

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 875
PROCEDURES FOR WHITE GOODS COLLECTION GRANTS

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AUTHORITY: Implementing and authorized by Section 22.28 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.28).

SOURCE: Adopted at 16 Ill. Reg. 20122, effective December 14, 1992.

SUBPART A: INTRODUCTION

Section 875.100 Purpose

Section 22.28(d) of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.28(d)) authorizes the Agency to:

Provide financial assistance to units of local government from the Solid Waste Management Fund to plan for and implement programs to collect, transport and manage white goods. Units of local government may apply jointly for financial assistance.

Section 875.101 Definitions

- a) "Act" means the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1001 et seq.) in the Act.
- b) For purposes of this Part, the following definitions apply:

"Act" means the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et seq.).

"Applicant" means a unit of local government that applies for a white goods collection grant.

"Component Treatment or Disposal" means the treatment or disposal through a hazardous waste facility of the white good components after they have been removed from the white goods.

"Grantee" means the unit of local government which has been awarded a grant for the collection, transportation, and management of white goods under Section 22.28 of the Act.

"Grant Agreement" means the written agreement and amendments thereto between the Agency and a grantee or applicant in which the terms and conditions governing the grant are stated and agreed to by both parties.

"White Goods" means *all discarded refrigerators, ranges, water heaters, freezers, air conditioners, humidifiers, and other similar domestic and commercial large appliances.* (Section 22.28(c)(1) of the Act).

"White Goods Collection Grant" or "WGC Grant" means grants issued pursuant to Section 22.28 of the Act and Subpart B of this Part.

"White Goods Components" means the component parts of white goods which are hazardous wastes in accordance with the Act, including any *chlorofluorocarbon refrigerant gas, any electrical switches containing mercury, and any device that contains or may contact PCBs in a closed system, such as dielectric fluid for a capacitor, ballast, or other component.* (Section 22.28(c)(2) of the Act).

"Polychlorinated Biphenyls" or "PCBs" means a commercial mixture produced by reacting known weights of chlorine with biphenyl and identified by Chemical Abstract Services (CAS) number 1336-36-3.

"State" means the State of Illinois.

"Subagreement" means a written agreement between the grantee and another party and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded, including contracts for personnel and professional services and purchase orders.

Section 875.102 Severability

If any Section, subsection, sentence or clause of this Part shall be adjudged unconstitutional, void, invalid, or otherwise unlawful, such adjudication shall not affect the validity of this Part as a whole, or any Section, subsection, sentence, or clause thereof not adjudged unconstitutional, void, invalid, or otherwise unlawful.

SUBPART B: WHITE GOODS COLLECTION GRANTS

Section 875.200 Grant Assistance Availability

- a) Subject to the availability of funding and the limitations and requirements set forth in this Part, grant assistance is available to units

of local government for planning and collection programs for white goods and for the disposal and/or treatment of the white good components.

- b) *Units of local government may apply jointly for financial assistance under this Section. (Section 22.28(d) of the Act).*
- c) The state shall reimburse 70% of the eligible program costs.
- d) *All materials collected or received under a program operated with financial assistance under this Section shall be recycled whenever possible. Treatment or disposal of collected materials are not eligible for financial assistance unless the applicant shows and the agency approves which materials may be treated or disposed of under various conditions. (Section 22.28(e) of the Act).*

Section 875.201 Grant Assistance Criteria and Limitations

The limits of assistance to be provided to a grantee will be as follows:

- a) Counties with a population of less than 100,000 are eligible to receive a WGC grant up to \$25,000;
- b) Counties with a population of greater than 100,000 are eligible to receive a WGC grant up to \$50,000;
- c) Municipalities with a population of less than 25,000 are eligible to receive a WGC grant up to \$10,000;
- d) Municipalities with a population of 25,000 to 500,000 are eligible to receive a WGC grant up to \$25,000;
- e) Municipalities with a population of greater than 500,000 are eligible to receive a WGC grant up to \$50,000.

Section 875.202 Requirements Applicable to Subagreements

- a) The following conditions shall apply to all subagreements:
 - 1) It is the policy of the Agency to encourage free and open competition appropriate to the type of project work to be performed.
 - 2) Only fair and reasonable profits may be earned by contractors in subagreements under Agency grants. Factors to be considered in determining a fair and reasonable profit shall include material acquisition, labor costs, associated management costs, contract risks, capital investments, degree of independent development, and cost control and recordkeeping efforts. The determination of a fair and reasonable profit shall not be based upon the application of a predetermined percentage factor.
 - 3) The grantee is responsible for the administration and successful accomplishment of the project for which the Agency grant is awarded. The grantee is responsible for the settlement and satisfaction of all contractual and administrative issues arising out

- of subagreements entered into under the grant. This includes, but is not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protest of award, claims, disputes and other procurement matters.
- 4) Neither the Agency nor the state shall be a party to any subagreement (including contracts or subcontracts), solicitation, or request for proposals.
- b) No subagreement shall be awarded to any person or organization which does not:
- 1) Have adequate financial resources for performance, the necessary experience, organization, technical qualification, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);
 - 2) Have staffing sufficient to comply with the proposed or required completion schedule for the project;
 - 3) Have a satisfactory record of integrity, judgement, and performance, including in particular any prior performance under grants and contracts with the federal and state government;
 - 4) Have an adequate financial management system and audit procedure which complies with generally accepted accounting procedures and with American Institute of Certified Public Accountant's Professional Standards (1211 Avenue of the Americas, N.Y., N.Y. 10036-8775, June, 1992). (This incorporation contains no later amendments or editions.);
 - 5) Maintain a standard of procurement in accordance with this Part;
 - 6) Maintain a property management system which provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and
 - 7) Conform to the civil rights, equal employment opportunity, and labor law requirements of the state.
- c) The Agency retains the right to review and approve in accordance with this Part any subagreements to be entered into by the grantee in furtherance of the administration of the grant prior to execution of that subagreement. The Agency shall approve a subagreement only if the grantee demonstrates that the subagreement is in conformance with subsection (a) of this Section.

Section 875.203 Allocation

- a) *Financial assistance shall be awarded for a state fiscal year, and may be renewed, upon application, if the Agency approves the operation of the program. (Section 22.28(d) of the Act.)*
- b) Pursuant to the availability of funds, grant renewals will be awarded for no more than 3 consecutive years. Recipients requesting grants for more than a 3-year period must reapply at the end of the third year.

- c) Recipients must comply with all reporting requirements set forth in Subpart C of this Part before consideration can be given for grant renewal.

Section 875.204 Required Content of Applications for White Goods Collection Grants

- a) WGC grants will not be awarded unless complete applications are filed in accordance with requirements of this Section.
- b) *Applications for WGC grants shall be submitted to the agency and must provide a description of:*
 - 1) *The area to be served by the program;*
 - 2) *The white goods intended to be included in the program;*
 - 3) *The methods intended to be used for collecting and receiving materials;*
 - 4) *The property, buildings, equipment, and personnel included in the program;*
 - 5) *The Public Education Systems to be used as part of the program;*
 - 6) *The safety and security systems that will be used;*
 - 7) *The intended processing methods for each white goods type;*
 - 8) *The intended designation for final material handling location; and*
 - 9) *Any staging sites used to handle collected materials, the activities to be performed at such sites and the procedures for assuring removal of collected materials from such sites. (Section 22.28(d) of the Act.)*
- c) Cost justification for the amount requested, including a budget for the expenses to be incurred, must be submitted to the Agency. The budget shall include:
 - 1) Demonstration of source of funds for the local portions of the project.
 - 2) Costs shall be itemized as follows:
 - A) Equipment;
 - B) Personal services;
 - C) Fringe benefits;
 - D) Supplies;
 - E) Contractual support;
 - F) Travel; and
 - G) Other costs.

Section 875.205 Agency Action on Application

- a) WGC grants shall be issued with budget periods concurrent with the state fiscal year. Applications for upcoming state fiscal years shall be due

prior to May 1 of each year. The Agency will make awards by June 15 of each year.

- b) The Agency will approve the application only if:
 - 1) It satisfies the terms, conditions, and limitations of Section 875.204 of this Part, relevant statutes, and program regulations; and
 - 2) Achievement of the proposed outputs is feasible, considering the applicant's existing problems, past performance under previous grants, program authority, organization, availability of local share resources, and proposed methodologies for accomplishing outputs.
- c) The applicant will be notified in writing by the Agency if the application is disapproved.

Section 875.206 Determination of Allowable Costs

- a) The grantee will be paid, upon request, in accordance with Section 875.209, for the state share of all necessary costs within the scope of the approved project not to exceed the total grant offer and determined to be allowable in accordance with the following criteria.
- b) Allocable project costs of the grantee which are reasonable and necessary are allowable. Necessary costs may include, but are not limited to:
 - 1) Purchase and/or lease costs of collection and processing equipment;
 - 2) Costs of salaries and benefits of operating and management personnel;
 - 3) White good component treatment or disposal at Agency preapproved disposal or recycling facilities;
 - 4) Material transportation expenses; and
 - 5) Materials acquired, consumed, or expended specifically for the project.
- c) Costs associated with the purchase or lease of property or building(s) for the project are unallowable costs.
- d) Costs which exceed the total amount of the grant offer or which are not necessary for completion of the work required by the grant agreement are unallowable costs. Such costs include, but are not limited to:
 - 1) Inspection or enforcement activities related to the project;
 - 2) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;
 - 3) Fines and penalties resulting from violations of, or failure to comply with, federal, state, or local laws;
 - 4) Costs outside the scope of the approved collection project;

- 5) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney; and
- 6) Costs of equipment or material procured in violation of any provisions of this Part.
- e) The grantee shall seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, prior to execution of the grant agreement). Final determinations by the Agency concerning the allowability of costs shall be conclusive unless appealed in accordance with Section 875.305 of this Part.
- f) Payment will not be authorized for costs incurred prior to the date of the grant award.

Section 875.207 Grant Award and Acceptance

When the Agency has approved an application, the Agency shall notify the applicant in writing with a grant award notification. Within 30 days of receipt of a grant award notification, the grantee shall notify the Agency in writing of its acceptance. Failure by the applicant to so notify the Agency shall terminate the grant award.

Section 875.208 Evaluation of Performance

- a) The Agency will oversee each grantee's performance under an accepted WGC grant. The Agency will evaluate grantee performance and progress toward completing the outputs in the approved work program according to the schedule. If the evaluation reveals that the grantee is not achieving one or more of the terms, conditions or limitations of the WGC grant, the Agency will attempt to resolve the situation through negotiation. If agreement is not reached, the Agency may impose any of the sanctions in Subpart C of this Part.
- b) The Agency will schedule quarterly meetings with the grantee to discuss the progress in meeting the requirements of the grant agreement and to determine whether the grantee will timely meet the requirements of the grant agreement.

Section 875.209 Grant Payments

- a) Requests for partial or final payment shall be sent to the Agency and shall demonstrate the performance of work in accordance with the terms of the grant agreement. Payments will only be made on a reimbursement basis according to the grant payment schedule.
- b) The grantee shall be paid in the state share of allowable costs incurred within the scope of an approved project not to exceed the total grant. Such payments must be in accordance with the payment schedule and the

grant amount set forth in the grant award notification or any amendments thereto.

- 1) Request for Payment: The grantee may submit requests for payment for allowable costs incurred in accordance with the payment schedule. Upon receipt of a request for payment, subject to limitations set forth in the conditions of the grant, the Agency shall cause to be disbursed from available funds such amounts as are necessary so that the total amount of state payments to the grantee for the project is equal to the state share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment.
- 2) Adjustment: At any time or times prior to final payment under the grant, the Agency may cause any request(s) for payment to be reviewed or audited. Each subsequent payment shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit, not to constitute allowable costs. Any payment will be reduced for overpayments or increased for underpayments on preceding requests for payment.
- 3) Schedule of Payments: Payments for project work will be paid in accordance with the schedule of payments established by a condition of the grant, subject to appropriation of funds by the Illinois General Assembly.

Section 875.210 Project Changes

- a) Prior approval by the Agency is required for project changes which may:
 - 1) Increase the amount of state funds needed to complete the project, except that no change will be approved which either exceeds the grant offered or which exceeds the limitation provided for approvable contingencies;
 - 2) Alter the scope of the project by changing the methodologies or personnel to be used, as agreed to at the time of the grant award; or
 - 3) Extend any contractual or grant completion date for the project.
- b) The grantee shall notify the Agency in writing three weeks prior to the effective date of all proposed project changes. Failure on the part of the grantee to give timely notice of proposed project changes may, in accordance with Subpart C of this Part, result in:
 - 1) Disallowance of costs incurred which are attributable to the change; or
 - 2) Termination of the grant.
- c) The Agency may disapprove proposed project changes by written notice to the grantee within 3 weeks after receipt of a written notice of a proposed change; however, neither approval nor failure to disapprove a

- project change shall commit or obligate the state or the Agency to any increase in the amount of the grant or payments thereunder and nothing herein shall operate to increase the amount of the grant.
- d) Notwithstanding the provisions of subsections (a)-(c) of this Section, prior Agency approval is not required for changes having a cost of less than \$500.00. The total cost for all changes allowable under this provision shall not exceed one-half of one percent of the total grant offer.
 - e) The Agency will approve project changes if the grantee can make a showing that:
 - 1) The original project cost approval was based on estimated cost or contractor bids where the actual costs or contractor bids were different;
 - 2) Amendments to state statutes affect the project cost;
 - 3) A project element was inadvertently omitted; or
 - 4) An approved project element was found unnecessary.

SUBPART C: NONCOMPLIANCE WITH GRANT CONDITIONS

Section 875.300 Agency Action for Noncompliance with Grant Conditions

- a) In addition to such other remedies as may be provided by law, in the event of noncompliance with any condition imposed pursuant to a WGC grant, the grant may be annulled and all grant funds recovered, or
 - 1) The grant may be terminated;
 - 2) The project work may be suspended;
 - 3) An injunction may be entered by an appropriate court; or
 - 4) Such other action may be taken by the Agency as the Director shall determine.
- b) No action shall be taken under this Section without prior consultation with the grantee.
- c) In determining whether to take action and which action to take when the Agency is empowered to act under this Subpart, the Agency shall consider factors such as the severity of the violation(s); the number of violations by the grantee; whether the violation is a continuing one; whether the grantee can remedy the violation; and whether the grantee and any subagreement parties remain capable of complying with the approved work project.
- d) Recovery actions taken under this Section shall be pursuant to the Illinois Grant Funds Recovery Act (Ill. Rev. Stat. 1991, ch. 127, par. 2301 et seq.).

Section 875.301 Project Termination by Grantee

The grantee may not terminate a project for which the grant has been awarded, except for good cause. Good cause for termination shall include, but not be limited to: realignment of programs, change in program requirements or priorities, lack of adequate funding, or advancements in the state of the art. If the Agency finds that there is good cause for termination of all or any portion of a project for which the grant has been awarded, it shall enter into a termination agreement or unilaterally terminate the grant, effective the date of termination of the project by the grantee. If the Agency finds that the grantee has terminated the project without good cause, then the grant shall be annulled and all grant funds previously paid or owing to the grantee shall be returned to the State Solid Waste Management Fund as final settlement.

Section 875.302 Covenant Against Contingent Fees

The grantee warrants that no person or agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the Agency shall have the right to annul this grant without liability or in its discretion to deduct from the grant award, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Section 875.303 Statutory Conditions

The grantee is solely responsible for assuring compliance with all statutory requirements.

Section 875.304 Indemnity

The grantee shall assume the entire risk, responsibility and liability for any and all loss or damage to property owned by the grantee, the Agency, or third persons, and any injury to or death of any persons (including employees of the grantee) caused by, arising out of, or occurring in connection with the execution of any work, contract, or subcontract arising out of this grant, and the grantee shall indemnify, save harmless and defend the state and the Agency from all claims for any such loss, damage, injury, or death whether caused by the negligence of the state, the Agency, their agents or employees or otherwise consistent with the provisions of the Construction Contract Indemnification for Negligence Act (Ill. Rev. Stat. 1991, ch. 29, pars. 61 et seq.). The grantee shall require that any and all contractors or subcontractors engaged by the grantee shall agree in writing that they shall look solely to the grantee for performance of such contract or satisfaction of any and all claims arising thereunder.

Section 875.305 Disputes

- a) Only the grantee may appeal to the Agency under this provision with respect to its subagreements thereunder for its own name and benefit. Neither a contractor nor a subcontractor of a grantee may prosecute an

- appeal under the disputes provision of a grant in its own name or interest.
- b) Any dispute arising under this grant which is not disposed of by agreement shall be decided by the Director or his/her duly authorized representative, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the applicant. The decision of the Director shall be final and conclusive.
 - c) This Section does not preclude consideration of questions of law in connection with decisions provided for in subsection (b) of this Section.

SUBPART D: AUDITING AND RECORDS

Section 875.400 Access

- a) The Agency and any persons designated by the Agency shall have access to the premises where any portion of the work for which the grant was awarded is being performed during normal business hours and at any other time at which the work is being performed. Subsequent to cessation of the grant support, Agency personnel or any authorized representative shall have access to the project records, as defined in Section 875.401(a) of this Subpart, to the full extent of the grantee's right to access, during normal business hours.
- b) Any contract entered into by the grantee for work, and any subagreement thereunder, shall provide that the representatives of the Agency will have access to the work as described in subsection (a) of this Section and that the contractor or subcontractor will provide proper facilities for such access and inspection. Such contract or subagreement must also provide that the Agency or any authorized representative shall have access to any books, documents, papers, and records for the contractor or subcontractor which are pertinent to the project for the purpose of making an audit, examination, excerpts, and transcriptions thereof.
- c) Any failure by the grantee or any contractor or subcontractor of the grantee to provide access, as provided herein, after 10 days written notice from the Agency, shall be cause for termination of the grant pursuant to Subpart C of this Part, and refund to the State Solid Waste Management Fund of any unexpended grant funds in the hands of the grantee, and in addition thereto, refund of any grant funds previously expended by the grantee, contractor, or subcontractor found in noncompliance with this Section.

Section 875.401 Audit and Records

- a) The grantee shall maintain books, records, documents, reports, and other evidentiary material and accounting procedures and practices that conform to generally accepted accounting principles to properly account for:
 - 1) The receipt and disposition by the grantee of all assistance received for the project, including both state assistance and any local share; and
 - 2) The costs charged to the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the grant has been awarded. The foregoing constitute "records" for the purposes of this condition.
- b) The grantee's facilities, or such facilities as may be engaged in the performance of the project for which the grant has been awarded, and the grantee's records shall be subject to inspection and audit by the Agency or any authorized representative at the times specified in Section 875.400 of this Subpart.
- c) The grantee shall preserve and make his records available to the Agency or any authorized representative:
 - 1) Until expiration of 3 years from the date of final payment under this grant; and
 - 2) For such longer period, if any, as is required by applicable statute or lawful requirement, or by subsections (d) or (e) of this Section.
- d) If this grant is terminated completely or partially, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.
- e) Records which relate to disputes and/or appeals, litigation or the settlement of claims arising out of the performance of the project for which this grant was awarded, or costs and expenses of the project as to which exception has been taken by the Agency or any of its duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.
- f) Any failure by the grantee or any contractor or subcontractor of the grantee to make records available to the Agency as required by this Subpart after ten days written notice from the Agency shall be cause for termination of the grant and refund to the State Solid Waste Management Fund of any unexpended grant funds in the hands of the grantee, and in addition thereto, refund of any grant funds previously expended by the grantee, contractor or subcontractor found in noncompliance with this Section.

Section 875.402 Reports

The grantee shall prepare and file with the Agency a final report containing a summary of the work completed, a detailed evaluation of the project activities and impacts, and a

summation of actual expenditures. Failure to timely submit reports required by this grant offer may result in:

- a) Withholding of grant funds;
- b) Suspension of the grant;
- c) Termination of the grant; or
- d) Such other action as the Agency may be authorized to take.