

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 39.00: SOLID WASTE GRANT AND LOAN PROGRAMS

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39.01: Part I: Composting Grant Program

(1) Pursuant to St. 1987, c. 584, § 24, the Department of Environmental Quality Engineering is authorized to expend a sum not exceeding \$7,000,000 to establish yard waste and leaf composting projects, and to award grants to municipalities for such projects. The Department is authorized by M.G.L. c. 21H, § 7(a), to establish programs for recycling through composting of leaves and other organic matter, to award grants to assist in the development of local and regional composting projects, and to promulgate rules and regulations. 310 CMR 39.01 through 39.09 is promulgated pursuant to that authority.

(2) 310 CMR 39.01 through 39.09 establishes the criteria and priorities for the award of Composting Grant funds to municipalities, as herein defined and provide guidelines for the administration and disbursement of such funds.

(3) The goals of 310 CMR 39.01 through 39.09 is: to promote the diversion of leaf and yard waste and other organic portions of the solid waste stream from landfills and incinerators, into projects which will compost or process organic material in a manner that will serve to protect the environment and the public from any risks associated with the operations of these facilities, and will result in the production of a beneficial by-product; to encourage a diversity of such projects; and to ensure proper use of public funds.

These activities are intended to preserve solid waste disposal capacity, beneficially reuse organic material and reduce the environmental impact associated with the disposal of solid waste. 310 CMR 39.01 through 39.09 is intended to facilitate state and local yard waste and leaf composting programs and organic materials recycling.

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(4) The following objectives seek to accomplish this goal through the award of grants for selected eligible projects.

- (a) To assist municipalities in the development of local and regional leaf composting operations.
- (b) To assist municipalities in the development of regional yard waste processing operations.
- (c) To assist municipalities in the planning and design of municipal solid waste composting or co-composting operations.

(5) Pilot composting projects established by the Department pursuant to St. 1987, c. 584, § 24, are not governed by 310 CMR 39.01 through 39.09.

39.02: Definitions

(1) As used in 310 CMR 39.01 through 39.09 the following definitions shall apply unless the context clearly indicates otherwise:

Acts - St. 1987, c. 584, § 24.

Applicant - A municipality or authorized regional body which is applying to the Department for a composting grant.

Application Form - a form prescribed by the Department to be used by the applicant requesting a composting Grant.

Application Period - the inclusive dates established by the Department pursuant to 310 CMR 39.05 for the receipt of an application.

Compost - a stabilized organic material produced through a controlled aerobic decomposition process.

Composting - a process of accelerated biodegradation and stabilization of organic material under controlled conditions.

Co-Composting - a composting process utilizing carbon rich organic material including but not limited to leaves, yard waste, or mixed municipal solid waste, in combination with a nitrogen-rich amendment such as sewage or sludge, approved sludge from industrial waste, animal manure, or other organic material.

Compost Pad - the area within a composting site on which the active composting process takes place.

Compost Site - a specified area of land on which the composting process occurs, including the deposition area, composting pad, curing area and buffer zone.

Department - the Department of Environmental Quality Engineering.

Funding Cycle - the time, up to a year, from the beginning of one application period to the beginning of the subsequent application period.

Grant Agreement - the document containing the grant terms and conditions, which upon signature by the Department's authorized representative and the applicants authorized representative, constitutes a binding contract.

Grantee - a grant applicant who accepts and receives a Compost Grant under the terms of 310 CMR 39.01 through 39.09.

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Local Share - the funds and/or services provided by the grantee for the unfunded portion of the eligible costs.

Leaves - deciduous and coniferous seasonal deposition, grass clippings, weeds, hedge clippings, and organic garden waste.

MSW - municipal solid waste; consisting of residential, commercial, institutional and industrial sources of solid waste.

Municipality - a city, town, county, solid waste district, or regional planning agency.

Permit - written authorization from the Department approving the establishment of an operation after review of site, design, and operation plans.

Priority List - the list established by the Department for funding purposes upon which eligible applicants are ranked by numerical ratings using criteria set forth in 310 CMR 39.07.

Processing - a mechanical operation for preparing organic material for reuse.

Region - two or more municipalities, or a municipality with a population in excess of 300,000.

Regional Authority - a county, solid waste district or regional planning agency, authorized to represent two or more municipalities.

Registration Form - a form issued by the Department to municipalities for the purpose of describing the nature, scope, and location of a composting project.

Site Assignment - a currently valid legal determination by a board of health or by the Department, where appropriate, as specified in M.G.L. c. 111, § 150A that:

- (a) designates an area of land for a specific solid waste use subject to conditions with respect to the extent, character and nature of the facility that have been imposed by the assigning agency; or
- (b) establishes that an area of land was utilized as a site for the disposal of solid waste prior to July 25, 1955 as provided in St. 1955, c. 310, § 2.

Sludge - the solid, semi-solid, and liquid residue that results from a process of wastewater or drinking water treatment, not including segregated grit, screening, scum or floatables.

Solid Waste - all solid or liquid waste materials, including garbage and rubbish, and sludge, but not including sewage and those materials defined as hazardous wastes in M.G.L. c. 21C, § 2 and those materials defined as source, special nuclear or by-product material under the provisions of the Atomic Energy Act of 1954.

Source Separated Material - a compostable or recyclable material that is divided or maintained distinct from solid waste at the point of generation.

Yard Wastes - discarded material consisting of trees, stumps, or brush, including but not limited to sawdust, chips, shavings, and bark, but not including, wood pieces or particles containing chemical preservatives.

39.03: Project Eligibility

(1) In General. To be considered for a composting grant proposed projects must satisfy all of the following requirements:

- (a) the applicant is a municipality, or group of municipalities acting pursuant to an executed agreement;

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- (b) the proposed project must be a public operation and not a for profit private operation.
- (2) Eligible Projects. Proposed projects must fall under one or more of the following categories:
  - (a) Leaf Composting Projects;
  - (b) Regional Yard Waste Processing Projects;
  - (c) Planning and design of MSW Composting or Co-composting Projects.

39.04: Eligible Costs

- (1) In General.
  - (a) Eligible costs shall be the final approved costs as determined by the Department and stated in the Grant Agreement. The eligibility of any costs, including those that do not clearly fall into the categories listed below, shall be determined in each instance by the Department.
  - (b) Grant funds shall be limited to a maximum of 90% of approved eligible costs. The amount of the grant award shall be a minimum of \$5,000 and a maximum of \$300,000 for each project grant, contingent upon available funding.
  - (c) Eligible costs are reimburseable, and documentation of expenditures must be provided in order to receive grant funds. Eligible costs shall be limited to the acquisition of eligible equipment, materials and contracted services. Funding for capital costs of equipment will be based on the percentage of time that the equipment is solely dedicated or utilized for the compost project, as determined by the grantee and approved by the Department. Eligible costs must be approved by the Department and incurred after January 1, 1986. Eligible costs shall not include cost increases or the cost of any project expansion or modification, unless approved in advance by the Department.
- (2) Categories of Eligible Costs. The following define eligible costs under each project category.
  - (a) Leaf Composting Projects. Eligible costs for leaf composting project grants, include the following categories:
    - 1. Site:
      - a. suitability evaluation and/or pad design.
      - b. preparation.
    - 2. Collection:
      - a. materials.
      - b. equipment.
      - c. public education.
    - 3. Composting operation:
      - a. water supply equipment.
      - b. windrow formation/turning equipment.
      - c. leaf compost processing equipment.
    - 4. Monitoring:
      - a. equipment.
      - b. compost analysis.
    - 5. Program planning and administration of leaf compost projects which are administered by a regional authority.
    - 6. Other costs specifically approved by the Department.
  - (b) Regional Yard Waste Processing Projects. Eligible costs for regional yard waste processing project grants, include the following categories:
    - 1. Site:
      - a. suitability evaluation and /or pad design.
      - b. preparation.
    - 2. Processing equipment.
    - 3. Other costs specifically approved by the Department.

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(c) Planning and Design of MSW Composting or Co-composting Projects. For MSW composting or co-composting project grants, eligible costs include the following categories:

1. Feasibility study.
2. Evaluation of vendor/technology (including RFP development).
3. Site evaluation.
4. Facility design.
5. Facility construction management.
6. Compost quality analysis and end-use testing.
7. Other costs specifically approved by the Department.

(3) Exclusions from Eligible Costs. Ineligible costs shall be costs outside the scope of the project and any other costs determined by the Department to be ineligible as provided in 310 CMR 39.04. Ineligible costs include the following categories:

- (a) Administrative and fiscal costs:
  1. Preparation of grant application forms.
  2. Ordinary government operating costs.
  3. Interest and other finance costs.
  4. Travel.
- (b) Project Operation and Maintenance costs:
  1. Force account labor or other municipal salaries for the operation and maintenance of the project.
  2. Personal injury insurance or compensation payments.
  3. Bonus payments to contractors for completion of work earlier than date specified in contract.
  4. Costs for abatement of nuisance conditions resulting from operation.
- (c) Marketing or distribution of the compost product.
- (d) Removal and clean-up of illegally disposed waste.
- (e) Undocumented costs.
- (f) Land acquisition costs.
- (g) Costs for permit preparation and applications.
- (h) Legal fees.

39.05: Application Process

(1) In General. The Department will announce by direct mail to municipalities or by publication the maximum number of project grants and/or the maximum funds available in each category that will be awarded prior to each funding cycle. Municipalities may apply for a composting grant by submitting a completed application to the Department within the application period described in 310 CMR 39.05(3).

(2) Application Filing Requirements. An application shall contain a complete Department Composting Grant Application Form and the following:

- (a) for leaf composting grant applications: a copy of a Leaf Composting Registration Form completed for the applicant site,
- (b) for regional grant applications; a copy of the executed agreement among the municipalities participating in the project,
- (c) for regional yard waste processing grant applications; a copy of the site and operation and maintenance plans,
- (d) for MSW composting or co-composting grant applications; a copy of any relevant studies for the proposed project.
- (e) documentation of any costs previously incurred (after January 1,1986) for which eligibility is sought.

(3) Application Period. All applications must be filed within the specified application period in order to be considered for a compost grant. Contingent upon available funding, the Department shall announce annually by direct mail to the municipalities or by publication an application period of at least 90 consecutive days.



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Applications received after the final day of the application period set by the Department pursuant to 310 CMR 39.05(3), or any extension thereto, shall not be considered for a grant during that funding cycle.

Applications submitted before January 6, 1989, may be resubmitted or amended during the first application period, to accommodate the final changes in 310 CMR 39.01 through 39.09.

(4) Certification of Applications. The Department shall review each application field during the application period to determine its compliance with 310 CMR 39.00 and for adequacy, and completeness of the information contained therein, and shall notify the applicant in writing whether the application is complete. An incomplete application shall be deemed ineligible for the current cycle of grant awards. Only an application certified as complete shall be considered for a composting grant.

39.06: Selection Process

(1) In General. All applications certified by the Department as complete will be rated and prioritized using the criteria listed in 310 CMR 39.06(3). In addition, applications will be evaluated on the adequacy of the project description and time line, and on any relevant information provided, including analysis of: site(s), equipment/technology, economics, and end-product use. Grants will be awarded to applicants based on their position on the priority list, pursuant to 310 CMR 39.06(2).

No grant awards will be made until an inspection by Department personnel occurs of the composting or proceeding site to ensure that the site meets the necessary criteria, as set forth in relevant Department guidelines and/or regulations. Use of state-owned land will be approved where feasible.

(2) Priority System.

(a) The Department shall rate each composting grant application certified as complete, using the criteria set forth in 310 CMR 39.06(3). Based on these ratings, applications shall be ranked on a priority list in numerically descending order.

The priority list shall be comprised of "fundable" and "extended" portions. The fundable portion shall list the number of available project grants in the current funding cycle and those projects ranked highest and which are expected to be ready to proceed within the funding cycle. The extended portion shall list the remaining applications certified as complete in numerically descending order. For applications receiving equal scores in the same project category, the completed application received by the Department on the earlier date and time will be assigned the higher ranking on the priority list.

(b) Publication of Lists. The Department shall compile a separate priority list for each project category as stated in 310 CMR 39.03(2)(a)(b) and (c). Upon determination of the priority lists, the Department shall publish each list, and each list.

(3) Rating Criteria.

(a) Criteria for Leaf Composting Grants. The following criteria shall be used to rate each application for a leaf composting grant. For an application to be rated, the applicant must demonstrate to the Department that they own the proposed site or have an executed lease agreement specifying rates of compensation, if any, and that the site will be used for leaf composting for a period of at least three years, unless otherwise approved by the Department. The rating is based on the quality of the information submitted.

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39.06: continued

<u>Criteria</u>	<u>Total Points</u>
1. Operation/Staffing/Quality Control Plan:	
- excellent	19 - 24
- good	13 - 18
- fair	7 - 12
- poor	0 - 6
2. Site Plan:	
- excellent	19 - 24
- good	13 - 18
- fair	7 - 12
- poor	0 - 6
3. Collection Plan:	
- Rated excellent	10 - 12
- Rated good	7 - 9
- Rated fair	4 - 6
- Rated poor	0 - 3
4. Composting Pad Size/Population:	
- 1 Acre/less than 20,000 population	5 - 6
- 1 Acre/20,000 - 40,000 population	3 - 4
- 1 Acre/over 40,000 population	1 - 2
5. Population Served:	
- 25,000 or more.	5 - 6
- 5,000 - 25,000.	3 - 4
- below 5,000.	1 - 2

(b) Criteria for Yard Waste Processing Grants. The following criteria shall be used to rate each application for a regional yard waste processing grant. For an application to be rated, the applicant must demonstrate to the Department that they own the proposed site or have an executed lease agreement specifying rates of compensation, if any, and that the site will be used for a regional yard waste processing project for a period of at least 3 years, unless otherwise approved by the Department. The rating is based on the quality of information submitted.

<u>Criteria</u>	<u>Total Points</u>
1. Operation and Maintenance Plan:	
- excellent	19 - 24
- good	13 - 18
- fair	7 - 12
- poor	0 - 6
2. Site Plan:	
- excellent	19 - 24
- good	13 - 18
- fair	7 - 12
- poor	0 - 6
3. Population Served:	
- 100,000 or more.	9 - 12
- 50,000 to 100,000.	5 - 8
- below 50,000.	1 - 4
4. Regional Structure:	
- Solid Waste District (or equivalent body)	5 - 6
- District Formation in Process (or equivalent body)	3 - 4
- Representative Committee (pursuant to executed agreement).	1 - 2
5. Number of Municipalities:	
- 10 or more Municipalities.	5 - 6

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- 4 - 9 Municipalities. 3 - 4
- 3 or less Municipalities. 1 - 2

## 39.06: continued

(c) Criteria for MSW Composting or Co-Composting Grants. These criteria shall be used to rate applications for MSW Composting or Co-composting planning and design grants, for the funding of feasibility studies and related eligible activities. For those eligible activities which occur subsequently, as listed in 310 CMR 39.04(2)(c)2. through 6., the feasibility study must be completed and approved by the Department, and must recommend the development of the proposed facility. For an application to be rated, the applicant must demonstrate to the satisfaction of the Department that bypass disposal capacity for scheduled and unscheduled downtime of the proposed facility exist at a Department-approved solid waste disposal facility. The application must include identification of at least one available potential site for the proposed facility.

<u>Criteria</u>	<u>Total Points</u>
1. Project Scope of Services and/or Feasibility Study:	
- excellent	19 - 24
- good	13 - 18
- fair	7 - 12
- poor	0 - 6
2. Population Served:	
- 50,000 or more.	9 - 12
- 25,000 to 50,000.	5 - 8
- Below 25,000.	1 - 4
3. Site Availability/Suitability	
- Potentially suitable site with site assignment	9 - 12
- More than 1 potential suitable site	5 - 8
- 1 potential suitable site	1 - 4
4. Regional Structure:	
- Solid Waste District (or equivalent body)	5 - 6
- District formation in process (or equivalent body)	3 - 4
- Representative Committee (pursuant to executed agreement).	1 - 2
5. Number of Municipalities:	
- 10 or more.	5 - 6
- 4-9.	3 - 2
- 3 or less.	1 - 2

39.07: Grant Awards

(1) Execution. The grant shall be deemed awarded when the Grant Agreement is executed by the Department and the grantee.

(2) Project Scope. The project scope shall be as described in the project plans and specification as approved by the Department and incorporated into the Grant Agreement. The grant award shall be the amount stated in the Grant Agreement.

(3) Grant Limitation. A composting grant may fund up to 90% of those eligible costs of the project which the Department determines to be appropriate for funding. The applicant must certify appropriation of the remainder of eligible costs prior to execution of the Grant Agreement. No single grant shall be less than \$5,000, or exceed \$300,000.

(4) Payment.

(a) Payment of the grant award to the grantee shall be made as a reimbursement for all eligible costs pursuant to 310 CMR 39.03. All reimbursements shall be made upon the Department's receipt of invoices certified as paid by the applicant.

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(b) For leaf and yard waste projects, a precondition for the payment of grant funds shall be Department inspection and approval of the performed services or acquired equipment that is being funded by the Department. In addition, approval of the composting or processing operation is required to insure that the operation meets all relevant Department guidelines and regulations. Grant funds shall not be released until the Department's approval has been given.

(5) Contract delay. Failure of a grantee to commence work within 12 months of the execution date of the Grant Agreement shall constitute sufficient cause for the Department to exercise its right to terminate the grant agreement. Prior to doing so, the Department shall give due consideration to any extenuating circumstances presented in writing by the grantee and may extend the grant commitment for an additional period of up to six months, if the Department determines such an extension is warranted.

(6) Suspension of Grant Payments. The Department may temporarily suspend a composting grant whenever the Department becomes aware of allegations, evidence, or appearance of illegality, corruption, or fraud associated with the award of the grant; allegations or evidence of failure to comply with the terms of 310 CMR 39.00 or the terms of a grant agreement; or, allegations or evidence of improprieties with respect to the expenditure of project funds, compliance with 310 CMR 39.00, terms of agreement, or expenditure of project funds.

(7) Termination of Grant. The Department shall terminate and revoke a composting grant whenever the Department determines that there is substantial evidence of illegality, corruption or fraud associated with the award of the grant; noncompliance with 310 CMR 39.00 or the terms of the grant agreement; or improprieties with respect to expenditure of project funds. Written notice to the applicant shall be provided whenever a grant is terminated and revoked, and the grantee shall return all grant funds to the Department within 60 days. The Department may terminate the Grant Agreement for other good cause.

(8) Affirmative Action. Each applicant must be in compliance with 301 CMR 50.00: *Affirmative Action*.

39.08: Project Management Requirements

(1) Grant Terms and Conditions. The grantee is responsible for complying with the terms and conditions in the grant agreement and any applicable Department guidelines, regulations, or other requirements. This responsibility is non-delegable and non-transferable. The grantee shall maintain a record of programmatic activities and a financial management system which provides effective control of all project funds.

Without limitation of authority pursuant to any statute, the Department reserves the right to inspect a site and/or to order the abatement of any nuisance conditions at a composting or processing operation.

(2) Records. The grantee shall create and maintain records, documents and supporting evidence which fully explain the source, amount and disposition of all funds for the project for a period of no less than six years from termination of the Grant Agreement. The grantee and its contractor(s) shall make records available to the Commissioner of the Department, the State Auditor, the Secretary of the Administration and Finance and their designee(s) at all reasonable times for inspection, copying, and auditing.

39.09: Severability

If any provision of 310 CMR 39.00 or its application(s) to any public body is found invalid, such invalidity shall not affect any other provision or application of 310 CMR 39.00, and to this end the provisions of 310 CMR 39.00 are declared to be severable.

39.11: Part II: Solid Waste Planning

(1) 310 CMR 39.11 through 39.19 is promulgated pursuant to M.G.L. c. 16, § 20. Pursuant to St. 1987, c. 584, § 20, the Department is authorized to award grants and technical assistance to enable local public bodies to implement improved techniques and procedures for solid waste management and planning and for preparation of local solid waste management plans by cities and towns in conformance with M.G.L. c. 16, § 21.

(2) 310 CMR 39.11 through 39.19 establishes the criteria and requirements for the award of planning grant funds to municipalities and other local public bodies for the purposes of regional solid waste management planning and provide appropriate requirements for the administration and disbursement of the funds.

(3) The purpose of 310 CMR 39.11 through 39.19 is to direct the effective and proper use of state funds for improved solid waste management planning. Specifically the Solid Waste Planning Grant regulations:

- (a) encourage cities, towns and other local public bodies to act together to plan and operate solid waste management facilities;
- (b) encourage the planning of appropriate and well managed facilities to process and dispose of the Commonwealth's solid waste in an environmentally sound and cost effective manner;
- (c) provide financial assistance to local public bodies in the Commonwealth for planning, development and management of solid waste facilities, including activities undertaken since January 1, 1986; and
- (d) improve regional solid waste management planning so that it is consistent with state regulations and the policies of the Department.

39.12: Definitions

As used in 310 CMR 39.11 through 39.19 the following terms shall have the following meanings, unless the context clearly indicates otherwise:

Applicant means the local public body which is applying to the Department for a solid waste management planning grant.

Combustion means the thermal breakdown of solid, liquid or gaseous combustible waste producing residue that contains little or no combustible material.

Commissioner means the Commissioner of the Department of Environmental Quality Engineering, or his or her designee.

Composting means a process of accelerated biodegradation and stabilization of organic material under controlled conditions yielding a product which can be safely used for agricultural and horticultural purposes.

Department means the Department of Environmental Quality Engineering.

Grant Agreement means the document containing the grant terms and conditions which upon signature by the Department's authorized representative and the applicant's authorized representative, constitutes a binding contract.

Grantee means an applicant which receives a solid waste management planning grant.

Integrated Solid Waste Management - means a solid waste strategy which addresses the various subcomponents of the solid waste stream and seeks to maximize environmental protection and economic efficiency in the management of each subcomponent, through the use of; source reduction, recycling, composting, combustion and landfilling.

Landfilling means the deposition of solid waste on or in land.



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Local Public Body means any city, town, district, county, commission, council, financing authority or any other similar subdivision of the Commonwealth. State agencies and authorities shall not be local public bodies for the purpose of 310 CMR 39.11 through 39.19.

Master Plan means the solid waste Master Plan, or the most recent draft thereof, prepared by the Department pursuant to M.G.L. c. 16, § 21.

Matching Share means the portion of eligible project costs not borne by the Department, which shall be at least 50% of the total eligible costs.

Recycling means any method, technique or system utilized to process or treat discarded materials so that its component materials or substances may be beneficially used or reused.

Region means any two or more municipalities, or a single municipality with a population in excess of 300,000.

Solid Waste means garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid or contaminated gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or in irrigation return flows, industrial discharges special nuclear, or radioactive byproduct material.

Solid Waste Facility means an established site or works and other appurtenances thereto, which has been or will be used for the storage, transfer, processing, treatment or disposal of solid waste including all land, structures and improvements which are directly related to the solid waste management activities.

Source Reduction means any change in the design or manufacture of products or packaging which reduces the toxic content or volume of material or results in a longer useful life.

39.13: Project Eligibility

(1) Local public bodies acting on behalf of regions are eligible for assistance under this program. Grants shall be provided to public bodies to fund Phase I or Phase II studies as defined in 310 CMR 39.13(2) and (3). A single grant request for a combined Phase I and Phase II will be honored only if the Phase I, or its equivalent, is completed at the time of application and qualifies for reimbursement, as determined by the Department. Ongoing or completed projects which commenced on or after January 1, 1986 are eligible for reimbursement, provided they meet all the applicable requirements as determined by the Department.

(2) The Phase I study shall be comprised of all the following components, except as expressly approved by the Department:

- (a) the identification of a core group or central coordinating person for the planning process, describe the role of this person or group, her/his capacity to guide the development of the plan, and the general strategy that will be used to involve all affected interest groups, including local agencies, boards, staff members, citizens associations and advocacy groups, in the planning process;
- (b) the identification and definition the regional entity which will implement the recommendations of the Phase II Study and manage or oversee any proposed solid waste facilities including a detailed description of the working relationship of the member municipalities, the shared managerial and financial responsibilities and the goals, objective and methods of the regional entity;
- (c) the characterization the sources, types and quantities of solid waste generated within each city or town in the region using existing data;

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- (d) the identification of the current means of solid waste management including collection, transfer, recycling, processing and disposal for each city or town in the region using existing data;
- (e) the identification of the solid waste management facilities currently serving the applicant and any available capacity at those facilities over the next 12 years;
- (f) the identification of reasonable solid waste management options for each subcomponent of the waste stream for which there is a current or future capacity shortfall, the identified options shall provide capacity for 12 years;
- (g) the generation of a list of all reasonably potential sites for each facility proposed pursuant to 310 CMR 39.13(2)(f) based on preliminary site feasibility studies;
- (h) any additional elements that the Department deems necessary to effectuate the purposes of 310 CMR 39.11 through 39.19 or the Master Plan.

(3) The purpose of a Phase I study is to assess the applicant's current solid waste management practices; the shared problems and goals of the participating municipalities; identify the structure of the regional entity; identify potential capacity shortfalls; and identify options for addressing the shortfalls. The Phase II study shall include all of the following components, except as expressly approved by the Department:

- (a) an evaluation of the options identified in the Phase I study and select the preferred option and identify:
  - 1. the preferred site and an alternative site for each facility; and
  - 2. for each processing facility identify a disposal option for any residual material;
- (b) an evaluation of the various reasonable technologies that may be implemented for each facility and identify the preferred technology(ies);
- (c) a detailed implementation strategy for the preferred options identifying potential organizational, financial and technical problems which may arise and need to be resolved and present solutions to these problems;
- (d) any additional elements that the Department deems necessary to effectuate the purposes of 310 CMR 39.11 through 39.19 or the Master Plan.

The purpose of a Phase II study is to develop a solid waste management plan for the region that is consistent with the Master Plan; and an implementation strategy for the plan.

39.14: Eligible Costs

(1) General.

- (a) Eligible costs shall be the final approved costs as determined by the Department and stated in the grant agreement. The eligibility of any costs, including those that do not clearly fall into the categories listed below, shall be determined in each instance by the Department.
- (b) Eligible costs are reimbursable, and documentation of expenditure must be provided in order to receive grant monies. Eligible costs shall be limited to the acquisition of eligible materials and contracted services, as set forth in the grant agreement. Eligible costs shall not include cost increases, or the cost of any project expansion or modification, unless approved in advance by the Department.

(2) Eligible costs. Eligible costs shall include:

- (a) documented in-kind services which have been approved by the Department pursuant to 310 CMR 39.18(2), for planning work necessary for the completion of the scope of services;
- (b) costs of consultants to perform planning work necessary for the completion of the scope of services;
- (c) expenses for printing of the draft and final plans; and
- (d) other costs specifically approved by the Department.

(3) Ineligible costs. Ineligible costs shall be costs outside of the scope of the project, costs in excess of the grant amount and any other costs determined by the Department to be ineligible as provided in 310 CMR 39.11 through 39.19. Ineligible costs include:

39.14: continued

- (a) administrative and fiscal costs: preparation of grant applications, ordinary government operating costs, interest and other finance costs, travel and other similar expenses; and
  - (b) bonus payments to contractors for completion of work earlier than the date specified in contract.
- (4) Costs incurred prior to the effective date of 310 CMR 39.11 through 39.19. Costs incurred by the applicant prior to the effective date of 310 CMR 39.11 through 39.19 may be determined by the Department to be eligible for reimbursement, where all of the following conditions are met:
- (a) the costs are incurred on or after January 1, 1986;
  - (b) the costs were eligible costs pursuant to 310 CMR 39.14(2); and
  - (c) the costs are fully documented, consistent with the requirements of 310 CMR 39.18(2)(d).

39.15: Application Process

(1) Applications. The applicant shall be responsible for submitting a complete application.

The application shall include, at a minimum:

- (a) a written statement demonstrating how the proposed the study effectuates integrated solid waste management in accordance with the goals established in the Master Plan;
- (b) a written statement establishing the need for the proposed solid waste management plan which:
  - 1. identifies shared issues and problems which justifies the membership and organizational structure of the regional approach proposed;
  - 2. identifies the objectives of the proposed plan and methods to manage resolutions of the applicant(s) needs;
- (c) a scope of work for the study, which is consistent with 310 CMR 39.13;
- (d) an outline of the methodology and structure of the planning process, including both the proposed method for establishment of goals, objectives, standards, and policies, the conduct of relevant planning studies and a description of existing or planned databases to be used in formulating the proposed plan;
- (e) a time line marking the major milestones of the planning process and the completion date;
- (f) a description of the applicant's capability to complete the proposed scope of work in accordance the time line;
- (g) a detailed budget which defines and allocates the projected costs of the proposed scope of work, the total expenditures and the source(s) of the revenues needed for the completion of the plan, and outlines the personnel and other local resources that will be available to develop the plan. If the applicant is requesting reimbursement for costs incurred pursuant to 310 CMR 39.14(4) the application shall clearly state such request and provide documentation required to substantiate such request.

The Department may require other information deemed necessary or appropriate for inclusion in the application.

(2) Documentation requirements.

- (a) Applicants must supply documentation that the funds required to complete the proposed study have been appropriated or will be appropriated within 120 days of submission, for the purpose of conducting the study.
- (b) Each applicant must supply documentation that the application for assistance has been approved by the applicant's governing body, and by that of each municipality that is a party to the application. An executed intermunicipal or intergovernmental agreement, duly authorized by each entity, shall be included in such documentation wherever more than one entity is involved.
- (c) Each applicant shall certify at the time of application that it possesses the legal authority to apply for and expend the funds; and that a resolution, motion or similar action has been duly adopted or enacted as an official act of the applicant's governing body, authorizing the person identified as the official representative of the applicant to act in connection with the application. The applicant shall supply such additional documentation or other information as the Department may request for verification.

39.15: continued

- (3) Applications may be filed at any time throughout the year.

39.16: Review Process

- (1) Review for Completeness. The Department shall review each application to determine its completeness. Applications that are incomplete shall be deemed ineligible and returned to the applicant. The Department shall notify applicant of the date their application is determined complete.
- (2) Evaluation. Subject to the availability of funds the Department will take action on complete applications within 100 days of the determination of completeness. The applications shall be evaluated for eligibility using the criteria listed in 310 CMR 39.16(3).
- (3) Review criteria. The Department shall evaluate the application and make a determination of; excellent, acceptable or unacceptable for each of the following criteria:
  - (a) the extent to which the proposed study is consistent with the Master Plan;
  - (b) the extent to which the study addresses regional solid waste capacity needs;
  - (c) the extent to which the proposed plan justifies the regional structure and identifies methods to resolve divergent needs among the members;
  - (d) the extent to which the application contains a detailed summary of the proposed study including all technical subcomponents;
  - (e) the extent to which the application includes an outline of the methodology and structure of the planning process which is practical and efficient;
  - (f) the extent to which the scope of work includes all elements of a Phase I or Phase II study, as is necessary to ensure a practical and efficient decision making process by the public bodies;
  - (g) the extent to which the time line for completion of the project is practical and reasonable;
  - (h) the ability of the applicant to complete the study and implement the proposed plan; and
  - (i) the extent to which the applicant provides a detailed budget that is reasonable and which defines and allocates the projected costs of the proposed scope of work.
- (4) Further action. In reviewing a grant application, the Department may take any or all of the following actions:
  - (a) conduct a field inspection of the land and facilities included in the proposed plan for the purpose of verifying and evaluating the elements set forth in the application;
  - (b) refer the proposed plan to the relevant agencies of the Commonwealth for an opinion of the proposed project's compatibility or consistency with the policies of the Commonwealth;
  - (c) request additional information or consult with local officials regarding the application, including discussions of how to redraft the application, and/or the scope of work contained therein, to ensure compatibility and consistency with the Master Plan and any other Departmental policies or requirements;
  - (d) require that elements be added to or deleted from the scope of work when necessary to effectuate the purposes of 310 CMR 39.11 through 39.19 or the Master Plan; or
  - (e) other actions as deemed necessary by the Department to effectuate the purposes of 310 CMR 39.11 through 39.19.
- (5) Approval of Application. The Department may rate as fundable an application which satisfies the following conditions:
  - (a) the application receives no determination of unacceptable for any of the review criteria; and
  - (b) the application receives an excellent rating on at least four of the criteria; one of which must be the criteria pertaining to conformance with the Master Plan.

39.16: continued

Applicants that receive a fundable rating for their application may receive a grant, subject to the availability of funds and subject to all preconditions contained in 310 CMR 39.11 through 39.19 or established by the Department in its approval of the application. The Department may approve or reject any application in whole or in part, and may require modifications of the proposed application as a condition of approval.

39.17: Grant Awards

- (1) Preconditions. No planning grant shall be awarded except upon satisfaction that the applicant is in compliance with 301 CMR 50.00: *Affirmative Action* and Executive Order 215.
- (2) Execution. The grant shall be deemed awarded when the grant agreement is executed by the Department and the Grantee.
- (3) Scope of Work. The scope of work shall be as described in the application as approved by the Department and incorporated into the grant agreement. The grant amount shall be the amount stated in the grant agreement.
- (4) Grant Limitation. A planning grant may fund no more than 50% of the eligible costs of the plan, as determined by the Department. The applicant must certify appropriation and allocation of the remainder of the eligible costs, or in-kind service match, prior to execution of the grant agreement. No grant for any single phase shall exceed \$125,000.
- (5) Conditions. The Department may include any general or special conditions in the grant agreement it deems necessary or appropriate to effectuate the purposes of 310 CMR 39.00, Part II, M.G.L. c. 21H, or the Master Plan.

39.18: Project Management Requirements

- (1) Grant terms and conditions. The grantee is responsible for complying with the terms and conditions in the grant agreement and any applicable Department guidelines, regulations or other requirements. This responsibility is non-transferable and non-delegable. The grantee shall maintain a record of programmatic activities and a financial management system which provides effective control of all project funds.
- (2) Payment.
  - (a) General. Payment of the grant award to the grantee shall be made as a reimbursement for 50% of eligible costs incurred pursuant to 310 CMR 39.11 through 39.19. All reimbursements shall be made upon the Department's receipt of invoices certified as paid by the applicant and written documentation of the work products for which payment is requested. Requests will be honored if the Department determines that the expenses are eligible costs and the Department approves the work products. In making this determination with respect to any payment request, the Department may indicate what measures the grantee should take in further development of the work product to ensure continued or improved conformity with the conditions of the grant agreement, and to ensure compliance with the standards for acceptance of the final plan for purposes of final reimbursement.
  - (b) Approval of Work Products. For both Phase I and Phase II studies, Department approval of the work products produced shall be based on compliance with terms of the grant agreement and conformance with the Master Plan.
  - (c) Documentation. The grantee shall submit as documentation with each billing invoice:
    1. work products as required by the grant agreement;
    2. copies of the front and back of cancelled check(s) with project name included attached to invoices, or other written documentation that the invoice has been paid by the applicant;

39.18: continued

3. a copy of any applicable contract for the implementation of the planning contract;
4. time sheets for all direct personnel costs.

Except for costs incurred prior to the effective date of 310 CMR 39.11 through 39.19 a grantee must secure the Department's prior written approval for use of in-kind service as eligible costs. The Department's approval of in-kind services shall be contingent upon the grantee's demonstration that it has established a dedicated account or other administrative mechanism from which to pay for such services; that it possesses the necessary competence to accomplish, document and audit such work; and that the work can be accomplished more economically by use of the in-kind service or similar method of direct costs.

(d) Eligible Costs Pre-Effective Date. Costs incurred prior to the effective date of 310 CMR 39.11 through 39.19 shall, to the extent possible, be documented in the same manner as all other costs. Where such documentation is not available, or where the applicant seeks reimbursement for in-kind service or similar direct costs, the Department may allow payment where it determines that:

1. the costs are fully verifiable from the grantee's records; and
2. the costs were necessary and reasonable for a proper and efficient accomplishment of project objectives; and
3. the activities for which the costs were incurred are eligible pursuant to 310 CMR 39.11 through 39.19.

(e) Payments.

1. For Phase I studies, payment will occur only after the grantee has demonstrated that a given project milestone, specified in the grant agreement, has been completed.
2. For Phase II studies, payment in an amount specified in the grant agreement, not to exceed 50% of the total grant award, shall occur upon completion of a draft plan and when the Department determines that the grantee has complied with the terms of the grant agreement and 310 CMR 39.11 through 39.19. Reimbursement for the remainder of the grant amount shall occur only upon completion of the final plan and when the Department determines:
  - a. the grantee has complied with the terms of the grants agreement and 310 CMR 39.11 through 39.19; and
  - b. the objectives, goals and implementation program stated in the plan are consistent with the master plan and applicable regulatory requirements.

(3) Contract delay. Failure of a grantee to meet the initial mile stone, established in the grant agreement, within 12 months of the execution date of the grant agreement shall constitute sufficient cause for the Department to terminate the grant agreement. Prior to doing so, the Department shall give due consideration to any extenuating circumstances presented in writing by the grantee, and may extend the grant agreement for an additional period of not more than six months if the Department determines that such an extension is warranted.

(4) Suspension of grant payments. The Department may temporarily suspend a planning grant whenever the Department becomes aware of:

- (a) allegations, evidence or appearance of illegality, corruption to fraud associated with the award or management of the grant;
- (b) allegations or evidence of failure to comply with the terms of 310 CMR 39.11 through 39.19 or the terms of the grant agreement, including any milestone schedule; or
- (c) allegations or evidence of improprieties with respect to the project funds.

(5) Termination of a grant. The Department may terminate or revoke a planning grant whenever the Department determines that there is substantial evidence of illegality, corruption or fraud associated with the award or management of the grant, noncompliance with 310 CMR 39.11 through 39.19 or with the terms of the grant agreement (other than failure to meet schedules, where subsequently approved by the Department) or improprieties with respect to project funds. The Department may terminate the grant agreement for other good cause. Written notice shall be provided to the grantee whenever a grant is terminated and revoked, and the grantee shall return all grant funds to the Department within 60 days.

39.18: continued

(6) Records. The grantee shall create and maintain records, documents and supporting evidence which fully explain the source, amount and disposition of all funds for the planning project for a period of no less than six years from the termination of the grant agreement. The grantee and its contractor(s) and any subcontractor(s) shall make records available to the Commissioner, the State Auditor, the Governor, the Secretary of Administration and Finance and their respective designee(s) at all reasonable times for inspection, copying and audit.

39.19: Severability

If any portion of 310 CMR 39.11 through 39.19 or its application to any public body is found invalid, such invalidity shall not affect any other provision or application of 310 CMR 39.11 through 39.19, and to this end the provisions of 310 CMR 39.11 through 39.19 are declared severable.

39.21: Part III Solid Waste Management Capacity Development

(1) Authority. 310 CMR 39.21 through 39.29 is promulgated pursuant to M.G.L. c. 21H, § 3(e). Pursuant to M.G.L. c. 21H, § 3(c), the Department is authorized to award grants and loans to public bodies for the purposes of construction of solid waste facilities which serve as regional facilities.

(2) Purpose. The purpose of 310 CMR 39.21 through 39.29 is to provide for capacity for the management of residential and commercial waste in an environmentally sound manner.

(3) 310 CMR 39.21 through 39.29 establish criteria and priorities for the award of Capacity Development grants and loans to municipalities or other public bodies and provide guidelines for the administration and disbursement of such funds. Specifically the Capacity Development Regulations:

- (a) establish procedures for the Department to provide finances to public bodies to construct environmentally sound solid waste capacity;
- (b) encourage the development of solid waste capacity expansion projects which incorporate the principles of integrated waste management;
- (c) encourage solid waste capacity development and management on a regional basis;
- (d) encourage the development of solid waste facilities which comply with the DEQE solid waste management Master Plan; and
- (e) encourage implementation of recycling, composting and household hazardous waste collection programs.

39.22: Definitions

(1) As used in 310 CMR 39.21 through 39.29 the following definitions shall apply unless the context clearly indicate otherwise:

Applicant means a public body which is applying to the Department for a solid waste capacity development grant or loan.

Application Period means the inclusive dates established by the Department pursuant to 310 CMR 39.21 through 39.29 for the receipt of an application.

Benchmark Score means a score of 125 points, based on the rating criteria contained in 310 CMR 39.25(4).

Commercial Solid Waste means any solid waste resulting from industrial, mining, agricultural or any other commercial activity.

Containment means a project for the prevention of leachate generation and migration from a solid waste facility, including without limitation planning, design and implementation of surface sealing grading, drainage control, lining, slurry trenching, grout curtain sheeting, and other activities incidental to leachate control.

39.22: continued

Department means the Department of Environment Quality Engineering.

Master Plan means the adopted version of the statewide solid waste management Master Plan which the Department is mandated to produce pursuant to M.G.L. c. 16, § 21.

Grant Agreement means the document containing the grant and loan terms and conditions which upon signature by the Department's authorized representative, and a representative of the applicant constitutes a binding contract.

Grantee means a public body which files an application and receives a grant and a loan under 310 CMR 39.21 through 39.29.

Integrated Solid Waste Management means a solid waste strategy which considers the various sub-components of the municipal solid waste stream and seeks to maximize environmental protection and economic efficiency in the management of each sub-component.

Local Share means funds and or force account labor provided by the grantee for the unfunded share of the project costs.

Public Body means any city, town, district, commission, council, financing authority or other political subdivision of the Commonwealth and any agency, authority, board, bureau, commission, council, department or other entity or instrumentality of government.

Region means any two or more municipalities, or a single municipality with a population in excess of 300,000.

Regional Plan means a regional solid waste management plan written and endorsed by the chief elected officials of the municipalities named in the plan.

Solid Waste means garbage, refuse, trash, rubbish, sludge, residue or by-products of processing or treatment of discarded material, and any other solid, semi-solid or liquid discarded material resulting from domestic, commercial, mining, industrial, agricultural municipal or other sources or activities, but shall not include solid or dissolved material in domestic sewage sludge.

Solid Waste Facility means an established site or works and other appurtenances thereto, which has been or will be used for the storage, transfer, processing, treatment or disposal of solid waste including all land, structures and improvements which are directly related to the solid waste management activities.

39.23: Eligibility

(1) Applicant Eligibility. Public bodies applying for Capacity Development Grants and Loans must satisfy the following requirements:

- (a) the applicant and all participating municipalities shall have implemented a plan providing for the periodic collection of household hazardous wastes; and
- (b) the applicant and all participating municipalities shall have implemented a plan for the recycling or composting of not less than 20% of the solid waste generated within the area served by the public body.

The Department may modify the requirements listed in 310 CMR 39.22 (1)(a) and (b) upon a determination that it would not be feasible for the public body to meet these requirements.

(2) General Project Eligibility. Projects eligible for the Capacity Development grants and loans must satisfy the following requirements:

- (a) the applicant is a public body;

39.23: continued

- (b) the site where the proposed project is to be located is assigned as a site for a solid waste management facility pursuant to 310 CMR 16.00, or the project has received a determination by the Department that the facility is exempt from the Site Assignment process;
- (c) the project shall have received final design approval from the Department on or after January 1, 1986;
- (d) the facility is designed to provide capacity for a minimum of ten years;
- (e) the Applicant has commenced or will commence work on the facility within 12 months of the Grant Award. For the purpose of 310 CMR 39.21 through 39.29 commence work shall mean sign a binding contract for the design or construction of the facility in accordance with the Grant Agreement;
- (f) the facility is found to be environmentally safe by the Department;
- (g) the facility will provide services to municipalities at a total cost less than or equal to equivalent services provided by private industry; and
- (h) capacity at the proposed facility will replace environmentally unsound capacity or less preferred solid waste management options.

(3) Eligibility of Projects Submitted Prior to Masterplan. Capacity Development projects submitted prior to the Masterplan in addition to the requirements contained in 310 CMR 39.22 (1) must also satisfy the following requirements:

- (a) the applicant has adopted a Regional Plan;
- (b) the Regional Plan has been reviewed and approved by the Department; and
- (c) the project conforms to the Regional Plan.

39.24: Project Costs

(1) General.

- (a) Eligible costs shall be the actual costs of the project as approved by the Department and stated in the grant agreement. The eligibility or ineligibility of any costs that do not clearly fall into categories listed in 310 CMR 39.23 (2) or (3) shall be determined in each instance by the Department. Funding of such costs shall be at the sole discretion of the Department. All items not approved shall be at the full expense of the Applicant.
- (b) Eligible costs are reimbursable, and documentation of expenditure must be provided in order to receive grant monies. Eligible costs shall be limited to the acquisition of eligible materials and contracted services, as set forth in the grant agreement. Eligible costs shall not include extra work orders, or the cost of any project expansion or modification unless approved in advance and in writing by the Department.
- (c) Grantees will be responsible for providing a local share sufficient to cover all unfunded project costs. Grantees are permitted to incur force account charges as part of their local share up to \$25,000.

(2) Specific Eligible Costs. Eligible costs shall be costs within the scope of the project. The following categories define the scope of eligible project costs:

- (a) engineering design of the new solid waste capacity including any site or related studies done in conjunction with the design and or construction of the facility;
- (b) costs of any necessary containment done in conjunction with the construction of the facility; and
- (c) construction of the new solid waste facility including but not limited to purchase of the land and site preparation.

(3) Ineligible Costs. Ineligible project costs shall be costs other than those defined in 310 CMR 39.23 (1) and (2). Such ineligible costs shall include, without limitation:

- (a) costs incurred by an applicant in the site assignment process pursuant to 310 CMR 16.00;
- (b) preparation of application for a Capacity Development Grant Loan;
- (c) finance charges;

39.24: continued

- (d) ordinary operating expenses of government;
- (e) travel costs;
- (f) any undocumented costs;
- (g) removal of illegally disposed wastes;
- (h) cost of any work approved by the Department prior to January 1, 1986;
- (i) personal injury compensation or damages arising from the project;
- (j) bonus payments to contractors;
- (k) any items funded under other grant programs; and
- (l) force account labor charges in excess of \$25,000.

(4) Pre-Effective Date Costs. Costs incurred prior to the effective date of 310 CMR 39.21 through 39.29. Costs incurred by the applicant prior to the effective date of 310 CMR 39.21 through 39.29 may be determined by the Department to be eligible for reimbursement, where all of the following conditions are met:

- (a) the costs are incurred on or after January 1, 1986;
- (b) the costs were eligible costs pursuant to 310 CMR 39.23(2); and
- (c) the costs are fully documented, consistent with the requirements of 310 CMR 39.27(2)(d).

39.25: Application Process

(1) Projects Submitted Prior to the Masterplan. Applications for such projects may be submitted to the Department at any time after the promulgation of 310 CMR 39.21 through 39.29 and prior to the adoption of the Master Plan.

(2) Other Projects.

- (a) Application Period. After publication of the Master Plan, the Department shall establish an application period. The Department may extend the application period at its discretion and shall establish regular application cycles greater than one year and less than two years apart subject to the availability of funds. Applications received after the final day of the application period, or any extension thereto, shall not be considered for a grant/loan and shall be returned to the applicant.
- (b) Public Notice. The Department shall make reasonable efforts to provide notice of the availability of funds and the application period and procedures by publication or mailing notices to eligible public entities prior to the commencement of any application period. The Department may in the same notice release guidance regarding preferred types of facilities based on further analysis or changed solid waste capacity conditions in the Commonwealth.

(3) Project Application Form. A request for a capacity development grant or loan shall be submitted on a project application form provided by the Department along with any other documentation required in the application.

(4) Documentation requirements.

- (a) Each applicant must supply documentation that the application for assistance has been approved by the applicant's governing body, and by that of each municipality that is a party to the application. An executed intermunicipal or intergovernmental agreement, duly authorized by each entity, shall be included in such documentation wherever more than one entity is involved.
- (b) Each applicant shall certify at the time of application that it possesses the legal authority to apply for and expend the funds; and that a resolution, motion or similar action has been duly adopted or enacted as an official act of the applicant's governing body, authorizing the person identified as the official representative of the applicant to act in connection with the application.
- (c) The applicant shall supply such additional documentation or other information as the Department may request for verification.

39.26: Review Process

(1) Completeness Review. The Department shall review all applications received during each application period to determine if they contain all necessary information. After completing the review the Department shall notify each applicant in writing that their application is complete or incomplete. Applications that are determined to be incomplete shall be ineligible for funding and returned to the applicant.

(2) Projects Submitted Prior to Masterplan. All applications for such projects will be rated and scored using the criteria listed in 310 CMR 39.25(4). The score of the application will then be compared against the Benchmark Score. Applications which receive a rating equal to or above the Benchmark Score may be awarded a grant/loan contingent on the availability of funds. Applications which score below the Benchmark Score will not be awarded a grant/loan.

(3) Other Projects. The Department shall review each application deemed complete based on the criteria set forth in 310 CMR 39.25 (4). Applications which receive a rating equal to or above the Benchmark Score will be placed on a priority list in numerically descending order. Projects which are ranked highest and for which there is available grant/loan money in the current cycle may receive an award.

Tie Scores. For applications receiving equal scores, the proposed project which provides greatest amount of total capacity will be assigned the higher ranking on the priority list.

(4) Rating Criteria. Applications that have been certified as complete shall be scored by each of the following criteria:

(a) conformance with the Master Plan or Regional Plan; considerations will include the scale of the facility, the quality of the recycling plan for the service area:

<u>Rating</u>	<u>Points</u>
Excellent	57 - 80
Good	38 - 56
Fair	18 - 37
Poor	1 - 17

(b) the quality of the management plan for the proposed facility; considerations will include the existence of a regional solid waste district or an intermunicipal agreement and the use of User Fees to cover the full life cycle cost of the proposed facility:

<u>Rating</u>	<u>Points</u>
Excellent	37 - 50
Good	24 - 36
Fair	12 - 23
Poor	1 - 11

(c) total population to be served by the proposal:

<u>Population</u>	<u>Points</u>
200,000 or more	10
100,000 - 199,999	7 - 9
50,000 - 99,999	4 - 6
49,999 or less	3

(d) willingness to accept solid waste collect by private companies:

39.26: continued

the applicant will accept solid waste generated within the service area without regard to who collects and transports the waste: 10 points

the applicant will discriminate against, discourage or in any other manner prevent private collectors of solid waste from using the facility to dispose of solid waste collected within the service area that would otherwise be accepted at the facility: 0 points

(e) the compliance history of the proposed facility's management:

<u>Rating</u>	<u>Points</u>
Excellent	10
Good	7 - 9
Fair	4 - 6
Poor	1 - 3

(5) Further action. In reviewing a grant application, the Department may take any or all of the following actions:

- (a) conduct a field inspection of the land and facilities included in the proposed plan for the purpose of verifying and evaluating the elements set forth in the application;
- (b) refer the proposed plan to the relevant agencies of the Commonwealth for an opinion of the proposed project's compatibility or consistency with the policies of the Commonwealth;
- (c) request additional information or consult with local officials regarding the application, including discussions of how to redraft the application, and/or the scope of work contained therein, to ensure compatibility and consistency with the Master Plan and any other Departmental policies or requirements;
- (d) require that elements be added to or deleted from the scope of work when necessary to effectuate the purposes of 310 CMR 31.21 through 39.29 or the Master Plan; or
- (e) other actions as deemed necessary by the Department to effectuate the purposes of 310 CMR 39.21 through 39.29.

39.27: Grant Awards

(1) Preconditions.

- (a) Applicants must supply documentation that the funds required to complete the proposed facility have been appropriated or will be appropriated within 120 days of award of the Grant/Loan.
- (b) No grant and loan shall be awarded except upon satisfaction that the applicant is in compliance with 301 CMR 50.00: *Affirmative Action* and Executive Order 215.

(2) Project Scope. The project scope shall be described in the project plans and specifications approved by the Department. The grant amount shall be the amount stated in the grant agreement. The Facility Development Grants and Loans shall be deemed awarded when the grant agreement is executed by the Department and the Grantee.

(3) Grant Limitation. A Solid Waste Capacity Development Grant or Loan may fund up to 90% of eligible project costs not to exceed \$10,000,000 and shall be awarded either as a 40% grant and 60% no interest loan in the cases where the proposed facility will accept both residential and commercial wastes or as a 30% grant and a 70% no interest loan in cases where the facility will accept only residential wastes.

(a) To determine the percent of final project costs that will be provided the Department shall rate the application on the following criteria and apply the rating to the table contained in 310 CMR 39.27(3)(b).

- 1. The number of municipalities that are participating in the project:

39.27: continued

<u># of Municipalities</u>	<u>Points</u>
9 or more	6
7 - 8	4
5 - 6	3
2 - 4	2

2. The equalized property value per capita (averaged for the participating municipalities) as compared to the state average in the most recent year for which data is available based on the Department of Corporations and Taxation:

<u>Equalized Prop. Val.</u>	<u>Points</u>
>50% below average	6
25 - 50% below average	4
0 - <25% below average	3
above average	2

(b) The final percent of the final project costs provided by DEQE will be determined by applying the rating given each application in 310 CMR 39.27(2)(a) to the following table:

<u>Points</u>	<u>% of Costs DEQE Pays</u>
9-12	up to 90%
7-8	up to 75%
5-6	up to 60%
4	up to 45%

In the event that program funds are not sufficient to pay for the appropriate amount of project costs according to 310 CMR 39.27(2)(b), the dollar amount of each award shall be contingent upon the availability of funds.

- (4) Total Project Funding. The Department shall condition its grant/loan offer as follows:
- (a) the total of all funds received by the grantee from all sources including betterments and other state or federal grant or loan programs shall not exceed 100% of the project costs;
  - (b) if the total of all funds received does exceed 100% of the total project costs the Department shall reduce the grant/loan offer such that the total funds received by the recipient equals only 100% of the project costs; and
  - (c) any funds previously received by the Grantee in excess of 100% of the project costs shall be reimbursed to the Department.
- (5) Conditions. The Department may include any general or special conditions in the grant agreement it deems necessary or appropriate to effectuate the purposes of 310 CMR 39.21 through 39.29, M.G.L. c. 21H, including without limitation:
- (a) a requirement that the applicant provide financial assurance for the long term operation and maintenance, and closure of the facility; and
  - (b) a requirement that all participating communities come into compliance with any outstanding enforcement actions taken by the Department regarding their management of any solid waste management facility.
- (6) Payment. Payment of the grant/loan award shall be made as a reimbursement for all eligible costs pursuant to 310 CMR 39.23 (1)(2) and (3). All reimbursements shall be made upon the Department's receipt of invoices certified as paid by the applicant.

39.28: Project Management and Requirements

- (1) Grant Terms and Conditions. The grantee is responsible for complying with the terms and conditions in the grant agreement. This responsibility is non-transferable. The grantee shall maintain a record of programmatic activities and a financial management system which provides effective control of all project funds.
- (2) Contract Delay. The Department may condition its grant/loan offer such that in the event a grantee fails to award and initiate work under all project contracts within 12 months of the acceptance of a grant award, the Department may terminate the grant. Prior to termination of the grant/loan under these circumstances, the Department will give due consideration to any extenuating circumstances presented by the grantee, and may extend the grant/loan award for a period of time to be determined by the Department.
- (3) Suspension of Grant Payments. The Department may temporarily suspend a Capacity Development Grant/Loan whenever the Department becomes aware of:
  - (a) allegations, evidence or appearance of illegality, corruption to fraud associated with the award or management of the grant;
  - (b) allegations or evidence of failure to comply with the terms of 310 CMR 39.21 through 39.29 or the terms of the grant agreement, including any milestone schedule; or
  - (c) allegations or evidence of improprieties with respect to the project funds.
- (4) Termination of a Grant. The Department may terminate or revoke a Capacity Development Grant/Loan whenever the Department determines that there is substantial evidence of illegality, corruption or fraud associated with the award or management of the grant, noncompliance with 310 CMR 39.21 through 39.29 or with the terms of the grant agreement (other than failure to meet schedules, where subsequently approved by the Department) or improprieties with respect to project funds. The Department may terminate the grant agreement for other good cause. Written notice shall be provided to the grantee whenever a grant is terminated and revoked, and the grantee shall return all grant funds to the Department within 60 days.
- (5) Records. The grantee shall maintain books, records, documents and supporting evidence which fully explain the source, amount and disposition of all funds for the project for a period of six years after closeout of the grant/loan. The grantee and its contractor(s) shall make records available to the Secretary of Administration and Finance and his or her designee(s) at all reasonable times for inspection, copying and auditing.

39.29: Severability

If any provision of 310 CMR 39.21 through 39.29 or its application to any unit of government is held invalid, such invalidity shall not affect other provisions or applications of 310 CMR 39.21 through 39.29 which can be given effect without the invalid provision or application, and to this end the provisions of 310 CMR 39.21 through 39.29 are declared to be severable.

REGULATORY AUTHORITY

310 CMR 39.01 through 39.09: M.G.L. c. 21H, § 7(a)  
310 CMR 39.11 through 39.19: M.G.L. c. 16, § 20, St. 1987, c.  
584. 310 CMR 39.21 through 39.29: M.G.L. c. 21H, § 3(e)