

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 455E.9(1), the Environmental Protection Commission hereby gives Notice of Intended Action to rescind Chapter 209, “Solid Waste Alternatives Program,” and to adopt new Chapter 209, “Landfill Alternatives Financial Assistance Programs,” Iowa Administrative Code.

This rule making is intended to reorder the content of existing Chapter 209 and to formalize rules pertaining to the awarding of grants to Iowa communities through the Derelict Building Grant Program.

Any person may submit written suggestions or comments on the proposed new chapter through October 6, 2015. Such written material should be submitted to Tom Anderson, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034; by fax to (515)725-8202; or by e-mail to [tom.anderson@dnr.iowa.gov](mailto:tom.anderson@dnr.iowa.gov). Persons who have questions may contact Tom Anderson by e-mail or by telephone at (515)725-8323.

A public hearing will be held on October 6, 2015, at 1 p.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa. Persons attending the public hearing may present their views orally or in writing. At the hearing, persons will be asked to provide their names and addresses for the record and to confine their remarks to the subject of the proposed rule making.

Any person who intends to attend the public hearing and has special requirements, such as those related to mobility or hearing impairments, should contact the Department to advise of any specific needs.

After analysis and review of this rule making, it was determined that the rule making has a positive impact on jobs. Jobs are positively impacted by the financial incentives contained within the Derelict Building Grant Program and the Solid Waste Alternatives Program. This positive impact includes opportunities that result from the awarding of financial assistance to Iowa communities and private sector interests for the deconstruction and renovation of abandoned buildings, the recycling of the resulting building materials, and recycling and reuse projects in general. While funding for these programs is set out in statute and both programs are currently being implemented, the proposed chapter will facilitate the awarding of funds under the Derelict Building Grant Program.

These rules are intended to implement Iowa Code sections 455B.301A and 455E.11.

The following amendment is proposed.

Rescind 567—Chapter 209 and adopt the following **new** chapter in lieu thereof:

**CHAPTER 209**

**LANDFILL ALTERNATIVES FINANCIAL ASSISTANCE PROGRAMS**

**567—209.1(455B,455E) Goal.** The goal of landfill alternatives financial assistance programs is to reduce through implementation of solid waste management projects the amount of solid waste being generated and the amount of solid waste being landfilled.

**567—209.2(455B,455E) Purpose.** The purpose of these programs is to provide financial assistance to applicants implementing projects and programs leading to the diversion of solid waste from sanitary landfills.

**567—209.3(455B,455E) Definitions.**

*“Abandoned”* means that the building has been unoccupied for a minimum of six continuous months.

*“Asbestos-containing material”* or *“ACM”* means any material that contains more than 1 percent of asbestos.

*“Building renovation”* means repairs that stabilize or improve the structural integrity of the building, including but not limited to roof repair or replacement, building stabilization, and the tuck-pointing of exterior walls.

*“Cost share”* means the applicant’s share of the eligible costs of the proposed project.

*“Deconstruction”* means the selective dismantlement of a building for the purpose of maximizing reuse and recycling opportunities through source separation while minimizing disposal costs.

*“Demonstration project”* means a project that is innovative or new to the state of Iowa.

*“Department”* means the Iowa department of natural resources.

*“Derelict building grant eligibility”* means any county or municipal government with a population of 5,000 or fewer is eligible to apply for a derelict building grant. An applicant may partner with a local nonprofit organization on a project.

*“Eligible costs”* means costs directly related to the project and for which financial assistance moneys may be used.

*“Financial assistance”* means monetary assistance in the form of grants, loans, or forgivable loans that is awarded under these rules to an applicant.

*“Forgivable loan”* means financial assistance that does not require repayment to the department.

*“Indirect costs”* means costs not directly arising from a specific product, function, or activity.

*“Landfill diversion rate”* means the weight of materials diverted from a sanitary landfill, divided by the total weight of the building and its contents, expressed as a percentage. Materials diverted from a sanitary landfill do not include material combusted without energy recovery or material dumped or discarded in violation of Iowa Code sections 455B.307 and 455B.307A.

*“Loan”* means an award of financial assistance with the requirement that the award be repaid including interest as applicable.

*“Overhead costs”* means expenses not chargeable to a particular part of the work or product, including but not limited to utilities, insurance, and rent.

*“Phase I environmental assessment”* means review of known environmental records and land use information about the site and vicinity.

*“Phase II environmental assessment”* means actual soil, groundwater and structural material sampling and testing to confirm or deny the presence of contamination.

*“Recipient”* means any applicant selected to receive financial assistance under these rules.

*“Sanitary landfill”* means a permitted disposal site where solid waste is buried between layers of earth.

*“Solid waste alternatives program eligibility”* means any unit of local government, public or private group, individual or business that has an interest in or has responsibility for solid waste management in Iowa and is currently in compliance with all applicable state statutes and regulations is eligible to apply for the solid waste alternatives program (SWAP).

*“Waste reduction”* means practices which reduce, avoid, or eliminate the generation of solid waste at the source. Waste reduction is not merely the shifting of a waste stream from one medium to another medium.

**567—209.4(455B,455E) Role of the department.** The department is responsible for the administration of funds for projects receiving financial assistance under these rules. The department will ensure that funds disbursed meet guidelines established by Iowa Code sections 455E.11(2)“a”(1)(e) and 455E.11(2)“a”(1)(f).

**567—209.5(455B,455E) Funding sources.** The department will use moneys that are appropriated by the legislature and that may be obtained from other sources for the purpose of achieving the goals outlined in

these rules. The department will ensure that moneys appropriated meet both federal and state guidelines pertaining to their use.

**567—209.6(455B,455E) Reduced award.** The department reserves the right to offer financial assistance in an amount less than that requested by the applicant. In the event that financial assistance offered is less than the amount requested by an applicant, the applicant may be asked to document the impact on the proposed project. Reduced awards shall be offered when the department determines that:

1. Program resources are insufficient to provide the level of financial assistance requested to all applicants to which the department intends to offer financial assistance.
2. The applicant could implement the project at a reduced level of financial assistance and achieve the project objectives and the goals of the program.

**567—209.7(455B,455E) Fund disbursement limitations.** No funds shall be disbursed until the department has:

1. Determined the total estimated cost of the project;
2. Determined that financing for the cost-share amount is ensured by the recipient;
3. Received final design plans from the recipient, if applicable;
4. Received confirmation that all permits or permit amendments have been obtained by the recipient;
5. Received commitments from the recipient to implement the project;
6. Executed a written agreement with the recipient; and
7. Determined that the recipient is currently in compliance with all applicable state statutes and regulations.

**567—209.8(455B,455E) Minimum cost share.** An applicant shall provide a minimum cash match for the purchase of each good and service for which department-awarded financial assistance will be used. The applicant's minimum cost share shall be in accordance with subrule 209.16(3) for the derelict building grant program.

**567—209.9(455B,455E) Denial of financial assistance.** An applicant may be denied financial assistance for any of the following reasons:

1. Funds are insufficient to award financial assistance to all qualified applicants.
2. An applicant does not meet eligibility requirements pursuant to provisions of subrule 209.15(1) for the solid waste alternatives program or subrule 209.16(1) for the derelict building grant program.
3. An applicant does not provide sufficient requested information on forms provided by the department pursuant to rule 567—209.12(455B,455E).
4. An applicant has previously received financial assistance under these rules and is determined by the department to be delinquent in repaying the loan or delinquent in submitting required documentation.
5. The goals or scope of the project is not consistent with rules 567—209.1(455B,455E) and 567—209.2(455B,455E).
6. The project does not meet the criteria of an eligible project in subrule 209.15(2) for the solid waste alternatives program or subrule 209.16(2) for the derelict building grant program.

**567—209.10(455B,455E) Eligible costs.** Applicants may request, for the implementation and operation of a project, financial assistance which includes, but is not limited to, funds for the purpose of:

1. Purchase and installation of waste reduction equipment;
2. Purchase and installation of collection, processing, or hauling equipment;
3. Development, printing and distribution of educational materials;
4. Planning and implementation of educational forums, including but not limited to workshops;
5. Materials and labor for construction, deconstruction, or renovation of buildings;
6. Salaries directly related to implementation and operation of the project;
7. Laboratory analysis costs; and
8. Engineering or consulting fees.

**567—209.11(455B,455E) Ineligible costs.** Financial assistance shall not be provided or used for costs including, but not limited to, the following:

1. Taxes;
2. Vehicle registration;
3. Overhead expenses;
4. Indirect costs;
5. Legal costs;
6. Contingency funds;
7. Proposal preparation;
8. Contractual project administration;
9. Land acquisition;
10. Office furniture, office computers, fax machines and other office furnishings and equipment;
11. Costs for which payment has been or will be received under another federal, state or private financial assistance program;
12. Costs incurred before a written agreement has been executed between the applicant and the department; and
13. Insurance premiums or other costs associated with insuring items purchased using program funds.

**567—209.12(455B,455E) Applications.** Applicants shall submit applications on forms provided by the department. Applications are considered part of the public record. Unless otherwise designated in the solid waste alternatives program application forms or the derelict building grant program application guideline forms, applications will be accepted by the department during normal business hours throughout the year.

**567—209.13(455B,455E) Selection.**

**209.13(1)** To receive consideration under these rules, applications for financial assistance submitted to the department must be provided to the agency responsible for submitting an approved solid waste comprehensive plan or a subsequent solid waste comprehensive plan or by solid waste agencies participating in the environmental management system for agency review and comment. Applications shall be provided to the agency in the area in which the proposed project is located or the area or areas in which the proposed project will be implemented.

**209.13(2)** The department shall coordinate evaluation of applications, and applicants will be awarded financial assistance based on review committee recommendations.

**567—209.14(455B,455E) Written agreement.** Recipients shall enter into a contract with the department for the purposes of implementing the project for which financial assistance has been awarded. The agreement shall be signed by the appropriate department signatory and the recipient's authorized signatory. Conditions to successfully implement and manage agreements shall be expressed in the signed agreement. The department may terminate agreements and seek the return of funds released under the agreement for failure by the recipient to perform under the terms and conditions of the agreement. Amendments to agreements may be adopted by mutual written consent of the department and the recipient.

**567—209.15(455B,455E) Solid waste alternatives program.** Financial assistance awarded under the solid waste alternatives program shall be used to implement activities that support the practical and beneficial use of solid waste materials and for activities leading to a reduction in the reliance on sanitary landfills for disposal of solid waste.

**209.15(1) Eligible applicants.** Any unit of local government, public or private group, individual or business that has an interest in or has responsibility for solid waste management in Iowa and is currently in compliance with all applicable state statutes and regulations is eligible to apply for the solid waste alternatives program.

**209.15(2) Eligible projects.** The department may provide financial assistance to applicants for the following types of projects that are consistent with the goal and purpose of this program:

- a.* Best practices — practices and programs that will move Iowa toward long-term pollution prevention, waste reduction and recycling sustainability;
- b.* Education — practices and programs that are consistent with a coordinated statewide message on pollution prevention, waste reduction, and recycling to ensure ongoing support of these integrated solid waste management activities; and
- c.* Market development — practices and programs that develop a demand for value-added recyclables sufficient to provide increased and stable commodity markets.

**209.15(3) Type of financial assistance.** The type of financial assistance (forgivable loan, zero interest loan, low-interest loan) offered to an applicant is dependent upon factors such as, but not limited to, the amount of program funds awarded, level of new landfill diversion, profit generation and project uniqueness. The department reserves the right to offer any combination of types of financial assistance to any selected project.

**209.15(4) Loans.** The term of all loans executed under these rules shall be determined on a case-by-case basis and shall be based on the specific capital costs financed, as well as the terms of other financing provided for the project. The written agreement between the department and the recipient will establish other conditions or terms needed to manage or implement the project.

**567—209.16(455B,455E) Derelict building grant program.** Financial assistance awarded under the derelict building grant program is available to communities of 5,000 or fewer to help improve the attractiveness and appearance of their jurisdictions by providing financial assistance for eligible projects. Each project must have a landfill diversion component.

**209.16(1) Eligible applicants.** Any county or municipal government with a population of 5,000 or fewer is eligible to apply for a derelict building grant. An applicant may partner with a local nonprofit organization on a project.

**209.16(2) Eligible projects.** A community's building is eligible for the program if the building meets the following criteria:

- a.* The building is an abandoned commercial or public building of which a local government has ownership or an intent to own.
- b.* The building is not on the National Register of Historic Places.

**209.16(3) Eligible activities and amount of financial assistance.** The eligible activities and amount of financial assistance for each are:

*a.* Asbestos-containing material inspections: 100 percent reimbursement for inspection costs conducted by a state of Iowa-licensed asbestos contractor.

*b.* Abatement of asbestos-containing material: 100 percent reimbursement, not to exceed \$10,000, for abatement of ACM performed by a state of Iowa-licensed asbestos contractor. A 50 percent cost share is required for those costs exceeding \$10,000.

*c.* Structural engineering analysis: 100 percent reimbursement not to exceed \$1,500 for a structural engineering analysis conducted by a licensed structural engineer or architectural historian to determine the ability to renovate the building. The recipient is responsible for all costs exceeding \$1,500.

*d.* Phase I environmental assessment: 100 percent reimbursement not to exceed \$3,000 for conducting a Phase I environmental assessment. The recipient is responsible for all costs exceeding \$3,000.

*e.* Phase II environmental assessment: 50 percent reimbursement not to exceed \$2,500 for conducting a Phase II environmental assessment. The recipient is responsible for all costs exceeding \$5,000. The need for this assessment is determined by the results of the Phase I environmental assessment and involves the sampling of structure components, soil, and groundwater to confirm or deny the presence of contamination.

*f.* Building renovation: 50 percent reimbursement not to exceed \$50,000 for renovation costs, including but not limited to:

- (1) Restoration or removal of materials for reuse, either at the site or off site, or for recycling.
- (2) Roof repair or replacement.
- (3) Building stabilization.
- (4) Tuck-pointing of exterior walls.

g. Deconstruction: 50 percent reimbursement not to exceed \$50,000 for costs related to deconstruction. All deconstruction projects must achieve a minimum landfill diversion rate of 30 percent of the structure by weight to receive reimbursement for deconstruction costs.

**209.16(4)** *Deconstruction cost-share incentive.* For every additional 10 percent above 30 percent of landfill diversion by weight that is documented upon completion of the project, the applicant's cost share is reduced by 5 percent and the grant award amount will increase by 5 percent. The maximum grant award for deconstruction projects shall not exceed \$75,000.

These rules are intended to implement Iowa Code sections 455B.301A and 455E.11.