisfaction of the department that the proposed expansion of such activities will provide a net increase in protection to human health and the environment beyond that which is currently provided at the facility;

(v) Owners/operators of facilities who seek to obtain a dangerous waste permit for waste storage and satisfy all of the following:

(A) The facility recycles dangerous waste in a process that is exempt from dangerous waste permitting.

(B) Waste storage is used strictly to support the exempt recycling.

(C) Waste storage is in tanks, containers, or a containment building.

(D) Waste storage is indoors; or

(vi) Owners/operators of existing designated zone facilities as defined in this section seeking a significant expansion.

(3) Relationship to other legislation and administrative rules.

(a) The lead local government receiving a grant under this section, must comply fully with all applicable federal, state, and local laws, orders, regulations, and permits.

(b) Nothing in this section will influence, affect, or modify department programs, regulations, or enforcement of applicable laws relating to dangerous waste management and disposal.

(c) All grants under this section will be subject to all existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grant funds.

(4) Definitions. As used in this section:

(a) "Citizen/proponent negotiations (CPN)" means a communication process, as specified in these regulations and associated guidelines, between the proponent of a dangerous waste management facility and potentially affected citizens, to reach an agreement when there are shared and opposing interests.

(b) "Designated zone facility" means any facility that requires an interim or final status permit, located in a land use zone designated for handling hazardous substances and hazardous waste, and is not a preempted facility as defined in this section.

(c) "Environmental impact statement (EIS)" means an environmental document prepared according to the State Environmental Policy Act (SEPA), that provides decision makers and the public with an impartial discussion of probable significant environmental impacts, reasonable alternatives, and mitigation measures that would avoid impacts, minimize adverse impacts, or enhance environmental quality.

(d) "Existing facility," as defined by WAC 173-303-281, means a facility for which an interim or final status permit has been issued by the department pursuant to WAC 173-303-805 or 173-303-806.

(e) "Expansion," as defined by WAC 173-303-281, means the enlargement of the land surface area of an existing facility from that described in an interim status permit, the addition of a new dangerous waste management process, or an increase in the overall design capacity of existing dangerous waste management processes at a facility. However, a process or equipment change within the existing handling code (not to include "other") as defined under WAC 173-303-380 (2)(d) will not be considered a new dangerous waste management process.

(f) "Facilitator" means one who assists at a meeting or group discussion.

(g) "Grant applicant" means the lead local government requesting a citizen/proponent negotiations grant.

(h) "Lead local government" means the city or county in which all or a majority of the proposed dangerous waste management facility would be located, unless the lead local government is a proponent of the project.

(i) "Local negotiating committee" means a committee, appointed by the lead local government, whose membership consists of broad representation from city and county government, citizen groups, academia, business, industry, Indian tribes, and environmental groups potentially affected by the siting of a dangerous waste management facility.

(j) "Mediator" means a neutral person who is accepted voluntarily by opposing parties in a dispute to assist in reaching a settlement.

(k) "Notice of intent," as specified in WAC 173-303-281, means the notice provided by the owner/operator of a facility to the department, local communities, and the public stating that the siting of a

dangerous waste management facility, or the expansion of an existing facility, is being considered.

(l) "Neutral convener" means a nonpartisan person hired by the lead local government to convene and preside over the official public meeting.

(m) "Preempted facility" means any facility that includes as a significant part of its activities any of the following operations: (i) Landfill, (ii) incineration, (iii) land treatment, (iv) surface impoundment to be closed as a landfill, or (v) waste pile to be closed as a landfill.

Local jurisdictions who fail to establish designated land use zones for handling hazardous substances and hazardous waste within eighteen months after the enactment of siting criteria in accordance with RCW 70.105.210 will be subject to preemptive provisions until such time as zone designations are completed and approved by the department.

(n) "Potentially affected area" means the area within a twenty-mile radius of a proposed dangerous waste management facility or a proposed expansion to an existing facility or, any area of impact larger or smaller than the twenty-mile radius as determined by the department.

(o) "Proponent" means any person applying to the department for a dangerous waste management facility permit or for the expansion of an existing permit under WAC 173-303-805 or 173-303-806.

(p) "Proposed facility" means a facility that does not have interim or final status on the effective date of this section, and for which the owner/operator applies for an interim or final status permit under WAC 173-303-805 or 173-303-806 after the effective date of this section.

(q) "SEPA" means the State Environmental Policy Act, chapter 43.21C RCW, and SEPA rules, chapter 197-11 WAC.

(5) Citizen/proponent negotiations procedures.

(a) Notice of intent. A proponent for a dangerous waste management facility must apply to the department for a dangerous waste management facility permit or for the expansion of an existing permit. In compliance with WAC 173-303-281, the proponent must submit a notice of intent to the department no less than one hundred fifty days prior to filing an application for a permit or permit revision.

(b) Notice letter.

(i) Within fourteen days of receipt of the notice of intent, the department will send, by registered mail, a copy of the notice of intent, a copy of the CPN regulation, associated guidelines, and a CPN grant application to the elected officials of the lead local government and all local governments within the potentially affected area.

(ii) The notice letter will alert all communities within the potentially affected area that a notice of intent to file was submitted to the department, the availability of a CPN grant, the procedures for applying for a CPN grant, and the procedures for conducting the CPN process.

(iii) Within thirty days of the effective date of this section, the department will send, by registered mail, a notice letter to all local governments potentially affected by facilities for which the department has already received a permit application. The notice letter will contain a copy of the CPN regulation, associated guidelines, and a CPN grant application.

(iv) If the lead local government is also a proponent of the facility, responsibility for CPN will be deferred to a committee com-

prised of representatives from all incorporated cities and towns, and all the counties in the potentially affected area. This committee must decide, among the government entities represented, who will be the lead local government for the purposes of applying for and administering the CPN grant and selecting members to the negotiating committee as set forth in subsection (6) of this section.

(c) Selection of the neutral convener. Within sixty days of the notice letter, the lead local government and the facility proponent must jointly select a neutral convener, facilitator, or mediator to organize and preside over an official public meeting, assist in selecting the local negotiating committee, and mediate citizen/proponent negotiations.

(d) The public meeting. The purpose of the public meeting will be:

(i) To advise local citizens within the potentially affected area of the CPN procedures, the State Environmental Policy Act (SEPA) requirements, and the dangerous waste management permit process;

(ii) To allow the proponent to present elements of the proposal;

(iii) To take public testimony on whether to agree to participate in the CPN process.

(e) Expenditures by the lead local government for the initial costs of the neutral convener and the official public meeting will be reimbursed by the department through an interagency agreement with the lead local government.

(f) Decision notice. Within forty-five days of the public meeting the lead local government must decide whether to proceed with the negotiations process. The lead local government must forward notice of that decision to the department and the proponent of the facility. Notice to the department of an affirmative decision may include a completed grant application for financial assistance. If the lead local government decides to participate in the negotiations process for pre-empted facilities, then the proponent will be required to participate. Citizen/proponent negotiations at designated zone facilities will be voluntary for both parties.

(g) Appointment of local negotiating committee. Within thirty days of the decision notice to proceed with CPN, the lead local government and local governments within the potentially affected area must appoint members to a local negotiating committee, as set forth in subsection (6) of this section, and mail notice of those appointments to the department and to the facility proponent.

(h) Organizational meeting. Within twenty-one days of the committee appointments, the committee must hold an organizational meeting to establish the committee goals, set schedules, identify tasks, discuss funding, and identify issues to research.

(i) Negotiations process. The negotiations process may occur in two stages.

(i) Stage 1. Within thirty days of the organizational meeting, the local negotiating committee, with the assistance of the neutral convener, must initiate negotiations and public information and education activities. The local negotiating committee will have one hundred twenty days, or until completion of the SEPA process, to conduct public information and education activities on dangerous waste management and dangerous waste management facilities and to negotiate emerging issues and concerns.

(ii) Stage 2. Upon completion of the SEPA process, with the assistance of the neutral convener, the local negotiating committee may continue formal negotiations. If no environmental impact statement is

required as part of the SEPA process, the local negotiating committee may negotiate for up to one hundred twenty days. If an environmental impact statement is required as part of the SEPA process, negotiations may take place until one hundred twenty days after the issuance of the final environmental impact statement. Upon completion of formal negotiations, all agreements should be submitted to the department for review for applicability to the operating permit.

(iii) Negotiations should focus on the mitigation of impacts identified by persons in the affected area and those impacts identified during the SEPA process, which may include but are not limited to:

- (A) Technical aspects of the facility proposal;
- (B) Emergency response;
- (C) Economic impacts;
- (D) Management of the facility;
- (E) Site characteristics;
- (F) Transportation;
- (G) Compliance assurance.

(iv) During each stage of the negotiations process, the committee must, at a minimum:

(A) Arrange public forums at key points in the negotiations to solicit input from the local community and provide public education regarding the issues and elements of the proposed facility or facility expansion.

(B) Arrange smaller community gatherings with the whole committee or subgroups of the committee to supplement the larger meetings and to provide more opportunities for discussion with community members.

(C) Meet with key community leaders to solicit information and opinion.

(D) Prepare a draft of the completed local negotiating committee report and agreements. The draft must be submitted for review and comment to the proponent and local county, city, and town officials who made the committee appointments.

(E) Prepare the final local negotiating committee report and agreements. Final copies must be submitted to the department and distributed to the proponent and local county, city, and town officials who made the committee appointments.

(v) Negotiations may be reopened upon agreement by both parties as long as a draft permit has not been issued.

(j) Agreements. Any specific agreement reached between the local negotiating committee and the proponent, deemed valid and applicable by the department, may be incorporated in the operating permit issued by the department. Any agreements not applicable to the operating permit may be implemented by the proponent and local communities through a contract or other legal means.

(6) Local negotiating committee.

(a) Appointments to the local negotiating committee must be made as follows:

(i) Four members must be appointed by the lead local government.

If the lead local government is the county, committee appointments will be made by the county executive in charter counties or the board of county commissioners. If the lead local government is an incorporated town or city, committee appointments will be made by the mayor.

(ii) The mayor of each incorporated city or town in the potentially affected area, that is not a lead local government, must appoint one member to the committee.

(iii) The county executive or the board of county commissioners of each county in the potentially affected area, that is not a lead local government, must appoint one member to the committee.

(iv) Each federally-recognized Indian tribe located in the potentially affected area must appoint one member to the committee.

(v) If all or the majority of a facility is located wholly within city limits, the board of county commissioners or county executive of the potentially affected county must appoint two members to the citizen negotiating committee. If the facility is located wholly within the county, these appointments will not be made.

(b) Local negotiating committees must have broad representation including but not limited to representation from academia, business and industry, citizen organizations, environmental groups, agricultural groups, health professionals, emergency response organizations, and fire districts.

(c) After the initial committee appointments are made, the neutral convener must assess the group representation and determine which interest groups are not represented. The committee, with the aid of the neutral convener, will then select up to four additional members to serve on the local negotiating committee. These selections must be made from interest groups not already represented on the negotiating committee.

(d) Elected officials will not be members of the local negotiating committee.

(7) Modified CPN procedures. Modified CPN procedures apply to lead local governments who are also proponents of a dangerous waste management facility.

(a) Notice letter. Within fourteen days of the notice of intent or thirty days of the effective date of this section, the department will notify all local governments in the potentially affected area of applications for proposed facilities or expansions of existing facilities and of the opportunity for formal negotiations under CPN and the availability of a CPN grant.

(b) Decision notice. The local governments will have forty-five days to form a committee to:

(i) Determine whether they wish to participate in CPN;

(ii) Determine who will be the lead local government;

(iii) Select a neutral convener, facilitator, or mediator;

(iv) Notify the department and the proponent of those decisions;

and

(v) Complete a grant application for financial assistance if a decision is made to proceed with CPN.

(c) Once the lead local government is determined, modified CPN procedures must follow CPN procedures set forth in subsections (5)(d) through (6)(d) of this section.

(8) Grant eligibility and eligible activities.

(a) Grant applicant eligibility and eligible activities are the same for CPN and modified CPN.

(b) Grant applicant eligibility. Grants up to fifty thousand dollars will be awarded to the lead local government and may be renewed once during the permitting process.

(c) Eligible costs. Eligible costs include direct costs of the activities of the negotiating process. These costs include:

(i) The local committee's expenses such as travel, office space or lodging, supplies, postage, report production costs, and meeting room costs;

(ii) Neutral convener's, facilitator's, or mediator's fees and expenses;

(iii) Technical assistance for the committee; and

(iv) Other costs determined necessary by the department.

(d) Ineligible costs. Grant funds may not be used by the grant applicant to support legal actions against the department, or facility owners/operators.

(9) Grant administration and funding.

(a) A grant application package will be sent to the lead local government with the notice letter. Grant application packages include grant application deadlines, grant guidelines, and application forms.

(b) Completed grant applications will be reviewed by the department. To receive a grant offer, successful applications must include all required elements as outlined in the guidelines.

(c) The obligation of the department to make grant awards and payments is contingent upon the availability of funds through legislative appropriation and allotment, and such other conditions not reasonably foreseeable by the department rendering performance impossible. When the grant crosses over bienniums, the obligation of the department is contingent upon the appropriation of funds during the next biennium.

(d) The department will fund up to fifty percent of the total grant amount or up to fifty thousand dollars for citizen/proponent negotiations and the proponent of a dangerous waste management facility must fund up to fifty percent of the total grant amount or up to fifty thousand dollars.

(e) Disbursement of funds. The department will be responsible for reimbursement of all eligible CPN costs incurred. The proponent must enter into a contract with the department for the proponent's share of the CPN grant. The department will be responsible for all eligible CPN costs incurred before the decision notice and its share of any eligible CPN costs incurred after the decision notice, up to fifty thousand dollars. The proponent will be responsible for its share of all remaining eligible CPN costs incurred after the decision notice and after an executed grant award is made to the lead local government, up to fifty thousand dollars.

(f) The department, on at least a biennial basis, will determine the amount of funding available for citizen/proponent negotiation grants.

(g) All grantees will be held responsible for payment of salaries, consultant's fees, and other overhead costs contracted under a grant awarded to the lead local government.

(h) To the extent that the Constitution and laws of the state of Washington permit, the grantee will indemnify and hold the department harmless from and against, 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, except for such damage, claim, or liability resulting from the negligent act or omission of the department.

(i) All grants under this chapter will be consistent with the provisions of "Financial Guidelines for Grant Management" WDOE 80-6, May 1980, Reprinted March 1982, or subsequent guidelines adopted thereafter.

[Statutory Authority: Chapters 70.105 and 70.105D RCW. WSR 09-14-105 (Order 07-12), § 173-303-902, filed 6/30/09, effective 7/31/09; WSR 95-22-008 (Order 94-30), § 173-303-902, filed 10/19/95, effective

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