

# State Water Plan Applications September 2016



Staff is recommending that the following projects be placed on the State Water Facilities Plan:

- Gregory
- Martin
- Sioux Falls
- Terry Trojan Water Project District

Staff is recommending that the following projects be added to *Attachment I – Project Priority* list of the Clean Water SRF Intended Use Plan:

<b>Priority Points</b>	<b>Loan Recipient</b>	<b>Estimated Loan Amount</b>	<b>Expected Loan Rate &amp; Term</b>
12	Sioux Falls	\$5,649,000	1.25%, 10 years
9	Gregory	\$334,000	3.25%, 30 years

Staff is recommending that the following projects be added to *Attachment I – Project Priority* list of the Drinking Water SRF Intended Use Plan:

<b>Priority Points</b>	<b>Loan Recipient</b>	<b>Estimated Loan Amount</b>	<b>Expected Loan Rate &amp; Term</b>
48	Terry Trojan Water Proj. Dist.	\$1,087,377	3.25%, 30 years
20	Martin	\$633,000	2.25%, 30 years

SOLID WASTE MANAGEMENT PROGRAM  
GRANT AGREEMENT  
ASSURANCES, TERMS AND CONDITIONS

In consideration of the approval of the Grant described above by the State of South Dakota, acting through its Board of Water and Natural Resources, and Department of Environment and Natural Resources (“DENR”), 523 East Capitol Avenue, Pierre, SD 57501 (collectively the “State”), the Grantee covenants and agrees to comply with the following assurances, terms, and conditions.

1. Grantee will comply with those federal, state and local laws, regulations, ordinances and permits applicable to the construction, operation, and maintenance of the Project.
2. Grantee will cause its contractors, sub-contractors, agents, and employees to comply with the applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. In the event of conflict between federal, state and local laws and regulations, compliance with the more restrictive laws and regulations shall be deemed compliance with less restrictive laws and regulations.
3. Grantee will submit all changes which would alter the purpose, scope, or the functional layout of the Project to the State for approval and no such changes or modifications may be made without such prior approval in writing. It is agreed that the Application of the Grantee, including those materials attached in support thereof, are by this reference incorporated herein as if set out in full. Grantee will not substantially depart from the description of the Project as set forth therein without the prior written approval of the State.
4. Grantee will construct the Project, or cause it to be constructed, to final completion with reasonable diligence in accordance with the approved plans and specifications and the approved Project scope for the grant; construction will be completed and funds expended within three years after Grantee’s request for grant funds has been approved.
5. Grantee will ensure that construction administration and inspection is done by or under the supervision of a professional engineer or architect licensed and registered in the State of South Dakota to help assure that the construction contractor’s work conforms with the approved plans and specifications, and to furnish inspection and material testing reports, recommendations and such other information as the State may require. It is recognized and understood that the final responsibility of conformance with the plans and specifications is that of the construction contractor. The State has the right to monitor facility and design through on-site inspections from time to time.
6. Grantee warrants and represents as follows:
  - a. The Grantee is duly organized and existing under the laws of the State of South Dakota; has taken all proper action to authorize the execution, delivery and

performance of its obligations under this Grant Agreement; and has the power and authority to enter into and consummate all transactions contemplated by this Grant Agreement, and to carry out its obligations hereunder.

b. There is no action, suit, proceeding, inquiry or investigation at law or equity, by or before any judicial or administrative court, agency or body, pending or threatened against the Grantee wherein an unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Grant Agreement.

c. As of the date of this Grant Agreement, the Grantee has obtained or made all permits, findings and approvals required by any governmental body or officer for the Project or the financing thereof, except as otherwise set forth in this Grant Agreement or disclosed in writing to the State prior to the execution hereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Grantee as a condition to entering into this Grant Agreement and the performance of the Grantee's obligations hereunder.

d. This Grant Agreement is a legal, valid and binding obligation and agreement of the Grantee, enforceable against the Grantee according to its terms, except as the enforceability thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.

e. The Project consists of the facilities, improvements and activities described in the Project Title/Description of the Funding Agreement, as the same may be from time to time amended pursuant to section 28 hereof.

f. There is no fact that the Grantee has not specifically disclosed in writing to the State that materially and adversely affects or will materially and adversely affect the properties, operations and finances of the Grantee, its legal status, or its ability to perform its obligations hereunder.

g. The Grantee certifies that there has been no material adverse change since the date of the Application in the financial condition, organization, operation, property, or the personnel of the Grantee; and that the information contained in the Application, and other information the Grantee provided to the State does not contain any material misrepresentations or misstatements of fact.

h. The Grantee further certifies that it:

(1) has not received any notice or otherwise learned of any Environmental Liability which would individually or in the aggregate constitute a Material

Adverse Occurrence arising in connection with (i) any non-compliance with or violation of the requirements of any Environmental Law or (ii) the release or threatened release of any toxic or hazardous waste or other substance into the environment;

(2) does not have any knowledge of any threatened or actual liability in connection with the release or threatened release of any toxic or hazardous waste, substance or constituent, or other substance in the environment which would individually or in the aggregate constitute a Material Adverse Occurrence; or

(3) has not received any notice or otherwise learned of any federal or state investigation evaluating whether any remedial action is needed to respond to a material release or threatened release on any toxic or hazardous waste, substance or constituent into the environment for which the Grantee is or may be liable. The Grantee is in substantial compliance with all Environmental Laws in the respective jurisdictions where it is presently doing business or conducting operations.

(4) Material Adverse Occurrence shall mean any occurrence of any nature whatsoever, including without limitation, any adverse determination in any litigation, arbitration or government investigation or proceeding, which the State shall reasonably determine materially adversely affects the present or prospective financial condition or operations of the Grantee, or impairs the ability of the Grantee to perform its obligations.

7. Grantee agrees to maintain the necessary and appropriate accounts, records and books in which full and correct entries are made, capable of allowing the preparation of annual financial statements prepared in accordance with generally accepted financial and reporting standards as promulgated by the Governmental Accounting Standards Board, or the Financial Accounting Standards Board, as appropriate, or an Other Comprehensive Basis of Accounting as defined by the American Institute of Certified Public Accountants. The State and its authorized representatives shall have the right to inspect such books and accounts upon reasonable notice, during normal business hours. Grantee will retain all books and records, including audits required pursuant to this Grant Agreement, for a period of not less than three years following the issuance of the final grant closeout letter.
8. Grantee will establish safeguards to prevent employees from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain unrelated to the public benefits from the Project, for themselves or others, particularly those with whom they have family, business, or other ties.

9. Grant proceeds will be kept in the state treasury, in the Water and Environment Fund, and shall be disbursed based upon the Grantee's request for disbursements. Grantee will submit signed requests for disbursements using a form prescribed by the State, together with all attachments required by such form. The request for disbursement will be submitted to such person or persons as the State may designate for approval. Disbursements may be obtained only for those Project costs which have been legally incurred, and which are due and payable, or have been paid by the Grantee. The Grantee will designate, by duly adopted resolution, an official to certify on Grantee's behalf that the request submitted is correct and is a valid expenditure for the Project. The Grantee is required to submit a W-9 form with the "Required Direct Deposit Information" completed which will authorize electronic payments by direct deposit and provide electronic payment notification to the Borrower. This form is available through the DENR Fiscal Office or it can be downloaded directly from <http://denr.sd.gov/dfta/wwf/VendorACHW-9Form.pdf>. The Borrower must fax the completed form to (605) 773-4068 or scan and email to [DENRINTERNET@state.sd.us](mailto:DENRINTERNET@state.sd.us) with "Attn: Fiscal Office" in the subject line or mail it to:

DENR Fiscal Office  
523 East Capitol  
Pierre, SD 57501-3182

All requests for disbursement for eligible costs under this Grant Agreement not presented within ninety (90) days after the completion of the term hereof are barred from payment. The State reserves the right, at its option, to disburse the funds directly to the contractor or sub-contractor supplying the service or material for which the payment is sought. Disbursements for travel and subsistence may not exceed the rates established in the rules and regulations of the State Board of Finance relating to travel and subsistence expenses for state employees. No funds will be disbursed until all fees owed by the Grantee to DENR are paid.

10. Prior to the drawdown of grant funds, Grantee will supply to the State, in a form satisfactory to the State, evidence of the commitment of funds from other sources for use, together with the funds granted hereby, in construction of the Project.
11. Grantee hereby grants to the State a security interest pursuant to the South Dakota Uniform Commercial Code (SDCL Ch. 57A-1 et seq.) in the equipment described in Exhibit A, attached hereto, including all products of, additions to, and replacements thereof, and all accessories, accessions, parts and equipment now or hereafter affixed thereto and used in connection therewith, and the proceeds of all property secured hereby (the "Collateral"). Upon purchase of the equipment, Grantee shall within ten (10) days provide a description to the State, which description is hereby made a part of this Grant Agreement. Grantee agrees that the equipment will remain personal property, and not become a fixture. The State shall have a first lien on the Collateral, unless it expressly agrees otherwise in writing. Grantee

agrees to cooperate with the State in signing and filing all documents necessary to perfect the State's security interest in such equipment.

12. Grantee agrees not to sell, lease, convey, assign, transfer, or encumber any equipment purchased, in whole or in part, with funds provided pursuant to this Grant Agreement for a period of five (5) years from the date hereof, without the express prior written consent of the State. In the event the equipment is transferred within the five (5) year period, Grantee agrees to pay the State, within 30 days, an amount equal to an amount determined by taking the fair market value of the equipment at the time of disposal times the approved percentage of the Project funded by this Grant Agreement.
13. Grantee will submit, if requested, within ten (10) working days of the end of a quarter, on a form provided by the State, a status report detailing the progress, operations, and financial condition of the Project and its facilities, which reports may include the entire construction and operation of the Project and all revenues and expenditures of the Project.
14. If the Grantee's financial statements for the grant period are not audited and the grant is for more than \$250,000 dollars, the Grantee agrees to have a final project audit performed. The final project audit or audited financial statements covering the grant period shall be submitted to the Department of Environment and Natural Resources within 15 days of issuance or acceptance by either the Department of Legislative Audit or issuance by a qualified independent accountant duly licensed in the State of South Dakota. The scope of the required final project audit is detailed in Exhibit B.
15. Grantee will insure that all land surveys are conducted by a land surveyor registered in the State of South Dakota, and that the final plans and specifications are prepared under the supervision of a professional architect or engineer licensed and registered in the State of South Dakota.
16. Grantee will maintain an acceptance certificate completed by the architect or engineer in charge of the Project in the Grantee's files.
17. The Grantee shall at all times during the term of this Grant Agreement keep and maintain property and casualty insurance, workers compensation, and liability insurance with insurers licensed to do business in the State, or risk pool coverage programs described in SDCL chapter 3-22, against such risks and in such amounts as are customary in the State for entities of the same or similar size and type as the Grantee, and similarly situated with facilities of the Project's type, and provide proof of such coverage to the State. In the event of cancellation of coverage the Grantee will promptly obtain replacement insurance with the same or substantially similar coverage and provide proof of such coverage to the State. In the event of a substantial change in insurance, issuance of a new policy, renewal, replacement, or changes in coverage, the Grantee will promptly provide written notice of such changes to the State and provide a new certificate of insurance showing continuous coverage in the amounts required.

18. Grantee agrees to indemnify and hold the State, its officers, agents, employees, assigns and successors in interest harmless from any and all claims or liability of any kind or character whatsoever arising from or connected with the construction, operation, or maintenance of the Project funded herein, provided that nothing herein requires the Grantee to indemnify the State for its own acts or omissions.
19. Grantee certifies, by signing this agreement, that:
  - a. A conflict of interest policy is enforced within the Grantee's organization;
  - b. Internal Revenue Service Form 990 has been or will be filed, if applicable, in compliance with federal law, and will be displayed immediately after filing on the Grantee's website or if Grantee does not maintain a website a copy of the form will be sent to the State;
  - c. An effective internal control system is employed by the Grantee's organization; and
  - d. Grantee is in compliance with the federal Single Audit Act, if applicable, in compliance with SDCL 4-11-2.1, and that audits are displayed on the Grantee's website or if Grantee does not maintain a website copies of the audits will be sent to the State.
20. Prior to the disbursement of funds, Grantee will provide the State with the written opinion of an attorney duly licensed to practice law in the State of South Dakota, said opinion certifying that, if applicable:
  - a. The Grantee is a duly organized and existing legal entity under State law, has the legal power to enter into this Grant Agreement both as a matter of State law and according to its enabling documents, and its governing board has duly authorized these transactions by appropriate resolutions;
  - b. The Grantee, has acquired or will acquire the real property necessary for the construction of the Project, together with those rights-of-way, easements, permits, and licenses necessary for the construction, operation and maintenance of the Project; the legal instruments evidencing that acquisition are in appropriate and due legal form and adequately confer upon the Grantee the necessary rights for the construction, operation and maintenance of the Project; such omissions or defects as may exist will in no substantial way or manner endanger the value or operation of the Project and its facilities; and those legal instruments have been duly and properly recorded in the appropriate public land records of each county in which any land affected thereby is situated; and,

c. There is no action, suit, proceeding, inquiry or investigation at law or in equity, by or before any judicial or administrative court, agency or body, pending or threatened against the Grantee or the Project, wherein an unfavorable decision, ruling, or finding would materially adversely affect the validity or enforceability of this Grant Agreement, or would materially adversely affect the ability of the Grantee to comply with its obligations under this Grant Agreement.

21. In the event the Grantee fails or refuses to perform any covenants or agreements hereunder on Grantee's part made and entered into, or in the event of an improper use of grant funds hereunder, or in the event of the failure of the Grantee to promptly pay, when due, any taxes, charges, liens, assessments, or encumbrances, or in the event of the insolvency of the Grantee, the State may at its option declare this Grant Agreement to be in default and shall provide Grantee with written notice of such default. If such default has not been cured, or if a written plan to correct such default acceptable to the State has not been submitted to the State within thirty (30) days of Grantee's receipt of written notice thereof, the State at its sole option, may cancel this Grant Agreement, and Grantee shall be obligated to reimburse the State for any grant funds therefore expended by or for the benefit of Grantee, or any part thereof, and if not promptly paid the State may pursue any rights and remedies under any applicable laws or regulations. Grantee agrees to pay the State an amount equal to the costs and expenses, including reasonable expert and attorney's fees, incurred by the State in enforcing its rights under this Grant Agreement.
22. The rights and remedies herein conferred upon the State shall be cumulative and not alternative and shall be in addition and not in substitution of or in derogation of rights and remedies conferred by any other agreements between the parties hereto or by any applicable law. The failure of the State to enforce strict performance of any covenant, promise, or condition herein contained, including timely payments due hereunder, shall not operate as a waiver of the right of the State thereafter to require that the terms hereof be strictly performed according to the tenor thereof.
23. This Grant Agreement, or any part thereof, or the benefits to be received hereunder, shall not be assigned, transferred, or otherwise disposed of to any person, firm, corporation, or other entity by Grantee without the express prior written consent of the State.
24. Any notice or other communication required under this Grant Agreement shall be in writing and sent to the address set forth in this Grant Agreement. Notices shall be given by and to the Secretary, DENR on behalf of the State, and by and to the Designated Official executing the Funding Agreement on behalf of the Grantee, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

25. In the event that any provision of this Grant Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
26. All other prior discussions, communications and representations concerning the subject matter of the Grant are superseded by the terms of this Grant Agreement, and except as specifically provided herein, this Grant Agreement constitutes the entire agreement with respect to the subject matter hereof.
27. This Grant Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Grant Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
28. This Grant Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof or thereof, and which writing will be signed by an authorized representative of each of the parties. No provision stated herein shall be waived without the prior written consent of the State.
29. Time is of the essence in the performance of the covenants, terms and conditions contained in this Grant Agreement. This Grant Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors and assigns.

EXHIBIT A  
SOLID WASTE MANAGEMENT PROGRAM  
SOUTH DAKOTA UNIFORM COMMERCIAL CODE

## EXHIBIT B

### SOLID WASTE MANAGEMENT PROGRAM

All recipients of a grant of more than \$250,000 who do not have their financial statements audited during the grant period must have a final Project audit performed by a qualified independent accountant duly licensed in the State of South Dakota. The final project audit or audited financial statements covering the grant period shall be submitted to the Department of Environment and Natural Resources within 15 days of issuance or acceptance by either the Department of Legislative Audit or issuance by a qualified independent accountant duly licensed in the State of South Dakota.

The scope of the audit will include:

- 1) Compliance with federal, state and local laws, regulations, ordinances and permits applicable to the construction, operation, and maintenance of the Project;
- 2) Documentation of all sources of revenue for the Project and all Project costs to include allocation of costs by revenue source; and
- 3) An Acceptance Certificate completed by the architect or engineer of the Project.

# Solid Waste Management Applications September 2016



# September 2016

## Dedicated Solid Waste Management Fees

### Solid Waste Management Program (SWMP)

Previous Balance of SWMP Funds:	\$	2,232,068
Reversions:	\$	173,437
Available for Award:	\$	<u>2,405,505</u>

**SOLID WASTE MANAGEMENT PROGRAM FUNDING APPLICATION  
FINANCIAL ANALYSIS SUMMARY**

**APPLICANT:** Ecomaniacs

**Total Project Cost:** \$7,000

**BWNR Funding Assistance Requested:** \$4,000

**Staff Analysis**

- 1) Ecomaniacs is requesting grant funds to update and expand its education exhibit. This exhibit will be showcased at various outlets including festivals, churches, schools, and camps in the effort to increase the recycling rate in the Sioux Falls region. The exhibit will include interactive display, games and informational kiosks aimed at reaching a large audience.
- 2) Ecomaniacs has secured a \$1,500 donation from First National Bank and a \$1,500 SD Discovery Center 319 I&E grant.

**Funding Recommendation:** \$4,000 Solid Waste Management Program grant.

**SOLID WASTE MANAGEMENT PROGRAM FUNDING APPLICATION  
FINANCIAL ANALYSIS SUMMARY**

**APPLICANT:** Madison

<b>Total Project Cost:</b>	\$84,784
<b>BWNR Funding Assistance Requested:</b>	\$42,392

**Staff Analysis**

- 1) The City of Madison is requesting grant funds to construct an additional cell at its Restricted Use Site. Excavated materials from the proposed cell will be used to cap the majority of an existing cell. A small portion of the existing cell will continue to receive waste until the proposed cell is completed.

**Funding Recommendation:** \$17,000 Solid Waste Management Program grant.

**SOLID WASTE MANAGEMENT PROGRAM FUNDING APPLICATION  
FINANCIAL ANALYSIS SUMMARY**

**APPLICANT:** Naples

**Total Project Cost:** \$29,800

**BWNR Funding Assistance Requested:** \$23,840

**Staff Analysis**

- 1) The Town of Naples is requesting grant funds to clean up its tree dump facility. Municipal solid waste has been illegally dumped at the site and the facility is now out of compliance. Naples wishes to return its facility to compliance by removing the illegal waste and disposing it at a regional landfill.

**Funding Recommendation:** \$23,840 Solid Waste Management Program grant.

## **SOLID WASTE MANAGEMENT PROGRAM FUNDING APPLICATION FINANCIAL ANALYSIS SUMMARY**

**APPLICANT:** Northwest South Dakota Regional Landfill Association, Inc.

**Total Project Cost:** \$788,000

**BWNR Funding Assistance Requested:** \$788,000

**Rate/Term:** 2.25% for 10 years

**Security Pledged For Repayment Of Loan:** Revenue

### **Staff Analysis**

- 1) Northwest SD Regional Landfill Association is proposing to construct an additional landfill cell in order to meet future space demand. Construction of Cell #3 will create an additional 10 or more years of useful life.

**Funding Recommendation:** \$315,200 SWMP loan at 2.25% for 10 years and a \$472,800 SWMP grant

**Debt Service Coverage:** Coverage would exceed 100% based on revenue projections

### **Contingencies:**

- 1) Contingent upon Borrower adopting a resolution approving the form of the loan agreement, the promissory note, and the pledge of revenues for repayment of the loan.
- 2) Contingent upon Borrower approving a security agreement and mortgage.

### **Grant Special Condition:**

- 1) Grant funds shall be drawn concurrently with the Solid Waste Management Program loan awarded for this project.

**SOLID WASTE MANAGEMENT PROGRAM FUNDING APPLICATION  
FINANCIAL ANALYSIS SUMMARY**

**APPLICANT:** Seneca

**Total Project Cost:** \$29,880

**BWNR Funding Assistance Requested:** \$23,904

**Staff Analysis**

- 1) The Town of Seneca is requesting grant funds to permanently close its waste site. The site no longer accepts waste materials and does not have the capacity to operate the site. Closure of the site is desired by both Seneca and SD DENR.

**Funding Recommendation:** \$23,900 Solid Waste Management Program grant.

## **SOLID WASTE MANAGEMENT PROGRAM FUNDING APPLICATION FINANCIAL ANALYSIS SUMMARY**

**APPLICANT:** Tri-County Landfill Association

**Total Project Cost:** \$18,150

**BWNR Funding Assistance Requested:** \$14,400

### **Staff Analysis**

- 1) Tri-County Landfill Association is requesting grant funds to utilize a geothermal heating system in their recently constructed cold storage building. The floor piping is already in place and Tri-County is proposing to utilize energy created by decomposing solid waste in the landfill cells to heat a glycol solution in the pipes. The heated solution would be connected to the existing floor piping to heat the building. The proposed improvements will assist in daily operations and further the landfill's goal of safe and environmentally sound waste disposal and management.

**Funding Recommendation:** \$3,630 Solid Waste Management Program grant.

# September 2016

## Dedicated Solid Waste Management Fees

### Solid Waste Management Program (SWMP)

Previous Balance for SWMP Funds:	\$	2,232,068
Reversions:	\$	173,437
Available for Award:	\$	<u>2,405,505</u>
Recommended:	\$	<u>(860,370)</u>
Balance:	\$	<b>1,545,135</b>

# USDA Rural Development Interest Rates

