



# Solid Waste Recycling and Waste Reduction

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# Solid Waste Recycling and Waste Reduction

In the 1980s, concerns about landfill capacity and the environmental impacts of solid waste disposal, in combination with increasing interest in recycling, brought attention to solid waste management in Wisconsin and served as the impetus for implementation of several state initiatives to more effectively manage this waste.

The Legislature enacted 1989 Wisconsin Act 335, a statewide regulatory and financial assistance program aimed at encouraging, and in some instances requiring, solid waste recycling and reduction. Subsequent legislation modified the funding sources and appropriations for state recycling programs.

The purpose of this paper is to describe major, statewide solid waste recycling and waste reduction regulations, financial assistance programs, and educational and technical assistance initiatives currently in place in Wisconsin. Most of the solid waste management and recycling regulations and financial and technical assistance are administered by the Department of Natural Resources (DNR). DNR administers the municipal and county recycling grant program that provides financial assistance to responsible units of local government for eligible recycling expenses. The

grant program is providing \$24.5 million to responsible units in each of calendar years 2004 and 2005. In each of fiscal years 2003-04 and 2004-05, \$1.9 million is provided for a recycling efficiency incentive grant program that began in 2002-03. Other recycling provisions are administered by the Department of Commerce, University of Wisconsin Systems, Department of Transportation and Department of Agriculture, Trade and Consumer Protection.

The paper also describes the segregated recycling fund, from which appropriations are made for state recycling programs, and the recycling surcharge and recycling tipping fee, which provide revenue to the recycling fund. Appendix I provides a summary table of funding and positions during 2003-05 for the programs discussed in the following sections. Appendix II provides a summary table of recycling fund cumulative revenues and expenditures from 1990-91 through 2003-04. Several other appendices discuss various aspects of recycling program provisions. While this paper focuses on recycling financial assistance and regulatory programs, other programs and laws addressing recycling and recyclable materials market development are also briefly discussed.

*SOLID WASTE AND RECYCLING PROGRAM REQUIREMENTS*

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**Solid Waste Management Policy**

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The state's solid waste management policy, established in s. 287.05 of the statutes, declares that maximum solid waste reduction, reuse, recycling, composting and resource recovery is in the best interest of the state in order to protect public health, to protect the quality of the natural environment and to conserve resources and energy. The policy also states that implementation of solid waste reduction, reuse, recycling, composting and resource recovery systems and operations requires the involvement and cooperation of individuals, state and local governments, schools, private organizations and businesses. The statutes specify that state government should achieve this involvement and cooperation by relying to the maximum extent feasible on technical and financial assistance, educational and managerial practices and that necessary regulations should be developed with maximum flexibility. These policies are summarized in Appendix III.

The state policy establishes a hierarchy of solid waste management options, ranked in the following order of preference: (1) reduction of the amount of solid waste generated; (2) reuse of solid waste; (3) recycling of solid waste; (4) composting of solid waste; (5) recovery of energy from solid waste; (6) land disposal of solid waste; and (7) the burning of solid waste without energy recovery.

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**Bans on Landfilling and Incineration**

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State law prohibits the landfilling and incineration of specified materials after certain dates as a means of encouraging their recycling or reducing their generation. Bans of specific materials went into effect on January 1 of 1991, 1993 and 1995. Certain materials are exempted from the ban.

In the recycling law, the term "solid waste disposal facility" includes several types of facilities, but is most commonly synonymous with the more familiar "landfill." A "solid waste treatment facility" which burns solid waste is generally synonymous with "incinerator." For the purposes of this paper, "landfill" and "incinerator" will be used unless a more extensive definition is necessary for clarity.

**1991 Bans**

As of January 1, 1991, no person may dispose of lead acid batteries, major appliances or waste oil in a solid waste disposal facility or landfill. Major appliances include residential or commercial air conditioners, clothes dryers, clothes washers, dishwashers, freezers, microwave ovens, ovens, refrigerators, stoves, furnaces, boilers, dehumidifiers and water heaters. The ban also prohibits any person from burning lead acid batteries or major appliances in an incinerator, and prohibits incinerating waste oil without energy recovery. An exception to the ban is provided for any person who disposes of a microwave oven in a landfill if the capacitor has been removed and



disposed of in accordance with state regulations regarding the disposal of capacitors containing PCBs (polychlorinated biphenyls).

### **1993 Bans**

As of January 1, 1993, no person may dispose of yard waste (yard and garden debris and brush) in a landfill or in any other solid waste disposal facility, except a land spreading facility approved in accordance with solid waste laws. A "land spreading facility" is defined as a solid waste disposal facility in which solid waste is placed in thin layers onto the surface of the land or incorporated into the surface layers of the soil. The ban also prohibits burning yard waste without energy recovery. The Department of Natural Resources is authorized to grant a waiver to this prohibition to allow the burning of brush or other clean, woody vegetative material that is no greater than six inches in diameter at wood burning facilities that are licensed or permitted by DNR. The statutes specify that DNR is not required to promulgate the policy that establishes conditions for this waiver as an administrative rule.

### **1995 Bans**

As of January 1, 1995, no person may landfill, burn with or without energy recovery, or convert into fuel, any of the following waste materials: (a) aluminum containers; (b) corrugated paper or other container board; (c) foam polystyrene packaging (packaging made primarily from foam polystyrene that either: (1) is designed for serving food or beverages; (2) consists of loose particles intended to fill empty space and cushion the packaged article; or (3) consists of rigid materials shaped to hold and cushion a packaged article); (d) glass containers; (e) magazines or other material printed on similar paper; (f) newspapers or other material printed on newsprint; (g) office paper; (h) plastic containers (plastics #1 through #7 required to be labeled under the plastic container labeling law); (i) steel containers; and (j) containers for

carbonated or malt beverages that are primarily made from a combination of steel and aluminum (known as "bi-metal" cans). In addition, waste tires cannot be landfilled or burned without energy recovery, but can be burned with energy recovery.

### **Exceptions to the Bans**

Exceptions to the bans are made for: (a) incidental amounts of the banned materials generated in a region that has an effective recycling program; (b) certain materials incinerated in a grandfathered incinerator; (c) incinerators that burn solid waste as a supplemental fuel; (d) certain medical waste; (e) unexpected emergency conditions; (f) certain woody materials burned in approved wood burning facilities; (g) beneficial reuse of a material within a landfill; (h) contaminated materials; and (i) certain plastics if recycling is not feasible. A more detailed discussion of these exceptions is contained in Appendix IV. (Incidental amounts refers to banned materials that are not separated for recycling within an effective program, including items the consumer fails to separate, and nonrecyclable items, such as newspapers used for cleaning windows, plastic milk containers used for waste oil and broken glass containers.)

### **Enforcement of Bans**

DNR is authorized to issue a citation to any person who violates any of the bans. The forfeitures that may be collected through a citation for violation of these requirements are \$50 for the first violation, \$200 for the second and \$2,000 for the third or subsequent violation. The Attorney General is authorized to enforce the 1995 bans by seeking injunctive relief against any person who violates them on or after January 1, 1995. Monetary penalties for violations of the 1993 and 1995 bans were imposed beginning two years after the bans on the landfilling and incineration of the recyclable materials took effect. DNR has issued a few citations to haulers for landfilling of recyclables

mixed with solid waste, has met with other haulers to review the requirements of the landfilling bans, and has responded to citizen inquiries or complaints about possible cases of landfilling of mixed recyclables and trash by haulers. DNR has also sent annual letters to licensed haulers of solid waste and recyclable materials to review the recycling and landfill ban requirements. No cases have been referred to the Department of Justice for enforcement action to date.

In addition to state enforcement, if a responsible unit has an "effective recycling program," it must adopt an ordinance to enforce a prohibition on the landfilling or burning of materials subject to the 1995 bans that are separated for recycling. The responsible unit may impose forfeitures for the violation of its recycling ordinance. DNR has worked with responsible units on a few cases where the responsible unit took enforcement action against a waste hauler that was collecting separated recyclables with solid waste and landfilling all of the materials.

DNR is authorized 2.4 positions from the recycling fund in 2004-05 for recycling enforcement that is provided by allocating a portion of the time of environmental wardens throughout the state. DNR regional recycling specialists funded from the recycling fund also work with enforcement. DNR's implementation of the recycling law emphasizes achieving voluntary compliance through technical and financial assistance rather than enforced compliance through the imposition of penalties or injunctions. The Department works with responsible units to identify violations of local recycling ordinances by waste haulers or landfills.

DNR also is authorized to: (a) hold hearings and compel the attendance of witnesses in the production of evidence related to the administration of the statewide recycling laws; and (b) enter and inspect property at which a solid waste facility is located, or is being constructed or installed, or inspect any record relating to solid waste management at any reasonable time for the

purpose of ascertaining the status of compliance with recycling law.

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### **Local Government Responsible Units**

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The statutes establish several responsibilities for local government related to recycling. In general, the local units of government responsible for implementing state-mandated recycling programs are termed "responsible units." Under the recycling law definition, the responsible unit for a geographic area is the municipality (city, village or town) unless a county takes specific action to create a responsible unit. Currently, every municipality in the state is included within one of 1,064 responsible units. For 2004, almost all responsible units (1,014 of 1,064), representing 99% of the state's population, received state-funded grants for a portion of the costs of operating the local recycling programs.

A county may become a responsible unit upon its board adopting a resolution accepting this designation. A municipality located in the county may retain its own status as a responsible unit if the municipality adopts a resolution to do so within 90 days of the county board's adoption of its resolution. There are 34 counties that are responsible units for all or some of the communities within their boundaries. The governing body of any responsible unit may designate, by contract, another unit of government to be the responsible unit, if it has that unit of government's consent. These multiple-municipality responsible units consist of counties, solid waste management commissions or two or more neighboring municipalities. Indian tribes may also become responsible units.

### **Duties and Powers of Responsible Units**

Each responsible unit must develop and implement a program to manage the solid waste

generated within its region in compliance with the 1991, 1993 and 1995 bans and the state's solid waste management priorities. The allowable ways this may be done are: (a) manage materials subject to the 1995 bans in an "effective recycling program" and complying with the 1991 and 1993 bans; (b) burn combustible materials subject to the 1995 bans in a "grandfathered" incinerator (described in the section on exceptions to the bans), managing the non-combustibles in an effective recycling program and complying with the 1991 and 1993 bans; (c) ship waste which contains materials subject to the 1991, 1993 and 1995 bans, out of state; or (d) a combination of (a) through (c). Responsible units are authorized to designate one or more persons to implement specific components of the solid waste management program and are authorized to adopt an ordinance to enforce this program.

Unpaid recycling fees are a lien on the property against which the fees are levied and are to be collected in the same manner as delinquent property taxes. Recycling fees are defined as fees for services provided by responsible units, or other parties, including private parties, that relate to the responsible unit's duties to operate a solid waste management program.

No officer, official, agent or employee of a responsible unit may be held liable for civil damages as a result of good faith actions taken by that person within the scope of that person's duties relating to the responsible unit's recycling program or recycling site or facility.

Any responsible unit that accepts funding from the municipal and county recycling grant program (or a county or municipality within such a responsible unit) is prohibited from regulating the sale or distribution of packaging for a purpose relating to its disposal unless that restriction is consistent with current law relating to marketing and trade practices or solid waste regulation. For example, a municipality that accepts grant funding may not ban retail sales of products packaged in a

certain type of plastic in order to reduce the disposal problems associated with that plastic. The unit of government also may not impose a tax or fee on the sale or distribution of the packaging for a purpose related to its disposal. Further, the law states it is the intent of the Legislature not to impose, or to authorize such a unit of government to impose, such a tax or fee.

### **Effective Recycling Programs**

A responsible unit's compliance with its recycling responsibilities relating to the 1995 landfill and incineration bans is determined by whether it is judged to have an "effective recycling program." Effective recycling program criteria were established in 1989 Act 335 and are contained in DNR administrative rule NR 544.

The designation of an effective recycling program is significant because, beginning in 1995, it determined a local government's ability to landfill or incinerate certain materials and its eligibility for state recycling grant funds. Materials subject to the 1995 ban may generally only be landfilled or incinerated if they are the "residuals" (in this context, materials remaining after other like materials have been separated for recycling) from an effective recycling program, or qualify under one of the other exceptions.

A responsible unit may request that DNR conduct a review to determine if its solid waste management program constitutes an effective recycling program. The DNR has 90 days in which to review documentation submitted to it and to determine whether a program is "effective." All 1,064 responsible units have received approval as having effective recycling programs. The approval is valid as long as the local program is operated in a manner that maintains the required components of an effective recycling program.

Local programs are required to submit an annual report to DNR that outlines their effective

recycling program. DNR field staff review the reports and perform program evaluations to determine the compliance of the responsible unit with the effective program requirements. Between 1996 and 2004, 11 responsible units were placed on probation due to noncompliance issues or failure to submit their annual recycling report to DNR. They corrected the problems in their recycling program and were returned to effective program status.

Since January 1, 2003, two responsible units (the Village of Fenwood and the Village of Unity, both in Marathon County) were placed on probation in 2003, for failure to submit the annual report that was due in April, 2003. Both villages have since submitted their annual reports and the probationary status was removed. All other responsible units are in compliance with effective program requirements.

### Required Components of an Effective Program

An effective recycling program is required to have thirteen specific components. A description of the thirteen statutory components is included in Appendix V. Administrative rule NR 544 implements these requirements by requiring responsible units to have the following:

- An ordinance to require recycling of the banned materials in all residences and non-residential facilities and properties;
- Public education and information about how to recycle, reduce and reuse waste;
- A method for collecting, processing and marketing of recyclables from single-family and two- to four-unit residences;
- Municipalities with populations of 5,000 or greater must provide, at least monthly, curbside collection from single-family and two- to four-unit residences for at least newspaper, glass, aluminum and steel containers, plastic containers made of PETE (polyethylene terephthalate or #1 plastic) or

HDPE (high density polyethylene or #2 plastic), and either corrugated paper or magazines, and must provide drop off collection for materials that are not collected curbside. Municipalities with populations of less than 5,000 must provide either curbside or drop-off collection from single-family and two- to four-unit residences;

- Beginning in 1997, meet specific per capita collection standards for eight recyclable materials, as shown in Table 1. The amounts specified for plastic containers that are not made out of PETE or HDPE and foam polystyrene packaging are subtracted from the requirement. DNR reports that in 2003, Wisconsin residents recycled approximately 735,610 tons of materials, or about 267 pounds per person. DNR has considered review of the standards but has not made changes since the 1997 implementation.; and

**Table 1: NR 544 Standards for Collection of Recyclables: Pounds Per Person Per Year\***

Type of Recyclable	Rural Municipalities**	Other Municipalities
Newspaper		36.0
Corrugated Paper	6.0	7.0
Magazines		7.0
Aluminum Containers	1.4	1.8
Steel and Bi-Metal Containers	7.0	9.0
Plastic Containers	4.0	5.0
Glass Containers	22.0	29.0
Foam Polystyrene Packaging	<u>0.3</u>	<u>0.4</u>
TOTAL	83.7	108.2

\* Beginning in 1999, DNR modified the annual report form submitted by responsible units to allow a responsible unit that does not meet the collection standards to request an exemption from the standards and to be granted the exemption if the DNR does not act within 90 days.

\*\* Rural municipalities are those with a permanent population density of 70 persons per square mile or fewer. Municipalities that do not meet that population criterion fall into the other category.

- Equipment and staff necessary to operate and enforce the program.

The recycling ordinance adopted by any responsible unit with an effective recycling

program must include the following requirements:

- Occupants of single-family and two- to four-unit residences, multiple-family dwellings and non-residential facilities and properties must either separate for recycling the banned materials or send the materials to a licensed processing facility that recovers materials for recycling;
- Owners of multi-family dwellings and non-residential facilities and properties must provide recycling containers, information for users and provide for collection of recyclable materials;
- Recyclable materials that are subject to the statewide bans on landfilling or incineration must be prohibited from such disposal; and
- Enforcement must include penalties consistent with statewide enforcement provisions.

### **Implementation of Effective Recycling Programs**

The structure of local recycling programs varies. Responsible units generally collect recyclable materials through one of two methods. Curbside collection is the collection of materials that are set out at the curb of the residence where they were generated. Drop-off collection is the collection of materials at centralized locations where people who generate the recyclables deliver or "drop-off" the materials.

In 2003, 53% of the state's population lived in responsible units that had curbside collection programs, 28% lived in responsible units with curbside and/or drop-off collection and 12% lived in responsible units where drop-off collection was available to residents. Approximately 7% of population lived in responsible units that did not report their program type, but DNR estimates that the residents are likely served by drop-off programs. Responsible units with populations over 5,000 relied primarily on curbside collection or a combination of curbside and drop-off collection.

Responsible units that relied primarily on drop-off collection were those with populations of less than 2,500. Almost 65% of the responsible units with populations less than 5,000 had curbside collection available to at least some of their residents.

Responsible units reported to DNR that they collected a total of 735,610 tons of recyclable materials from residences in 2003, as compared with 763,604 tons in 1999. Almost 53% of recyclable materials collected in 2003 were materials subject to the 1995 bans and 35% was yard waste subject to the 1993 bans. Residential recycling programs collected an average of 267 pounds per capita in 2003 (an increase from 250 pounds per capita in 1995 and a decrease from 289 pounds per capita in 1999), including 141 pounds per capita of the 1995 banned materials (an increase from 140 pounds per capita in 1995 and a decrease from 147 pounds per capita in 1999).

Franklin Associates completed a study of recyclable materials for DNR using 2000 solid waste tonnage data, and revised their data for 2000 in 2003. The study estimated that collected recyclable materials represented a statewide average of 34% of municipal solid waste generated in 2000 (residential and commercial solid waste). As part of its study of 2000 data, Franklin Associates revised data for its earlier 1995 study and estimated that collected recyclable materials also represented a statewide average of 34% of municipal solid waste generated in 1995. The actual recycling rates vary among municipalities.

### **Exceptions, Variances and Waivers to the Effective Program Criteria**

DNR may grant a variance to a specific responsible unit from certain effective program criteria for one or more of the materials subject to the 1995 landfill and incinerations bans. DNR may grant the variance to a specific responsible unit if a cost of selling processed material exceeds certain criteria. A description of the conditions under

which a variance may be granted is included in Appendix VI.

There are certain exceptions to the 1995 bans which apply to effective recycling programs. These include exceptions for materials in regions with a grandfathered incinerator, incinerators that burn solid waste as a supplemental fuel, certain medical waste, unexpected emergency conditions, beneficial reuse of a material within a landfill, contaminated materials and certain plastics (foam polystyrene packaging and plastic containers other than PETE or HDPE) if recycling is not feasible. Appendix IV describes these situations. Issuance of variances, waivers or conditional waiver eliminates for effective recycling programs the requirement to separate those materials, or the prohibition on disposal or incineration of those materials, or both.

In October, 1996, DNR issued a waiver to the collection and disposal requirements for #3 through #7 plastic containers and polystyrene foam packaging, based on a departmental study that indicated that it is not feasible or practical to continue collecting these materials under current market conditions. The waiver will continue until one year after DNR determines that markets are available for these materials.

#### **Pilot Program for Alternative Compliance With Effective Program Requirement**

In 2001 Act 16, a pilot program was created to offer up to nine responsible units an alternative method of complying with the effective recycling program requirements of materials to be recycled by allowing them to select materials to be recycled instead of the materials subject to the 1995 landfill and incineration bans. Participation in the program is voluntary. DNR was required to select three responsible units with a population of less than 5,000, three responsible units with a population of at least 5,000 but less than 25,000, and three responsible units with a population of at least 25,000 to participate in the pilot program.

DNR was required to promulgate administrative rules for the program that do all of the following: (a) set goals for materials to be recycled as a percentage of solid waste generated in the geographic area served by the responsible unit; (b) establish a list of recyclable materials that could be collected for recycling by responsible units, including materials currently subject to the 1995 landfill bans and other recyclable materials; (c) specify a procedure for a responsible unit to identify the materials that it will require to be separated for recycling under its recycling program; and (d) specify a procedure to be used by DNR to determine whether a responsible unit has achieved the recycled materials percentage goals. The pilot program ends on December 31, 2005.

The pilot program was drafted as amendments to administrative rule NR 544, effective February 1, 2003. Applications for participation in the program were due to DNR by March 1, 2003. Responsible unit applicants were required to identify materials to be recycled from at least four of the seven categories listed in Table 2, and at least nine of the materials listed. Applicants were also required to submit: (a) a market plan for any new materials the responsible unit proposed to recycle; (b) the baseline recycling rate (the percent of materials collected for recycling in a base period before implementation of the pilot program); (c) the parties affected by participation in the pilot program (such as providers of collection services, marketing services and solid waste disposal facilities); (d) a description of how the responsible unit would prevent recyclable materials from being disposed of in solid waste generated by other responsible units; and (e) an explanation of how the responsible unit would make any necessary changes to its local recycling ordinance. DNR was authorized to select nine responsible units that best met the program criteria. Responsible units would be required to submit an annual report to DNR that demonstrates compliance with the pilot program requirements.

**Table 2: Pilot Program for Alternative Compliance  
-- Materials That May Be Collected by Participating  
Responsible Units**

Category	Material
Paper	Corrugated paper Newspaper Magazines Office Paper Residential mixed paper
Organics	Food waste Wood pallets
Metal	Aluminum containers Steel and bi-metal containers Scrap metals
Glass	Glass containers
Plastic	Plastic containers with #1 and #2 resins Plastic containers with #3 - #7 resins Plastic film (LDPE) Polystyrene
Special Wastes	Nickel-cadmium batteries Mercury thermostats Dental amalgam Televisions Computers Other electronic appliances Fluorescent/HID lamps Mercury thermometers Antifreeze (automobile & other liquids)
Other	Waste tires Latex paint Carpet Textiles Clean construction & demolition waste (C&D)

The City of Kenosha was the only applicant for the pilot program. DNR approved Kenosha's pilot program on January 20, 2004. Under the pilot, the City no longer collects glass at curbside. Instead, City residents are allowed to drop-off clean wood, concrete, stone, brick and masonry for recycling at designated locations. The City maintains two drop-off sites for City residents who wish to continue to recycle glass. Kenosha has decided to discontinue its participation in the pilot program, continue recycling glass, and switch to single stream collection of recyclables in 2005. Single stream collection means a system where all of the recyclables being collected (such as newspaper, cardboard, plastic, and glass) are mixed together in a collection truck, instead of being sorted by the resident, and are transported to a processing facility to be sorted into marketable commodities.

### **Out-of-State Waste**

1989 Act 335 and 1997 Act 27 established requirements for governmental units located outside Wisconsin to receive approval as effective recycling programs in order to dispose of solid waste in Wisconsin. Several of these provisions were found to be unconstitutional by federal courts. Provisions related to out-of-state waste are described in Appendix VII.

STATE-FUNDED RECYCLING FINANCIAL ASSISTANCE

State law includes several state-funded programs that provide financial assistance to local governments and businesses for solid waste recycling and waste reduction purposes. These programs are funded from the segregated recycling fund. The revenue sources for this fund include a recycling surcharge and a recycling tipping fee. The recycling fund and revenue sources are described at the end of this Chapter. The recycling fund also funds costs of administering these programs and of administering and enforcing many of the recycling regulations discussed in other sections of this paper. Appendix I lists recycling financial assistance program costs and administrative, regulatory and enforcement costs that are funded from the recycling fund.

paid by June 1, 2004, and \$24,500,000 in 2004-05 for calendar year 2005 grants to be paid by June 1, 2005. Annual funding amounts are shown in Table 3.

**Eligible Recipients of Grant Awards**

1989 Act 335 created the municipal and county grant program. To provide start-up funding quickly, grants for the period from July 1, 1990, through December 31, 1991, were allocated through a special expedited process. Grants for subsequent years are allocated based on additional criteria. 1999 Act 9 changed the grant formula for 2000 and subsequent grant years to provide a proportional distribution based on 1999 awards. Table 4 provides a summary of the criteria and allocation method through 2005.

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**Municipal and County Recycling Grant Program**

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The municipal and county recycling grant program was created in 1989 Act 335 to provide financial assistance to responsible units for eligible recycling expenses incurred from July 1, 1990, through calendar year 1999. 1997 Act 27 increased the amount of grant funding for 1999 from the \$17,000,000 specified in 1989 Act 335 to \$24,000,000 and extended the grant program through the year 2000, with \$24,000,000 in grant funding. 1999 Act 9 increased the annual amount of grant funding to \$24,500,000 beginning in 1999 and established that amount as an annual appropriation, with no statutory end date for grant funding.

2003 Act 33 provided appropriations of \$24,500,000 in 2003-04 for calendar year 2004 grants

**Table 3: Municipal and County Recycling Grant Program Funding Levels 1990-91 Through 2004-05**

Calendar Year	Fiscal Year	Amount
July 1, 1990 to Dec 31, 1991	1990-91	\$18,500,000
1992	1991-92	18,500,000
1993	1992-93	23,800,000
1994	1993-94	29,849,200
1995	1994-95	29,200,000
1996	1995-96	29,200,000
1997	1996-97	29,200,000
1998	1997-98	24,000,000
1999	1998-99	24,000,000
2000	1999-00	24,500,000
2001	2000-01	24,500,000
2002	2001-02	24,500,000
2003	2002-03	24,500,000
2004	2003-04	24,500,000
2005	2004-05	<u>24,500,000</u>
TOTAL		\$373,249,200



**Table 4: Municipal and County Recycling Grant Program Award Eligibility and Allocation Method**

Calendar Year	Eligibility Criteria and Allocation
1990 - 2001	<ul style="list-style-type: none"> <li>• Eligible uses of grant funds include expenses for planning, constructing or operating one or more of the components of an effective recycling program, or to comply with the 1993 yard waste ban.</li> </ul>
1990 and 1991	<ul style="list-style-type: none"> <li>• Expedited grants</li> <li>• Grants based on population</li> <li>• 1st installment to all municipalities</li> <li>• 2nd and 3rd installments to responsible units only</li> <li>• No application required</li> <li>• Grants could be used to purchase capital equipment</li> </ul>
1992 – 1993	<ul style="list-style-type: none"> <li>• Only responsible units eligible</li> <li>• Application required by September 1 of prior year</li> <li>• Grant award based on projected eligible expenses</li> <li>• 50% of award paid by January 1 of calendar grant year</li> <li>• Additional 25% paid by July 1 of grant year</li> <li>• Final 25% grant payment based on report of actual expenditures submitted by April 30 of year following grant year</li> </ul>
1992 – 2005	<ul style="list-style-type: none"> <li>• Eligible capital expenses are limited to annual depreciation, or equipment on an hourly use basis, with the exception of the purchase of land.</li> </ul>
1994	<ul style="list-style-type: none"> <li>• Same as for grant years 1992 - 1993, except application required by October 31, 1993</li> </ul>
1995 – 2005	<ul style="list-style-type: none"> <li>• Grants only available to responsible units with DNR-approved effective recycling programs</li> <li>• Application required by October 1 of prior year</li> <li>• Late applications reduced to receive: if submitted after October 1 and by October 10, 95% of the awarded amount; if submitted after October 10 and by October 20, 90%; if submitted after October 20 and by October 30, 75%; and if submitted after October 30, no grant</li> </ul>
1995 – 1999	<ul style="list-style-type: none"> <li>• Grants only available to responsible units with DNR-approved effective recycling programs</li> <li>• 50% of award paid by February 1 of calendar grant year</li> <li>• Additional 25% of award paid by July 1 of grant year</li> <li>• Final 25% grant payment based on report of actual expenditures submitted by April 30 of year following grant year</li> </ul>
2000	<ul style="list-style-type: none"> <li>• Grants only available to responsible units with DNR-approved effective recycling programs that received a grant in 1999</li> </ul>
2000 – 2001 and 2003-2005	<ul style="list-style-type: none"> <li>• 100% of award paid by June 1 of calendar grant year</li> </ul>
2001 - 2005	<ul style="list-style-type: none"> <li>• Grants only available to responsible units with DNR-approved effective recycling programs that received a grant or would have received a grant in 1999</li> </ul>

**Program Implementation**

The grant allocation formula used between 1991 and 1999 was complex, and was based on eligible expenses, "avoided disposal costs," the grant year

and other factors. Avoided disposal costs are those costs that are not incurred by the responsible unit because material is recycled rather than disposed of by landfilling or incineration (such as landfill tipping fees). From 1992 through 2005, the grants

are to be calculated using the formulas shown in Table 5.

For the 14 grant periods to date, Table 6 shows the number of units eligible for awards, total award amount before proration (eligible grant amount under the formula), the amount by which individual grants were prorated, if applicable, and the average per capita award. In 1992 through 1999, all grants were prorated by an equal percentage (after providing the minimum \$100,000 grants to certain counties as described in Table 5). This was because the available appropriation was less than the eligible grant under the formula. Table 7 shows the total state grant award as a percent of the net eligible recycling costs. In 1992,

the first year of the grant formula, grant awards averaged 52% of net eligible recycling costs. The award as a percent of costs has decreased in subsequent years. In 2004, the most recent grant award cycle, grant awards (including basic grants plus recycling efficiency incentive grants) averaged 28.7% of the estimated \$91.9 million in net eligible recycling costs. The award as a percent of net eligible recycling costs varied for individual responsible units.

From 1992 through 1999, initial awards were made at the beginning of the calendar year based on the estimated recycling costs of responsible unit grantees, and were converted into final grant amounts late in the following calendar year after

**Table 5: Municipal and County Recycling Grant Program Allocation Formula by Year**

Year	Formula
1992	66% of the difference between eligible expenses and avoided disposal costs or \$6 per capita, whichever is less.
1993-1999	66% of the difference between eligible expenses and avoided disposal costs or \$8 per capita, whichever is less.
1992-1999	Minimum grant: If the amount calculated is less than 33% of eligible expenses, the grant equals 33% of eligible expenses.
1992-1999	Minimum for certain counties: Counties that are responsible units for at least 75% of the population of the county are guaranteed a minimum grant of \$100,000, if they have eligible expenses equal to or greater than that amount.
1993-1999	Statutory per capita proration: If available funds are insufficient to fund grants under the above schedules, the first step in prorating grants is to ensure that all grantees eligible for \$6 per capita receive this amount before any grantee receives between \$6 and \$8 per capita.
1994-1999	Supplemental grant for volume-based fees: 10% of grant funds will be allocated to responsible units imposing volume-based fees for residential solid waste collection. The total basic plus supplemental grant may not exceed the responsible unit's eligible expenses.
1994-1999	Supplemental grant for multifamily residences: Any funds remaining from the supplemental grant for volume-based fees above may be used for supplemental grants to responsible units that provide for collection of recyclable materials from multifamily residences and that impose volume-based fees for residential solid waste collection. The total basic plus supplemental grants may not exceed the responsible unit's eligible expenses.
1992-1999	DNR administrative rule proration formula: If funds are not available to support the \$6 per capita proration, DNR is directed to develop a process by administrative rule to prorate grant funds. Under administrative rule NR 542, the proration formula maintains the minimum \$100,000 grant for counties that are responsible units representing at least 75% of that county's population, and prorates all other grants by an equal percentage.
2000-2005	Proportional distribution: Provide a grant to responsible units equal to the same percentage of the total grant funding as the responsible unit received or would have received in 1999.

**Table 6: Summary of Municipal and County Recycling Grant Amounts**

Calendar Year	Number of Grantees	Net Eligible Recycling Costs	Formula Award Amount	Actual Award Amount	Proration Percent	Average Per Capita Award Amount
1990/1991 final	1,860 <sup>2</sup>	NA	NA	\$18,500,000	NA	\$3.77
1992 final	870	\$35,588,600	\$19,268,400	18,452,200	95.4%	4.07
1993 final	941	48,520,200	26,276,600	23,741,300	89.8	4.98
1994 final Basic	1,001	56,520,200	29,495,400	26,860,700	90.6	5.44
Supplemental	<u>211<sup>3</sup></u>	<u>NA</u>	<u>NA</u>	<u>2,943,900</u>	<u>NA</u>	<u>10.50</u>
Total	1,001	56,520,200	29,495,400	29,804,500	NA	6.04
1995 final Basic	1,010	61,023,800	30,832,100	26,182,500	84.1	5.21
Supplemental	<u>283<sup>3</sup></u>	<u>NA</u>	<u>NA</u>	<u>2,914,100</u>	<u>NA</u>	<u>6.92</u>
Total	1,010	61,023,800	30,832,100	29,096,600	NA	5.80
1996 final Basic	1,018	66,340,000	33,194,200	26,278,600	78.1	5.18
Supplemental	<u>299<sup>3</sup></u>	<u>NA</u>	<u>NA</u>	<u>2,915,900</u>	<u>NA</u>	<u>5.89</u>
Total	1,018	66,340,000	33,194,200	29,194,500	NA	5.75
1997 final Basic	1,016	68,842,900	34,123,800	26,268,900	75.9	5.13
Supplemental	<u>290<sup>3</sup></u>	<u>NA</u>	<u>NA</u>	<u>2,917,900</u>	<u>NA</u>	<u>5.84</u>
Total	1,016	68,842,900	34,123,800	29,186,800	NA	5.71
1998 final Basic	1,018	71,442,200	34,963,200	21,440,200	59.6	4.15
Supplemental	<u>292<sup>3</sup></u>	<u>NA</u>	<u>NA</u>	<u>2,417,900</u>	<u>NA</u>	<u>4.38</u>
Total	1,018	71,442,200	34,963,200	23,858,100	NA	4.61
1999 final Basic	1,011	73,262,600	35,221,300	21,731,500	59.8	4.18
Supplemental	<u>296<sup>3</sup></u>	<u>NA</u>	<u>NA</u>	<u>2,397,900</u>	<u>NA</u>	<u>4.13</u>
Total	1,011	73,262,600	35,221,300	24,129,400	NA	4.64
2000 final Total	999	76,581,100	NA	24,312,500	NA	4.66
2001 final Total	1,011	84,124,200	NA	24,276,700	NA	4.59
2002 final Total	1,016	82,624,400	NA	24,387,500	NA	4.53
2003 award Basic	1,007	90,253,800	NA	24,423,000	NA	4.61
Efficiency Incentive	<u>110</u>	<u>NA</u>	<u>NA</u>	<u>1,900,000</u>	<u>NA</u>	<u>0.71</u>
Total	1,007	90,253,800	NA	26,323,000	NA	4.91
2004 award Basic	1,014	91,860,200	NA	24,480,500	NA	4.48
Efficiency Incentive	<u>77</u>	<u>NA</u>	<u>NA</u>	<u>1,900,000</u>	<u>NA</u>	<u>0.74</u>
Total	1,014	\$91,860,200	NA	\$26,380,500	NA	\$4.83

NA: Not applicable

<sup>1</sup> For final grants, this equals the lesser of the actual net eligible recycling costs and the net eligible recycling costs that were estimated at the time of the initial grant award.

<sup>2</sup> This equals the 1990 total of 1,849 municipalities plus 11 Indian tribes. Since the first expedited grant installment was made to all municipalities and Indian tribes, and subsequent installments only to responsible units, this is the maximum number of units that received any of the expedited grant installments.

<sup>3</sup> All grantees that received a supplemental grant in 1994 through 1999 or an efficiency incentive grant in 2003 or 2004 first received a basic grant.

actual cost data was submitted to DNR by responsible units. For example, initial 1999 awards were made in February, 1999, based on estimated costs and converted into final grants in November, 2000.

For the expedited grant period, July 1, 1990, through December 31, 1991, grants were allocated by dividing total funding available by the population of eligible local governments. This resulted in a per capita payment of \$3.77 for the

**Table 7: Municipal and County Recycling Grants: Eligible Cost, Grant Award and Award as Percent of Costs (\$ Millions)**

Calendar Year	Net Eligible Recycling Costs	Award Amount	Grant Award as % of Net Eligible Costs
1992	\$35.6	\$18.5	52.0%
1993	48.5	23.7	48.9
1994	56.5	29.8	52.7
1995	61.0	29.1	47.7
1996	66.3	29.2	44.0
1997	68.8	29.2	42.4
1998	71.4	23.9	33.5
1999	73.3	24.1	32.9
2000	76.6	24.3	31.7
2001	84.1	24.3	28.9
2002	82.6	24.3	29.4
2003*	90.3	26.3**	29.1
2004*	91.9	26.4**	28.7

\*Estimated net eligible recycling costs.

\*\*Includes basic grant plus efficiency incentive grant.

eighteen-month period.

### 1999 Awards

The 1999 grant year was the last year in which the grant was calculated according to the formula used between 1991 and 1999. As indicated in Table 5, the 1999 basic grant award was determined by first calculating 66% of the difference between eligible expenses and avoided disposal costs or \$8 per capita, whichever was less. The second step was to compare this amount with 33% of eligible expenses. The responsible unit received the greater of these two amounts. Third, counties that are responsible units for at least 75% of the county's population were guaranteed a minimum annual grant of \$100,000 if they had eligible expenses equal to or greater than that amount. The final step was to prorate the awards to meet available funding.

Ten percent of funds available for 1999 grants (\$2.4 million) were allocated for supplemental grants for volume-based fees. The supplemental grant was calculated by dividing the available funds by the population subject to volume-based fees in the 310 responsible units that imposed volume-based fees for residential solid waste

collection. The population of the responsible unit that was subject to volume-based fees may be smaller than the population of the responsible unit.

The total of basic plus supplemental grant could not exceed the responsible unit's eligible recycling expenses.

As illustrated in Table 6, 1,011 responsible units in the state received grants for the 1999 grant year. The 1,011 responsible units submitted eligible grant requests totaling \$35,221,300. The final basic grants were prorated at 59.8% of the eligible amount and actual awards equaled \$21,731,500. Thirteen counties received the \$100,000 grants and four other counties were eligible for the \$100,000 grant but had projected expenditures less than \$100,000, so they received 100% of their net eligible request. These 17 county grants were not prorated. A total of 296 responsible units also received supplemental grants totaling \$2,397,900. The total final grant award amount was \$24,129,400. The 1999 final grant amount was greater than the \$24,000,000 listed in Table 3 because of the way the grant appropriation was structured. The appropriation allowed expenditures up to a cumulative total of grant funds between 1992-93 and 1998-99. Since the 1999 grant year was the final year of the cumulative appropriation, the program spent grant funds that had been authorized but not spent in prior years. The structure of the local recycling grant appropriation changed in 1999-00.

### 2000 Through 2004 Awards

Under 1999 Act 9, the grant formula changed beginning in grant year 2000. In order to be eligible for a grant in 2000, a responsible unit had to have received financial assistance in 1999 and DNR had to have determined that the responsible unit has an effective recycling program. In 2000, 11 responsible units applied for and did not receive grants because they did not receive a grant in 1999. Beginning in the 2001 grant year and in subsequent years, the requirement that a responsible unit have received a grant in 1999 does not apply.

The 2004 grant amount was calculated as the same percentage of the 2004 appropriation of \$24,500,000 as the responsible unit received or would have received of the 1999 appropriation of \$24,000,000. The actual grant amount was capped by the projected net eligible recycling costs for each responsible unit, and was reduced by any late application penalty.

For the 2004 grant year, Tables 8 through 13 show the distribution of grant awards in several different ways and include the population represented by the responsible units receiving those awards, the net eligible recycling costs, the total grant award, the average per capita grant award and the grant award as a percent of net eligible recycling costs.

Table 8 shows the distribution of 2004 basic plus efficiency incentive grant awards by type of local government unit. While 58.6% of the responsible units were towns, towns represented 17.2% of the population of responsible units that received grant awards and 11.5% of the total grant award dollars. Responsible units that are cities represented 45.9% of the population and 48.7% of the total grant award dollars. While the statewide average award as a percent of the net eligible recycling costs was 28.7% and the average award per capita was \$4.83, these measurements varied by responsible unit.

Most of the responsible unit grant recipients had populations under 2,500. As shown in Table 9, the 732 responsible units with populations under 2,500 represented 72.2% of the responsible units

that received grants, 8.9% of the population served through the grants and 4.6% of the total grant award dollars in 2004. In comparison, five responsible units with populations of 100,000 or greater represented 0.5% of the responsible units, but included 25.0% of the population that received grants and 26.7% of the total grant award dollars in 2004.

Table 10 lists the number and total dollar amount of 2004 recycling grant awards received by the size of the award and includes the population represented within each category. Table 10 shows that 552 grant awards, totaling \$1,216,915, were less than \$5,000 each and were made to responsible units representing a total population of 485,479. These grants represent approximately 8.9% of the population of grantees and 4.6% of the awarded grants. Six grant awards, totaling \$7,713,200, were each \$500,000 or larger and were made to approximately 26.8% of the population served and approximately 29.2% of the grant award dollars.

For the 2004 grant year, the grant award averaged \$4.54 per capita. The award averaged 28.7% of the net eligible recycling costs. Table 11 shows that this varied among responsible units. Approximately 21.0% of the grantees, with 7.2% of the total grantee population, received awards that averaged less than \$2 per capita, with awards averaging 19.7% of total net eligible recycling costs. In comparison, 22 responsible units, with 1.7% of the total grantee population, received awards that averaged \$10 and over per capita, with these awards averaging 31.5% of the net eligible recycling costs of the 22 responsible units.

**Table 8: 2004 Municipal and County Recycling Grants to Responsible Units (RUs) by Governmental Unit Type**

Type	Number of RUs	Population	Net Eligible Recycling Costs	Basic Plus Efficiency Incentive Grant Award	Average Per Capita Grant Award	Average Award as a % of Net Eligible Recycling Costs
Town	594	937,915	\$11,237,875	\$3,044,732	\$3.25	27.1%
Village	234	596,589	12,232,784	2,603,418	4.36	21.9
City	130	2,510,094	50,436,309	12,839,536	5.12	25.5
County	34	1,356,610	16,486,528	7,521,674	5.54	45.6
Indian Tribe	10	20,575	1,041,808	199,171	9.68	19.1
Other	<u>12</u>	<u>43,708</u>	<u>424,918</u>	<u>171,943</u>	<u>3.93</u>	<u>40.5</u>
Total	1,014	5,465,491	\$91,860,222	\$26,380,474	\$4.83	28.7%

**Table 9: 2004 Municipal and County Recycling Grants to Responsible Units (RUs) by Population Size**

Population	Number of RUs	Population	Net Eligible Recycling Costs	Basic Plus Efficiency Incentive Grant Award	Average Per Capita Grant Award	Average Award as a % of Net Eligible Recycling Costs
Less than 2,500	732	753,881	\$11,588,278	\$2,959,514	\$3.93	25.5%
2,500 to 4,999	118	413,146	6,936,260	1,637,287	3.96	23.6
5,000 to 9,999	66	468,446	7,915,410	2,134,663	4.56	27.0
10,000 to 24,999	59	917,118	16,234,596	4,504,100	4.91	27.7
25,000 to 49,999	23	814,907	12,599,456	4,227,145	5.19	33.6
50,000 to 99,999	11	732,683	10,909,888	3,872,276	5.29	35.5
100,000 and over	<u>5</u>	<u>1,365,310</u>	<u>25,676,334</u>	<u>7,045,489</u>	<u>5.16</u>	<u>27.4</u>
Total	1,014	5,465,491	\$91,860,222	\$26,380,474	\$4.83	28.7%

**Table 10: 2004 Municipal and County Recycling Grants to Responsible Units (RUs) by Amount of Award**

Award Amount	Number of RUs	Population	Net Eligible Recycling Costs	Basic Plus Efficiency Incentive Grant Award	Average Per Capita Grant Award	Average Award as a % of Net Eligible Recycling Costs
\$1-4,999	552	485,479	\$4,808,527	\$1,216,915	\$2.51	25.3%
5,000-9,999	169	327,221	4,540,404	1,222,233	3.74	26.9
10,000-24,999	149	556,918	10,248,865	2,289,202	4.11	22.3
25,000-49,999	52	398,882	7,808,342	1,792,975	4.50	23.0
50,000-99,999	36	550,052	10,416,096	2,667,410	4.85	25.6
100,000-499,999	50	1,683,743	27,445,635	9,478,545	5.63	34.5
500,000 and over	<u>6</u>	<u>1,463,196</u>	<u>26,592,353</u>	<u>7,713,194</u>	<u>5.27</u>	<u>29.0</u>
Total	1,014	5,465,491	\$91,860,222	\$26,380,474	\$4.83	28.7%

Table 12 shows the grant award as a percent of the net eligible recycling costs. The award as a percent of net eligible recycling costs varied widely, ranging from 1.69% to 100% of net eligible recycling costs. In the group of 261 responsible units that had awards that averaged less than 20% of net eligible recycling costs, the per capita award ranged from \$0.21 to over \$42. In the group of 31 responsible units that had awards that averaged 80% to 100% of net eligible costs, the per capita award ranged from \$0.35 to over \$22.

Table 13 lists the 56 responsible units with grant awards of \$100,000 or greater for the 2004 grant year. These responsible units, all of which are cities or counties, except for two villages, include 57.6% of the total grantee population and 65.2% of the

total grant awards. The grant award for the 56 responsible units as a percent of net eligible recycling costs varied from 13% to 100%, depending on the 1999 grant amount, estimated net eligible costs and whether the responsible unit received an efficiency incentive grant.

#### Administration of Grants

The grant program is administered by DNR in the Bureau of Community Financial Assistance in the Customer Assistance and External Relations (CAER) Division central office. In 2004-05, the central office is authorized 2.0 segregated (SEG) recycling fund positions to administer the municipal and county recycling grant program, the waste reduction and recycling demonstration grant

**Table 11: 2004 Municipal and County Recycling Grants to Responsible Units (RUs) by Award Per Capita**

Award Per Capita	Number of RUs	Population	Net Eligible Recycling Costs	Basic Plus Efficiency Incentive Grant Award	Average Per Capita Grant Award	Average Award as a % of Net Eligible Recycling Costs
\$0.01 to \$1.99	213	391,285	\$2,603,817	\$511,602	\$1.31	19.7%
2.00 to 3.99	327	924,280	12,037,235	2,865,709	3.10	23.8
4.00 to 5.99	320	3,407,963	62,204,618	17,075,571	5.01	27.5
6.00 to 7.99	95	527,427	8,392,446	3,649,049	6.92	43.5
8.00 to 9.99	37	121,582	2,706,384	1,043,978	8.59	38.6
10.00 and over	<u>22</u>	<u>92,954</u>	<u>3,915,722</u>	<u>1,234,565</u>	<u>13.28</u>	<u>31.5</u>
Total	1,014	5,465,491	\$91,860,222	\$26,380,474	\$4.83	28.7%

**Table 12: 2004 Municipal and County Recycling Grants to Responsible Units (RUs) by Award as a Percent of Net Eligible Recycling Costs**

Award as % of Net Eligible Recycling Costs	Number of RUs	Population	Net Eligible Recycling Costs	Basic Plus Efficiency Incentive Grant Award	Average Per Capita Grant Award	Average Award as a % of Net Eligible Recycling Costs
0.1% to 19.99%	261	1,174,400	\$30,579,576	\$5,004,111	\$4.26	16.4%
20 to 39.99	521	2,939,030	48,650,622	13,953,784	4.75	28.7
40 to 59.99	152	757,823	7,781,077	3,721,147	4.91	47.8
60 to 79.99	49	437,556	3,545,285	2,467,346	5.64	69.6
80 to 100	<u>31</u>	<u>156,682</u>	<u>1,303,661</u>	<u>1,234,085</u>	<u>7.88</u>	<u>94.7</u>
Total	1,014	5,465,491	\$91,860,221	\$26,380,473	\$4.83	28.7%

program and the recycling efficiency incentive grant program.

grant. No responsible units were disqualified from grant eligibility as a result of an audit.

### Audit of Grants and Responsible Units

Prior to 2001-02, the statutes directed DNR to annually audit at least 5% of the recipients of the grants to ensure that funded programs and activities meet established requirements. DNR may withhold all or part of a grant if it determines that either: (a) the responsible unit has not maintained an effective recycling program; or (b) the responsible unit spent all or part of a previous grant for ineligible costs. After final grants were determined, DNR audited 108 grants totaling \$24.5 million received by 44 recipients of 1992 through 1999 grants. DNR audits resulted in some adjustments to eligible expense totals, but audited responsible units generally received their entire

In 2001 Act 16, the audit requirement was deleted and replaced with a requirement that DNR annually review the effective recycling programs of at least 5% of the responsible unit grant recipients to ensure that programs and activities funded by responsible unit grants meet the requirements of the program. Based on 1,014 responsible unit grant recipients, DNR would need to review at least 51 programs annually to comply with the annual review requirement. In each of 2000-01 (before the requirement went into effect) and 2001-02 (when the requirement went into effect), DNR reviewed over 100 programs, including at least 20 programs per region per year. In each of 2002-03 and 2003-04, DNR reviewed at least 150 programs. This represented over 10% of responsible units. DNR

**Table 13: 2004 Municipal and County Recycling Grants to Responsible Units (RUs) - Largest 56 Grant Awards Includes All Awards of \$100,000 or Greater**

Municipality	Population	Net Eligible Recycling Costs	Basic Plus Efficiency Incentive Grant Award	Average Per Capita Grant Award	Average Award as a % of Net Eligible Recycling Costs
Milwaukee, City of*	595,245	\$10,247,431	\$3,252,931	\$5.46	31.7%
Waukesha County*	266,041	4,548,879	1,332,738	5.01	29.3
Madison, City of*	215,697	5,899,769	1,122,139	5.20	19.0
Outagamie County*	185,094	1,430,674	810,262	4.38	56.6
Eau Claire County*	97,886	916,020	667,706	6.82	72.9
Green Bay, City of	103,233	3,549,580	527,418	5.11	14.9
Kenosha, City of	92,078	1,110,639	469,481	5.10	42.3
Racine, City of*	81,111	1,695,769	443,571	5.47	26.2
West Allis, City of*	60,923	1,084,652	354,510	5.82	32.7
Oshkosh, City of*	64,327	1,019,940	333,878	5.19	32.7
Chippewa County*	52,412	528,139	301,455	5.75	57.1
Manitowoc, City of*	34,520	464,830	293,802	8.51	63.2
Pierce County*	38,129	780,745	274,691	7.20	35.2
St. Croix County*	61,657	442,501	274,543	4.45	62.0
Neenah, City of*	25,058	1,234,352	272,395	10.87	22.1
Janesville, City of	61,110	667,815	271,982	4.45	40.7
Portage County	59,063	1,356,984	264,638	4.48	19.5
Wauwatosa, City of*	46,802	1,167,904	260,463	5.57	22.3
La Crosse, City of*	51,513	649,487	256,063	4.97	39.4
Oconto County	37,279	327,617	255,333	6.85	77.9
Waupaca County*	42,481	522,381	241,930	5.70	46.3
Sheboygan, City of	50,603	1,437,942	234,448	4.63	16.3
Polk County*	43,126	324,422	223,619	5.19	68.9
Dunn County*	38,693	527,220	218,287	5.64	41.4
Monroe County*	40,956	490,000	202,799	4.95	41.4
Vernon County*	29,059	546,216	195,566	6.73	35.8
Columbia County*	39,252	628,942	194,739	4.96	31.0
Beloit, City of*	35,826	695,830	193,164	5.39	27.8
Fond Du Lac, City of	42,856	926,486	188,775	4.40	20.4
Wausau, City of	38,848	637,917	178,084	4.58	27.9
Greenfield, City of*	36,000	525,016	175,853	4.88	33.5
Vilas County	21,658	442,504	141,589	6.54	32.0
Fitchburg, City of*	21,595	445,450	141,126	6.54	31.7
West Bend, City of	29,001	554,016	130,087	4.49	23.5
Watertown, City of	22,585	961,876	128,900	5.71	13.4
Richland County*	16,404	154,759	125,674	7.66	81.2
Oneida County*	30,747	166,245	125,167	4.07	75.3
Buffalo County	11,724	182,057	123,649	10.55	67.9
Allouez, Village of	15,458	600,572	123,290	7.98	20.5
Superior, City of	27,224	440,336	121,524	4.46	27.6



**Table 13: 2004 Municipal and County Recycling Grants to Responsible Units (RUs) - Largest 56 Grant Awards Includes All Awards of \$100,000 or Greater (continued)**

Municipality	Population	Net Eligible Recycling Costs	Basic Plus Efficiency Incentive Grant Award	Average Per Capita Grant Award	Average Award as a % of Net Eligible Recycling Costs
Adams County*	18,606	\$152,845	\$120,856	\$6.50	79.1%
Burnett County*	15,735	118,418	119,503	7.59	100.9
De Pere, City of	21,529	652,000	118,500	5.50	18.2
Menomonee Falls, Village of*	33,489	339,575	116,570	3.48	34.3
Washburn County*	16,565	124,817	114,520	6.91	91.8
Two Rivers, City of*	12,573	316,181	112,758	8.97	35.7
Iron County	6,936	112,249	111,788	16.12	99.6
Oak Creek, City of	30,856	503,332	110,472	3.58	22.0
South Milwaukee, City of	21,374	436,185	105,552	4.94	24.2
Waushara County	23,811	156,656	104,240	4.38	66.5
Jackson County	19,073	107,100	102,461	5.37	95.7
Door County	28,819	258,845	102,084	3.54	39.4
Forest County	10,155	105,752	102,084	10.05	96.5
Menominee County	4,593	120,119	102,084	22.23	85.0
Florence County	5,191	100,000	100,000	19.26	100.0
Marquette County	14,360	100,000	100,000	6.96	100.0
Basic Plus REI Grant \$100,000 or Greater	3,146,939	54,037,988	17,191,740	5.46	31.8
Total – 56 Grants			\$17,191,740	\$5.46	31.8%
Statewide Total – 1,014 Grants	5,465,491	\$91,860,232	\$26,380,474	\$4.83	28.7%
56 Largest Grants % to Total	57.6%	58.8%	65.2%	NA	NA

\*Municipality received a recycling efficiency incentive grant (REI). The 56 municipalities received \$1,742,607 of \$1,900,000 in REI grants awarded in 2003-04.

selected programs for review that had prior problems with the program, had provided incomplete annual report information, had received complaints from residents, had a lower annual recycling rate than the per capita goals, or had an exceptionally good program that could provide lessons about how to operate a successful program. In addition, in 2003-04, half of the programs reviewed received a recycling efficiency incentive grant in addition to the basic grant. DNR regional staff made site visits to review programs and worked with responsible units to correct any observed program deficiencies. DNR has not

placed any responsible units on probation as a result of the reviews. However, staff followed up on non-compliance issues with several responsible units, and all of the issues were addressed by responsible units to the satisfaction of DNR staff within the specified timeframes.

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### Recycling Efficiency Incentive Grant Program

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In 2001 Act 16, a recycling efficiency incentive

grant program was created and the program is appropriated \$1,900,000 SEG annually beginning in 2002-03. A recycling efficiency incentive grant plus a municipal and county recycling grant may not exceed the net eligible costs that the responsible unit incurred in the year two years before the year for which the efficiency incentive grant is made. For example, a recycling efficiency incentive grant awarded in 2004-05 for calendar year 2005, may not exceed the total net eligible costs from calendar year 2003 and reported to DNR in the spring of 2004.

The statutes direct DNR to promulgate administrative rules for the program but do not specify other eligibility criteria or program requirements and do not define "efficiency incentive." Responsible units may choose whether to apply for a grant under the program. DNR promulgated administrative rule chapter NR 549, effective April 1, 2003, to administer the recycling efficiency incentive grant program.

Under NR 549, applications for the first grant cycle in 2002-03 (calendar year 2003) were due to DNR by April 15, 2003, and DNR awarded and distributed the \$1,900,000 in available funding at the end of June, 2003. Under NR 549, responsible unit applicants were authorized to claim the following types of efficiencies for calendar year 2003 grant funds:

1. The responsible unit was formed by the consolidation of two or more prior responsible units before March 31, 2003.

2. A county has formally been designated by cities, towns, and villages within its jurisdiction to serve as the recycling responsible unit before March 31, 2003. A county is eligible for a grant under this criteria only once.

3. The responsible unit entered into a cooperative agreement before March 31, 2003, with at least one other responsible unit for: (a) direct recycling services by or for the responsible unit; or

- (b) private vendor services to be shared by the participating responsible units.

Applications for the second grant cycle in 2003-04 for calendar year 2004 were due by October 30, 2003, and DNR distributed the \$1,900,000 in available funding at the end of June, 2004. For calendar year 2004 grants, applicants were authorized to claim the following measures of efficiency:

1. Formal consolidation agreements of two or more responsible units entered into between April 1, 2003, and October 30, 2003, and in place no later than January 1, 2004.

2. New written cooperative agreements for direct recycling services or shared private vendor services entered into between April 1, 2003, and October 30, 2003, and in place no later than January 1, 2004.

In 2004-05 and subsequent years, applications must be submitted to DNR by October 30 before the grant year, and shall claim that an efficiency was implemented 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. For example, applications for 2004-05 funding for calendar year 2005 were due by October 30, 2004, and must claim that a recycling efficiency was implemented between October 31, 2003, and October 30, 2004, and was in place before April 30, 2004. The 2004-05 recycling efficiency incentive grants will be awarded in May, 2005, at the same time as basic grants are awarded. Efficiencies could include formal consolidation agreements of two or more responsible units or new written cooperative agreements for direct recycling services or shared private vendor services.

Under the NR 549 recycling efficiency incentive grant administrative rule, eligible costs include the grant applicant's costs of operating the recycling

program minus the proceeds from the sale of recycled material, that are reasonable and necessary for planning, constructing or operating a recycling program.

If responsible unit applicants claim that they are implementing a recycling efficiency through a cooperative agreement for joint services or private vendor services, the agreement must be entered into with the expectation of either a reduction in eligible costs for the year or an increase in the quality or scope of the recycling program for the year in which the responsible unit attributes the efficiency measures. The agreement must 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; or (d) educational efforts about waste reduction, reuse and recycling.

Under NR 549, DNR awards a grant to each responsible unit that submits a complete application that is approved by the Department. The grant amount is determined as follows: (a) DNR determines a per capita grant amount by dividing the appropriated grant funds by the sum of the population of all responsible units with approved applications; (b) the per capita amount is multiplied by the population of each eligible responsible unit to determine the grant amount; (c) DNR limits the grant amount so that the grant plus the municipal and county recycling grant does not exceed the net eligible costs that the responsible unit incurred in the year two years before the year for which the efficiency incentive grant is made; and (d) DNR distributes all funds in a grant year to eligible applicants until all eligible applicants have received their statutory maximum awards.

In 2002-03, DNR awarded \$1,900,000 SEG to 110 responsible units with a total population of 2,702,566. Grant distribution included: (a) \$884,320 to 29 counties with a population of 1,274,877 (counties are only eligible for a grant in the year that they were consolidated into county responsible unit status, or in the first year of the

program if they had county RU status before that time); (b) \$973,892 to 64 responsible units with a population of 1,366,008, where the responsible units demonstrated an efficiency through implementation of a cooperative agreement; and (c) \$41,788 to 17 responsible units with a population of 61,681 for efficiencies demonstrated through a consolidation of two or more responsible units. The average per capita grant amount was \$0.71, after the grants for seven responsible units were capped at a lower per capita amount so that the grant would not exceed the net eligible costs that the responsible unit incurred in 2001 (the year two years before the year for which the efficiency incentive grant was made).

In 2003-04, DNR awarded \$1,900,000 SEG for recycling efficiency incentive grants to 77 responsible units with a total population of 2,557,171. Grant distribution included: (a) \$1,835,282 to 74 responsible units with a population of 2,455,406 where the responsible units demonstrated an efficiency through implementation of a cooperative agreement; and (c) \$64,718 to three responsible units with a population of 101,765 for efficiencies demonstrated through a consolidation of two or more responsible units. The average per capita grant amount was \$0.74, after the grants for two responsible units were capped at a lower per capita amount so that the grant would not exceed the net eligible costs that the responsible unit incurred in 2002 (the year two years before the year for which the efficiency incentive grant was made).

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### **Recycling Market Development Board**

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Recycling market development programs were administered by the former Department of Development (now Commerce) from 1991-92 through 1994-95. The Department spent \$15.1 million on recycling market development grants, loans, technology assistance and rebates for qualified recycling equipment.

In 1993-94, the Recycling Market Development Board (RMDB) was created to promote the development of markets for recovered materials and maximize the marketability of these materials. The RMDB took over many of the recycling market development programs formerly administered by the Department of Development. In October, 1997, the Board was attached to the Department of Commerce, for certain limited administrative purposes. 1999 Act 9 made several modifications to the structure and duties of the Board including placing the RMDB directly within the Department of Commerce reducing the Board's quasi-independent status.

In 2003 Act 1, \$3,800,000 was transferred from the RMDB's program revenue loan repayments appropriation to the state's general fund. In 2003 Act 33, the RMDB was repealed, and Commerce was directed to deposit repayments of prior loans made under the program into the general fund. This will result in a transfer of approximately \$2,000,000 in additional loan repayments to the general fund in the 2003-05 biennium.

Between 1993 and 2003, the RMDB administered several recycling market development programs that provided financial assistance to governmental entities or business entities to assist waste generators in the marketing of recovered materials or to develop markets for recovered materials. The cumulative amount of financial assistance awarded for each program is shown in Table 14, and includes funds provided from the recycling fund and from repayments of previous loans. Of the \$26.6 million awarded by the Board, the largest use of funds was for the Board's recycling loan program. Almost \$13.1 million, or 49% of awarded funds, was approved for recycling loans.

**Table 14: Recycling Market Development Board: Financial Assistance Awarded by Category as of August, 2003 (end date of program)**

Category	Amount Awarded	Percent
Loans	\$13,065,212	49.1%
Rebates to Manufacturers	4,788,390	18.0
Grants	2,303,842	8.6
Technical Assistance	2,028,979	7.6
Research	1,638,994	6.2
Administrative Services	1,426,142	5.4
Education	<u>1,371,833</u>	<u>5.1</u>
TOTAL	\$26,623,392	100.0%

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### **Waste Reduction and Recycling Demonstration Grant Program**

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DNR administers the waste reduction and recycling demonstration grant program to provide cost-share grants to municipalities, public entities, businesses and nonprofit organizations for projects which implement innovative waste reduction and recycling activities. DNR is also authorized to issue requests for proposals for projects that include waste reduction and recycling activities eligible for funding under this program. Projects funded under a request for proposal do not have to be innovative. DNR requests for proposals may also emphasize community-wide waste reduction efforts. Positions allocated to DNR for the municipal and county recycling grants program also manage the waste reduction and recycling demonstration grant program.

#### **Criteria**

DNR is directed to consider the following criteria when deciding eligibility and determining the amount of the demonstration grant: (a) the weight or volume of solid waste to be diverted from disposal; (b) the types of waste reduction and recycling activities to be implemented; (c) existing waste reduction and recycling activities; (d) existing and anticipated solid waste management needs; (e) the value of implementation of the waste

reduction or recycling activities as a demonstration project; and (f) the implementation of innovative technologies, including the application or implementation of innovative technologies in a project which employs a proven technology. A grant may not exceed 50% of the project's actual eligible costs, or 75% of the actual eligible costs of a community-wide waste reduction project, or \$150,000, whichever is less.

In 1997 Act 237, DNR was directed to provide grants from the program to the following organizations, without being subject to standard application procedures or grant funding limitations: (a) \$100,000 to the Wheelchair Recycling Project for refurbishing used wheelchairs and other mobility devices and returning them to use by persons who otherwise would not have access to needed or appropriate equipment; and (b) \$409,800 to the Department of Corrections for the purpose of refurbishing and recycling used computers.

In 1999 Act 9, DNR was directed to provide additional grants to the Wheelchair Recycling Project totaling \$175,000 in 1999-00 and \$150,000 in 2000-01. Further, the Department of Corrections computer recycling program was funded directly beginning in 1999-01 rather than through the waste reduction and recycling demonstration grant program, and is described in a later section.

### **Requests for Proposals**

For grant cycles since 1995, DNR has requested proposals to target several areas, including: (a) increasing recycling of construction and demolition debris; (b) expanding appropriate recycling of special wastes and problem materials such as food waste, computers and other consumer electronics, thermostats, switches, lamps and other materials containing mercury, paint, textiles, carpeting and books; (c) establishing local partnerships to reduce and/or reuse solid waste generated at area industries, institutions and retail and commercial businesses; (d) developing and implementing community-wide waste reduction programs that

reduce the amount of waste being produced, reduce the amount of materials used in manufacturing or extend the life of materials; and (e) implementing systems by product manufacturers and/or retailers to accept return of used consumer products and/or packaging for reuse or recycling. The amount awarded for demonstration grants under a request for proposals may not exceed 50% of the total amount available for demonstration grants in that fiscal biennium.

### **Grant Awards**

The program has an available unencumbered balance from prior year appropriations of \$1,256,600 in 2004-05 and is appropriated \$500,000 in 2004-05 from the SEG recycling fund. DNR may not award grants to any applicant that cumulatively total more than \$250,000 (other than the wheelchair recycling grants). The program has made 174 grants totaling \$11.8 million. DNR requested proposals in grant cycles beginning in 1997. Table 15 lists the funded recycling demonstration projects by the category of project from 1991 through December, 2004. The largest categories of grant projects are plastic, with \$1.95 million in grants, representing 16.5% of grant awards, and industrial wastes with \$1.87 million in grants, representing 15.8% of grant awards.

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### **Segregated Recycling Fund**

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The majority of state solid waste recycling and waste reduction programs are funded from the segregated recycling fund, which is a separate, nonlapsable trust fund created in 1989. This fund receives revenues from a recycling surcharge established in 1991 and a recycling tipping fee effective January 1, 2000.

Table 16 shows actual revenues and expenditures for the recycling fund for 2003-04 and estimated figures for 2004-05. An unappropriated

**Table 15: Waste Reduction and Recycling Demonstration Grant Awards as of December, 2004**

Category	Projects	Funding	Percent of Funding
Plastic	20	\$1,955,630	16.5%
Industrial Waste	28	1,871,101	15.8
Paper	17	1,379,564	11.7
Construction and Demolition	22	1,369,600	11.6
Collection and Marketing Efficiency	24	827,657	7.0
Hazardous Waste	12	650,556	5.5
Composting	8	539,314	4.6
Food and Other Organics	8	493,560	4.2
Waste Reduction	9	436,376	3.7
Glass	5	358,835	3.0
Other Wastes *	<u>21</u>	<u>1,941,357</u>	<u>16.4</u>
<b>TOTAL</b>	<b>174</b>	<b>\$11,823,550</b>	<b>100.0%</b>

\* Some examples of other wastes are textiles, computers, electronics, oil filters, wheelchairs, nonrecyclable paper or plastic, and medical waste.

balance of approximately \$6.9 million can be expected on June 30, 2005. Expenditures from the recycling fund for 2003-04 totaled \$29.7 million. In addition, \$7,273,900 was transferred from the recycling fund to the general fund under 2003 Act 33. Net appropriations from the recycling fund for 2004-05 total \$30.3 million, and an additional \$6,836,600 will be transferred from the recycling fund to the general fund. For a complete listing of individual appropriations from the segregated recycling fund, see Appendix I.

The recycling fund condition in Table 16 shows recycling surcharge collections of \$25.5 million for 2003-04. However, the 2003-04 amount contains \$6.7 million in corporate income and franchise tax estimated payments that were mistakenly left in 2003-04 recycling surcharge collections. This amount will be returned to the general fund as corporate income and franchise taxes in 2004-05. Actual surcharge collections were \$18.8 million. The adjustment is reflected in estimated recycling surcharge collections for 2004-05 of \$11.8 million. The current (December, 2004) estimate of 2004-05 surcharge collections of \$18.5 million is reduced by the \$6.7 million that will be returned to the general

**Table 16: Recycling Fund Condition – 2003-05 (\$ in Millions)**

	2003-04 Actual	2004-05 Estimated
<b>Revenues</b>		
Opening Balance -- July 1	\$3.6	\$10.4
Recycling Surcharge	25.5	11.8
Recycling Tipping Fee	19.9	21.7
Interest Income and Other	<u>0.1</u>	<u>0.2</u>
<b>Total Revenue</b>	<b>\$45.6</b>	<b>\$33.6</b>
<b>Total Available</b>	<b>\$49.2</b>	<b>\$44.1</b>
Program Expenditures	-\$29.7	-30.3
Encumbrances and Continuing Balances	-1.7	-0.0
<b>Transfer to the General Fund Required by Act 2003 Act 33</b>	<b><u>- 7.3</u></b>	<b><u>-6.8</u></b>
<b>Closing Balance -- June 30</b>	<b>\$10.4</b>	<b>\$6.9</b>

fund.

Appendix II shows the cumulative recycling fund revenues and expenditures from 1990-91 through 2003-04 (including year-end encumbrances in 2003-04). Of the \$532.0 million in recycling fund revenues during the 14 years, the recycling surcharge provided \$428.9 million, or 80.7% of the total revenue. A transfer from the general fund in 1990-91 provided \$29.7 million, or 5.6% of the total revenue. Recycling fund expenditures during 1990-91 through 2003-04 have totaled \$520.3 million. The largest cumulative expenditure category is the DNR municipal and county recycling grant program with \$347.6 million, or two-thirds of total expenditures. The recycling efficiency incentive grant program that was created effective 2002-03, had \$3.8 million of expenditures, or 0.7% of total cumulative expenditures. The two local recycling grant programs had combined total expenditures of \$351.4 million, which was 67.5% of total expenditures as of 2003-04.

The second largest expenditure was from transfers to the general fund and conservation fund in 1991-92, 1995-96, 1997-98, 1999-00, 2000-01, 2001-02 and 2003-04 that totaled \$69.1 million, (\$1 million of this was transferred to the conservation fund), or 13.3% of the total expenditures. Under 2003 Act 33, \$7,273,900 was transferred to the general fund in 2003-04 and \$6,836,600 will be transferred from the recycling fund to the general fund in 2004-05. In addition to the transfers from the recycling fund to the general fund, 2001 Act 108 authorized, and the Joint Committee on Finance approved a plan on October 9, 2002, to transfer \$1,000,000 from the recycling fund to the conservation fund in 2002-03 for purposes of activities related to chronic wasting disease management in deer.

Recycling market development financial assistance programs administered by the Department of Development prior to June 30, 1995, and the Recycling Market Development Board through June 30, 2003, included \$36.9 million in expenditures, or 7.1% of total expenditures.

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### **Recycling Surcharge**

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The state recycling surcharge was first imposed on businesses for tax years ending after April 1, 1991, and it remained in effect until April, 1999. From tax year 1991 until tax year 1997, the surcharge was equal to 5.5% of the gross tax liability of corporations. For tax year 1998, the surcharge rate was reduced to 2.75% of the gross tax liability of corporations. There was a minimum payment of \$25 and a maximum payment of \$9,800. Corporations (including S corporations) with less than \$4,000 in total receipts were excluded from the recycling surcharge.

Nonfarm sole proprietorships, partnerships, limited liability companies (LLCs) and S corporations were also subject to a recycling surcharge of 0.4345% of net business income from

tax year 1991 to tax year 1997. The rate was reduced to 0.2173%, beginning in tax year 1998. The minimum payment was \$25 and the maximum was \$9,800. Members of the clergy and noncorporate farms with less than \$1,000 of net farm profits were also exempt from the surcharge. Noncorporate farms that were subject to the surcharge paid a flat amount of \$25. The rates of 0.4345% and then 0.2173% applied to the net business income sole proprietorships, partnerships, S corporations and LLCs taxed as partnerships were equivalent to the 5.5% and 2.75% rates, respectively, that applied to the gross tax liability of corporations. For corporations, gross tax liability is determined by applying the corporate tax rate of 7.9% to net income. When the corporate tax rate of 7.9% is multiplied by the surcharge rates of 5.5% and 2.75%, the resulting tax rates are 0.4345% and 0.2173%, respectively.

The recycling surcharge was eliminated for all businesses beginning with tax years ending after April, 1999. Consequently, taxpayers were generally not subject to the recycling surcharge for tax year 1999. However, 1999 Wisconsin Act 9 created a recycling surcharge on businesses, beginning in tax year 2000. The recycling surcharge is 3% of gross tax liability for corporations or 0.2% of net business income for nonfarm sole proprietorships, partnerships, limited liability companies taxable as partnerships and S corporations. There is a minimum payment of \$25 and a maximum payment of \$9,800. Farms and other businesses with less than \$4,000,000 in gross receipts are excluded from paying the surcharge. Noncorporate farms (sole proprietorships, LLCs taxable as partnerships and partnerships) with gross receipts in excess of \$4,000,000 pay the \$25 minimum payment. Farms organized as regular C and S corporations that are subject to the surcharge determine surcharge liabilities in the same manner as C and S corporations.

The Department of Revenue is authorized to administer the surcharge under provisions governing administration of the individual and corporate income and franchise taxes, including

provisions relating to audits and assessments, claims for refund, statutes of limitations, IRS adjustments, confidentiality, appeals, collections and set offs for debts owed other state agencies.

Table 17 shows annual recycling surcharge collections from 1991-92 through 2003-04. Total collections during this time period were \$428.9 million. The 1999-00 collections of \$9.6 million represent residual payments under the former surcharge in tax years 1998 and earlier, and estimated payments under the new surcharge for tax year 2000.

**Table 17: Recycling Surcharge Collections (\$ in Millions)**

Fiscal Year	Amount
1991-92	\$32.1
1992-93	36.8
1993-94	47.6*
1994-95	40.6
1995-96	41.6
1996-97	51.5
1997-98	53.6
1998-99	35.8
1999-00	9.6
2000-01	26.3
2001-02	12.5
2002-03	15.4
2003-04	<u>25.5</u>
Total	\$428.9

\*Includes one-time collections of an estimated \$7.9 million due to estimated payments.

Table 17 shows a total of \$25.5 million in recycling surcharge collections for 2003-04. However, the 2003-04 amount contains \$6.7 million in corporate income and franchise tax estimated payments that were left in 2003-04 in recycling surcharge collections. This amount will be returned to the general fund as corporate income and franchise taxes in 2004-05. As a result, actual recycling surcharge collections in 2003-04 were really \$18.8 million.

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## Recycling Tipping Fee

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In 1999 Act 9, a recycling tipping fee was created as a revenue source to the recycling fund. The fee equaled 30¢ per ton on all solid waste except high-volume industrial waste disposed of in landfills in Wisconsin. The tipping fee is effective for waste disposed of in landfills on or after January 1, 2000 and is assessed quarterly. Waste, other than high-volume industrial waste, that is subject to other tipping fees that existed prior to enactment of 1999 Act 9, is subject to the recycling tipping fees. In 2001 Act 16, the recycling tipping fee was increased from 30¢ to \$3 per ton, effective with waste disposed of on or after January 1, 2002. Further information about landfill tipping fees deposited in the environmental fund can be found in the Legislative Fiscal Bureau informational paper entitled "Contaminated Land and Brownfields Cleanup Programs."

Solid waste is excluded from the recycling tipping fee if it is disposed of by a nonprofit organization that provides services and programs for people with disabilities or that primarily serves low-income persons and that derives a portion of its income from the operation of recycling and reuse programs, if that waste is not commingled with waste that is subject to the tipping fee. State recycling tipping fees paid by municipalities are exempt from the budget test under the expenditure restraint program.

Under 2003 Act 33, also exempt from the recycling tipping fee are all sludges, river sediments, or dredged materials that contain PCBs (polychlorinated biphenyls) that are removed in connection with the remediation of contaminated sediments in a navigable water of the state, if the total quantity of the removed materials, either in an individual phase or in combination with other planned phases of remediation, will exceed 200,000 cubic yards. It can be anticipated that this



exemption would apply to sediments dredged from the Fox River cleanup project, and potentially other large harbor contaminated sediment cleanups in the future. The recycling fund will lose revenues associated with an expected 362,500 tons annually of dredged contaminated sediment from the Fox River cleanup project that would currently be subject to state recycling tipping fees for dredging done in calendar year 2005 (2005-06), and annually thereafter for a 10-year period.

Table 18 shows annual recycling tipping fee collections from 1999-00 through 2003-04. Total collections during this time period were \$50.7 million. The 2001-02 recycling tipping fee collections include three quarters of revenue at the former 30¢ per ton rate and one quarter of revenue at the \$3 per ton that went into effect on January 1,

**Table 18: Recycling Tipping Fee Collections (\$ Millions)**

Fiscal Year	Amount
1999-00	\$0.4
2000-01	2.0
2001-02	6.0
2002-03	22.4
2003-04	<u>19.9</u>
Total	\$50.7

2002. The 2002-03 revenue equals approximately four and one half quarters of annual revenue, due to the timing of fee assessments and collections during the fiscal year. Recycling tipping fee revenues are estimated at \$21.7 million in 2004-05 under the \$3 fee.

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**Council on Recycling**

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The Council on Recycling was created in 1989 as a part-time advisory body appointed by the Governor to promote the efficient and prompt implementation of state programs relating to solid waste reduction, recovery and recycling and to advise and assist state and local agencies in the coordination of these programs and the exchange of information related to these activities. There are seven Council members serving business, government and the public-at-large. Each member serves a four-year term. The Council is staffed by DNR.

In addition to the general functions, the Council is directed to: (a) advise state agencies concerning the promulgation of administrative rules related to solid waste reduction, recovery and recycling; (b) advise DNR and the University of Wisconsin system concerning educational efforts and research related to these activities; (c) in cooperation with the packaging industry, recommend standards for recyclable packaging; (d) develop recommendations, advise and assist local officials and the automotive service industry to promote the recycling of used oil filters; (e) advise DNR concerning the development of a statewide plan for public service announcements that would provide information about recycling programs and the benefits of recycling; and (f) advise the Governor and the Legislature.

As directed by 1997 Act 243, the Council on Recycling submitted a report to the Legislature in December, 1999, that described the recycling of

automotive oil filters, and recommended methods to increase the recycling of automotive oil filters.

During 2003 and 2004, the Council: (a) maintained contact with state agencies involved in recycling, including the DNR, Department of Commerce, UW – Extension and Department of Corrections; (b) testified on proposed state legislation related to recycling of computers, televisions and other electronics (it did not pass); (c) continued to review issues related to recycling of electronics; (d) continued to propose legislation related to used oil filter recycling (2003 Act 96 passed and the Council is represented on the required committee convened by the Department of Commerce); (e) reviewed the activities of organizations involved in the recycling of construction and demolition debris; (f) reviewed the recycling efficiency incentive grant program and alternative compliance program created in 2001 Act 16; (g) reviewed proposed DNR administrative rules related to recycling; (h) reviewed the status of paper recycling; (i) studied issues related to mercury in products; and (j) provided a forum for the discussion of issues affecting recycling programs in the state.

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**DNR Education and  
Technical Assistance Responsibilities**

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**Duties**

DNR is responsible for providing technical assistance and comprehensive public information. DNR is required to provide technical assistance to

individuals, groups, businesses, state agencies, counties and municipalities in all aspects of recycling, with an emphasis on documents and material that is easy to read and understand by the general public. This includes: (a) providing information about how to perform a study related to the composition of solid waste; (b) maintaining current estimates of the amount of components of solid waste generated by categories of businesses, industries, municipalities and other governmental entities; (c) providing information about how to manage solid waste consistent with the state's solid waste management priorities; and (d) providing technical assistance to local recycling programs.

The Department is required to collect, prepare and disseminate information, and conduct educational and training programs that assist in the implementation of the solid waste management programs. The educational programs must inform the public of the relationship between an individual's consumption of goods and services, the generation of different types and quantities of solid waste and the implementation of the solid waste management priorities. DNR is also required to prepare educational programs on a statewide basis for the following audiences: (a) municipal, county and state officials and employees; (b) kindergarten through graduate students and teachers; (c) private solid waste scrap brokers, dealers and processors; (d) businesses that use or could use recycled materials or which produce or could produce products from recycled materials and persons who serve or support these businesses; and (e) the general public.

The policy development, administrative, planning, evaluation, markets directory and data management functions are performed by 10.0 SEG recycling fund positions in the Air and Waste Division in the central office and in five regional offices. Regional staff provide technical assistance and outreach to local governments on recycling and also process applications for the municipal and county grant program. The informational and educational functions are performed by the Division of Customer Assistance and External

Relations with 2.0 SEG recycling fund positions in 2004-05. DNR also has accounting, purchasing and other financial management recycling-related responsibilities. In 2004-05, 0.5 SEG recycling fund position and associated funding is authorized for these purposes.

## **Activities**

DNR accomplishes its technical assistance, informational and educational responsibilities by establishing project work groups from various bureaus in DNR. In 2003-05, DNR worked with local and state elected officials and employees, students ranging in age from kindergarten to graduate student, teachers, solid waste brokers, dealers, processors and haulers, businesses that use or make products from recycled materials, other businesses and the general public. DNR focused on several activities that are listed below.

1. Prepared, updated and provided fact sheets, newsletters, and publications related to general recycling issues. A new poster focused on green schools.
2. Maintained and improved Internet web sites for general audiences and youth for access to a variety of recycling materials and resources.
3. Updated the Wisconsin Recycling Markets Directory and maintained it as a searchable Internet web directory.
4. Provided communication and education tools and resources to responsible units for distribution to their residents, businesses and institutions.
5. Developed and promoted an internet-based green and healthy school program in partnership with the Wisconsin Department of Public Instruction.
6. Analyzed information from the Franklin Associates' waste characterization study, Cascadia Consulting's waste sort study and the University of

Wisconsin's household recycling survey and used the information to develop a report on the status of recycling in the state.

7. Initiated a campaign focusing on recycling away from home. The campaign included radio ad and newspaper ads for local distribution.

8. Began working with interested persons on issues related to business recycling.

9. Worked with groups of stakeholders to develop revisions to existing administrative rules related to recycling and new rules related to recycling efficiency incentive grants and the pilot program for compliance with the landfill bans.

10. Prepared two opinion articles for the Wisconsin Newspaper Association to distribute on recycling, and collaborated on a strategy to promote newspaper recycling.

### Municipal Solid Waste Studies

In 1990, 1995, and 2000, DNR contracted with Franklin Associates, Ltd., to conduct waste characterization studies. In 2002, DNR contracted with Cascadia Consulting to conduct a municipal solid waste composition and quantification study. The Franklin studies produced estimates for the quantities of residential and commercial municipal solid waste that is generated, recycled, landfilled, and combusted in Wisconsin. The Cascadia study produced an estimate of the quantity of municipal solid waste that is landfilled, based on taking 400 samples from 14 landfills.

DNR used the study data to analyze how successful local recycling programs have been both in diverting banned materials from landfills and in determining the average amounts and ranges of recyclable materials found in the waste stream, and diverted from landfills. DNR estimates of the recycling rates for several materials banned from Wisconsin landfills are shown in Table 19. As DNR

**Table 19: DNR's Estimates of the Recycling Rate for Materials Banned from Wisconsin Landfills (Based on Data from 2000 and 2002)**

Material	Estimated Recycling Rate
Lead acid batteries, major appliances and tires	over 95%
Yard waste	78%
Corrugated cardboard	72%
Newspaper	67%
Glass containers	57-74%
Aluminum and steel cans	approx. 55%
Plastic containers	41-51%
Magazines	31-35%
Office paper	28-57%
Overall average landfill diversion rate *	40.4%

\* The DNR estimate includes recycling, plus combustion with energy recovery, plus yard waste managed at home.

analyzed the study data, the Department also estimated an overall landfill diversion rate, which factored recycling, plus combustion of solid waste with energy recovery, plus yard waste managed at home. The estimated landfill diversion rate was 40.4%.

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### Other DNR Activities

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#### Newspaper Recycled Content Target and Fee

Current law requires printers and publishers of newspapers and some shopper guides to use newsprint that averages a mandated level of post-consumer recycled content. Table 20 shows the established targets for the percentage of recycled newsprint used by printers and publishers. 2003 Act 106 modified the annual percentage targets so that in all years beginning in 1998, the target percentage is 33%. Prior to the change in law, the percentage for 2001 and 2002 was 37% and the

**Table 20: Target Newspaper Recycled Content Percentages**

Target Year	Percentage
1992 and 1993	10%
1994 and 1995	25%
1996 and 1997	35%
1998 and thereafter	33%

percentage for 2003 and subsequent years was 40%.

A newspaper recycling fee is assessed annually to the publisher of a newspaper that fails to meet the recycled content targets. Administrative rule NR 546 implements this provision. The amount of the newspaper recycling fee imposed on a publisher in any calendar year that the target is not met is 1% of the total cost of the newsprint used during the year multiplied by the recycling status factor, which is the target recycled content percentage minus the average recycled content percentage of the newsprint actually used.

The newspaper recycling fee does not apply to a publisher of a newspaper if: (a) the publisher documents that he or she is unable to obtain sufficient recycled content newsprint; and (b) the newspaper has a circulation of less than 20,000, the publisher requests an exemption, and DNR determines that compliance with the target recycled content requirement would create a financial hardship for the publisher. Prior to January 1, 2001, DNR was required to exempt every publisher that met or exceeded 30% recycled content for the year (this provision does not apply after December 31, 2000).

Printers and publishers reported compliance with the requirements of the newspaper recycled content requirement as shown in Table 21. Fees totaling \$46,155 have been paid for 1992 through 2003. The fees are deposited in the recycling fund.

For 2003, of the 55 printers and publishers that reported their use of recycled content newsprint,

**Table 21: Compliance of Printers and Publishers with the Newspaper Recycled Content Requirement**

Year	Exceeded or Met Requirements	Did Not Meet Requirements	Fees Paid	Average Recycled Content
1992	69	2	\$353	23.4%
1993	78	0	0	28.9
1994	62	14	2,847	31.0
1995	48	26 *	610	27.3
1996	43	28 *	27,487	32.9
1997	58	14 *	1,323	37.6
1998	63	9*	2,750	41.9
1999	55	10*	696	42.6
2000	59	5	567	45.5
2001	45	13*	8,887	42.9
2002	58	10	596	41.8
2003	55	4	39	47.1

\*Printers and publishers received an exemption from the fee as follows: 21 in 1995, eight in 1996, nine in 1997, nine in 1998, two in 1999 and one in 2001.

four (4%) did not meet the mandated 33% post-consumer recycled content requirement.

### Waste Oil Collection and Recycling

Any business that sells automotive engine oil to consumers is required to either: (a) maintain an engine waste oil collection facility for the temporary storage of oil returned by consumers and post a sign to that effect; or (b) post at least one sign indicating the location and hours of operation of the nearest DNR-approved waste oil storage facility. If adequate approved waste oil storage facilities do not otherwise exist, local governments are required to provide these facilities. Anyone operating a facility for the recycling of engine waste oil must obtain a license and comply with all applicable requirements and regulations. Recycled waste oil must be clearly labeled "re-refined oil" or "reclaimed oil," depending upon the method of recycling.

DNR is required to conduct public information and educational programs regarding the availability of collection facilities, the merits of recycled oil, the need for using recycled oil to maintain oil reserves and the need to minimize the

disposal of waste oil in ways harmful to the environment.

### **Battery Collection and Disposal**

Retail sellers of lead acid (automotive-type) batteries are required to accept a used battery in exchange for each battery sold. If the retailer does not install the new battery and the customer returns the used battery at a later time, the retailer may require the customer to provide proof that the customer purchased a battery from the retailer. In addition, the retailer may charge a refundable deposit of up to \$5 on the sale of a battery. Retailers are required to accept used batteries when the consumer has not purchased a new battery from the retailer. Under these circumstances, a retailer may charge up to \$3 for each accepted battery and may refuse to accept more than two batteries in one day from any person. DNR is responsible for enforcement of the provisions.

### **Recycling of Other Materials**

DNR received \$65,000 annually in federal Clean Water Act funds in federal fiscal years 1996 through 1999 for municipal mercury reduction programs. Funds were used to reduce the amount of mercury that is disposed of in landfills or wastewater treatment facilities. Examples of activities undertaken with grant funds include providing information to the public about mercury source reduction efforts, assisting municipalities in collecting mercury thermostats, encouraging recycling of dental mercury amalgam, assisting schools in eliminating mercury from school science laboratories, replacing mercury manometers on dairy farms with non-mercury versions, working with auto salvage businesses to collect and recycle mercury switches from scrapped automobiles and appliances, and working with hospitals to collect and recycle mercury.

DNR staff perform outreach and education related to recycling of fluorescent light bulbs

(lamps). In 2002, DNR received a \$56,000 federal grant that was distributed to five entities to develop and distribute literature on the safe management of mercury-containing fluorescent light bulbs and on local disposal options. The recipients were: (a) the City of Superior and the Northwest Regional Planning Commission; (b) Oneida County; (c) Brown County; (d) Intra-State Recycling Corporation (Portage County); and (e) the Southeast Wisconsin Waste Reduction Coalition (coordinated by Waukesha County).

Wisconsin, six other states, the U.S. Environmental Protection Agency, and carpet industry representatives signed a memorandum of understanding in January, 2002, to promote carpet recycling. DNR staff work with businesses and municipalities to identify opportunities to promote recycling of used carpet. DNR also worked with the Wisconsin Department of Administration to develop a new state purchasing contract for carpet that would provide an opportunity for state agencies and local governments to purchase carpets and padding that are made from recycled materials and to reclaim old carpet being discarded.

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## **University of Wisconsin System Activities**

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### **Solid Waste Experiment Centers and Solid Waste Research Council**

In 1989, the UW Board of Regents was authorized to establish one or more solid waste experiment centers for the purpose of developing, demonstrating, promoting and assessing the costs and environmental effects of alternatives to solid waste disposal. In addition, The UW System was directed to conduct research into alternatives to solid waste disposal and the safe disposal of solid waste that cannot be recycled or composted. The Board was directed to appoint a Solid Waste

Research Council to advise it regarding the awarding of solid waste research funds.

Prior to 1997-98, the UW System had allocated GPR funding and position authority for these purposes. However, 1997 Act 27 converted this funding to segregated monies from the recycling fund. The program currently is utilized to provide funding to UW System institutions for research into alternative methods for the disposal of solid waste. Under 2003 Act 33, \$154,900 SEG annually from the recycling fund was provided to the UW System for solid waste research and experiments with \$36,300 budgeted for a one-half time program manager position, and \$118,600 budgeted for Solid Waste Research Council research award funds.

The Solid Waste Research Council currently has 11 members representing nine UW campuses, UW-Extension and the UW System. Annually, the Council solicits proposals that investigate alternative methods of solid waste management, including reduction of the amount of solid waste generated, the reuse and recycling of materials, composting, source separation and the disposal of household hazardous waste. Proposals are also sought for research into the development of products made from recycled materials and markets for those products. For 2003-04, eight recipients were awarded a total of \$117,642, including \$10,000 for four undergraduate research projects.

#### **UW-Extension Solid and Hazardous Waste Education Center**

The University of Wisconsin-Extension Solid and Hazardous Waste Education Center (SHWEC) with branches at UW-Madison, UW-Stevens Point, UW-Green Bay and UW-Milwaukee, was created in 1989. Positions within UW-Extension are authorized to provide statewide information on hazardous pollution prevention and to provide educational and technical assistance related to recycling. The Center also provides information on waste reduction; produces written materials, educational teleconference network programs,

satellite conferences and video productions; and offers technical assistance to local governments and businesses on recycling, hazardous waste management, energy conservation, the use of renewable energy, pollution prevention, source reduction and other cost effective waste reduction programs. SHWEC staff conduct workshops through the recycling program, and have developed web-based resources to address recycling and solid waste management needs as well as for other outreach priorities such as pollution prevention and waste reduction. (The Center's hazardous waste management, energy conservation, renewable energy, and pollution prevention programs are not described in this paper.)

To carry out its programs, SHWEC receives funding from various sources. The Center is appropriated \$336,900 SEG from the recycling fund in 2004-05 for education and technical assistance in recycling and recycling market development. This funding supports 4.0 positions at the four SHWEC locations including: (1) UW-Stevens Point - 1.0 commercial/industrial recycling waste reduction specialist; (2) UW-Extension Madison - 1.0 community and business recycling specialist, 0.75 recycling and source reduction specialist, and 0.5 program assistant (the program assistant supports the work of all four center offices); (3) UW-Green Bay - 0.25 solid waste and recycling research; and (4) UW-Extension Milwaukee -- 0.5 data collection and analysis.

In 2004-05, the UW-Extension has also internally allocated approximately \$61,000 GPR and \$15,000 PR for SHWEC for 1.0 waste reduction and management specialist at UW-Extension in Milwaukee.

In 2004-05, SHWEC received \$250,000 PR from various grants, contracts and revenue sources. This funding is used to provide technical assistance to industries, businesses, recyclers and other relevant entities to identify source reduction opportunities, methods to make products and packaging recyclable, appropriate recycling technologies, and

the feasibility of using recyclable materials to manufacture other products.

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### **Department of Administration Responsibilities**

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The Department of Administration (DOA) is responsible for establishing commodity procurement and disposal guidelines relating to recycled materials. DOA is charged with: (a) developing commodity specifications for certain materials made from recycled and recovered wastes; (b) encouraging the adoption of procurement preferences for commodities that comply with such specifications; and (c) establishing solid waste separation and recycling procedures. These guidelines are applicable to state agencies and authorities (other than the UW Hospitals and Clinics Authority). Local units of government are encouraged to utilize DOA procurement services for the purchase of recycled and recovered materials and to participate in the state's solid waste separation and recycling program.

In general, the statewide recycling law attempts to leverage state and local government procurement funding to encourage market development for recycled materials. Since state and local governments collectively constitute one of the largest purchasers of goods in Wisconsin, procurement guidelines that favor the use of recycled materials are thought to create stable markets for goods made from these materials. In turn, the development of stable markets should serve to lower the economic risks faced by manufacturers of commodities made from recycled and recovered materials.

DOA and other state agencies and authorities with delegated purchasing authority are required to write commodity specifications that incorporate requirements for the procurement of products

made from recycled materials and recovered materials, if the use of such materials is technologically and economically feasible. The law covers the purchase of paper and paper products, plastic and plastic products, glass and glass products, motor oil and lubricants, construction materials, furnishings and highway equipment. Specifications must consider, where practicable, recyclability and the ultimate disposition of purchased goods. These types of considerations are useful in determining what are deemed the "life cycle costs" of a commodity.

Where practicable, DOA, agencies with delegated purchasing authority, state authorities, and participating local units of government are required to make purchases that: (a) are from a bidder who has the lowest life cycle cost when such factors as product manufacture and disposal are considered; (b) utilize the commodity specifications for certain products made from recycled and recovered materials; and (c) include, for paper purchases, material with an aggregate recycled or recovered content of fiber, by weight, of not less than 40%.

Finally, DOA operates a program for state agencies and authorities that requires them to separate for recycling, all materials subject to landfilling and incineration bans. These bans are described in Chapter 1.

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### **Department of Transportation Activities**

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The Department of Transportation (DOT) is required to use or encourage the use of the maximum possible amount of recovered materials in construction projects.

DOT indicates that it is complying with this requirement by developing technical standards for the use of various materials in construction and encouraging contractors to use these materials



when possible. The Department does not generally require contractors to use recovered materials, but indicates that they are used if the contractor finds that their use would be economical. Some materials that have been used in projects include fly ash, paper mill ash, foundry sand, steel slag, glass, tires, pottery cull, and bottom ash. These materials are commonly used as fill for embankments or are blended with traditional materials to reduce the amount of those materials needed for the roadway base course.

In addition to the use of the recovered materials mentioned above, which are largely waste products from industrial activities, highway construction projects commonly reuse old paving material as the crushed aggregate for use in the base course of the new roadway. The Department's technical standards for the use of materials recovered from off site also include standards for the onsite recovery of old pavement materials.

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### **Department of Agriculture, Trade and Consumer Protection Activities**

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The Department of Agriculture, Trade and Consumer Protection (DATCP) administers requirements related to labeling for plastic containers, recycled content of plastic containers, heavy metals content in packaging, truth in labeling and battery collection and disposal. DATCP estimates that it is using less than 0.1 FTE to administer these provisions, and most of its efforts are focused on issues of product compliance with these requirements. In addition, DATCP also administers the state's clean sweep program, which funds the collection and disposal of hazardous materials and is funded from the recycling fund.

#### **Plastic Container Labeling**

Administrative rule ATCP 137 establishes labeling requirements for plastic containers, which provide information needed by operators of

materials recovery programs to facilitate recycling or reuse of the containers. Each container is required to be labeled with a number and initials based on its composition. DATCP is authorized to grant a variance from the labeling requirements for containers for which labeling is not technologically possible. The variance is for up to one year and is renewable. Blister packs, which are defined as containers with a rigid backing to which a plastic film or preformed semirigid plastic covering is affixed, are exempt from labeling requirements. DATCP has not received any requests for variances to the labeling requirement. Occasionally the Department does receive requests for letters of non-objection for containers because of plastic resin content, and DATCP has issued such letters if the product is compatible with recycling streams.

#### **Plastic Container Recycled Content**

State law requires that plastic containers used for products sold at retail consist of at least 10% recycled or remanufactured material. This applies to containers required to be labeled under state law for plastic resin composition. It does not apply to containers for food, beverages or drugs unless the federal Food and Drug Administration has approved the specific use of recycled or remanufactured material. In a 1996 survey of manufacturers, DATCP found reasonable industry acceptance of current minimum recycled content requirements, but also encountered instances of noncompliance due to costs and poor container integrity for certain product contents, such as hazardous substances.

#### **Heavy Metals Content in Packaging**

The law directs that with a few exceptions, "a manufacturer or distributor may not sell a package, packaging material or packaging component with a total concentration of lead, cadmium, mercury plus hexavalent chromium" that exceeds 100 parts per million. A violation of these provisions is subject to a forfeiture of up to \$200. A 1993 DATCP report found most packaging materials being used and sold in the state are in compliance with the statute.

Exceptions included some cans using solder, certain labeling inks and enamels and specialized packaging such as lead wrapping for photographic film. In 2004, DATCP received two complaints related to mercury content of certain button cell batteries, but concluded after an investigation that the batteries were in compliance with current state and federal law.

### **Truth in Labeling**

Administrative rule ATCP 137 sets standards on the content of products represented as "recycled," "recyclable" or "degradable" and establishes that no person may label or represent any product in violation of these standards. The standards are intended to be consistent, to the greatest extent practicable, with nationwide industry consensus standards. Any person who labels or represents a product in violation of these standards is subject to a forfeiture of not less than \$100 nor more than \$10,000 for each violation. In 2003, DATCP received one complaint of improper labeling, which was related to improper resin labeling of plastic containers that resulted in a written assurance of corrective action from the manufacturer.

### **Battery Collection and Disposal**

1993 Act 74 established collection and disposal regulations for certain batteries containing mercury. DATCP maintains a list of certified batteries. No person may sell a zinc carbon battery that is manufactured after July 1, 1994, or an alkaline manganese battery that is manufactured after January 1, 1996, unless the manufacturer has certified to DATCP that the battery contains no mercury that was intentionally introduced. No person may sell an alkaline manganese button cell battery that is manufactured after January 1, 1996, unless the manufacturer has certified to DATCP that the battery contains no more than 25 milligrams of mercury.

Waste mercuric oxide batteries, other than

mercuric oxide button cell batteries, may not be treated, stored or disposed of except at approved collection sites. An operator of an approved collection site must recycle all collected waste mercuric oxide batteries unless no reasonable alternative exists. No person may sell a mercuric oxide, other than a mercuric oxide button cell battery, unless the manufacturer does all of the following: (a) identifies an approved collection site to which people may take used mercuric oxide batteries for recycling or proper disposal; (b) informs all purchasers of the battery of the collection site and the prohibition on disposal; (c) informs all purchasers of a telephone number that may be called to obtain information about returning the batteries for recycling or proper disposal; and (d) informs DATCP and DNR of the collection site and telephone number. DNR has general enforcement authority over the disposal and recycling provisions.

### **Clean Sweep Program**

In 2003 Act 33 (the 2003-05 biennial budget act), funding for DATCP's agricultural chemical and pesticide collection ("clean sweep") program and DNR's household clean sweep grant program was consolidated under the recycling fund and DATCP was directed to administer the combined programs. The program provides grants to counties and municipalities for the collection of pesticides, farm chemicals, and household hazardous wastes from farmers, businesses, households, schools and government agencies. During the fall of 2004, DATCP was in the process of revising administrative rule ATCP 34 to administer the new combined program. The rule is expected to be first effective for calendar year 2005 clean sweep grants.

For 2005 grants, counties and municipalities must offer a minimum match of 25% of the clean sweep grant, where matching costs include cash or services. While there is no maximum grant award set in statute or administrative code, DATCP determines the maximum grant internally each

grant cycle in an attempt to provide most eligible counties with some level of funding. The 2005 maximum grants are \$15,000 for a household waste single-day event and \$20,000 for a household waste permanent facility, and \$12,000 for a agricultural waste single-day event and \$18,000 for an agricultural waste permanent facility. In addition, based on its service area of Ashland, Bayfield, Burnett, Douglas, Iron, Price, Rusk, Sawyer, Taylor and Washburn Counties and the tribal governments of the Bad River, Red Cliff, Lac du Flambeau, Lac Courte Oreilles and St. Croix, DATCP has historically allowed a larger grant for the Northwest Regional Planning Commission. In 2003-04, this grant was \$29,750, and total clean sweep grants of \$446,200 were made for 29 events. Subject to available funding, DATCP provides at least \$400,000 annually for agricultural chemical and container collection grants and at least \$200,000 annually for household waste collection grants. In 2004-05, \$710,400 is available for clean sweep grants, but the Department estimates that awards will total approximately \$520,000. The Department estimates it will devote about \$130,000 and 1.5 positions for administration of its clean sweep responsibilities in 2004-05.

Grant recipients sign a contract with DATCP and are awarded their grants as reimbursements for eligible expenditures after the Department receives documentation of eligible expenses. Eligible grant expenditures include: (a) costs to hire a hazardous waste contractor; (b) costs for equipment rentals, supplies and services to operate the collection site and handle disposal; (c) county staff costs related to a permanent collection event; and (d) costs of local educational and promotional activities related to a project.

Grants may not be used to collect oil that is not contaminated, batteries, contaminated soil or debris, fluorescent tubes, triple-rinsed plastic pesticide containers, materials that may be disposed of at other waste or recycling sites, and

chemicals for which there is no federally-approved or state-approved disposal method.

Commercial firms know as "very small quantity generators" are allowed to bring in hazardous wastes to agricultural clean sweep sites and dispose of it, provided they pay a 50% cost-share for the waste's disposal. Very small quantity generators are firms that do not produce more than 100 kilograms (220 pounds) of hazardous waste in any given month, and that do not accumulate quantities of more than 1,000 kilograms (2,205 pounds) of hazardous waste.

Prior to Act 33, the agricultural clean sweep program was provided \$560,400 SEG in funding annually from the agrichemical management (ACM) fund. The ACM fund collects revenue from a variety of fertilizer, pesticide and commercial feed fees and funds: (a) DATCP's administration of the agricultural cleanup grant program and inspection and regulation of the individuals and businesses that manufacture and distribute feed, fertilizer and pesticide products in Wisconsin; (b) DATCP administration of groundwater management programs; and (c) agriculture in the classroom program grants that help teachers educate students about agriculture.

DNR's household clean sweep program was funded by \$150,000 SEG funding annually from the environmental fund prior to 2003 Act 33. The environmental fund receives revenues from a variety of sources including a temporary motor vehicle environmental impact title fee, solid waste tonnage fees, pesticide fees, petroleum inspection fees and hazardous spills reimbursements from responsible parties. These fees are used primarily for Department of Commerce brownfields grants, and DNR activities related to environmental response and repair programs, including enforcement, prevention, cleanup, brownfields grants, liability determinations, and groundwater management.

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## Department of Commerce Activities

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### Recycling Space in Public Buildings

The Safety and Buildings Division in the Department of Commerce administers a provision in the state commercial building code to require that any person engaged in constructing or remodeling a public building provide adequate space in or adjacent to, the building for the separation, temporary storage and collection of materials subject to the 1995 landfill and incineration bans. This requirement applies to the following types of building projects: (a) constructing a public building; (b) increasing the size of a public building by 50% or more; or (c) altering 50% or more of the existing area of a public building which is 10,000 square feet or more in area.

### Disposal of Oil-Absorbent Materials

In 2003 Act 96, the Department of Commerce was directed to convene a 12-member committee to study the disposal of oil-absorbent materials and submit recommendations based on its work to the Legislature and Governor by January 1, 2006. The committee was directed to do all of the following: (a) gather data that provides Wisconsin annual information concerning the number of oil filters used and recycled and the amount of oil-absorbent material disposed of, recycled or recovered; (b) establish percentage goals for recycling used oil filters and for recycling or recovering other oil-absorbent materials that are enough higher than current practice to make a significant difference but are attainable with current technology; (c) set a deadline for meeting the goals under (b); and (d) suggest measures to be taken if the goals under (b) are not met and dates for taking those measures. The committee began meeting in May, 2004.

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## Department of Corrections Activities

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The Department of Corrections administers a computer recycling program under which inmates salvage, repair, and upgrade donated computers. The program is designed to reduce the number of computers deposited in landfills and to provide computers to government agencies and non-profit organizations at no cost. Under the program, inmates clean, reformat, and match components for recycling and remanufacturing, test electronic equipment for operating condition, and demanufacture any unsalvageable equipment for parts recycling or proper disposal.

In 2003-04, the program had an average total of 118 available positions, as follows: 34 positions at the Racine Youthful Offender Correctional Facility (RYOCF); five positions for female inmates from the Robert E. Ellsworth Correctional Center; one position at the Sturtevant Transitional Facility for donation pickups; 28 positions at the Jackson Correctional Institution; 36 positions at the Redgranite Correctional Institution; and 14 positions at the Taycheedah Correctional Institution. During 2003-04, 77,235 pieces of computer equipment were donated to the program and 1,371 complete computer units (computer processing unit, monitor, keyboard, and mouse) were refurbished for donation. In 2003-04, more than 1,500 computers were donated to qualified program participants, including non-profit organizations and government agencies. The sale of scrap computer materials generated approximately \$98,800 in program revenue (PR) in 2003-04.

Total budgeted funding for the program in 2004-05 is \$445,600 (\$295,600 recycling SEG and \$150,000 PR) and 5.0 positions (2.0 SEG and 3.0 PR).

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## Tax Exemptions

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There are two types of sales and use tax exemptions targeted at certain recycling and waste reduction-related activities.

**Cloth Diapers and Diaper Services.** Sales of cloth diapers and charges by diaper services for cleaning and providing cloth diapers are exempt from the sales and use tax.

**Motor Vehicles and Machinery and Equipment Used for Recycling Activities.** Gross receipts from the sale of certain motor vehicles and machinery and equipment used in connection with recycling are exempt from sales and use tax. In order to be exempt, the motor vehicles and machinery and equipment must be used exclusively and directly with waste reduction or recycling activities that reduce the amount of solid waste generated or must be used to reuse, recycle, compost, or recover energy from solid waste. In addition, the motor vehicles must be vehicles that are not required to be licensed for road use.

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## 2001 Legislative Audit of Recycling Programs

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In January, 2001, the Legislative Audit Bureau (LAB) published an evaluation of state recycling programs. The LAB reviewed: (a) the effectiveness of recycling efforts in the state; (b) costs of recycling efforts and how costs vary among

communities; (c) relationships between local expenditures, state grants and recycling rates; and (d) the number and function of state staff supported by the recycling fund.

The LAB findings related to program effectiveness included: (a) in 1999, over one-fourth of responsible units failed to meet effective recycling program per capita recyclable collection standards; and (b) the only means DNR has of sanctioning responsible units for failure to meet collection standards is to revoke effective program status and, effectively, permission to dispose of waste within Wisconsin, therefore there is no practical means of enforcing collection standards (such as reducing grant amounts in future years).

The LAB report listed several recycling issues for possible consideration by the Legislature, including: (a) addressing a possible recycling fund deficit (2001 Act 16 increased the recycling tipping fee was increased from 30¢ to \$3 per ton); (b) developing new funding for state support of recycling (\$1.9 million in efficiency incentive grants was provided in 2002-03); (c) determining if state recycling laws should be modified (a pilot program for an alternative method of compliance with effective program criteria was created in Act 16); (d) creating a new grant formula to distribute funds to municipal recycling programs (formula changes were item-vetoed by the Governor in Act 16); and (e) shifting the focus of state recycling staff efforts from technical assistance for municipal recycling programs to increasing efficiency and cost effectiveness of local programs or focusing on non-municipal solid waste (such as construction and demolition waste).

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## APPENDICES

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Several appendices provide additional program information.

- Appendix I lists the 2003-05 appropriations for recycling programs funded from the segregated recycling fund.
- Appendix II shows cumulative revenues and expenditures for the recycling fund from 1990-91 through 2003-04.
- Appendix III describes the major state statutory policies related to solid waste reduction, reuse, recycling, composting and resource recovery.
- Appendix IV describes exceptions to the 1991, 1993 and 1995 landfill and incineration bans.
- Appendix V describes the required components of an effective recycling program.
- Appendix VI describes DNR's authority to grant a variance from the effective recycling program criteria.
- Appendix VII summarizes major provisions related to waste generated outside of Wisconsin.

**APPENDIX I**

**Appropriations Funded From the Segregated Recycling Fund, 2003-05**

	2003-04	2004-05	Authorized Positions 2004-05
<b>Administrative Appropriations</b>			
<i>Corrections</i>			
410 (1)(qm) Computer recycling	295,300	295,600	2.0
<i>Natural Resources</i>			
370 (2)(hq) Recycling administration	755,700	755,700	10.0
(3)(mr) Recycling enforcement and research	99,000	150,600	2.4
(8)(iw) Statewide recycling administration	195,800	195,800	0.5
(9)(is) Statewide recycling administration	484,100	484,100	5.0
<i>Revenue</i>			
566 (1)(q) Recycling fees administration	253,100	254,000	1.0
<i>University of Wisconsin System</i>			
285 (1)(tb) Extension recycling education	336,900	336,900	4.0
(1)(tm) Solid waste research and experiments	<u>154,900</u>	<u>154,900</u>	<u>0.5</u>
Subtotal	\$2,574,800	\$2,627,600	25.4
 <b>Financial Assistance Appropriations</b>			
<i>Agriculture, Trade and Consumer Protection</i>			
115 (7)(va) Clean sweep grants	710,400	710,400	
<i>Natural Resources</i>			
370 (6)(br) Waste reduction and recycling demonstration grants	500,000	500,000	
(6)(bq) Municipal and county recycling grants	24,500,000	24,500,000	
(6)(bv) Recycling efficiency incentive grants	<u>1,900,000</u>	<u>1,900,000</u>	
Subtotal	\$27,610,400	\$27,610,400	
 TOTAL RECYCLING FUND APPROPRIATIONS	 \$30,185,200	 \$30,238,000	

## APPENDIX II

### Recycling Fund Cumulative Revenues and Expenditures 1990-91 Through 2003-04

	Amount (In Millions)	Percent
<b>REVENUES</b>		
Recycling Surcharge	\$429.07	80.65%
Transfer from the General Fund	29.70	5.58
Recycling Tipping Fee	50.68	9.53
Interest Income and Miscellaneous	<u>22.53</u>	<u>4.24</u>
Total Revenues	\$531.98	100.00%
<b>EXPENDITURES AND ENCUMBRANCES</b>		
<b>Program Administration and Education</b>		
<i>Administration</i>		
Recycling activities	\$0.20	0.04%
<i>Agriculture, Trade and Consumer Protection</i>		
Recycling products regulation	1.12	0.21
<i>Commerce</i>		
Recycling development and rebate program administration	0.82	0.16
Recycling market development board; operations	1.75	0.34
<i>Corrections</i>		
Computer recycling	1.87	0.36
<i>Natural Resources</i>		
Park and forest recycling activities	0.34	0.06
Recycling--administration	13.80	2.65
Recycling--enforcement	0.70	0.13
Recycling grants--administration	0.83	0.16
Statewide recycling administration	11.49	2.21
Statewide recycling education	5.04	0.97
<i>Revenue</i>		
Recycling fees administration	3.62	0.69
<i>Wisconsin Technical College System</i>		
Recycling programs	0.02	0.01
<i>University of Wisconsin System</i>		
Extension recycling education	4.26	0.82
Research on tin can scrap	0.06	0.01
Solid waste research and experiments	1.03	0.20
<b>Grant, Loan, Rebate and Financial Assistance Programs</b>		
<i>Agriculture, Trade and Consumer Protection</i>		
Clean sweep grants	0.71	0.14
<i>Commerce</i>		
Recycling loans & grants -- assistance, including minority business recycling	3.56	0.68
Recycling rebates program -- assistance	10.81	2.08
Recycling market development board; assistance	22.15	4.26
Technology and pollution control and abatement grants and loans	0.40	0.08
<i>Natural Resources</i>		
Environmental aids - municipal & county recycling grants	347.55	66.80
Recycling efficiency incentive grants	3.80	0.73
Environmental aids - waste reduction and recycling demonstration grants	10.33	1.98
Environmental aids - lake states wood utilization consortium	0.19	0.04
Wheelchair recycling project	0.01	0.02
<i>WHEDA</i>		
Transfer--development reserve fund	0.68	0.13
Transfer--brownfields redevelopment	4.00	0.77
Transfer to General Fund and Conservation Fund	<u>69.10</u>	<u>13.28</u>
<b>TOTAL EXPENDITURES</b>	<b>\$520.29</b>	<b>100%</b>
Cumulative Revenues less Cumulative Expenditures/Encumbrances	\$ 11.69	
Less 2003-04 Year End Continuing Balances	\$1.26	
Available July 1, 2004, Fund Balance	\$ 10.43	



## APPENDIX III

### **State Solid Waste Reduction, Reuse, Recycling, Composting and Resource Recovery Policies Section 287.05, Wisconsin Statutes**

1. Maximum solid waste reduction, reuse, recycling, composting and resource recovery is in the best interest of the state to protect public health, to protect the quality of the environment and to conserve resources and energy.

2. Encouragement and support should be given to individuals, collectors, handlers and operators of waste facilities to separate solid waste at the source, in processing or at the time of disposal to facilitate reuse, recycling, composting or resource recovery.

3. Research, development and innovation should be encouraged to improve design, management and operation of solid waste reduction, reuse, recycling, composting and resource recovery systems and to improve the processes, to lower operating costs and to provide incentives for the use of these systems and operations and their products.

4. Encouragement should be given to initiatives of current recyclers which facilitate reuse and recycling through separation, collection and processing of substantial volumes of scrap and waste material, reducing the amount of mixed solid waste that is disposed of in landfills or burned without energy recovery.

5. Recovery of energy from solid waste is in the public interest where it replaces the use of nonrenewable fuels and it is done in a state-approved program that protects public health and welfare and the environment.

6. Implementation of solid waste reduction, reuse, recycling, composting and resource recovery

systems and operations requires the involvement and cooperation of individuals, state and local governments, schools, private organizations and businesses. State government should rely to the maximum extent feasible on technical and financial assistance, education and managerial practices. Necessary regulations should be developed with maximum flexibility.

7. Solid waste reduction, reuse, recycling, composting and resource recovery efforts should be planned and coordinated in order to maximize beneficial results while minimizing duplication and inefficiency.

8. It is necessary for the state to occupy a regulatory role to achieve the policy goals and it is necessary to give municipalities and counties powers to adopt waste flow control ordinances to require the use of recycling and resource recovery facilities.

9. Solid waste reduction, reuse, recycling, composting, and resource recovery systems and operations are preferable to land disposal.

10. Developers and users of land disposal facilities should not become committed to land disposal so that reuse, recycling, composting and resource recovery systems and operations may be implemented rapidly.

11. The state encourages the following priorities of solid waste management: (a) reduction; (b) reuse; (c) recycling; (d) composting; (e) recovery of energy from solid waste; (f) land disposal; and (g) burning of solid waste without energy recovery.

## APPENDIX IV

### Exceptions to the 1991, 1993 and 1995 Landfill and Incineration Bans Section 287.07, Wisconsin Statutes

1. The 1995 bans do not apply to incidental amounts of banned materials contained in solid waste generated in a region that has an effective recycling program and collected for disposal or treatment. An effective recycling program is required to prohibit disposal of any materials subject to the 1995 bans that have been separated for recycling. This exception recognizes that some incidental amount of recyclable materials may be found in solid waste collected for disposal, and that even a good recycling program will not be effective 100% of the time at capturing all banned materials. Banned materials may become unrecyclable with use, for example, when newspapers are used for window cleaning or plastic milk jugs are used for waste oil collection. Broken glass bottles are another example of a banned item which is no longer recyclable. This exception to the 1995 bans does not apply to materials that have been separated for recycling or to solid waste generated in a region that does not have an effective recycling program.

2. A "grandfather" clause exists for incinerators with a state solid waste license or air pollution permit in effect before May 11, 1990 (the effective date of 1989 Act 335). This exception allows the incinerator to convert to fuel or burn combustible materials (tires and the various types of paper and plastic) listed in the 1995 bans generated in the area served by the facility as of January 1, 1993, or generated by the owner of the facility. Under present DNR administrative rules, the operator of an incinerator with a design capacity of less than 500 pounds of waste per hour generally is not required to obtain a solid waste license or air pollution permit; these incinerators are thus not eligible for this exception.

3. The 1991, 1993 and 1995 bans do not apply to a facility that burns solid waste as a supplemental fuel if the solid waste provides less than 30% of the facility's heat input.

4. Burning of medical wastes in medical waste incinerators or other incinerators approved by DNR to burn medical waste is generally allowed. Landfilling of medical waste that has been treated to render the waste noninfectious is also generally allowed.

5. DNR may grant, to a responsible unit, an exception to the 1995 bans for up to one year in the event of an unexpected emergency condition. The exception would also eliminate the effective recycling program requirements to separate the materials for recycling and the prohibition on their disposal.

6. DNR may grant a waiver to the 1993 bans to allow the burning of brush or other clean woody vegetative material that is no greater than six inches in diameter at wood burning facilities that have air pollution permits or solid waste facility licenses from DNR that authorize the burning.

7. The 1993 and 1995 bans do not apply to the beneficial reuse of a material within a landfill if the use is approved in the landfill's plan of operation.

8. DNR may grant a waiver or conditional waiver to any of the 1995 bans if the applicant shows that the recyclable material has been contaminated and cannot feasibly be cleaned for recycling and DNR determines that granting the waiver or conditional waiver will not impede progress toward meeting the goals of the state solid

waste policies. DNR may not grant a waiver or conditional waiver for material that has been intentionally or negligently contaminated.

9. DNR may grant a waiver or conditional waiver to the 1995 bans related to foam polystyrene packaging and plastic containers other than polyethylene terephthalate (PETE or #1) or high density polyethylene (HDPE or #2) if DNR determines that recycling of the material is not feasible or practical in light of current markets or available technologies and that granting the waiver or conditional waiver will not impede progress toward meeting the goals of the state solid waste policies. The waiver or conditional waiver would continue until one year after DNR determines that markets and technologies are available for recycling of the material subject to the waiver. Issuance of a waiver also eliminates for effective recycling programs both the requirement to

separate the plastics and the prohibition on their disposal. On October 4, 1996, DNR issued a waiver to the disposal and collection requirements for #3-#7 plastic containers and polystyrene foam packaging. This waiver permits polyvinyl chloride (PVC or #3), low density polyethylene (LDPE or #4), polypropylene (PP or #5), polystyrene (PS or #6) and other/multi-layer (#7) containers and polystyrene foam packaging, to be landfilled or incinerated in the state. DNR granted previous variances in 1995 and 1996 for one year periods.

10. A responsible unit may not prohibit the beneficial reuse of a material by a landfill if the beneficial reuse of the material is approved by DNR in the landfill's plan of operation.

11. A responsible unit may not prohibit the landfilling or incineration of any material for which DNR has issued a waiver to the 1995 bans.

## APPENDIX V

### Twelve Required Components of an Effective Recycling Program Section 287.11, Wisconsin Statutes

1. A public education component.
2. A requirement that occupants of residential, commercial, retail, industrial and governmental (including federal) buildings either separate from their postconsumer waste the materials subject to the 1995 bans or treat these wastes at a facility which will recover those materials from commingled solid waste. Postconsumer waste is defined to be solid waste other than: waste generated in the production of goods, hazardous waste, construction or demolition waste, scrap automobiles or high-volume industrial waste.
3. A system for collecting separated recyclable materials from single-family residences.
4. A system for the processing and marketing of recyclable materials collected under the program.
5. A requirement that owners of building containing five or more dwelling units do the following: (a) provide containers for separated materials; (b) notify tenants of the recycling program; and (c) provide for the collection and recycling of separated materials.
6. A requirement that owners of commercial, retail, industrial and governmental facilities: (a) provide containers for separated materials; (b) regularly notify all users and occupants of the recycling program; and (c) provide for the collection and recycling of separated materials.
7. A prohibition on the landfilling or burning of any material subject to the 1995 bans that has been separated for recycling. (The plastics subject to the waiver of the 1995 bans are not subject to the prohibition.)
8. Provisions for the management of postconsumer waste not separated for recycling under the program, consistent with the solid waste management priorities.
9. Adequate enforcement of the above components.
10. Possession of the equipment or means necessary to implement the public education, separation, single-family residence collection, marketing and enforcement components described above.
11. Other criteria established by rule by DNR.
12. A reasonable effort through the implementation of the program components described above to reduce, to the maximum extent feasible, the amount, by weight, of each material subject to the 1995 bans that is generated in the region and disposed of in a landfill, converted into fuel or burned without energy recovery.

## APPENDIX VI

### Variances from Effective Program Criteria

If markets are not available for any material subject to the 1995 bans, DNR may grant a variance for that material from effective program requirements specifying that occupants of residential, commercial, retail, industrial and government buildings separate the 1995 banned items and that the separated materials be banned from landfilling or incineration. This variance may be granted at a request of the responsible unit with an effective recycling program or on DNR's initiative. Variances may apply to one or more responsible units with an effective recycling program. Variances are limited to one year in length, but there is no limit on the number of times that a variance may be granted.

The variance may be granted if DNR determines that the "cost of selling processed material" exceeds either: (a) \$40 per ton, adjusted for inflation since 1989; or (b) the "cost of disposing of processed material." These terms are defined as follows:

**1. Processed material.** A component of solid waste that has been collected, transported to a

waste processing facility and prepared for sale to a broker, dealer or manufacturer.

**2. Cost of disposing of processed material.** The gross cost of transferring processed material to a solid waste disposal facility and disposing of the processed material, including any disposal costs not paid through fees charged by the facility.

**3. Cost of selling processed material.** The net cost, including storage costs, of selling processed material to a broker, dealer or manufacturing facility, plus any cost of transporting the processed material from the waste processing facility to the destination specified by the buyer, less the portion of any state financial assistance received attributable to the processed material.

Since the test for granting a variance is based on the costs of selling and disposing of processed material, the test does not incorporate the costs of collecting, transporting to a processing center or processing the waste material.

## APPENDIX VII

### Summary of Major Out-of-State Waste Legal Provisions

The recycling statutes in effect prior to 1997 required an out-of-state local governmental unit to seek DNR approval of its recycling program as an effective program in order to dispose of solid waste in Wisconsin. However, in *National Solid Waste Management Assoc. v. George Meyer*, 63 F. 3d 653 (1995), the U.S. Seventh Circuit Court of Appeals ruled that the following requirements for landfilling or incinerating out-of-state waste in Wisconsin violated the Commerce Clause of the U.S. Constitution: (a) that the local government in whose jurisdiction the waste is generated must implement an effective recycling program; (b) that the determination that an out-of-state recycling program is an effective program must be promulgated in rules; and (c) that the state in which the waste is generated must implement an effective landfill siting program.

1997 Act 27 made several changes related to the disposal of out-of-state waste in Wisconsin, all of which were to be effective on October 1, 1999. The Act included three provisions intended to respond to the federal court rulings by: (a) retaining the requirement that in order for solid waste generated in another state to be disposed of in Wisconsin, the out-of-state local government's recycling program must be an effective recycling program, but allowing the local government to apply the components of the program only to those waste materials that are disposed of in Wisconsin; (b) repealing the requirement that the determination that an out-of-state local government has an effective recycling program be promulgated in rules; and (c) repealing the requirement that in order for out-of-state waste to be disposed of in

Wisconsin, the state in which it is generated must have an effective recycling program.

Under 1997 Act 27, out-of-state local governments would be eligible to obtain variances from certain effective program requirements and exceptions to the landfill and incinerator bans for which in-state responsible units are currently eligible. The Act also exempted out-of-state local governments from the effective recycling program requirements to: (a) prohibit the disposal within their jurisdiction of materials separated from waste for recycling; and (b) manage waste not separated for recycling in compliance with Wisconsin's recycling policy.

In December, 1997, the constitutionality of the revised law was challenged in court. In *National Solid Waste Management Assoc. v. George Meyer*, No 97-C-851-S (W.D. Wis, June 1, 1998), the U.S. District Court for the Western District of Wisconsin struck down the law without a trial, and agreed with the plaintiffs' contention that the law violates the Commerce Clause, the Due Process Clause and principles of state sovereignty set out in the U.S. Constitution. The court found that all of the objections to the prior law that were raised by the U.S. Seventh Circuit Court of Appeals apply equally to the revised law. On July 1, 1998, the State of Wisconsin appealed the decision, asking that the case be remanded to the district court for either a trial on the disputed facts in the case or summary judgment in favor of the state. In January, 1999, the U.S. Seventh Circuit Court of Appeals upheld the decision (165 F. 3d 1151 (1999)).