

RESOLUTION NO.2013-04
"Emergency Change to Rules and Regulations"

A RESOLUTION ADOPTING AN EMERGENCY CHANGE TO THE RULES AND REGULATIONS OF
THE BENTON COUNTY REGIONAL SOLID WASTE MANAGEMENT DISTRICT

WHEREAS, pursuant to Act 1333 of 2013, each Regional Solid Waste Management District is now required to promulgate rules and regulations dictating how the District will manage the annual Recycling Grant Program beginning with the 2013 Grant Round, and

WHEREAS, the Benton County Regional Solid Waste Management District has existing Rules and Regulations which were last amended on April 29, 2011; and

WHEREAS, the Benton County Regional Solid Waste Management District Board now wishes to modify these Rules and Regulations to add a Chapter to promulgate the Recycling Grant rules and procedures; and

WHEREAS, the Benton County Regional Solid Waste Management District Board finds imminent peril to public health, safety or welfare would result, as described in the attached memo, if the proposed changes are not adopted immediately;

NOW, THEREFORE, be it resolved by Benton County Regional Solid Waste Management District Board:

SECTION 1: The Board hereby adopts an emergency change to the existing Rules and Regulations of the Benton County Regional Solid Waste Management District to add Chapter H: Recycling Grants as attached.

SECTION 2: The Board intends that this change will be made effective immediately upon approval by the Board.

SO RESOLVED, this 19 day of November 2013.

ATTEST:

3P
BOARD SECRETARY

11/19/13
DATE

APPROVAL:

[Signature]
BOARD CHAIRPERSON

11-19-13
DATE



Benton County Solid Waste District
5702 Brookside Road
Bentonville AR 72712
(479) 795-0751

November 13, 2013

The Benton County Regional Solid Waste Management District is adopting an Emergency Revision to our existing Rules and Regulations. The revision includes the addition of a section to govern the management and distribution of Recycling Grants pursuant to Arkansas General Assembly Act 1333 of 2013 and the District's Resolution #2012-02 "Recycling Grant Criteria" which was adopted on May 17, 2012.

This amendment to the Rules and Regulations is being adopted on an emergency basis as the District Board finds imminent peril to public health, safety or welfare would result if the proposed changes are not adopted immediately.

Imminent peril is established as follows:

- ACA 8-6-202 establishes that [proper] collection and disposal of solid wastes protect the public health and welfare, prevent water and air pollution and prevent the spread of disease and creation of nuisances.
- PC&E Regulation 22 "Solid waste management system" means the entire process of storage, collection, transportation, processing, treatment, and disposal of solid waste, and includes equipment, facilities and operations designed for solid waste management activities, including recycling, source reduction, and the enforcement of solid waste management laws and ordinances
- A lack of available grant funding would result in disruption to district solid waste management services since a portion of 2013 administrative and operational expenses including staff salaries are budgeted from 2013 Recycling Grant Round grants # BCO 00-13, BCO 01-13, BCO 03-13 and BCO 04-13. Services potentially affected include implementation of the District's Solid Waste Plan, licensing and referral of solid waste haulers, collection of recyclable materials from rural areas, collection of bulky waste materials. We have no other revenue source available to fund these activities.
- A disruption in District collection ability could potentially result from lack of necessary baling and processing equipment to be funded from these grant funds.

These Rules and Regulations are being adopted pursuant to the Arkansas Administrative Procedures Act as well as the District's Administrative Policies and Procedures.

Mark-up Copy. Stricken language would be deleted from and underlined language would be added to the regulations, as they existed on April 29, 2011.

RULES AND REGULATIONS OF THE
BENTON COUNTY REGIONAL SOLID WASTE MANAGEMENT DISTRICT

CHAPTER H: RECYCLING GRANTS.

Subchapter 32 General.

Subchapter 33 Grant Procedures.

Subchapter 34 Project Selection.

Subchapter 35 Recordkeeping and Reporting

Subchapter 36 Appeals of Grant Decisions

Subchapter 32 General.

§ 32.01 Authority

§ 32.02 Applicability

§ 32.01 Authority

Pursuant to ACA 8-6-615(a)(1)(A) Funds collected under § 8-6-607 and deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund, less up to twenty percent (20%) for administrative support for the Arkansas Department of Environmental Quality, shall be allocated annually to each of the approved regional solid waste management districts.

The Benton County Solid Waste District Board is responsible for the grant application process and acceptance of grant applications from within the District.

§ 32.02 Applicability

Beginning with the 2013 Grant round, this regulation shall apply to Recycling Grant Funds received pursuant to ACA 8-6-615 and shall apply to all grant applicants and grantees.

Grants approved under prior years shall be governed by applicable laws and regulations in place at the time of the grant approval.

Subchapter 33 Grant Procedures.

§ 33.01 Applicant Eligibility

§ 33.02 Eligible Activities, Projects and Programs

§ 33.03 Pre-Application Training Meeting

§ 33.04 Application Process

§ 33.05 Adequate Revenues

§ 33.06 Permits and Licenses

§ 33.07 Distribution of Grant Funds

§ 33.08 Modifications

§ 33.09 Project Deadlines

§ 33.10 Funds Forfeited

§ 33.11 Irregularities

§ 33.12 Earned Interest on Grant Awards

§ 33.13 Markets Sought

§ 33.14 Notice Published

§ 33.01 Applicant Eligibility

The following entities shall be eligible to apply for and to receive grants:

- a) **Cities and Counties:** Duly incorporated cities and towns and County governments of the State of Arkansas.
- b) **Solid Waste Authorities: Authorities** incorporated under A.C.A. '14-233-101 et seq.
- c) **Regional Solid Waste Management Boards:** Boards formed pursuant to A.C.A. ' 8-6-701 et seq., which have entered into agreements pursuant to A.C.A. ' 8-6-701 et seq., and are empowered to administer a grant award pursuant to the requirements of A.C.A. ' 8-6-601 et seq.
- d) **Subordinate Service Districts:** Subordinate Service Districts which are formed pursuant to A.C.A. ' 14-14-708 et seq., and are empowered to administer a grant award pursuant to the requirements of A.C.A. ' 8-6-601 et seq.
- e) **Multi-County or Multi-Regional Projects,** provided that concurrent resolutions regarding the joint application have been adopted by participating Regional Solid Waste Management District Boards and that a joint application is signed by the Board Chairman for each Regional Solid Waste Management District.
- f) **Partnerships Between Public Entities and Private Recycling Interests:** Public entities identified herein partnered with private recycling interests to provide recycling services, provided that the public entity maintains ownership of facilities and equipment purchased with grant funds and that the public entity assumes responsibility for meeting the requirements of this regulation.

§ 33.02 Eligible Activities, Projects and Programs

The following activities, projects or programs in addition to other activities that support the objectives of increasing and improving recycling as a waste-management strategy, consistent with the intent of A.C.A. ' 8-6-601, et seq., are eligible for grant funding:

- a) **Solid Waste Planning –** The District may utilize grant funds for planning studies which meet the solid waste planning requirements of A.C.A. ' 8-6-201 et seq., ' 8-6-1901 et seq., Regulation 22: Solid Waste Management, and the Minimum Requirements for Regional Solid Waste Management District Plans as set forth in the Statewide Solid

Waste Management Plan. The funded planning study must include goals for the diversion of recyclable materials from disposal at landfills or incinerators and must set out methods for increasing recycling in the study area.

- b) Recycling or Composting Equipment and Material Recovery Facilities (MRF's)-Recycling equipment and recycling facilities are eligible for funding. The facilities must meet the objectives of the District solid waste management plan for recycling facilities. Composting facilities and equipment are also eligible.
- c) Solid Waste Education and Public Awareness Programs- Education and public awareness activities and materials are eligible if, in accordance with the legislative intent of ACA 8-6-601 et seq., they are part of a plan for introducing or promoting recycling, composting, or other solid waste management practices that divert wastes from landfills, encourage waste reduction and stimulate demand for products produced from recycled materials.
- d) Transfer Stations-Waste transfer stations which accept three or more recyclable materials, as identified in Regulation 28, are eligible for funding.
- e) Recycling Programs - Recycling activities that meet the intent and requirements of ACA 8-6-601 et seq. are eligible for funding.
- f) Waste Reduction Activities – Other waste stream reduction activities that divert the flow of materials away from landfills to be put to beneficial use are eligible for funding.
- g) Recycling System Activities – Activities that support and are an integral part of a recycling system, including without limitation, operation, construction, and logistical systems, are eligible for funding.
- h) Other activities as approved by the Board.

§ 33.03 Pre-Application Training Meeting

Prior to the application deadline each year, the District staff shall conduct a pre-application training meeting for all potential grant applicants. The meeting shall include training on the application process as well as instruction regarding the grant procedures and record keeping requirements. The meeting date shall be determined by the District director. Notice of the date and time of the meeting shall be provided to each eligible entity at least seven days in advance of the meeting.

Any potential grant applicant shall be required to have at least one employee of the applicant entity attend the mandatory pre-application meeting. Failure to attend the meeting shall result in the potential grantee being ineligible for that grant round.

§ 33.04 Application Process

Applicants shall fully complete a grant application form as developed by District staff each year. The application form shall include general information about the potential grantee entity, a thorough description of the proposed project and a detailed budget for the proposed project.

The Board shall establish a timeline each year for the annual grant process. Failure to submit an application by the deadline shall result in the grant application being ineligible for that grant round.

§ 33.05 Adequate Revenues

Each grantee shall show that adequate revenues are being collected to support the long-term operation and maintenance of a grant-funded project prior to the disbursement of any grant funds.

§ 33.06 Permits and Licenses

Each grantee shall possess or obtain all applicable federal, State, and local permits and licenses prior to disbursement of funds.

§ 33.07 Distribution of Grant Funds

After receipt of the annual allocation of grant funds from ADEQ, the District shall make distribution of grant funds to approved grant projects as scheduled in the grant application and subject to the grantee's compliance with all grant conditions. Funds shall not be disbursed by the Board prior to the start of the project.

Funds will be paid directly to the vendor on behalf of the Grantee for any eligible grant expenditures, including but not limited to products or services, ordered and authorized by the grantee. A grantee may alternatively choose to pay the vendor and then request reimbursement from the District for the amount of the expenditure. A copy of the invoice detailing the purchase and a copy of the Grantee's canceled check must be submitted to the District in order for the funds to be reimbursed to the Grantee.

Under no circumstance will a check for the grant funds be released to the Grantee without proper documentation of completed eligible purchases.

§ 33.08 Modifications

After the Board has approved a grant, any proposed modifications to a grant project will require written approval by the District Board prior to implementing any change to the project. Modifications include any use of the grant funds in a way which was not specifically identified in the approved grant application.

The grantee is required to submit adequate documentation of the proposed changes, on an approved Change Order Form, to the District staff. The Change Order form must bear the signature of someone within the Grantee's organization who has authorization to apply for and/or modify grants. The fully completed change order proposal will then be added to the agenda of the next regularly scheduled District Board Meeting. The Board will review the change order request and will either approve or reject the proposed change.

If the change order proposal is approved by the Board, the Chairman of the Board will affix his signature to the order and District Staff will notify the grantee of the approval. Implementation of any modifications to the approved grant project may only begin after the approved change order has been received from the District.

Modifications that alter the grant category or materially change the project must be public-noticed and will require a 30-day public comment period. The grantee will be solely responsible for the cost of publishing the required notice in a newspaper of general distribution within their community. District staff will assist the grantee with developing the language of the notice in order to ensure that all requirements are met. The notice must state that all public comments will be mailed to the District Office. The District staff will be responsible for submitting copies of any comments received to the Board prior to the Board's review of the proposed change order.

§ 33.09 Project Deadlines

All grantees shall develop recycling programs, as outlined in the grant application, and expend all grant funds within three (3) years following the date that the grant allocation was received by the District office unless a written extension is granted by the Board.

§ 33.10 Funds Forfeited

Funds for any grant project not started within one calendar year from the date that the grant allocation was received by the District office will be forfeited unless an extension of time is granted by the Board. The grantee will be responsible for submitting a written request for an extension prior to the calendar year date and will allow sufficient time for the Board to review the matter at a regularly scheduled meeting. Forfeited funds may be used to fund the next prioritized project as approved by the Board.

If, within a three-year period beginning on the date that the grant allocation was received by the District office, the grantee does not meet the conditions of the grant as prescribed in these Rules, the Board may order the grantee to reimburse any disbursed grant funds. Grantees will be ineligible for further grant awards until reimbursement is made. Reimbursed monies may be used to fund the next prioritized project as approved by the Board.

§ 33.11 Irregularities

A grant may be terminated by the Board if the Board determines that the grantee is unable or unwilling to complete or meet the conditions of the grant as set forth in the grant application. If a grant is terminated, any grant funds previously disbursed shall be reimbursed by the grantee in accordance. Funds returned may be used to fund the next prioritized project as approved by the Board.

§ 33.12 Earned Interest on Grant Awards

Interest monies earned from the holding of grant funds by the District shall be used exclusively for recycling programs consistent with the District's Solid Waste Management Plan. It shall be the responsibility of the District to monitor the collection of earned interest and direct interest monies to a project supported by a grant award or to other recycling program(s) consistent with the District's Solid Waste Management Plan.

§ 33.13 Markets Sought

All grantees shall seek to market or reuse the materials diverted under the grant project for, at minimum, a period of three (3) years following the grant award.

§ 33.14 Notice Published

The District shall insert, in a newspaper of general circulation in Benton County, a notice describing the grant requests approved by the Board and soliciting written comments from the public. The comment period shall last for thirty (30) calendar days after the date of publication. The notice shall be published at least thirty (30) days prior to the disbursement of grant funds. Copies of all written comments will be submitted to the Board for review.

Subchapter 34 Project Selection.

§ 34.01 Application Review Process

§ 34.02 Project Selection Criteria

§ 34.03 Administrative Allocation

§ 34.04 Equipment and Facility Purchasing

§ 34.05 Equipment Usage

§ 34.06 Existing Equipment or Facilities

§ 34.01 Application Review Process

Applications from eligible entities which are received by the application deadline shall be eligible for consideration of funding. District staff shall review applications for completeness and shall provide a copy of the complete applications to the Board's Grant Committee, as assigned by the Chairman of the Board annually. Staff shall develop a recommendation of prioritized grant projects and present the recommendations to the Grant Committee for consideration.

The Grants Committee shall judge each grant application based on the criteria outlined in Section 34.01 and shall make recommendations for acceptance of the proposed projects based on this criteria ranking. The Board shall review the committee recommendations and approve funding of projects deemed to provide for the greatest benefit of the citizens of Benton County and that support the Board's objectives of increasing and improving recycling as a waste-management strategy.

§ 34.02 Project Selection Criteria

The Board shall prioritize and select grant projects from within District boundaries, such selection being in the sole discretion of the District. The Board shall review and prioritize each Recycling Grant Application based on the following criteria in descending order:

- a) **Expansion of Recycling** – Priority will be given to those projects that seek to increase and/or expand the convenience and availability of recycling collection services and the types and volumes of materials collected using a regional approach to maximize efficiency.
- b) **Utilization of project** - Priority will be given to those projects which provide for the greatest utilization of project funded by grant funds. Criteria will include: Ability for equipment to be used by multiple entities; number of days of use per year; population served by the project; etc.
- c) **Financial Need**-Priority will be given to those projects for which existing revenues are insufficient to fund the proposed project. The applicant's ability to maintain the project and to provide in-kind contributions to the project will also be considered by the Committee.
- d) **Prior Grant History**-Priority will be given to those eligible entities which have not received Recycling Grant funds during the previous two grant rounds.
- e) **Diversion Rate** - Priority will be given to those projects which provide for the greatest percentage and/or volume of diversion of material from landfill disposal based on the waste generation estimates for the population served by the project.
- f) **Public Awareness Plan**-Priority will be given to those projects which demonstrate a comprehensive public awareness plan to promote the proposed project.
- g) **Compliance with Reporting**-Priority will be given to those entities which have complied fully with all reporting requirements on previous grants.

§ 34.03 Administrative Allocation

The District shall use an amount no greater than twenty-five percent (25%) of the annual allocation of grant funds for administrative purposes. For the purposes of the Recycling Grants Program, administrative expenses are expenses for the administration of the District's solid waste management plan and may include record keeping, periodic reporting requirements, budgeting, and other related activities. Examples of administrative expenses include the salaries and fringe benefits of the District Director and other staff supporting the administration of the plan (including accounting, payroll and human resources, information technology, legal, and procurement functions); the cost of supplies and equipment used for administrative functions or activities; rent, utilities, phone service, postage, and licenses associated with the administrative office of the District; and other expenditures approved by the Board.

§ 34.04 Equipment and Facility Purchasing

The District and each grantee shall conform to all State laws that are applicable to the purchase, use or sale of equipment and facilities secured with State funding including, but not limited to, State laws on commodity purchases and bids for construction by local governments.

§ 34.05 Equipment Usage

All facilities or equipment purchased with grant funds disbursed by the Board shall be used for the general purposes specified in the grant application. Equipment must be used a minimum of fifty percent (50%) of the time on recycling or grant funded activities. Facilities or equipment purchased with grant funds shall not be sold, traded, or transferred without written consent from the Board.

§ 34.06 Existing Equipment or Facilities

Grant assistance shall not be provided for the purpose of purchasing equipment or facilities if existing equipment and facilities efficiently and adequately serve the relevant area, unless the District determines that the equipment or facility is indispensable to the otherwise eligible project.

Subchapter 35 Recordkeeping and Reporting

§ 35.01 Record Keeping

§ 35.02 Documentation

§ 35.03 Recycling Activity Survey

§ 35.04 Progress Reports

§ 35.05 Right of Entry and Access

§ 35.01 Record Keeping

All grantees are required to maintain an orderly accounting system to document that grant expenditures are made in accordance with the project budget.

§ 35.02 Documentation

Grantees are required to submit to the District copies of all bids, paid invoices on equipment or services, and canceled checks pertinent to each grant funded project.

§ 35.03 Recycling Activity Survey

For a period of five (5) years from the date that the grant allocation was received by the District office, grantees shall provide the District with an annual Recycling Activity Survey report, as provided by ADEQ, summarizing:

- a) Tonnage of materials collected by the grant recipient; and
- b) Revenues produced by the sale of materials collected.

The reports shall be filed with the District office annually on or before July 31 and shall document recycling activities of the grantee for the period of July 1 of the previous year through June 30 of the current year.

§ 35.04 Progress Reports

Until all grant funds have been expended on a project, grantees shall provide the District with an annual Progress Report for each grant. The Progress Report shall be on a form developed by the District and shall include the amount of grant funds expended during the reporting period,

the amount of grant funds remaining and a narrative describing the progress of the grant project.

The reports shall be filed with the District office annually on or before July 31 and shall document project progress for the period of July 1 of the previous year through June 30 of the current year.

§ 35.05 Right of Entry and Access

District personnel shall have the right of entry, during normal business hours, to the premises of a grant-funded facility, the right of access to view and inventory any grant-funded equipment and the right of access to all records pertaining to a grant-funded project or activity.

Subchapter 36 Appeals of Grant Decisions

§ 36.01 Requests for Appeal of Grant Decisions

§36.02 Appeal to Board

§ 36.01 Requests for Appeal of Grant Decisions

The following persons shall have the right to appeal any grant decisions made by the Board:

- a) A grant applicant;
- b) A grantee;
- c) Any person who submitted written comments on the contested matter within the comment period;
- d) A Regional Solid Waste Management District Board member; or
- e) Any other person entitled by law to contest the Board's decision.

The request for appeal must be in writing and received by the District office no later than close of business ten (10) days after the date of approval of grant projects by the Board. If the tenth day falls on a Saturday, Sunday or State Holiday, the request is due by close of business the following business day.

Requests for appeal may be delivered to the District in person or by Certified Mail, return receipt requested.

§36.02 Appeal to Board

Persons who timely file a request for appeal shall be entitled to be heard at the first regularly scheduled Board meeting following their request for appeal. If a request for appeal is received within fourteen days prior to a scheduled Board meeting, the appeal will be heard at the next regularly scheduled Board meeting.

The hearing shall be conducted by the presiding Chairperson of the Board. Conduct of the hearing shall be informal. The Chairperson shall be entitled to use their discretion to allow, disallow or strike any evidence or testimony that they feel is irrelevant, unreliable or duplicative.

The appellant shall have an opportunity to explain the reasoning for their appeal of the contested grant decision. Questioning of the appellant by the Board shall be allowed.

At the close of the hearing, the Board shall make a final decision on the contested grant.

These Emergency Rules and Regulation shall be effective on the date approved by the Board.

Approved By the Board on the 19th day of November, 2013.

ATTEST:

SP

BOARD SECRETARY

11/19/13

DATE

APPROVAL:

Jodi CMB

BOARD CHAIRPERSON

11-19-13

DATE