

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

FILED

JUL 31 2 18 PM '99

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Bureau of Commerce Division of Natural Resources TITLE NUMBER: 58

CITE AUTHORITY 20-11-5a (h)(i)

AMENDMENT TO AN EXISTING RULE: YES  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 RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

\$11.00



**DIVISION OF NATURAL RESOURCES**  
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Cecil H. Underwood  
*Governor*

John B. Rader  
*Director*

**MEMORANDUM**

**TO:** Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office

Debra Graham, Chief Counsel  
Legislative Rule Making Committee

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

**SUBJECT:** Agency Approval Proposed Rule  
Recycling Assistance Grant Program

**DATE:** July 31, 1998

The proposed rule changes for Title 58-Series 5, Recycling Assistance Grant Program meet with my approval for filing with the Secretary of State's office and the Legislative Rule Making Committee. The public comment period ended on July 6, 1998.

If you have any questions or need additional information, please contact Emily Fleming at 558-3370. Thank you for your cooperation.

JBR:ejf

cc: Emily Fleming  
Becky Payne  
Jim Hill

**DATE:** July 30, 1998

**TO:** LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

**FROM:** Emily Fleming, Administrator  
Division of Natural Resources  
Conservation Education and Litter Control

**LEGISLATIVE RULE TITLE:** Recycling Assistance Fund Grant Program

1. Authorizing statute(s) citation 20-11-5a (h)(i)

2. a. Date filed in State Register with Notice of Hearing

June 5, 1998 - Written comments only

b. What other notice, including advertising, did you give of the hearing?

Letters to interested parties

Statewide news release

c. Date of Hearing(s) \_\_\_\_\_

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received \_\_\_\_\_

e. Date you filed in State register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 31, 1998

f. Name and phone number(s) of agency person(s) to contact for additional information:

Emily Fleming 558-3370

Jim Hill 558-3370

**3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:**

**a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.**

Not applicable

**b. Date of hearing:** Not applicable

**c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?**

See attachment

**d. Attach findings and determinations and reasons:**

\_\_\_\_\_

TITLE 58  
BUREAU OF COMMERCE  
DIVISION OF NATURAL RESOURCES

SERIES 5  
RECYCLING ASSISTANCE GRANT PROGRAM

SUMMARY OF AGENCY APPROVED RULE

AGENCY: Bureau of Commerce; Division of Natural Resources

REGULATION: Title 58, Series 5, "Recycling Assistance Grant Program"

ACTION: Filing of Agency Approved Rule

SUMMARY: The agency approved rule sets out the procedures and guidelines for providing Recycling Assistance Grants to those who are required by law or who wish to plan and implement a recycling program.

Language from Senate Bill 602 which was passed during the 1998 Legislative session has been incorporated. The Division of Natural Resources is named as first lienholder on all equipment purchased with grant, equipment not productively used for 180 days shall revert back to DNR, unexpended funds remaining on March 31 shall be returned to DNR, and increases in grant amounts for non profit/other interested party have been made from \$20,000 to \$50,000. Also, other technical changes have been made.

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**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE  
PROPOSED AMENDMENT**

The proposed amendment incorporates language from Senate Bill 602, passed March 14, 1998, effective June 11, 1998, which excludes persons who collect, haul or dispose of solid waste and do not participate in the collection and payment of the solid waste assessment fee from receiving grants. The proposed rule requires DNR to be named as first lienholder on all equipment purchased with grants. Also, requires equipment which is not productively used for 180 days to revert back to DNR. Establishes procedures for Private Sector grants, changes in maximum grant amounts, and time extensions. The proposed amendment require that all unexpended funds remaining as of March 31 of the following year be returned to DNR. Other technical changes are contained in the proposed amendment.

# FISCAL NOTE FOR PROPOSED RULE

**Rule Title:** RECYCLING ASSISTANCE GRANT PROGRAM 58-C.S.R. 43

**Type of Rule**      X      **Legislative**                  **Interpretive**                  **Procedural**

**Agency**    Division of Natural Resources

**Address**    Capitol Complex

Building 3, Room 732

Charleston, WV 25305

**1. Effect of Proposed Rule**

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>			\$2,700,254	\$2,804,515	\$2,739,000
<b>PERSONAL SERVICES</b>			160,340	176,313	180,000
<b>CURRENT EXPENSE</b>			150,000	252,500	250,000
<b>REPAIRS &amp; ALTERATIONS</b>			2,000	3,000	3,000
<b>EQUIPMENT</b>			2,800	9,000	6,000
<b>OTHER</b>			2,385,114	2,363,702	2,300,000

**2. Explanation of above estimates:**

The changes in the rule will not increase or decrease the amount of revenue required to operate the Grant Program. The figures shown above reflect the budgets for the program for fiscal years 1997 and 1998 and the estimated costs during 1999. The above estimates are based on 50% of the special revenue deposited in the Recycling Assistance Fund as provided for in WV Code 20-11-5a. In general it is expected that about 16% of these funds will be used to cover program administrative costs and the balance provided in assistance grants.

**3. Objectives of these rules:**

Set out procedures and guidelines for providing assistance grants to municipalities, counties, businesses, and others planning and implementing recycling programs.

**Rule Title:** RECYCLING ASSISTANCE GRANT PROGRAM 58 C.S.R. 43

**4. Explanation of overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government:**

Funds for program administration and assistance grants are derived from special revenue funds provided for in the WV Recycling Act. General revenue funds are not involved.

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:**

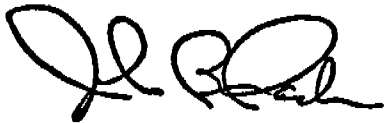
This rule allows political subdivisions and private businesses to apply for grant funds to implement recycling programs. By doing this, it eases the economic burden of these entities to operate such programs and allows them to redirect revenues into other aspects of their operation, such as jobs or expansion. The amendment incorporates language passed during the 1998 Legislative session which will exclude persons who collect, haul or dispose of solid waste and do not participate in the collection and payment of the solid waste assessment fee from receiving grants. Two municipalities which will be impacted are Huntington and Morgantown. Others could be impacted but are not known at this time.

**C. Economic Impact on Citizens/Public at Large:**

Funds to generate the special revenue are derived from fees placed on the disposal of solid waste, which are passed on to those that generate the solid waste.

**Date:** Jan 3, 1998

**Signature of Agency or  
Authorized Representative:**



JOHN B. RADER, DIRECTOR

FILED  
JUL 31 2 18 PM '98  
OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

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

**§58-5-1. General.**

1.1. Scope and Purpose.-This rule sets out guidelines and procedures for providing assistance grants to counties, municipalities, ~~counties~~ 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.

**§58-5-2. Definitions.**

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

2.2. "Instrumentality" means an agency authorized by state law, ~~but for the purposes of this rule, does not include political subdivisions of the state.~~

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.

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 mean include sewage sludge.

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

2.9. The terms as defined in the Solid Waste Management Regulations, 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 fund grant program provides grants to assist municipalities, counties and others in:

- ~~planning and~~ implementation of recycling programs;
- public education programs ~~related to~~ which promote recycling; and
- recycling market procurement efforts.

3.2. Recycling Assistance Fund grant proposals that are in compliance with the criteria of section 3.1 of these rules will be evaluated 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

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

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

The grant is available to ~~state agencies, other instrumentalities and of the state~~ and private colleges in the absence of a county, municipal; or county 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 grant is for the implementation of county, municipal, county and regional recycling programs, and must shall emphasize the integration of source reduction and recycling. A comprehensive solid waste management and siting plan developed by the local or regional solid waste authority must shall be approved by the West Virginia Solid Waste Management Board to qualify for the grant.

~~3.3.4 Office Recycling Recover Grant In the absence of a municipal and/or countywide~~

~~recycling program, a state agency or instrumentality of the state may apply for assistance to plan and implement an office wastepaper recover program in government, school, and local offices (on a county or greater level). Funds are available for paper collection equipment, transportation, education, publicity and promotion:~~

3.3.54. Recycling Market Development Grant - The 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, ~~state agencies and instrumentalities of the state~~ persons, partnerships, corporations, private schools, are eligible to apply for recycling assistance funding grants as provided for in subsections 3.3.1 through 3.3.54. 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 give priority to those ~~communities~~ municipalities, counties, ~~state agencies, state instrumentalities, and private colleges~~ schools, persons, partnerships, and corporations, 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 program ordinance by referendum vote, the program ordinance ~~must~~ shall be consistent with the provisions of West Virginia Code §20-11-5(c). If the county has one or more municipalities each with a population greater than 10,000, the municipality's program ~~must~~ shall at a minimum be consistent and coordinated with the county's recycling program. Grant proposals ~~must~~ shall meet the following criteria:

4.1.1. Municipalities with populations over 10,000:

4.1.1.a. Proposals for funding grants under subsection 3.3.1<sub>2</sub> of this rule must 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.

4.1.1.b. Proposals for funding grants under subsection 3.3.3<sub>2</sub> of this rule must 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 regarding 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 countywide or multi-county recycling program must shall have a comprehensive recycling plan(s) which has been approved by the solid waste management board.

4.2. Municipalities 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, ~~such as cardboard and yard waste.~~

4.2.2. In the absence of either a municipal or a countywide recycling program, all ~~agencies and instrumentalities of the state~~, primary and secondary schools, private colleges and universities are eligible to receive grants under subsections 3.3.2., and 3.3.4. ~~and 3.3.5.~~ 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 ~~regarding 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 section 3.1 of this rule, and include, but are not limited to the recycling activities listed under subsection 4.2.2. of this rule.

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 not be eligible to receive grants.

#### **§58-5-5. Use of Grant Funds:**

Recycling assistance grant may be used to:

5.1. Enhance the self-sufficiency of recycling in counties or ~~communities~~ 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.

5.2. Recycling assistance funds ~~may~~ grant shall be used for:

5.2.1. Personnel - Funding 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.

5.2.2. 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.

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

5.2.4. Equipment - Funding Grant is limited to processing equipment, material handling or storage equipment, scales, and safety equipment used in recycling activities. Equipment is to remain in grantee's name and may be leased, but not transferred to a third party. All equipment shall revert back to the Division of Natural Resources if the recycling program dissolves. During the three (3) year lien period, at the discretion of the Director, equipment which has not been productively used for 180 days shall revert back to the Division of Natural Resources.

5.2.5. Recycling Vehicle Expense - Funding 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.

~~5.2.6. The following other costs are allowed:~~

~~5.2.6.a. Funding for printing Printing - Grant is limited to costs associated with educational materials on recycling such as pamphlets, posters, flyers, etc;.~~

~~5.2.67.b. Funding for advertising Advertising - 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;~~

~~5.2.68.c. Funding for promotion items Promotional Items - 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;~~

~~5.2.69.d. Funding for professional services Professional Services - Grant is to assist in planning and implementation of recycling projects including feasibility studies; and.~~

~~5.2.610.e. Funding for development work Development Work - Grant is directed towards recycling market procurement.~~

5.3. Costs not allowed under a recycling assistance grant are:

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

5.3.2. Land acquisition.

5.3.3. Cost for office equipment including such items as desks, chairs, telephone, typewriters, files, and photocopying equipment.

5.3.4. Street sweepers or their equivalents.

5.3.5. Entertainment costs (banquets, parties, etc.).

5.3.6. Alcoholic beverages, in-state lunches, and all gratuities.

5.3.7. Beautification projects (plantings, mowing, weeding, etc.).

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

5.3.9. Expenditure of grant funds for any type of lobbying expense.

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

6.1. The following general conditions apply to counties, municipalities, ~~counties~~; ~~state agencies~~; and instrumentalities of the state applying for funding under the recycling assistance fund grant program:

6.1.1. The applicant ~~must~~ shall be an eligible local, ~~and/municipal~~ or county government, ~~state agency~~ and/or state instrumentality with an expressed commitment to recycling as a long-term solid waste management strategy. This commitment ~~must~~ shall be in the form of a formal resolution or ordinance from the local governing body, or a formal policy or regulation from a state agency or state instrumentality.

6.1.2. The proposed recycling project ~~must~~ 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 ~~must~~ shall be designed to affect a significant and measurable reduction in the municipal solid waste stream. All grant proposals ~~must~~ 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 ~~or county~~ proposals must 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 must 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 must shall include a plan to identify markets able to handle the projected volumes of materials to be collected.

6.1.7. The proposal must shall clearly demonstrate that the county, ~~municipality, county, state agency~~ 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 must shall be conducted directly by an agency of local or state government, or one of its instrumentalities.

6.1.8.a. Grant funds 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 services is in accordance with the appropriate local or state government competitive bidding process.

6.1.8.b. 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.

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.

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 services are needed.

6.1.9. Grant funds 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 a period of three (3) years. 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 at the address shown in section 14.2 of this rule. The business shall assume risk of loss.

6.1.11. Public and private sector grants involving equipment shall have subsequent on-site inspections each year for a period of three (3) years; once this period has expired the state will

no longer have an attachment.

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

6.2.1. The proposed project ~~must~~ 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.

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

6.3. Private Sector Grant Guidelines:

6.3.1 Applicant shall demonstrate through a narrative, financial statements, credit references, and business plan, their past performance in recycling.

6.3.2. All equipment specifications shall be a part of the grant application and include at least two price quotes.

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

6.3.4. Maximum amount of grant is \$50,000.

6.3.5. Quarterly reports shall be submitted showing totals of all recyclables whether or not they relate directly to the grant.

6.3.6. All private sector grants shall be subject to the rules and regulations in the general grant guidelines. Where there is a contradiction, the private sector rules shall apply.

**§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
<u>Recycling Promotion, Collection Drive</u> <u>and Office Paper Recovery.</u>	\$ 50,000
Recycling Feasibility Study/Planning.	\$ 20,000
Recycling Market Development.	\$ 20,000
<u>Non-Profit /Other Interested Party.</u>	<del>\$ 20,000</del> <u>50,000</u>

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.

**§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 §~~20-9-1~~22-C-4, i.e., source reduction; recycling, reuse and resource recovers; and landfilling.

8.2. All proposals applicants shall be coordinated consult with the county or regional solid waste authority in which the proposed project is located 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 ~~must~~ shall contain the following:

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

~~8.3.b. must outline~~ 8.3.b. 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 other type of establishment.

~~8.4.8.3.c.~~ 8.4.8.3.c. ~~The proposal must include a~~ A public information program to ensure receipt of good clean quality materials.

~~8.5.8.3.d.~~ 8.5.8.3.d. ~~The proposal must provide for~~ Description of a collection system.

~~8.6.8.3.e.~~ 8.6.8.3.e. ~~The proposal contain provisions~~ Provisions where required to ensure compliance with West Virginia Code §20-11-1, including incentives and penalties.

~~8.7.8.3.f.~~ 8.7.8.3.f. ~~The proposal must demonstrate~~ Projection of cost effectiveness and self-sufficiency of the proposed project.

~~8.8.8.3.g.~~ 8.8.8.3.g. ~~To the degree possible all proposals must demonstrate~~ Documentation of the type of in-kind services to be provided by the grantee.

~~8.9.~~ 8.9. ~~The proposal should discuss the economic development aspects of the project, i.e.:~~ job creation.

~~8.10.~~ 8.10. ~~The proposal must~~ shall set forth any other type of grant assistance received,

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

8.10.8.3.h. ~~The proposal must set forth~~Documentation of any other type of grant assistance received, including the dollar amount, type of project, etc., for recycling and/or solid waste management.

8.9.8.3.i. ~~The proposal should discuss the~~The 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 fund 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; the Director of the Division of Natural Resources or such other person(s) to whom the agency Director has delegated authority or duties. For the purpose of conducting business, four (4) members of the recycling assistance fund grant review committee are required for a quorum. The Director may vote to break tie votes of the committee. 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 through the recycling assistance fund 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 ~~as soon as possible~~ within a reasonable time after award decisions have been made. Unsuccessful applicants will be given the opportunity to discuss

their proposals with appropriate staff.

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

10.1. All recycling assistance fund grants are for a one year period beginning the first of January with a final report due ~~January 31~~ for approval on or before March 31 of the following year. ~~Subject to the approval of the Director, an extension for finalizing the current project may be granted upon written request showing justification for the extension; however, subsequent extensions must be approved by the recycling assistance committee.~~

10.2. Complete recycling assistance fund grant applications ~~must~~ shall be submitted to the Division of Natural Resources prior to the first day of August each year. The Division of Natural Resources will notify all grant applicants in relation to funding of their proposal, ~~during the first full week in November with grant award letters issued no later than the first week of January the following year.~~

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, all grants ~~funds~~ 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 ~~final~~ fourth quarterly report, as provided for in section eleven (11) of this ~~regulation~~rule.

10.4. The grantee ~~must~~ shall retain and make available upon request by the Division of Natural Resources for a period of three years, ~~or until audited, whichever occurs sooner,~~ all financial

records, supporting documents, statistical records, and all other records as they relate to the application, acceptance and use of the grant funds. The provision of West Virginia Code §12-4-14 apply to all recycling assistance fund grants. The grantee shall provide the Division of Natural Resources with a copy of the grantee's independently audited financial records that cover the entire grant period.

10.5. All of the unexpended grant funds remaining at the end of 90 days following submission of the final report required in section 11 of this rule shall return to the recycling assistance fund grant programs of March 31 of the following year shall be returned.

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, the Division of Natural Resources will terminate payment of 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 must 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 fundsgrants.

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

10.9. Grantees with an outstanding a current grant are not eligible for the next cycle of grants. A delinquent final report shall cause ineligibility for future grants.

10.10. A request for a change in budget will only be granted if it does not materially alter the original grant proposal approved by the grant review committee AND the adjustment is a result of conservative spending allowing any excess to be rebudgeted. (Example: Budgeted \$20,000 for purchase of baler. 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 ~~must shall~~ submit a final report for approval on or before ~~January 31, or within 30 days of completion of the project, whichever comes first~~ March 31 of the following year.

The report ~~must 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.

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

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

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period and detailed grant expenditures for the past three months.

11.3. The Division of Natural Resources 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 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 fund grant, grantee 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.**

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 must shall be completed and accompany the grant application.

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

14.1. The application for a recycling assistance fund grant must shall contain in addition to a description of the proposed project, an estimated budget with justification, certification regarding drug-free workplace, copy of written consultation with the county or regional solid waste authority, application checklist, and where required, a resolution or ordinance authorizing the submission of application. Incomplete applications shall not be considered; they will be marked “incomplete” and returned for resubmittal within a reasonable time period.

14.2. The original and one copy of the application must shall be 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.

~~14.3. Questions about the West Virginia Recycling Assistance Fund Grant Program or the grant application process, should be directed to the Conservation Education and Litter Control Section of the Division of Natural Resources, at (304) 558-3370.~~

**~~§58-5-15. Severability.~~**

~~If any provisions of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the rule, and to this end the provision of the rule are declared severable.~~



BUREAU OF COMMERCE  
DIVISION OF NATURAL RESOURCES  
RECYCLING ASSISTANCE FUND GRANT PROGRAM  
TITLE NUMBER 58  
AUTHORITY 20-11-5a-(h)(i)

Comments were received from the following people:

Mr. Frank Baird  
West Virginia CashIn Recyclables, Inc.  
P.O. Box 336  
Pickents Road, Nitro Industrial Park  
Nitro, WV 25143-0367

Ms. Jane Cline  
Executive Director  
West Virginia Association of Waste Haulers & Recyclers  
P.O. Box 3706  
Charleston, WV 25337

Ms. Sally Shepherd  
Director  
Kanawha County Solid Waste Authority  
600 Slack Street  
Charleston, WV 25301

Mr. Larry D. Brown  
Weston Transfer, Inc.  
P.O. Box 386  
702 North Main Avenue  
Weston, WV 26452



**DIVISION OF NATURAL RESOURCES**  
Capitol Complex, Building 3, Room 732  
1900 Kanawha Boulevard East  
Charleston WV 25305-0665  
Telephone (304) 558-3370  
Fax (304) 558-6207  
TDD (304) 558-1439  
TDD 1-800-354-6087

Cecil H. Underwood  
*Governor*

John B. Rader  
*Director*

July 22, 1998

Ms. Sally Shepherd, Director  
Kanawha County Solid Waste Authority  
600 Slack Street  
Charleston, West Virginia 25301

Dear Ms. Shepherd:

I appreciate you taking the time to read the proposed revisions to the Division of Natural Resources grant rules and providing suggestions to improve them. We have given a lot of thought to the issue of how much the private sector should be eligible to receive in grant funds. Other comments on what the private sector level of funding should be have been received, some believe it should be higher than \$50,000, while yours is the only comment received against the increase. We have determined that at this time a maximum grant amount of \$50,000 for the private sector is appropriate however, depending on future information and comments this amount may be adjusted.

Sincerely,

A handwritten signature in cursive script that reads "Emily J. Fleming".

Emily J. Fleming, Director  
Office of Conservation Education  
and Litter Control

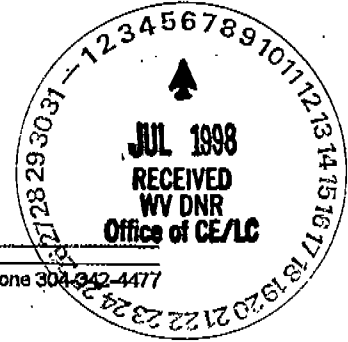
EJF/jhv



# Kanawha County Solid Waste Authority

Sally Shepherd  
Director  
600 Slack Street  
Charleston, WV 25301

Telephone 304 342-4477



West Virginia Division of Natural Resources  
Conservation, Education, and Litter Control  
1900 Kanawha Boulevard, East  
Building 3, Room 732  
Charleston, WV 25305

Re: Comments Concerning Proposed Rule Change

At its regular monthly meeting of June 17, 1998, board members discussed the amendments to the Recycling Assistance Fund Grant Program.

The Authority is opposed to Number 6.3.4 raising the amount of grants to the private sector from \$20,000 to \$50,000, and believe the amounts should be decreased rather than increased.

We work closely with the private sector in providing balers and other equipment and assistance. By providing the limited grant dollars to existing public recycling facilities and infrastructure, they are better able to assist the private sector in their efforts. Centralizing the grant assistance also encourages coordinating and cooperation which results in improved efficiencies and economies of scale.



**DIVISION OF NATURAL RESOURCES**

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TDD 1-800-354-6087

Cecil H. Underwood  
Governor

John B. Rader  
Director

**July 22, 1998**

**Mr. Frank Baird, President  
West Virginia Cashin Recyclables, Inc.  
Post Office Box 336  
Nitro, West Virginia 25143-0367**

Dear Mr. Baird:

Thank you very much for your comments and interest in improving the Division of Natural Resources Recycling Assistance Grant Program. The wording in the rules makes reference to counties and municipalities, and most of the interpretation of the rules is done with this reference in mind, although there is no exclusion of the private sector referred to in the rules. Therefore, I believe we need to be more cognizant of the private sector needs in the future.

Regarding your suggestion to increase the private sector grant amount to \$100,000, this has a lot of merit, but our section would like to see the effect the present change will have on the program. There are differences in the public and private sectors that have to be taken into account when making changes in the rules.

I also agree that limiting the use of grant funds to equipment purchases would give us more control and better use of our grant dollars, but I think the ability to use grant funds as the guidelines currently allow gives the grantee much more flexibility to utilize the funds in ways that are most beneficial to the operation.

The following change in 6.3.1. is needed and will appear as you have suggested:

**6.3.1 Applicant shall demonstrate through a narrative, financial statements, credit references, and business plan, their past performance in recycling.**

Mr. Frank Baird  
Page Two  
July 22, 1998

The following changes will be made in 6.3.2:

**6.3.2. All equipment specifications shall be part of the grant application and include at least two price quotes.**

Section 5.2.4. with reference to the lien period of three years, we believe that a 3-year lien period will allow the grantee more flexibility in the use of the equipment. After three years the equipment will still have enough value, so that it can be sold or traded for equipment that may be of more value to the grantee in his operation than the original piece of equipment. Business needs change and the ability to react to these changes is essential to maintain a sound financial operation. The Grant Program is designed to protect the public interest by properly screening the applicants, and with periodical audits of the grantees programs, this also addresses your concern about abuses of section 6.1.11. It has been our policy with regard to returned or repossessed equipment, to pass it onto a current grantee who is in the market for that specific piece of equipment or who has a use for it.

Some of your other concerns such as enforcement of trucking laws and commodity brokering are beyond the scope of the grant program.

With respect to your suggestions on 5.2.1. this is another issue where we feel that being allowed to disburse up to \$20,000 on personnel expense gives the grantee more flexibility in the operation of his program.

Your suggestion on 5.2.5. is beyond the scope of the grant program, there are other agencies that make, and enforce the laws that all grantees must abide by. We have the authority, and the responsibility to withdraw funds from any grantee who is found to be in violation of the laws that regulate his operation.

Requiring applicants to contribute 50% of the cost of a vehicle they intend to purchase would not be possible for some applicants, although some do contribute to the purchase of vehicles. The Recycling Assistance Grant Program does not require matching funds.

Your suggestion to add 9.3., relating to the establishment of a Private Sector Technical Advisory committee, is a wonderful idea, we already solicit and expect your suggestions, ideas, and advice. I do not think we need to make changes in the rules to develop such a committee. I would like to discuss this in more detail with you.

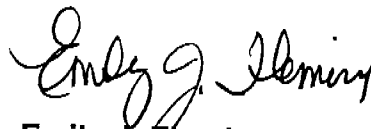
Mr. Frank Baird  
Page Three  
July 22, 1998

The change you propose in 4.1.2. would restrict the autonomy of the grantee. If mutual cooperation is agreed on this would be a win-win situation, but I do not think this is something that needs to be required, or even if it would be constitutional to require it. If the private sector is providing the services required by 20-11-5, the county government would not be required to implement a program. It is the responsibility of the Grant Review Committee to deny an application that is designed to address a need that is already being filled.

The suggestion to add 11.4. we agree on the accountability of grantees regardless of the amount. We have seen accountability as a problem and have taken measures to address the concern. We also realize that no matter how stringent our procedures to assure accountability are we will continue to have problems with this issue.

Again, thanks for your comments, it is evident that you spent a lot of time, and thought on your responses. We look forward to more involvement from the private sector in the future, as well as advice, ideas, and support in achieving our recycling goals.

Sincerely,



Emily J. Fleming, Administrator  
Office of Conservation Education  
and Litter Control

EJF/jhv



**WEST VIRGINIA CASHIN RECYCLABLES, INC**

PostOffice Box 336  
Pickents Road, Nitro Industrisl Pk.  
Nitro, WV 25143-0367

Phone: (304) 755-5187 Fax: (304) 755-5764



Ms Emily Fleming  
WV Division of Natural Resources  
Conservation Education and Litter Control  
1900 Kanawha Boulevard East  
Building 3, Room 732  
Charleston, WV 25305

July 6, 1998

Dear Emily,

I am thankful for the opportunity to respond to the proposed WV DNR Recycling Grant Rules. There are a number of issues that affect the private recycling industry in West Virginia that are directly related to the design of the DNR Recycling Grant Program. First, private sector recyclers, and end users have in place an existing recycling infrastructure that has largely been ignored in the past. Second, the public sector recyclers have increasingly stepped over the bounds of their mandate and have economically hurt private sector enterprises. Third, improvements in recycling infrastructure is the key to successful recycling, increasing economic development opportunities, and managing solid waste in West Virginia. Finally, the technical knowledge of people in our industry should be utilized in some form.

In respect to increasing the maximum amount of the private sector award from \$20,000 to \$50,000.00 I am encouraged by the direction the committee has taken. Removing the one time award limitation is also a major improvement. However, county solid waste authorities, and municipalities over 10,000 are eligible for up to \$100,000.00. These public bodies have gone through several grant cycles and many now have in place mature programs. In fairness to the private sector, I believe Rule 6.3.4. Maximum amount of grant is \$50,000 should be raised to \$100,000. In addition, the grant should only be awarded for equipment purchases. My suggestion is that the following changes be made.

6.3 Private Sector Equipment Grant Guidelines

This change in title limits the expenditure to equipment. This is the best use of DNR grant dollars.

6.3.1 Applicant shall demonstrate through a narrative, financial statements, credit references, and business plan, their past performance in recycling.

FBI

This addition, will give the committee more information on the solvency of the applicants and their business history. Yes, we are asking for access to more funds but we are willing to be more accountable for it.

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

The current wording seems to assume you have already selected the seller of the equipment before the public bid is made.

6.3.4 Maximum amount of the grant is \$100,000.

Not only will raising the dollar amounts positively impact private recycling processors but it will be beneficial to existing or new end users which have not participated in the grant program in the past.

Because of the significant dollar amounts involved for equipment purchases I believe the lien period needs to be extended from three years to no less than five and possibly up to seven years. This period of time would insure the DNR that major equipment purchases are being used for recycling activities that are a benefit to the citizens of West Virginia. The short lien period in my estimation has the potential to be abused. Therefore I recommend that in Rule 5.2.4 and 6.1.11 that the lien period be extended to a period of five to seven years.

I believe if these changes are made the private sector will respond with quality and significant recycling proposals for funding. The additional requirements will give the committee better tools for evaluation and monitoring private sector applications.

Perhaps no issue is as important to our company and to private recyclers in West Virginia than the areas of operation of private and public sector recyclers. While we do not deny a role for public sector recyclers in WV we do believe the extensive private sector recycling network has been overlooked in meeting WV's integrated solid waste management goals. In looking at arrangements that exist in other states we feel the clearest distinction between private and public sector recyclers is **the ability to buy recycled commodities for resell**. Simply stated, the private sector clearly does this and the public sector does not. We believe case law in WV clearly supports this concept.

This issue is critical to us because of the following reasons. There already exist a private infrastructure for the handling of recycled commodities that have a high resell value. The private sector has provided this service for many years in West Virginia. The introduction of public buy back centers into a area creates new entrants into the market, duplicates services, divides the existing market and weakens the performance of the private sector.

Buy back centers are more complicated to operate on a daily basis than public drop off centers or county or municipal recycling centers. The level of sophistication makes them

naturally unattractive to the public sector. For example, buy back centers have higher accounting and book keeping costs due to the large number of financial transactions made. Market conditions must be monitored daily for price adjustments, and in order to buy material one must have large cash and credit reserves. In addition, in the identification of precious metals there is a level of metallurgical knowledge that is lacking in the public sector. Each of these is a good case **for not establishing public buy back centers**. From our own experience we have seen public buy back centers buy material at a loss, and miss identify and wrongly grade material at a loss.

Public buy back centers also impact private sector recycling investment decisions by blurring the investment decision as to the role and future place of public recycling activities. They reduce state and local taxes by shifting taxable income and sales into non-taxable income and sales. When public entities engage in the buying and reselling of recycled commodities, they increase labor and administrative costs associated with those activities, their reported recycled tonnage figures represent materials that would have been recycled by the private sector. I am suggesting the addition of the following Rule.

4.2.5 County and municipal governments and public corporations who buy recycled commodities for resell shall not be eligible to receive DNR recycling grants.

In addition, to the buying and reselling of recycled materials. Public sector brokering of commodities is another issue of importance to the private recycling sector. Our sentiment is that materials collected and processed by public recycling operations should be let out for competitive bid and follow state purchasing rules and regulations.

West Virginia Cashin Recyclable as a incorporated WV company can do business throughout the entire state of WV. In respect to public sector corporations they tend to have papers of incorporation and bylaws that restrict their activities within certain geographical areas, like a city, county or a group of local governments. In respect to some public recycling operations in West Virginia they have expanded into areas like trucking and brokering that go beyond their original intent and I believe beyond their jurisdiction as outlined by WV Code.

4.2.6 County and municipal governments and public corporations who process or collect recycled material must use appropriate bidding procedures for the sell and or brokering of that material.

I do not believe this is a new requirement, it is one that is just not being followed.

In respect to 5.2.1 Personnel, the grant should be more limited. I suggest no more than a total of \$12,000 may be used from grant funds.

In recent weeks issues related to public trucking and the movement of material from many areas of southern WV have come before our attention. In respect to Rule 5.2.5 Recycling Vehicle Expense I suggest the following changes. Grant is limited to those

applicants that can demonstrate that they are aware of and meet the requirements of the WV DOT and WV DMV in respect to trucking. Grant is limited to 50% of the lease/purchase price for a truck or van used in an approved recycling activity. Grant funds used for maintenance, fuel, mileage, and insurance cannot exceed \$5000.00.

Trucks and vans can have a very short life. By requiring the applicant to contribute 50% of the price of the vehicles the committee will insure an extended life for those vehicles. In the same manner, operational and repair costs should be the ongoing responsibility of the applicant and should be limited. Finally, you should not be buying trucks and repairing trucks for people who do not know their regulatory responsibility in respect to trucking.

To follow up our earlier concern about public buy back centers we would add.

5.3.91<sup>19</sup> Expenditure of grant funds for the purchase and resell of recycled commodities.

One the keys to improving recycling rates in WV is to build and expand the quality and capacity of the recycling infrastructure. There also must be a realization that by partnering with the private sector, scarce resource dollars can be better utilized in providing recycling services. We suggest the following as a means to take advantage of the knowledge private sector recyclers can bring to the grant committee.

9.3 The Division of Natural Resources through the recycling assistance grant review committee will establish a Private Sector Technical Advisory Committee made up of one private sector representative from each of the following:  
solid waste hauling industry;  
recycling processors;  
recycling end users;

The duties of the committee are advisory only but could include, a technical review and evaluation of major equipment purchases and needs, resolving public and private recycling sector issues, and providing technical knowledge on how to improve efficiencies of public sector recycling operations.

In respect to rule 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 in compliance with the provisions of West Virginia Code 20-11-5©. The program will be implemented in cooperation with the existing private sector recycling infrastructure.

Presently, the DNR as well as DEP and the SWMB conduct site visits to individual applicants. These visits are important but are not comprehensive enough to truly evaluate the long-term viability of some public projects. We are in a period where some programs have had several grant funding cycles to implement and build up their

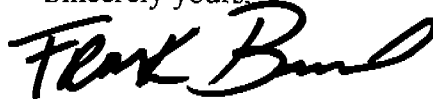
programs and capability. We now need to evaluate those programs and determine future actions. We suggest the following:

11.4 All grant applicants which have received a cumulative total of \$150,000 in recycling financial assistance from the WV DNR and the WV SWMB shall submit financial statements, papers of incorporation, by laws and other legal agreements and an approved business plan to those respective agencies. In the case of a private sector applicant such information will be submitted under conditions of confidentiality. Applicants who fail to submit this information will not be given consideration for future funding.

Our logic is quite simple. The more money any applicant gets from the state the more accountable one should be. The \$150,000 figure is perhaps somewhat arbitrary but is a starting point for evaluation purposes. We feel there are some public programs that need to be under closer scrutiny and this is the only way to do it. Clean-up projects and other types of activities that grant funds have been used for, do not merit this type of evaluation.

I hope these comments are of value to the committee and staff. Many issues that exist between the public and private sector could be resolved by the **no buy for resale clauses**. Our intent has always been to strengthen the recycling effort in West Virginia and make the DNR grant program a success. Greater involvement of the private sector, constraints on public sector activity, and greater accountability are our main goals.

Sincerely yours



Frank Baird, President  
West Virginia Cashin Recyclables, Inc.

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**DIVISION OF NATURAL RESOURCES**  
Capitol Complex, Building 3, Room 732  
1900 Kanawha Boulevard East  
Charleston WV 25305-0665  
Telephone (304) 558-3370  
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TDD (304) 558-1439  
TDD 1-800-354-6087

Cecil H. Underwood  
Governor

John B. Rader  
Director

July 22, 1998

Larry D. Brown  
Weston Transfer, Inc.  
P.O. Box 386  
Weston, West Virginia 26452

Dear Mr. Brown:

Your comments and concerns regarding the Division of Natural Resources proposed recycling grant rules are appreciated, I feel that some clarification is needed to address your concerns and have made the following changes. These changes give priority to "everyone" that is required by a referendum to implement a recycling program.

**§58-5-4. Grant program Priority and other Criteria.**

**4.1. All West Virginia municipalities, county commissions, county and regional solid waste authorities, ~~state agencies and instrumentalities, of the state persons, partnerships, corporations, private schools,~~ are eligible to apply for recycling assistance funding grants as provided for in subsections 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 give priority to those ~~communities municipalities, counties, state agencies, state instrumentalities, and private colleges schools, persons, partnerships, and corporations,~~ 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 program ordinance by referendum vote, the program ordinance shall be consistent with the provisions of West Virginia Code §20-11-5(c). 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:**

Larry Brown  
Page Two  
July 22, 1998

I believe this is a clearer interpretation of the meaning of §20-11-5(b1) of The West Virginia Natural Resources Laws.

The word "program" in the latter part of the rule has been replaced with the word "ordinance" as you have suggested. Your last requested change which relates to consultation with the county solid waste authority, has been addressed with a change in the first section of 4.1.

Thank you very much for taking the time to comment and offer your suggestions if you have other thoughts that you feel will improve the Grant Program please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Emily J. Fleming".

Emily J. Fleming, Administrator  
Office of Conservation Education  
and Litter Control

EJF/jhv



# Weston Transfer, Inc.

P O. BOX 386  
702 NORTH MAIN AVENUE  
WESTON, WEST VIRGINIA 26452

(304) 269-2776

Ms. Emily Fleming, Administrator  
WV Division of Natural Resources  
Conservation Education and Litter Control  
1900 Kanawha Boulevard East  
Building 3, Room 732  
Charleston, WV 25305



Dear Ms. Fleming,

After reviewing the proposed regulations we are in support of your rule changes related to Senate Bill 602 and restrictions on grant funds. This was an important piece of legislation for our company and many others in our area who are concerned about the overall financial health of the solid waste management system in WV. We also feel that raising the private sector grant from \$20,000.00 to \$50,000.00 is a positive move and will result in more private sector involvement in recycling and will help maximize scarce resources. In respect to Weston Transfer, Jack's Septic and other private solid waste hauling companies utilizing the landfills in Harrison County, we would like to inform you and the committee of the situation that has existed in our area for the past several years.

In 1993 the citizens of Harrison County passed a recycling ordinance that limited the types of material that could be deposited in the two landfills in Harrison County. The result of that ordinance has been the proliferation of recycling in our area because all public and private haulers (regardless of location) using landfills in Harrison County must comply with the provision of that ordinance. In examining 58-5-4 Grant Program Priority and Other Criteria, the current wording clearly states that the grant review committee will give priority to those public agencies required to implement said program. I concur in this. However, private entities like solid waste haulers, should be given this same consideration. In looking at Barbour, Braxton, Dodridge, Gilmer, Harrison, Lewis, Marion, Monongalia, Taylor, Preston, and Upshur counties, the main market areas for the two landfills in Harrison County, private waste haulers are the predominant means of collecting curbside recyclables. Private waste haulers and recyclers, are the predominant actors in setting up recycling programs and processing material in our area. It seems logical that they should be included in rule 4.1.



LBI

Ms. Emily Fleming

Our company, as have other solid waste haulers in our area, have made large private investments for recycling, worked with our solid waste authorities and re grateful for the assistance of the WWSWMB and WVDNR in implementing some of the most effective recycling programs in West Virginia. However, there is still much work to be done, and because of the Harrison County ordinance we have a greater obligation to recycle than most other areas of the state. I have enclosed proposed wording changes to 4.1 that will assist our area in meeting these challenging goals.

Finally, in respect to the latter part of that section, some clarity needs to be made in the existing rule. The county referendum is a means of adopting a county recycling ordinance; this is not necessarily the same as adopting an ordinance for a county operated recycling program. In our own local experience, municipalities and private solid waste haulers have implemented programs in accordance with the Harrison County recycling ordinance. I have submitted language that I believe will clarify this issue.

We here at Weston Transfer and Jack's Septic are proud of our involvement in recycling and are thankful for your past assistance. As always our operation is always open to committee members or your staff.

Very truly yours,

A handwritten signature in cursive script that reads "Larry D. Brown". The signature is written in black ink and is positioned above the printed name.

Larry D. Brown

## **DNR PROPOSED RULE LANGUAGE**

4.1 All West Virginia Municipalities, county commissions, county and regional solid waste authorities, instrumentalities are eligible to apply for recycling assistance grants as provided for in subsections 3.3.1 through 3.3.4 of this rule. The recycling assistance fund grant review committee will give priority to those communities, counties, state agencies, state instrumentalities and private colleges 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 program by referendum vote, the program shall be consistent with the provisions of West Virginia Code 20-11-5. 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:

## **RULE LANGUAGE PROPOSED BY WESTON TRANSFER**

4.1 All West Virginia Municipalities, county commissions, county and regional solid waste authorities are eligible to apply for recycling assistance grants as provided for in subsections 3.3.1 through 3.3.4 of this rule. The recycling assistance fund grant review committee will give priority to those communities, counties, state agencies, state instrumentalities and private colleges 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. Likewise, the recycling assistance grant review committee will give priority to those private sector applicants 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 (c). 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 with the county ordinance and implemented in consultation with the county solid waste authority. Grant proposals shall meet the following criteria:



DIVISION OF NATURAL RESOURCES  
Capitol Complex, Building 3, Room 732  
1900 Kanawha Boulevard East  
Charleston WV 25305-0665  
Telephone (304) 558-3370  
Fax (304) 558-6207  
TDD (304) 558-1439  
TDD 1-800-354-6087

Cecil H. Underwood  
Governor

John B. Rader  
Director

July 22, 1998

Ms. Jane Cline  
West Virginia Association of  
Waste Haulers & Recyclers  
P.O. Box 3706  
Charleston, West Virginia 25337

Dear Ms. Cline:

I appreciate you taking the time to read the proposed rule changes for the Division of Natural Resources Assistance Grant Program.

In reference to changing the title of 3.3.2. , the words "recycling promotion" are meant to be a general term that is inclusive of all recycling promotions. Listing certain types of collection activities would lead to the conclusion that if a specific type of collection drive was not listed, that it would not be allowed.

We agree with you that changes are needed on 4.1 and have made the following changes.

**§58-5-4. Grant program Priority and other Criteria.**

4.1. All West Virginia municipalities, county commissions, county and regional solid waste authorities, ~~state agencies and instrumentalities, of the state~~ persons, partnerships, corporations, private schools, are eligible to apply for recycling assistance funding grants as provided for in subsections 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 give priority to those ~~communities municipalities, counties, state agencies, state instrumentalities, and private colleges~~ schools, persons, partnerships, and corporations, 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 program ordinance by referendum vote, the program ordinance shall be consistent with the provisions of West

Jane Cline  
Page Two  
July 22, 1998

Virginia Code §20-11-5(c). 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:

Section 5.1 as it is written does not exclude the private sector. We do not feel that a change is necessary.

Section 5.2.1. Recycling grant funds are not meant to be a permanent source of finance for any program, but we feel the expenditure of funds for personnel, as the guidelines are written is a key factor for some programs getting started. We do not feel that a change in this section is necessary.

Section 5.2.4. With reference to the lien period of 3 years, we believe that a 3 year lien period will allow the grantee more flexibility in the use of the equipment. After 3 years the equipment will still have enough value so that it can be sold or traded for equipment that may be more useful to the grantee than the original equipment. Business needs change and the ability to react to these changes is essential to maintain a sound financial operation. The grant program is designed to protect the public's interest by properly screening the applicants and with periodical audits of the grantees programs, this also addresses your concern about abuses of section 6.1.11. We believe the 3 year lien period is an improvement in the program. It has been our policy, with regard to returned or repossessed equipment, to pass it on to a current grantee who is in the market for that specific piece of equipment or who has a use for it.

With regard to the addition of 6.2.4. and 6.2.5. which would give the highest priority to projects involving infrastructure, and the next highest priority on those that would increase the general technical knowledge of solid waste professionals in West Virginia. It is the purpose of the grant review committee to evaluate the grant proposals based on several factors, one of these factors is the present need of the recycling community. These two items will not always be the most important issues with regard to recycling. Adding these two sections would over the long term reduce the effectiveness of the program.

Ms. Jane Cline

Page Three

July 22, 1998

Item 7.2 your suggestion has merit, we have increased the private sector amount to \$50,000 we would like to see what the demand will be and the effect of this increase on the program.

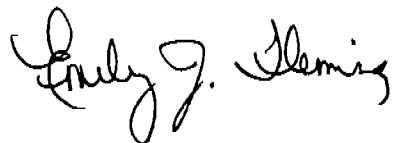
Item 8.2. the only change you suggest here it to change the word *consult* to *notify*, consult is the proper word. Consulting with the solid waste authority is part of the screening process which denotes an interaction, an exchange of information, and to some extent an agreement. To notify is a one way process which does not allow for the desired information exchange.

Item 8.3a I can't see any reason for a notice to the general public of intent to apply for a grant. Our grant awards are public information. We want to make the grant application process simple but efficient.

Item 8.3d and 8.3f. , both of these items would create excess work for the applicant, and it is also beyond the scope of the grant program. Our purpose is to promote recycling.

I hope that you don't feel that because most of our responses are not positive that we don't value your comments, because we do. Please feel free to comment or make suggestions at any time, as recycling changes so will our program and guidelines.

Sincerely,



Emily J. Fleming, Administrator  
Office of Conservation Education  
and Litter Control

EJF/jhv



# West Virginia Association of Waste Haulers & Recyclers

~~205 First Avenue, Nitro, WV 25149-2372 Phone: (304) 722-6175 Fax: (304) 727-1172~~

Post Office Box 3706 \* Charleston, WV 25337 Telephone (304) 342-6887



Ms. Emily Fleming  
WV Division of Natural Resources  
Conservation Education and Litter Control  
1900 Kanawha Boulevard East  
Building 3, Room 732  
Charleston, WV 25305

July 6th, 1998

Dear Emily,

After reviewing the suggested rules for the WV Recycling Assistance Grant Program, I was pleased with several changes that the DNR staff has made. First, increasing the maximum private sector award from \$20,000.00 to \$50,000.00 is a major asset to WV solid waste haulers and other private sector recycling businesses. This increase will allow many private companies in many diverse areas of recycling to expand existing programs and improve the recycling climate in WV. Second, by allowing private sector ventures more than just a one-time award, private sector applicants will have an opportunity to nurture, and build up self-sustaining and environmentally beneficial businesses. This result can only have long-term benefits for us all. Finally, in providing greater assistance to the private sector, the committee is taking another step in improving the overall business climate in WV and encouraging economic growth. I commend the staff and committee on the direction you are now taking.

Since the grant program was first instituted there have been many changes that have taken place both nationally and statewide in respect to recycling and solid waste management. Over the next few pages I have outlined some modifications of some of the existing rules that I believe needed to be fine-tuned.

Rule 3.3.2 Recycling Promotion, Collection Drive, and Office Paper Recovery Grant seems to be linked with the newspaper and can drives that many communities held some years ago. I think a better title and application would be the following:

3.3.2. Recycling Promotion, Tire, Appliance, Automobile, and Special Goods Collection Drive, and Office Paper Recovery Grant. In many rural areas the above mentioned items pose a special problem and collection drives are of a great community benefit. Tires and junk cars are a major problem in many areas of WV and blight much of the landscape. Several WV counties have enacted recycling ordinances in accordance with provisions 20-11-5 and 20-11-6 of the WV Code. These ordinances generally call for the recycling of



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various materials and disallow the landfilling of such items. Their impact can be far-reaching and go far beyond the boundaries in which the ordinance was enacted. The existing rule 4.1:

All West Virginia municipalities, county commissions, county and regional solid waste authorities, instrumentalities are eligible to apply for recycling assistance grants as provided for in subsection 3.3.1 through 3.3.4 of this rule. The recycling assistance fund grant review committee will give priority to those communities, counties, state agencies, state instrumentalities and private colleges 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 program by referendum vote the program shall be consistent with the provisions of West Virginia Code 20-11-5©. 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:

This rule while well intentioned in prioritizing public institutions in areas where a referendum has passed, fails to recognize that private sector solid waste haulers are the main vehicles for implementing such county ordinances. Waste haulers impacted by such an ordinance are under a greater obligation and have higher waste reduction goals than those that are not. In addition, the latter part of the rule needs greater clarity. I suggest the following:

4.1 All West Virginia municipalities, county commissions, county and regional solid waste authorities, and instrumentalities are eligible to apply for recycling assistance grants as provided for in subsections 3.3.1. through 3.3.4 of this rule. The recycling assistance fund grant review committee will give priority to those communities, counties, state agencies, state instrumentalities and private colleges 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. Likewise, the recycling assistance grant review committee will give priority to those private sector applicants 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 referendum shall be consistent with the provisions of West Virginia Code 20-11-5©. 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 with the county ordinance and implemented in consultation with the county solid waste authority. Grant proposals shall meet the following criteria:

On 5.1 just a minor rewrite:

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

To 5.1 Enhance the self-sufficiency of recycling in counties, municipalities and within the private sector by initiation of new or expanded recycling programs providing:

On 5.2.1 Personnel: DNR Recycling grant funds should never be used to fund permanent local government positions. Solid waste authorities which impose assessment fees on local solid waste facilities and local governments with broad taxing authority should never be eligible for personnel costs. Solid waste authorities which do not impose assessment fees on solid waste facilities should be allowed to utilize grant funds on a contingency basis. Such funding is never meant to be ongoing and should not exceed \$5000. While we suggest lowering the amount available for personnel, we also suggest that it only be made available to select solid waste authorities. Equipment and infrastructure need to be the highest funding priority.

Our version of 5.2.1 reads as follows:

Utilizing scarce resources is critical in today environment. Recycling and reuse activities are essentially about the best use of limited resources. Most recycling equipment if properly cared for can have an extended life of ten years or more. Recycling as a business is extremely risky and has a high turnover of firms and people. Rule 5.2.4 Equipment Grant is limited to processing equipment, material handling or storage equipment, scales, and safety equipment used in recycling activities. Equipment is to remain in grantee's name and may be leased, but not transferred to a third party. All equipment shall revert back to the Division of Natural Resources if the recycling program dissolves. During the three (3) year lien period, at the discretion of the Director, equipment which has not been productively used for 180 days shall revert back to the Division of Natural Resources.

The key issue here is the lien period on equipment should be at least five years in duration. A three year period is too short and does not really protect the interest of the public. It opens the door to situations where equipment can be obtained, see little use, then be sold by public or private concerns. Five years is really the minimum lien period that should be applied to equipment. In addition, equipment returned to the DNR should be awarded through a supplemental application process where both public and private applicants can bid on the equipment in respect to volumes of material recycled, recycling track record, and consumers served. Essentially using the existing grant format for the services of the equipment as it becomes available. If there are no applications the equipment should be returned to WV Surplus Property until such time it can be utilized.

This same issue applies in respect to 6.1.11. Public and private sector grants involving equipment shall have subsequent on-site inspections each year for a period of three(3) years. Once this period has expired the state will no longer have an attachment. Again the three-year period should be changed to five. There is just too much room here for potential fraud and misuse of public funds.

I would like to add a new section 6.2.4 that reads as follows:

6.2.4 Recycling infrastructure projects will be given the highest priority for funding under the general conditions applying to non-profit organizations and private enterprises.

6.2.5 Projects intended to increase the general technical knowledge of solid waste professionals in West Virginia will be given the second highest priority for funding under

Virginia. In an effort to keep all parties informed of each other's intention these two suggestions are being made.

First, in regard to rule 8.2 the following:

All grant applicants shall notify the county or regional solid waste authority in which the proposed project is located. The written notification shall be attached to and become part of the grant application. Submission of the written notification is the responsibility of the applicant.

Second, in regard to 8.3a Policy statement and/or resolution or ordinance as required by the provisions of this rule, and in the case of public sector applications proper legal notice must be published informing the general public of the applicants intent to apply for a DNR Recycling Grant.

One of the major concerns of the solid waste hauling industry in West Virginia are to ensure that grant funds are not utilized in ways that could unforeseeably hurt existing private sector recycling collection systems. Therefore we recommend that grant applicants provide the following in rule 8.3.d. Description of a collection system and any impacts on the existing private sector collection systems within the area.

Finally, in this time of shrinking grant dollars, cost effectiveness and self-sufficiency become ever more important. We suggest these modifications to Rule 8.3. f. Projected cost effectiveness including: projected volume of waste diverted from the waste stream; estimated cost per ton to recycle that volume; estimated revenues per ton of recycled material; and the estimated savings from the recycling in lieu of landfilling. Each project should submit a time frame for self-sufficiency of the proposed project.

I would like to thank the committee and staff for their hard work on improving this program and hope these comments are useful. West Virginia solid waste haulers deal with recycling and environmental issues each day and these comments are based upon that broad-based experience.

Sincerely yours,



Ms Jane Cline,  
Executive Director  
West Virginia Association of  
Waste Haulers & Recyclers

JCS

The following amendments have been proposed to the rule as a result of comments or other information received.

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

4.1. All West Virginia municipalities, county commissions, county and regional solid waste authorities, ~~state agencies and instrumentalities of the state~~ persons, partnerships, corporations, private schools, are eligible to apply for recycling assistance funding grants as provided for in subsections 3.3.1, through 3.3.54, 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 give priority to those communities municipalities, counties, state agencies, state instrumentalities, and private colleges schools, persons, partnerships, and corporations, 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 program ordinance by referendum vote, the program ordinance ~~must~~ shall be consistent with the provisions of West Virginia Code §20-11-5(c). If the county has one or more municipalities each with a population greater than 10,000, the municipality's program ~~must~~ shall at a minimum be consistent and coordinated with the county's recycling program. Grant proposals ~~must~~ shall meet the following criteria:

The following additions are proposed to the rule:

6.3.1 Applicant shall demonstrate through a narrative, financial statements, credit references, and business plan, their past performance in recycling.

6.3.2. All equipment specifications shall be a part of the grant application and include at least two price quotes.

The reasons for the amendments in 4.1 are to eliminate some redundancies, such as "state agencies" and "instrumentalities" and, to clarify the inclusion of the private sector in the grant program. Also, the word "ordinance" has been substituted for the word "program." One of the comments was that the county referendum is a means of adopting a county recycling ordinance. This is not necessarily the same as adopting an ordinance for a county operated recycling program.

The addition of 6.3.1. and 6.3.2. is requested to give the community more information on the solvency of the applicant and, thereby creating better accountability.