

02-060
NR 549

NR 549

Clearinghouse Rule 02-060

Relating to the recycling efficiency incentive grants.

The committee will look at the Senate Committee on Environment and Natural Resource's February 6th objection.



State Senator

Neal J. Kedzie

11th Senate District

February 6, 2003

Scott Hassett, Secretary
Wisconsin Department of Natural Resources
101 S. Webster Street, Fifth Floor
Madison, WI 53702

Dear Secretary Hassett,

This letter is to inform you that on February 6, 2003 the Senate Environment and Natural Resources Committee held an Executive Session and voted (Ayes, 3; Noes, 2;) to object to proposed s. NR 549.08 (3) (a) 2. and (4) (a) 4. and 5 pursuant to s. 227.19 (4) (d) 6., Stats. as set forth in the modified version of Clearinghouse Rule 02-060, relating to a recycling efficiency incentive grant program, modifications received by the committee on January 24, 2003 on the grounds that the section is arbitrary and capricious.

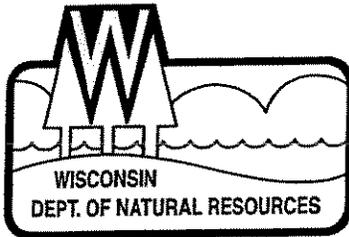
Thank you for your consideration.

Sincerely,

Neal Kedzie
Chair, Senate Environment and Natural Resources Committee
State Senator
11th Senate District

NJK: dj

JAN 24 2003



State of Wisconsin | DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
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January 23, 2003

Honorable Scott L. Gunderson, Chair
Assembly Committee on Urban & Local Affairs
7 West
State Capitol

Honorable Neal Kedzie, Chair
Senate Committee on Environment & Natural Resources
313 South
State Capitol

Re: Clearinghouse Rule No. 02-060
Recycling efficiency incentive grants

On October 22, 2002, the Assembly Committee on Environment requested the Department of Natural Resources to modify Clearinghouse Rule No. 02-060 relating to recycling efficiency incentive grants. At its January 22, 2003 meeting, the Natural Resources Board adopted modifications to the proposed rule. The modifications included:

1. The first sentence of the note following s. NR 549.08(3)(b)2. was deleted and s. NR 549.08(3)(d) was created. The Assembly Committee on Environment felt information of this kind should not be part of a note, as notes do not have the force of law. The new paragraph indicates that Department staff will review grantee claims of efficiency when programmatic reviews of responsible units programs are conducted each year.

2. ~~Section NR 549.08(4)(a)4. was revised.~~ As originally written, non-county responsible units with populations of at least 50,000 would be eligible for funding in the first grant year. Non-county responsible units achieving a population of 50,000 in subsequent years would be able to use this provision only once for grant funds. The Committee felt that size alone should not qualify a responsible unit for grant funds. Consequently, two new criteria have been added to this provision. As amended, non-county responsible units with populations of at least 50,000 must be able to claim at least one of the two new criteria in order to be eligible for funding under this provision. For the first grant year, claims of efficiency through these 2 new criteria must have occurred before March 31, 2003.

3. A germane modification was adopted for s. NR 549.08(2)(a)2. as it relates to the timing of eligibility in the second grant year. As originally proposed, there are only 8 months between the application deadlines for the first and second grant rounds. The Department recognizes that it will be extremely difficult for responsible units to initiate and implement a new consolidation or new cooperative agreement in just 8 months. The Department, therefore, proposed this germane modification to make it clear that the act of signing documentation of official consolidations or cooperative agreements pursuant

**Clearinghouse Rule 02-060
Recycle Efficiency Incentive Grant**

\$1.9 million efficiency grant program created by Wisconsin Act 16, 2001-03 budget. These additional grants are intended to provide **INCENTIVES** for efficient recycling programs to responsible units.

History

The Assembly Environment Committee reviewed CR 02-060 on October 22, 2002. The Committee had a few concerns with the Rule, in particular NR 549.08 (4)(a)(4), stating that a responsible unit with a population of more than 50,000 is eligible for the grant.

Because the Chair felt the 50,000 population provision was arbitrary and unfair to responsible units under 50,000, a motion was made to ask the DNR to delete it.

However that motion was withdrawn after some discussion took place among committee members to allow the 50,000 population provision to remain, but with some additional criteria.

After several weeks, the DNR came back with two criteria, which are now listed under NR 549.08(4)(a)(4):

- a. Hire a consultant to analyze cost-effective changes to a local recycling program;
OR
- b. Be a member of an organization comprised of at 50% responsible units that meets at least once a year and discuss recycling programs

Because the Chair does not believe that anything is gained by those two criteria and because the DNR has stated those are the only two criteria they've been able to devise, it is the intent of the Chair to make a motion to object to the 50,000 population provision as modified.

Concerns of the Rule

Under NR 549.08 (4)(a)(4), it states that a non-county, responsible unit with a population over 50,000 is eligible for this grant.

It is Sen. Kedzie & the Environment Committee's opinion that population size has nothing to do with efficiency. This grant program would require cooperative agreements and consolidation for all municipalities less than 50,000 in number. Agreements that could take months to establish.

However, 13 municipalities would not be required to do that. They'd simply have to fill in the name of the community, check a box stating they have a population of more than 50,000 and sign on the dotted line.

This 50,000 provision creates an unfair and uneven playing field for municipalities, and because DNR has failed to provide adequate or substantive criteria for the provision, it should be removed.



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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

March 6, 2003

P. Scott Hassett, Secretary
Department of Natural Resources
101 South Webster Street
Madison, WI 53707-7921

Dear Secretary Hassett:

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 6, 2003 and adopted the following motion:

The Joint Committee for Review of Administrative Rules, pursuant to s. 227.19 (4) (d) 6. and (5) (d), Stats., objects to s. NR 549.08 (3) (a) 2. and (4) (a) 4. and 5. of Clearinghouse Rule 02-60.

Motion Carried 10 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,


Senator Joseph Leibham
Senate Co-Chair


Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson

SENATOR JOSEPH LEIBHAM
Co-CHAIR



REPRESENTATIVE GLENN GROTHMAN
Co-CHAIR

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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

MAR 11 2003

March 6, 2003

The Honorable Alan Lasee
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable John Gard
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 6, 2003 and adopted the following motions:

The Joint Committee for Review of Administrative Rules, pursuant to s. 227.19 (4) (d) 6. and (5) (d), Stats., objects to s. NR 549.08 (3) (a) 2. and (4) (a) 4. and 5. of Clearinghouse Rule 02-60.
Motion Carried 10 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends HFS 115.04(9) to (13) at the request of Department of Health and Family Services by 60 days.
Motion Carried 10 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Emergency Rule Extension Motion Form

March 6, 2003
North Hearing Room
State Capitol

Moved by Welch, Seconded by Leibham

THAT, pursuant to s. 227.19(4)(d)6, stats. the Joint Committee for Review of Administrative Rules concurs with the Senate Environment and Natural Resources February 6, 2003 objections and objects to proposed s. NR 549.08 (3) (a) 2. and (4) (a) 4 and 5.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator LEIBHAM	✓		
2. Senator WELCH	✓		
3. Senator LAZICH	✓		
4. Senator ROBSON	✓		
5. Senator CARPENTER	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative BLACK	✓		
10. Representative HEBL	✓		
Totals			

Motion Carried

Motion Failed

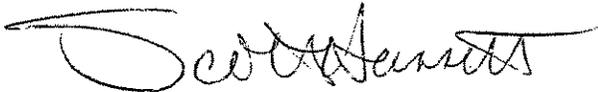
to s. 66.0301, Stats., meets the eligibility test for the second round of grants – so long as implementation of the consolidation or cooperative agreement begins no later than January 1, 2004.

4. Section NR 549.08(2)(a)1. and 2., (3)(a)1. and 2. and (4)(a)1. and 2. were amended to extend the grant application deadline for the first grant cycle. It is no longer possible for interested applicants to meet the original application deadline for the first grant cycle as listed in proposed ch. NR 549. To be fair to potential applicants, the March 1 deadline has been replaced with a more realistic April 15 deadline. Furthermore, the deadline by which consolidations or cooperative agreements must be agreed to by participating responsible units to be eligible for grant funding in the first year has been moved from February 28, 2003 to March 31, 2003. Lastly, s. NR 549.08 has been clarified to indicate that the Department will use the postmark date on the application envelope as the method for determining if an application is on time, earlier wording was less specific.

The specific wording changes adopted by the Natural Resources Board are detailed on the attachment. A revised copy of Natural Resources Board Order No. CF-30-02 containing the modifications is also attached.

Under s. 227.19(4)(b)2., Stats., the Department of Natural Resources refers this action to your Committees for an additional 10 working day review. If the Department does not hear from you within 10 working days of the receipt of this letter, the Department will continue processing this rule.

Sincerely,



Scott Hassett
Secretary

cc: Sheila Henneger – CF/8
Mary Rose Teves – CF/8
Dan Graff – LS/5
Carol Turner – LS/5

Attach.



State Senator
Neal J. Kedzie
11th Senate District

March 6, 2003

State Senator Joe Leibham
Co-Chair, Joint Committee on Review of Administrative Rules
Room 409 South, State Capitol

State Representative Glenn Grothman
Co-Chair, Joint Committee on Review of Administrative Rules
Room 15 North, State Capitol

Dear Chairmen Leibham and Grothman,

On February 6, 2003, the Senate Environment and Natural Resources Committee objected to section NR 549.08 (3) (a) 2. and (4) (a) 4. and 5 of Clearinghouse Rule 02-060, relating to a recycling efficiency incentive grant program. Please accept this letter as my formal request of the Joint Committee on Review of Administrative Rules to concur with that objection.

The intent of the rule is to offer a share of \$1.9 million in funds to local municipalities in exchange for a more efficient and effective recycling program. Under NR 549.08 (4)(a)(4), a non-county, responsible unit with a population over 50,000 qualifies for this grant. It is my opinion that the qualification based on population size alone contradicts the stated intent of the rule.

Allowing for the 50,000-population provision creates an unfair advantage for a few municipalities and a greater disparity for the majority of municipalities. In order to be eligible for a grant, a municipality with less than 50,000 in population would be required to enter into cooperative agreements or consolidation arrangements with other units of government – a process that could take several months to achieve.

Thirteen municipalities, however, would not be subject to such arduous requirements and could submit application for the grant within one day. Thus, the provision creates an uneven playing field for those municipalities and places our small communities at a tremendous and unfair disadvantage.

Further, the Department of Natural Resources (DNR) was instructed by the 2001-02 Assembly Environment Committee to provide substantive criteria for the provision as a measure of compromise among the members. Unfortunately, after five weeks of internal discussions, the DNR returned with only two criteria, which I believe fail to meet the intent of the committee. To my dismay and displeasure, the DNR did not discuss those changes with the Chair based on an "internal policy" of not conferring with the standing committee prior to any action by the Natural Resources Board.

It is incumbent on us as legislators to carefully scrutinize how we appropriate funds, especially during these difficult budgetary times. Moreover, if we as a state are serious about recycling efficiency and properly appropriating almost \$2 million dollars to achieve that goal, then we must not allow for such arbitrary provisions. The 50,000-population provision is an arbitrary criterion for this grant program and it should be removed.

For those reasons stated, I ask the Joint Committee on Review of Administrative Rules to concur with the objection made by the Senate Environment and Natural Resources Committee and maintain fairness, accountability and most importantly a true recycling efficiency incentive grant program.

Thank you for your time and consideration of my request.

Sincerely,



Neal Kedzie
Chair, Senate Environment and Natural Resources Committee
State Senator
11th Senate District

cc: Members, Joint Committee on Review of Administrative Rules

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 postmarked no later than April 15, 2003, to be eligible for a grant award in calendar year 2003 and all applications submitted shall claim that an efficiency was implemented before March 31, 2003.

2. During the second grant period, applications shall be postmarked no later than 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 or a signed agreement for consolidation or cooperative services was approved by the participating responsible units during the period between April 1, 2003, and October 30, 2003, and will be in place no later than January 1, 2004.

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 March 31, 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 April 1, 2003.

2. The status of an entity other than a county with a population of 50,000 or more pursuant to sub. (4) (a) 4., which status occurred before March 31, 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: 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.

(d) At least 25% of the responsible units visited each year as part of the department's recycling program review under s. 287.23(2)(b), Stats., will include responsible units receiving grants 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 March 31, 2003.

2. Two or more responsible units have consolidated into a single responsible unit on or after April 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 and can claim that at least one of the following efficiencies has been undertaken before March 31, 2003:

a. Conducted or hired a consultant to conduct a study to analyze cost-effective changes to local recycling programs.

b. Is a member of an organization that is composed of at least 50% responsible units and meets at least once per year and discusses the planning, development, implementation or evaluation of any recycling activity during these meetings.

5. Any non-county responsible unit that achieves a population of 50,000 after March 31, 2003, may claim grant eligibility under subd. 4. so long as it can also claim at least one of the 2 efficiencies identified under subd. 4. and may not do so more than once and only in the year following the year in which a population of at least 50,000 was achieved.

(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 and January 22, 2003.

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 _____
Scott Hassett, Secretary

(SEAL)

Modifications to s. NR 549.08(2)

NR 549.08 (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~~ postmarked no later than April 15, 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~~ March 31, 2003.

2. During the second grant period, applications shall be ~~submitted by~~ postmarked no later than 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 or a signed agreement for consolidation or cooperative services was approved by the participating responsible units during the period March 1 April 1, 2003, and October 30, 2003, and will be in place no later than January 1, 2004.

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.

Modifications to s. NR 549.08(3)

NR 549.08 (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~~ March 31, 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~~ April 1, 2003.

2. The status of an entity other than a county ~~as with~~ a population of 50,000 or more pursuant to sub. (4) (a) 4., which status occurred before ~~February 28~~ March 31, 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.

~~(e)~~ (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.

(d) At least 25 % of the responsible units visited each year as part of the department's recycling program review under s. 287.23(2)(b), Stats., will include responsible units receiving grants under this chapter.

Modifications to s. NR 549.08(4)

NR 549.08 (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~~ March 31, 2003.
2. Two or more responsible units have consolidated into a single responsible unit on or after ~~March 1~~ April 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 and can claim that at least one of the following efficiencies has been undertaken before March 31, 2003:~~

- a. Conducted or hired a consultant to conduct a study to analyze cost-effective changes to local recycling program.
- b. Is a member of an organization that is composed of at least 50% responsible units and meets at least once per year and discusses the planning, development, implementation or evaluation of any recycling activity during these meetings.

5. Any non-county responsible unit that achieves a population of 50,000 after March 31, 2003, may claim grant eligibility under subd. 4. so long as it can also claim at least one of the 2 efficiencies identified under subd. 4. and may not do so more than once and only in the year following the year in which a population of at least 50,000 was achieved.

HFS 115.04(9) to (13)

- Added 5 to required screenings of newborns
- Opt out for parents: religious reasons

CR 02-060

- Why 50,000?
 - Arbitrary
 - Reward for past efficiencies
- Letter to DNR on absence & treatment of Kedzie
 - Consult w/ committees on mods.
- Suspend Rule later or eliminate funding in budget