

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

itm #3

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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

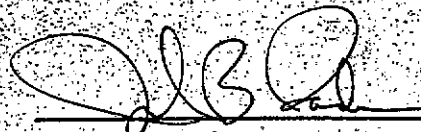
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Recycling Assistance Fund Grant Program

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

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West Virginia
Division of
Natural Resources

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MEMORANDUM

TO: Judy Cooper
Secretary of State's Office

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

SUBJECT: Revision to Title 58-Series 5
Recycling Assistance Fund Grant Program

DATE: October 20, 1997

Please find enclosed a revised copy of **Title 58-Series 5, Recycling Assistance Fund Grant Program**. Revision was made to **6.1.8**, page 11, by eliminating paragraph 3, regarding the F. W. Dodge Report.

If additional information is required, please contact me at (304) 558-3370.

EF/pjc
Enclosure



DATE: October 22, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Emily Fleming, Administrator, Division of Natural Resources
Conservation Education & 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

NA

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

Notice of Comment Period
Advertised in Division of Natural Resources Newsletter

c. Date of Hearing(s) Comment Period September 11, 1997

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

Attached Comments No comments received

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

NA

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

Emily Fleming, Division of Natural Resources (304) 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.

NA

b. Date of hearing: NA

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

NA

d. Attach findings and determinations and reasons:

Attached NA

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Recycling and Litter Control Assistance Fund Grant Program
58 C.S.R. 43

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources

Address: Building 3, State Capitol Complex, Charleston, West Virginia

1. Effects of Proposed Rule.

| | ANNUAL | | FISCAL YEAR | | |
|-------------------------|----------|----------|-------------|-------------|-------------|
| | Increase | Decrease | Current | Next | Thereafter |
| ESTIMATED TOTAL COST | | | \$2,700,254 | \$2,804,515 | \$2,739,000 |
| PERSONNEL SERVICES | | | 160,340 | 176,313 | 180,000 |
| CURRENT EXPENSES | | | 150,000 | 252,500 | 250,000 |
| REPAIRS AND ALTERATIONS | | | 2,000 | 3,000 | 3,000 |
| EQUIPMENT | | | 2,800 | 9,000 | 6,000 |
| OTHER | | | 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 and litter control programs.

Rule Title: Recycling and Litter Control Assistance Fund 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 or litter control projects. 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.

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: _____

7/7/97

Signature of Agency Head or Authorized Representative

Robert M. Bumpers

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED RULE

The proposed rule changes the Recycling Assistance Fund Grant Program to Recycling and Litter Control Assistance Fund Grant Program. This will allow grants to be funded for litter control projects that involve recycling. The rule requires the ownership of all equipment which is purchased by grant funds to revert back to Division of Natural Resources if the recycling program dissolves. The rule establishes procedures for Private Sector grants, change in budgets and time extensions. Other technical changes are contained in the proposed rule.

FILED

OCT 22 3 45 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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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.-

§8-5-2. 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 non-profit organizations.

2.5. "Recycling Market Procurement" means developing markets for the materials

generated by collection through a curbside- or dropoff recycling program.

2.6. "Recyclable Materials includes, but is not limited to steel and bi-metal 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 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 Fund Grant Program.

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

planning and implementation of recycling programs;

public education programs related to 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.~~

3.3.21. Recycling Promotion, and Collection Drive, and Office Paper Recovery

Grant-The grant is available to state agencies, other instrumentalities 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.

3.3.32. Local Government Recycling Grant - The grant is for the implementation of county, municipal, county and regional recycling programs, and must shall 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.

3.3.53. 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 are eligible to apply for recycling assistance funding as provided for in subsections ~~3.3.1~~ through ~~3.3.52~~ 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 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 under subsection 3.32.1 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 under subsection 3.32.2 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 recycling.

4.1.2. A county government required pursuant to West Virginia Code §20-11-5(e) to implemnt a comprehensive recycling solid waste program shall at a minumum 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 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 ~~3.3.2.2.1~~ ~~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~~ related to 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.

§-5-5. Use of Grant Funds.

Recycling assistance grants may be used to:

5.1. Enhance the self-sufficiency of recycling in counties or communities 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 be used for:

5.2.1. Personnel - Funding 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 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 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. 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 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 is limited to costs associated with educational materials on recycling such as pamphlets, posters, flyers, etc;

5.2.6.b. Funding for advertising 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.c. Funding for promotional items 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.d. Funding for professional services to assist in planning and implementation of recycling projects including feasibility studies; and

5.2.6.e. Funding for development work 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/city~~ 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 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. Grant funds may be utilized by local and state governments or state instrumentalities for recycling projects in which a private "for private" 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.

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 an agreement.

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 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.

6.2. 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 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 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.

6.2.4. All written materials funded by the grant or produced in cooperation with

activities of the grant shall contain a line crediting the West Virginia Division of Natural Resources.

6.3. Private Sector Grant Guidelines:

6.3.1 Applicant shall demonstrate through the narrative their past performance in recycling.

6.3.2. Business entity/proprietor shall hold the title to equipment listing the West Virginia Department of Natural Resources as lienholder for a period of five years. 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.

6.3.3. Public and private sector grants involving equipment purchase shall "spot check" audits for a period of five (5) years; once this period has expired the state will no longer have an attachment.

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

6.3.5. All equipment purchases shall provide public bids.

6.3.6. Maximum amount of grant is \$50,000. Funds shall be disbursed in a lump sum at the beginning of the grant period.

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

6.3.8. All private sector grants shall be subject to the rules and regulations in the general grant guidelines under section 6.2. 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 or Municipality under 10,000 | \$ 50,000 |
| County or Regional Solid Waste Authority | \$100,000 |
| State agency or state instrumentality or school. | \$ 50,000 |
| <u>Recycling Promotion, Collection Drive</u> <u>and Office Paper Recover.</u> | \$50,000 |
| Recycling Feasibility Study or Planning | \$20,000 |
| Recycling Market Development | \$50,000 |
| <u>Non-Profit or Other Interested Party.</u> | \$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 §20-9-1, 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 so lid 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 a policy statement and/or resolution or ordinance as required by the provisions of this rule and **must shall** outline 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. The proposal **must shall** include a public information program to ensure receipt of good clean quality materials.

8.5. The proposal **must shall** provide for a collection system.

8.6. The proposal **must shall** contain provisions where required to ensure compliance with West Virginia Code §20-11-1, including incentives and penalties.

8.7. The proposal **must shall** demonstrate cost effectiveness and self-sufficiency of the proposed project.

8.8. To the degree possible all proposals **must shall** demonstrate 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 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.

§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 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 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 for approval on or before March 1 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 shall~~ 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 unless there are extenuating circumstances on the part of the applicant as determined by the grant review committee. 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 grant funds will disburse 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. Exception to be the private sector as outlined in section 6.3.10. of this 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 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 program.

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 grant funds 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, rule and regulations. Failure to comply with grant guidelines could result in withdrawal of the grant award and/or future consideration of funds.

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.

10.11. A time extension to expend grant funds will only be granted if the grantee can show that a reasonable amount of progress has been made in the current year by use of grant funds. An extension will not exceed 30 days. 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 1 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 landfilling.

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 go 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.

11.4 Grants involving equipment shall have "spot check" audits for a period of five (5) years; once this period has expired the state will no longer have an attachment.

§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.

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.

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) 5589-3370.

§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.





FOR INFORMATION CONTACT : Emily Fleming, Administrator
Conservation Education and Litter Control (304) 558-3370

• **Proposed Administrative Law Changes for Recycling Assistance Fund Grant Program Available for Public Comment**

Proposed administrative law changes related to the Recycling Assistance Fund Grant Program have been filed with the Legislative Rule-making Review Committee and are available for public review and comment through September 11, according to Emily Fleming, administrator for the Division of Natural Resources Office of Conservation Education and Litter Control.

The existing rule sets out the procedures and guidelines for providing Recycling Assistance Fund Grants to those who are required by law or who wish to plan and implement recycling programs.

The proposed rule changes the Recycling Assistance Fund Grant Program to the Recycling and Litter Control Assistance Fund Grant Program. This will allow grants to be funded for litter control projects that involve recycling. The rule requires the ownership of all equipment which is purchased by grant funds to revert to the Division of Natural Resources if the recycling program dissolves. Funding for feasibility studies and planning grants will be eliminated. A new section will designate 20% of grant funds for private sector grants. Maximum levels will be reduced for some grants. Grant applicants must consult with existing Solid Waste Authorities to avoid duplication of efforts.

Copies of the proposed new rule can be obtained through the Secretary of State's Office (304) 558-6000 or by calling Emily Fleming at (304) 558-3370.

****DNR****

1900 Kanawha Blvd., E.
State Capitol Complex
Building 3, Room 669
Charleston, WV 25305

Phone
(304) 558-2754

FAX
(304) 558-2768

Hoy Murphy, Public
Information Officer
(304) 558-3380

Administration
(304) 558-3315

Law Enforcement
(304) 558-2783

Parks & Recreation
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Wildlife Resources
(304) 558-2771

Conservation
Education
and Litter Control
(304) 558-3370

Real Estate
Management
(304) 558-3225

Wonderful West Virginia
Magazine
(304) 558-9152





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|--|---|--|--|---|--|--|--|

October 27, 1997

Mr. Leff Moore, Executive Director
West Virginia Association of Waste Haulers
205 First Avenue
Nitro, WV 25143-2237

Dear Mr. Moore:

Thank you for your comments on proposed changes regarding the Recycling Assistance Fund Grant Program. The following proposals were submitted to the Secretary of State's office.

3.3.1 The grant is available to state agencies, other instrumentalities of the state and private colleges in the absence of a county, municipal, or state recycling program, as provided for in West Virginia Code §20-11.6. The grant is for the purpose of implementing recycling programs consisting of source separation, collection and transportation activities; and may include school projects, drop off collection bins, paper collection equipment and special events which increase public awareness of recycling and its benefits.

4.1.1b. Proposals for funding under subsection 3.2.2 of this rule shall document that the plan to be implemented has been approved by the solid waste management board. Grant proposals shall include, but not be limited to the following:

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

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

4.1.1.b.C public education regarding recycling.

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 shall have a comprehensive recycling plan(s) which have been approved by the solid waste management board.



5.2.4 Equipment - Funding 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. 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.

5.2.6. The following other costs are allowed:

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

5.2.6.b. Funding for advertising 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.c. Funding for promotional items 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.d. Funding for professional services to assist in planning and implementation of recycling projects including feasibility studies; and

5.2.6.e. Funding for development work directed towards recycling market procurement.

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

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

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

6.1.8. Grant funds may be utilized by local and state governments or state instrumentalities for recycling projects in which a private "for private" 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.

6.2.4. All written materials funded by the grant or produced in cooperation with activities of the grant shall contain a line crediting the West Virginia Division of Natural Resources.

6.3.1. Applicant shall demonstrate through the narrative their past performance in recycling.

6.3.2. Business entity/proprietor shall hold the title to equipment listing the West Virginia Division of Natural Resources as lienholder for a period of five years. 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.

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

6.3.5. All equipment purchases shall provide public bids.

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 sub-division times the number of sub-divisions involved.

8.2 All applicants shall 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.

10.4. The grantee 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.

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

Page 4

Mr. Leff Moore

Oct. 20, 1997

14.1. The application for a recycling assistance fund grant 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.

If additional information is required, please do not hesitate to contact me at (304) 558-3370.

Sincerely,

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

Emily Fleming, Administrator
Conservation Education & Litter Control

EF/pjc



West Virginia Association of Waste Haulers & Recyclers

205 First Avenue • Nitro, WV 25143-2237 • Phone: (304) 722-6175 Fax: (304) 727-1172



TO: EMILY FLEMING, ADMINISTRATOR
Conservation Education/LC
1900 Kanawha Boulevard East
Building 3, Room 732
State Capitol Complex
Charleston, WV 25305

FROM: LEFF MOORE
Executive Director

RE: Comments on the Recycling Assistance Fund Grant Program

DATE: September 11, 1997

Please accept and review the following comments made on behalf of the West Virginia Association of Waste Haulers and Recyclers.

Thank you.

VIA HAND DELIVERY



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CAN BE RECYCLED



West Virginia Association of Waste Haulers & Recyclers

205 First Avenue • Nitro, WV 25143-2237 • Phone: (304) 722-6175 Fax: (304) 727-1172

TO: Emily Fleming, Administrator Conservation Education//LC
1900 Kanawha Boulevard E
Building 3 R-732
Charleston, WV 25305

COMMENTS

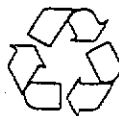
BY THE WEST VIRGINIA ASSOCIATION OF WASTE HAULERS & RECYCLERS RELATIVE TO PROPOSED AMENDMENTS TO TITLE 58, SERIES 5, C.S.R. RECYCLING ASSISTANCE FUND GRANT PROGRAM

The West Virginia Association of Waste Haulers and Recyclers is a non-profit corporation developed to serve the haulers in West Virginia. West Virginia waste haulers are divided into two general categories. Those municipalities who operate their own waste hauling system and those private waste hauling companies who hold certificates of convenience and necessity. Most of the state is served by waste haulers who hold certificates of convenience and necessity to provide service to incorporated and unincorporated areas by the West Virginia Public Service Commission. The waste haulers that hold these certificates for convenience and necessity are the predominant source of collection of solid waste in the state and provide the greatest percentage of immediate access to the waste stream. Those are the haulers that we represent.

We are grateful for the opportunity to provide the following comments:

GENERAL BACKGROUND:

- ◆ It is the position of our industry Association and its members that the grant funds expended over the years by the DNR have, to a high percentage, been wasted. These tax dollars, collected in the form of assessment fees on our customer's bill and remitted by us at the landfills and subsequently submitted to the state for utilization in various effort such as recycling, have not always been utilized in a cost-effective and appropriate manner. The primary source of the dispersal of funds have been to volunteer organizations such as county solid waste authorities who are generally held unaccountable for the expenditure of funds or for the viability of the programs. As a result, a great deal of "crash and burn" programs have been funded and repeatedly funded through this grant effort. While the goal is laudable and appropriate, we find that the performance level of this tax investment is suspect to say the least. One of the major problems is that the grant funds are being expended in the direction



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of quasi-public bodies who have little or no expertise in the solid waste delivery system, collection, recycling, etc.. In many cases these county solid waste authorities and small municipalities simply utilize the funds to start up "feel good" programs that once the grant funds are expended cannot be self-sufficient and do not work long term. As a result, much of the funds have been utilized to prove to industry and fund-applicants and hopefully, to DNR just what won't work.

West Virginia can no longer afford the latitude of this kind of excess, and consequently we urge that the legislature broadly investigate the overall viability of this program and determine what action is required by the legislature and the executive branch of government to better utilize this funding source.

- ◆ There is a clear switch in policy statement in these proposed rules that will allow grants for "litter control". Since many recycling programs implemented by county solid waste authorities, municipalities, and "instrumentalities" have been unsuccessful, it is apparent that the agency wishes to provide money for litter control projects. The rules seem to be expanding the original concept of the recycling fund grant program to include litter control. In another section of West Virginia law the solid waste assessment fees (.25 per ton) already have designated funds for litter control and for similar purposes, to redirect the recycling funds and expand their use for purposes under the control of DNR is inappropriate. We believe that recycling and litter control assistance should be administered separately with litter control being handled under either the Department of Environmental Protection or more appropriately, the Solid Waste Management Board.

In order for government agencies to achieve a continued cash-flow for staff and program work, they have in many cases already tried the recycling route and many of them appear to not be interested in continuing with their recycling efforts. In order to continue to receive the government funds, it appears that the "network" providers throughout the state are seeking grants for litter control. While it is a laudable effort it is something totally different, separate, and apart from recycling and should be maintained as such by the agency and by the industry and by the rules. The fact is that litter control projects that involve recycling is proposed in the preamble to the rule, however it is unlikely that broad based recycling programs designed to address West Virginia's improper disposal of solid waste and achieve our overall goal of recycling in the state will be achieved by the diversion of these funds to these projects.

- ◆ The general structure of the program, the implementation, and the administration of the program in the past along with the rules being amended clearly demonstrate a priority for government grants to government agencies. County solid waste authorities and instrumentalities authorized by state law are apparently the basis for which the program was established. The establishment of this hierarchy and the channeling of vast amounts of taxpayer money into the system is inappropriate and has resulted in a waste of vast amounts of taxpayers dollars. This is not to indicate that several county solid waste authorities and

some instrumentalities and some municipalities have invested these funds in a fashion that have paid long-term and existing dividends. However an investigation will reveal that the dollars contributed by the taxpayers over the years have purchased millions of dollars worth of equipment, in many cases without the benefit of competitive bids, that has created situations where government has competed directly with the private sector in the recycling and hauling areas and has done little more than to expend grant funds on a program that has proved to be temporary in nature and does not change the recycling habits of West Virginia as sought by all parties.

- ◆ The general scope, definitions and policies implemented by the rules clearly provide procedures in a pecking order outlined in the scope and purpose. Grants to counties, municipalities and others seem to be the clear priority of the grant program. This is further evidenced by the amount of money available under grants to municipalities. The previous amounts of One Hundred Thousand Dollars (\$100,000.00) for municipal, county, or regional waste authorities has been reduced to Fifty Thousand Dollars (\$50,000.00), but still remains a greater number than other eligible recipients. It appears that a municipality over 100,000 can receive a grant of Fifty Thousand Dollars (\$50,000.00). A community or municipality under 10,000 likewise can receive a grant of Fifty Thousand Dollars. A county or solid waste authority, a state agency, instrumentality or school can also be granted a similar amount of grant funds. An office paper recovery system which appears to be designed primarily for Kanawha County can receive up to Fifty Thousand Dollars, but a non-profit or other interested party who wishes to provide recycling services on a broad based market driven system can only receive a grant of Twenty Thousand Dollars (\$20,000.00). Clearly this indicates that the government entities who developed the grant program are pandering to the government entities who were created to receive the grant program and are obviously bypassing much of the private sector who, given some basic assistance with grants, could achieve a real market-viable system in West Virginia.

The West Virginia Association of Waste Haulers and Recyclers has formed and has in existence three (3) non-profit cooperatives made up of haulers, both municipal and rural PSC haulers, who have in the past applied for a \$100,000.00 grant. The purpose of this grant would be to acquire equipment to do curbside recycling throughout three separate waste sheds in West Virginia. The plan included public education and the recycling of commodities on a non-profit basis much in the same fashion that farmers band together to develop a processing plant. DNR and the existing rules precluded such a grant to these hauler developed non-profits. In the meantime, county authorities continue to receive vast amounts of money with the idea of trying to be a provider of solid waste services rather than a planner, educator, and a stimulator of workable solutions. The rules should be amended to specifically include haulers and non-profit corporations established by haulers as grant-eligible for recycling grants if it is going to continue to be public policy to taxpayer subsidize recycling efforts.

- ◆ Section 3.3 will grant up to Fifty Thousand Dollars (\$50,00.00) to state agencies, "other instrumentalities, private colleges, in the absence of a county, municipal, or state recycling program". We believe that those people who are currently providing solid waste services to West Virginia homes and businesses should be primary in the receipt of grant funds and that the government should oversee the viability of those programs and not attempt to become a provider of solid waste services. West Virginia has expanded its employment base directly and indirectly through recycling programs adding numerous government employees at all different levels in order to become a provider of solid waste services. We don't believe that the legislature ever intended this to happen, but these grants and grant guidelines stimulate that activity as evidenced by 3.3. We urge that non-profit cooperatives established by haulers and municipalities should be included in the eligibility for the grants outlined in 3.3 and with a maximum allowable grant of the \$50,000.00.

Recycling market developing grants are available to state, regional, county, or local governments to assist in developing markets for materials collected. Again, the private sector is given a lower priority than the public sector when it comes to developing markets and making the business of recycling, even on a non-profit basis, workable. This continues a bad public policy and eliminates the true and actual providers for the solid waste system in the state from access to grant funds, while providing priority to government run, government owned, and government operated facilities. Government should be the regulator, the planner, the overseer, but not the provider.

- ◆ Section 4.1.1.b indicates that implementation of non-profit hauler/municipal based cooperative programs has been approved by the solid waste management board. The solid waste management board has no authority over haulers and their plans. However, there can be a coordination of hauler-planned activities through their non-profit co-ops at the time that the grant is awarded and the solid waste management board, whose representative sits on the grant awarding committee, can assure that the activity being implemented is not in conflict with a government run program. Priority should be given to the private sector programs rather than to those operated by volunteer board members who have little accountability to the customers they serve.
- ◆ Section 4.1.3. indicates that special funding proposals can be accepted by five or more communities or two or more counties, however, two or more haulers or a hauler and a community does not appear to be eligible under special funding proposals. We can not understand why?
- ◆ We support a strengthening of the new language at 5.2.4. There are hundreds of thousands of dollars of equipment sitting idle throughout West Virginia that has been purchased by the taxpayers under this grant program. Bailors, sorters, materials handling equipment, trucks, etc., in many cases are not being utilized at all or being utilized inappropriately under the grant guidelines. The new language only allows the state to recover that equipment "if the recycling program dissolves"; the language should be changed to indicate that if the equipment has not actively been used for at least 60 days.

- ◆ 5.2.6.b limits advertising and education to newspaper, radio, business card, and other advertising related to the development and implementation of the recycling program. We believe and our experience dictates that bill stuffers and direct mail are the most effective ways of communicating with solid waste customers and those who might be encouraged to recycle. We believe that language should be inserted in that section.
- ◆ 58-5-6 further substantiates that the entire rule is generally designed and featured to provide dollars to government and not dollars to viable recycling efforts. Waste haulers have the trucks, the customers, and the knowhow to implement viable recycling programs. County governments, solid waste authorities, and "instrumentalities" receive the lion's share of these funds and do not have a truck or a customer, thus they have to begin to establish programs that have no core basis for existence.
- ◆ 6.1.4, 6.1.5, and especially 6.1.7, substantiate the policy of government control of the funds and encourages government to become a provider of services and not a planner and coordinator of services in the area of recycling. As a result, the waste hauling industry who actually has customers, trucks, knowhow, and material is subjected to the plans, programs, and staff designs of a provider system that is impractical and not knowledgeable in solid waste collection and recycling matters.
- ◆ 6.1.8. has been generally ignored by counties, cities, and recipients of grants, particularly county solid waste authorities. Purchases of tens of thousands of dollars have been perfected without the benefit of competitive bidding. It is recommended that any purchase over Five Thousand Dollars (\$5,000.00) by any entity receiving grant funds must be competitively bid as outlined in the competitive bidding requirements imposed on county commissions in West Virginia code.
- ◆ 6.2.4 gives an indication of the spirit and attitude of the agency administering the funds. It should be eliminated and the taxpayers of West Virginia should be credited along with the West Virginia Legislature for appropriating these monies if any "crediting" is done.
- ◆ 6.3. indicates that private sector grants shall be restricted to one (1) time only. A non-profit, successful cooperative operating in a multi county waste shed area with a successful program that is shown to be demonstrating a success rate far beyond what government has ever achieved can only receive one grant while a non-performing government entity could receive grants over and over based on the guidelines.
- ◆ 6.3.2 is interesting in view of the fact that government entities can buy vehicles with grant funds and lease them to the private sector or, can own vehicles for their own government run programs, but waste haulers and non-profit cooperatives would not be eligible to purchase specialized recycling handling trucks, etc, under the grant program. Again, the public sector takes precedence over the private sector and the funds are channeled to county solid waste authorities primarily leaving the workable systems unfunded.

- ◆ 6.3.4 requires that the private sector provide an auditors report for the past three (3) years and the audit is to be done by an independent auditor. This is certainly far from what the public sector is required to submit. Many solid waste authorities, such as Greenbrier County, have not been audited in years along with other numerous recipients of tens of thousands of dollars in recycling grant funds. It is our belief and understanding that numerous other authorities have not had independent audits or audits by the tax commissioner in a timely fashion and that those audits of public entities are not required to be submitted, however, the private sector is held to a higher standard when accounting for the expenditure of the funds. Although it is the private sector that is paying for the entire program through taxpayer's dollars, the private sector is being held more accountable than the public sector in this area.
- ◆ 6.3.5 states that 20% of grant funds available shall be designated for private sector grants. This substantiates our earlier position that the agency and public policy clearly favors government provided recycling and government run programs versus private sector programs. Government has not demonstrated an efficiency in this area and the private sector is being denied the opportunity to develop non-profit co-ops with the goal of providing broad-based recycling programs to waste haulers who truly have the customer base already under their service territory.
- ◆ Bidding and equipment purchase shall provide public bids under 6.3.9 only when feasible. Public bids as outlined above should be required. The schedule of grant maximum awards substantiates the preference for public versus private emphasis in this system.
- ◆ 7.2 contemplates cooperatives in political subdivisions, counties, cities, etc., but does not contemplate non-profit cooperatives in the private sector. Again, a preference for the public sector versus private sector participation.
- ◆ 8.2. indicates that applicants shall consult with the county or regional solid waste authority in which the proposed project is to be located to avoid duplication. A copy of such written consultation shall be attached to the grant application. Our non-profit cooperatives of haulers operate in several jurisdictions and cross county lines. Counties solid waste authority disagree about the viability of competing programs, consequently, this 8.2 provision puts a major governmental obstacle in what could be a very workable program for West Virginia.
- ◆ 10.4 language indicating that the grantee shall provide the Department of Natural Resources with a copy of the grantee's independently audited financial records that cover the entire grant period is not being enforced to the best of our knowledge, and many of the independently audited financial records have not been submitted to the DNR as outlined and required in existing rule.
- ◆ 10.9 leaves the Department of Natural Resources to continue to monitor the grant recipients' audit. An outstanding final audit "shall" cause ineligibility for future grants should be inserted instead of the word "can" which leaves too much discretion to staff.

- ◆ 14.1 adds new language that indicates "copy of written consultation with the county or regional solid waste authority application check list can result in private sector applications being deemed incomplete". Again, regional cooperatives that are non-profit and hauler and municipal based can find it extremely difficult to meet application checklist requirements and receive timely responses to written consultations from regional or county solid waste authorities. Again, an attempt on the part of the agency to place an inordinate obstacle to private sector participation.

FINAL COMMENT:

While we believe that many individuals involved in the recycling programs around West Virginia deserve recognition and accolades for their work and while we recognize that the staff at DNR and other state agencies have attempted to provide a meaningful service to the state of West Virginia, we find that the structure for the solid waste delivery system grant fund program is basically flawed.

There is no good reason for the Department of Natural Resources to be involved directly or indirectly in the administration of solid waste fees. The appropriate agency for handling these kinds of matters clearly is the solid waste management board. Their very name implies their role to state government. While DNR may have some law enforcement responsibilities in the area of illegal dumping or littering, there is little, if any, reason to place this agency whose primary focus is wild life and game management into the grant dispensing business. While the state continues to try to gain efficiency, we believe that the best approach would be to take the existing staff of DNR in the conservation education program and place them and the recycling effort under the direction of the solid waste management board whose answers directly to the Secretary at DEP.

Any questions regarding these comments can be directed to Randie Lawson, West Virginia Waste Haulers and Recyclers Inc., or Leff Moore, Executive Director, 205 First Avenue, Nitro, West Virginia.



Conservation Education and Litter Control
 State Capitol Complex
 Building 3, Room 732
 Charleston, West Virginia 25305
 Telephone (304) 558-3370
 Fax (304) 558-2768



CECIL H. UNDERWOOD
 Governor

JOHN B. RADER
 Director

Equal Opportunity Employer

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|---|---|--|--|---|--|--|---|
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October 20, 1997

Ms. Sue Maguire, Director
 Calhoun County Solid Waste Authority
 P. O. Box 359
 Grantville, WV 26147

Dear Ms. Maguire:

Thank you for your comments on proposed changes regarding the Recycling Assistance Fund Grant Program. The following proposals were submitted to the Secretary of State's office.

6.3-Maximum amount of grant for private sector is \$50,000. Funds will be disbursed in a lump sum at the beginning of the grant period.

7.1-Grant levels for municipalities 10,000 and under is \$50,000.

8.2-Submission of written consultation is the responsibility of the applicant.

If additional information is required, please contact me at (304) 558-3370.

Sincerely,

Emily Fleming, Administrator
 Conservation Education & Litter Control

EF/pjc

2/1/98



**Calhoun County Solid Waste Authority**

P.O. Box 359, Grantsville, West Virginia 25235

Faxed to DNR/CELC (304) 558-2768 - HARD COPY TO FOLLOW
Date: August 28, 1997 before 5:00 pm

To: Emily Fleming, Administrator, CELC
1900 Kanawha Blvd., E., Bldg. 3, R-732
Charleston, WV 25305

From: Calhoun County Solid Waste Authority
POB 359, Grantsville, WV 26147

RE: Comment on proposed changes in DNR Recycling Grant Rules

The title of the Rule has been changed; litter control projects in coordination with recycling may qualify for funding.

A litter control fund is in place to provide grants for projects. Would this fund be added to the recycling grant funds available under the proposed change? If it is not, then there would be a greater emphasis on litter control than recycling. The Division of Environmental Protection's Pollution Prevention and Open Dump program does reclamation work, to a certain extent, that also includes litter control. The state's solid waste hierarchy has recycling above litter control. If recycling is working well, as it should, then litter control is not a problem.

Section 5.2.4. to include "All equipment shall revert back to the Division of Natural Resources if the recycling program dissolves."

The availability of equipment to existing programs or grant recipients, attainment procedures with time frames, before equipment is turned over to surplus property, should be precisely explained in the regulations.

In a new section, 6.3; the following should be deleted, "Twenty percent (20%) of grant funds available shall be designated for private sector grants."

There should be no specific percentages or amount designated for any particular group of possible grant recipients. There is a question as to what will become of the rest of the 20% if the private sector does not apply for all the funds set aside?

The grant program is funded by assessment fees collected at West Virginia landfills. A municipality or any entity that disposes of their solid waste outside of the state should not qualify to receive a DNR recycling grant.

In Section 7.1. establishes maximum grant levels: the following should be deleted, "municipalities of 10,000+ and county SWA funding levels have been reduced from \$100,000 to \$50,000."

To initiate a program is very costly. Existing programs could be in need of additional funding for expansion. The maximum level of award should remain at \$100,000. In a draft report, Implementation Plan For a Statewide Recycling Program,

page 1 of 2

Printed on recycled paper

June 1994, prepared for the Director WV Division of Natural Resources, submitted by the DNR Recycling Coordinator, on page 6, "(1) A regional system of IPC's (intermediate processing centers) and assistance with funding such centers through the WV Grant Recycling Assistance Fund. a. Suggested grant amount for a new center would be \$100,000 with \$50,000 allocated for equipment that would include: forklift, small baler, a magnetic separator, and a stand for sorting."


Section 8.2. adds language; This written consultation shall be submitted as part of the application package.

The following should be added, "it is the responsibility of the applicant to provide this written consultation." Solid Waste Authorities have limited resources and a vast list of responsibilities.

The Solid Waste Authorities have the task of promoting recycling programs and preparing a comprehensive recycling plan for their counties. It would benefit the authorities in having input into these proposed grant regulation changes, by affording them the consideration of a reasonable comment period. One week is not adequate notice for a volunteer board to even be aware of proposals. Many boards meet once a month, have no paid staff and should have the opportunity to have their particular concerns addressed. Was this regulation change done using proper procedures and with the mandated public notice time requirements?

Thank you for your attention to this matter.

Sincerely,


Sue Maguire, Director
for
CCSWA

cc: Charlie Jordan, SWMB



JOHN B. RADER
Director

Conservation Education and Litter Control
State Capitol Complex
Building 3, Room 732
Charleston, West Virginia 25305
Telephone (304) 558-3370
Fax (304) 558-2768

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Governor

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October 27, 1997

Mr. George Riley, Executive Director
Harrison County Solid Waste Authority
301 West Main Street, Suite 505
Clarksburg, WV 26301-2986

Dear Mr. Riley:

Thank you for your comments on proposed changes regarding the Recycling Assistance Fund Grant Program. The following proposals were submitted to the Secretary of State's office.

6.3. Maximum amount of grant for private sector is \$50,000. Funds shall be disbursed in a lump sum at the beginning of the grant period.

7.1 Grant levels for municipalities 10,000 and under is \$50,000.

If additional information is required, please contact me at (304) 558-3370.

Sincerely,

Emily Fleming, Administrator
Conservation Education & Litter Control

EF/pjc



HARRISON COUNTY SOLID WASTE AUTHORITY
HARRISON COUNTY COURTHOUSE
301 WEST MAIN STREET, SUITE 505
CLARKSBURG, WEST VIRGINIA 26301-2986
Phone (304) 624-8715 Fax (304) 624-8723

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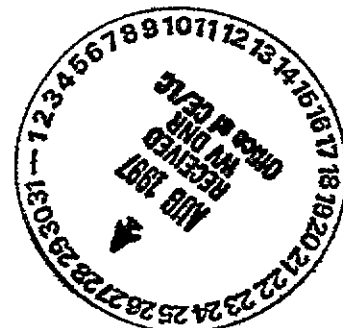
TO: Ms. Emily Fleming, Administrator,
CELC
1900 Kanawha Blvd., East
Building 3, Room 732
Charleston, West Virginia 25305

FROM: George Riley, Executive Director *GR*

RE: Comments on proposed changes in D N R Recycling Grant
Rules.

DATE: August 26, 1997

- ◆ Section 6.3, should limit grant funds for private sector grants to ten percent (10%) of funds available.
- ◆ Section 7.1 should limit grant levels for municipalities of 10,000 to \$25,000.00.
- ◆ It would have been easier if this response could have been transmitted by facsimile.



DNR
West Virginia
Division of
Natural Resources

JOHN B. RADER
Director

Conservation Education and Litter Control
State Capitol Complex
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Charleston, West Virginia 25305
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October 27, 1997

Ms. Vivian Stockman, Secretary
Roane County Solid Waste Authority
Otto Route Box 105A
Spencer, WV 25276

Dear Ms. Stockman:

Thank you for your comments on proposed changes regarding the Recycling Assistance Fund Grant Program. The following proposals were submitted to the Secretary of State's office.

6.3 Maximum amount of grant to private sectors is \$50,000. Funds shall be disbursed in a lump sum at the beginning of the grant period.

7.1 Grant levels for municipalities 10,000 and under is \$50,000.

8.2 Submission of written consultation is the responsibility of the applicant.

If additional information is required, please contact me at (304) 558-3370.

Sincerely,

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

Emily Fleming, Administrator
Conservation Education & Litter Control

EF/pjc



Vivian Stockman
Secretary,
Roane Co. SWA
Otto Rt. Box 105A
Spencer, WV 25276

Emily Fleming
Administrator, CELC
1900 Kanawha Blvd., E.
Building 3, R-732
Charleston, WV 25305




Dear Ms. Fleming:

Please accept the following comments regarding DNR's proposed changes to the 58CSR Series 5 Rule, "Recycling Assistance Fund Grant Program."

- Re: Section 6.3--I do not believe twenty per cent of available grants funds should be earmarked specifically for private sector grants. So far, the private sector has shown little interest in recycling. I don't believe the private sector should be shut out of the grant system, however, funds should be available based on a grant proposal's merit, and not based on meeting a numerical percentage.
- Re: Section 7.1--I do not believe the maximum grant levels for municipalities of 10,000+ and for county SWAs should be reduced from \$100,000 to \$50,000. Costs associated with implementing a recycling system--location, buildings, equipment, etc., dictate that the higher level of potential grant funding be maintained.
- Re: Section 8.2--Who writes the consultation? SWAs or the applicants? This language should be clarified so that the burden of a written consultation falls into the hands of the applicant.

Thank you for your attention regarding these matters.

Sincerely,


Vivian Stockman



JOHN B. RADER
Director

Conservation Education and Litter Control
State Capitol Complex
Building 3, Room 732
Charleston, West Virginia 25305
Telephone (304) 558-3370
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October 27, 1997

Ms. Helen Gibbins, Chair
League of Women Voters of West Virginia
6128 Gideon Road
Huntington, WV 25705

Dear Ms. Gibbins:

Thank you for your comments on proposed changes regarding the Recycling Assistance Fund Grant Program. The following proposals were submitted to the Secretary of State's office.

§58-5-7. Schedule of Grants Available

7.1. Schedule for one applicant:

| Type of Grant | Maximum Grant |
|--|---------------|
| Municipality over 10,000 population | \$ 100,000 |
| Community or Municipality under 10,000 | 50,000 |
| County or Regional Solid Waste Authority | 100,000 |
| State agency or state instrumentality or school | 50,000 |
| Recycling Promotion, Collection Drive and office paper recover | 50,000 |
| Recycling Feasibility Study or Planning | 20,000 |
| Recycling Market Development | 50,000 |
| Non Profit or Other Interested Party | 50,000 |

If additional information is required, please contact me at (304) 558-3370.

Sincerely,

Emily Fleming, Administrator
Conservation Education & Litter Control

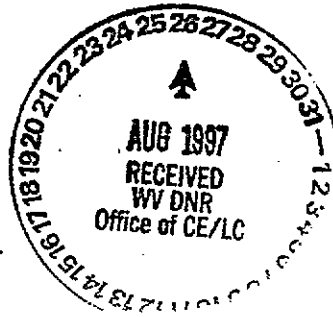
EF/pjc





LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA

6128 GIDEON RD • HUNTINGTON, WV 25705 • TELEPHONE 304-736-3287



August 25, 1997

Emily Fleming, Administrator
CELC
1900 Kanawha Blvd. E
Building 3, Rm 732
Charleston, WV 25305

Re: Title 58 series 5 Rule for the recycling grant program

The League of Women Voters of West Virginia understands that the proposed rule for the recycling grant program is to expand the scope of the grant program to include litter control activities and at the same time to reduce the grant ceiling to Solid Waste Authorities from \$100,000 to \$50,000. The League does not have a copy of the proposed rule, but wishes to make comments in case our understanding is correct.

If available funds have decreased, we urge you not to give the limited funds available to litter control activities. The hierarchy for solid waste management in West Virginia is Reduce, Reuse, Recycle. Litter control activities may be popular with some people, but does not take care of the basic problems of trash. We generate too much of it. The League would rather see the money spent to promote reduction of the generation of trash and to fund programs that will encourage recycling.

We do not oppose litter control activities, but are concerned that recycling efforts will be harmed if funds are diverted to litter control. We believe that civic groups can be encouraged to pick up litter and educate their members and the public about the problems of litter. Municipalities also are outfitted to promote litter pickup in their neighborhoods.

We also understand that the local solid waste authorities were not notified about the proposed changes in rules. We believe public participation necessitates reaching out to grass roots organizations as well as to the press. Press notices will reach the public better than legal ads, although legal ads may be required. The solid waste authorities make up an excellent avenue for reaching communities to solicit public input on solid waste issues.

The League of Women Voters has studied and come to positions on solid waste issues for many years. If you plan to make a list of organizations which should be notified on solid waste issues and rule changes, please add us to that list.

ES/HG

Ellender Stanchina, President
2023 Huber Rd.
Charleston, WV 25314

Sincerely,

Helen Gibbins

Helen Gibbins, Natural Resources
Chair gibbins@marshall.edu
6128 Gideon Rd.
Huntington, WV 25705