



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **02-060**

AN ORDER to create chapter NR 549, relating to recycling efficiency incentive grants.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-02-2002 RECEIVED BY LEGISLATIVE COUNCIL.

05-29-2002 REPORT SENT TO AGENCY.

RNS:DLL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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CLEARINGHOUSE RULE 02-060

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. Section NR 549.05 (1) should indicate, using the active voice, that it applies to a responsible unit that the department has determined has an effective recycling program.

b. The rule routinely makes incorrect use of the introduction format. Provisions that introduce a list of subsequent subunits should end with a phrase such as "all of the following" or "any of the following" and a colon. [See s. 1.03 (8), Manual.] A few of the provisions where this convention is *not* followed are ss. NR 549.07 (1) (intro.), (e) (intro.) and (j) (intro.) and (2) (intro.) and (g) (intro.).

c. In ss. NR 549.07 (1) (intro.), and (2) (intro.) and (g) (intro.), the phrase "but is not limited to" should be omitted; this is implied by the use of the word "includes" and so is redundant.

d. In s. NR 549.07 (1) (e) 1., "shall" should replace "will."

e. Rules should not refer to the definitions of terms when using the terms; it is redundant. For example, the "as defined in" clauses in s. NR 549.08 (2) (a) 1. and 2., should be omitted. The definitions in ch. NR 549 are made applicable to the entire chapter by s. NR 549.03 (intro.).

f. Similarly, it is usually not necessary to refer to substantive provisions that define a concept, unless the provision or concept is obscure and a reference to the provision enhances

clarity. For example, in s. NR 549.08 (1), it is definitely not necessary to indicate that eligible applicants are those described in s. NR 549.05 (1), nor is it necessary to reiterate that the grants for which those applicants may apply are grants for the purposes specified in s. NR 549.02--in fact, the only new requirement created by that subsection, and so the only part that is needed, is the requirement that applications for grants under ch. NR 549 be made on forms provided by the department.

- g. In s. NR 549.08 (2) (intro.), "has been" should be inserted before "achieved."
- h. There appears to be no difference between s. NR 549.08 (2) (a) 1. and 2., apart from the dates. They should be combined in a single provision that simply states: "The responsible unit has joined with one or more other responsible units to form a consolidated responsible unit." The reference to s. 287.09 (1), Stats., is not necessary, although the note that follows may be helpful to the reader.
- i. Drafter's notes imbedded in a rule are not a part of the accepted format. The drafter's note following s. NR 549.08 (2) either should be converted to a note, which will appear in the published rule, or should be moved to the rule analysis.
- j. Section NR 549.08 (3) makes incorrect use of the introduction format, since par. (b) does not follow grammatically from the introduction. The introduction and two paragraphs should be collapsed into an undivided subsection, and the introduction and par. (a) should be combined into a single sentence.
- k. The organization of ch. NR 549 should be reconsidered. In a process-oriented rule such as this, provisions should be arranged in the order in which they apply to the process being described, so that the rule as a whole presents a logical, step-wise and chronological overview of the process. [See s. 1.02 (3), Manual.] In particular, s. NR 549.09, **Department review**, includes material that is not related to the department's review of applications: s. NR 549.09 (2) relates to who may apply when; and s. NR 549.09 (3) relates to what an application must contain (although it could be recast as review criteria). Also, there is a suggestion in s. NR 549.09 (3) that there are required application dates, but those dates are not established explicitly anywhere in the rule.
- l. Section NR 549.09 (3) (a) (intro.) requires that efficiencies have been implemented in the year prior to the grant year, but s. NR 549.09 (3) (a) 1. allows for efficiencies that were implemented as much as three years before the grant year. The rule must either remove this inconsistency or insert the phrase "except as provided in subd. 1." at an appropriate location in the introduction.
- m. Section NR 549.09 (3) (a) 3. is adequately described in subd. 4., and so is not needed; that subdivision should be omitted, while subd. 4. should be renumbered 3. and modified to refer to 2004 and subsequent grant periods.
- n. Section NR 549.09 (3) (b) should be reformatted. The introduction should end in a colon. Subdivision 1. a. should be numbered subd. 1. and should end with a period after "revenues"; the material that is in subd. 2. a. should be added to this subdivision. Subdivisions

1. b. and 2. b. should be treated in the same manner. Subdivision 3. should be renumbered par. (c).

4. Adequacy of References to Related Statutes, Rules and Forms

a. The rule-making order should cite ss. 287.03 (1) (f) and 227.11 (2) as granting authority to promulgate this rule. Section 287.235 should *not* be cited in this context, as it does not contain an explicit grant of rule-making authority.

b. It appears that the reference in s. NR 549.01 should be to all of s. 287.235, not just to sub. (1) of that section.

c. It appears that the cross-reference in s. NR 549.09 (2) (b) should be to s. NR 549.08 (2) (b).

d. In s. NR 549.18 (2) (a), the reference to ch. NR 549 should be replaced by a reference to "this chapter." [See s. 1.07 (2), Manual.]

e. In s. NR 549.18 (2) (c) (intro.), the reference should be to s. NR 549.07 (2). Also, "described" should replace "defined."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section 549.07 (1) (intro.) refers to the costs of administering recycling programs. "Administering" could be interpreted to include only office functions and not actual operations, such as collection, processing and marketing of recyclable materials. If the department wants all operational costs to be eligible costs, it should use broader language, such as "costs of operating the program."

b. In the note following s. NR 549.08 (1), the web address given only gets the reader to the first page of a large and complex web site. It might be easier for readers to find the form if the address given was to the form itself or to a page that contains a direct link to the form.

c. As written, s. NR 549.08 (2) (a) 4. refers to a responsible unit that is not a large county ("a county with a population of 50,000 or more"). However, it appears that that provision is intended to refer to a large responsible unit (one with a population of at least 50,000) that is not a county. If this is a correct interpretation, then the rule should state: "The responsible unit is not a county and has a population of at least 50,000."

d. Section NR 549.08 (2) (b) 1. (intro.) should begin with a phrase such as: "The responsible unit has entered into" Also, how many of the listed topics must be addressed in the agreement--any one? all four? This can be clarified with language such as: "The cooperative agreement shall address, at a minimum, all of the following:" if that is what is intended.

e. In s. NR 549.08 (2) (a) 3., "the" should be deleted from the second sentence. In par. (b) 3., "a" should replace the final "an."

f. Section NR 549.08 (4) fails to indicate what body is required to adopt the authorizing resolution.

g. In s. NR 549.09 (2) (b) 2., the applicant is only required to state that efficiencies are expected. (See the last sentence.) Does the department want the applicant to make any estimate of the magnitude of the expected efficiencies? Similarly, in s. NR 549.09 (3) (a) (intro.), applicants are merely required to "indicate" that an efficiency has been implemented. Should the applicant not be required to demonstrate this through some form of evidence, rather than simply saying that it is so?

h. In the second item numbered 2. in the note following s. NR 549.09 (3) (b) 2. b., the word "which" should be replaced by the word "that."

i. In s. NR 549.14 (3), the first occurrence of the word "mail" appears superfluous, and should be deleted.

j. Section NR 549.17 states that either the department or a grant recipient may initiate the termination of a grant award and specifies procedures for terminations initiated by the department. What procedures apply if a grant recipient initiates the termination?

k. Section NR 549.17 (2) (c) allows termination of a grant for any of three listed reasons. However, s. NR 549.18 (1) (a) allows termination for noncompliance with any provision of ch. NR 549. These provisions should be reconciled.

l. In s. NR 549.18 (3) (b), "their" should be replaced by "his or her" or simply "an."

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create ch. NR 549 relating to recycling efficiency incentive grants.

CF-30-02

Analysis Prepared by the Department of Natural Resources

Statutory Authority: s. 287.235, Stats. *287.03 (1) (4)*
Statute Interpreted: s. 287.235, Stats.

This rule creates a Recycling Efficiency Incentive Grants (REI Grants) Program that establishes criteria and procedures for the awarding of additional grants to responsible units to reward or encourage recycling efficiency.

The department administers Wisconsin's Recycling Grants Program under s. 287.23, Stats., for planning, constructing, and operating a recycling grant program. This program partially reimburses responsible units for their efforts to collect, sort and market recyclable material and thereby conserve landfill space, prevent the introduction of hazardous material into Wisconsin's landfills, and ensure better stewardship of the environment, protecting public health, the quality of the environment and to conserve resources and energy.

The '01-'03 Budget Bill created an additional grants program which provides incentives for efficient recycling programs to responsible units. The REI Grants Program rewards and encourages responsible units that either serve large communities or cooperate in the provision of services -- or contracting for services -- by either reducing administration and contract costs, or increasing the quality or scope of services provided through a recycling program, or both.

SECTION 1 Chapter NR 549 is created to read:

CHAPTER NR 549
RECYCLING EFFICIENCY INCENTIVE GRANTS TO RESPONSIBLE UNITS

NR 549.01	Purpose.
NR 549.02	Applicability.
NR 549.03	Definitions.
NR 549.05	Eligibility of Applicant.
NR 549.07	Eligible and Ineligible Costs.
NR 549.08	Grant Application.
NR 549.09	Departmental Review.
NR 549.11	Distribution of Grant Assistance.
NR 549.12	Grant Recipient Accountability.
NR 549.14	Interpretation of Chapter.
NR 549.15	Variances.
NR 549.17	Termination.
NR 549.18	Enforcement.

NR 549.01 Purpose. The purpose of this chapter is to establish rules and procedures under s. 287.235 (1), Stats., for the implementation and administration of a grants program which provides financial assistance to responsible units that have achieved efficiency in their recycling programs through the criteria or methods provided in this chapter.

NR 549.02 Applicability. This chapter applies to all applicants and recipients of recycling efficiency incentive grants under s. 287.235, Stats. This chapter does not apply to waste reduction and recycling demonstration grants, under s. 287.25, Stats., nor to recycling grants under s. 287.23, Stats.

NR 549.03 Definitions. In this chapter:

- (1) "Department" means the department of natural resources.
- (2) "Effective recycling program" means a solid waste management program that includes all of the components specified in s. 287.11(2), Stats.
- (3) "Population" has the meaning specified in s. 287.23 (1) (c), Stats.
- (4) "Recycling center" means a facility that accepts source separated materials for processing and marketing.
- (5) "Responsible unit" has the meaning specified in s. 287.01(9), Stats.

NR 549.05 Eligibility of applicant. (1) **ELIGIBLE APPLICANTS.** Any responsible unit that has been determined to have an effective recycling program shall be eligible to apply for assistance through this chapter.

(2) **REVIEW OF GRANT APPLICANT'S OR RECIPIENT'S ELIGIBILITY.** The department may review a responsible unit's eligibility for a recycling efficiency incentive grant at any time.

NR 549.07 Eligible and ineligible costs. (1) **ELIGIBLE COSTS.** The grant applicant's recycling program costs, defined as the costs of administering the program minus those proceeds from the sale of recycled material, that are reasonable and necessary for planning, constructing or operating a recycling program are eligible for grant assistance. Eligible costs may include, but are not limited to:

- (a) The costs of planning, including consultant fees.
- (b) Construction costs, including capitalized interest, professional services of an attorney, and engineering services for design, construction and construction inspection.
- (c) Training, salaries and fringe benefit costs of personnel.
- (d) The purchase of necessary supplies.
- (e) Capital purchases for:
 - 1. Equipment costing \$1,000 or more and with an expected life of 3 or more years will be funded on an amortized basis.
 - 2. Land, including site acquisition at fair market value and site preparation costs.
- (f) The allocable cost of using equipment not purchased with grant moneys, as provided under s. NR 542.10 (1) (b) 3.
- (g) Costs of collecting recyclables, marketing and transporting recyclables to market.
- (h) Public education and enforcement costs.
- (i) Written contracts entered into by responsible units to obtain services necessary for an effective recycling program.

is determined by DNR to

(2) active voice

(5)

almost identical to NR 542.05

(j) The following costs of a solid waste facility designed to recover recyclables from post-consumer waste:

1. All costs that can be directly attributed to the recycling component.
2. The proportionate share of the remaining costs as calculated as a proportion of recovered recyclables to total waste, by weight.

(k) Costs of documenting how solid waste that is generated in the grant applicant's region and is not separated or recovered for recycling will be managed, as required by s. 287.11 (2) (ew), Stats.

(2) INELIGIBLE COSTS. Costs not directly associated with or not necessary for planning, construction or operation of an effective recycling program are not eligible for grant assistance. Ineligible costs include, but are not limited to:

(a) Costs incurred either prior to January 1 or after December 31 of the calendar year 2 years prior to the year for which the grant is awarded.

(b) The costs of collecting and disposing of municipal solid waste not separated for recycling, except for costs described in sub. (1) (k).

(c) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations, rules and ordinances.

(d) Ordinary operating expenses of local government, such as salaries and expenses of a mayor or city council members that are not directly related to the recycling program.

(e) Interest or finance charges.

(f) Costs for which payment is received under another federal or state financial assistance program.

Note: Costs for which payment is received by a responsible unit under s. 287.23, Stats., are costs which are ineligible for a recycling efficiency incentive grant under this chapter.

(g) Costs incurred in a contract that creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a responsible unit participates in the selection, awarding or administration of a contract supported by this program. An apparent conflict of interest includes, but is not limited to: *any of the following situations:* ✓

1. Situations where the official or employee of the responsible unit, or his or her business partner or immediate family member, has an ownership interest in the firm selected for activities funded in part by a recycling efficiency incentive grant.

2. Situations where any person identified in subd. 1. receives any contract, gratuity or favor from the award of the contract for a recycling efficiency incentive grant.

(h) The purchase of plastic containers for the collection of recyclable materials, unless the recycled content of the plastic containers is at least 25% by weight.

NR 549.08 Grant application. (1) APPLICATION METHOD. An eligible applicant, as described in s. NR 549.05 (1), may apply for a grant for the purposes specified under s. NR 549.02. Applicants shall submit applications on forms provided by the department and shall provide the information required by the remainder of this section. ✓

in fact, whole 1st sentence unnecessary

Note: Recycling Efficiency Incentive Grant application forms may be obtained as follows:

Mailing Address:

Department of Natural Resources
Community Financial Assistance Bureau
P. O. Box 7921
101 S. Webster Street
Madison, Wisconsin 53707-7921

Phone:

608-266-7555

DNR Web Site:

www.dnr.state.wi.us

5 ✓
more specific?

(2) STATEMENT OF RECYCLING EFFICIENCY. Applications pursuant to this section shall indicate that at least one of the recycling program efficiencies in par. (a) or (b) achieved:

active voice
2 ✓

(a) *Operational status or size.* The responsible unit meets one or more of the following criteria:

1. Two or more responsible units have consolidated into a single responsible unit, as defined in s. 287.01(9), Stats., under the provisions of s. 287.09(1), Stats., on or after March 1, 2003.

2 ✓

2. The responsible unit that was formed by the consolidation of a combination of 2 or more prior responsible units as defined in s. 287.01(9), Stats., as a consolidated responsible unit that complies with s. 287.09, Stats., where one responsible unit joined the consolidated responsible unit between January 1, 1999 and February 28, 2003.

in compliance
ditto
garbled!

Note: Section 287.09, Stats., provides for the formal consolidation of responsible units by agreements under s. 66.0301, Stats.

3. The responsible unit is a county. A county shall be eligible for the a grant under this chapter not more than once under this criterion.

5 ✓
write each
action

4. The responsible unit is an entity other than a county with a population of 50,000 or more. A responsible unit shall be eligible for a grant under this chapter not more than once under this criterion.

and has
5 ✓

(b) *Written cooperative agreements.* 1. Responsible units that have entered into a written cooperative agreement with at least one other responsible unit for direct recycling services by or for the responsible unit, or for private vendor services to be shared jointly by the participating responsible units to the agreement. The cooperative agreement shall address the following recycling needs:

- a. Comprehensive program planning.
- b. Collection and transportation of recyclables.
- c. Sorting recyclables at a materials recovery facility.
- d. Educational efforts about waste reduction, reuse and recycling.

at an in...?
all?
≥ 1?

2. When a responsible unit enters a cooperative recycling agreement for joint services or private vendor services, it shall be entered into by the applicant with the expectation either of a reduction in program costs or that the cooperative agreement will provide an increase in the scope or quality of recycling services. Cooperative agreements shall include an effective date, a brief description of the responsibilities of all parties, and a statement of expectations that costs will be reduced, funds saved, or that the scope or quality of the responsible unit's recycling program will be improved.

quantity, or
just say it
will happen?

3. All cooperative agreements shall be made by an agent of the responsible unit who has authorization under s. 66.0301, Stats., from the responsible unit's local governing body to enter the responsible unit into an cooperative agreement.

not necessary
2 ✓

what
differs
other
on date?

no such thing
either it is a note
or put it in the
analysis

2 ✓

Drafter's Note: The department will examine ways to allow eligibility for operational and managerial efficiencies—those efforts made by a single responsible unit to improve efficiency. Due to the compressed time schedule for promulgating the current rule, the department did not have time to thoroughly examine the issue. If the department decides to expand eligibility it will go through the rule making process again to amend this rule.]

(3) PROOF OF COOPERATIVE AGREEMENT. If an application for a recycling efficiency incentive grant under this chapter claims recycling efficiency as a result of a written cooperative agreement pursuant to sub. (2) (b), the application shall document this as follows:

intro. format
2 ✓

(a) Show that a responsible unit, other than a county, participating in a cooperative agreement has authorized the responsible unit to participate in the cooperative agreement.

(b) County responsible units shall provide proof of authorization from the county's governing body, but need not provide proof of authorization from each municipality within the jurisdiction of the county.

5 ✓

(4) AUTHORIZING RESOLUTION. All applicants for recycling efficiency incentive grants shall submit to the department an authorizing resolution that designates a representative of the responsible unit as the person authorized to submit an application for financial assistance under this chapter and handle all grant actions. Prior resolutions on file with the department for other recycling grant programs in prior years do not satisfy this requirement. No application may be considered complete until the resolution is submitted.

of whom?

(5) SIGNATURE OF RESPONSIBLE PARTY. All applications for financial assistance under this chapter shall be signed by the person designated in the authorizing resolution.

NR 549.09 Departmental review. (1) COMPLETE APPLICATIONS REQUIRED. The department shall review all applications submitted by eligible responsible units by the deadlines listed in sub. (3) (a) for completeness. For an application to be deemed complete by the department, all portions shall be correctly and fully answered or provided, and an authorized representative shall sign the application.

(2) REQUIREMENTS FOR THE FIRST GRANT PERIOD. (a) Responsible units claiming, as a measure of recycling efficiency, a consolidation pursuant to s. NR 549.08 (2) (a) 2. which was entered into after January 1, 1999 and before February 28, 2003, county responsible unit status pursuant to s. NR 549.08 (2) (a) 3. or an entity other than a county with a population of 50,000 or more pursuant to s. NR 549.08 (2) (a) 4. may do so only for the first calendar year 2003 grant awards.

?

(b) Responsible units claiming cooperative agreements as a measure of recycling efficiency pursuant to s. NR 549.08 (2) for the first grant awarded under this chapter may only do so if those agreements were entered into after January 1, 1999, and before February 28, 2003. Cooperative agreements entered into before January 1, 1999, do not meet the requirements of this chapter. Responsible units claiming cooperative agreements as a measure of recycling efficiency after the first grant awarded under this chapter may do so only if the cooperative agreement was entered after March 2, 2003.

is this review?
or is it
distinguish cost?
or...?

(3) REQUIREMENTS FOR GRANT AWARDS. (a) Each application for financial assistance under this chapter shall indicate that efficiency in the effective recycling program had been implemented in the year immediately prior to the year in which grant funds are being requested and that the efficiency is an increase over efficiency claimed in the previous grant year. In addition, the following limitations shall apply:

demonstrate?

This belongs with the application reqs.

1. During the grant period for which an application shall be received by March 1, 2003, the claimed efficiency shall have been implemented during the period between January 1, 1999 and February 28, 2003.

is (a) intro needed?

where is this application schedule?

2. During the grant period for which an application shall be received by October 31, 2003, the claimed efficiency shall have been implemented during the period between March 1, 2003 and October 30, 2003.

3. During the grant period for which an application shall be received by October 31, 2004, the claimed efficiency shall have been implemented during the period between October 31, 2003 and October 30, 2004, and shall have been in place before April 30, 2004. (2)

3 A. During the grant period for which an application shall be received by October 31, 200⁴ and all subsequent grant periods, the claimed efficiency shall have been implemented during the period between October 31 of the previous year and October 30 of the year in which the application is made, and shall have been in place before April 30 of the year in which the application is made.

(b) An efficiency in an effective recycling program shall be shown by either of the following: (2)

1. ~~3~~ The probability of a reduction in eligible costs for the year or an increase in recycling materials sales revenues as described in subd. 2. a.

2. ~~4~~ An increase in the quality or scope of the program for the year in which the responsible unit attributes the efficiency measures as provided as described in subd. 2. b.

2 a. A reduction in eligible costs means an expected reduction in eligible costs or increase in revenues from the expenses or revenues of the previous year, and may occur on either a program-wide basis, or in one or more component areas of the responsible unit's recycling program. These include comprehensive program planning, collection, sorting, processing, marketing or education. A reduction in eligible costs cannot be as a result of additional financial assistance received from the state.

b. An increase in the quality or scope of the program means an increase in the quality or scope of the program from the previous year, and may occur on either a program-wide basis, or in one or more areas of the responsible unit's recycling program. These include comprehensive program planning, collection, sorting, processing, marketing or collection. Claims of efficiency shall be substantial and not marginal or lacking a sound basis.

Note: The department expects to review applicant claims of efficiency on a periodic basis. Activities that increase a responsible unit's recycling program quality or scope may include the following:

1. Changing collection from drop-off sites to curbside pick-up where recyclable items are collected by either another responsible unit or by a private vendor contracted jointly with another responsible unit.
2. Coordinated program delivery through joint comprehensive planning or educational efforts by a single planning unit for 2 or more responsible units.
3. Collection of a greater amount or type of plastic containers by 2 or more responsible units made possible through sorting provided by a responsible unit or by vendors jointly contracted by the responsible units.
4. Provision of new services by responsible units or joint vendor contracting.
5. Organizing coordinated program delivery in a specific geographic area with a reduction in eligible costs.

Efficiencies considered to be substantial may increase recycling collection or participation rates, environmental benefits, responsible unit revenues, or reduce environmental degradation and program operating costs.

Examples of increases in the quality or scope of the program that are marginal or without a sound basis may include:

1. Sharing equipment on a free or at-cost basis between responsible units without a resulting increase in the collection of recyclables in at least one of the responsible units.
 2. An educational campaign which does not reach the majority of the residents of the responsible units and is conducted without a reasonable expectation of increasing awareness of recycling issues and citizen participation in the recycling programs.
- That*

(c)

An increase in efficiency in a recycling activity category not previously the subject of an effort by the responsible unit to achieve efficiency shall qualify as an increase in efficiency only if the increase does not duplicate an effort previously undertaken under this chapter.

NR 549.11 Distribution of grant assistance. (1) **FIRST GRANT PERIOD.** Recycling efficiency incentive grants provided under this chapter shall first be provided in calendar year 2003.

(2) **DETERMINATION OF GRANT AMOUNT.** The department shall award a grant to each responsible unit that submits a complete application that is approved by the department. The amount of the grant shall be determined as follows:

(a) The per capita amount shall be calculated by dividing the funds appropriated for recycling efficiency incentive grants by the sum of the population of all responsible units whose applications meet the requirements of s. NR 549.08.

(b) The grant amount shall then be determined by multiplying the per capita amount times the population of the responsible unit.

(c) Notwithstanding pars. (a) and (b), a grant under this chapter plus a grant under s. 287.23, Stats., may not exceed the net eligible expenses identified under s. 287.23 (3) (b), Stats., that the responsible unit incurred in the year 2 years before the year for which the grants are made.

(d) Funds available to the department for grants under this chapter shall be distributed to all eligible applicants until either all available funds have been depleted or until all eligible applicants have received their statutory maximum awards. Grants under this chapter are subject to the availability of funds provided to the department. A grant under this chapter plus a grant under s. 287.23, Stats., may not exceed the eligible costs identified under s. 287.23 (3)(b), Stats., that a responsible unit incurred in the year 2 years before the year for which the grants are made.

(3) **AWARD NOTIFICATION.** The department shall notify successful applicants by issuance of a grant award. Accepting funds provided through the grant award shall subject the responsible unit to all provisions of this chapter and all terms and conditions contained in the grant award.

NR 549.12 Grant recipient accountability. (1) **RECORDS MANAGEMENT.** Each responsible unit shall maintain an accounting system that accurately reflects all fiscal transactions, incorporates appropriate controls and safeguards, and provides clear reference to source or original documents.

(a) **Accounting procedures.** Financial schedules and statements filed with grant applications and payment requests shall be based on records maintained under generally accepted accounting principles which meet the following minimum requirements:

1. Program accounts shall separate grant receipts and eligible expenditures from those allocable to other programs and activities.

2. Receipts and expenditures shall be listed in sufficient detail to provide a basis for accurate and complete program reporting.

3. All program receipts shall be identified in sufficient detail to reflect their source and purpose.

4. Supporting records for all program expenditures shall be itemized in detail to indicate the nature and appropriateness of each disbursement. Proof of payment, such as canceled checks or receipts from vendors, shall be maintained.

5. Time and attendance records describing the work performed, specifying project hours worked by day, signed by the employee and bearing evidence of management approval, shall be maintained, along with computations showing hourly pay rates and allocations of fringe benefits.

U.S. Grant #
application # 17
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identical to
NR 549.10

(b) *Fiscal controls.* 1. Any consultant, construction or service contract totaling \$10,000 or more annually shall be covered by a formal contract or agreement specifying financial terms, contract duration and services to be rendered.

2. Acquisition of real property shall be in accordance with state guidelines for preparation of appraisals and relocation assistance.

Note: Land acquisition and appraisal procedures can be obtained from the department's district recycling specialist.

3. Allowable rates for use of a responsible unit's own equipment not purchased with grant monies shall be limited to the county-wide rates established annually by the department of transportation. Allowable costs for the use of equipment, for which the department of transportation rates are not available, may be based on the grant recipient's calculation of operating the equipment attributable to recycling activities.

Note: County-wide rates established by the department of transportation can be obtained from the grant recipient's county highway department.

(2) **RECORDS RETENTION AND AUDITING.** All responsible units receiving grant funds are subject to audit by the department and shall retain all records pertaining to their programs for 3 years after the year in which they received the recycling efficiency incentive grant.

NR 549.14 Interpretation of chapter. (1) DISPUTE CONSIDERATION. Any disputes regarding the interpretation of this chapter shall be decided by the department based upon whether an increase in efficiency can be inferred through a probability of either a reduction in eligible costs for the year or an increase in recycling materials sales revenues, or an increase in the quality or scope of the program for the year in which the responsible unit attributes the efficiency measures. This consideration shall be made in accordance with all applicable state and federal law.

(2) **DISPUTE RESOLUTION.** In the event that a dispute arises between the department and the grant recipient, either party may request a conference between the department's director of the bureau of community financial assistance and the grant recipient, or designee, to resolve the dispute.

(3) **DECISION OF THE DEPARTMENT.** Except as otherwise provided by law, any dispute arising as a result of a grant provided under this chapter shall be decided in writing by the department. The department shall serve personally or by mail, certified mail, return receipt requested, a copy of such decision upon the grant recipient. (5)

NR 549.15 Variances. The department may approve variances from non-statutory requirements of this chapter upon written request of the grant recipient. Approval of variances will be based on the department's determination that variances for good cause, to encourage recycling or to accomplish the objectives of this chapter. Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the grant recipient and financial hardship.

NR 549.17 Termination. (1) ACTION TO INITIATE. The department or the grant recipient may initiate the termination of a grant award provided under this chapter with 30 days advance written notice to the other party. Notices of termination shall be served on the other party personally or by mail. (2)
procedures
for that?

(2) **DEPARTMENT ACTION.** (a) Any action undertaken by the department to terminate a grant award shall include the effective date of termination of the grant award, the basis for settlement of award termination costs, and the amount and date of payment of any sums due either party.

(b) The department may terminate awards, in whole or in part upon a finding of one of the grounds specified in par. (c) and in accordance with the following procedure:

1. The department shall attempt to consult with the grant recipient prior to initiating any termination action. After the department has received and considered the views of the grant recipient, or 30 days after the grant recipient has been notified of the department's intent to terminate the recycling efficiency incentive grant, the department may terminate the award in whole or in part.

2. Any termination action taken by the department shall be made in writing and shall state the reasons for termination.

(c) The department may terminate a grant, in whole or in part, if the department determines any of the following:

1. There has been no substantial performance under the terms of the grant by the grant recipient, without good cause.

2. There is clear and convincing evidence that the grant was obtained by fraud.

3. There is clear and convincing evidence of gross abuse or corrupt practices in the administration of the grant.

(3) GRANT REFUND. Upon termination, the grant recipient shall refund to the department all funds provided by the department under this chapter that have not been spent as of the date of termination written approval from the department, except an amount as may be required to meet commitments which had become enforceable prior to the date of termination. The grant recipient shall reduce the amount of outstanding commitments as much as possible and remit to the department any uncommitted balance of grant funds awarded. A grant recipient may spend funds otherwise required to be refunded under this subsection upon written approval from the department.

(4) REVIEW. Any responsible unit who is dissatisfied with any determination made by the department under the section may request review by the chief of the department's environmental financial assistance section. If the matter is still not resolved, review may be sought from the director of the department's bureau of community financial assistance. All requests for review of termination actions shall be made by the grant recipient in writing, be addressed to the appropriate department staff, and shall contain factual information explaining the basis for requesting review. The department shall issue all decisions under this subsection in writing.

NR 549.18 Enforcement. (1) SANCTIONS. The department may impose the following sanctions for noncompliance of any provisions of this chapter:

(a) The grant may be terminated. *with - all 549.17 (2)(c)*

(b) Program costs directly related to the noncompliance may be declared ineligible.

(c) Repayment of some or all of the grant amount related to the noncompliance may be required.

(d) Other administrative and judicial remedies may be sought as legally available and appropriate.

(2) WITHHOLDING OR REFUND OF GRANTS. (a) If any responsible unit uses any scheme or device to unjustly benefit from the grant program under this chapter, the department shall withhold grants awarded under this chapter or require a refund of part or all of any payments otherwise due or paid to the responsible unit. A scheme or device to unjustly benefit from this program includes, but is not limited to, coercion, fraud or misrepresentation, false claims or any business or other dissolution, reorganization, revival or other legal mechanism designed for or having the effect of evading the requirements of ch. NR 549.

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which. (2)

(b) If any responsible unit takes action resulting in, or fails to take action to prevent, the destruction or impairment of a prescribed condition or term of the grant award, the department shall withhold a grant provided under this chapter or require a refund of part or all of any payments otherwise due or paid.

(c) Any responsible unit that has spent funds received under this chapter on ineligible costs defined under s. NR 549.05 (2) is ineligible for:

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1. Recycling efficiency incentive grant assistance the following year if the funds were intentionally diverted to other purposes by the responsible unit.

2. A portion of the recycling efficiency incentive grant assistance for the following year if the responsible unit does not repay the inappropriately spent funds to the department and the amount exceeds any outstanding grant payments owed the responsible unit.

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(3) OTHER PENALTIES. (a) Nothing requiring the withholding or repayment of a grant provided under this chapter shall preclude any other penalty or liability available by law.

(b) Any person who violates this chapter by a material misrepresentation in their application is subject to the penalties specified in s. 287.97, Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on _____.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin: _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. CF-30-02

Legislative Council Rules Clearinghouse Number 02-060

Subject of Rules Recycling efficiency incentive grants

Date of Transmittal to Presiding Officers August 28, 2002

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 549, Wis. Adm. Code
Recycling efficiency incentive grants

Board Order No. CF-30-02
Clearinghouse Rule No. 02-060

Statement of Need

The 2001-2003 biennial budget created s. 287.235, Stats., which mandated the creation of a grant program that provides additional funding to responsible units that operate efficient recycling programs. Proposed ch. NR 549 described the policies and procedures for the voluntary Recycling Efficiency Incentive (REI) Grant Program. The proposed rule provides additional grant funding to responsible units that have undertaken certain recycling activities. The grant is an incentive to encourage participating responsible units to have more efficient recycling programs. In future years, the proposed rule encourages others to seek eligibility for this grant. The proposed rule identifies consolidation and cooperative agreements as key efficiency activities. The proposed rule presumes that "economies of scale" are realized – and efficiencies achieved – when at least two responsible units consolidate or cooperate in the operation of their recycling programs.

Wisconsin responsible units currently receive basic recycling grant funding for their eligible recycling program expenses under s. 287.23, Stats. The recycling grant program is administered by the DNR under ch. NR 542. Funding provided through the proposed new REI grant program – when added to the amount provided through the basic recycling grant program – is limited to the allowable expenses from the year two years before the year for which the grants are made. Therefore, total recycling grant awards made for calendar year 2003 would be based on total eligible expenses from calendar year 2001.

The statutes that authorize the REI grant program did not define "efficiency". While efficiency could be defined in many ways, the proposed rule incorporates the ideas and criticism of those who participated in the listening sessions and focuses on the following activities as indicators of recycling program efficiency:

1. Consolidation of at least two responsible units into a single responsible unit will generally result in "economies of scale" and, therefore, program efficiencies.
2. Cooperation between at least two responsible units for direct recycling services will likely also result in "economies of scale" and lead to program efficiencies.
3. Cooperation between at least two responsible units for private vendor recycling services utilizes collective purchasing power and will likely result in "economies of scale" and also lead to program efficiencies.

Modifications as a Result of Public Hearings

The requirement that the efficiency was implemented between January 1, 1999 and February 28, 2003 has been modified to allow an efficiency that was implemented prior to February 28, 2003.

The organization of ch. NR 549 was modified to better reflect how a responsible unit qualifies for the program. Certain sections of the rule will be labeled to make more explicit the concepts of the

program. Making more explicit that new and innovative ideas by responsible units are rewarded through the cooperative agreement process is included in the final rule.

Appearances at the Public Hearings and Their Position

June 13, 2002 – noon

In support:

Jennifer Sunstrom, WI Counties Association, 100 River Place, Suite 101, Monona, WI 53716
Bart Sexton, Oneida County Solid Waste, 7450 County Highway K, Rhinelander, WI 54501

In opposition:

Ron Hermes, National Solid Wastes Management Association, 16 N. Carroll Street, Suite 305,
Madison, WI 53703

As interest may appear:

Sherri Radke, Env. Coordinator, City of West Allis, 6300 W. McGeoch Ave., West Allis, WI 53219
Mike Engelbart, City of Milwaukee, 841 N. Broadway, Room 620, Milwaukee, WI 53202
David Fodroczi, St. Croix County Planning, 1101 Carmichael Road, Hudson, WI 54016
Carl Oman, MA Recycling, P.O. Box 437, Richland Center, WI 53581
C. W. Malick, St. Croix County, Hudson, WI 54016
Mary Barney, St. Croix County Recycling, 1413 200th Avenue, New Richmond, WI 54017
John Reindl, Dane County, 1919 Alliant Energy Center Way, Madison, WI 53713
Debbie Krogwold, Waupaca Co. Solid Waste, 811 Harding St., Waupaca, WI 54981
Todd Schmidt, Village of Brown Deer, 4800 W. Green Brook Drive, Milwaukee, WI 53223
Kate Mawdsley, DOA-SBO, 101 E. Wilson, Madison, WI
Angela Rowley, Foth and Van Dyke, 2737 South Ridge Road, Green Bay, WI
Lee Ebert, Village of Gresham, P.O. Box 50, Gresham, WI 54128
Thomas C. Meier, Village of Allouez, 1649 S. Webster Avenue, Green Bay, WI 54301
Joe Van Rossum, Brown County Port & Solid Waste, 2561 S. Broadway, Green Bay, WI 54304

June 13, 2002 – 6:30 p.m.

In support – none

In opposition – none

As interest may appear:

Dean Boehne, Village of Strum, 512 5th Avenue North, Strum, WI 54770
Michael Voltz, Polk County Recycling, 1302 208th Street, St. Croix Falls, WI 54024

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted, except for:

2.h. This comment was not incorporated because there is a difference between s. NR 549.08(4)(a)1. and 2. Two timelines are involved in the limitations of the current version of the rule on s. NR 549.08(4)(a)1. and 2. – those of the sections themselves, limiting the period in which the efficiency occurred, and those of s. NR 549.08(2)(a)1. limiting the grant period in which a

responsible unit may apply for a grant based on that efficiency. Essentially, the first grant period allows efficiencies that occurred in a time period which is different than the time period of subsequent grant cycles.

2.k. This section was incorporated into what is now s. NR 549.08, combining the two sections. Though the titles of the sections have been changed to make more explicit the process described, they do not reflect a substantive change to the content of the rule.

Final Regulatory Flexibility Analysis

The proposed ch. NR 549 will not have a significant impact on a substantial number of small businesses. While there is an exception to the regulatory flexibility analysis for cases that do not affect small business directly, the Department has provided the attached analysis because of the significant role small business plays in many municipal recycling programs.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

Regulatory Flexibility Analysis

Proposed Chapter NR 549, Wis. Admin. Code
(Recycling Efficiency Incentive Grants Program)

Scope of the Rule

The '01-'03 Budget Bill created 287.235, Stats., which mandated the creation of a grant program that provides additional funding to Responsible Units as defined in s. 287.01 (9), Stats., that operate efficient programs. The creation of proposed ch. NR 549, Wis. Admin. Code, will have a moderately positive impact on small businesses. The proposed rule codifies a newly established grants program, the Recycling Efficiency Incentive Grants Program (REI Grants Program). The REI Grants Program provides additional grant funds to eligible Responsible Units that achieve efficiency in their recycling program. For the purposes of the proposed rule, efficiency is an inferred result from certain administrative and operational activities. The proposed rule establishes the process for and timelines by which Responsible Units may apply for and receive these grant funds. Eligibility of the actions taken by Responsible Units will be evaluated through flexible criteria, in recognition of the diversity of recycling services provided by Responsible Units throughout the state.

Grant funds may be used to offset the costs of planning, constructing, or operating a recycling program, as follows:

1. Consultant fees.
2. Training, salaries and fringe benefit costs of personnel.
3. The purchase of necessary supplies.
4. Construction costs, including capitalized interest, professional services of an attorney, and engineering services for design, construction and inspection.
5. Other costs of the recycling program, net of the sale of recovered materials, that are reasonable and necessary.

Businesses Affected

A. Industrial and Manufacturing

Industrial and manufacturing small businesses likely to be affected by the proposed rule include:

- materials industrial recyclers
- recycling manufacturers

B. Private Vendors of Recycling Services and Waste Haulers

There are approximately 1069 Responsible Units in Wisconsin, many of whom contract with private vendors for the recycling services provided to their residents. This segment of small business collects, transports, and markets recyclable post-consumer waste.

Other recycling businesses, called Materials Recovery Facilities (MRFs), sort recyclables in Wisconsin prior to marketing. Of the 144 MRFs in Wisconsin, 98, or two-thirds, are privately owned.

Fiscal Impact

Small businesses contracting with Responsible Units will experience both positive and negative fiscal impacts from this proposed rule as financial assistance to comply with existing rule provisions is supplemented from the REI Grants Program.

Sellers of recycled materials should not expect significant changes in market conditions as the result of the proposed rule. As responsible units combine their purchase of materials and services and provision of services, those private entities which contract with them may be subject to greater competition in seeking to gain contracts with responsible units. However, it is also possible that greater competition will lead to either consolidation within recycling contractors or growth in their business as they serve larger areas, and compete on a larger geographical scale, or both.

An adjustment in the market for the provision of services and materials to Responsible Units cannot be expected to be significant in terms of initial impact. Sophistication of both Responsible Units in their cooperative agreements and Contractor and Vendor competition for market share should provide a stronger and healthier service sector to support Wisconsin recycling. Cost savings could result in local governments changing their own fiscal policy with respect to taxes and regulation.

Recordkeeping

The proposed rule will not impose any new recordkeeping requirements on small businesses.

Professional Skills Required to Comply

Small business owners and operators will not need to acquire any new skills -- or retain additional professional services -- to comply with the rule revisions.

Date July 11, 2002 By Mary Rose Teves
Mary Rose Teves, Section Chief
Bureau of Community Financial Assistance
Department of Natural Resources

Date 7-17-02 By Craig L. Karr
Craig L. Karr, Administrator
Customer Assistance and External Relations Division

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create ch. NR 549 relating to recycling efficiency incentive grants.

CF-30-02

Analysis Prepared by the Department of Natural Resources

Statutory Authority: ss. 287.03 (1) (f) and 227.11 (2), Stats.

Statute Interpreted: s. 287.235, Stats.

This rule creates a Recycling Efficiency Incentive Grants (REI Grants) Program that establishes criteria and procedures for the awarding of additional grants to responsible units to reward or encourage recycling efficiency.

The department administers Wisconsin's Recycling Grants Program under s. 287.23, Stats., for planning, constructing and operating a recycling grant program. This program partially reimburses responsible units for their efforts to collect, sort and market recyclable material and thereby conserve landfill space, prevent the introduction of hazardous material into Wisconsin's landfills and ensure better stewardship of the environment, protecting public health, the quality of the environment and to conserve resources and energy.

The '01-'03 Budget Bill created an additional grants program which provides incentives for efficient recycling programs to responsible units. The REI Grants Program rewards and encourages responsible units that either serve large communities or cooperate in the provision of services -- or contracting for services -- by either reducing administration and contract costs, or increasing the quality or scope of services provided through a recycling program, or both.

SECTION 1 Chapter NR 549 is created to read:

CHAPTER NR 549

RECYCLING EFFICIENCY INCENTIVE GRANTS TO RESPONSIBLE UNITS

NR 549.01	Purpose.
NR 549.02	Applicability.
NR 549.03	Definitions.
NR 549.05	Eligibility of applicant.
NR 549.07	Eligible and ineligible costs.
NR 549.08	Grant application and departmental review.
NR 549.11	Distribution of grant assistance.
NR 549.12	Grant recipient accountability.
NR 549.14	Interpretation of chapter.
NR 549.15	Variances.
NR 549.17	Termination.
NR 549.18	Enforcement.

NR 549.01 Purpose. The purpose of this chapter is to establish rules and procedures under s. 287.235, Stats., for the implementation and administration of a grants program which provides financial assistance to responsible units that have achieved efficiency in their recycling programs through the criteria or methods provided in this chapter.

NR 549.02 Applicability. This chapter applies to all applicants and recipients of recycling efficiency incentive grants under s. 287.235, Stats. This chapter does not apply to waste reduction and recycling demonstration grants, under s. 287.25, Stats., nor to recycling grants under s. 287.23, Stats.

NR 549.03 Definitions. In this chapter:

- (1) "Department" means the department of natural resources.
- (2) "Effective recycling program" means a solid waste management program that includes all of the components specified in s. 287.11(2), Stats.
- (3) "Population" has the meaning specified in s. 287.23 (1) (c), Stats.
- (4) "Recycling center" means a facility that accepts source separated materials for processing and marketing.
- (5) "Responsible unit" has the meaning specified in s. 287.01(9), Stats.

NR 549.05 Eligibility of applicant. (1) **ELIGIBLE APPLICANTS.** Responsible units that the department determines operate an effective recycling program shall be eligible to apply for grants through this chapter.

(2) **REVIEW OF GRANT APPLICANT'S OR RECIPIENT'S ELIGIBILITY.** The department may review a responsible unit's eligibility for a recycling efficiency incentive grant at any time.

NR 549.07 Eligible and ineligible costs. (1) **ELIGIBLE COSTS.** The grant applicant's recycling program costs, defined as the costs of operating the program minus those proceeds from the sale of recycled material, that are reasonable and necessary for planning, constructing or operating a recycling program are eligible for grant assistance. Eligible costs may include all of the following:

- (a) The costs of planning, including consultant fees.
- (b) Construction costs, including capitalized interest, professional services of an attorney and engineering services for design, construction, and construction inspection.
- (c) Training, salaries, and fringe benefit costs of personnel.
- (d) The purchase of necessary supplies.
- (e) Capital purchases for all of the following:
 1. Equipment costing \$1,000 or more and with an expected life of 3 or more years funded on an amortized basis.
 2. Land, including site acquisition at fair market value and site preparation costs.
- (f) The allocable cost of using equipment not purchased with grant monies, as provided under s. NR 542.10 (1) (b) 3.
- (g) Costs of collecting recyclables, marketing and transporting recyclables to market.
- (h) Costs of public education and enforcement.
- (i) Written contracts entered into by responsible units to obtain services necessary for an effective recycling program.

(j) Any of the following costs of a solid waste facility designed to recover recyclables from post-consumer waste:

1. All costs that can be directly attributed to the recycling component.
2. The proportionate share of the remaining costs as calculated as a proportion of recovered recyclables to total waste, by weight.

(k) Costs of documenting how solid waste that is generated in the grant applicant's region and is not separated or recovered for recycling will be managed, as required by s. 287.11 (2) (ew), Stats.

(2) INELIGIBLE COSTS. Costs not directly associated with or not necessary for planning, construction or operation of an effective recycling program are not eligible for grant assistance under this chapter. Ineligible costs include all of the following:

(a) Costs incurred either prior to January 1 or after December 31 of the calendar year 2 years prior to the year for which the grant is awarded.

(b) The costs of collecting and disposing of municipal solid waste not separated for recycling, except for costs described in sub. (1) (k).

(c) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations, rules and ordinances.

(d) Ordinary operating expenses of local government, such as salaries and expenses of a mayor or city council members that are not directly related to the recycling program.

(e) Interest or finance charges.

(f) Costs for which payment is received under another federal or state financial assistance program.

Note: Costs for which payment is received by a responsible unit under s. 287.23, Stats., are costs that are ineligible for a recycling efficiency incentive grant under this chapter.

(g) Costs incurred in a contract that creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a responsible unit participates in the selection, awarding, or administration of a contract supported by this program. An apparent conflict of interest includes all of the following:

1. Situations where the official or employee of the responsible unit, or his or her business partner or immediate family member, has an ownership interest in the firm selected for activities funded in part by a recycling efficiency incentive grant.

2. Situations where any person identified in subd. 1. receives any contract, gratuity, or favor from the award of the contract for a recycling efficiency incentive grant.

(h) The purchase of plastic containers for the collection of recyclable materials, unless the recycled content of the plastic containers is at least 25% by weight.

NR 549.08 Grant application and departmental review. (1) APPLICATION METHOD.

Applicants shall submit applications on forms provided by the department and shall provide the information specified in subs. (4) to (7).

Note: Recycling efficiency incentive grant application forms may be obtained as follows:

Mailing Address:

Department of Natural Resources
Community Financial Assistance Bureau
P. O. Box 7921
101 S. Webster Street
Madison, Wisconsin 53707-7921

Phone:

608-266-7555

(2) DEADLINES TO SUBMIT ELIGIBLE APPLICATIONS. (a) Each application for financial assistance under this chapter shall indicate that an effective recycling program has implemented an efficiency. In addition, the following limitations shall apply:

1. During the first grant period, applications shall be submitted by March 1, 2003, to be eligible for a grant award in calendar year 2003 and all applications submitted shall claim that an efficiency was implemented before February 28, 2003.

2. During the second grant period, applications shall be submitted by October 30, 2003, to be eligible for a grant award in calendar year 2004 and all applications submitted shall claim that an efficiency was implemented during the period between March 1, 2003, and October 30, 2003.

3. During the third grant period, applications shall be submitted by October 30, 2004, to be eligible for a grant award in calendar year 2005. In all subsequent grant periods, applications shall be submitted no later than October 30th before the grant year, and all applications submitted shall claim that an efficiency was implemented during the period between October 31 of the previous year and October 30 of the year in which the application is made, and was in place before April 30 of the year in which the application is made.

(3) REQUIREMENTS FOR GRANT AWARDS. (a) Responsible units claiming the following, as a measure of recycling efficiency, may do so only for the first grants awarded in calendar year 2003:

1. A consolidation pursuant to sub. (4) (a) 1. or achieving county responsible unit status pursuant to sub. (4) (a) 3. that was implemented before February 28, 2003. Responsible units claiming consolidations or cooperative agreements as a measure of recycling efficiency under this chapter after the first grant period may do so only if the consolidation or cooperative agreement was entered after March 2, 2003.

2. The status of an entity other than a county as a population of 50,000 or more pursuant to sub. (4) (a) 4., which status occurred before February 28, 2003.

(b) An efficiency claimed under sub. (4) (b) for an effective recycling program shall be demonstrated by either of the following:

1. The probability of a reduction in eligible costs for the year or an increase in recycling materials sales revenues. A reduction in eligible costs means an expected reduction in eligible costs or increase in revenues compared to the expenses or revenues of the previous year, and may occur on either a program-wide basis, or in one or more component areas of the responsible unit's recycling program. Component areas may include comprehensive program planning, collection, sorting, processing, marketing, or education. A reduction in eligible costs cannot be as a result of additional financial assistance received from the state.

2. An increase in the quality or scope of the program for the year in which the responsible unit attributes the efficiency measures. An increase in the quality or scope of the program means an increase in the quality or scope of the program from the previous year, and may occur on either a program-wide basis, or in one or more areas of the responsible unit's recycling program. Component areas may include

comprehensive program planning, collection, sorting, processing, marketing, or collection. Claims of efficiency shall be substantial and not marginal or lacking a sound basis.

Note: The department expects to review applicant claims of efficiency on a periodic basis. Activities that increase a responsible unit's recycling program quality or scope may include the following:

1. Changing collection methods from consumer drop-off sites to curbside pick-up where recyclable items are collected by either another responsible unit or by a private vendor contracted jointly with another responsible unit.
2. Coordinated program delivery through joint comprehensive planning or educational efforts by a single planning unit for 2 or more responsible units.
3. Collection of a greater amount or type of plastic containers by 2 or more responsible units made possible through sorting provided by a responsible unit or by vendors jointly contracted by the responsible units.
4. Provision of new services by responsible units or joint vendor contracting.
5. Organizing coordinated program delivery in a specific geographic area with a reduction in eligible costs.

Efficiencies considered to be substantial may increase recycling collection or participation rates, environmental benefits, responsible unit revenues, or reduce environmental degradation and program operating costs.

Examples of increases in the quality or scope of the program that are marginal or without a sound basis may include:

1. Sharing equipment on a free or at-cost basis between responsible units without a resulting increase in the collection of recyclables in at least one of the responsible units.
2. An educational campaign that does not reach the majority of the residents of the responsible units and is conducted without a reasonable expectation of increasing awareness of recycling issues and citizen participation in the recycling programs.

(c) An increase in efficiency in a recycling activity category not previously the subject of an effort by the responsible unit shall qualify as an increase in efficiency only if the increase does not duplicate an effort previously undertaken under this chapter.

(4) CLAIM OF RECYCLING EFFICIENCY. Applications pursuant to this section shall indicate at least one of the recycling program efficiencies in par. (a) or (b) have been achieved:

(a) *Operational status or size.* The responsible unit meets one or more of the following criteria:

1. The responsible unit was formed by the consolidation of 2 or more prior responsible units before February 28, 2003.

2. Two or more responsible units have consolidated into a single responsible unit on or after March 1, 2003.

Note: Section 287.09, Stats., provides for the formal consolidation of responsible units by agreements under s. 66.0301, Stats.

3. The responsible unit is a county. A county shall be eligible for a grant under this chapter not more than once under this criterion.

4. The responsible unit is not a county and has a population of at least 50,000. A responsible unit shall be eligible for a grant under this chapter not more than once under this criterion. At the time that a responsible unit becomes a responsible unit with a population 50,000, it shall be considered to have implemented this efficiency.

(b) *Written cooperative agreements.* 1. The responsible unit has entered into a written cooperative agreement with at least one other responsible unit for direct recycling services by or for the

responsible unit, or for private vendor services to be shared jointly by the participating responsible units to the agreement. The cooperative agreement shall address at least one of the following elements:

- a. Comprehensive program planning.
- b. Collection and transportation of recyclables.
- c. Sorting recyclables at a materials recovery facility.
- d. Educational efforts about waste reduction, reuse and recycling.

2. When a responsible unit enters a cooperative recycling agreement pursuant to this paragraph for joint services or private vendor services, it shall be entered into by the applicant with the expectation either of a reduction in program costs or that the cooperative agreement will provide an increase in the scope or quality of recycling services. Cooperative agreements shall include an effective date, a brief description of the responsibilities of all parties and a statement of expectations of how costs will be reduced, funds will be saved or the scope or quality of the responsible unit's recycling program will be improved.

3. All cooperative agreements shall be made by an agent of the responsible unit who has authorization under s. 66.0301, Stats., from the responsible unit's local governing body to enter the responsible unit into a cooperative agreement.

Note: The department will examine ways to allow eligibility for operational and managerial efficiencies—efforts made by a single responsible unit to improve internal efficiency. If the department decides to expand eligibility, it will amend this rule at a later date to allow internal efficiencies by a single responsible unit.

(5) **REQUIRED PROOF OF COOPERATIVE AGREEMENT.** If an application for a recycling efficiency incentive grant under this chapter claims recycling efficiency as a result of a written cooperative agreement pursuant to sub. (4) (b), the application shall document this by showing that the responsible unit participating in the cooperative agreement has authorized the responsible unit to participate in the cooperative agreement. County responsible units shall provide proof of authorization from the county's governing body, but need not provide proof of authorization from each municipality within the jurisdiction of the county.

(6) **REQUIRED AUTHORIZING RESOLUTION.** All applicants for recycling efficiency incentive grants shall submit to the department an authorizing resolution from their respective body of elected officials who have the power to authorize the resolution, that designates a representative of the responsible unit as the person authorized to submit an application for financial assistance under this chapter and handle all grant actions. Prior resolutions on file with the department for other recycling grant programs in prior years do not satisfy this requirement. No application may be considered complete until the resolution is submitted.

(7) **REQUIRED SIGNATURE OF RESPONSIBLE PARTY.** All applications for financial assistance under this chapter shall be signed by the person designated in the authorizing resolution.

(8) **COMPLETE APPLICATIONS REQUIRED.** The department shall review all applications submitted by eligible responsible units by the deadlines listed in sub. (2) for completeness and compliance with the requirements of this section. For an application to be deemed complete by the department, all portions shall be correctly and fully answered or provided.

NR 549.11 Distribution of grant assistance. (1) FIRST GRANT PERIOD. Recycling efficiency incentive grants provided under this chapter shall first be provided in calendar year 2003.

(2) DETERMINATION OF GRANT AMOUNT. The department shall award a grant to each responsible unit that submits a complete application that is approved by the department. The amount of the grant shall be determined as follows:

(a) The per capita amount shall be calculated by dividing the funds appropriated for recycling efficiency incentive grants by the sum of the population of all responsible units whose applications meet the requirements of s. NR 549.08.

(b) The grant amount shall be determined by multiplying the per capita amount times the population of the responsible unit.

(c) Notwithstanding pars. (a) and (b), a grant under this chapter plus a grant under s. 287.23, Stats., may not exceed the net eligible expenses identified under s. 287.23 (3) (b), Stats., that the responsible unit incurred in the year 2 years before the year for which the grants are being made.

(d) Funds available to the department for grants under this chapter shall be distributed to all eligible applicants until either all available funds have been depleted or until all eligible applicants have received their statutory maximum awards. Grants under this chapter are subject to the availability of funds provided to the department.

(3) AWARD NOTIFICATION. The department shall notify, in writing, successful applicants by issuance of a grant award. Accepting funds provided through the grant award shall subject the responsible unit to all provisions of this chapter and all terms and conditions contained in the grant award.

NR 549.12 Grant recipient accountability. (1) RECORDS MANAGEMENT. Each responsible unit shall maintain an accounting system that accurately reflects all fiscal transactions, incorporates appropriate controls and safeguards and provides clear reference to source or original documents.

(a) *Accounting procedures.* Financial schedules and statements filed with grant applications and payment requests shall be based on records maintained under generally accepted accounting principles which meet the following minimum requirements:

1. Grant recipient program accounts shall separate grant receipts and eligible expenditures from those allocable to other programs and activities.

2. Receipts and expenditures shall be listed in sufficient detail to provide a basis for accurate and complete program reporting.

3. All program receipts shall be identified in sufficient detail to reflect their source and purpose.

4. Supporting records for all program expenditures shall be itemized in detail to indicate the nature and appropriateness of each disbursement. Proof of payment, such as canceled checks or receipts from vendors, shall be maintained.

5. Time and attendance records describing the work performed, specifying project hours worked by day, signed by the employee and bearing evidence of management approval, shall be maintained, along with computations showing hourly pay rates and allocations of fringe benefits.

(b) *Fiscal controls.* 1. Any consultant, construction or service contract totaling \$10,000 or more annually shall be covered by a formal contract or agreement specifying financial terms, contract duration and services to be rendered.

2. Acquisition of real property shall be in accordance with state guidelines for preparation of appraisals and relocation assistance.

Note: Land appraisal and relocation guidelines can be obtained from the department's regional recycling specialist.

3. Allowable rates for use of a responsible unit's own equipment not purchased with grant monies shall be limited to the county-wide rates established annually by the Wisconsin department of transportation. Allowable costs for the use of equipment, for which the department of transportation rates are not available, may be based on the grant recipient's calculation of operating the equipment attributable to recycling activities.

Note: County-wide rates established by the department of transportation can be obtained from the grant recipient's county highway department.

(2) **RECORDS RETENTION AND AUDITING.** All responsible units receiving grant funds are subject to audit by the department. Grant recipients shall retain all records pertaining to their programs for 3 years after the end of the year in which they received the recycling efficiency incentive grant.

NR 549.14 Interpretation of chapter. (1) DISPUTE CONSIDERATION. Any disputes regarding the interpretation of this chapter shall be decided by the department based upon whether an increase in efficiency can be inferred through a probability of either a reduction in eligible costs for the year or an increase in recycling materials sales revenues, or an increase in the quality or scope of the program for the year in which the responsible unit attributes the efficiency measures. This consideration shall be made in accordance with all applicable state and federal laws.

(2) **DISPUTE RESOLUTION.** In the event that a dispute arises between the department and the grant recipient, either party may request a conference between the department's director of the bureau of community financial assistance and the grant recipient, or designee, to resolve the dispute.

(3) **DECISION OF THE DEPARTMENT.** Except as otherwise provided by law, any dispute arising as a result of a grant provided under this chapter shall be decided in writing by the department. The department shall serve personally or by certified mail, return receipt requested, a copy of the decision upon the grant recipient.

NR 549.15 Variances. The department may approve variances from nonstatutory requirements of this chapter upon written request of grant applicants. The department may approve variances for good cause, to encourage recycling or to accomplish the objectives of this chapter. Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the grant recipient and financial hardship.

NR 549.17 Termination. The department may initiate the termination of a grant award provided under this chapter with 30 days advance written notice to the grant recipient. Notice of termination shall be served on the grant recipient personally or by mail.

(1) **ACTION TO INITIATE.** Any action undertaken by the department to terminate a grant award shall include the effective date of termination of the grant award, the basis for settlement of award termination costs, and the amount and date of payment of any sums due either party.

(b) The department may terminate awards, in whole or in part, upon a finding of one of the grounds specified in par. (c) and in accordance with the following procedure:

1. The department shall attempt to consult with the grant recipient prior to initiating any termination action. After the department has received and considered the views of the grant recipient, or 30 days after the grant recipient has been notified of the department's intent to terminate the recycling efficiency incentive grant, the department may terminate the grant award in whole or in part.

2. Any termination action taken by the department shall be made in writing and shall state the reasons for termination.

(c) The department may terminate a grant, in whole or in part, if the department determines any of the following:

1. There has been no substantial performance under the terms of the grant by the grant recipient, without good cause.
2. There is clear and convincing evidence that the grant was obtained by fraud.
3. There is clear and convincing evidence of gross abuse or corrupt practices in the administration of the grant.

(2) **GRANT REFUND.** Upon termination, the grant recipient shall refund to the department all funds provided by the department under this chapter that have not been spent as of the date of termination without written approval from the department, except an amount as may be required to meet commitments which had become enforceable prior to the date of termination. The grant recipient shall reduce the amount of outstanding commitments as much as possible and remit to the department any uncommitted balance of grant funds awarded. A grant recipient may spend funds otherwise required to be refunded under this subsection only with the written approval from the department.

(3) **REVIEW.** Any responsible unit that is dissatisfied with any determination made by the department under this section may request review by the chief of the department's environmental financial assistance section. If the matter is still not resolved, review may be sought from the director of the department's bureau of community financial assistance. All requests for review of termination actions shall be made in writing by the grant recipient, be addressed to the appropriate department staff, and shall contain factual information explaining the basis for requesting review. The department shall issue all decisions under this subsection in writing.

NR 549.18 Enforcement. (1) SANCTIONS. The department may impose the following sanctions for noncompliance of any provisions of this chapter :

- (a) The grant may be terminated pursuant to s. NR 549.17.
- (b) Program costs directly related to the noncompliance may be declared ineligible.
- (c) Repayment of some or all of the grant amount related to the noncompliance may be required.
- (d) Other administrative and judicial remedies may be sought as legally available and appropriate.

(2) **WITHHOLDING OR REFUND OF GRANTS.** (a) If any responsible unit uses any scheme or device to unjustly benefit from the grant program under this chapter, the department shall withhold grants awarded under this chapter or require a refund of part or all of any payments otherwise due or paid to the responsible unit. A scheme or device to unjustly benefit from this program includes, but is not limited to, coercion, fraud or misrepresentation, false claims or any business or other dissolution, reorganization, revival or other legal mechanism designed for or having the effect of evading the requirements of this chapter.

(b) If any responsible unit takes action resulting in, or fails to take action to prevent, the destruction or impairment of a prescribed condition or term of the grant award, the department shall withhold a grant provided under this chapter or require a refund of part or all of any payments otherwise due or paid.

(c) Any responsible unit that has spent funds received under this chapter on ineligible costs described under s. NR 549.07 (2) is ineligible for:

1. Recycling efficiency incentive grant assistance the following year if the funds were intentionally diverted to other purposes by the responsible unit.

2. A portion of the recycling efficiency incentive grant assistance for the following year if the responsible unit does not repay to the department the inappropriately spent funds and the amount exceeds any outstanding grant payments owed the responsible unit.

(3) OTHER PENALTIES. (a) Nothing requiring the withholding or repayment of a grant provided under this chapter shall preclude any other penalty or liability available by law.

(b) Any person who violates this chapter by a material misrepresentation in an application is subject to the penalties specified in s. 287.97, Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board at its meeting on August 14, 2002.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

By Darrell Bazzell, Secretary

(SEAL)