



CR 90-255

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

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STATE OF WISCONSIN)
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DEPARTMENT OF NATURAL RESOURCES) SS

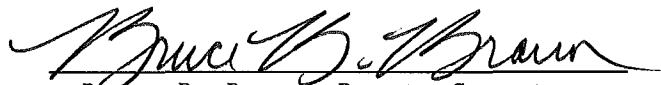
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. CA-75-90 was duly approved and adopted by this Department on March 28, 1991. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

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IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 28th
day of May, 1991.


Bruce B. Braun, Deputy Secretary

(SEAL)

8-1-91

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

.....
IN THE MATTER of creating ch. NR 542 of .
the Wisconsin Administrative Code . CA-75-90
pertaining to recycling grants to .
responsible units .
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Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 159.03(1)(a), 159.23(5m) and 227.11, Stats.
Statutes interpreted: s. 159.23, Stats.

1989 Wisconsin Act 335, the recycling law, creates the recycling grants for responsible units program to assist local governments to establish and operate effective recycling programs. The proposed administrative rule, ch. NR 542, will be used to administer this program. This program will provide grants to responsible units for the period 1992 to 2000. In calendar years 1992 to 1994, any responsible unit may receive a grant. In years 1995 to 2000, only those responsible units that have an effective recycling program may receive a grant.

This proposed rule establishes application requirements, eligible costs, cost sharing amounts, and procedures for the administration of the recycling grants for responsible units.

SECTION 1. Chapter NR 542 is created to read:

NR 542

RECYLING GRANTS TO RESPONSIBLE UNITS

NR 542.01 PURPOSE. The purpose of this chapter is to establish rules under s. 159.23, Stats., for the implementation and administration of a grant program for planning, constructing or operating recycling programs with one or more of the components specified in s. 159.11 (2) (a) to (h), Stats.

NR 542.02 APPLICABILITY AND CROSS REFERENCING. This chapter applies to all applicants and recipients of funding under s. 159.23, Stats., for planning, constructing or operating a recycling program. This chapter does not apply to applicants for financial assistance for waste reduction and

recycling demonstration grants under s. 159.25, Stats., nor the waste tire grant program under s. 159.17, Stats.

NR 542.03 DEFINITIONS. In this chapter:

(1) "Avoided disposal costs" has the meaning specified in s. 159.23(1)(ar), Stats.

(2) "Capital expenses" means construction or acquisition costs including improvements or equipment costing \$1,000.00 or more and with an expected life of 3 years or more.

(3) "Curbside collection" means the collection of recyclable materials at the curb, or from an alley or roadside.

(4) "Department" means the department of natural resources.

(5) "Effective recycling program" means a solid waste management program that includes all of the components specified in s. 159.11(2), Stats.

(6) "Population" has the meaning specified in s. 159.23(1)(c), Stats.

(7) "Postconsumer waste" has the meaning specified in s. 159.01(7), Stats.

(8) "Prevailing market rate" has the meaning specified in s. 159.23(1)(d), Stats. This means a reasonable estimate of the price for a recyclable material that will be paid by a collection facility serving the area within the boundaries of a responsible unit during the year for which an application for assistance is submitted.

(9) "Recycling center" means a facility that accepts source separated materials for processing and marketing.

(10) "Recycling program costs" means the collection, transportation, processing and marketing costs incurred as a result of any of the following:

(a) Source separation of recyclables through the use of either curbside collection or drop-off facilities, or both;

- (b) Processing of source separated materials at a recycling center;
- (c) Recovery of recyclables from postconsumer waste prior to grinding, shredding, composting or incinerating materials at a solid waste facility.
- (11) "Responsible unit" has the meaning specified in s. 159.01(9), Stats.
- (12) "Solid waste facility" has the meaning specified in s. 144.43(5), Stats.
- (13) "Source separated materials" means clean recyclables kept apart from mixed solid waste at the original point of generation.

NR 542.04 ELIGIBILITY FOR GRANT ASSISTANCE. (1) ELIGIBLE APPLICANTS. The following responsible units are eligible for assistance under this chapter:

- (a) For assistance in 1992 to 1994, any responsible unit.
- (b) For assistance in 1995 to 2000, a responsible unit that has been determined by the department to have an effective recycling program.

(2) INELIGIBLE APPLICANTS. (a) Responsible units that have not maintained an effective recycling program, following approval of the recycling program under s. 159.11, Stats., are ineligible for grant assistance the following year unless they have met one of the following:

1. Their program has again been approved by the department;
2. The department determines that they have performed substantial remedial actions and submitted an acceptable timetable for completion of remaining actions.

(b) A responsible unit that has spent funds received under this program on ineligible costs as outlined under s. NR 542.05(2) is ineligible for:

1. Grant assistance the following year if the funds were intentionally diverted to other purposes by the responsible unit.

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

NR 542.05 ELIGIBLE AND INELIGIBLE COSTS. (1) ELIGIBLE COSTS. The grantee's recycling program costs, net of the sale of recovered materials, 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 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; equipment costing \$1,000 or more and with an expected life of 3 years or more 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 monies 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;

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

1. All costs that can be directly isolated 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; and

(k) Cost of documenting how solid waste which is generated in the grantee's region and is not separated or recovered for recycling will be managed, as required by s. 159.11 (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 for each grant;

(b) The costs of collecting and disposing of municipal solid waste not separated for recycling, except as provided for 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 has been or will be received under another federal or state financial assistance program;

(g) Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a grantee participates in the selection, awarding or administration of a contract supported by this program and:

1. The official or employee, or his or her partner or immediate family member, has an ownership interest in the firm selected for the contract; or
2. Any person identified in subd. 1. receives any contract, gratuity or favor from the award of the contract;

(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 542.06 DISTRIBUTION OF GRANT ASSISTANCE. The department shall award a grant to each eligible responsible unit that submits a complete application for allowable expenses. The amount of the grant shall be determined as follows:

(1) For a county that is the responsible unit for at least 75% of the population of the county, \$100,000 or the amount determined under sub. (2), whichever is greater.

(2) Unless total grant requests exceed the amount of funds available, the amount of the grant for all other responsible units will equal the lesser of the following:

- a. The population of the responsible unit times \$6.
- b. Sixty-six percent of eligible expenses, minus any avoided disposal costs.

(3) If the total of approvable grant requests exceeds the amount of funds available, the department shall allocate funds in the following manner:

- a. Counties that are to receive \$100,000 grants under sub. (1) will not be prorated;
- b. All remaining responsible units' grant awards shall be multiplied by the following ratio:

$$\frac{\text{Total funds available - awards from sub. (1)}}{\text{Total remaining requests from sub. (2)}}$$

NR 542.07 GRANT ASSISTANCE APPLICATION. (1) PROCEDURE. A completed application shall be submitted to the department by September 1 in the year preceding the year for which the assistance is sought. Application shall be made on forms provided by the department in accordance with the instructions provided.

Note: Forms and instructions may be obtained, at no charge, from the Bureau of Community Assistance Management, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707.

(2) CONTENTS OF APPLICATION. An application shall contain all of the following:

(a) A resolution of the responsible unit authorizing its representative to file the grant application. The authorized representative shall be an official or employee of the responsible unit;

(b) The information specified in s. 159.09(2)(b), Stats.;

(c) A description of the program, the processes and methods to be used, including who will implement them, and a timetable for implementation;

(d) Documentation that the assistance, when combined with future anticipated assistance, will result in the responsible unit doing one of the following:

1. Making continued progress in creating an effective recycling program as defined under s. 159.11, Stats., by January 1, 1995;

2. Maintaining an effective recycling program following approval of the recycling program under s. 159.11, Stats.;

(e) A financial schedule itemizing revenues and expenses of all programs and activities likely to be funded under the proposed grant;

(f) A financial report if the responsible unit received a grant under this chapter, or 1989 Wisconsin Act 335, section 85 (5), for the grant period preceding the grant period for which the application is being made. It shall include a statement of whether any portion of that grant was or is likely to be spent on ineligible activities, and the actual or estimated amount;

(g) An amortization schedule for all equipment, included in projected program costs, with a useful life exceeding 3 years and a cost greater than \$1,000;

(h) A copy of any executed contracts for the performance of any portion of the program;

(i) A preliminary project design, engineering plans and specifications for the facility and equipment, as appropriate to the proposed project.

NR 542.08 GRANT ASSISTANCE CONDITIONS AND REQUIREMENTS. Before awarding a grant to a responsible unit, the department shall determine that all of the applicable requirements of s. NR 542.07 have been met and the responsible unit shall assure that it will comply with the following:

(1) OPERATION AND MAINTENANCE. The responsible unit shall agree to operate and provide adequate maintenance of facilities purchased or developed with state grant assistance;

(2) ACCESS. The grantee shall insure that department representatives will have access to the recycling facilities, including construction activities;

(3) PREVAILING MARKET RATE. No grantee may pay above the prevailing market rate for recyclables for any year in which it receives grant assistance.

NR 542.09 GRANT PAYMENTS. (1) FIRST PAYMENT. The department shall disburse 50% of a grant to the applicant upon approval, but not later than January 1 of the year for which the grant is made.

(2) SECOND PAYMENT. The department shall disburse 25% of the grant not later than July 1 of the year for which the grant is made.

(3) FINAL PAYMENT. The department shall disburse the final balance of the eligible net program costs to the grantee based on the final payment request. The final payment request shall be submitted on forms provided by the department, following the instructions provided, not later than April 30 of the year following the grant year. The department may withhold all or part of a grant payment if it determines that either:

(a) The responsible unit spent grant funds on activities not eligible for assistance as outlined under s. NR 542.05; or

(b) The responsible unit has not maintained an effective recycling program following initial approval of its program as effective as outlined in s. NR 542.08. Funds withheld under this provision may be paid if the responsible unit corrects all program deficiencies to the satisfaction of the department within one year of the original finding.

Note: Forms may be obtained, at no charge, from the Bureau of Community Assistance Management, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707.

NR 542.10 GRANTEE 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 references 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. Proof of payment, such as cancelled checks or receipts from vendors, shall be maintained.

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

(b) Fiscal controls. 1. Any consultant, construction or service contract totalling \$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 (DOT). Allowable costs for the use of equipment, for which DOT rates are not available, may be based on the grantee's calculation of the cost of operating the equipment attributable to recycling activities.

Note: County-wide rates established by the DOT can be obtained from the grantee's county highway department.

(2) RECORDS RETENTION AND AUDITING. All responsible units receiving grant funds are subject to audit and shall retain all records pertaining to their programs until 3 years following the end of their participation in the program.

NR 542.11 GRANT VARIANCES. The department may approve variances from nonstatutory requirements of this chapter upon request of the grantee when it is determined that variances are essential to effect necessary actions or department objectives, and where special circumstances make variances in the best interests of the state. Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the grantee and financial hardship.

NR 542.12 DISPUTE RESOLUTION; ARBITRATION. (1) 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 assistance management and the grant recipient, or designee, to resolve the dispute.

(2) All claims, disputes and other matters in question arising out of or relating to the grant agreement or the breach thereof, may be decided by arbitration in accordance with ch. 788, Stats. Arbitration shall be conducted within the state of Wisconsin.

(3) Requests for arbitration shall be filed in writing with the other party to the grant agreement. The other party shall respond to the request for arbitration within a 30 day period either by accepting or rejecting the request for arbitration. In no event may the request for arbitration be made at any time after the applicable statute of limitations could bar the institution of legal or equitable proceedings based on such claim, dispute or other matter in question.

NR 542.13 TERMINATION OF AWARDS. (1) The department and a grantee may enter into an agreement to terminate the award at any time pursuant to this section. The agreement shall establish 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.

(2) A grantee may not unilaterally terminate the work authorized in the award, except for good cause. The grantee shall promptly give written notice to the department of any complete or partial termination of the program work by the grantee. If the department determines that there is good cause for the termination of all or any portion of the program work, the department may enter into a termination agreement or unilaterally terminate the award pursuant to sub. (3), effective on the date of cessation of the program work by the grantee. If the department determines that a grantee has ceased program work without good cause, the department may unilaterally terminate the award pursuant to sub. (3).

(3) Awards may be terminated in whole or in part by the department in accordance with the following procedure:

(a) The department shall attempt to consult with the grantee prior to any termination. After the department has received any views expressed by the grantee, the department may terminate the award in whole or in part.

(b) Any termination shall be in writing and shall state the reasons for terminating the award. Notices of termination shall be served on the grantee personally or by mail.

(4) Upon termination, the grantee shall refund or credit to the state of Wisconsin that portion of any funds paid or owed to the grantee and allocable to the terminated project work, except an amount as may be required to meet commitments which had become enforceable prior to the termination. The grantee may not make any new commitments without department approval. The

grantee shall reduce the amount of outstanding commitments insofar as possible and report to the department the uncommitted balance of funds awarded.

NR 542.14 ENFORCEMENT. The following sanctions may be imposed for noncompliance with s. 159.11, Stats., the provisions of this chapter, or any award made under this chapter:

- (1) The award may be terminated under s. NR 542.13;
- (2) Program costs directly related to the noncompliance may be declared ineligible;
- (3) Payment otherwise due to the grantee may be withheld under s. NR 542.09;
- (4) Other administrative and judicial remedies may be instituted as legally available and appropriate;
- (5) The department may seek recovery of some or all payments.

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

The rules 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

May 28, 1991

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MAY 30 1991

Revisor of Statutes
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STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By

Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)

