

Wyoming Administrative Rules

Lands and Investments, Office of

Loan and Investment Board

Chapter 35: Municipal Solid Waste Facilities Cease and Transfer Loan and Grant Program

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CHAPTER 35

MUNICIPAL SOLID WASTE FACILITIES CEASE AND TRANSFER LOAN AND GRANT PROGRAM

Section 1. In General.

- (a) Authority: This chapter is adopted pursuant to W.S. 35-11-530.
- (b) Applicability: The rules shall apply to any municipal solid waste facility operator.
- (c) Objective: The objective of these rules and regulations is to provide grants and loans from the municipal solid waste facilities cease and transfer accounts for cease and transfer activities as provided in W.S. 35-11-528, 35-11-529 and 35-11-530.
- (d) Definitions:
 - (i) "Board" means the State Loan and Investment Board.
 - (ii) "DEQ" means the Wyoming Department of Environmental Quality.
 - (iii) "Office" means the Office of State Lands and Investments.
 - (iv) Refer to Chapter 1, of the Wyoming Department of Environmental Quality, Solid Waste Rules and Regulations for definitions of the following: closure, facility, municipal solid waste, and operator.

Section 2. Program Eligibility.

To be eligible for funding under the program, the applicant shall:

- (a) Meet the eligibility criteria set forth in W.S. 35-11-528(d); and
- (b) Be in compliance with all applicable reporting requirements with the Wyoming Department of Audit and Wyoming Department of Revenue prior to its application being considered by the Board.

Section 3. Project Costs.

- (a) Eligible project cost shall include total project cost for the activities identified in W.S. 35-11-528(b), less ineligible project cost.

(b) Ineligible project costs: The following project costs shall be ineligible for reimbursement from grant funds and shall be ineligible to be counted toward the applicant's match:

(i) Salaries or benefits for employees of the municipal solid waste facility;

(ii) Long-term monitoring at a closed municipal solid waste facility or a closed cell of a still operating municipal solid waste facility;

(iii) Operational costs of municipal solid waste facilities;

(iv) Costs for any asset that is owned by a private property owner;

(v) Costs for tap fees, sewer and water fees, and plant investment fees;

(vi) Engineering fees, including design, inspection and contract administration costs, over ten percent (10%) of projects costs, unless otherwise approved by DEQ;

(vii) All non-cash costs except:

(A) Land, labor, materials, equipment, and services provided by the applicant, and used for project purposes, valued at reasonable, actual cost;

(B) Land, labor, materials, equipment, and services provided to the applicant by others, at no cost to the applicant, used for project purposes and valued at reasonable, actual cost; and

(C) Land which is integral to the Municipal Solid Waste Facilities Cease and Transfer process but not costs for land in excess of current fair market value and/or costs for an amount of land in excess of that needed for project purposes. Land costs not defined in the application will be ineligible for reimbursement.

(viii) Costs for preparation or presentation of grant or loan applications for any source of funding;

(ix) Costs for transportation, meals and lodging incurred anywhere away from the site of the project;

(x) Costs of tools, supplies and furnishings for capital projects not included in DEQ-approved construction contract documents, including but not limited to, capital equipment, hammers, tanks, tools, furniture, drapes, blinds, file cabinets, file folders and survey stakes;

(xi) Legal fees;

(xii) Costs related to issuance of bonds;

(xiii) Costs for real property in excess of current fair market value and/or costs for an amount of real property in excess of that needed for project purposes;

(xiv) Costs to establish and form special districts or joint powers boards;

(xv) Costs incurred prior to grant or loan award, except costs for architectural and engineering design;

(xvi) Costs for a contingency or additional work allowance in excess of ten percent (10%) of estimated construction costs, unless otherwise approved by DEQ;

(xvii) Costs for change orders not approved by the Office and DEQ;

(xviii) Lump sum contracts unless approved by the Office and DEQ; and

(xix) Costs for meals, transportation and incidental expenses in excess of federal per diem rates.

Section 4. Application Procedure.

(a) Applications. Separate applications shall be prepared for each project. Applicants shall submit two (2) copies of their completed application to the Office. Applications shall be properly executed by the officers of the applicant.

(b) Timing of Board Consideration. Loan and/or grant applications must be received by the Director at least ninety (90) days prior to any scheduled meeting of the Board. Applicants must cure any defects in their applications no later than forty-five (45) calendar days before any scheduled meeting of the Board.

(c) Applications shall be reviewed by the DEQ and applicants will be notified of any deficiencies. When the DEQ has found an application to contain all required information and has completed its review, the DEQ shall provide a report to the Board. A copy of the report shall

also be provided to the applicant. The report shall include the findings of the DEQ's review, recommendations for denial, approval or conditional approval of grants and/or loans, and a recommendation to the Board relating the proposed amount of a recommended grant and/or loan.

(d) Information Required for All Applications. The following information shall be provided in all applications:

- (i) An application cover page on a form provided by the Office;
- (ii) A project summary on a form provided by the Office;
- (iii) The grant and/or loan amount requested and percentage of total project costs for which the grant is sought;
- (iv) A full description of the proposed project, specifically including, but not limited to, a phased construction schedule, if applicable, and alternative project designs;
- (v) A detailed project budget divided into at least six (6) month intervals delineating all costs of the proposed project and the method by which the project costs were estimated;
- (vi) A licensed engineer's statement of the feasibility of the project;
- (vii) The geographic area and population served directly and indirectly by the project and the percentage of the applicant's population directly served by the project;
- (viii) A description of other project funding sources, committed or pending, the portion of the project cost expected to be funded from each source, including any future grant applications under this chapter, and copies of funding commitments from all project funding sources, including the applicant, to demonstrate commitment to the project;
- (ix) If the applicant is a special district, a copy of the resolution that shows formation of the special district and certification from the Board of County Commissioners that the special district currently exists and is in good standing;
- (x) If the applicant is a joint powers board, a copy of the certificate of organization filed with the Secretary of State, and a copy of an executed joint powers agreement approved by the Wyoming Attorney General's Office;
- (xi) A standard resolution authorizing the filing of the application on a form provided by the Office;

(xii) A financial statement of the applicant, on a uniform "General Financial Information" form provided by the Office;

(xiii) If an applicant submits multiple applications under this chapter for consideration at one meeting, a priority ranking of the applications as established by the applicant;

(xiv) If the project is needed to meet federal or state health and safety requirements, documentation of the specific requirements and an explanation of how the project addresses the requirements;

(xv) For applications submitted by a special district, either standing alone or as a member of a joint powers board, the written review as required by W.S. 9-4-604(h);

(xvi) Other applicable information as requested by the Office; and

(xvii) Information demonstrating compliance with the eligibility criteria of Section 2 of this chapter.

Section 5. Grant and Loan Prioritization.

Grants and/or loans shall be prioritized based on the criteria in W.S. 35-11-530(a)(iv).

Section 6. Loan Terms.

(a) Interest rates for loans made under this chapter may be at zero percent, up to an annual interest rate equal to the average prime interest rate as determined by W.S. 35-11-528(e). In no event, shall the interest rate exceed an annual interest rate equal to the average prime interest rate as determined by the state treasurer. Interest rates established under this section shall be adjusted on January 1 of each year.

(b) Interest rates shall be established in recognition of the repayment abilities and needs of the applicant eligible for loans under the program.

(c) Loan amortization schedules, terms and conditions for each loan approved shall be based on the criteria in W.S. 35-11-528(e).

(d) The term of the loan shall not exceed thirty (30) years or the useful life of the project, whichever is less, and may be for a shorter term as determined by financial strength, repayment ability, security and other factors.

Section 7. Security.

(a) The Board shall require such security as it deems advisable. Security for loans may include, but is not limited to, the pledge and assignment of designated special property assessments within a district, the pledge and assignment of user fees, the pledge and assignment of transfer station generated revenue, and/or a first lien on equipment and fixtures.

(b) Appraisals of offered security will be completed by staff appraisers from the Office.

(c) Every loan will be evidenced by a promissory note for the principal sum of the loan signed by the borrower(s).

(d) The loan agreement shall provide a legal right of access to the Board and its agents for the purposes of inspection, maintenance, inventory, retrieval of personal property and fixtures, and foreclosure proceedings. Such right shall be assignable to the purchaser at any foreclosure sale.

(e) All loan documents including, but not limited to, notes, mortgage deeds, and security instruments shall be executed in the form and manner acceptable to the Wyoming Attorney General's Office.

Section 8. State Loan and Investment Board Actions.

(a) After DEQ approves a recommendation for an application, the loan and/or grant application package, containing all items described in Section 4 above, shall be forwarded to the Office for Board consideration at its next regularly scheduled meeting. This package shall include a report from DEQ stating its recommendation regarding the applicant's loan request. All items required in Sections 2-5 of these rules shall be addressed in the report.

(b) Upon approval by the Board, documents shall be prepared for execution of the agreements necessary for the loan and/or grant to be made to the applicant.

(c) Grant and/or loan funding shall be awarded in accordance with W.S. 35-11-528(d) and (h).

(d) Participation in the program shall not restrict funding for a municipal solid waste facility from any other program created or supported by the state, including, but not limited to, any other program under the authority of and administered by the Board.

Section 9. Disbursement of Loan Proceeds.

Requests for disbursements shall be submitted on a form provided by the Office and include supporting invoices establishing the eligibility of costs submitted for disbursement. Loan proceeds will only be disbursed for eligible project costs as set forth in this chapter following review by the Office and DEQ.

Section 10. Audits and Inspections.

The DEQ or Board may, at their expense, conduct an audit of the records of the applicant and inspect the construction and operation of the project.