



WASTE AND MATERIALS MANAGEMENT PROGRAM GUIDANCE FOR COMMENT

GUIDANCE DOCUMENT TITLE AND NUMBER

Responsible Unit Cooperation and Consolidation: Recycling with your Neighbors (WA-1623)

PROGRAM/BUREAU

Waste and Materials Management

GENERAL TOPIC

To provide Responsible Units (RUs) with information on cooperation versus consolidation, including grant funding and sample template language.

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PUBLIC CONTACT FOR GUIDANCE

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Responsible Unit Cooperation and Consolidation: *Recycling with your neighbors*

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This document provides guidance to responsible units (RUs) about working with other RUs to improve recycling services and reduce overall costs through pooling of staff and financial and contractual services. The two main examples of working together are through a cooperative agreement, informally or formally, or through RU consolidation. Both options may make an RU eligible for the Recycling Consolidation Grant, a supplemental award to the basic state recycling grant. For more information, visit dnr.wi.gov and search for “consolidation grant.”

RU cooperation is the result of an intergovernmental agreement between two or more RUs to share resources, jointly contract or provide services, etc. While not required under state law, RU cooperation often involves entering into a formalized intergovernmental cooperative agreement, such as under s. 66.0301, Wis. Stats. A formalized agreement is advisable to ensure the roles and responsibilities of each party are clearly articulated and agreed upon. Each RU maintains its individual RU status.

Common examples of cooperative agreements include joint development and distribution of outreach materials for residents and/or businesses, pooling staff resources, and sharing facilities and equipment such as for composting, event recycling and access to drop-off centers.

RU consolidation refers to the merging of two or more RUs to form a new RU or joining under the umbrella of an existing RU. Consolidation can be at the county or municipal level. Under any consolidation arrangement, a single RU is designated as the “parent” RU and is the main point of contact between the Department of Natural Resources (DNR) and the RU. The parent agrees to be the responsible party to perform administrative tasks and ensures that all members are complying with recycling requirements.

A common misconception is that consolidation means every community in the consolidated RU must operate the same way. While some consolidated RUs offer the same array of services throughout their geographic area, others allow flexibility. For example, the parent member in one consolidated RU may provide all services to member communities, while in another consolidated RU, the parent may only provide education and enforcement and leave collection services to the member communities. In the department’s experience, most consolidated RUs are pleased with their decision, and consolidation has resulted in greater program efficiencies and better service to their residents.

Factors to consider when deciding which option is best for your needs

If the RU has no prior experience in working cooperatively with another local government unit, cooperative agreements are simpler to accomplish and a good starting point for cooperative work efforts. Some factors to consider when deciding whether to consolidate or enter into a cooperative agreement include:

1. What are your objectives and needs? How can they be effectively addressed?

2. What type of partnership would work best? If you have not worked with this municipality, consider a cooperative agreement as a first step.
3. What time frame are you considering? For either option, you should consider how long the cooperative agreement or consolidation would last.
4. What mechanism works best for renewals and for possible dissolution? If there are shared facilities or resources, how will they be divided post agreement or consolidation?
5. What process would work best to address violations or infractions of the cooperative agreement or consolidation?
6. If you are considering formal consolidation, also consider:
 - a. At what level would the consolidation occur (among municipal RUs, between a county and its member municipalities, between two or more counties, etc.)?
 - b. Which services would the parent RU coordinate or manage, and which would be left to member communities? Note that for all consolidated RUs, the parent is considered the accountable party in the eyes of DNR and is responsible for submitting annual reports and ensuring that all member communities comply with recycling requirements.
 - i. Operational (curbside collection, drop-off centers, processing, and marketing)
 - ii. Educational (providing information about recycling)
 - iii. Administrative (handling complaints and enforcement)
 - iv. Special collections (electronics, clean sweeps/household hazardous waste collections, pharmaceutical collections, appliances, etc.)
 - c. What might be the potential impact on your basic recycling grant (applies only in the case of formal consolidation). The statutory formula for determining award amounts under the Basic Recycling Grant requires the DNR to recalculate the RU eligible costs, pegged to 1999 costs, based on the aggregate costs and programs of all member RUs. In some cases, this may result in a greater grant award, and in others no change or a decreased award amount. Contact the DNR recycling program at DNRRecycling@wisconsin.gov for more information.

Process for entering into a cooperative agreement

If a cooperative agreement is used as eligibility for the Recycling Consolidation Grant, the agreement must be formal and signed by all parties. See Appendix A for a sample cooperative agreement that would meet the eligibility requirements for the Recycling Consolidation Grant. Per s. 287.24(2)(d)2., Wis. Stats., to qualify for the Recycling Consolidation Grant each year, a new cooperative agreement must be executed by the parties each year. Note that it is not necessary to have a contract under s. 66.0301, Wis. Stats., to be eligible for the Recycling Consolidation Grant.

If not applying for a consolidation grant, a formal agreement is not required, but DNR strongly encourages formalizing agreements to clarify roles and responsibilities to avoid misunderstanding or conflict.

Process for entering into a consolidation

Section 287.09, Wis. Stats, provides two pathways for RU consolidation: through adoption of a resolution or through a contract under s. 66.0301, Wis. Stats. Existing RUs that seek to become members of a new or existing consolidated RU must notify the DNR of their intent at DNRRecycling@wisconsin.gov.

Option 1: Consolidation by resolution

A county may adopt a resolution declaring itself the RU for the county, following the steps outlined under the state recycling law s. 287.09(1)(b), Wis. Stats. This option is only available for counties. In considering whether to form a “county” RU, it is important to note that state laws, including the recycling law, do not provide any

legal means to dissolve a county RU formed under resolution or for a municipality to leave a county RU formed under resolution beyond 90 days of passage of the resolution.

Option 2: Consolidation by contract

Two or more existing RUs may formally consolidate through a contract under s. 66.0301, Wis. Stats. The consolidation could be accomplished under the umbrella of one of the existing RUs or result in the formation of a new RU. In either case, the contract among the local governments should clearly designate a single governing body as the RU parent and detail all functions required for the operation of an effective recycling program under s. 287.11, Wis. Stats., and s. NR 544.04, Wis. Adm. Code, as shown in the sample template in Appendix B.

The steps to consolidation include:

1. Within 30 days of signing the contract, each new member of the RU and the parent RU must submit a copy of the contract to the clerk of the counties in which they are located and to the DNR recycling program at DNRRecycling@wisconsin.gov.
2. The designated parent of the RU must submit a new Effective Recycling Program Application (Responsible Unit) for DNR approval and to establish eligibility for the recycling grants.
3. If the consolidated RU intends to apply for a state recycling grant, it must designate an Authorized Representative and notify the DNR recycling program. Once the consolidation is accomplished and in effect, the consolidated RU could also be eligible for the Recycling Consolidation Grant.
4. Timing of the consolidation could be an important factor. The DNR only recognizes changes in RU status on January 1 each year, including mid-year consolidations. Changes in RU program status should be structured to accommodate this timing.

For additional information on cooperative options for Responsible Units or on the recycling grants (basic or consolidation) please email DNRRecycling@wisconsin.gov.

Disclaimer: This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

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Appendix A: COOPERATIVE AGREEMENT

Recycling Consolidation Grant

202___ Grant Year (enter the year that the grant application is for)

This agreement is entered into between the _____ and the
(city, town, village, tribe, county)

_____ for the purpose of implementing efficiencies related to operating
(city, town, village, tribe, county)

an effective recycling program in accordance with s. 287.11 and s. 287.24, Wis. Stats. and ch. NR 542, Wis. Adm. Code.

The _____ and the _____
(city, town, village, tribe, county) (city, town, village, tribe, county)

agree to jointly provide the following effective recycling program activities.

Description of Effective Recycling Program Component

- What
- Where
- How often
- Who is responsible for
- Other

Describe Each Responsible Unit’s Responsibilities

Who will be responsible for what? Examples---

- Service contracts (collection, hauling, educational materials, etc)
- Recycling site management or events
- Expenditures and payments
- Administrative duties

Expected Savings

- Time, money, equipment, etc.
- Improvements in customer service (to residents, businesses, other)
- Other

Cooperative Agreement Amendment, Renewal and Termination

Include terms for amendment, renewal and termination. *(To continue this Cooperative Agreement for the next grant year, sign a renewal or amendment to specify your commitment to continue the Cooperative Agreement.)*

The undersigned parties mutually agree to the terms and conditions of this Cooperative Agreement. Agreement **must be signed by all parties as of October 1 of the year preceding the year for which the grant award will be made.**

(Authorized Representative Name) (Responsible Unit Name) (Date)

(Authorized Representative Name) (Responsible Unit Name) (Date)

Appendix B: SAMPLE CONSOLIDATION CONTRACT AGREEMENT, where recycling program is administered and managed by the Parent RU (centralized model).

**Template for
Contract Agreement Designating [Parent RU] as The Responsible Unit for Recycling
for [Member RUs]**

This contract agreement (“Contract”) is entered into by and between the [parent RU Municipality name] (the “RU Municipality”), and [RU member Municipality name(s)] (individually a “Member Municipality and together the “Member Municipalities.” Collectively, with the RU Municipality, the “Parties”) under the authority at s. 287.09(1)(d), Wis. Stats., for the purpose of operating as a multiple-municipality Responsible Unit to implement an effective recycling program for the Member Municipalities in accordance with ss. 287.09 & 11, Wis. Stats. and chapters NR 542 and NR 544, Wis. Adm. Code in each Member Municipality.

If applicable, add the list of member municipalities.

I. Purpose

The purpose of this Contract is to designate, pursuant to ss. 287.09(1)(d) and 66.0301, Wis. Stats., the RU Municipality as the Responsible Unit for the Municipalities. Furthermore, this agreement establishes the responsibility of the RU Municipality and the Member Municipalities to fulfill the requirements of s. 287.09(2) Wis. Stat. to develop, implement, and operate a recycling program to manage recyclable materials and to manage the solid waste generated within its region in compliance with s. 287.07 (1m) to (4) Wis. Stat. and the priorities under s. 287.05 (12) Wis. Stat.

II. Definitions

All terms used in the Contract shall have the same meaning as defined at s. 287.01 Wis. Stat. and ss. NR 542.03 & 544.03, Wis. Admin. Code.

III. Period of Performance

A. Initial Term

The term of this Contract shall be for a period of [time period], commencing on [January 1, next calendar year OR the date this agreement is executed.]

Note: here and elsewhere throughout this document, “time period” should be expressed in written and digital format such as “five (5) years”.

B. Renewal of Contract

The term of this Contract shall be renewed for an additional term of [time period] and shall continue to renew for each successive [time period] unless [time period] before the end of the term the RU Municipality or all the Member Municipalities give written notice to all the Parties of its/their intent not to renew.

C. Withdrawal Option:

Notwithstanding the above, the RU Municipality may withdraw from this Contract upon [time period] notice to all Parties. Each Member Municipality may withdraw from this Contract upon [time period] notice to all Parties.

Note: The Department of Natural Resources (DNR) only recognizes newly established RUs on January

1 of each year. Mid-year changes in RU status are not recognized by the DNR until that time.

D. Asset Disposition on Termination or Withdrawal

In this section, at a minimum discuss how the jointly procured assets or investments in capital equipment or facilities will be handled in the case where a member leaves the RU or the entire multiple-municipality RU is terminated. Be specific to avoid future legal challenges and conflicts

E. Other Terms

In this section, RU and Member Municipalities may want to add terms controlling Member withdrawal or termination of the RU. This could include terms identifying how grants provided to the RU are allocated between the members, payments, etc. when a withdrawal or Termination occurs.

IV. Responsible Unit Designation

The Member Municipalities hereby agree to designate the RU Municipality as the responsible unit for developing and implementing an effective recycling program on behalf of the Member Municipalities pursuant to s. 287.09, Wis. Stats. The RU Municipality hereby accepts such designation and agrees to assume the duties of responsible unit for the Member Municipalities to develop, implement, and operate a recycling program to manage recyclable materials and to manage the solid waste generated within its region in compliance with s. 287.07 (1m) to (4) Wis. Stat. and the priorities under s. 287.05 (12) Wis. Stat.

V. Duties and Responsibilities of the RU Municipality

The RU Municipality as the designated responsible unit for the Member Municipalities during the term of this Contract hereby agrees to develop, implement, operate and enforce an effective recycling program for recyclable materials generated within the RU Municipality and the Member Municipalities, in cooperation with the Member Municipalities and in compliance with the terms, conditions, obligations, requirements and priorities as set forth under Chapter 287 Wis. Stats. The recycling program will include all the following:

- 1) Creation of a Responsible Unit Recycling Ordinance in accordance with NR 544.06 which addresses the required components of an effective recycling program specified in s. 287.11, Wis. Stats and in s. NR 544.06, Wis. Adm. Code.

Note: In accordance with NR 544.06(1), the RU Municipality shall adopt and enforce an ordinance for the RU Municipality and its Members. However, a Member Municipality may adopt and enforce its own ordinance depending on local circumstances and how responsibilities for the program are distributed among members.

- 2) A public education program to inform residents, multi-family and non-residential facilities within the region of the reasons to recycle, local opportunities to recycle, and prohibitions on land disposal and incineration set forth under 287.07(1m) to (5), Wis. Stats.
- 3) A requirement that the occupants of single-family and 2-4 dwelling units, multi-family, and commercial, retail, industrial, governmental and any other non-residential facilities in the region separate the materials identified in s. 278.07, Wis. Stats., from post-consumer waste.
- 4) A requirement that owners of buildings that contain five or more dwelling units in the region do all the following:
 - (a) Provide adequate, separate containers for the effective recycling program established under

this program.

- (b) Notify tenants at the time of renting or leasing the dwelling and semi-annually thereafter of the effective recycling program established under this paragraph.
 - (c) Provide for the collection of recyclable materials separated from solid waste by the owners/tenants and the delivery of the recyclable materials to a materials recycling facility self-certified by the state.
- 5) A requirement that owners of commercial, retail, industrial and governmental facilities in the region do all the following:
- (a) Provide adequate, separate containers for the recycling program established under this subparagraph.
 - (b) Regularly notify all users and occupants of the facilities of the recycling program established under this program.
 - (c) Provide for the collection of recyclable materials separated from solid wastes by the users and occupants and the delivery of the recyclable materials to Materials Recycling Facility self-certified by the state.
- 6) Implementation of a system for the collection of recyclable materials from single family and 2-4 dwelling units in the region separated from solid waste and their delivery to a materials recycling facility self-certified by the state.
- 7) A prohibition on disposing of in a solid waste disposal facility or burning in a solid waste treatment facility material identified under s. 287.07(1m) to (4) , Wis. Stats., that is separated for recycling as part of the program or is prohibited under s. 287.07(5), Wis. Stats, from landfill disposal or burning in a solid waste treatment facility or is exempted by rule.
- 8) Procurement of equipment or means necessary to implement the effective recycling program, including contracts for service, staff, supplies and equipment from vendors.
- 9) A reasonable effort through the implementation of the effective recycling program to reduce to the maximum extent feasible the amount, by weight, of each material specified in s. 287.07, Wis Stat. that is generated as solid waste within the region and disposed of in a solid waste disposal facility or converted into fuel or burned without energy recovery in a solid waste treatment facility.
- 10) Provisions to be implemented for the management of post-consumer waste that is not separated for recycling or recovery under the effective recycling program, consistent with the highest feasible priority under s. 287.05(12), Wis Stats.
- 11) A system to provide adequate enforcement of the program established above, including creation and implementation of a Compliance Assurance Plan outlining procedures for enforcement of at least one act of non-compliance commonly encountered by RU members.
- The RU Municipality as representative of the Responsible Unit shall also:
- 1) If establishing a new RU, submit to the DNR a one-time Effective Recycling Program Application Responsible Unit (Form 4400-163) for approval of the RU's recycling program and to establish eligibility for financial recycling grant award.
 - 2) Submit to the DNR on or before April 30 annually a complete Annual Report of the prior year activity for the RU.
 - 3) Submit to the DNR on or before October 1 annually a recycling grant request as provided by the DNR for the following year.
 - 4) Provide information to the Member Municipalities regarding the status and planning of the effective recycling program.

VI. Duties and Responsibilities of the Municipalities

In this section, identify specific tasks assigned to Member Municipalities. This is important to avoid later misunderstandings and possible legal challenges. Tasks could include: local responsibility to pass rules, regulations regarding any component of the recycling program, its funding and/or education and enforcement.

VII. Funding

In this section, identify revenue sources (grant awards, sale of recyclables, citations, municipality contributions to offset administration/operation costs, etc.), which Party receives the funds and how they are managed. This section could include things such as: What is the process for funds disbursement and what oversight procedures are in place?

How will initial start up expenses be managed between Parent and Municipalities?

Below are examples of what might be included in this section:

- *The RU Municipality shall be entitled to receive all monies or other assets distributed by the state of Wisconsin, directly or indirectly to or for the benefit of the [RU name].*
- *The RU Municipality shall put all monies received, if any, into the [ABC Bank] account.*
- *The RU Municipality and the Member Municipalities will meet annually at the end of [Month] to reassess the per capita bill rate for next year.*
- *Each Member Municipality shall pay to the RU Municipality by the end of [Month] for the annual billing cycle.*
- *The clerk for the RU Municipality will keep a record of all the income and expenses incurred in implementing the RU program and provide an annual financial report to the Member Municipalities by [date.]*
- *The Member Municipalities will pay an administration fee of \$X/capita to the RU Municipality for Responsible Unit recycling related oversight.*

VIII. Amendment

This Contract may be modified upon the agreement of all Parties. Such modifications shall be executed as a written, signed addendum to the Contract, effective upon signature by all Parties unless otherwise specified in the addendum. This Contract shall be amended and/or supplemented to reflect any changes to Chapters 287, Wis. Stats. and ch. NR 544, Wis. Adm. Code.

IX. Dispute Resolution

The Parties shall use reasonable efforts to resolve any dispute(s) that may arise regarding implementation of this Contract. Any dispute that arises under or with respect to this Contract shall in the first instance be the subject of informal discussions between the Parties. A dispute is initiated when one Party sends the other Party a written notice of the dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless a longer period is agreed to by the Parties.

X. Indemnification

Each party shall be responsible for its own acts and the results thereof and shall not be responsible for the acts of any other party and the results thereof. Each party, therefore, agrees that it will assume all risk and liability to itself, its agents or employees, for any injury to persons or property resulting in any manner from the conduct of its own actions, and the actions of its agents or employees under this Contract, for any loss, cost, damage or expense resulting at any time from any

and all causes due to any act, or acts, negligence, or the failure to exercise proper precautions, of or by itself or its own agents or its own employees, while occupying or visiting the premises under and pursuant to this Contract.

XI. Contacts

Each Party certifies that the individuals listed in Appendix A are contacts for the RU Municipality and Member Municipalities and are authorized to act in their respective areas for matters related to this Contract. Alternative designees may be identified in writing.

SIGNATURE PAGE FOR CONTRACT AGREEMENT
DESIGNATING Parent Name
AS THE RESPONSIBLE UNIT FOR RECYCLING

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their representatives dated and signed this (date)

TOWN OF ABCD

TOWN OF XYZA

By: _____
First and last name – Chairman

By: _____
First and last name – Chairman

ATTEST:

Name and title