

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #4

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**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: BUREAU OF COMMERCE, DIVISION OF NATURAL RESOURCES TITLE NUMBER: 58

CITE AUTHORITY: 20-11-5a [h](1)

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: RECYCLING ASSISTANCE FUND GRANT PROGRAM

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



JOHN B. RADER, DIRECTOR



DIVISION OF NATURAL RESOURCES

State Capitol
Building 3, Room 669
Charleston WV 25305
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Cecil H. Underwood
Governor

John B. Rader
Director

MEMORANDUM

TO: Judy Cooper, Director
Secretary of State
Administrative Law

Debra Graham, Chief Counsel
Legislative Rule Making Committee

FROM: John B. Rader, Director 
Bureau of Commerce
Division of Natural Resources

DATE: January 6, 2000

SUBJECT: **Division Approval of Proposed Rules**

The attached copy of the Recycling Assistance Grant Program rules has my approval to be submitted as a replacement to the modified rule filed on December 28, 1999. Please accept this for approval.

Please call Emily Fleming, Chief, Environmental Resources Section at 558-3370 should there be any questions.

Attachments

JBR/efh

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JAN 7 11 25 AM '00

RECEIVED



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MEMORANDUM

TO: Judy Cooper, Director
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Debra Graham, Chief Counsel
Legislative Rule Making Committee

FROM: John B. Rader, Director
Bureau of Commerce
Division of Natural Resources

A handwritten signature in dark ink, appearing to be "JBR", written over the printed name of John B. Rader.

DATE: December 27, 1999

SUBJECT: Division Approval of Proposed Rules

The attached rule amendment has my approval to be filed as a rule modification to the agency proposed Recycling Assistance Grant Program Legislative Rules pursuant to the West Virginia Administrative Procedures Act. Your approval is requested.

All changes are shown by strike-throughs for deleted language and underlined for new language.

Please call Emily Fleming, Chief, Environmental Resources Section at 558-3370 should there be any questions.

Attachments

JBR/efh

TITLE 58
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES
SERIES 5
RECYCLING ASSISTANCE GRANT PROGRAM

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

JAN 7 11 25 AM '00

FILED

§58-5-1. General.

1.1. Scope and Purpose. - This rule sets out guidelines and procedures for providing assistance grants to counties, municipalities, and others planning and implementing recycling programs, related public education programs, and recycling market procurement efforts.

1.2. Authority. - West Virginia Code §20-11-5a(h)(1).

1.3. Filing date.

1.4. Effective Date.

~~1.5. Refiling of rule. The director shall refile this rule consistent with the provisions of West Virginia Code §29A-3-9 and §29-3-12, for consideration by the legislature during the year 2000 regular session.~~

§58-5-2. Definitions.

2.1. "Director" means the director of the Division of Natural Resources, or his or her, authorized representative.

2.2. "Instrumentality" means an agency authorized by state law.

2.3. "Municipality" means an incorporated community.

2.4. "Other Interested Party" means private enterprise and nonprofit organizations.

2.5. "Recycling Market Procurement" means developing markets for the materials generated by collection through a curbside or drop off recycling program recycling programs.

2.6. “Recyclable Materials” includes, but is not limited to steel and bimetal cans, aluminum, glass, paper, plastic, tires, white goods and yard waste.

2.7. “Source Separated” means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does not include sewage sludge.

2.8. “White Goods” means bulky appliances such as stoves, hot water heaters, sinks, washers, dryers, refrigerators, and dishwashers.

2.9. “Division” means the West Virginia Division of Natural Resources.

~~2.9.2.10.~~ The terms as defined in the Solid Waste Management ~~Regulations~~ Rule, 47 C.S.R. 38, are adopted for use, where applicable, in this rule.

§58-5-3. Grants Available From Recycling Assistance Grant Program.

3.1. The recycling assistance grant program provides grants to assist municipalities, counties and others in:

3.1.1 implementation of recycling programs;

3.1.2 public education programs which promote recycling; and

3.1.3 recycling market procurement efforts.

3.2. The Recycling Assistance Fund Grant Review Committee shall evaluate the Recycling Assistance grant proposals that are in compliance with the criteria of section 3.1 of these rules will be evaluated this rule on a competitive basis considering each proposal’s objectives towards maximizing the following factors:

3.2.1. conservation of limited natural resources;

3.2.2. public education regarding litter control;

3.2.3 recycling of valuable materials;

3.2.4 extending the useful life of solid waste landfills; and

3.2.5. reducing the need for new landfills.

3.3. The following types of grants are available:

3.3.1. Local Government Recycling Feasibility Study and Planning Grant -

~~The~~ This grant is for researching the feasibility of community/, county/, and regional recycling programs including market development and ~~entails~~ requires submittal of a detailed comprehensive plan. A local government may use a professional service ~~may be utilized~~ to assist in planning and/or implementing a comprehensive recycling program.

3.3.2. Recycling Promotion, Collection Drive, and Office Paper Recovery Grant -

~~The~~ This grant is available to instrumentalities and state and private colleges in the absence of a county, municipal; or state recycling program, as provided for in West Virginia Code §20-11-6. The grant is for the purpose of implementing recycling programs consisting of source separation, collection and transportation activities; and may include school projects, drop-off collection bins, paper collection equipment and special events which increase public awareness of recycling and its benefits.

3.3.3. Local Government Recycling Grant - ~~The~~ This grant is for the implementation

or expansion of county, municipal and regional recycling programs, and ~~shall~~ emphasizes the integration of source reduction and recycling. The local or regional solid waste authority shall have a ~~A~~ comprehensive solid waste management and siting plan developed by ~~the local or regional solid waste authority shall be~~ and approved by the West Virginia Solid Waste Management Board to qualify for the grant.

3.3.4. Recycling Market Development Grant - ~~The~~ This grant is available to state,

regional, county or local governments to assist in developing markets for materials collected and/or processed.

§58-5-4. Grant Program Priority and Other Criteria.

4.1. All West Virginia municipalities, county commissions, county and regional solid waste authorities, instrumentalities, proprietorships, partnerships, corporations, ~~and~~ private schools, are eligible to apply for recycling assistance grants as provided for in ~~subsections~~divisions 3.3.1. through 3.3.4. of this rule, through consultation with the county or regional solid waste authority in which the applicant is located. The recycling assistance fund grant review committee ~~will~~ shall give priority to those municipalities, counties, state instrumentalities, private schools, proprietorships, partnerships, and ~~cooperations~~ cooperatives, required to implement recycling programs as a result of a county referendum or pursuant to the provisions of West Virginia Code §20-11-5 and 20-11-6. If a county has adopted a recycling ordinance by referendum vote, the ordinance shall be consistent with the provisions of West Virginia Code §20-11-5© for the county to be eligible for a grant. If the county has one or more municipalities each with a population greater than 10,000, the municipality's program shall, at a minimum, be consistent and coordinated with the county's recycling program. Grant proposals shall meet the following criteria:

4.1.1. Municipalities with populations over 10,000; county governments;
cooperatives; and other interested parties;

4.1.1.a. Proposals for grants under ~~subsection~~division 3.3.1. of this rule shall have work elements that are at a minimum consistent with the provisions of subsections (a) and (b) of West Virginia Code §20-11-5; and

4.1.1.b. Proposals for grants under ~~subsection~~division 3.3.3. of this rule shall document that the plan to be implemented has been approved by the solid waste management board. Grant proposals shall include, but not be limited to the following:

4.1.1.b.A. source separation of at least three recyclable materials;

4.1.1.b.B. collection and transportation of materials to a processing center; and

4.1.1.b.C. public education programs which promote recycling.

4.1.2. A county government required pursuant to West Virginia Code §20-11-5(e) to implement a comprehensive recycling solid waste program shall at a minimum develop a program that is in compliance with the provisions of West Virginia Code §20-11-5(c).

4.1.3. Special funding proposals for five or more communities or two or more counties combining their efforts to provide a cooperative countywide or multi-county recycling program shall have a comprehensive recycling plan(s) which has been approved by the solid waste management board.

4.2. Municipalities with a population under 10,000; absence of a municipal program; other interested parties:

4.2.1. Municipalities with a population under 10,000 may implement a curbside or drop-off recycling program that includes public education, providing transportation of recyclable materials to a processing center, and integration of other recyclable materials into the program.;

4.2.2. In the absence of either a municipal or a countywide recycling program, all instrumentalities, primary and secondary schools, private colleges and universities are eligible to receive grants under ~~subsections~~divisions 3.3.2. and 3.3.4. of this rule. Grant proposals shall include, but not be limited to the following:

4.2.2.a. source separation of at least two recyclable materials;

4.2.2.b. collection and transportation of materials to a processing center; and

4.2.2.c. public education programs which promote recycling.

4.2.3. Other interested parties may apply for grants provided that grant proposals are

consistent with one or more of the objectives listed under subsection 3.1 of this rule, and include, but are not limited to the recycling activities listed under ~~subdivision~~section 4.2.2. of this rule; and

4.2.4. Persons responsible for collecting, hauling or disposing of solid waste who do not participate in the collection and payment of the solid waste assessment fee imposed by West Virginia Code §20-11-5a in addition to all other fees and taxes levied by law for solid waste generated in this state which is destined for disposal, ~~shall are not be~~ eligible to receive grants.

§58-5-5. Use of a Grant.

Recycling assistance grant may be used to:

~~5.1. Enhance the self-sufficiency of recycling in counties or municipalities by initiation of new or expanded recycling programs providing:~~

~~5.1.1. Supplemental wages of personnel directly involved with administration or operation or recycling activities; rent or purchase of recycling equipment, including items such as curbside containers or drop-off boxes; collection and transportation of recyclables; recycling promotion; and recycling market procurement efforts.~~

5.21. A Recycling assistance grant shall be used for:

5.21.1. Personnel - A Grant grant is limited to the salary costs associated with a recycling manager, coordinator, or laborers. No more than a total of \$20,000 may be used from grant funds for the combined wages and/or benefits of a recycling manager, coordinator, and/or laborers;

5.21.2. Travel - Educational recycling conference expenses are limited to ~~outside of the program boundaries and are allowable for:~~ airfare or mileage, meals, lodging, parking and registration fees. ~~Costs are limited to \$1,000 per grant. No more than a total of \$1,500 may be used from grant funds for travel;~~

5.21.3. Supplies - A Grant grant is allowed for general office supplies, and other supplies, such as collection bags or household bins used for the collection/storage of recyclables;

5.21.4. Equipment - A Grant grant is limited to processing equipment, material handling or storage equipment, scales, and safety equipment used in recycling activities. ~~The Equipment equipment~~ is to remain in the grantee's name and may be leased, but not transferred to a third party. The Division of Natural Resources shall by grant agreement acquire a lien interest in property and equipment purchased with grant monies. This lien shall state the ~~period of years in which lien attaches and~~ terms of release ~~and the period of years in which the lien attaches, in accordance with subdivision 6.1.11. of this rule.~~ All equipment shall become property of the Division of Natural Resources if the recycling program dissolves. At the discretion of the Director, equipment which has not been productively used for 180 days shall become property of the Division of Natural Resources;

5.21.5. Recycling Vehicle Expense - A Grant grant is limited to the lease/purchase, maintenance, fuel, mileage and insurance for a truck or van used in approved recycling activities. Transporting materials to market using the program's vehicle and labor is an approved recycling activity;

5.21.6. Printing - A Grant grant is limited to costs associated with educational materials on recycling such as pamphlets, posters, flyers, etc.;

5.21.7. Advertising - A Grant grant is limited to costs associated with the production and/or placement of recycling advertising in newspaper, radio, business cards, and other advertising related to development and implementation of a recycling program;

5.21.8. Promotional Items - A Grant grant is limited to costs associated with promotional items such as awards, decals, patches, buttons, magnets, and costs associated with the

rental of a fair booth and/or exhibit space for creating public awareness.;

5.21.9. Professional Services - A ~~Grant~~ grant is to assist in planning and implementation of recycling projects including feasibility studies; and

5.21.10. Development Work - A ~~Grant~~ grant is directed towards recycling market procurement.

5.32. ~~Costs not allowed under a~~ A recycling assistance grant ~~are~~ may not be used for:

5.32.1. The purchase or long term lease of dumpsters or other containers, or their servicing, when they are not part of an approved recycling activity.;

5.32.2. Land acquisition.;

5.32.3. ~~Cost~~ The cost for office equipment including such items as desks, chairs, telephones, typewriters, files, and photocopying equipment.;

5.32.4. Street sweepers or their equivalents.;

5.32.5. Entertainment costs (banquets, parties, etc.).;

5.32.6. Alcoholic beverages, in-state lunches, and all gratuities.;

5.32.7. Beautification projects (plantings, mowing, weeding, etc.).;

5.32.8. Computer hardware/software, provided that, the director may waive or modify this constraint where appropriately justified by the applicant; or

5.32.9. ~~Expenditure of grant for any~~ Any type of lobbying expense.

§58-5-6. General Conditions Applicable to Grants.

6.1. The following general conditions apply to counties, municipalities, and instrumentalities applying for funding under the recycling assistance grant program:

6.1.1. The applicant shall be an eligible municipal or county government, and/or instrumentality with an expressed commitment to recycling as a long-term solid waste management

strategy. This commitment shall be in the form of a formal resolution or ordinance from the local governing body, or a formal policy or ~~regulation rule~~ from a state agency or state instrumentality;

6.1.2. The proposed recycling project shall be a logical extension of the applicant's current solid waste management services and/or authority to manage solid waste through recycling;

6.1.3. The proposed project shall be designed to affect a significant and measurable reduction in the municipal solid waste stream. All grant proposals shall include analysis and projection of materials that will be diverted from the solid waste currently being landfilled and the costs and/or savings that will directly result from the proposed project;

6.1.4. All county or municipal proposals shall plan to involve all or a substantial percentage of the community's residents located in the project area and should include a plan to provide public education regarding the recycling program;

6.1.5. Projects proposed for funding shall be designed to collect and recycle at least three items with respect to municipal and county programs and two items with respect to state agency and state instrumentality programs. These items shall be those that are typically discarded with household solid waste (i.e., newspaper, aluminum, steel and bi-metal cans, glass bottles and jars, and number 1 and 2 plastic containers);

6.1.6. Project proposals shall include a plan to identify markets able to handle the projected volumes of materials to be collected;

6.1.7. The proposal shall clearly demonstrate that the county, municipality, or ~~state~~ instrumentality will be directly involved in the planning, administration, implementation, monitoring and evaluation of the project. The overall operation and coordination of the project shall be conducted directly by an agency of local or state government, or one of its instrumentalities;

6.1.8.a: ~~Grant~~ A grant may be utilized by local and state governments or state

instrumentalities for recycling projects in which a private “for profit” business or a not-for-profit organization is contracted to provide a service, or services, only so long as the bid for such ~~the~~ services is in accordance with the appropriate local or state government competitive bidding process;

6.1.8.b.a. The applicant shall solicit sealed bids for all construction-related contracts or purchases which have an estimated value of over five thousand dollars (\$5,000). Any attempts by the applicant to segregate the project into sections having an estimated value of less than \$5,000 may be cause for termination of grant;

6.1.8.b. The bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provision of W. Va. Code, §59-3-2. This notice shall be published by the applicant in the newspaper with the largest circulation serving the general area twice within fourteen days preceding the final date of submitting bids. The applicant shall have available upon request for review by the Division of Natural Resources or its designated representative, bid documentation and other evidence of compliance with these procedures; and

6.1.8.c. The applicant shall comply with the requirements of W. Va. Code, §5G-1-1 et seq., in regard to obtaining architectural or engineering services, if ~~such~~ those services are needed;

6.1.9. ~~Grant~~ A grant may not be used to replace existing personnel, equipment or funding which is currently being provided by the local government;

6.1.10. All grant recipients shall hold the title to equipment listing the West Virginia Division of Natural Resources as first lienholder for the lien term. The lien shall apply to equipment purchased with West Virginia Division of Natural Resources grant in whole or part. A copy of the title shall be submitted to the ~~West Virginia Division of Natural Resources~~ division at the address

shown in subsection 14.2 of this rule. The grant recipient shall assume the risk of loss;

~~6.1.11.~~ The division shall determine the lien period for each individual piece of equipment purchased with grant funds using the class-life depreciation schedules published by the Internal Revenue Service. If a piece of equipment is in question as to which class the equipment is to be placed in, the division may make that determination; and

~~6.1.11-6.1.12.~~ Public and private sector grants involving equipment shall have subsequent on-site inspections for the term specified.

6.2. The following general conditions apply to non-profit organizations and private enterprises applying for funding under the recycling assistance grant program:

6.2.1. The proposed project shall be designed to affect a significant and measurable reduction in the municipal solid waste stream;

6.2.2. The project may provide recycling market procurement efforts; and

6.2.3. The project shall be consistent with one or more of the objectives listed under subsection 3.1. of this rule, and include, but is not limited to the recycling activities listed under ~~subdivision~~section 4.2.2. of this rule.

6.3. Private Sector Grant Guidelines:

6.3.1 ~~An A~~applicant shall demonstrate through a narrative ~~their~~ its past performance in recycling;

6.3.2. All equipment specifications shall be a part of the grant application and include the equipment seller's name and the price of the equipment;

6.3.3. All equipment purchases shall be done by public bid;

6.3.4. ~~The M~~maximum amount of a grant is \$50,000;

6.3.5. ~~The grantee shall submit~~ Quarterly reports shall be submitted showing totals

of all recyclables whether or not they relate directly to the grant; and

6.3.6. All private sector grants ~~shall be~~ are subject to the rules and regulations in the general grant guidelines in this rule. Where there is a contradiction, ~~subsection 6.3. shall apply~~ applies.

§58-5-7. Schedule of Grants Available.

7.1. Schedule for one applicant:

<u>Type of Grant</u>	<u>Maximum Grant</u>
Municipality over 10,000 population.	\$100,000
Community/Municipality under 10,000.	\$ 50,000
County or Regional Solid Waste Authority.	\$100,000
State agency/state instrumentality or school.	\$ 50,000
Recycling Promotion, Collection Drive and Office Paper Recovery.	\$ 50,000
Recycling Feasibility Study/Planning.	\$ 20,000
Recycling Market Development.	\$ 20,000
Non-Profit /Other Interested Party.	\$50,000

7.2. Schedule for cooperatives - For a cooperative recycling effort ~~of five or more communities, or two or more counties the maximum grant available will be the maximum for the type of political subdivision times the number of subdivisions involved between counties, municipalities, or private sector entities, the maximum amount of funding for a cooperative grant shall not exceed \$200,000, or the cumulative of the maximum amount allowable for each individual applicant as stated in subsection 7.1 of this section, whichever is smaller.~~

§58-5-8. Criteria for Developing a Grant Proposal.

8.1. The grant proposal should demonstrate the relationship to, and support of, the

hierarchy established under West Virginia Code §22C-4, i.e., source reduction; recycling, reuse and resource recovery; and landfilling.

8.2. All applicants shall ~~submit to~~ ~~consult with~~ the county or regional solid waste authority in which the proposed project is located, a copy of their application to be reviewed by the members of the solid waste authority to avoid duplication, ensure coordination of solid waste programs, and maximize the market for recyclables. ~~This written consultation shall be attached to and become a part of the grant application. Submission of written consultation is the responsibility of the applicant.~~

8.3. The proposal shall contain the following:

8.3.a. ~~Policy~~ A policy statement and/or resolution or ordinance as required by the provisions of this rule.;

8.3.b. ~~Outline~~ An outline of the materials to be source separated and recycled. The list of recyclable material may be adjusted according to whether the generator is residential, commercial or ~~another~~ type of establishment.;

8.3.c. ~~Public~~ A public information program to ensure receipt of good clean quality materials.;

8.3.d. ~~Description~~ A description of a collection system.;

8.3.e. Provisions where required to ensure compliance with West Virginia Code §20-11-1, including incentives and penalties.;

8.3.f. ~~Projection~~ A projection of ~~the~~ cost effectiveness and self-sufficiency of the proposed project.;

8.3.g. Documentation of the type of in-kind services to be provided by the grantee.;

8.3.h. Documentation of any other type of grant assistance received, including the

dollar amount, type of project, etc., for recycling and/or solid waste management; and

8.3.i. Economic development aspects of the project, i.e.: job creation.

§58-5-9. Recycling Assistance Fund Grant Review Committee.

9.1. All grant proposals will be reviewed by a recycling assistance grant review committee, composed of the following: a member of a county or regional solid waste authority, and a representative of business or industry, to be appointed by the Director; the Executive Director of the Solid Waste Management Board; the Director of the West Virginia Development Office; the Director of the Division of Environmental Protection; and the Director of the Division of Natural Resources or ~~such~~ any other person(s) to whom the agency Director has delegated ~~his or her~~ authority or duties. For the purpose of conducting business, four (4) members of the recycling assistance grant review committee are required for a quorum. The Director may only vote to break tie votes of the committee. ~~The committee shall submit approved~~ Approved grants meeting the program's criteria ~~will be submitted~~ to the Director of the Division of Natural Resources for final approval and awarding.

9.2. ~~The Division of Natural Resources division~~ through the recycling assistance grant review committee reserves the right to reject any and all proposals. Applicants not selected for grants will be notified by the ~~Division of Natural Resources division~~ within a reasonable time after award decisions have been made. Unsuccessful applicants ~~will be given the opportunity to~~ may discuss their proposals with the appropriate staff.

§58-5-10. Submittal of Grant Applications; Awarding of Grants; Financial Management; and Unexpended Grant and Termination of Grant.

10.1. All recycling assistance grants are for a one year period beginning the first of January with a final report due for approval on or before March 31 of the following year.

10.2. ~~A grant applicant shall submit its~~ Complete recycling assistance fund grant applications ~~shall be submitted to the Division of Natural Resources division~~ prior to the first day of August each year. The ~~Division of Natural Resources division shall~~ will notify all grant applicants in relation to funding of their proposal.

10.3. Unless a grant applicant specifically requests and can demonstrate a need for a larger portion of the awarded grant to initiate the project, ~~the division shall disburse~~ all grants ~~will be disbursed~~ on the following schedule: 30% at the time of grant award with subsequent payments of 30% to be made ~~every four months~~ upon receipt of a quarterly report. The final payment shall be 10% and shall be withheld until receipt of the ~~fourth third~~ quarterly report, ~~as provided for in section eleven (11) of this rule.~~

10.4. The grantee shall retain and make available upon request by the Division of Natural Resources for a period of three years, all financial records, supporting documents, statistical records, and all other records as they relate to the application, acceptance and use of the grant. The provisions of West Virginia Code §12-4-14 apply to all recycling assistance grants. The grantee shall provide the ~~Division of Natural Resources division~~ with a copy of the grantee's independently audited financial records that cover the entire grant period.

10.5. ~~All of the~~ The grantee shall return any unexpended grant funds remaining as of March 1 of the following year ~~shall be returned to the Recycling Assistance Fund. If the grantee expends any grant funds on or after March 1 this shall be considered an unauthorized expenditure.~~

10.6. If, through any cause, the grantee fails to fulfill in a timely and proper manner its obligation as proposed in the grant application, and as accepted and approved by the ~~Division of Natural Resources division~~, the ~~Division of Natural Resources will~~ ~~division shall~~ terminate payment of ~~the~~ remaining grant funds. The grantee shall return any amount of the grant used for unauthorized expenditures. Authorized expenditures are those outlined in the original budget that

was approved by the grant review committee.

10.7. The grantee shall comply with all applicable federal, state and local laws, codes, ordinances, rules and regulations. ~~Failure to comply with grant guidelines could result in withdrawal of the grant award and/or future consideration of grants. The division may withdraw all funds from grantees who fail to comply with grant guidelines, and may not give future consideration of grants.~~

10.8. The grantee shall deposit the grant immediately upon receipt in a separate interest bearing checking account.

10.9. Grantees with a current grant are not eligible for the next cycle of grants. ~~The Grant Review Committee may recommend exceptions for final approval by the Director of the division.~~ A grantee who files a delinquent final report ~~shall cause ineligibility is ineligible~~ for future grants.

10.10. ~~A The division shall grant a~~ request for a change in budget ~~will only be granted~~ if it ~~the change~~ does not materially alter the original grant proposal approved by the grant review committee ~~AND and~~ the adjustment is a result of conservative spending allowing any excess to be rebudgeted. (Example: Budgeted \$20,000 for ~~the~~ purchase of a baler. ~~The B~~baler costs \$18,000. The extra \$2,000 may be rebudgeted upon approval.) All requests shall be made in writing.

§58-5-11. Site Visits and Reports Required.

11.1. Grantees shall submit a final report for approval on or before March 31 of the following year ~~following the grant award~~. The report shall include the following:

11.1.1. An evaluation of successes and failures encountered in implementing the original proposal's work tasks;

11.1.2. An evaluation of the operating costs and community support for the project;

11.1.3. An analysis of the economic development achievements, such as job creation;

11.1.4. An analysis of the project including: total volume (tons) of waste diverted

from the solid waste stream, the estimated cost per ton to recycle that volume, the estimated revenue per ton of recycled material, and the estimated savings from recycling in lieu of land filling; and

11.1.5. A complete accounting of the grant expended for the entire year, ~~shall be included in the final report.~~

11.2. A progress status report and expenditure statement shall be submitted by all grantees to the ~~Division of Natural Resources~~ division every quarter containing a brief narrative of accomplishments (including individual volumes of material recycled), projections for the next report period and detailed grant expenditures for the past three months.

11.2.1. The grantee shall attach evidence of all grant expenditures to the quarterly reports, including copies of invoices, checks, titles, bids, and bank statements.

11.2.2. The division shall return an incomplete quarterly report to the grantee for completion. The division shall withhold grant payments until it receives a complete report as required in section ten (10) of this rule.

11.3. ~~The Division of Natural Resources~~ division shall will periodically conduct site visits with grant recipients. These visits will be conducted to provide assistance, to review progress, and to discuss any problems encountered in project implementation. Site visits present important opportunities for direct, on-site communications between the ~~Division of Natural Resources~~ division and grant recipients, and may include inspections from the Division of Environmental Protection and site visits from the West Virginia Solid Waste Management Board.

§58-5-12. Equal Employment Opportunity.

12.1. To implement the recycling assistance grant, ~~the~~ grantee ~~shall~~ agrees:

12.1.1. That it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin; and

12.1.2. That all solicitations or advertisements for employees placed by or on behalf of grantee shall state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, or national origin.

§58-5-13. Certification Regarding Drug-Free Workplace Requirements.

13.1. The Drug-Free Workplace Act of 1988, Title V-D Public Law 100-690, Federal Register, Volume 54, No. 19, and West Virginia Code §60A-2-201 requires that all state governments, federal contractors, and federal and state grant recipients maintain a drug-free workplace. The Act is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989. The certification form shall be completed and accompany the grant application.

§58-43-14. Submission of an Application.

14.1. The application for a recycling assistance grant shall contain in addition to a description of the proposed project, an applicant profile, an estimated budget with justification, certification regarding a drug-free workplace, ~~copy of written consultation with the county or regional solid waste authority, an application checklist, and where required, a resolution or ordinance authorizing the submission of application a time line graph, attested financial documents, a letter of receipt of application from county solid waste authority, and equipment specifications.~~ Incomplete ~~The division shall not consider incomplete~~ applications shall not be considered; they will be marked ~~and shall mark them~~ "incomplete" and returned for resubmittal within a reasonable time period ~~them to the applicant. The applicant may complete the returned application and resubmit it before the grant submission deadline date.~~

14.2. The original and one copy of the application must be received by the division on or before 5:00 p.m. of the last business day in July. Applications shall be hand delivered or mailed to:

West Virginia Division of Natural Resources, 1900 Kanawha Boulevard, East, Building 3, Room 732, Charleston, West Virginia 25305-0665, ~~no later than August 1 of the year prior to the grant year.~~



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
Phone: (304) 347-4840
Fax: (304) 347-4919

email: tanders@mail.wvnet.edu

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

December 14, 1999

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Emily Fleming
Division of Natural Resources
Capitol Complex
Building 3, Room 732

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Recycling Assistance Fund Grant Program, 58CSR5**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
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Teri Anderson, Administrative Assistant

December 14, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Jim Hill
Recycling Coordinator
Capitol Complex
Building 3, Room 732

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Recycling Assistance Fund Grant Program, 58CSR5**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
(a) as originally filed
(b) as modified by the agency

☒

2. Authorize the agency to promulgate part of the Legislative rule;
a statement of reasons for such recommendation is attached.

3. Authorize the agency to promulgate the Legislative rule with
certain amendments; amendments and a statement of reasons
for such recommendation is attached.

4. Authorize the agency to promulgate the Legislative rule as
modified with certain amendments; amendments and a
statement of reasons for such recommendation is attached.

5. Recommends that the rule be withdrawn; a statement of
reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Natural Resources

Subject: Recycling Assistance Fund Grant Program, 58CSR5

PERTINENT DATES

Filed for public comment: June 24, 1999

Public comment period ended: July 24, 1999

Filed following public comment period: August 6, 1999

Filed LRMRC: August 6, 1999

Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 5 relating to the use of a grant has been amended to increase from \$1,000 to \$1,500 the amount of a grant which may be used for travel.

Section 6 relates to general conditions applicable to grants. It has been amended to provide that the Division of Natural Resources is to determine the lien period for each individual piece of equipment purchased with grant funds using the class-life depreciation schedules published by the IRS.

Section 7 relates to the schedule of grants available. The current rule provides that a cooperative recycling effort is between five or more communities, or two or more counties and the maximum grant available is the maximum for the type of political subdivision times the number of subdivisions involved. The proposed rule does not restrict the number of entities involved in the cooperative and provides that the maximum amount of funding may not exceed \$200,000 or the accumulative of the maximum amount allowable for each individual applicant, whichever is smaller.

Section 8 relates to the criteria for developing a grant proposal. The current rule requires applicants to consult with the

county or regional solid waste authority in which the proposed project is located and to attach the written consultation to the grant application. The proposed rule removes this requirement and merely requires applicants to submit a copy of their application to the county or regional solid waste authority.

Section 10 relates to submittal of grant applications; awarding of grants; financial management; and unexpended grant and determination of grant. The disbursement schedule has been altered slightly to provide for payment based upon the quarterly reports instead of every four months. It provides that grantees are to return all unexpended grants remaining as of March 1 of the following year to the Recycling Assistance Fund. Language has been added which states that any expenditure made on or after March 1 is considered an unauthorized expenditure. The current rule also provides that grantees with a current grant are not eligible for the next cycle of grants. Language has been added which would allow the Grant Review Committee to recommend exceptions for final approval by the Director of the Division of Natural Resources.

Section 11 relates to site visits and required reports. Language has been added requiring the grantee to attach evidence of all grant expenditures to quarterly reports, including copies of invoices, checks, titles, bids and bank statements. It requires the Division of Natural Resources to return an incomplete quarterly report to the grantee and to withhold grant payments until it receives an acceptable report.

Section 14 relates to submission of an application. It has been amended to include additional information which must be included with the application. Language has also been added permitting an applicant to resubmit an incomplete application before the deadline grant submission date.

AUTHORITY

Statutory authority: W.Va. Code, §20-11-5a, which provides, in part, as follows:

...The director of the division of natural resources shall promulgate rules, in accordance with chapter twenty-nine-a of this code, containing application procedures, guidelines for eligibility, reporting requirements and other matters considered appropriate...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.