

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

Form #3

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FILED

Aug 6 1 50 PM '99

OFFICE OF THE 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)(1)

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.



JOHN B. RADER, DIRECTOR

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

August 6, 1999

- f. Name, title, address and **phone/fax/e-mail numbers** of agency persons(s) to receive all written correspondence regarding this rule: (Please type)

Emily Fleming, Chief of Environmental Resources Section, Capitol Complex, Bldg. 3,

Room 732, Charleston, WV 25305, phone: 558-3370, fax: 558-6207

e-mail: eflemin@dnr.state.wv.us

- g. ***IF DIFFERENT FROM ITEM 'f'***, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)
-

Jim Hill, State Recycling Coordinator, Capitol Complex, Bldg. 3, Room 732, Charleston,

WV 25305, phone: 558-3370, fax: 558-6207, e-mail: jhill@dnr.state.wv.us

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?

June 24, 1999

- d. Attach findings and determinations and reasons:

Attached See Attached

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.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED AMENDMENT

The proposed amendment strengthens the lienholder language to include the class-life depreciation schedules published by the Internal Revenue Service. Incorporates a Severability Clause. Also, requires the grantee to return any unexpended grant funds remaining as of March 31 to the Recycling Assistance Fund.

Other technical changes are contained in the proposed amendments.

FISCAL NOTE FOR PROPOSED RULE

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

Type of Rule 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
ESTIMATED TOTAL COST			\$1,594,000	\$1,600,000	\$1,581,000
PERSONAL SERVICES			\$172,000	\$181,000	\$189,000
CURRENT EXPENSE			\$135,000	\$170,000	\$174,000
REPAIRS & ALTERATIONS			\$2,500	\$2,500	\$2,500
EQUIPMENT			\$9,500	\$6,500	\$5,500
OTHER			\$1,275,000	\$1,240,000	\$1,210,000

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 1998 and 1999 and the estimated costs during 2000. 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 Economics 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 int 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.

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: 6-24-99

Signature of Agency or
Authorized Representative:



JOHN B. RADER, DIRECTOR

Aug 8 1 54 PM '99
OFFICE OF MONT VIRGINIA
SECRETARY OF STATE

TITLE 58
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES
SERIES 5
RECYCLING ASSISTANCE 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, and others planning and implementing recycling programs, related public education programs, and recycling market procurement efforts.

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

1.3. Filing date.

1.4. Effective Date.

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

§58-5-2. Definitions.

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

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

2.3. "Municipality" means an incorporated community.

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

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

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

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

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

2.9. 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 grant program provides grants to assist municipalities, counties and others in:

- implementation of recycling programs;
- public education programs which promote recycling; and
- recycling market procurement efforts.

3.2. Recycling Assistance 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, Collection Drive, and Office Paper Recovery Grant -

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

3.3.3. Local Government Recycling Grant - The grant is for the implementation or expansion of county, municipal and regional recycling programs, and 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 shall be approved by the West Virginia Solid Waste Management Board to qualify for the grant.

3.3.4. 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, instrumentalities, proprietorships, partnerships, corporations; and private schools, are

eligible to apply for recycling assistance grants as provided for in subsections 3.3.1. through 3.3.4. of this rule, through consultation with the county or regional solid waste authority in which the applicant is located. The recycling assistance fund grant review committee will give priority to those municipalities, counties, state instrumentalities, private schools, proprietorships, 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 ordinance by referendum vote, the ordinance 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 shall, at a minimum, be consistent and coordinated with the county's recycling program. Grant proposals shall meet the following criteria:

4.1.1. Municipalities with populations over 10,000:

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

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

- 4.1.1.b.A. source separation of at least three recyclable materials;
- 4.1.1.b.B. collection and transportation of materials to a processing center; and
- 4.1.1.b.C. public education programs which promote recycling.

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

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

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

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

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

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

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

4.2.2.c. public education programs which promote recycling.

4.2.3. Other interested parties may apply for grants provided that grant proposals are consistent with one or more of the objectives listed under 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.

Recycling assistance grant may be used to:

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

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

5.2. Recycling assistance grant shall be used for:

5.2.1. Personnel - 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~~ \$1,500 per grant.

5.2.3. Supplies - 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 - 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 and the period of years in which lien attaches, in accordance with section 6.1.11. of this rule. All equipment shall become property of the Division of Natural Resources if the recycling program dissolves. At the discretion of the Director, equipment which has not been productively used for 180 days shall become property of the Division of Natural Resources.

5.2.5. Recycling Vehicle Expense - 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. Printing - Grant is limited to costs associated with educational materials on recycling such as pamphlets, posters, flyers, etc.

5.2.7. 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.

5.2.8. 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.

5.2.9. Professional Services - Grant is to assist in planning and implementation of recycling projects including feasibility studies.

5.2.10. 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 for any type of lobbying expense.

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

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

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

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

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

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

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

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

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

6.1.8.a. Grant 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 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. The lien period for each individual piece of equipment purchased with grant funds will be determined using the class-life depreciation schedules published by the Internal Revenue Service. If a piece of equipment is in question as to which class the equipment is to be placed in, the WV Division of Natural Resources reserves the right to make that determination.

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

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

6.2.1. The proposed project shall be designed to affect a significant and measurable

reduction in the municipal solid waste stream.

6.2.2. The project may provide recycling market procurement efforts.

6.2.3. The project 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
Recycling Promotion, Collection Drive	

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

7.2. ~~Schedule for cooperatives - For a cooperative recycling effort of five or more communities, or two or more counties the maximum grant available will be the maximum for the type of political subdivision times the number of subdivisions involved between counties, municipalities, or private sector entities, the maximum amount of funding for a cooperative grant shall not exceed \$200,000, or the cumulative of the maximum amount allowable for each individual applicant as stated in §58-5-7.1, whichever is smaller.~~

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

8.1. The grant proposal should demonstrate the relationship to, and support of, the hierarchy established under West Virginia Code §22C-4, i.e., source reduction; recycling, reuse and resource recovery; and landfilling.

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

8.3. The proposal shall contain the following:

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

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

8.3.c. Public information program to ensure receipt of good clean quality materials.

8.3.d. Description of a collection system.

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

8.3.f. Projection of cost effectiveness and self-sufficiency of the proposed project.

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

8.3.h. Documentation of any other type of grant assistance received, including the dollar amount, type of project, etc., for recycling and/or solid waste management.

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

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

9.1. All grant proposals will be reviewed by a recycling assistance grant review committee, composed of the following: a member of a county or regional solid waste authority, and a representative of business or industry, to be appointed by the Director; the Executive Director of the Solid Waste Management Board; the Director of the West Virginia Development Office; the Director of the Division of Environmental Protection; 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 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 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 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 Grant and Termination of Grant.

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

10.2. Complete recycling assistance fund grant applications 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.

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 will be disbursed on the following schedule: 30% at the time of grant award with subsequent payments of 30% to be made ~~every four~~ months upon receipt of a quarterly report. The final payment shall be 10% and shall be withheld until receipt of the ~~fourth~~ ~~third~~ quarterly report, ~~as provided for in section eleven (11) of this rule.~~

10.4. The grantee shall retain and make available upon request by the Division of Natural Resources for a period of three years, all financial records, supporting documents, statistical records, and all other records as they relate to the application, acceptance and use of the grant. The provision of West Virginia Code §12-4-14 apply to all recycling assistance 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 remaining as of March 1 of the following year shall be returned to the Recycling Assistance Fund. Any expenditure made on or after March 1 shall be considered an unauthorized expenditure.

10.6. If, through any cause, the grantee fails to fulfill in a timely and proper manner its obligation as proposed in the grant application, and as accepted and approved by the Division of Natural Resources, 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 shall comply with all applicable federal, state and local laws, codes, ordinances, rules and regulations. Failure to comply with grant guidelines could result in withdrawal of the grant award and/or future consideration of grants.

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

10.9. Grantees with a current grant are not eligible for the next cycle of grants. Exceptions shall be recommended by the Grant Review Committee for final approval by the Director of the Division of Natural Resources. 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 shall submit a final report for approval on or before March 31 of the

following year. The report shall include the following:

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

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

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

11.1.4. An analysis of the project including: total volume (tons) of waste diverted from the solid waste stream, the estimated cost per ton to recycle that volume, the estimated revenue per ton of recycled material, and the estimated savings from recycling in lieu of land filling.

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

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

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

11.2.2. An incomplete quarterly report shall be returned to the grantee for completion. Grant payments shall be withheld until receipt of an acceptable report as provided for in section ten (10) of this rule.

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 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 shall be completed and accompany the grant application.

~~§58-43~~ 5-14. Submission of Application.

14.1. The application for a recycling assistance grant shall contain in addition to a description of the proposed project, an applicant profile, an estimated budget with justification, certification regarding 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 time line graph, attested financial documents, letter of receipt of application from county solid waste authority, and equipment specifications.~~ Incomplete

applications shall not be considered; they will be marked “incomplete” and returned for resubmittal within a reasonable time period to the applicant. An incomplete application may be resubmitted before the deadline grant submission date.

14.2. The original and one copy of the application must be received by the Division of Natural Resources on or before 5:00 p.m. of the last business day in July. Applications shall be hand delivered or mailed to: West Virginia Division of Natural Resources, 1900 Kanawha Boulevard, East, Building 3, Room 732, Charleston, West Virginia 25305-0665, no later than August 1 of the year prior to the grant year.

§58-5-15. Severability.

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



West Virginia Association of Waste Haulers and Recyclers, Inc.
Post Office Box 3706 Charleston, WV 25337

Ms. Emily Flemming, Chief
Environmental Resources Section
1900 Kanawha Blvd., E.
Building 3, Room 732
Charleston, WV 25305

July 22, 1999

Dear Emily,

These are suggested changes on rules for the Recycling Assistance Grant Program.

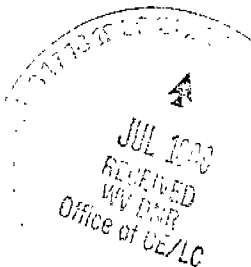
The Association of WV Waste Haulers and Recyclers believes that the schedule of grants available (7.1) should be modified in a number of ways. First, the maximum award given to any single public or private entity in a single year should be limited to \$50,000. This puts public and private requests on equal footing and reflects the budgetary constraints the grant committee works under. Second, 7.2 should be reworded to include private and public sector joint projects. I would suggest, "Schedule for cooperatives- for a cooperative effort of four or more public or private entities the maximum grant available is \$200,000. This change will encourage private sector companies to pool resources and allow for joint public and private recycling projects. It will encourage cooperation and reduce duplication of services. This is probably the most important change that can be made that will have a significant impact on recycling in West Virginia.

Rule 8.2 is both a burden on the applicant and on solid waste authorities as it is now written. The current resolution format is not worded in a manner consistent with the current rules. I suggest this rule be changed. I believe if the applicant is required to send a copy of their application to the solid waste authority this would be sufficient, and make the process much easier on the authority and the applicant. In conjunction with this change, (14.1) should also be modified.

Sincerely yours,



Greg Sayre, Executive Director





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

July 28, 1999

Mr. Greg Sayre, Executive Director
West Virginia Association of
Waste Haulers and Recyclers, Inc.
P. O. Box 3706
Charleston, WV 25337

Dear Mr. Sayre:

The Division of Natural Resources appreciates your comments on the proposed rule changes to the Recycling Assistance Grant Program. Public comments are the best way to improve and strengthen the program. Your comments have been reviewed and the following changes will be suggested:

Section 7.2

The Division of Natural Resources will develop language to include additional types of cooperatives that include the private sector. This will address your comments on the schedule of grants available.

Section 8.2

Regarding the requirement that the applicant consult with the County Solid Waste Authority when applying for a Recycling Assistance Grant - it has become apparent that this requirement has created excessive hardships for some grant applicants; therefore, we will propose that applicants for Recycling Assistance Grants, are required to submit a copy of their grant proposals to their SWA and acknowledgment of receipt of the application by the SWA must accompany the application when submitted to the Division of Natural Resources. Formal action by the SWA is not required. As indicated, changes will also be made to section 14.1.

Section 7.1

Relating to limiting all grant applicants to \$50,000 - municipalities with populations of 10,000 or more and counties that have voted to require recycling programs are given priority in the Recycling Assistance Grant Program. This priority is in the awarding of grants and in the maximum amount that may apply for. The Division of Natural Resources does not believe that reducing the amount of funding that the public sector can apply for to \$50,000 would be an improvement in the program.

Mr. Greg Sayre
Page Two
July 28, 1999

Again, I would like thank you on behalf of the Division of Natural Resources for your comments and suggestions on improving the Recycling Assistance Grant Program.

Sincerely,

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

Emily Fleming, Chief
Environmental Resources Section

EF/jhv

AMENDMENTS TO THE PROPOSED RULE

7.2. ~~Schedule for cooperatives - For a cooperative recycling effort of five or more communities, or two or more counties the maximum grant available will be the maximum for the type of political subdivision times the number of subdivisions involved between counties, municipalities, or private sector entities, the maximum amount of funding for a cooperative grant shall not exceed \$200,000, or the cumulative of the maximum amount allowable for each individual applicant as stated in §58-5-7.1, whichever is smaller.~~

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

14.1. The application for a recycling assistance grant shall contain in addition to a description of the proposed project, ~~an applicant profile, an estimated budget with justification, certification regarding 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 time line graph, attested financial documents, letter of receipt of application from county solid waste authority, and equipment specifications.~~ Incomplete applications shall not be considered; they will be marked "incomplete" and returned for resubmittal within a reasonable time period to the applicant. An incomplete application may be resubmitted before the deadline grant submission date.

14.2. The original and one copy of the application ~~must be received by the Division of Natural Resources on or before 5:00 p.m. of the last business day in July. Applications shall be hand delivered or mailed to: West Virginia Division of Natural Resources, 1900 Kanawha Boulevard, East, Building 3, Room 732, Charleston, West Virginia 25305-0665, , no later than August 1 of the year prior to the grant year.~~

EXPLANATION FOR AMENDMENTS

7.2.

Changed to encourage private sector companies to coordinate resources and allow for joint public and private projects and reduce duplicate programs in each county. Cooperative grants are limited to the amount of \$200,000 due to the limited amount of grant funds available through the Recycling Assistance Program.

8.2.

Changed to remove the burden from grant applicant from obtaining signatures from county solid waste authorities, who only meet once a month, and allows the solid waste authority to review the application at their convenience.

14.1.

Changed to include all relevant information of the grant application as outlined in the application format.

14.2.

Changed to clarify the deadline periods that all applications can be submitted and accepted.



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Cecil H. Underwood
Governor

John B. Rader
Director

MEMORANDUM

TO: Judy Cooper, Director
Secretary of State
Administrative Law Division

Debra Graham, Chief Counsel
Legislative Rule Making Committee

FROM: John B. Rader, Director

DATE: August 6, 1999

SUBJECT: **Division Approval of Proposed Rules**

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

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

Enclosures

EF/ndh