

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
Form #2

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NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: DCL&ER, Division of Natural Resources TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY § 20-11-5a(h)(1)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 43

TITLE OF RULE BEING PROPOSED: Recycling Assistance Fund Grant Program

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 31, 1992 AT 5:00 pm

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS Maxine Scarbro, Division of Natural Resources, Conservation Education/Litter Control, Capitol Complex, Bldg. 3, Room 732, Charleston, West Virginia 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.


J. Edward Hamrick III, Director
Division of Natural Resources

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3.40



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY
State Capitol, Room R-151
Charleston, West Virginia 25305-0310
Telephone: (304) 558-3255
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

July 22, 1992

J. Edward Hamrick III, Director
Division of Natural Resources
Building 3, Room 669
Charleston, West Virginia 25305

RE: Proposed Rule - Title 47, Series 43 (Recycling assistance
fund grant program)

Dear Ed:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:cjb
B:RULE-DNR.RUL

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Recycling Assistance Fund Grant Program 47 C.S.R. 43

Type of Rule: - X Legislative Interpretive Procedural

Agency: Division of Natural Resources

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

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$2,100,000	\$	\$2,100,000	\$2,100,000	\$2,100,000
Personal Services	\$ 125,000		\$ 125,000	\$ 125,000	\$ 125,000
Current Expenses	\$ 55,000		\$ 55,000	\$ 55,000	\$ 66,000
Repairs & Alterations	\$ 8,000		\$ 8,000	\$ 8,000	\$ 4,000
Equipment	\$ 22,000		\$ 22,000	\$ 22,000	\$ 15,000
Other	\$1,890,000		\$1,890,000	\$1,890,000	\$1,890,000

2. Explanation of above estimates: The above estimates are based on 50% of the special revenue deposited in the Recycling Assistance Fund as provided for in W. Va. Code § 20-11-5a. In general it is expected that about 10% of these funds will be used to cover program administrative costs and the balance provided in assistance grants.

3. Objectives of this rule: Set out procedures and guidelines for providing assistance grants to municipalities, counties and others planning and implementing recycling programs.

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 W, Va, Recycling Act. General revenue funds are not involved.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens. While this rule can provide assistance grants to those planning and implementing recycling programs; there is the potential, at least for the first few years, of recycling program costs exceeding assistance grants for those entities required by law to implement a recycling program.

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:

Signature of Agency Head or Authorized Representative


 Director, Division of Natural Resources

PREAMBLE TO A PROPOSED RULE
CONCERNING
RECYCLING ASSISTANCE FUND GRANT PROGRAM

AGENCY: -- Department of Commerce, Labor, and Environmental Resources; Division of Natural Resources.

REGULATION: Title 47, Series 43, "Recycling Assistance Fund Grant Program."

ACTION: Filing of a Proposed Rule, Notice of a Thirty Day Public Comment Period, and filing of an Emergency Rule.

SUMMARY: The proposed, 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 a recycling program.

Written comments received prior to 5:00 pm August 31, 1992 will be accepted. Written comments should be sent to:

Maxine Scarbro
Division of Natural Resources
Conservation Education/Litter Control
Capitol Complex, Bldg. 3, Room 732
Charleston, WV 25305

TITLE 47
DIVISION OF NATURAL RESOURCES
DEPARTMENT OF COMMERCE, LABOR AND
ENVIRONMENTAL RESOURCES

FILED
JUL 29 11 11:57

SERIES 43
RECYCLING ASSISTANCE FUND GRANT PROGRAM

§ 47-43-1. General.

1.1. Scope and Purpose. - This regulation provides guidelines for awarding grants to assist municipalities, counties and other interested parties in the planning and implementation of recycling programs, related public education programs, and recycling market procurement efforts.

1.2. Authority. - § 20-11-5a(h)(1).

1.3. Filing Date.

1.4. Effective Date.

§ 47-43-2. Definitions.

2.1. "Co-mingled" means those source separated recyclable materials that are aggregated into a container(s) to facilitate collection and transportation to a facility for further processing.

2.2. "Director" means the director of the West Virginia Division of Natural Resources or his authorized representative.

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

2.4. "Materials Recovery Facility" means a facility for processing of source separated materials, and may include co-mingled source separated materials.

2.5. "Municipality" means an incorporated community

2.6. "Recycling Market Procurement" means developing markets for the materials generated by programs funded from the Recycling Assistance Fund Grant Program.

2.7. "Recyclable Materials" includes, but is not limited to, steel and bi-metallic cans, aluminum, glass, paper, and plastic.

2.8. "Source separated" means the removal of recyclable materials at the point of solid waste generation from that waste which is to be landfilled.

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 regulation.

§ 47-43-3. Grants Available From Recycling Assistance Fund Grant Program.

3.1. The Recycling Assistance Fund Grant program provides grants to assist municipalities, counties and other interested parties in:

- 3.1.1. Planning and implementation of recycling programs;
- 3.1.2. Public education programs related to recycling; and
- 3.1.3. Recycling market procurement efforts.

3.2. Recycling Assistance Fund grant proposals that are in compliance with the criteria of section 3.1 of these regulations will be evaluated on a competitive basis considering each proposal's objectives towards maximizing the following factors; conservation of limited natural resources, reduction of litter, recycling of valuable materials, extending the useful life of solid waste landfills, and reducing the need for new landfills throughout the state.

3.3 The following types of grants are available:

3.3.1. Local Government Recycling Feasibility Study and Planning Grants - This grant is to be used to investigate the feasibility of, and to prepare detailed, comprehensive planning for, community/county recycling programs. A professional service may be utilized to plan and implement a comprehensive recycling program.

3.3.2. Recycling Promotion and Collection Drive Grants - This type grant is available to state agencies, other instrumentalities of the state and private colleges in the absence of a municipal, or county recycling program, as provided for in §20-11-6 of the state code. Such grants are for the purpose of implementing recycling programs consisting of at a minimum source separation, collection and transportation activities. This grant may also include such activities as a school project, drop-off bins, special events which will help to increase public awareness of recycling and its benefits.

3.3.3. Local Government Recycling Operation Grants - This grant is for the implementation of municipal, county and regional recycling programs. These grants must emphasize the integration of recycling into local, comprehensive, Solid Waste Management Board approved, solid waste management plans developed by the local or regional solid waste authorities.

3.3.4. Office Paper Recovery Programs - In the absence of a municipal and/or county-wide recycling program, any state agency or instrumentality of the state may apply for assistance to plan and implement on a county or greater level an office wastepaper recovery program in government, school, and local offices. Funds are available for such activities as paper collection equipment acquisition, transportation to a processing center, program publicity and promotional activities.

3.3.5. Other Interested Party Recycling Program Grants and Nonprofit Recycling Center Operation Grants - reserved.

3.3.6. Recycling Market Development Grants - This Grant is available to State, regional, county or local governments to assist in developing markets for materials produced or expected to be produced in recycling programs.

§ 47-43-4. Grant Program Priority and Other Criteria.

4.1. All West Virginia municipalities, county commissions, and county and regional solid waste authorities are eligible to apply for recycling assistance funding as provided for in subsections 3.3.1, 3.3.3 and 3.3.6 of this regulation. However, priority for funding will be given 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 §§ 20-11-5 and 20-11-6 of the state code. In those instances where a county by referendum has adopted a recycling program that is consistent with the provisions of § 20-11-5(c) of the state code, and the county contains one or more municipalities each with a population greater than 10,000, then such municipality's recycling program must at a minimum be consistent and coordinated with the county's recycling program. Such program funding proposals must meet the following appropriate criteria:

4.1.1. For municipalities with populations over 10,000:

4.1.1.a. Proposals for funding under subsection 3.3.1 of this regulation must have work elements that are at a minimum consistent with the provisions of subsections (a) and (b) of § 20-11-5 of the state code; and

4.1.1.b. Proposals for funding under subsection 3.3.3 of this regulation must contain as part of the application documentation that the plan to be implemented has been approved by the solid waste management board.

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

4.1.3. Municipalities with populations under 10,000 may plan and implement the collection and transportation of recyclable materials featuring curbside or drop-off collection systems; public education about recycling; and/or integration of other materials into the recycling program, such as cardboard, household composting, used oil, and yard waste.

4.1.4. Special funding proposals for five or more communities or two or more counties combining their efforts to provide a county-wide or multi-county recycling program must have a comprehensive recycling plan(s) which has been approved by the West Virginia Solid Waste Management Board.

4.2. In the absence of either a municipal or a comprehensive county recycling program, all agencies and instrumentalities of the state, primary and secondary schools, and private colleges and universities shall be eligible to receive grants under subsections 3.3.2, 3.3.4 and 3.3.6 of this regulation. Grant proposals shall include, but not be limited to the following:

4.2.1. Source separation of at least two recyclable materials; and

4.2.2. Collection and transportation of source separated materials.

4.3. Other interested parties, including non-profits which may at a minimum apply for grants under subsection 3.3.5 of this regulation, may be eligible to receive recycling assistance fund grants,

provided grant proposals are consistent with one or more of the objectives listed under section 3.1 of this regulation, and includes, but is not limited to the recycling activities listed under subsection 4.2 of this regulation.

§ 47-43-5. Use of Grant Funds.

Recycling assistance grants may be used to:

5.1. Enhance the self-sufficiency of recycling in counties or communities through initiation of new, or support of, on-going recycling activities.

5.2. Supplement wages of personnel directly involved with administration or operation of recycling activities; rent or purchase of recycling equipment, including but not limited to such items as curbside containers, or drop-off boxes; collection and transportation of recyclables; development and implementation of recycling program plans and related enforcement programs; recycling promotion and public education; and recycling market procurement efforts.

5.2.1. Allowable costs for Recycling Assistance Fund grants are:

5.2.1.a. Personnel - Limited to the salary costs associated with a recycling manager or coordinator and laborers. No more than \$20,000 of Recycling Assistance Fund grant monies may be used for the wages/benefits of a recycling manager/coordinator.

5.2.1.b. Travel - 1) Recycling workshop expenses are limited to expenses outside of the program boundaries and are allowable for items such as airfare or mileage, meals, lodging, parking and registration fees for attending recycling meetings, workshops and conferences. These costs are limited to a maximum of \$1,000 per year per grant from the Recycling Assistance Fund grant monies, and 2) recycling vehicle expenses which are limited to the lease/purchase, maintenance, fuel, mileage and insurance for truck or van used in approved recycling activities. Shipping materials to market using the program's vehicles and labor is an approved recycling activity.

5.2.1.c. Supplies - General office supplies; and other supplies such as collection bags or household bins used for the collection/storage of recyclables.

5.2.1.d. Equipment - Limited to processing equipment, material handling equipment, material storage equipment, scales, and safety equipment used in recycling activities.

5.2.1.e. Other - 1) Printing/production which is limited to costs associated with the production of educational materials on recycling such as pamphlets, booklets, posters, flyers, etc; 2) Advertising which 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; 3) Promotion items which are limited to costs associated with promotional items such as awards, decals, patches, buttons, magnets, and costs associated with the rental of fair booth and exhibit space for recycling awareness; 4) Professional services to assist in planning and implementation of recycling projects including feasibility studies; and 5) Development work directed towards recycling market procurement.

5.2.2. Costs not allowed under a recycling assistance fund grant are:

5.2.2.a. Purchase or long term lease of dumpsters or other containers or their servicing when not part of an approved recycling activity.

5.2.2.b. Land acquisition.

5.2.2.c. Costs for office equipment including such items as desks, chairs, telephone, typewriters, files, and photocopying equipment.

5.2.2.d. Street sweepers or their equivalents.

5.2.2.e. Entertainment costs (banquets, parties, etc.).

5.2.2.f. Alcoholic beverages, in-state lunches, and all gratuities.

5.2.2.g. Beautification projects (plantings, mowing, weeding, etc).

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

§ 47-43-6. General Conditions Applicable to Grants.

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

6.1.2. The proposed recycling project must 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 be designed to affect a significant and measurable reduction in the municipal solid waste stream. All grant proposals must include an 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 municipal or county proposals must plan to involve all or a substantial percentage of the community's residents in the project area and should include a plan to provide public education about the recycling program.

6.1.5. Projects proposed for funding must 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 include a plan to identify markets able to handle the projected volumes of materials to be collected.

6.1.7. The proposal must clearly demonstrate that the 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 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 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.

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

6.1.10. The proposed project must be limited to the collection, processing and market development of recyclable materials and NOT for the manufacture of products from recyclable materials.

6.2. The following general conditions apply to non-profit organizations and other interested parties applying for funding under the Recycling Assistance Fund Grant Program: Reserved.

§ 47-43-7. 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	\$100,000
State agency/state instrumentality/school.	\$ 50,000
Office Paper Recovery.	\$ 50,000
Recycling Feasibility Study/Planning.	\$ 20,000
Recycling Market Development	\$ 20,000
Non-profit organization and Other Interested Party Recycling	Reserved

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.

§ 47-43-8. 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 recovery; landfilling.

8.2. All proposals shall be coordinated 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.

8.3. Implementation of proposals must contain a policy statement, regulation or ordinance as required by the provisions of this regulation that outlines 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. All proposals must include a public information and education component to ensure receiving good clean quality materials.

8.5. The proposal must provide, where appropriate, for a collection system.

8.6. Where required by the West Virginia Recycling Act the proposal must contain provisions to ensure compliance with the ordinance, including incentives and penalties.

8.7. All proposals must demonstrate cost effectiveness and self-sufficiency of the proposed project.

8.8. To the degree possible all proposals should demonstrate the type of in-kind services to be provided by grantees.

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

8.10. All proposals must set forth any other type of grant assistance received, including the dollar amount, type of project, etc., for recycling and/or solid waste management.

§ 47-43-9. 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, to be appointed by the director; the Executive Director of the Solid Waste Management Board; the Director of the Economic Development Office; the Director of the Division of Environmental Protection; the Director of the Division of Natural Resources; and a representative of business or industry, to be appointed by the director. For the purpose of conducting business, four (4) members of the Recycling Assistance Fund Grant Review Committee shall be required for a quorum. The Director may vote to break tie votes of the committee. Approved grants meeting the programs 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 as soon as possible after award decisions have been made. Unsuccessful applicants will be given the opportunity to discuss their proposals with appropriate staff.

§ 47-43-10. 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 each year.

10.2. Complete recycling assistance fund grant applications must be submitted to the West Virginia Division of Natural Resources prior to the first day of August each year. However, municipalities with populations greater than 10,000 should make application as soon as possible, but no later than the first day of August, so that they may meet the time frames provided for in the West Virginia Recycling Act.

10.3. Notification to grant applicants relative to funding of their proposal will be made during the first full week in November each year with grant award letters issued by no later than the first of January the following year.

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

10.5. The grantee must retain and make available upon request by the West Virginia 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 provisions of § 12-4-14 of the West Virginia State Code apply to all Recycling Assistance Fund Grants. A copy of the grantee's independently audited financial records that cover the entire grant period shall be provided to the West Virginia Division of Natural Resources.

10.6. All unexpended grant funds remaining at the end of 90 days following submission of the final report required in section 11 of this regulation shall be returned to the recycling assistance fund grant program.

10.7. 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 West Virginia Division of Natural Resources, payment of remaining grant funds will be terminated.

§ 47-43-11. Site Visits and Reports Required.

11.1. A final report must be submitted on or before January 30, or within 30 days of completion of the project, whichever comes first. The report must provide a detailed summary of the implementation of the project and the degree to which objectives were achieved. The final report must 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.

11.2. A progress status report and expenditure statement must be submitted by all recycling grantees to the DNR 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 communication between the Division and grant recipients, and may include inspections from the Division of Environmental Protection and site visits from the West Virginia Solid Waste Management Board.

§ 47-43-12. Equal Employment Opportunity.

12.1. In implementing 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.

12.1.2. 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.

§ 47-43-13. Certification Regarding Drug-Free Workplace Requirements.

Certification is required by the Drug-Free Workplace Act of 1988 and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989. The certification form must be completed and accompany the grant application.

§ 47-43-14. Submission of Application.

14.1. All applications for a recycling assistance fund grant must contain in addition to a description of the proposed project, an estimated budget, Certification Regarding Drug-Free Workplace, and where required a resolution authorizing the submission of application.

14.2. Applications should be mailed to: West Virginia Recycling Assistance Fund Grant Program, West Virginia Division of Natural Resources, 1900 Kanawha Boulevard, East, Building 3, Room 732, Charleston, West Virginia 25305-0665.

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 West Virginia Division of Natural Resources, at (304) 348-3370.

§ 47-43-15. Severability.

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

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
Form #7

Do Not Mark In This Box, Filing Date

FILED

1992 JUL 29 11:57

Effective Date

Sept. 3, 1992

NOTICE OF AN EMERGENCY RULE

AGENCY: DCL&ER, Division of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY: § 20-11-5a(h)(1)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 43

TITLE OF RULE BEING FILED AS AN EMERGENCY: Recycling Assistance Fund Grant Program

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS (Use Additional

Sheets If Necessary) : W. Va. Code § 20-11-5a(h)(1) requires director of Division of Natural Resources to promulgate rules containing grant application procedures, etc. so grants may be provided to assist municipalities, counties and others in planning and implementing recycling programs. W. Va. Code § 20-11-5(a) requires municipalities with populations over ten thousand to file with the Solid Waste Management Board by October 18, 1991 a proposal for establishing and implementing mandatory recycling. Therefor to provide grant assistance so that Legislative time frames are complied with it is necessary to file this rule as an Emergency Rule.

3.40


J. Edward Hamrick III, Director
Division of Natural Resources



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY
State Capitol, Room R-151
Charleston, West Virginia 25305-0310
Telephone: (304) 558-3255
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

July 22, 1992

J. Edward Hamrick III, Director
Division of Natural Resources
Building 3, Room 669
Charleston, West Virginia 25305

RE: Proposed Rule - Title 47, Series 43 (Recycling assistance
fund grant program)

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Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,

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John M. Ranson
Cabinet Secretary

JMR:cjb
B:RULE-DNR.RUL

FISCAL NOTE FOR PROPOSED RULE

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Type of Rule: Legislative Interpretive Procedural

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A. Economic Impact on State Government. Funds for program administration and assistance grants are derived from special revenue funds provided for in the W, Va, Recycling Act. General revenue funds are not involved.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens. While this rule can provide assistance grants to those planning and implementing recycling programs; there is the potential, at least for the first few years, of recycling program costs exceeding assistance grants for those entities required by law to implement a recycling program.

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:

Signature of Agency Head or Authorized Representative

Director, Division of Natural Resources

Date: July 23, 1992

To: Legislative Rule-Making Review Committee

From: Department of Commerce Labor and Environmental Resources, Division of Natural Resources

Emergency Rule Title: Recycling Assistance Fund Grant Program

1. Date of filing: July 28, 1992
2. Statutory authority for promulgating the emergency rule: §§ 20-11-5a(h)(1) and 20-11-5(a).
3. Date of filing the proposed legislative rule: July 31, 1992 (Notice of 30 day comment period).
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule: This is a new rule.
5. Has the same or similar emergency rule previously been filed and expired: No.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare: N.A.
7. If the emergency rule was promulgated in order to comply with a time limit established by the code or federal statute or regulation, cite the code provision, federal statute or regulation and time limit established therein: W. Va. Code § 20-11-5a(h)(1) requires director of Division of Natural Resources to promulgate rules containing grant application procedures, etc. so grants may be provided to assist municipalities, counties and others in planning and implementing recycling programs. W. Va. Code § 20-11-5(a) requires municipalities with populations over ten thousand to file with the Solid Waste Management Board by October 18, 1991 a proposal for establishing and implementing mandatory recycling. Therefor, to provide grant assistance so that Legislative time frames are complied with it is necessary to file this rule as an Emergency Rule.
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest: N.A.

TITLE 47
DIVISION OF NATURAL RESOURCES
DEPARTMENT OF COMMERCE, LABOR AND
ENVIRONMENTAL RESOURCES

FILED

JUL 29 11:11:18

SERIES 43
RECYCLING ASSISTANCE FUND GRANT PROGRAM,
EMERGENCY RULE

§ 47-43-1. General.

1.1. Scope and Purpose. - This regulation provides guidelines for awarding grants to assist municipalities, counties and other interested parties in the planning and implementation of recycling programs, related public education programs, and recycling market procurement efforts.

1.2. Authority. - § 20-11-5a(h)(1).

1.3. Filing Date.

1.4. Effective Date.

§ 47-43-2. Definitions.

2.1. "Co-mingled" means those source separated recyclable materials that are aggregated into a container(s) to facilitate collection and transportation to a facility for further processing.

2.2. "Director" means the director of the West Virginia Division of Natural Resources or his authorized representative.

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

2.4. "Materials Recovery Facility" means a facility for processing of source separated materials, and may include co-mingled source separated materials.

2.5. "Municipality" means an incorporated community

2.6. "Recycling Market Procurement" means developing markets for the materials generated by programs funded from the Recycling Assistance Fund Grant Program.

2.7. "Recyclable Materials" includes, but is not limited to, steel and bi-metallic cans, aluminum, glass, paper, and plastic.

2.8. "Source separated" means the removal of recyclable materials at the point of solid waste generation from that waste which is to be landfilled.

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 regulation.

§ 47-43-3. Grants Available From Recycling Assistance Fund Grant Program.

3.1. The Recycling Assistance Fund Grant program provides grants to assist municipalities, counties and other interested parties in:

- 3.1.1. Planning and implementation of recycling programs;
- 3.1.2. Public education programs related to recycling; and
- 3.1.3. Recycling market procurement efforts.

3.2. Recycling Assistance Fund grant proposals that are in compliance with the criteria of section 3.1 of these regulations will be evaluated on a competitive basis considering each proposal's objectives towards maximizing the following factors; conservation of limited natural resources, reduction of litter, recycling of valuable materials, extending the useful life of solid waste landfills, and reducing the need for new landfills throughout the state.

3.3 The following types of grants are available:

3.3.1. Local Government Recycling Feasibility Study and Planning Grants - This grant is to be used to investigate the feasibility of, and to prepare detailed, comprehensive planning for, community/county recycling programs. A professional service may be utilized to plan and implement a comprehensive recycling program.

3.3.2. - Recycling Promotion and Collection Drive Grants - This type grant is available to state agencies, other instrumentalities of the state and private colleges in the absence of a municipal, or county recycling program, as provided for in §20-11-6 of the state code. Such grants are for the purpose of implementing recycling programs consisting of at a minimum source separation, collection and transportation activities. This grant may also include such activities as a school project, drop-off bins, special events which will help to increase public awareness of recycling and its benefits.

3.3.3. Local Government Recycling Operation Grants - This grant is for the implementation of municipal, county and regional recycling programs. These grants must emphasize the integration of recycling into local, comprehensive, Solid Waste Management Board approved, solid waste management plans developed by the local or regional solid waste authorities.

3.3.4. Office Paper Recovery Programs - In the absence of a municipal and/or county-wide recycling program, any state agency or instrumentality of the state may apply for assistance to plan and implement on a county or greater level an office wastepaper recovery program in government, school, and local offices. Funds are available for such activities as paper collection equipment acquisition, transportation to a processing center, program publicity and promotional activities.

3.3.5. Other Interested Party Recycling Program Grants and Nonprofit Recycling Center Operation Grants - reserved.

3.3.6. Recycling Market Development Grants - This Grant is available to State, regional, county or local governments to assist in developing markets for materials produced or expected to be produced in recycling programs.

§ 47-43-4. Grant Program Priority and Other Criteria.

4.1. All West Virginia municipalities, county commissions, and county and regional solid waste authorities are eligible to apply for recycling assistance funding as provided for in subsections 3.3.1, 3.3.3 and 3.3.6 of this regulation. However, priority for funding will be given 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 §§ 20-11-5 and 20-11-6 of the state code. In those instances where a county by referendum has adopted a recycling program that is consistent with the provisions of § 20-11-5(c) of the state code, and the county contains one or more municipalities each with a population greater than 10,000, then such municipality's recycling program must at a minimum be consistent and coordinated with the counties recycling program. Such program funding proposals must meet the following appropriate criteria:

4.1.1. For municipalities with populations over 10,000:

4.1.1.a. Proposals for funding under subsection 3.3.1 of this regulation must have work elements that are at a minimum consistent with the provisions of subsections (a) and (b) of § 20-11-5 of the state code; and

4.1.1.b. Proposals for funding under subsection 3.3.3 of this regulation must contain as part of the application documentation that the plan to be implemented has been approved by the solid waste management board.

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

4.1.3. Municipalities with populations under 10,000 may plan and implement the collection and transportation of recyclable materials featuring curbside or drop-off collection systems; public education about recycling; and/or integration of other materials into the recycling program, such as cardboard, household composting, used oil, and yard waste.

4.1.4. Special funding proposals for five or more communities or two or more counties combining their efforts to provide a county-wide or multi-county recycling program must have a comprehensive recycling plan(s) which has been approved by the West Virginia Solid Waste Management Board.

4.2. In the absence of either a municipal or a comprehensive county recycling program, all agencies and instrumentalities of the state, primary and secondary schools, and private colleges and universities shall be eligible to receive grants under subsections 3.3.2, 3.3.4 and 3.3.6 of this regulation. Grant proposals shall include, but not be limited to the following:

4.2.1. Source separation of at least two recyclable materials; and

4.2.2. Collection and transportation of source separated materials.

4.3. Other interested parties, including non-profits which may at a minimum apply for grants under subsection 3.3.5 of this regulation, may be eligible to receive recycling assistance fund grants,

provided grant proposals are consistent with one or more of the objectives listed under section 3.1 of this regulation, and includes, but is not limited to the recycling activities listed under subsection 4.2 of this regulation.

§ 47-43-5. Use of Grant Funds.

Recycling assistance grants may be used to:

5.1. Enhance the self-sufficiency of recycling in counties or communities through initiation of new, or support of, on-going recycling activities.

5.2. Supplement wages of personnel directly involved with administration or operation of recycling activities; rent or purchase of recycling equipment, including but not limited to such items as curbside containers, or drop-off boxes; collection and transportation of recyclables; development and implementation of recycling program plans and related enforcement programs; recycling promotion and public education; and recycling market procurement efforts.

5.2.1. Allowable costs for Recycling Assistance Fund grants are:

5.2.1.a. Personnel - Limited to the salary costs associated with a recycling manager or coordinator and laborers. No more than \$20,000 of Recycling Assistance Fund grant monies may be used for the wages/benefits of a recycling manager/coordinator.

5.2.1.b. Travel - 1) Recycling workshop expenses are limited to expenses outside of the program boundaries and are allowable for items such as airfare or mileage, meals, lodging, parking and registration fees for attending recycling meetings, workshops and conferences. These costs are limited to a maximum of \$1,000 per year per grant from the Recycling Assistance Fund grant monies, and 2) recycling vehicle expenses which are limited to the lease/purchase, maintenance, fuel, mileage and insurance for truck or van used in approved recycling activities. Shipping materials to market using the program's vehicles and labor is an approved recycling activity.

5.2.1.c. Supplies - General office supplies; and other supplies such as collection bags or household bins used for the collection/storage of recyclables.

5.2.1.d. Equipment - Limited to processing equipment, material handling equipment, material storage equipment, scales, and safety equipment used in recycling activities.

5.2.1.e. Other - 1) Printing/production which is limited to costs associated with the production of educational materials on recycling such as pamphlets, booklets, posters, flyers, etc; 2) Advertising which 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; 3) Promotion items which are limited to costs associated with promotional items such as awards, decals, patches, buttons, magnets, and costs associated with the rental of fair booth and exhibit space for recycling awareness; 4) Professional services to assist in planning and implementation of recycling projects including feasibility studies; and 5) Development work directed towards recycling market procurement.

5.2.2. Costs not allowed under a recycling assistance fund grant are:

5.2.2.a. Purchase or long term lease of dumpsters or other containers or their servicing when not part of an approved recycling activity.

5.2.2.b. Land acquisition.

5.2.2.c. Costs for office equipment including such items as desks, chairs, telephone, typewriters, files, and photocopying equipment.

5.2.2.d. Street sweepers or their equivalents.

5.2.2.e. Entertainment costs (banquets, parties, etc.).

5.2.2.f. Alcoholic beverages, in-state lunches, and all gratuities.

5.2.2.g. Beautification projects (plantings, mowing, weeding, etc).

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

§ 47-43-6. General Conditions Applicable to Grants.

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

6.1.2. The proposed recycling project must 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 be designed to affect a significant and measurable reduction in the municipal solid waste stream. All grant proposals must include an 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 municipal or county proposals must plan to involve all or a substantial percentage of the community's residents in the project area and should include a plan to provide public education about the recycling program.

6.1.5. Projects proposed for funding must 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 include a plan to identify markets able to handle the

projected volumes of materials to be collected.

6.1.7. The proposal must clearly demonstrate that the 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 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 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.

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

6.1.10. The proposed project must be limited to the collection, processing and market development of recyclable materials and NOT for the manufacture of products from recyclable materials.

6.2. The following general conditions apply to non-profit organizations and other interested parties applying for funding under the Recycling Assistance Fund Grant Program: Reserved.

§ 47-43-7. 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	\$100,000
State agency/state instrumentality/school.	\$ 50,000
Office Paper Recovery.	\$ 50,000
Recycling Feasibility Study/Planning.	\$ 20,000
Recycling Market Development	\$ 20,000
Non-profit organization and Other Interested Party Recycling	Reserved

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.

§ 47-43-8. 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 recovery; landfilling.

8.2. All proposals shall be coordinated 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.

8.3. Implementation of proposals must contain a policy statement, regulation or ordinance as required by the provisions of this regulation that outlines 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. All proposals must include a public information and education component to ensure receiving good clean quality materials.

8.5. The proposal must provide, where appropriate, for a collection system.

8.6. Where required by the West Virginia Recycling Act the proposal must contain provisions to ensure compliance with the ordinance, including incentives and penalties.

8.7. All proposals must demonstrate cost effectiveness and self-sufficiency of the proposed project.

8.8. To the degree possible all proposals should demonstrate the type of in-kind services to be provided by grantee.

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

8.10. All proposals must set forth any other type of grant assistance received, including the dollar amount, type of project, etc., for recycling and/or solid waste management.

§ 47-43-9. 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, to be appointed by the director; the Executive Director of the Solid Waste Management Board; the Director of the Economic Development Office; the Director of the Division of Environmental Protection; the Director of the Division of Natural Resources; and a representative of business or industry, to be appointed by the director. For the purpose of conducting business, four (4) members of the Recycling Assistance Fund Grant Review Committee shall be required for a quorum. The Director may vote to break tie votes of the committee. Approved grants meeting the programs 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 as soon as possible after award decisions have been made. Unsuccessful applicants will be given the opportunity to discuss their proposals with appropriate staff.

§ 47-43-10. 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 each year.

10.2. Complete recycling assistance fund grant applications must be submitted to the West Virginia Division of Natural Resources prior to the first day of August each year. However, municipalities with populations greater than 10,000 should make application as soon as possible, but no later than the first day of August, so that they may meet the time frames provided for in the West Virginia Recycling Act.

10.3. Notification to grant applicants relative to funding of their proposal will be made during the first full week in November each year with grant award letters issued by no later than the first of January the following year.

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

10.5. The grantee must retain and make available upon request by the West Virginia 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 provisions of § 12-4-14 of the West Virginia State Code apply to all Recycling Assistance Fund Grants. A copy of the grantee's independently audited financial records that cover the entire grant period shall be provided to the West Virginia Division of Natural Resources.

10.6. All unexpended grant funds remaining at the end of 90 days following submission of the final report required in section 11 of this regulation shall be returned to the recycling assistance fund grant program.

10.7. 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 West Virginia Division of Natural Resources, payment of remaining grant funds will be terminated.

§ 47-43-11. Site Visits and Reports Required.

11.1. A final report must be submitted on or before January 30, or within 30 days of completion of the project, whichever comes first. The report must provide a detailed summary of the implementation of the project and the degree to which objectives were achieved. The final report must 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.

11.2. A progress status report and expenditure statement must be submitted by all recycling grantees to the DNR 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 communication between the Division and grant recipients, and may include inspections from the Division of Environmental Protection and site visits from the West Virginia Solid Waste Management Board.

§ 47-43-12. Equal Employment Opportunity.

12.1. In implementing 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.

12.1.2. 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.

§ 47-43-13. Certification Regarding Drug-Free Workplace Requirements.

Certification is required by the Drug-Free Workplace Act of 1988 and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989. The certification form must be completed and accompany the grant application.

§ 47-43-14. Submission of Application.

14.1. All applications for a recycling assistance fund grant must contain in addition to a description of the proposed project, an estimated budget, Certification Regarding Drug-Free Workplace, and where required a resolution authorizing the submission of application.

14.2. Applications should be mailed to: West Virginia Recycling Assistance Fund Grant Program, West Virginia Division of Natural Resources, 1900 Kanawha Boulevard, East, Building 3, Room 732,

Charleston, West Virginia 25305-0665.

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 West Virginia Division of Natural Resources, at (304) 348-3370.

§ 47-43-15. Severability.

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