

NOTICE OF PUBLIC HEARINGS
AND PUBLIC MEETING
STATE OF NEBRASKA
DEPARTMENT OF ENVIRONMENTAL QUALITY (NDEQ)
ENVIRONMENTAL QUALITY COUNCIL

Notice is hereby given pursuant to Neb. Rev. Stats. §81-1505(17), §84-907, and §84-1411, the Nebraska Environmental Quality Council (EQC) will hold a meeting and public hearings on November 15 and 16, 2018 beginning at 1:00 P.M. Central Time (CT) at the Cornhusker Hotel, 333 South 13th St., Lincoln, Nebraska. Preceding the hearings will be business items on the agenda. The hearings are scheduled to begin at 1:00 P.M. CT or as soon thereafter as can reasonably be heard. The purpose of the hearings is to take testimony and evidence about the proposed Fiscal Year 2019 Funding Percentage Allocations for the Litter Reduction and Recycling Grant Program and proposed amendment of NDEQ regulations, as outlined in this notice.

The meeting agenda and a draft copy of the proposals scheduled for hearing are available at the NDEQ's Lincoln office, 1200 N St., Suite 400, Lincoln, NE and on the NDEQ website at <http://deq.ne.gov>. The meeting agenda and a draft copy of the proposed regulations scheduled for hearing are also available at the Office of the Secretary of State, Regulations Division, 1201 N St., Suite 120, Lincoln, NE, 68508. The description of the fiscal impact of the proposed regulations on state agencies, political subdivisions, or persons regulated is also available at these locations.

All interested persons may attend and testify orally or by written submission at the public hearing. Any person may provide advance notice of intent to testify by contacting Carla Felix, Hearing Officer, NDEQ, 1200 N St., Suite 400, P.O. Box 98922, Lincoln, NE 68509-8922. Unscheduled testimony will be heard following scheduled testimony. Interested persons may also submit written comments to Carla Felix prior to the hearing, which will be entered into the hearing record if received at the Lincoln office by 5:00 P.M. CT, November 14, 2018.

Please notify the NDEQ at least one week in advance of the EQC meeting if auxiliary aids or reasonable accommodations or alternate formats of materials are needed. Contact phone number is 402-471-2186. TDD users call 800-833-7352 and ask the relay operator to call us at 402-471-2186.

A public hearing will be held on the following:

1. Litter Reduction and Recycling Grant Program, 2019 Funding Percentage Allocations. The NDEQ administers the Litter Reduction and Recycling Grant Fund in percentage amounts to grantees for projects within three categories: public education, cleanup, and recycling. Neb. Rev. Stat. §81-1561 requires the EQC to annually determine the percentages for each category. A statewide litter fee is the source of revenue for the fund. At this hearing, the EQC will take action on the NDEQ recommendations for percentage amounts. For the Year 2019, the NDEQ recommends the following percentage

allocations: recycling 52.5%, public education 43.6%, and cleanup 3.9% with additional approval to adjust these percentages by up to 10%. All persons affected by the proposed allocations are hereby notified that modifications may be offered to the proposed percentage allocations or the EQC may propose new allocations. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.

2. Title 197 – Rules and Regulations for Certification of Wastewater Treatment Operators in Nebraska. Chapters 10 and 11 are proposed for repeal. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.

3. Title 198 – Rules and Regulations Pertaining to Agricultural Chemical Containment. Chapters 10 through 14 are proposed for repeal. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.

4. Title 133 – Litter Reduction and Recycling Grant Program. Changes to Chapter 1 modify and delete definitions; describe and consolidate eligibility, application, grant agreement, and reasons for denial, termination, and disqualification for grants; and rename chapter. Chapters 2 through 6 are proposed for repeal. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.

5. Title 199 – Waste Reduction and Recycling Incentive Grants Program. Changes to Chapter 1 modify and delete definitions; describe and consolidate eligibility, application, grant agreement, and reasons for denial, termination, and disqualification for grants; and rename chapter. Chapters 2 through 11 are proposed for repeal. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.

6. Title 120 – Rules and Regulations on 401(1)(A) Certification. Repeal Chapter 1 definitions. Changes to Chapter 2 consolidate provisions from Chapter 3 and 4; make public notice consistent with federal notice; and update, simplify, and modernize language and delete language that is duplicative of or merely repeats statute. Chapter 2 is renumbered Chapter 1. Repeal Chapter 5. The EQC will vote to adopt, amend or not approve the NDEQ proposal after hearing and considering all the testimony and written submissions.

FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Environmental Quality
 Prepared by: Dave Haldeman *DH*
 Administrator, Land Management Division
 Date Prepared: October 9, 2018
 Phone: (402) 471-4219
 Title: 133
 Chapter: 1 through 6
 Name: *Litter Reduction and Recycling Grant Program*
 State Status: EQC Hearing Draft

Type of Fiscal Impact:

	State Agency	Political subdivision	Regulated Public
Chapters 1 through 6 streamlining and clarifying revisions	No fiscal impact	No fiscal impact	No fiscal impact

Description of Impact:

State Agency: There is no fiscal impact related to the streamlining and clarifying revisions proposed for Chapters 1 through 6 as these changes do not create new requirements or modify existing requirements. The proposed changes eliminate unnecessary regulation, revise confusing regulation, and streamline Title 133 to its essential provisions.

The transfer of requirements placed on grant recipients from regulations into the grant agreement will allow the DEQ to be flexible in addressing fraud and abuse of grant funds. Being able to address sources of potential fraud and abuse more quickly through modifying the grant agreement, as opposed to engaging in regulation reform, will help prevent the misuse of tax payer money and ensure that more funds are available for legitimate projects.

Political Subdivision: There is no fiscal impact related to the streamlining and clarifying revisions proposed for Chapters 1 through 6. The proposed amendments may allow the DEQ to make more funds available through the reduction of fraud and abuse of grant funds. When the bid requirements of Chapter 3, 003 are removed, the new threshold for bids will be set at \$2,000 to match the standards of DAS and Title 199. This may increase the work needed for a political subdivision to apply for a grant, but the fiscal impact is expected to be negligible

Regulated Public: There is no fiscal impact related to the streamlining and clarifying revisions proposed for Chapters 1 through 6. The proposed amendments may allow the DEQ to make more funds available through the reduction of fraud and abuse of grant funds. When the bid requirements of Chapter 3, 003 are removed, the new threshold for bids will be set at \$2,000 to

match the standards of DAS and Title 199. This may increase the work needed for the public to apply for a grant, but the fiscal impact is expected to be negligible.

NEBRASKA ADMINISTRATIVE CODE

Title 133 – NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 1 – ~~DEFINITIONS~~Litter Reduction and Recycling Grants

001 Definitions. "Act" means the Litter Reduction and Recycling Act, Neb. Rev. Stat. §§ ~~81-1534–1566~~.

001.01 "Grant recipient" means any person or their authorized agent who has been awarded a grant.

001.02 All other terms will be defined as set forth in Neb. Rev. Stat. §§ 81-1536.

002 Application. Any person may apply for funding by submitting an application in a manner prescribed and on a form provided by the Department. "Applicant" means any person, or their authorized agent, who submits an application for a grant.

003 Grant Agreement. In order to receive funds from a grant pursuant to the Nebraska Litter Reduction and Recycling Act and these regulations, a grant recipient will enter into a grant agreement with the Department. "Competitive Grant" or "Grant" means funds which are distributed by the Department based on applications for specific projects related to litter reduction and recycling.

004 Falsification, concealment, or misrepresentation. An application may be denied or a grant may be terminated if an applicant or grant recipient falsifies, conceals, or misrepresents any information provided to the Department. "Council" means the Nebraska Environmental Quality Council.

005 Penalties. In addition to denial of an application and the termination of a grant, any person who fails to comply with all applicable local, state, and federal statutes, rules, regulations, ordinances, or orders may be disqualified from future grants at the discretion of and for a time period specified by the Director.

"Department" means the Nebraska Department of Environmental Quality.

006 "Director" means the Director of the Nebraska Department of Environmental Quality. Eligibility. A person must have the authority to transact business in the State of Nebraska in order to be eligible to receive funds from a grant pursuant to the Nebraska Litter Reduction and Recycling Act and these regulations.

~~007 "Equipment" means all personal property and fixed assets other than land and buildings purchased or leased by a grant recipient pursuant to a grant awarded by the Department.~~

~~008 "Expected service life" means the period of time that the Department may assign to equipment purchased in whole or in part with grant funds during which the equipment can be expected to be serviceable and in which the Department shall maintain an interest.~~

~~009 "Fund" means the Litter Reduction and Recycling Fund.~~

~~010 "Grant" means "Competitive Grant" unless otherwise noted.~~

~~011 "Grant recipient" means any person or their authorized agent who has been awarded a grant.~~

~~012 "Litter" means all waste materials susceptible to being dropped, deposited, discarded or otherwise disposed of by any person upon any property in the state, but not including the wastes of primary processes of farming or manufacturing. Waste material as used in this section shall mean any material appearing in a place or in a context not associated with that material's function or origin.~~

~~013 "Match" means cash or the economic value of non-cash contributions provided by the applicant including but not limited to labor, equipment usage, real property, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the grant project.~~

~~014 "Person" means any natural person, political subdivision, government agency, public or private corporation, partnership, limited liability company, joint venture, association, firm, or individual proprietorship.~~

~~015 "Program Priority System" means criteria developed by the Department and used to evaluate and rank grant applications.~~

~~016 "Public Use Area" means any place or area in the state that is used or held out for use by the public, whether owned or operated by public or private interests.~~

~~017 "Recycling" means the process of separating, cleaning, treating, and reconstituting waste or other discarded materials for the purpose of recovering and reusing the resources contained therein.~~

~~018 "Recycling Center" means a central collection point in a community for recyclable materials.~~

~~019 "Related Entity" means two persons or entities that have significant common purposes and substantial common ownership, membership, direction or control, or either entity owns directly or through one or more entities a 50 percent or greater interest in the capital or profits of the other.~~

~~020 "Source Separation" means separation by the public from their general refuse of recyclable material.~~

Enabling Legislation: Neb. Rev. Stat. §81-1549 (Reissue 2008)

Legal Citation: Title 133, Ch. 1, Nebraska Department of Environmental Quality

~~Chapter 2—FUNDING ACTIVITIES~~

~~001 The Department shall allocate and distribute funds for projects including one or more of the following activities:~~

~~001.01 Programs of public education, motivation, and participation aimed at creating an ethic conducive to the reduction of litter, establishing an attitude against littering and a desire for a clean environment, and securing greater awareness of and compliance with anti-litter laws, including but not limited to:~~

~~001.01A The distribution of informative materials to elementary and secondary schools;~~

~~001.01B The purchase and erection of roadside signs;~~

~~001.01C The organization and operation of cleanup drives conducted by local agencies and organizations using volunteer help;~~

~~001.01D The use by state and local government units and agencies and private organizations for developing and conducting anti-litter programs; and~~

~~001.01E Other public information methods selected by the Department, including the use of media.~~

~~001.02 Cleanup of public highways, waterways, recreation lands, urban areas, and public places within the state, including but not limited to:~~

~~001.02A Payment of personnel employed by cities and counties to pick up litter;~~

~~001.02B Programs aimed at increasing the use of youth and unemployed persons in seasonal and part-time litter pickup programs and to establish work release and other programs to carry out the purposes of the Act;~~

~~001.02C Surveys conducted by public and private agencies and persons of amounts and composition of litter and rates of littering;~~

~~001.02D~~ Research and development by public and private agencies and persons in the fields of litter reduction, removal, and disposal, including the evaluation of behavioral science techniques in litter control and the development of new equipment, and to implement such research and development when appropriate; and

~~001.02E~~ Other projects approved by the Department to clean up litter.

~~001.03~~ New or improved community recycling and source separation programs, including but not limited to:

~~001.03A~~ Expansion of existing and creation of new community recycling centers;

~~001.03B~~ Expansion of existing and creation of new source separation programs;

~~001.03C~~ Research and evaluation of markets for the materials and products recovered in source separation and recycling programs; and

~~001.03D~~ Providing advice and assistance on matters relating to recycling and source separation, including information and consultation on available technology, operating procedures, organizational arrangements, markets for materials and products recovered in recycling and source separation, transportation alternatives, and publicity techniques.

~~Enabling Legislation: Neb. Rev. Stat. §§81-1549, 81-1561 (Reissue 2008)~~

~~Legal Citation: Title 133, Ch. 2, Nebraska Department of Environmental Quality~~

~~Chapter 3—COMPETITIVE GRANT APPLICATION PROCESS~~

~~001—Application deadline.—Applications for grants under the Act shall be submitted in accordance with deadlines established by the Department.~~

~~002—Application.—Any person eligible to receive funds in accordance with guidelines established by the Department may apply for funding pursuant to these regulations by submitting an application with supporting documentation, or on a form provided by the Department, consistent with guidelines established by the Department, and that provides the following information:~~

~~002.01—The name and address of the applicant;~~

~~002.02—A detailed narrative description of the scope of work for the project;~~

~~———002.03—Grant amount requested;~~

~~———002.04—A detailed itemized budget for the project that includes:~~

~~002.04A—Grant funds requested, and cash or in-kind match;~~

~~002.04B—Personnel costs;~~

~~002.04C—Travel expenses at rates not greater than those approved for the Department;~~

~~002.04D—Supplies and operating expenses;~~

~~002.04E—Equipment;~~

~~002.04F—Contractual assistance, including the name, contact information, and the primary person for the contractor selected by the applicant and the reasons for selection of the contractor. If a contractor has not been selected by the time of filing the application, the applicant shall describe the process to be used to select the contractor; and~~

~~002.04G—Other costs.~~

~~002.05 Proposed grant timeline;~~

~~002.06 Contact person, if not the applicant;~~

~~002.07 A description of how the project meets the criteria established by the Department in the Program Priority System; and~~

~~002.08 A description of how the grant recipient intends to demonstrate or verify completion and performance of grant commitments.~~

~~003 Written bids for equipment purchase or contractual services. An applicant must obtain at least three written bids from non-related entities for equipment purchase or contractual services costing \$5,000 or more before funds are disbursed. The written bids do not need to be submitted with the application. If the applicant is unable to obtain three written bids from non-related entities, the applicant shall submit a written rationale for why the Department should consider a waiver to this requirement.~~

~~004 Application rejection. An application may be rejected by the Department for any of the following reasons:~~

~~004.01 Failure to meet eligibility requirements established by the Department;~~

~~004.02 Failure to submit information and documentation sufficient to evaluate the application;~~

~~004.03 Failure to submit the application by the deadline established by the Department;~~

~~004.04 Falsification, concealment, or misrepresentation of any information in the application;~~

~~004.05 Failure to comply with applicable regulations;~~

~~004.06 The applicant is in violation of, or delinquent on, any condition of a previously awarded grant by the Department or any other state agency, or the applicant failed to adequately comply with the terms of such previous grant;~~

~~004.07 The applicant has proposed expenditures for grant project activities or components that are unnecessary or that exceed the usual and customary costs for such activities or components;~~

~~004.08 Activities for which funding is requested are already funded by other grant funds for the same time period or a previous time period;~~

~~004.09 The applicant has requested funding for a supplemental environmental project or other activity required pursuant to judicial or administrative order related to the application;~~

~~004.10 Adequate funds are not available; or~~

~~004.11 Other appropriate factors as determined by the Department.~~

~~Enabling Legislation: Neb. Rev. Stat. §§81-1549, 81-1561, 81-1562 (Reissue 2008)~~

~~Legal Citation: Title 133, Ch. 3, Nebraska Department of Environmental Quality~~

~~Chapter 4 — EVALUATION OF COMPETITIVE GRANT APPLICATIONS~~

~~001 Applications shall be evaluated and ranked in accordance with the Program Priority System developed by the Department.~~

~~002 The Department may request additional information in writing from any applicant.~~

~~003 When requested funds exceed the funds available, the Department may apportion and allocate funding in a fair and equitable manner when the ranking does not yield clear award preferences.~~

~~004 The Director will consider the project's ranking among other factors in determining funding, if any, for project applications.~~

~~Enabling Legislation: Neb. Rev. Stat. §§ 81-1549, 81-1565 (Reissue 2008)~~

~~Legal Citation: Title 133, Ch. 4, Nebraska Department of Environmental Quality~~

~~Chapter 5 — GRANT CONDITIONS~~

~~001~~ An applicant awarded a grant pursuant to these regulations shall enter into a grant agreement with the Department prior to the receipt and expenditure of grant funds as specified for the approved project.

~~002~~ In signing this agreement, the grant recipient shall agree at a minimum to the following conditions:

~~002.01~~ The grant period shall be for a set period of time designated in the grant agreement;

~~002.02~~ All grant funds, including match funds, shall be expended in accordance with the conditions in the grant agreement;

~~002.03~~ Any unexpended funds remaining after the grant period ends shall be returned by the grant recipient to the Department;

~~002.04~~ All interest earned by grant funds shall be considered a part of the grant and subject to all the requirements of the grant agreement;

~~002.05~~ Grant funds shall be used only for specifically approved activities and not to replace any pre-existing funding for such activities;

~~002.06~~ Project activities and financial status reports shall be submitted as required by the Department during the grant period, including:

~~002.06A~~ A comprehensive line-item expenditure report of all grant funds, including any interest earned on grant funding and all other income or cash or in-kind match utilized to carry out the project;

~~002.06B~~ An inventory of all equipment or personal property purchased with grant funds including, if applicable: the model name and/or model number, serial number, cost of purchase, date of purchase, and copies of purchase receipts;

~~002.06C~~ A summary of performance and accomplishments addressing those objectives and goals stated in the approved application; and

~~002.06D~~ Any additional information required.

~~002.07~~ Maintain for a period of three years following completion of the grant period, and make available to the Department upon request, all documentation required under 002.06 above, as well as documentation of all match funds;

~~002.08~~ Establish an accounting procedure that allows separation of expenditures and receipts for each grant;

~~002.09~~ Comply with state equal employment opportunity and drug-free workplace requirements;

~~002.10~~ Provide proof of coverage under an insurance policy for the Department's investment in any property purchased with grant funds that have a value equal to or greater than five thousand dollars (\$5,000);

~~002.11~~ Comply with all state or federal statutes, rules or regulations, applicable to the grant project;

~~002.12~~ Assure that all financial and performance records relating to the grant are available at all reasonable times for inspection, review or audit by Department; and

~~002.13~~ Any other conditions deemed necessary by the Department.

~~003~~ Equipment.

~~003.01~~ The Department shall determine an expected service life for equipment purchased in whole or in part with grant funds which shall be used only for purposes approved by the Department during its expected service life.

~~003.02~~ After the end of the designated grant period, the grant recipient must continue to maintain a listing of all equipment purchased with grant funds and respond to Department requests for updates on the status of such equipment during its expected service life.

~~003.03~~ The grant recipient is responsible for all reasonable and necessary maintenance of grant-funded equipment and may be held liable for any loss, damage, neglect or unreasonable deterioration of the equipment during its expected service life.

~~004~~ Equipment disposition.

~~004.01~~ The Department must approve the disposition of equipment purchased in whole or in part with grant funds during its expected service life. Any funds realized from the approved sale of equipment purchased with grant funds shall revert back to the fund in an amount proportional to the grant-funded percentage of the equipment's original cost.

~~005~~ Any grant-funded equipment which is no longer being used by the grant recipient for the approved grant purpose during its expected service life shall be returned to and may be redistributed by the Department to another eligible grant recipient.

~~Enabling Legislation: Neb. Rev. Stat. §§81-1549, 81-1563 (Reissue 2008)~~

~~Legal Citation: Title 133, Ch. 5, Nebraska Department of Environmental Quality~~

~~Chapter 6—GRANT ADMINISTRATION~~

~~001—The Department shall notify the grant recipient of the award of grant funds contingent upon signing the grant agreement.~~

~~002—The Department may award partial funding in an amount less than requested by an applicant provided that the applicant submits a revised budget and work plan within the scope of the original application that meets Department requirements and deadlines.~~

~~003—The Director in his or her discretion may redistribute grant funds returned or unexpended during a grant funding cycle to other applicants or return the monies to the Fund to be distributed in a subsequent grant cycle.~~

~~004—Grant funds shall be disbursed in accordance with the grant agreement.~~

~~005—Disbursement of funds pursuant to any grant shall be subject to the availability of funds and shall be in accordance with specified grant conditions.~~

~~006—Equipment lien. The grant recipient shall agree to allow the Department to file a lien on all equipment purchased in whole or in part with grant funds for the expected service life of the equipment, including any redistributed equipment.~~

~~007—Grant recipients shall be liable for audit by the Department or its authorized agents. Audits may include, but are not limited to, on-site inspections and review of financial records and other relevant documents relating to the grant-funded project.~~

~~008—Project and/or budget modifications.~~

~~008.01—If a grant recipient wants to modify an approved project and/or the expenditures of grant funds or interest or dividends earned on the grant funds, the grant recipient must submit a written request to the Department. The request must include a revised work plan and a revised comprehensive line-item budget with an explanation for the request.~~

~~008.02—If the Department approves the request, the grant agreement must be modified accordingly prior to initiating the changes. If the Department denies the request, the grant recipient will be notified in writing and may not expend grant funds for the denied changes.~~

~~009 Recognition of Department.~~

~~009.01 Grant recipients are required to recognize grant funding from the Department on all published materials and news releases related to their Department grant-funded project.~~

~~009.02 If required by the Department, grant recipients shall display a sign provided by the Department at site locations. The Department may also require equipment partially or wholly funded with grant funds be identified by a decal or other means provided by the Department acknowledging the source of the grant funding.~~

~~010 Grant termination. A grant may be terminated by the Department for any of the following reasons:~~

~~010.01 Falsification, concealment, or misrepresentation of any information;~~

~~010.02 Failure to submit information or data required by the grant;~~

~~010.03 Violation of any condition of the grant; or~~

~~010.04 Failure to comply with applicable regulations.~~

~~011 Penalties.~~

~~011.01 Failure by the grant recipient to comply with these regulations or the grant agreement may result in:~~

~~011.01A Suspension, termination, or revocation of the grant;~~

~~011.01B Withholding of further grant disbursements;~~

~~011.01C Disqualification from future grants for a time period specified by the Director;~~

~~011.01D Forfeiture of any equipment purchased with grant funds;~~

~~011.01E Reimbursement to the Department for money already disbursed under the grant agreement; or~~

~~011.01F Any other remedy provided by law.~~

~~011.02 Prior to initiating such action, the Department may provide written notice to the grant recipient explaining the reason for the intended action and offer an opportunity to respond or cure the failure within a specified time frame.~~

~~Enabling Legislation: Neb. Rev. Stat. §§81-1549, 81-1561 (Reissue 2008)~~

~~Legal Citation: Title 133, Ch. 6, Nebraska Department of Environmental Quality~~