

Remedial Action Grants and Loans Rule Making

Pre-proposal Draft for Public Review

List of Significant Changes

February 13, 2014

General Requirements

	Issue	Current Rule or Guidelines	Proposed Rule	Comment
Budget and Application Process	Will Ecology solicit project proposals? How often?	Not specified. Project-specific discussions.	YES, annually.	To developed our budget and ten-year financing plan. Previously submitted applications may be
	Must applicants submit “project proposals” to be included in budget and ten-year plans?	Not specified. Project-specific discussions.	YES	Ecology will specify timelines in guidelines. Applications may be submitted in place of project proposals.
	Must projects be included in the ten-year financing plan to be grant-eligible? If so, which ones?	NO	Only for Oversight Remedial Action Grants and Area-wide Remedial Action Grants.	Ecology will update the plan for grants and loans at least annually. More likely for project to be funded if included in plan.
	When will Ecology prioritize projects for funding?	Annually, when developing biennial and supplemental budget requests. Project list and ranking may be adjusted during a FY if applications for new projects are received.	Same	Currently, for ORAGs, a ranked project list is included with budget requests. For other types of grants (such as SAs, IRAGs, IPGs), a lump sum is included with budget requests. The sum is based on known projects.
	When will Ecology make funding decisions / negotiate an agreement for a project?	After the biennial or supplemental budget has been passed and funds appropriated.	Same	

Cash Management	How does Ecology implement cash management for multi-biennial projects?	Not implemented	<ul style="list-style-type: none"> • Ecology may not award more funds each biennium than required to complete the scope of work for that biennium. • The biennial scope of work must be approved by Ecology and account for any work not completed during the previous biennium. 	To implement statutory and OFM changes. To the extent possible, funds must be used in the biennium in which appropriated.
	Must recipients provide updated reimbursement schedules by month?	NO	YES, quarterly updates.	To manage accounts.
Funding Priority	How are projects prioritized?	Criteria specified for each type of grant	<p>Among all types of grants:</p> <ul style="list-style-type: none"> • Existing EGAs • Other ongoing projects • New projects <p>Within each type of grant, specify factors. The factors have been modified.</p>	To reflect statutory changes and department policy. Process will remain qualitative (no scoring).
	For ongoing projects, is performance a condition of maintaining priority?	Not specified	YES	Substantial progress must have been made to maintain priority.
Environmental Justice	Is environmental justice considered as a factor when prioritizing funding?	Not specified	YES	Consider whether site located within “highly impacted community.” The term and definition is taken from HB 2312. The plan is to list factors for consideration when making determination in the guidelines (such as poverty rate).

Economic Disadvantage	Counties	<p>1. One of the lowest 20 counties based on per capita income; and</p> <p>2. Either:</p> <ul style="list-style-type: none"> • Rural county; • Unemployment 20% above State average; or • Median HH income < 75% of State median 	Same, except eliminated option of being a rural county.	The original definition was based on Rural Washington Loan Fund. The purpose of this funding program is different.
	Cities and towns	If located in ED county (rule) or if meet the criteria for counties, but as applies to cities (guidelines)	<p>Evaluating options, including:</p> <ul style="list-style-type: none"> • Per capita income less than State average; and • Unemployment 20% above State average; or • Median HH income < 75% of State median 	To stay consistent with criteria currently used for counties. In the process of identifying reliable sources of data. Need to ensure implementable.
	Special purpose districts	If located in ED county	If site located in ED county, city, or town	Surrogate for trying to define ED for special purpose districts
Contribution Claims	May proceeds from contribution claims be used as match?	NO	<p>YES, provided that:</p> <ul style="list-style-type: none"> • Notice of actions. • Notice of settlements. • Proceeds in excess of match result in reduced department share or repayment. 	To incentivize the pursuit of contribution claims. Treated same as insurance claim proceeds.

Site Assessment Grants

	Issue	Current Rule or Guidelines	Proposed Rule	Comment
Project Eligibility	Are initial investigations eligible for funding?	Not explicitly, but allowed	YES	To explicitly allow funding of initial investigations
	Must a site being assessed be located within the applicant's jurisdiction?	YES	NO	To allow local governments to perform assessments in other jurisdictions under inter-local agreements
Funding Priority	What factors are considered when prioritizing funding?	Funding based primarily on past grants	<ul style="list-style-type: none"> • Need for assessments within the jurisdiction; • Population within the jurisdiction; and • Performance of applicant under prior grants 	To reflect practice and possible shift to a more performance-based approach
Cost Eligibility	Are initial investigations eligible for funding?	Not explicitly, but allowed	YES	To explicitly allow funding of initial investigations
	What costs are not eligible for funding?	Specified only in guidelines	Specified in rule	To clarify, consistent with other types of grants
	Are retroactive costs eligible for funding?	YES, including costs incurred during a prior biennia	YES, but not costs incurred during a prior biennia	To clarify that a grant may only fund work during the current biennium
Funding	No changes			

Oversight Remedial Action Grants

	Issue	Current Rule or Guidelines	Proposed Rule	Comment
Project Eligibility	Must the project be included in ten-year financing plan?	NO	YES	Annually, the department will solicit project proposals to develop its budget and update its financing plan.
	May an applicant be a prospective purchaser?	NO	YES	To fund projects where the applicant has entered into an order or decree as a prospective purchaser.
Funding Priority	What factors are considered when prioritizing funding?	Current factors: <ul style="list-style-type: none"> • Threat posed by the site • Readiness to proceed 	Added following factors: <ul style="list-style-type: none"> • Land reuse potential • Whether located in highly impacted community • Ability to expedite cleanup • Ability to leverage other public or private funding for cleanup and reuse • Distribution of grants throughout the state 	To reflect statutory changes and department policy. Process will remain qualitative (no scoring).
Cost Eligibility	How long after construction completion is O&M or monitoring eligible?	Up to one year, but practice varied due to ambiguity	Up to one year. Clarified rule & defined term construction completion," consistent with EPA usage.	To address concern that longer term O&M would tie up future funds, limiting ability to leverage other cleanup projects.
	Are dispute resolution costs eligible?	Not specified.	NO	To ensure funds are used for remedial actions. To expedite cleanups and discourage disputes.
	Are mitigation costs not part of a remedial action eligible?	Not specified.	NO	To ensure funds are used only for remedial actions.

Retroactive Cost Eligibility	Are costs incurred between the effective date of the order or decree and the signature date of the grant agreement eligible?	Not explicitly, but allowed	YES	To avoid delaying remedial action until grant signed.
	Are costs incurred negotiating an order or decree eligible?	Not explicitly, but allowed. Legal costs are not eligible.	YES, if incurred within 90 days of the effective date of the order or decree. Legal costs are not eligible.	To expedite negotiations and therefore the investigation and cleanup of the site.
	Are prior independent remedial action costs eligible?	YES (rule), if incurred after 2001 (guidelines)	YES, if incurred within 5 years of the effective date of the order or decree	To be consistent with post-cleanup funding of IRAGs. Recognizes addition of periodic reimbursement option for IRAGs. To save funds for new projects.
Funding	Does an economically disadvantaged city within a prosperous county qualify for up to 75% funding?	Specified in guidelines, but not rule.	YES	To ensure such cities are treated equitably. Still evaluating how to define economic disadvantage.
	May a project qualify for up to 90% funding under certain conditions and if approved by the director?	Specified in statute and guidelines, but not rule.	YES	To implement statutory change. Limiting availability to projects whose costs are less than \$5 million.
	May proceeds from contribution claims be used as match?	NO	YES	To incentivize the pursuit of contribution claims. Treated same as insurance claims.
Extended Grant Agreements	May Ecology enter into extended grant agreements?	NO	YES	To implement statutory change. Limited to multi-biennia projects whose costs exceed \$20 million. Ecology share of total eligible costs limited to 50%.

Independent Remedial Action Grants

	Issue	Current Rule or Guidelines	Proposed Rule	Comment
Project Eligibility	May an applicant be a prospective purchaser?	NO	YES	To fund projects where the applicant is a prospective purchaser.
Funding Options	Is periodic reimbursement an option?	NO	YES	To implement statutory change and provide flexibility to local governments without sufficient resources to pay upfront for all costs.
	What is required to be eligible?	--	Must enroll the site in the VCP before applying and have the necessary access to conduct remedial actions.	To provide for Ecology oversight of work funded under the grant and to ensure recipients are able to conduct necessary actions.
	How often are applicants reimbursed?	--	Upon completion of each phase of the remedial action	To ensure the work being funded is necessary and has been completed.
	What is required to be reimbursed for each phase of the remedial action?	--	<ul style="list-style-type: none"> • The recipient may not start work until Ecology has reviewed the work plan and authorized funding. • Ecology will not reimburse the recipient until it has reviewed the report and determines no further action is necessary to complete the phase. 	
Funding Priority	What factors are considered when prioritizing funding?	Date Ecology receives completed application	Same as for ORAGs	To reflect statutory changes and department policy. Process will remain qualitative (no scoring).

Cost Eligibility	Same issues as for ORAGs			
Retroactive Cost Eligibility	For the post-cleanup reimbursement option, within how many years of application must the costs be incurred?	Five years	Five years (no change)	No basis for changing policy. Periodic reimbursement is now an option for more complex sites.
Funding	What is the limit on the total eligible cost for a project?	\$400,000	\$600,000	To account for inflation in construction costs.
	Does an economically disadvantaged city within a prosperous county qualify for up to 75% funding?	Specified in guidelines, but not rule.	YES	To ensure such cities are treated equitably. Still evaluating how to define economic disadvantage.
	May a project qualify for up to 90% funding under certain conditions and if approved by the director?	Specified in statute and guidelines, but not rule.	YES	To implement statutory change.
	May proceeds from contribution claims be used as match?	NO	YES	To incentivize the pursuit of contribution claims. Treated same as insurance claims.

Area-wide Groundwater Remedial Action Grants

	Issue	Current Rule or Guidelines	Proposed Rule	Comment
Project Eligibility	May a project include the cleanup of area-wide ground water contamination?	YES	YES (no change)	Considering whether to limit to just investigations
	May the remedial actions be required under an order or decree?	YES	NO	To limit these 100% grants to applicants who are not a PLP. 50% ORAGs are available for applicants who are PLPs.
	Must the applicant have access or obtain access to conduct remedial actions?	Not specified.	YES	To implement statutory change.
	Must the project be included in ten-year financing plan?	NO	YES	Annually, Ecology will solicit project proposals to develop its budget and update its financing plan.
Funding Priority	What factors are considered when prioritizing funding?	Current factors: <ul style="list-style-type: none"> • Threat posed by the site • Readiness to proceed • Ability to expedite cleanup 	Same as for ORAGs	To reflect statutory changes and department policy. Process will remain qualitative (no scoring).
Cost Eligibility	Same issues as for ORAGs			
Funding	What is the limit on the total eligible cost for a project?	None	\$500,000	To limit funding primarily to investigations.

Safe Drinking Water Action Grants

	Issue	Current Rule or Guidelines	Proposed Rule	Comment
Project Eligibility	May the remedial actions be required under an order or decree?	YES	NO	To limit these 100% grants to applicants who are not a PLP. 50% ORAGs are available for applicants who are PLPs.
Funding Priority	What factors are considered when prioritizing funding?	<ul style="list-style-type: none"> • Threat posed by the site • Readiness to proceed • Ownership of system • Number of people served 	<ul style="list-style-type: none"> • Threat posed by the site to drinking water • The number of persons affected by contaminated drinking water • Whether the drinking water serves a highly impacted community • Whether the water system is owned by a local government • Per capita cost of providing safe drinking water • Readiness to proceed 	To reflect statutory changes and department policy. Process will remain qualitative (no scoring).
Cost Eligibility	Must property owners substantially participate in funding individual service connections?	YES	NO	To provide safe drinking water to the public. There is still a 10% match.
	Is the cost of over-sizing or extending a water system for future development an eligible cost?	Not specified	NO	To ensure funds are used only to provide safe drinking water to impacted residents.
Funding	What is Ecology's share of the total eligible cost?	Up to 50%, or 75% for economically disadvantaged counties or cities	Up to 90%	To provide safe drinking water. Actions not required under an order or decree.

Integrated Planning Grants

	Issue	Current Rule or Guidelines	Proposed Rule	Comment
Project Eligibility	Must the applicant have access or obtain access to conduct remedial actions?	Not specified	YES	To implement statutory change.
	May the remedial actions be required under an order or decree?	Not specified	NO	To clarify that grants are not available for actions required under an order or decree.
Funding Priority	What factors are considered when prioritizing funding?	Specified in guidelines	Same as ORAGs	To reflect statutory changes and department policy. Process will remain qualitative (no scoring).
Cost Eligibility	What costs are eligible for funding?	Specified in guidelines	The costs specified in the statute, which include the costs currently listed in the guidelines	To implement statutory change
Funding	What is the limit on the total eligible cost for a project?	\$200,000	\$200,000	No basis for change. These grants are intended primarily for smaller projects and rural communities.

Methamphetamine Lab Site Assessment and Cleanup Grants

	Issue	Current Rule or Guidelines	Proposed Rule	Comment
Status	Are these grants available?	YES	NO	To implement statutory changes. The Legislature eliminated this grant as a separate funding category. The number of labs in this state has fallen dramatically. Other funding is still available to address releases of hazardous substances from lab sites.
Alternate Remedial Action Grant Funding	Can initial investigations and site hazard assessments of meth lab sites be funded?	YES, under the Meth Lab Site Assessment and Cleanup Grant.	YES, under a Site Assessment Grant.	Funding is limited to lab sites where there is a release or threatened release of hazardous substances.
	Can cleanups of meth lab sites be funded?	YES, under the Meth Lab Site Assessment and Cleanup Grant.	YES, under an Independent Remedial Action Grant	
	Can testing or remediation of meth use site be funded under this chapter?	NO	NO	

Derelict Vessel Remedial Action Grants

	Issue	Current Rule or Guidelines	Proposed Rule	Comment
Status	Are these grants available?	YES	NO	To implement statutory changes. The Legislature eliminated this grant as a separate funding category under LTCA. The DNR provides 90% grant funding and funding may be used for more than just the removal of the hazardous substances.