

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 9 SOLID WASTE
PART 25 FACILITY GRANT FUND

20.9.25.1 ISSUING AGENCY: Environment Department.
[11/30/95; 20.9.25.1 NMAC - Rn, 20 NMAC 9.3.I.100, 8/2/2007]

20.9.25.2 SCOPE: This part applies to the use of the funds in the solid waste facility grant fund.
[7/16/91, 11/30/95; 20.9.25.2 NMAC - Rn, 20 NMAC 9.3.I.101, 8/2/2007]

20.9.25.3 STATUTORY AUTHORITY: This part is adopted under the authority of NMSA 1978, Sections 9-7A-6.E and 74-9-40.
[7/16/91; 20.9.25.3 NMAC - Rn, 20 NMAC 9.3.I.102, 8/2/2007]

20.9.25.4 DURATION: Permanent.
[11/30/95; 20.9.25.4 NMAC - Rn, 20 NMAC 9.3.I.103, 8/2/2007]

20.9.25.5 EFFECTIVE DATE: November 30, 1995. This part amends and replaces the New Mexico environment department regulations, NMED 91-2, filed June 16, 1991.
[11/30/95; 20.9.25.5 NMAC - Rn, 20 NMAC 9.3.I.104, 8/2/2007]

20.9.25.6 OBJECTIVE: This part governs the procedures by which municipalities and counties may apply for grants for solid waste management projects, and by which the department shall award such grants.
[7/16/91, 11/30/95; 20.9.25.6 NMAC - Rn, 20 NMAC.9.3.I.105, 8/2/2007]

20.9.25.7 DEFINITIONS: As used in this part:

- A. "applicant" means a municipality as defined in this section or a county that has submitted a grant application, or any number of such municipalities and/or counties that have submitted a grant application jointly;
- B. "department" means the New Mexico environment department;
- C. "fund" means the solid waste facility grant fund created by NMSA 1978, Section 74-9-41.A.
- D. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;
- E. "regionalization" means the combining of activities of legally and politically distinct municipalities as defined in this section and/or counties within a geographical area to address through joint effort or activity mutual solid waste management problems;
- F. "secretary" means the secretary of the environment department;
- G. "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities; "solid waste" does not include:

(1) drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy;

(2) fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion;

(3) waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, coal, copper, molybdenum and other ores and minerals;

(4) agricultural waste, including, but not limited to, manures and crop residues returned to the soil as fertilizer or soil conditioner;

(5) cement kiln dust waste;

(6) sand and gravel;

(7) solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water

Pollution Control Act, 33 U.S.C. Section 1342 or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq.;

(8) densified-refuse-derived fuel; or

(9) any material regulated by Subtitle C of the federal Resource Conservation and Recovery Act of 1976, substances regulated by the federal Toxic Substances Control Act or low-level radioactive waste;

H. "solid waste facility" means any public or private system, facility, location, improvements on the land, structures or other appurtenances or methods used for processing, transformation, recycling or disposal of solid waste, including landfill disposal facilities, transfer stations, resource recovery facilities, incinerators and other similar facilities not specified, but does not include equipment specifically approved by order of the secretary to render medical waste noninfectious or a facility which is permitted pursuant to the provisions of the Hazardous Waste Act and does not apply to a facility fueled by a densified-refuse-derived fuel that accepts no other solid waste. [7/16/91, 20.9.25.7 NMAC - Rn, 20 NMAC.9.3.I.107, 8/2/2007]

20.9.25.8 SEVERABILITY: If any part or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[7/16/91, 20.9.25.8 NMAC - Rn, 20 NMAC.9.3.I.106, 8/2/2007]

20.9.25.9 GRANT APPLICATION:

A. General Grant Application Requirements. Assistance is available on a competitive basis to qualified municipalities and counties, individually or jointly. Joint applications will be allowed when two or more eligible municipalities and/or counties within reasonable proximity of each other propose to address a common problem.

B. Eligibility.

(1) Grants shall be made only to applicants that:

(a) agree to operate and maintain any facility proposed for funding so that the facility will function properly over its structural and material design life;

(b) require the contractor of any facility construction project to post a performance and payment bond in accordance with the requirements of NMSA 1978, 13-4-18;

(c) provide a written assurance, signed by an attorney, that it has proper title, easements leases, and right-of-ways to the property upon which any facility proposed for funding is to be constructed or improved;

(d) meet the requirements for financial capability set by the department to assure sufficient revenues to operate and maintain any facility proposed for funding for its useful life;

(e) agree to properly maintain financial records and to conduct an audit of the project's financial records;

(f) have a treasurer, clerk, secretary-treasurer, or other individual responsible for the financial aspects of the project who is bonded;

(g) employ a registered professional engineer licensed in the state of New Mexico to provide and be responsible for all engineering services on a project;

(h) provide a written notice to the department of completion and start of operation of any grant project;

(i) provide authorized state officials and representatives with access to all books, accounts, records, reports, files, and property or facilities pertaining to the project in order to make audits and inspections; and

(j) provide the department with quarterly accomplishment reports and an end-of-project report.

(2) Plans and specifications for a grant project, where applicable, shall be approved by the department before a grant is made to an applicant.

(3) Facilities or systems requiring department solid waste facility permits shall meet all requirements of the solid waste management regulations, 20.9.2 - 20.9.10 NMAC, and/or the Solid Waste Act, or have an approvable facility/system application on file at the time of application.

(4) An applicant that receives solid waste facility grant fund monies shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those related to procurement practices, construction wage rates, and this part.

C. Eligible and Non-eligible Items.

(1) Eligible items include but are not limited to planning for the development of a regional solid waste disposal facility or for regional disposal services. Additionally eligible items may include the costs of engineering feasibility reports, contracted engineering design, inspection of construction, special engineering

services which includes, but is not limited to, the preparation of operation and maintenance manuals, and contracted facility construction, operation or system operation.

(2) Ineligible items include but are not limited to the costs of water rights, land, easements and rights-of-way; legal costs; fiscal agents' fees; and applicant administrative costs.

D. Responsibilities of the Department; Application and Notification Procedures.

(1) The department shall administer the solid waste facility grant fund program.

(2) Application shall be made using standard application forms available from the department.

(3) All applications for assistance under the solid waste facility grant fund program are due on the date(s) specified by the department.

(4) The department shall review the applications for completeness, eligibility, technical merits, and financial capability, and rate the applications based on the priority ranking system described in 20.9.25.10 NMAC.

(5) The department shall require such additional information as it deems necessary and appropriate to conduct its evaluation of the applications.

(6) The department shall make grants to applicants in order of priority as determined by the priority ranking system and considering the following:

(a) willingness of an applicant to accept a grant under the program;

(b) financial capability of the applicant to properly operate and maintain any project facility;

and

(c) the applicant's readiness to proceed with the project.

(7) The department shall make its grant determination and notify all applicants of its determination within ninety (90) days after the close of each application deadline.

(8) Grant agreements will be prepared by the department and executed for those projects which can be financed with available funds.

E. Grant Disbursement Requirements. Payment(s) of awards will be on a reimbursement basis on a schedule to be developed by the grantee and approved by the department. Unexpended project funds remaining at the completion of the project shall revert to the solid waste facility grant fund.

[7/16/91, 11/30/95; 20.9.25.9 NMAC - Rn, 20 NMAC.9.3.II.204, 8/2/2007]

20.9.25.10 PRIORITY RANKING FOR FACILITY GRANTS:

A. Purpose. This section provides the procedures to rank applications so that highest priority is based on greatest need without ability to fund activity by other sources. These procedures also provide a mechanism to ensure an equitable and reasonable allocation of funds where there are not sufficient funds available to fund all eligible projects for which applications have been received.

B. Elements of Ranking Criteria.

(1) Applications shall be ranked on each of the criteria listed in this section. Each element shall be awarded a value from 0 to 10, with 10 being the optimum value. The sum of the numbers awarded each element multiplied by the weight given the element, will equal the total score of the application, which will determine its rank when compared to other applications. Maximum points attainable are 1,100.

(2) **Criteria:**

(a) Fiscal capacity/self-funding capability. Points will be awarded **Weight**
25
to the extent that local resources, including bonding capacity, gross receipts taxing authority, are unavailable or inadequate for use on the proposed project. The greater the absence of local funding capacity, the higher the score:

(i) complete absence of funding capacity 10 pts.

(ii) available funding 1% to 29% 6 pts

(iii) available funding 30% to 59% 3 pts.

(b) Ability to sustain operation w/o additional grant funding. 10

Points will be awarded to the extent that the applicant can demonstrate sufficient financial support or revenues to sustain the operation of any facility or system after this award without additional grant funding. The greater the ability to sustain operation without additional grant funding the higher the score.

(i) Sufficient support 10 pts.

(ii) Insufficient support 0 pts.

(c) Estimated beneficial time period (i.e., life of facility). Points 10
will be awarded based on the length of time which any facility or improvement will

satisfy the requirements of the affected geographical area. The greater the length of time (up to twenty-five years) of beneficial use the higher the score.	
(i) Minimum of 25 years	10 pts.
(ii) Minimum of 10 but fewer than 25 years	6 pts
(d) Size of target area/population served. One point will be awarded for each 1,000 population increment served up to 10 points. Credit will be given to combined populations in the event of joint applications. The larger the target area/population served, the higher the score. One point for each 1,000 population.	10
(e) Ability to operate and maintain 10 facility/system. Points will be awarded to the extent that the applicant can demonstrate satisfactory ability to operate and maintain any proposed facility. Such demonstration may include past facility/system operating experience or professional qualifications of key personnel. The greater the demonstrated ability to operate and maintain the proposed facility the higher the score.	10
(i) Good ability	10 pts.
(ii) Fair ability	5 pts.
(iii) Poor ability	0 pts.
(f) Demonstration of project need. Points will be awarded based on the extent to which any project is necessary. The more severe the project need for the project the higher the score.	20
(i) Severe need	10 pts.
(ii) Moderate need	5 pts.
(g) Regulatory non-compliance and nature of violations. Points will be awarded based on the extent to which any proposed facility or improvement will remedy underlying causes for regulatory non-compliance. The greater the significance of the corrected violation(s) in terms of protecting public health and the environment the higher the score.	10
(i) 100% correction of significant violations	10 pts.
(ii) Correction unaffected by project	0 pts.
(h) Project Urgency. Up to 10 points will be awarded based on the urgency of need for the project. The greater the urgency the higher the score.	5
(i) Project needed within 6 months	10 pts.
(ii) Project needed within 6 to 12 months	5 pts.
(i) Regionalization Effort. Up to 10 points will be awarded to the extent that an application is jointly made by more than one municipality or county. The greater the regionalization effort the higher the score.	10
(i) Project servicing the entirety of at least three counties	10 pts.
(ii) Project servicing the entirety of at least two counties	5 pts.
(iii) Project servicing the entirety of at least one county	2 pts.

[7/16/91; 20.9.3.10 NMAC - Rn, 20 NMAC.9.3.III.300 - III.301, 8/2/2007]

HISTORY OF 20.9.25 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

NMED 91-2, Solid Waste Facility Grant Fund Regulations, filed 7/16/91.

History of Repealed Material: [RESERVED]

Other History:

NMED 91-2, Solid Waste Facility Grant Fund Regulations (filed 7/16/91) was renumbered, reformatted, amended and replaced by 20 NMAC 9.3, Facility Grant Fund, effective 11/30/1995.

20 NMAC 9.3, Facility Grant Fund, (filed 10/31/1995) was **renumbered, reformatted and replaced** by 20.9.25 NMAC, Facility Grant Fund, effective 8/2/2007.