

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #4

Do Not Mark In this Box

FILED

Nov 20 1 47 PM '98

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**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)(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 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 REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
\_\_\_\_\_

\$7.00



**DIVISION OF NATURAL RESOURCES**  
Environmental Resources Section  
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*

**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:** Revisions to Title 58-Series 5  
Recycling Assistance Grant Program

**DATE:** November 20, 1998

Attached is the requested number of copies of the modified rule changes for the Recycling Assistance Grant Program for the Division of Natural Resources.

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

Jar/ndh

cc: Emily Fleming  
Becky Payne  
James Hill

DATE: July 30, 1998

3

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.

**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:**

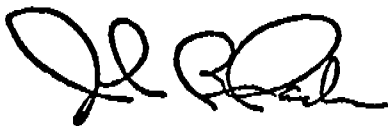
This rule allows political subdivisions and private businesses to apply for grant funds to implement recycling programs. By doing this, it eases the economic burden of these entities to operate such programs and allows them to redirect revenues into other aspects of their operation, such as jobs or expansion. 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

RECEIVED  
JUL 20 1 43 PM '98  
OFFICE OF THE 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.

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 2,000 regular session.

**§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 ~~or expansion 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 proprietorships, 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, propriertiships, partnerships, and cooperations,~~ 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© 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 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. 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. 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. 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. 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.

5.2.5. 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.;

5.2.6**7**.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;

5.2.6**8**.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;

5.2.6**9**.d. ~~Funding for professional services~~ Professional Services - Grant is to assist in planning and implementation of recycling projects including feasibility studies; and

5.2.6**10**.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 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 at the address shown in section 14.2 of this rule. The grant recipient shall assume risk of loss.

6.1.11. 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 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 their past performance in recycling.

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

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, section 6.3. 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> and Office Paper Recovery.	\$ 50,000
Recycling Feasibility Study/Planning.	\$ 20,000
Recycling Market Development.	\$ 20,000
<u>Non-Profit/Other Interested Party.</u>	<del>\$20,000</del> \$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.

**§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 ~~§20-9-122-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 policy~~ Policy statement and/or resolution or ordinance as required by the provisions of this rule, and

~~8.3.b. must outline~~ 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.~~ The proposal must include a public-Public information program to ensure receipt of good clean quality materials.

~~8.5:8.3.d.~~ The proposal must provide for Description of a collection system.

~~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.~~ The proposal must demonstrate Projection of cost effectiveness and

self-sufficiency of the proposed project.

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

~~8.10.~~ The proposal must 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 economic 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 only 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.

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 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.

✦



FILED

Nov 16 12 16 PM '98

**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

*email: tanders@mail.wvnet.edu*  
November 12, 1998

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

*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 1, Room 732

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Recycling Assistance 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. \_\_\_\_\_



FILED

Nov 16 12 16 PM '98

**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

*email: tanders@mail.wvnet.edu*  
*November 12, 1998*

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

*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: John B. Rader  
Division of Natural Resources  
Capitol Complex  
Building 3, Room 732

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Recycling Assistance 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.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

FILED

SEP 30 9 15 AM '98

**Agency:** Division of Natural Resources  
**Subject:** Recycling Assistance Fund Grant Program  
**CSR Cite:** 58CSR5  
**Counsel:** JAA

OFFICE OF SOCIAL VIRGINIA  
SECRETARY OF STATE

---

PERTINENT DATES

Filed for public comment: June 3, 1998  
Public comment period ended: July 31, 1998  
Filed following public comment period: July 31, 1998  
Filed LRMRC: July 31, 1998  
Filed as emergency: n/a

**Fiscal Impact:** None. The recycling program administers grants of approximately 2.3 million dollars per year in monies received by the state from solid waste assessment fees.

ABSTRACT

Brief Summary

This current rule establishes the Recycling Assistance Fund Grant Program. The grant funds are distributed to public and private entities who create and administer recycling programs in the state. Several small changes are made to the rule regarding application requirements for private entities receiving grants and new provisions are created which give the Department of Natural Resources [DNR] an lien interest in all equipment used for recycling. Per ENR SB 602[1998], no municipality or other persons who do not participate in the collection or payment of the state solid waste assessment will be eligible for a grant. The rule change incorporates this requirement. The rule also provides that the DNR may reclaim any equipment if the grant recipient goes out of the recycling business or violates provisions of its grant.

## Section Summary

Section 3.3.4. has been deleted. This section authorized an Office Recycling Recovery Grant for state agencies when no county or municipal government program is available.

Section 4.2.4. is added and provides that persons responsible for collection or disposal of waste who do not collect and pay the solid waste assessment fee are not eligible to receive grants.

Section 5.2.4. is amended and states that any equipment purchased with grant money will revert back to ownership of the DNR upon non-use of the equipment for a period of 180 days during a mandatory three year lien period, or at any time upon desolation of the grantee.

Section 6.1.8.b. establishes bidding requirements for any construction related contracts or purchase made by the grantee.

Section 6.1.10. provides title for any equipment shall be held by the DNR with a lien for the three years following purchase. Annual inspections shall be conducted until the lien expires.

Section 6.3. is also new and establishes guidelines for receiving grants for private entities. The applicant must provide a history of recycling performance and provide specifics about equipment expected to be purchased. The grant recipient shall submit quarterly reports to the DNR. All private grants may not exceed \$50,000, and are to be distributed in full at the beginning of the grant period.

The Section 7.1. schedule for maximum grants is amended to increase Non-profit/Other Interested Party grants from \$20,000 to \$50,000 per grant.

Section 8.2. requires that grant applicants consult with local solid waste authorities to ensure coordination of the local solid waste program.

Section 9.1. is amended to allow the Director of the DNR to appoint any DNR employee to serve on the Recycling Assistance Fund Grant Review Committee. This committee reviews grant applications and makes decisions as to who will receive the annual grants.

Section 10.1. now allows for approval of grants to go to March 31 of each year. Currently the date is January 31 with extensions in special circumstances.

Section 10.9. provides that a delinquent final report can result in no further grants.

A new Section 10.10. provides for allowing changes in a approved grant recipient budget expenditures upon approval by the committee.

Section 11.1. extends the period for filing of final reports for expenditures of grants from January 31 following the grant year to March 1 following the grant year.

Section 14.1. is amended to require the grant application to include a copy of the written consultation with the local solid waste authority and provides that incomplete applications for grants shall be returned to the applicant, marked as incomplete.

Section 15., an unnecessary severability clause, is deleted.

---

#### AUTHORITY

Statutory authority: W.Va. Code, §20-11-5a(h) which provides:

Dedication of proceeds. -- The proceeds of the fee collected pursuant to this section shall be deposited by the tax commissioner, at least monthly, in a special revenue account designated as the "recycling assistance fund" which is hereby continued. The director of the division of natural resources shall allocate the proceeds of the fund as follows:

(1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities, counties and other interested parties in the planning and implementation of recycling programs, public education programs and recycling market procurement efforts, established pursuant to this article. 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?

Unclear. Appointments to the Recycling Assistance Fund Grant Review Committee of the Executive Director of the Solid Waste Management Board, the Director of the West Virginia Development Office and the Director of the Department of Environmental Protection are not authorized by statute. Since these persons are not statutorily subject to DNR rules, it is unclear whether the DNR has authority to appoint them to a Committee.

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?

Yes. The provisions of Section 5.2.4 are not clear on what interest DNR has in grant purchased equipment.

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 the rule to recommend.