



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 173-321 WAC

Public Participation Grants

Summary of rulemaking and response to comments

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Concise Explanatory Statement

Chapter 173-321 WAC Public Participation Grants

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: Public Participation Grants

WAC Chapter(s): 173-321

Adopted date: June 28, 2017

Effective date: July 29, 2017

To see more information related to this rulemaking or other Ecology rulemakings please visit our web site: <http://www.ecy.wa.gov/laws-rules/index.html>

Reasons for adopting the rule

In 2016, Ecology obtained an independent audit of our Public Participation Grants program. Changes to the rule are either specific audit recommendations or the program's recommendations based on experience. Updating the rule now will allow us to apply these changes to grants in the 2017-19 biennium.

As directed under Chapter 70.105D RCW, Ecology has the authority to administer a program for grants to "persons who may be adversely affected by a release or threatened release of a hazardous substance and not-for-profit public interest groups". Grants are used to "facilitate public participation in the investigation and remediation of a release or threatened release of a hazardous substance and to implement the state's solid and hazardous waste management priorities."

The rule language limited applicants to "groups of three or more unrelated persons or not-for-profit public interest groups". The proposed rule language removed the "three or more" requirement and allows "*individuals* adversely affected by a release or threatened release" to apply for a grant. Not-for-profit public interest groups are still eligible.

Chapter 173-321 WAC directs that priority consideration for grant funding will be given to: (1) applicants requesting a hazardous substance release grant. (2) new applicants, and (3) applicants that demonstrate the ability to provide accurate technical information on complex waste management issues.

Proposed changes included replacing (2) new applicants with applicants who "facilitate public participation in highly impacted or low-income communities". This change acknowledges Ecology's commitment to prioritize environmental justice concerns in the program. The "new applicant" priority was moved to (3) and changed to applicants who "have not received

funding in the last two biennia”. This does not change the intent of this priority which is to encourage new grant recipients or to provide flexibility to fund applicants impacted by newly discovered cleanup sites.

“Applicants that demonstrate the ability to provide accurate technical information on complex waste management issues” was eliminated but will be incorporated into the evaluation criteria in the program implementation guidelines.

The rule excluded federally recognized tribes from eligibility, but grants have been awarded in the past to their not-for-profit organizations. The proposed rule language allowed for tribal not-for-profit organizations to apply for grants.

Organizations “sustained by public funding” were excluded in the rule. Since local, state, and federal governments have their own specific exclusions, it was unclear what organizations were excluded. The language was removed from the proposed rule.

Public participation grants may be funded up to \$60,000 per year and renewed annually. The rule required that a new application be submitted to renew a grant. Proposed rule changes eliminated the requirement to submit a new application.

Other proposed changes included, but were not limited to, the application evaluation criteria, eligible costs, and agency reporting requirements.

Differences between the proposed rule and adopted rule

There are no differences between the proposed rule filed on April 5, 2017 and the adopted rule filed on June 28, 2017.

Response to comments

Ecology accepted comments from April 5, 2017 until May 22, 2017. This section provides comments that we received during the public comment period and our responses. (RCW 34.05.325(6)(a)(iii))

Verbatim excerpts from submitted comments have been organized by rule section where appropriate. All other comments can be found in the “General comments” section. Each comment is identified by commenter and represented with italics. Submitted comments in their entirety can be found here: <http://wt.ecology.commentinput.com/comment/extra?id=rt46y>. References to public testimony provided at the public hearing include the person’s name and the hearing date. A full transcript of the public hearing can be found in Appendix A.

General comments

Methow Recycles:

PPG is one of a very small number of grant opportunities available in our very rural and low income part of the state enabling us to reach out to full- and part-time residents, business owners, and students of all ages.

Investments in outreach go a long way toward changing behaviors AND building insurance against future toxic contamination needs. PPG funding of public participation in waste solutions is a critical piece of the funding puzzle in rural Washington state and I strongly urge continued investment in this priority.

Response:

Thank you for your comment.

John Price:

I endorse the Ecology rule-making on Public Participation Grants Rulemaking-Chapter 173-321 WAC.

Response:

Thank you for your comment.

Washington Environmental Council (also provided by Mindy Roberts at public hearing 5/15/17):

WEC strongly supports the MTCA rule revisions related to Public Participation Grants (PPGs), and particularly the improved language around environmental justice. Our partners at Front and Centered evaluated how race and income relate to toxic waste sites. Not surprisingly, they found that across Washington State, toxic waste sites are disproportionately located in communities of color and low-income communities. Moreover, the current system may be biased toward cleaning up sites in white communities or higher-income communities. We need to remove structural and institutional barriers that have produced these patterns. One way to do so is to ensure that people of color and low-income communities have access to funds to support public participation in their communities, both to clean up existing sites and to prevent new contamination... we support the rule revisions and we hope that Ecology moves forward expeditiously without substantive changes to the proposed rule changes to ensure PPGs are available this summer.

Response:

Thank you for your comment.

Zero Waste Washington (hearing testimony given by Heather Trim 5/15/17):

...I am also testifying in favor of the rule. I want to first thank staff for putting in so much time and effort in updating the rule. Especially helping streamline it and clarify the process and also the accompanying criteria and guidelines so it will be a lot clearer to people about when they're applying how the different points and ranking will be done. So thank you very much for all the work that you have done...I just want to thank you for expediting your rulemaking because it's so important to get these grants out on the ground and any delay in the rulemaking will end up causing us a problem in terms of having not us, but anyone who applies for a grant a problem of not having a full two years to do their work. So, thank you very much for the speed with which you're doing this.

Response:

Thank you for your comment.

Sustainable Living Center:

PPG is one of the most economical ways to avoid major hazardous and other waste issues.

Response:

Thank you for your comment.

Heart of America Northwest and Heart of America Northwest Research Center (HOANW/HOANWRC):

The PPG program has suffered in recent years from a lack of focus on this primary statutory purpose of enhancing public participation in the decisions regarding hazardous waste sites and waste management priorities to avoid creation of new sites.

The proposed rule changes fall far short of enhancing or facilitating such public participation in the decisions regarding hazardous waste sites and plans that may significantly impact public health, safety and the environment for decades and centuries.

Response:

Ecology respectfully disagrees with this comment. All grant funded projects are required to facilitate public participation in hazardous waste sites or waste management priorities.

HOANW/HOANWRC:

Some of the provisions of the proposed rule revision will be obstacles to facilitation of public participation in those decisions, rather than facilitating or enhancing them. Those proposed provisions need to be significantly changed because they are inconsistent with the statute and with the goals of the program.

Response:

The commenter expanded on this concern in other areas of their submittal and we have responded to those remarks below.

HOANW/HOANWRC:

HOANW understands the sense of urgency on the part of Ecology to finish the rule making process and apply the changes to grants awarded in the 2017-19 biennium. We do note that there is no particular obstruction to applying the “lessons learned” to the rules as they currently stand. However, other strongly motivating factors for Ecology are to provide more clarity to applicants and evaluators for 2017-2019, and achieve greater efficiencies in the administration of the program.

We do caution that these goals – particularly ease of administration or reducing evaluation of applications - should not outweigh due consideration of the fundamental purposes of the PPG program.

Response:

Ecology believes our approach provides an appropriate balance and does not sacrifice the fundamental purpose of the program in favor of more expeditious administration.

HOANW/HOANWRC:

Dispute resolution process is missing: There is no formal appeal process. This is not adequate. Sharing how grants are scored is not a replacement for an appeal process. The rules should have a clear process and timeline for appeals.

Response:

With many potential projects and limited funding, Ecology recognizes that some applicants will likely be disappointed with our decisions in awarding grants. We believe our process is reasonable and reflects good business practices. The addition of an appeals process would delay the issuance of grants, potentially for all applicants. We remain open to further comments and input regarding our process of evaluation.

Front and Centered:

Front and Centered supports the revised Public Participation Grants Rulemaking-Chapter 173-321 WAC... The revised rule better executes the original intent of the Model Toxics Control Act, approved by voters, for communities to directly engagement in toxic and waste prevention and clean-up. Specifically, the rule makes more explicit the issue of environmental justice and better provides for participation from communities disproportionately impacted by toxics and waste. In addition, the revised rule supports participation of communities that were not fully being engaged previously. The revised rule also provides for better accountability and transparency, and will reduce costs and burden on applicants and administrators.

Thank you for your work, we fully support implementation of the revised rule as soon possible, and recommend you do not delay these necessary grants any further than they have already been delayed due to budget cuts.

Response:

Thank you for your comment.

The Lands Council:

Thank you for this opportunity to comment on Ecology's rulemaking to amend Chapter 173-321 WAC, Public Participation Grants. We applaud Ecology's adoption of specific recommendations from the 2016 independent audit in an effort to streamline applicant eligibility, establishment of priorities, evaluation criteria, and program implementation. TLC is in agreement with the proposed changes.

Response:

Thank you for your comment.

Got Green:

We support the revised Public Participation Grants Rulemaking-Chapter 173-321 WAC. Got Green is a people of color led environmental justice organization based out of South Seattle. Our members are from frontline communities, who are working at the intersection of poverty and climate change. Thank you for your work on this.

Response:

Thank you for your comment.

PT AirWatchers:

PT AirWatchers supports the revised Public Participation Grants rulemaking, Chapter 173-321 WAC, with the following comments and questions...Public Participation Grants are valuable, a cost-effective way for supporting work to solve problems that may be particular and local, but yet can yield results with wider application. Grassroots advocates often have local expertise and

willingness, and PPGs can be the boost that willing local people need to become effective in working for the public good.

We feel like these proposed changes are generally beneficial in that they will make that process clearer; we very much appreciate that they recognize that having funding for "basics" is essential to carrying out the larger task; and that effective groups can come in different packages... access to funding allows grassroots groups to do work that can yield rich results to the benefit of science, the environment and communities at a very favorable cost. As one such group that has been grappling with highly technical, complex and politically "hot" issues for a decade, we appreciate that the state values the work that our peer groups of citizen advocates and citizen researchers can bring to solving collective issues. We thank the committee for their good work to simplify and to enhance the process, which we believe will bring stronger results from and for our communities.

Response:

Thank you for your comments.

Citizens for a Healthy Bay:

We commend Ecology staff and members of the PPG advisory committee for their work on this important program. As a past PPG recipient, CHB knows firsthand how critical these funds are to grassroots organizations working to protect Washington's communities from the adverse effects of hazardous pollution. Simply put, without these funds to facilitate public participation, the people of Washington bear the hardship. It is imperative that Ecology is able to move quickly on this rulemaking in order to implement the program for this biennium.

Response:

Thank you for your comment.

WAC 173-321-010 Purpose and authority

Washington Environmental Council (also provided by Mindy Roberts at public hearing 5/15/17):

Very few PPG recipients to date identify as environmental justice organizations. As more groups get involved, we need to ensure they have clear grant application information and that the selection process is equitable. The first step is captured in the proposed edits to WAC 173-321-010 that give priority consideration to public participation in highly impacted or low-income communities among other factors. We urge Ecology and other state agencies to incorporate language that defines disproportionate impacts to ensure that communities of color and low-income communities no longer face higher risks.

We also agree with prioritizing organizations not funded in the previous two biennia. We do not intend to apply for a grant ourselves, nor have we received PPGs in the past. However, we see the need to ensure that environmental justice groups gain access to these important funds. We support this clarification of the previous language that was in WAC 173-321-050 related to prioritizing new grant recipients.

Response:

Thank you for your comment.

HOANW/HOANWRC:

The Rule should specify that Ecology views the PPG program, as noted in other WAC sections, and in various MTCA and HWMA cleanup orders and agreements and their public participation plans, as part of the public participation plan process for hazardous substance release sites and a direct cost of investigation and remediation. Therefore, pursuant to the Federal Facilities Compliance Act, RCRA, RCW 70.105.280 and WAC 173-328-014(1)(e), the rule should lay out a clear process under which Ecology will charge USDOE or other mixed waste site operators with releases for the cost of grants to qualified organizations applying for PPG grants to facilitate public participation in cleanup decisions for the site (and RCRA permitting), especially for the costs of effectively participating in the Hanford Advisory Board and increasing public comment and participation in upcoming decisions for the site in the biennia for which the grant is awarded.

WAC 173-328-040(1) directs Ecology to collect fees for the “[d]irect and indirect cost of . . . [p]ublic involvement, education, and outreach” WAC 173-328- 040(1)€ (implementing RCW 70.105.280).

Response:

Ecology appreciates the recommendation, but it is outside the scope of this rulemaking to develop a fee program as suggested.

HOANW/HOANWRC:

In the past, our organization has questioned the rule giving priority to “new” applicants on the grounds that it does not demonstrably improve achievement of the goals stated in the statute.

We have previously stated our position that the Department of Ecology can and should provide support in a consistent way to new applicants in order to help them to make successful and compliant grant applications, but that this does not rise to the level of statutory priorities.

Assisting new groups by providing training for the in the application process would be an example of facilitating involvement.

However, the statute does not allow Ecology to add a new prioritization, as is proposed in the proposed amendment to WAC 173-321-010, for applicants who:

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

The priorities of the PPG program are set in statute. If Ecology wants to change the priorities of the PPG program to add a new, third, priority, it must seek legislation to do so.

As noted above, there are two priorities set in statute. Further, as an initiative, the statute must be interpreted to meet its purpose, which is to “facilitate the participation by persons or organizations....”

Creating a priority for applicants who have not received funding in the past two biennia will actually be an obstacle to facilitating involvement, particularly for hazardous substance release sites:

- *The statute (and the rules implementing MTCA in the WAC) recognizes that the most complex and potentially dangerous sites may take years to investigate, develop potential exposure scenarios (which depend on the facilitated public input from various stakeholders*

who eat, drink, breathe, use the land and other resources which may be impacted from releases), and many more years to develop and implement cleanup plans.

- The proposed rule amendment to prioritize grant awards to “new” applicants (which also includes increasing evaluation scores for groups that have not received grants for two biennia and penalizing those who have) diminishes the ability of those individuals and groups seeking to participate in the most complex and long-term hazardous substance release sites.

- The proposed rule amendment directly penalizes the groups working to facilitate public participation in the most complex sites. It is not written as an encouragement for new applicants, but as a diminution of priority and grants for the groups working to involve the public in such extremely long-term site process such as for Hanford, the Duwamish and every other major Superfund / CERCLA site and other complex sites.

- Under the proposed rule amendment, a group which successfully assists the public and higher risk individuals to provide input to a site investigation, risk assessment and exposure scenario, would lose priority and have a diminished likelihood of receiving a grant when the liable parties, Ecology, EPA and others were developing a cleanup plan.

Or, after conducting processes to involve the public in an investigation and gathering input for the exposure scenario and risk assessment, which often take four years at complex sites, a grant applicant would move into a lower priority and disfavored applicant status – just when the importance of providing that input and having an iterative public participation process to ensure that cleanup decisions reflect input was reaching its apex.

The groups that are likely to suffer the most from moving into a disfavored status after four years are groups working to provide environmental justice related considerations into the cleanup decision process.

Thus, this proposed set of amendments (010 and 050(8)(a)) would diminish, rather than facilitate, public participation.

Response:

Chapter 70.105D RCW, Model Toxic Control Act is the authorizing statute for the Public Participation Grant program (RCW 70.105D.070). The statute does not establish the program priorities. The statute outlines the *eligibility criteria* and *purpose* of the grants:

The funds are “only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations.”

“The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities.”

Ecology established the priorities for the grant funds in the rule as authorized by the statute. “The department shall adopt rules for grant or loan issuance and performance” (RCW 70.105D.080).

The existing rule language gave priority to “new applicants”. The proposed amendment changed that to applicants who “have not received funding in the last two biennia”. The

language was changed for two reasons: 1) “New applicants” eliminates applicants who applied but did not receive funding. This wasn’t the intent of the previous rule writers. The intent was to provide grant opportunities to a wide variety of applicants and projects each funding cycle. 2) Ecology did not want this to be a “one-time only” qualification so we narrowed the impact to four years or two biennia. The proposed language is less restrictive than the current rule.

Ecology will consider giving less weight to this priority in the application evaluation process.

HOANW/HOANWRC:

HOANW strongly supports the proposed environmental justice language to “facilitate public participation in highly impacted or low-income communities,” as a much improved approach to prioritizing new applicants in a way that goes directly to the purpose of the PPG program under the statute, while avoiding the potential mistake of supporting newness simply for the sake of newness.

Response:

Thank you for your comment.

HOANW/HOANWRC:

Having made this revision, it makes no sense to also add language (priority consideration to applicants that “have not receive funding in the last two biennia” [010 and 050(8)(a)]) that essentially still calls for prioritization of new applicants simply because they are new.

It makes even less sense to substitute this language, not as a direct replacement of (2) “new applicants,” but rather as a replacement of an entirely different priority, (3) “Applicants that demonstrate the ability to provide accurate technical information on complex waste management issues.”

There is no rationale for making such a substitution. In fact, it is likely to negatively impact the achievement of the purpose of the PPG program, as many high priority waste management issues are indeed complex, and many applications meeting environmental justice criteria will also prove to be addressing complex management issues over a time frame extending beyond two biennia.

If there are difficulties with the old language in regard to other goals, such as a revised system of evaluation, then it may make sense to modify the language regarding complex waste management issues. HOANW challenges the assumption, however, that the prioritization of applicants with skill in dealing with complex waste should be replaced. It is especially problematic to replace the evaluation criteria for the ability to communicate regarding technical waste management issues with the prioritization of new applicants

We urge that the current language for criteria regarding “the ability to provide accurate technical information” be modified to have specific evaluation criteria which reflects the goal of increasing public participation with the following:

“a) The ability to review complex procedural and technical information on cleanup and waste management, including such issues as risk assessments, and to effectively communicate how decisions may impact affected individuals, communities and environmental resources; and,

“b) The degree to which the applicant proposes to facilitate public participation through public input or comment in decision processes for hazardous substance release sites or pending waste management prioritization decisions; e.g., will the applicant increase the numbers of public offering to comment, or will the applicant enable the public to participate in additional geographic regions or from different segments of a community?”

Response:

Ecology believes that “the ability to provide accurate technical information on complex waste management issues” is more appropriate as a criterion for application evaluation than as a funding priority.

The Lands Council:

We are especially in favor of Ecology’s commitment to environmental justice issues in giving priority consideration for grant funding to “applicants who facilitate public participation in highly impacted or low-income communities” rather than “applicants that demonstrate the ability to provide accurate technical information on complex waste management issues.”

Response:

Thank you for your comment.

Citizens for a Healthy Bay:

The proposed changes revise PPG program priorities to include environmental justice. CHB fully supports the new priority area of “applicants who facilitate public participation in highly impacted or low-income communities.” This change addresses the need to prioritize environmental justice concerns in the program.

Citizens for a Healthy Bay fully supports revising the PPG program priorities to include environmental justice. Studies have shown that toxic contamination disproportionately affects vulnerable communities in Washington, such as people of color and low-income populations.

By prioritizing projects that benefit these highly vulnerable communities, this program can seek to acknowledge the inequitable distribution of environmental burdens and benefits. Every Washingtonian deserves protection from hazardous pollution no matter who they are, where they live, or how much money they make. Citizens for a Healthy Bay commends Ecology for prioritizing funding for overburdened communities. Achieving this vision will help to make our vulnerable, environmentally burdened, and economically disadvantaged communities healthier, cleaner and more sustainable places in which to live, work, play and learn.

Response:

Thank you for your comment.

Citizens for a Healthy Bay:

The proposed rulemaking directs that priority consideration for grant funding will be given to new applicants. While CHB understands the intent behind this consideration to promote equity and encourage new applicants, we are concerned about its unintended consequences for people and small organizations doing environmental justice work.

By prioritizing new applicants who “have not received funding in the last two biennia,” the proposed change benefits large organizations with more financial stability while individuals and

smaller grassroots groups are at a disadvantage – we believe this is the opposite effect Ecology has intended. The disruption in potential funding makes small organizations less financially stable, thereby decreasing both the consistency and quality of their education and outreach work.

CHB recommends that this provision is: 1) removed from the priority consideration language; 2) given less weight than the other two priority criteria; or 3) revised to read: “(c) Have not received funding in the last two biennia or have received funding in the last two biennia and have received positive performance evaluation by the department.

Response:

Existing rule language gave priority to “new applicants”. The proposed amendment changed that to applicants who “have not received funding in the last two biennia”. The language was changed for two reasons: 1) “New applicants” eliminates applicants who applied but did not receive funding. This wasn’t the intent of the previous rule writers. The intent was to provide grant opportunities to a wide variety of applicants and projects each funding cycle. 2) Ecology did not want this to be a “one-time only” qualification so we narrowed the impact to four years or two biennia. The adopted language is less restrictive than the previous version of the rule.

Ecology will consider giving less weight to this priority in the application evaluation process.

WAC 173-321-020 Definitions

Zero Waste Washington (hearing testimony by Heather Trim 5/15/17):

I would like to comment that it does seem that we need a little bit more clarification on the definition of highly impacted communities, and that could be in guidance but, I think that at this point it is still a little bit not well defined, probably across the state but also here.

Response:

The definition allows flexibility in case the Department of Health changes methods of assessing risk. Methodology for determining a “highly impacted community” will be provided in the guidance prior to the application period.

PT AirWatchers:

...“Hazardous substance” ...The “as proposed” is a lot shorter and cleaner. Though, in eliminating reference to U.S. Code, there’s a potential for losing out on being able to address hazardous substances that might be defined in Federal law but not called out in WA law? Would there be merit, demerit or unintended consequences in adding a reference to federal definitions of hazardous substances, e.g., “...or U.S.C. Sec 9601(14)”?

Response:

The proposed definition of “hazardous substance” references chapter 70.105D RCW, the rule’s authorizing statute. The full definition in the statute includes the language regarding federal law and is not needed in full in the rule.

PT AirWatchers:

(C)omparing...items (9) and new (22) ... I like that (9) includes “...Physical, chemical, and biological treatment;” yet it’s omitted in (22). We would like to also see it included in (22) as the second choice after waste reduction...

Response:

This language comes directly from the authorizing statutes (chapters 70.105 and 70.95 RCW) and for that reason cannot be altered.

PT AirWatchers:

Under the rubrics of "waste recycling" and "landfill" we have concerns about increasing use of industrial and sewer sludges as "compost", being spread on farms and forests with little responsible characterization of chemical hazards. We have similar concerns over sources and fates of materials that are in the "incineration" and "energy recovery" groups. We hope that somewhere in this or other rulemakings, sludge begins to be honestly characterized, and the true, full ecological costs of burning biomass come to account.

Response:

Thank you for your comment.

PT AirWatchers:

I like that the committee has deleted "(13) 'Person' means [list of all sorts of non-human entities]". One less place enshrining a misguided notion. By using "person" in "(18) Potentially Liable Person", is the intent to have a means to hold actual individual human decision-makers responsible for their choices? I can support that! Otherwise, I seriously would prefer to see the word "party" used, e.g., "Potentially Liable Party" and " 'Owner/operator' means any party..." rather than further entrenching this misguided proposition that corporations and non-human entities are "persons." Then, e.g., add a definition of "party" to mean all of the entities listed under the deleted item (13).

Response:

The definition of “person” was removed when we proposed allowing individuals to apply. Ecology did not want there to be any confusion as to applicant eligibility because of the broad scope of the definition of “person”. The other terms are from chapter 70.105D RCW, the rule’s authorizing statute and cannot be changed.

WAC 173-321-030 Relationship to other legislation and administrative rules

PT AirWatchers:

Seems like a good way to deal with guideline updates for everyone involved.

Response:

Thank you for your comment.

WAC 173-321-040 Applicant eligibility

PT AirWatchers:

Makes it clear that worthy groups may apply even if they do not fit the 501(c)3 model. Many factors can affect what structure works best for a given group or project. Even if 501(c)3 is a good fit for the group, issues that environmental advocates address can be complex, arcane or politically "hot" enough that a certain amount of research and public education must be done before they can attract a board and build 501(c)3 type structure; adequate funding is key to making that happen.

Response:

Thank you for your comment.

WAC 173-321-050 Application evaluation criteria

Zero Waste Washington (hearing testimony by Heather Trim 5/15/17):

I'd also like to comment that the question of past performance of the grant applicants should be clarified, and that may not be in the rule, also that might be something that can be done in guidance but, I understand that it makes sense to look at past performance but I think it's unclear if that is something that is for just the last biennium or if it is for multiple bienniums. And as you all know, you know staff at non-profits change sometimes rapidly sometimes not so rapidly.

Response:

This will be clarified in guidance. The evaluation of past performance for the 2017-19 funding cycle will be based on the performance in the 2013-15 biennium. The performance evaluation method will change in subsequent biennia because grants will be monitored in Ecology's Administration of Grants and Loans (EAGL) online system. The performance matrices are different than the 2013-15 method.

Sustainable Living Center:

The Public Participation Grant process needs to have a schedule that not only specifies deadlines for submission but deadlines for Ecology to complete selection of grantees, complete notification to grantees, and begin allowing spending on grants issued so the grantee has the entire time period in which to complete the project. In the past, we have met the deadlines but Ecology has often not allowed spending until well into the project's time period.

Response:

Ecology understands that promptness in decision making is important to applicants. Ecology cannot set or commit to a specific schedule because there are a number of factors that affect the process that we cannot directly control. In particular, grants cannot be awarded until the Governor has authorized a budget. Ecology has allowed charges to grants prior to the award (back to an effective date) in the past, and we anticipate to continue doing so. We recognize that stakeholders incur risk in spending before a grant is formally awarded by Ecology. We agree that delays on Ecology's part are impactful to recipients. We expect the new Ecology Grants and Loans data management system to expedite the process.

HOANW/HOANWRC:

The rule should include a commitment by Ecology to support environmental justice goals by laying out a process through which Ecology will offer to assist groups from more highly impacted communities with language and financial barriers in being able to apply for grants. This would be a meaningful commitment and represents a proven approach to improving minority and limited English proficiency participation in state grants and business awards. This would not be in the evaluation criteria, but a new WAC section.

The WAC needs to be clear as to when, how and for whom Ecology staff will offer such assistance.

Response:

Ecology has committed to supporting environmental justice goals as evidenced in the proposed rule language giving highly impacted and low-income communities priority consideration. Ecology is also committed to providing outreach to all communities regarding the application period, deadlines, and guidance document (WAC 173-321-050(1)). Ecology will provide accessible application training upon request.

HOANW/HOANWRC:

The proposed rule amendments fail to address the serious problem exposed when some Ecology staff assisted one applicant who had significant connections to Ecology officials and management of a release site with preparation of their application. The rules need to specify if – and when – any assistance is offered to an applicant in order to avoid the appearance of unfairness or favoritism.

Response:

Ecology is not aware of this occurring. PPG program staff assist everyone under the same rules. They offer a one hour pre-application consultation with anyone that requests it. The application instructions are available to all applicants. They also provided training and assistance to anyone that requested it on the new online application system for 2013-15 cycle applicants. This assistance was limited to technical assistance with the form.

HOANW/HOANWRC:

We urge that the current language for criteria regarding “the ability to provide accurate technical information” be modified to have specific evaluation criteria which reflects the goal of increasing public participation with the following:

“a) The ability to review complex procedural and technical information on cleanup and waste management, including such issues as risk assessments, and to effectively communicate how decisions may impact affected individuals, communities and environmental resources; and,

“b) The degree to which the applicant proposes to facilitate public participation through public input or comment in decision processes for hazardous substance release sites or pending waste management prioritization decisions; e.g., will the applicant increase the numbers of public offering to comment, or will the applicant enable the public to participate in additional geographic regions or from different segments of a community?”

Response:

Ecology wants the evaluation criteria in the rule to be broader to allow for flexibility in each funding cycle. Ecology awards grant amounts based on the applicant’s request and project needs. Meaningful and effective involvement is not determined by the number of outputs. It is determined by measurable behavior changes. Projects will be evaluated based on how these behavior changes can be measured. The quality of the communication is as important as the quantity and cost. Project costs are reimbursed based on actual expenditures.

HOANW/HOANWRC:

...a major concern reflected in our comments is the degree to which the proposed rules will ensure that applications are reviewed and awards are made based on the degree to which public participation in decisions for hazardous waste sites or decisions for waste management priority implementation is “facilitated” or enhanced.

Nowhere in the proposed amendments is there any proposal to have clear criteria to evaluate applicants based on the primary goal of the PPG program: to facilitate public participation in these decisions.

Instead, the proposed amendment adds several administrative evaluation criteria (050(c)(d) and (e)) without improving the criticized lack of clear public participation evaluation criteria. The repeated emphases on administration in 050 evaluation criteria – at the expense of involvement criteria - will penalize the smallest groups, particularly those with English Language barriers, lower income communities, who do not have the experience and resources to report perfectly.

The only element of evaluation criteria relating to facilitating public participation proposed in the revision to 050 is (b), the extent to which the applicant is impacted by the release site or decision.

But, the proposed 050(b) is not even truly evaluation criteria for public participation. Rather, it is really simply a restatement of the statutory limitation that awards of funding are limited to: “persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations.” RCW 70.105D.070.

Thus, for the PPG program to address the questions raised about whether the evaluations consider the degree to which public participation is enhanced or facilitated, and the objectivity of the evaluation process, the rules truly need to add that there will be specific evaluation criteria regarding how many people, from which communities, will have participation facilitated in the decisions.

The rule should specify that awards will be based primarily on how the proposal would facilitate public participation in specific decisions at sites or specific pending waste management prioritization decisions (e.g., not broad “education” about waste or the environment). There should be clear criteria for increasing the numbers of people participating in cleanup site or priorities decisions, e.g., a group which proposes to increase participation by ten people should not receive the same funding award as a group effectively increasing participation by one thousand; and groups serving to increase participation for major sites over a broader area should receive a higher award than a group serving one single community.

Ecology should be emphasizing in the rule that the evaluation criteria will ensure that groups or citizens seeking to review risk assessments and comment on cleanup plans with exposure scenarios based on public input are supported.

Response:

No new evaluation criteria were added to the rule. We removed some outdated criteria and reworded others for clarification. For instance, “past performance under a public participation grant” (WAC 173-321-050(3)(f)) became “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” (WAC 173-321-050(8)(e)).

The evaluation scoring rubric that the evaluator’s will be using will contain more specific criteria. The rubric will be made available to applicants prior to the application period. This will let them see how they will specifically be evaluated. It will also allow Ecology to include new tools that are appropriate for measuring public involvement as they evolve.

HOANW/HOANWRC:

The rules should add to 050 that one evaluation criteria will reflect Ecology's claimed commitment to support participation in major cleanup site advisory boards, including the Hanford Advisory Board.

- *There should be clear criteria that for complex sites with advisory boards that Ecology will provide support for groups participating. Ecology has repeatedly stated that it understands the lack of PPG support for groups on the Hanford Advisory Board has severely diminished their participation and the overall work of the Board, e.g., ability to spend extensive time developing advice on complex issues relying on organizations' expertise. This clearly fits within the legislative mandate for grants to facilitate public participation in decisions about hazardous release sites.*

- *The language should be: "whether the applicant participates in an official advisory board convened by Ecology or another agency (agencies) for purposes of increasing public input to cleanup decisions or the waste management prioritization decision which is the subject of the application."*

Response:

Ecology has prioritized projects that facilitate public participation in hazardous substance release sites. This includes participation on advisory boards. We do not believe additional criteria are necessary in the rule. *Guaranteeing* support to organizations is not consistent with the need to give fair consideration to the overall context and merit of each application.

HOANW/HOANWRC:

Our final proposal for enhancing the administration, credibility and goals of the PPG program is for Ecology to appoint a small group of 3 to 7 external advisors with expertise in public participation (and without any connection to applicants or liable parties) to assist in review of the applications.

- *Ecology faces obstacles for timely review of applications with appropriate expertise in public participation. This proposal would greatly enhance credibility of the reviews and allow for independent individuals to provide a composite score (instead of one or two Ecology staffers). This proposal would allow Ecology to tap a wide range of volunteer public participation expertise to enhance the PPG program, speed up review and increase objectivity and credibility of the scoring process.*

Response:

Ecology concurs that a thoughtful and expeditious review of applications is in the best interest of all parties. We are hopeful that the new EAGL system will help expedite the process.

We appreciate the intent of the recommendation for an external group of evaluators. While it could present challenges that are unlikely to be easily resolved ahead of the upcoming grant cycle (for example, recruiting, vetting, and training members of the public) the rule does not preclude Ecology from considering this practice in future biennia. Ecology has skilled technical experts and public participation staff to help in the evaluation process.

PT AirWatchers:

...streamlines/simplifies specific application and evaluation criteria. We feel like this proposal is easier and more broadly inclusive.

Response:

Thank you for your comment.

WAC 173-321-060 Eligible project costs

HOANW/HOANWRC:

Supplies and tools as reimbursable expenses must not include purchase of materials that will be used for purposes other than the grant and allowable grant purposes if over \$1,000. The current proposal (060(1)(g)) for allowing tools and supplies with costs up to \$5,000 opens Ecology to severe criticism and inability to prevent use of grant funds for non-allowable purposes. Equipment with a life of five years is major equipment. Depreciation of equipment is normally five years.

a. During the discussion on the rule prior to the hearing, in response to a question about this Ecology said the agency won't allow reimbursement for things that are not reasonable. That is not a standard. Indeed, anyone submitting a reimbursement for such supplies and tools would be entitled to reimbursement under the proposed rule, even if the future uses of the supplies and tools over the ensuing years might be for entirely unallowable purposes, such as assisting in a ballot campaign.

Response:

Equipment is not an eligible expense for PPG. Supplies and tools will only be allowed if they are necessary to implement the project. All costs must be pre-approved by Ecology. Ecology is not obligated to reimburse for costs not allowed under the grant conditions.

The disposition of tools that may still be usable at the completion of the grant is determined by Ecology on a case-by-case basis. One of the considerations is whether the project is continuing. Ecology has the ability to require the return of any supplies or tools, or the sale of these items with the funds returning to Ecology. Disposition of Ecology funded purchases is outlined in the [Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL](#) that is applicable to all state funded grant programs.

PT AirWatchers:

It's nice to see acknowledgment that having basic yet necessary Supplies and Tools is part of being able to accomplish a grant project.

Response:

Thank you for your comment.

PT AirWatchers:

I am confused as to what is meant by "an acquisition cost of less than one thousand dollars" - does that mean acquisition cost in total for all items or something like "per line item"? I imagine that most items in this would cost much less than \$1k, but it might be easy to reach \$1k in the aggregate, so welcome clarification.

Response:

This is a per unit cost, not aggregate. Supplies and tools will only be allowed if they are necessary to implement the project. All costs must be pre-approved by Ecology. Ecology is not obligated to reimburse for costs not allowed under the grant conditions.

PT AirWatchers:

(2)(a) excludes "independently collecting or analyzing samples at a facility".

- *does it exclude ALL collecting or analyzing samples?*
- *if any, what sampling and in what context is or would be allowed? e.g.,*
- *fenceline monitoring or samples from off-site?*
- *conducted by a professional who is employed neither by an agency nor the facility in question?*
- *citizen science under the supervision or guidance of such a professional?*
- *sampling, even off-site or fenceline, can make a highly direct route from questions and fears to knowledge, especially for fenceline communities.*

Response:

This exclusion only applies to hazardous substance sites that are currently under Ecology or EPA oversight, including Voluntary Cleanup sites. Any sampling conducted, including off-site and fenceline, would have to have prior review and approval by Ecology (not “independent”). Non-site specific sampling, such as for general stormwater quality analyses or other “citizen science” projects, may also be eligible. Applicants should request guidance from Ecology PPG staff prior to applying.

WAC 173-321-070 Grant funding

HOANW/HOANWRC:

The rules should provide for MORE awards of varied size based on level of increased public participation and considerations such as whether the increased participation facilitates environmental justice considerations by increasing participation by, and the inclusion of viewpoints from, impacted persons or communities who have traditionally had less of a voice while experiencing disproportionate impacts.

- *Groups increasing participation in multiple communities or areas; and, with a record of increasing participation in actual comments on decisions by dozens or hundreds of commenters; should receive higher awards based on the increased work to do so than a group serving one community or a small group, such as twenty or one hundred people.*
- *Obviously, the cost of communicating and effectively involving larger numbers of people is higher and should be a factor in scaling awards as well as in initial scoring.*

Response:

Ecology awards grant amounts based on the applicant’s request and project needs. Meaningful and effective involvement is not determined by the number of outputs. It is determined by measurable behavior changes. Projects will be evaluated based on how these behavior changes can be measured. The quality of the communication is as important as the quantity and cost. Project costs are reimbursed based on actual expenditures.

WAC 173-321-080 Grant administration

No comments received

Comments in their entirety may be found here: <http://wt.ecology.commentinput.com/?id=rt46y>

Commenter index

The table below lists the names of organizations or individuals who submitted a comment on the rule proposal and where you can find Ecology's response to the comment(s).

Name	Position Title	Organization	Stakeholder Comment Section	Page Numbers
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Deric Gruen	Executive Director	Front and Centered	General comments	7
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Gretchen Brewer	Executive Director	PT AirWatchers	General comments WAC 173-321-020 WAC 173-321-030 WAC 173-321-040 WAC 173-321-050 WAC 173-321-060	8 13-14 14-15 15 19 19-20
Melissa Malott	Executive Director	Citizens for a Healthy Bay	General comments WAC 173-321-010	8 12-13
Heather Trim	Executive Director	Zero Waste Washington	General comments WAC 173-321-020 WAC 173-321-050	5-6 13 15

Appendix A: Transcripts from public hearings

The following transcription of comments was prepared from a digital recording of the public hearing on proposed revisions to the Public Participation Grants rule, held on May 15, 2017 at the Department of Ecology headquarters in Lacey, WA. This rendering may contain some errors. Vocalized pauses such as um have been removed, as well as misspeaks that were corrected by the speaker. A digital version of the full proceeding is located in the official rule file.

Kirsten Miller: Okay so I am Kirsten Miller, hearings officer for this hearing. This afternoon we are to conduct a hearing for the proposed amendments to Chapter 173-321 of the Washington Administration Code - *Public Participation Grants*. Let the record show it's 2:32 PM on May 15, 2017, and this hearing is being held at the Department of Ecology Lacey building in R0A-32, 300 Desmond Drive, Lacey, WA 98503. We also have people attending via webinar. Legal notices of this hearing were published in the Washington State Register on April 19th, 2017 with the *Washington State Register* number 17-08-094. In addition, notices of this hearing were mailed to about 362 interested people, emailed to 2,972 interested people, published in the April 13th, 2017 issue of Ecology's *Site Register* and issued in a news release on April 11, 2017. Ecology is accepting both written and oral comments on the proposed amendments. I note that three people have indicated that they'd like to provide formal comments, and after they're done I'll give others that have not commented an opportunity to do so as well. So when I call your name please come to the recorder at the front of the room, and then clearly state your name and your affiliation if you would like. And then for those of you participating by webinar, please use the chat feature to let Dawn know, and she'll unmute your line when it's your turn. I'll start the recording after you provide your information and you'll have up to two minutes to comment. So on my list we have Helen Wheatley first, and then Mindy Roberts next, and then we'll go to the webinar participants if there are any. So.

Helen Wheatley: Well can we switch that around?

Kirsten Miller: Yeah.

Helen Wheatley (to Mindy Roberts): Can you go first?

Mindy Roberts: Sure.

Kirsten Miller: If you are ready, we can do that yeah. So Mindy.

Mindy Roberts: Yeah.

Kirsten Miller: Here you go.

Mindy Roberts: Recorder there?

Kirsten Miller: Yeah, so here is the recorder. And then I am just going to start my timer or did you want to use your timer that's fine too.

Mindy Roberts: Just to keep track.

Kirsten Miller: Okay, I'll start this.

Mindy Roberts: Okay.

My name is Mindy Roberts and I lead the People for Puget Sound Program at the Washington Environmental Council. For over fifty years we have worked to protect, restore and sustain Washington's environment, and we focus on clean air, clean water and clean energy for all Washingtonians. We were deeply involved in writing the Model Toxics Control Act that was passed by Washington voters in 1988, and we have invested significant resources to protect and defend MTCA as it is known to ensure it continues to meet the needs intended by voters. We have over 12,000 toxic waste sites in our state and about half remain to be cleaned up. WEC strongly supports the rule revision, and particularly the improved language around environmental justice. Our partners at Front and Center evaluated how race and income relate to toxic waste sites, and not surprisingly they found that across Washington state, toxic waste sites disproportionately impact low-income communities and communities of color. And the current system may actually be biased toward cleaning up sites in white communities, or in higher-income communities. So we need to remove the structural and institutional barriers that have produced these patterns, and one way to do so is to ensure that people of color and low-income communities have access to these funds to support public participation grants in their communities, both to clean up the existing sites and to prevent new contamination in the future. And very few of the PPGs to date have been by environmental justice organizations. As more EJ groups get involved in these programs we really need to reduce barriers to assure that they've got the information for applying for the grants, the information is clear, and the process is equitable. And we feel the first step is captured in the proposed edits to WAC 173-321-010 that give priority consideration to public participation in highly impacted or low-income communities among other factors. So we support the rule revisions and we hope Ecology moves forward expeditiously without substantive changes so that we can have PPGs this summer. Thank you.

Kirsten Miller: Okay, thank you. And Helen are you ready?

Helen Wheatley: I'm going to go with a, I'm just going to do a written comment.

Kirsten Miller: Okay. And so do we have anyone on webinar?

Dawn Drake: No one indicated to me that they would like to speak.

Unknown: She does.

Dawn Drake: We just did.

Kirsten Miller: Okay.

Dawn Drake: Would we be able to add someone?

Kirsten Miller: Yeah. Okay so now we have Heather Trim and she is going to comment over the webinar here.

Heather Trim: Can you hear me?

Kirsten Miller: Yes, so.

Heather: Great, good.

Kirsten Miller: So, go ahead now. I've started the timer.

Heather Trim: Okay, thank you. So this is Heather Trim. I'm Executive Director of Zero Waste Washington, and I'm also testifying in favor of the rule. I want to first thank staff for putting in so much time and effort in updating the rule. Especially helping streamline it and clarify the process and also the accompanying criteria and guidelines so it will be a lot clearer to people about when they they're applying how the different points and ranking will be done. So thank you very much for all the work that you have done. I would like to comment that it does seem that we need a little bit more clarification on the definition of highly impacted communities, and that could be in guidance. But I think that at this point it is still a little bit not well defined probably across the state but especially here. I'd also like to comment that the question of past performance of the grant applicants should be clarified, and that may not be in the rule, also that might be something that can be done in guidance but, I understand that it makes sense to look at past performance but I think it's unclear if that's something that is for just the last biennium or if it is for multiple bienniums. And as you all know, you know staff at non-profits change um sometimes rapidly sometimes not so rapidly. And it seems...

Kirsten Miller: Thirty seconds left.

Heather Trim: Okay thanks, and the last thing I just want to thank you for expediting your rulemaking because it's so important to get these grants out on the ground, and any delay in the rulemaking will end up causing us a problem in terms of having not us, but-anyone who applies for a grant a problem of not having a full two years to do their work. So, thank you very much for the speed with which you're doing this.

Kirsten Miller: Okay. Alright, thank you. Is there anyone else on the webinar?

Dawn Drake: Nope.

Kirsten Miller: Okay. So just as a final reminder all the comments received today whether in person or by webinar, and those provided to Ecology at any time during the public comment period are part of the official record for this process and will receive the same consideration. You can provide comments on the proposed amendments online or by regular mail postmarked by May 22, 2017. Provide online comments at <http://wt.ecology.commentinput.com/?id=rt46y>. Send written comments to Lynn Gooding at the Department of Ecology Waste 2 Resources Program, PO BOX 47600, Olympia, WA 98504-7600. And Lynn's email is lynn.gooding@ecy.wa.gov. Ecology will send out notices about the Concise Explanatory Statement publication to everyone that provided written comments or oral testimony on this rule proposal today, and submitted contact information, everyone that signed in for today's hearing and provided an email address, and other interested parties on the agency's mailing list for this rule. The Concise Explanatory Statement will contain the agency's response to questions and issues of concern that were submitted during the public comment period. If you would like to receive a copy please make sure that your contact information is on the sign in sheet, or you can contact Lynn Gooding or provide your contact information through the webinar. And then you can find the contact information on the PowerPoint provided today. The next step is to review the comments and make a determination whether to adopt the rule. Ecology director Maia Bellon will consider the rule documentation and

staff recommendations, and will make a decision about adopting the proposal. Adoption is currently scheduled for June 28th, 2017. If the proposed rule should be adopted that day and filed with the code reviser, it will go into effect 31 days later. So those are the next steps for the rule process. And then just as a final reminder, if you didn't sign in, please do so, which I think we all did. And then if you have other questions Lynn will be here for a few minutes after the conclusion of this hearing to answer questions if you have any. So on behalf of the Department of Ecology thank you for coming today and participating through the webinar. We appreciate your time, comments and participation. Let the record show that this hearing adjourned at 2:43.