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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 04-039

#### 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 October 2002.]**

#### **2. Form, Style and Placement in Administrative Code**

a. Section ATCP 34.04 (4) (b) 1. provides in part that the department will not reimburse over 50% of certain costs, except that a division administrator may approve a higher percentage rate for special disposal problems that warrant the higher rate. The rule should provide a standard by which the division administrator makes this determination.

b. Section ATCP 34.06 (2) (f) provides that a written announcement soliciting grant applications must include the weights that the department will give to criteria included in s. ATCP 34.08 (2). If the weights are known, they should be placed in the Administrative Code. Further, creating a known scoring system would obviate the problem in s. ATCP 34.08 (2) which in many places provides that the department “may give priority” to certain aspects of clean sweep projects. The use of the phrase “may give priority” gives very little guidance to grant recipients.

c. Section ATCP 34.08 (2) (intro.) provides that in ranking eligible grant applications, the department may consider criteria set forth in sub. (2) and “other criteria set forth in the department’s notice.” To the extent these “other criteria” become standard, they should be placed in the Administrative Code.

d. In s. ATCP 34.12 (1), the phrase “under this chapter” is not necessary and should be deleted.

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

Section ATCP 34.06 (3) refers to a form provided by the department. The requirements of s. 227.14 (3), Stats., should be met.

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

a. The rule defines “municipality” to include a county. This term is used in the rule together with the term “county,” as in s. ATCP 34.02 (10). Although this overlap does not make the rule less clear, it is a drafting practice that is better to be avoided.

b. The definitions of “county” and “municipality” refer to “associations” of two or more of those entities. Would it be appropriate to require the joint exercise of local authority under the rule to be done through an intergovernmental cooperation agreement under s. 66.0301, Stats.?

c. Section ATCP 34.16 (4) (b), provides that the department may disapprove a contractor who does not comply with par. (a). Should the word “may” be replaced by the word “shall,” since sub. (4) (a) requires that a grant recipient contract only with a hazardous waste contractor who is qualified to undertake specified activities?

d. Section ATCP 34.18 (2) (b) provides that a grant recipient must file an interim report prior to each partial payment. The rule should indicate that the schedule for the filing of interim reports will be specified in the contract between the department and the recipient.