

Chapter 173-321 WAC
PUBLIC PARTICIPATION GRANTS

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WAC 173-321-010 Purpose and authority. (1) The department is directed by 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 is to facilitate public participation in the investigation and remedying of a release or threatened release of a hazardous substance and to facilitate 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 provide eligibility criteria and funding requirements for grant projects.

[Statutory Authority: Chapter 70.105D RCW, RCW 70.105D.070 and 70.105D.070(8). WSR 17-14-045 (Order 16-13), § 173-321-010, filed 6/28/17, effective 7/29/17. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-321-010, filed 2/12/01, effective 3/15/01. Statutory Authority: 1989 c 2. WSR 89-21-072 (Order 89-26), § 173-321-010, filed 10/17/89, effective 11/17/89.]

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 designee.

(3) "Emergency" means an occurrence warranting public participation 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 study or risk assessment; or

(c) Discovery of a technical assistance need 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) "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, landfill, 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 individual or organization requesting a public participation grant.

(8) "Hazardous substance" means any hazardous substance as defined in chapter 70.105 RCW.

(9) "Hazardous waste management priorities" as defined in chapter 70.105 RCW are in descending order:

(a) Waste reduction;

(b) Waste recycling;

(c) Physical, chemical, and biological treatment;

(d) Incineration;

(e) Solidification/stabilization treatment;

(f) Landfill.

(10) "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 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.

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

(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.

(18) "Potentially liable person" means any person the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

(19) "Real property" means land, improvements, structures, and additional pieces associated to them.

(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.

(21) "Remedy 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 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.

(22) "Solid waste management priorities" as defined in chapter 70.95 RCW are in order of descending priority:

(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.

[Statutory Authority: Chapter 70.105D RCW, RCW 70.105D.070 and 70.105D.070(8). WSR 17-14-045 (Order 16-13), § 173-321-020, filed 6/28/17, effective 7/29/17. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-321-020, filed 2/12/01, effective 3/15/01. Statutory Authority: 1989 c 2. WSR 89-21-072 (Order 89-26), § 173-321-020, 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 must comply fully with all applicable federal, state, and local laws, orders, regulations, and permits.

(2) Nothing in this chapter 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 are subject to the existing, applicable accounting and auditing requirements of state laws and regulations.

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

[Statutory Authority: Chapter 70.105D RCW, RCW 70.105D.070 and 70.105D.070(8). WSR 17-14-045 (Order 16-13), § 173-321-030, filed 6/28/17, effective 7/29/17. Statutory Authority: 1989 c 2. WSR 89-21-072 (Order 89-26), § 173-321-030, filed 10/17/89, effective 11/17/89.]

WAC 173-321-040 Applicant eligibility. (1) Public participation grants 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) The following 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 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

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

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

[Statutory Authority: Chapter 70.105D RCW, RCW 70.105D.070 and 70.105D.070(8). WSR 17-14-045 (Order 16-13), § 173-321-040, filed 6/28/17, effective 7/29/17. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-321-040, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. WSR 90-18-065 (Order 90-20), § 173-321-040, filed 9/4/90, effective 10/5/90. Statutory Authority: 1989 c 2. WSR 89-21-072 (Order 89-26), § 173-321-040, filed 10/17/89, effective 11/17/89.]

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, grant applications must be received by the application deadline in order to be considered.

(5) Applications will be ranked 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.

(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.

[Statutory Authority: Chapter 70.105D RCW, RCW 70.105D.070 and 70.105D.070(8). WSR 17-14-045 (Order 16-13), § 173-321-050, filed 6/28/17, effective 7/29/17. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-321-050, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080 and chapter 70.105D RCW. WSR 90-18-065 (Order 90-20), § 173-321-050, filed 9/4/90, effective 10/5/90. Statutory Authority: 1989 c 2. WSR 89-21-072 (Order 89-26), § 173-321-050, filed 10/17/89, effective 11/17/89.]

WAC 173-321-060 Eligible project costs. (1) Eligible project costs 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) Assisting in developing and implementing programs that promote or improve state or local solid or hazardous waste management plans;

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

(f) Other 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.

(2) Ineligible projects and grant costs include but are not limited to:

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

- (b) Hiring attorneys for legal actions against potentially liable persons, facility owners, or the department. Applicants must notify the department if legal action is intended or taken on the subject of the grant project;
- (c) Lobbying;
- (d) Real property;
- (e) Equipment.

[Statutory Authority: Chapter 70.105D RCW, RCW 70.105D.070 and 70.105D.070(8). WSR 17-14-045 (Order 16-13), § 173-321-060, filed 6/28/17, effective 7/29/17. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-321-060, filed 2/12/01, effective 3/15/01. Statutory Authority: 1989 c 2. WSR 89-21-072 (Order 89-26), § 173-321-060, filed 10/17/89, effective 11/17/89.]

WAC 173-321-070 Grant funding. (1) The department 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 is sixty thousand dollars per year.

(3) Public participation grants may be renewed annually. 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.

[Statutory Authority: Chapter 70.105D RCW, RCW 70.105D.070 and 70.105D.070(8). WSR 17-14-045 (Order 16-13), § 173-321-070, filed 6/28/17, effective 7/29/17. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-321-070, filed 2/12/01, effective 3/15/01. Statutory Authority: 1989 c 2. WSR 89-21-072 (Order 89-26), § 173-321-070, filed 10/17/89, effective 11/17/89.]

WAC 173-321-080 Grant administration. (1) 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.

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

(3) The grantee must 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.

(4) All grants under this chapter must be consistent with the department's *"Administrative Requirements for Recipients of Ecology Grants and Loans"* and the funding program guidelines.

[Statutory Authority: Chapter 70.105D RCW, RCW 70.105D.070 and 70.105D.070(8). WSR 17-14-045 (Order 16-13), § 173-321-080, filed 6/28/17, effective 7/29/17. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-321-080, filed 2/12/01, effective 3/15/01. Statutory Authority: 1989 c 2. WSR 89-21-072 (Order 89-26), § 173-321-080, filed 10/17/89, effective 11/17/89.]