

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

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SEP 29 2 12 PM '92

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Oct. 2, 1992

NOTICE OF AN EMERGENCY RULE

AGENCY: Solid Waste Management Board TITLE NUMBER: 54

CITE AUTHORITY: WVA Code § 16-26-6; WVA Code § 20-9-13(b)-(2)(A)

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: 5

TITLE OF RULE BEING FILED AS AN EMERGENCY: Rules and Regulations

for the Disbursement of Grants to Solid Waste Authorities

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

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

SEE ATTACHMENT


Signature



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

OFFICE OF THE SECRETARY

State Capitol, Room R-151

Charleston, West Virginia 25305-0310

Telephone: (304) 558-3255

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GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

August 11, 1992

Charles Jordan, Director
Solid Waste Management Board
1615 Washington Street, E.
Charleston, West Virginia 25311-2126

RE: Proposed Rule - Title 54, Series 5 (Rules & Regulations
for the Disbursement of Grants to Solid Waste)
Authorities)

Dear Charles:

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:RUL-SWMB.RUL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities

Type of Rule: y Legislative Interpretive Procedural

Agency: Solid Waste Management Board Address: 1615 Washington Street East
Charleston, WV 25311-2126

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

Grants are Special Revenue Funds disbursed to local Solid Waste Authorities through account 8461-17-025 in accordance with these Rules and Regulations. The maximum Disbursement of these funds pursuant to WV Code § 16-26-6; § 20-9-13(h)-(2)(A) would be \$1,100,000; to be determined by the Board on a "funds available" basis. The administrative cost would be negligible and no general revenue funds are expended for this purpose.

3. Objectives of these rules:

The objectives of these rules are to provide the local authorities with guidelines for the proper expenditures of funds and procurement procedures. Additionally, they will ensure that the authorities are following legislative intent in implementing an integrated solid waste management plan.

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

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

Implementation of these rules would provide for the prudent use of state mandated special revenue funds. Additionally, the efficient disposal of solid waste, using state of the art technology, will retain and attract industry, providing more jobs and resulting in a larger tax base.

B. **Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.**

Provide funds to assist local solid waste authorities with funds to implement an integrated solid waste management plan pursuant to WV Code § 20-9-12.

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

Makes available a more cost effective solid waste disposal system.

Date: August 12, 1992

Signature of Agency Head or Authorized Representative

Charles F. Jordan

DATE: September 29, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Solid Waste Management Board

EMERGENCY RULE TITLE: Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities

1. Date of filing: September 29, 1992
2. Statutory authority for promulgating the emergency rule:
WV Code § 16-26-6; § 20-9-13(h)-(2)(A)
3. Date of filing of proposed legislative rule: August 12, 1992
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Repeals and replaces WV 54 CSR5
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
To comply with state laws, local authorities have used these funds to develop on-going programs such as recycling, cleaning up open dumps and feasibility studies for transfer stations. The protracted interruption of these funds will do serious harm to the public health welfare and safety by causing these programs to be shut down.

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

No

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The public has demanded and the legislature has mandated that we
protect surface and groundwater, eliminate harborage and breeding
places for disease-carrying insects, rodents, and other pests
injurious to the public health, safety and welfare. Additionally,
the Board's small, professional staff was reduced fifty percent by
recent turnovers making it impossible to develop these rules in a
timely manner.

FILED

SEP 29 2 13 PM '92

TITLE 54
EMERGENCY RULES
SOLID WASTE MANAGEMENT BOARD

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 5
RULES AND REGULATIONS FOR THE DISBURSEMENT
OF GRANTS TO SOLID WASTE AUTHORITIES

§ 54-5-1. General.

1.1. Scope. -- The purpose of these regulations is to provide interpretation and guidance concerning the awarding of grants to county and regional solid waste authorities for use in carrying out the purposes under W. Va. Code, § 20-9-1 et seq.

1.2. Filing Date.

1.3. Effective Date.

1.4. Authority. -- W. Va. Code, § 16-26-6; W. Va. Code, § 20-9-13(h)(2)(A).

1.5. Repeal of former rule. -- This legislative rule repeals and replaces WV 54CSR5 "Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities" filed December 5, 1990 and effective January 4, 1991.

§ 54-5-2. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

2.1. "Applicant" -- means a solid waste authority which applies for a grant pursuant to these regulations.

2.2. "Approved solid waste facility" -- means a commercial solid waste facility or practice which has a valid permit or compliance order under article five-f [§ 20-5f-1 et seq.] of this chapter.

2.3. "Authority" -- means any solid waste authority of any county or region in West Virginia, established by W. Va. Code, §§ 20-9-3, 20-9-4; or the County Commission of any county which elected not to establish an authority, as allowed by W. Va. Code, § 20-9-5a.

2.4. "Board" -- means the Solid Waste Management Board created in W. Va. Code, 16-26-4, or its authorized representatives.

2.5. "Buy back facility" -- means any recycling facility, which has an attendant present while open, at which source separated recyclable are purchased from the general public, or accepted for a nominal fee. Limited processing of materials is required or conducted.

2.6. "Class A facility" -- means a commercial solid waste facility which handles an aggregate of between ten and thirty thousand tons of solid waste per month. Class A facility shall include two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

2.7. "Class B facility" -- means a commercial solid waste facility which receives or is expected to receive an average daily quantity of mixed solid waste equal to or exceeding one hundred tons each working day, or serves or is expected to serve a population equal to or exceeding forty thousand persons, but which does not receive solid waste exceeding an aggregate of ten thousand tons per month. Class B facilities do not include construction/demolition facilities; Provided, That the definition of Class B facility may include such reasonable subdivisions or subclassifications as the director may establish by legislative rule proposed in accordance with provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code.

2.8. "Commercial solid waste facility" -- means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or that person and another person on a cost-sharing or non-profit basis and shall not include the legitimate reuse and recycling of materials for structural fill, road base, mine reclamation and similar applications.

2.9. "Construction" -- includes reconstruction, enlargement, improvement and providing furnishings or equipment for a solid waste disposal project.

2.10. "Cost" -- means, as applied to solid waste disposal projects, the cost of their acquisition and construction; of all land, rights-of-way, property, rights, easements, franchise rights and interests required by the board for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no

more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to solid waste facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the board providing for the issuance of solid waste disposal revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation. Any obligation or expenses incurred after the effective date of this article by any governmental agency, with the approval of the board, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed out of the proceeds of loans or solid waste disposal revenue bonds as authorized by the provisions of this article.

2.11. "Energy recovery incinerator" -- means any solid waste facility at which solid wastes are incinerated, with the intention of using the resulting energy for generation of steam, electricity, or any other use not specified in these regulations.

2.12. "Grant" -- means a grant made by the Board to an applicant pursuant to these regulations.

2.13. "Government agency" -- means the state government of any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate solid waste facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

2.14. "Incineration technologies" -- means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation, or any other method by which solid waste is incinerated.

2.15. "Incinerator" -- means an enclosed device ~~device~~ using controlled flame combustion to thermally break down solid waste,

including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

2.16. "Industrial waste" -- means any solid waste substance resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resource.

2.17. "Landfill" -- means a facility or part of one at which solid waste, or its residue after treatment, is intentionally placed in or on land, and at which solid waste will remain after closure. The term landfill does not include a land application unit, surface impoundment, solid waste surface impoundment or injection well.

2.18. "Materials recovery facility" -- means any solid waste facility at which solid wastes are manually or mechanically shredded, separated, so that materials are recovered from the general waste stream for purposes of reuse and recycling.

2.19. "Owner" -- includes all persons, partnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

2.20. "Person" -- means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or county; the United States or the state of West Virginia; governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; solid waste disposal shed district; partnership; trust; estate; individual; group of individuals acting individually or as a group; or any other legal entity whatever.

2.21. "Recycle" or "Recycling" -- means the collection, separation, recovery and sale or reuse of metals, glass, paper and other materials.

2.22. "Recycling Facility" -- means any solid waste facility for the purpose of recycling at which neither land disposal, nor biological, chemical, or thermal transformation of solid waste occurs. Sorting of recyclable into separate categories may occur, but the manual or mechanical separation of recyclable from the general waste stream may not.

2.23. "Resource recovery facility" -- means any solid waste facility at which solid wastes are mechanically, biologically, chemically, or thermally transformed for the purpose of separating, removing, or creating any materials or energy for reuse or sale and at which land disposal of solid waste does not occur. Resource recovery facilities include composting facilities, environmentally

acceptable incinerators, materials recovery facilities, energy recovery facilities, and other such solid waste facilities not herein specified.

2.24. "Solid waste" -- means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a [§ 20-5A-1 et seq.], chapter 20 of the code, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or by-product material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e [§ 20-5E-1 et seq.] chapter 20 of the code, or refuse, slurry, overburden or other waste or materials resulting from coal-fired electric power generation or stream generation, the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, chapter twenty-two a, or chapter twenty-two b, [§ 22-1-1 et seq., § 22A-1-1 et seq. or § 22B-1-1 et seq.] of the code, so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters: "Solid waste" shall also not include materials which are recycled by being used or reused in an industrial process to make a product, as effective substitutes for commercial products, or are returned to the original process as a substitute for raw material feedstock.

2.25. "Solid waste disposal" -- means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste.

2.26. "Solid waste disposal project" or "project" -- means any solid waste facility, wastewater treatment plants, sewer treatment plants, water and sewer systems and connecting pipelines the acquisition or construction of which is authorized by the solid waste management board or any acquisition or construction which is financed in whole or in part from funds made available by grant or loan by, or through, the board as provided in this article, including all buildings and facilities which the board deems necessary for the operation of the project, together with all property, rights, easements and interests which may be required for the operation of the project.

2.27. "Solid waste facility" -- means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities and other such facilities not herein specified. Such facility shall be deemed to be situated, for purposes of these regulations, in the county where the majority of the spatial area of such facility is located.

§54-5-3. Application for grants.

3.1. Any eligible solid waste authority which desires to participate in the program shall make a separate application to the Board on forms prescribed by the Board for each project for which such participation is desired.

3.2. All applications must be submitted with a signed resolution authorizing the application. Both the application and the resolution must be signed by the chairperson of the solid waste authority or authorities.

3.3. Grant applications must be received by the Board no later than March 31 to be considered at the May Board meeting and no later than September 30 to be considered at the November Board meeting. Grants will not be considered at any other meetings. However, for the First half of Fiscal Year 92-93, once regulations have been implemented the Authority will have thirty (30) days from day of implementation to file an application for a grant. The Board will consider said application within thirty (30) days.

3.4. Applications to fund the operation and maintenance of a project must include a detailed outline of projected expenditures and revenues for the project.

3.5. Grants will be awarded to solid waste authorities for the purchasing of equipment, materials, services, land and buildings to be done on behalf of the solid waste authority. Grant monies cannot be passed on to a third party for use.

3.6. The applicant will be notified in writing within a reasonable period of time of approval or disapproval of the grant. Approval or disapproval of the grant will be determined by the Board after consideration of the factors listed under section 54-5-7 of these regulations, following review of the application by staff, presentation of the application to the grants committee, and recommendation by the committee to the full Board. Disbursement of any approved grant by the Board shall be contingent upon the prior written approval of the Secretary of Commerce, Labor and Environmental Resources, if such approval is required pursuant to W. Va. Code section 16-26-6(ba) or any other statutory provision.

§54-5-4. Eligibility for Participation. -- The following criteria will determine the eligibility of a proposed project to receive funding under this program:

4.1. The applicant must be a county or regional solid waste authority, or group of such authorities acting collectively for the purpose of the grant project.

4.2. Grants will be awarded for a maximum period of one year, provided that the Board may extend this period for up to sixty (60) days. A second grant may be awarded for a project funded in a previous year. Continued financing for long-term projects will not be provided under this grant program. However, recycling projects showing exceptional innovation and merit may receive grants for more than two years at the sole discretion of the Board.

4.3. Applicants are only eligible for one or more grants totalling an aggregate amount not to exceed twenty thousand dollars (\$20,000) per fiscal year if funds are available. The amount of money may be increased when the applicant consists of two or more counties acting collectively for the purposes of a grant, and provided further, that at the Board's sole discretion, this amount of grant monies may be increased if the Board's funding exceeds the fiscal projections made by the Board.

4.4. Grants will be awarded on a one-to-one matching basis, unless the applicant demonstrates to the Board's satisfaction that it does not have sufficient funds to make such a match or that such a match is unwarranted under the particular circumstances pertaining to the particular project. The match may be in dollars or in kind (services, land or equipment). In the event an applicant makes such a satisfactory demonstration, the Board may award the grant with a lesser match required of the applicant. Further, the Board may require an applicant to provide documentation substantiating monies or in-kind services used to match the Board's grant.

4.5. After July 1, 1991, grants will not be awarded to any solid waste authorities which have failed to submit or implement comprehensive litter and solid waste control plans and commercial solid waste facility site ~~siting~~ plans in accordance with the requirements of W. Va. Code, §§ 20-9-7, 20-9-12a and the regulations promulgated thereunder, and provided that eligibility will be reinstated upon the approval of such required plans and the payment to the Board of all cost and expenses incurred by the Board for its preparation of such plans pursuant to W. Va. Code, § 20-9-7(e) and 12(a)(h).

4.6. After December 31, 1992, grants will not be awarded to solid waste authorities which do not have comprehensive litter and solid waste control plans and commercial solid waste facility site ~~siting~~ plans approved by the Board in accordance with the

requirements of W. Va. Code, § 20-9-7, 20-9-12a and the regulations promulgated thereunder, and provided that eligibility will be reinstated upon the approval of such required plans and the payment to the Board of all cost and expenses incurred by the Board for its preparation of such plans pursuant to W. Va. Code, § 20-9-7(e) and 12(a)(h).

4.7. If the purpose of the grant is to fund costs associated with a solid waste facility, the facility must be in compliance with all applicable laws and regulations of the West Virginia Department of Health and Human Resources and the West Virginia Department of Commerce, Labor and Environmental Resources, including any compliance orders issued by such departments.

4.8. The applicant shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the applicant's matching share.

4.9. The applicant shall cause an audit of this program to be included in the annual audit of the applicant performed by the State Tax Department or its designated representative. The audit shall be performed in conformance with generally acceptable accounting procedures as referred to in W. Va. Code, § 16-26-15.

4.10. At any time during normal business hours and as often as the Solid Waste Management Board or its designated representative may deem necessary, the applicant shall make available to the Solid Waste Management Board or its designated representative for examination, all of its records with respect to all matters covered by this grant and permit the Solid Waste Management Board or its designated representative to audit, examine and make excerpts or transcripts from such records, audit all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this grant during the entire time period beginning with the project approval and ending three years after the final disbursement of grant funds.

4.11. The applicant shall solicit sealed bids for all construction-related contracts or purchases which have an estimated value of over five thousand dollars (\$5,000). Any attempts by the applicant to segregate the project into sections having an estimated value of less than \$5,000 may be cause for termination of an agreement.

4.11.1. The bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of W. Va. Code, § 59-3. 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 also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Report, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin Board in a public place. The applicant shall have available upon request for review by the State Solid Waste Management Board or its designated representative, bid documents and other evidence of compliance with these procedures.

4.11.2. 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.

4.12. Unless a grant applicant specifically requests and can demonstrate a need for a larger portion of the awarded grant to initiate the project, all grants funds will be disbursed on the following schedule: 30% at the time of grant award with subsequent payments of 30% to be made every four months upon receipt of a quarterly report. The final payment shall be 10% and shall be withheld until receipt of the final report.

4.13. All grant applications will be submitted to the appropriate Regional Council or Councils for review in accordance with W. Va. Code, § 8-25-9 in order to avoid unnecessary duplication of ideas, equipment, services, or imprudent use of grant funds.

§54-5-5. In-Kind Services.

5.1. Credit will be given for in-kind services when determining the amount of funding from the authority to be matched by a grant.

5.2. Volunteer services will be valued at the minimum hourly wage unless the applicant can demonstrate that such services would normally be valued above that wage in the area served by the applicant's program.

5.3. Donated equipment will be valued at its fair market value prorated over the life of the grant. Such equipment may only be used to determine the amount of matching funds for the first grant given the authority involving that equipment.

5.4. Costs and third-party in-kind contributions must be verifiable from the records of the applicant. These records must show how the value placed on third-party in-kind contributions were derived. To the extent feasible, volunteer services will be supported by the same methods that the organizations use to support the allocability of regular personnel costs.

5.5. The following items are not in-kind services:

5.5.1. Goods and services normally available free in the community and which would be available whether you operated the project or not. Example, space in a community center;

5.5.2. Contributed time of project staff whose regular working hours are paid with Federal and State funds;

5.5.3. Contributed time of members of Boards of Directors and Advisory Councils spent in the performance of the duties for which they were elected or appointed;

5.5.4. Value of space donated for meetings and other purposes in the homes of individuals, especially staff members.

5.6. Valuation of third-party in-kind contributions will be determined as follows:

5.6.1. Volunteer services are unpaid services valued at rates paid by other activities of the agency or should be consistent with those paid for similar work in the same labor market, including fringe benefits. Rates of employees of other agencies should be priced at the base compensation rate exclusive of fringe benefits and overhead costs;

5.6.2. Tangible personal property;

5.6.3. Donated real property (land and buildings), fair market value at the time of donation, if approval is obtained from the awarding agency;

5.6.4. Donated use of property, valued as if the applicant has rented the property and has paid the property's fair rental value.

5.7. The Board may allow other charges which are adequately supported and permissible.

5.8. The applicant must document within the application that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Solid Waste Management Board.

5.9. The applicant agrees to the following conditions:

5.9.1. That it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap;

5.9.2. That it shall take affirmative action to ensure that all contractors employed during this project treat all their

employees without regard to race, color, age, religion, sex, national origin, or physical handicap; and that such affirmative action shall include, but not be limited to the following: employment, upgrading, demotions, transfers, recruitment, compensation, selection for training (including apprenticeship), and participation in recreational and educational activities; in all solicitations or advertisements for employees placed by or on behalf of the applicant, shall state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, national origin, or physical handicap; shall cause the provisions of this nondiscrimination clause to be inserted in all subcontracts for any work covered by this notice of grant award so that such provisions will be binding upon each subcontractor; and shall keep such records and submit such reports concerning the racial and ethnic origin of employees and applicants for employment as the Solid Waste Management Board may require;

5.9.3. The applicant shall require any contractors and/or any subcontractors it engages on this project to comply with Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et. seq.); Presidential Executive Order 11246, as amended by Presidential Executive Order 11375; as well as the provisions of the West Virginia Human Rights Act, as amended W. Va. Code, § 5-11-1;

5.9.4. The applicant shall insure that the contractor has complied with the regulations issued by the Contractors Licensing Board pursuant to West Virginia Code, § 21-11-1 et seq. and its' applicable regulations, in regard to operating a contracting business in the State of West Virginia.

5.10. The applicant shall require any facilities constructed under the auspices of this Contract to be designed to comply with the standards documented within Title III of the Americans With Disabilities Act of 1991, and its applicable regulations.

5.11. 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 RG #5 must be completed and accompany the grant application.

§54-5-6. Authorized Use of Grants Funds.

6.1. Applicants may request grant money to be used for any of the purposes under W. Va. Code, § 20-9-1 et seq. The following purposes have been selected as representative of the types of activities allowed and the general priority in which they will be considered:

6.1.1. Source reduction in toxicity or volume.

6.1.2. Reuse of materials with little or no processing thus diverting them from the waste stream.

6.1.3. Recycling, composting, processing and marketing of materials recovered.

6.1.4. Open dump clean-up and litter control.

6.1.5. Transfer stations.

6.1.6. Landfills and other solid waste facilities.

6.1.7. Administrative costs for any of the above items or other projects.

6.1.8. Projects for the development, purchase or delivery of educational materials, programs or seminars. Applicants are encouraged to use existing educational information, programs and seminars available to the applicant from other sources.

\$54-5-7. Factors Considered in Evaluating Applications.

The Board will consider the following factors in evaluating an application for a grant: --

7.1. Project's relationship to and support of the hierarchy established under W. Va. Code, § 20-9-1. The Board will give preference to grant projects in the following order of priority: (1) Source reduction; (2) recycling, reuse and materials recovery; and (3) landfilling. The project needs to be consistent with the state solid waste plan and the local authority's plan.

7.2. Potential of project to further the efficient and effective collection, processing, recycling and disposal of solid wastes within the area and to assist in the protection of the environment.

7.3. Financial sustainability ~~sustainability~~ of the project beyond the grant period.

7.4. Cost-effectiveness of the project.

7.5. Level of local match.

7.6. Degree of public involvement in the project.

7.7. Projects that have not received funding from this particular grant program will be given priority over projects funded previously for grants under this program.

7.8. Consideration of the applicant's ability to obtain a grant or loan from monies available under the provisions of W. Va. Code, § 16-26-1 et seq., or any other state funded source.

7.9. Consideration of the applicant's ability to assess and collect rentals, fees and service charges for the use or services of any solid waste facilities involved in the grant application.

7.10. Any administrative costs of the authority, such as salary, operations and maintenance or administrative equipment whether in connection with a grant project or not, will be given low priority by the Board when compared to other costs involved in requests for grants. However, computer hardware and software at a reasonable cost may be an exception to the low priority standard.

7.11. No grants will be approved in operation or equipment for buy-back centers which are in direct competition with private enterprise operations existing within the same county, unless such buy-back center agrees in writing not to pay more for commodities than the price paid for such commodities by the private enterprise.

7.12. Applications for physical resources, such as equipment or facilities will receive preference over funding of operations or salaries of employees.

§54-5-8. Grant Withdrawal and Penalty.

8.1. The Board reserves the right to withdraw a grant upon determination of unsatisfactory program compliance with either these rules, or the specifications in the grant document, or the application for the grant.

8.2. A failure to commence program activities within ninety (90) days after receiving funding from the Board may result in the cancellation of the grant.

8.3. A failure to expend twenty percent of the grant funds within the first quarter of the grant period will result in cancellation of the grant and a recall of all funds.

8.4. The Board reserves the right to conduct an on-site inspection of the applicant's facilities related to the grant; and the Board also reserves the right to conduct an audit of an applicant's program records during or after the grant period. The applicant shall retain all financial records, statistical records and all other documents relating to the grant for a period of three (3) years from the end of the grant period.

§54-5-9. Reporting Requirements.

9.1. Quarterly reports. -- If grant monies are for an ongoing project within a fiscal year, reports shall be submitted to the

Board on a quarterly basis within fourteen (14) calendar days of the end of the quarter and shall contain the following information:

9.1.1. A detailed listing of all funds expended or received during the quarter with copies of invoices, purchase orders and titles evidencing ownership, for all equipment and materials purchased and copies of all contracts and service agreements.

9.1.2. The balance of the grant monies remaining.

9.1.3. The amount of matching funds and in kind match utilized to date, including time sheets, invoices, requisitions for payment, and other records or information requested by the Board.

9.1.4. The percentage of the project completed to date. Specify the progress that has been made and any problems which have been encountered.

9.1.5. All quarterly reports must include a copy of the authorities current balance sheet and current income statement.

9.2. For purposes of section 9.1. of these regulations, the fiscal quarters end with the following dates: September 30, December 31, March 31, and June 30.

9.3. Final Report. -- A final report shall be submitted to the Board within thirty (30) days of completion of the project containing the same information required under Section 9.1. of these regulations.

9.3.1. If an extension is authorized in regard to the project, pursuant to Section 4.2., then the filing deadline will automatically be extended for a like period of time.

9.3.2. An applicant may submit a final report at the time all grant and matching funds have been expended in lieu of any additional quarterly reports.

9.4. All reports required under this section shall be filed with the Board on forms prescribed by the Board.

§54-5-10. Unexpended Funds. -- The applicant shall return all unexpended funds remaining at the end of the grant period to the Board, provided that this requirement may be waived for good cause found by the Board. Such unexpended funds must be returned to the Board within sixty (60) days following the end of the grant period.

§54-5-11. Reduction of Grant Monies Available. -- Grants allocated under these regulations are dependent upon the availability of funds collected pursuant to W. Va. Code, § 20-9-13. In the event that those funds are diminished by legislative action or a decrease in waste disposed of at landfills, the Board will adjust the amount of each grant accordingly.



David C. Callaghan
Joyce Manyik
John H. Martin
Martha H. Moore
Mark Nesselroad
Harold A. Taylor
William Wallace
BOARD MEMBERS

SOLID WASTE MANAGEMENT BOARD
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
1615 Washington Street, East
Charleston, WV 25311-2126
Phone: (304) 558-0844 FAX: (304) 558-0899
September 29, 1992

Gaston Caperton
GOVERNOR

John M. Ranson
CABINET SECRETARY

Charles F. Jordan
ACTING DIRECTOR

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157K
1900 Kanawha Blvd., E.
Charleston, West Virginia 25305-0770

RE: Justification for the Filing of Emergency Rules and
Regulations for the Disbursement of Grants to Solid Waste
Authorities [Title 54, Series 5]

Dear Mr. Hechler:

The Solid Waste Management Board is requesting the Secretary of State's approval in regard to filing Title 54 Legislative Rules, Solid Waste Management Board Series 5 Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities as emergency rules and regulations.

The Legislature determined that "the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) a public nuisance and a clear and present danger to the citizens of West Virginia; (2) the degradation of the state's environmental quality including both surface and groundwater which provide essential and irreplaceable sources of domestic and industrial water supplies; (3) provides harborage and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare; (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state; (5) has adverse social and economic effects on the state and its citizens; and (6) results in the waste and squandering of valuable and nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state." West Virginia Code, section 20-9-1.



PRINTED ON RECYCLED PAPER

The Legislature also determined that "the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and the lack of proper and effective solid waste collection services and disposal facilities demands that the state of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors." WV Code, section 20-9-1. Therefore, legislation was duly promulgated to allow local solid waste authorities to apply for and receive grants to aid in acquiring and constructing solid waste projects to respond to the above documented problems. See WV Code, sections 16-26-1 et seq., and 20-9-1 et seq.

Pursuant to WV Code, sections 16-26-6(1) and (5), rules and regulations were promulgated by the Solid Waste Management Board in regard to disbursing grants to local solid waste authorities; the effective date was October of 1991. These grants are to aid the local solid waste authorities in acquiring and/or constructing solid waste disposal projects.

Initially, interpretive regulations were promulgated; however, there were several deficiencies in the regulations and they were not enforceable. Therefore, the Solid Waste Management Board on February 19, 1992, suspended the grant program until the deficiencies could be corrected. Since February of 1992 one director, one acting director/senior planner, and an attorney resigned; also, the office of the Solid Waste Management Board was recently relocated. Due to these problems, the Board was unable to develop these rules and regulations in a timely fashion.

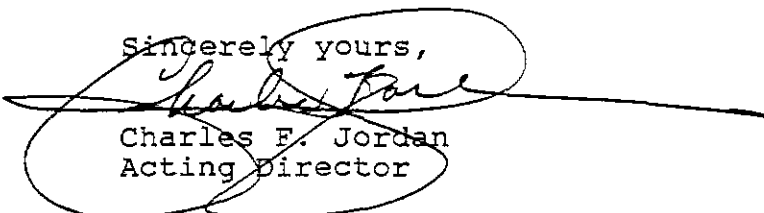
The local authorities have been waiting for grant monies to be disbursed to help fund their solid waste projects. Until regulations are in place, the authorities will not obtain the funds needed to properly operate, acquire, and construct their various solid waste projects. This delay is disturbing because projects will be shut down resulting in: termination of innumerable employees throughout the state; causing further degradation of the state's surface and groundwater; providing breeding places for injurious insects, rodents, and other pests, all of which affect the public health and welfare of the citizens. Our notes taken from discussions had with five of the county Solid Waste Authorities to which grants were previously issued document examples of the ability of these counties to make strides in complying with the state's solid waste laws, as well as show the imminent loss of jobs and progress if the program is not immediately re-established.

Page Three
SoS-Justification
September 29, 1992

To conclude, it is our contention that pursuant to WV Code, section 29A-3-15(g), an emergency exists necessitating these rules, and therefore, it is imperative that they be implemented immediately.

If you should need any further information please feel free to contact me or Chris Quasebarth, Counsel, W. Va. Solid Waste Management Board. Thank you for your prompt attention in regard to this matter.

Sincerely yours,



Charles F. Jordan
Acting Director

CFJ:mks

Ritchie County

Ritchie County Solid Waste Authority
P.O. Box 161
Ellenboro, WV 26346
869-3736
Jane Hearne, Chairman

In speaking with Peter Schumacher of the SWA, we find they are anxiously awaiting the return of the grant program in order to avoid shutting their programs down and terminating workers.

Ritchie County does not have a landfill to continuously fund an on going program. The only funding they get is the monthly assessment checks and grant money. They still have a solid waste problem and have done much to solve present and future problems. They have a progressive program, but repairs need to be made, salaries paid, and more dropoff points established as well as to sustain the program they already have. The DNR Recycling Grant Program does not cover composting and other solid waste projects that Ritchie and other counties must use the Board's Grant Monies to operate.

Letters of endorsement from the Ritchie County Chamber of Commerce, Ritchie County Community Resources, Inc., Ritchie County Board of Education, WV University Extension Center, Little Kanawha Soil Conservation District, Mid-Ohio Valley Health Department, and Pine Hill Pottery have been received expressing endorsement and support of the Ritchie County Solid Waste Authority's work with dump cleanup, solid waste management, recycling, education as well as the need for funding to continue their programs.

Through the grant program, Ritchie County has :

- Cleaned up many dumps in the county including Lost Run, Harrisville, Dry Run, Bean Ridge and dumps on the Rails to Trails recreation area; Another scheduled in the fall with PPOD
- Established a Car and Recycling Program (CARP) and a white goods/scrap drop off which is still going on every month at WVDON
- Established School Mini Grants
- Purchased a truck for cleanup operations
- Initiated a mandatory disposal campaign in association with DNR Litter Control
- Established an ongoing county wide recycling program involving local haulers, local business and citizens
- Established a recycling center; purchased a building and used equipment including a glass crusher, a baler and a fork-lift
- Working with PSC on a volume-based program on a two-month trial base (\$2.00 a bag which helps with recycling)

Nicholas County

Nicholas County Solid Waste Authority
P.O. Box 821
Craigsville, WV 26205
304-742-3803

Obie Adkins, Chairman

Grant funding was spent on a leachate treatment facility as part of Nicholas County's solid waste management plan. Other funding is necessary to keep this facility in operation and to complete other upcoming tasks the county is facing such as keeping the landfill in operation and/or closing the old landfill, prevent the loss of jobs and establish a recycling center.

Nicholas County has constructed a leachate treatment facility which is the fourth such wetland treatment facility in the US. (currently one in Utah and two in Florida). This treatment facility will help to maintain cost efficiency so that a rural county (Nicholas, Clay, Webster, etc.) can continue to operate a landfill to handle the solid waste from their own county. Without this operation, the county with such a small population would be unable to afford to operate a landfill.

In order to stay open, the landfill had to meet regulations to develop water treatment capabilities:

"All leachate must be treated on-site to meet applicable technology based or water quality based standards before discharge to the receiving system or a zero discharge must be achieved by the use of pump-and-truck method to a P.O.T.W., the spray back method, the direct sewer line hookup method to a P.O.T.W. or any combination of these. Diversion ditches installed in accordance with Section 4.5.2.b of the regulations to control run-on will help minimize leachate production."

This facility is a model for all small counties in West Virginia and throughout the nation. According to George Hayslette, landfill manager: Without the grant, they wouldn't have been able to do this project in a timely manner.

Greenbrier County

Greenbrier County Solid Waste Authority
Rt. 5, Box 11
Lewisburg, WV 24901
645-1470

John Tuckwiller, Chairman

Greenbrier County operates an efficient, no-frills sanitary landfill and participates in managing and financing the Greenbrier Recycling Center (GRC) at Fairlea. Both facilities serve county residents as well as customers from Summers, Pocahontas and Monroe counties.

Manager Robert Kirk and three full-time employees are assisted by part-time workers during peak periods. These workers received training at the center which has enabled them to go into the workplace and hold competitive employment. Sen. J.D. Brackenrich, authority chairman, John Tuckwiller, and Richard Coffman, landfill operator, engineered the inter-agency cooperation.

In the July-August 1992 Solid Waste Reporter, the WVU Extension Service relates:

"Combining innovation with prudence, GRC has used grant money to buy used equipment and such necessities as a sorting table." Besides the paper shredder, the center has a horizontal baler, a vertical cardboard baler, a glass and can crusher, two forklifts and a hand truck"

The tonnage of materials processed at the nonprofit recycling center has increased from 392 tons in 1990 to a projected annual total of about 780 tons for 1992. The GRC is cooperating with area farmers in shredding newspaper for cattle bedding. Most recyclers no longer accept newspaper, and innovation for their use is a most needed project.

The GRC provided experience for the Greenbrier East High School woodworking shop. They built the color-coded recycling units for the recycling program.

If the other counties cannot secure grants to start programs like this, the plan set forth by the legislature for solid waste management will be in jeopardy. Authorities will not be able to manage their own waste, and it will fall to the state to take care of those authorities which fail, due to the lack of funds, to establish a productive waste management program.

Monongalia County

Monongalia County Solid Waste Authority
P.O. Box 561
Morgantown, WV 26507
292-3936

Jim Petitto, Treasurer

We Recycle, one of the last recycling operations in Monongalia County, faces financial problems due to the lack of markets for recyclables and the lack of grant money. In our conversation with Warren Mock, SWA Secretary, he states that if the company closes, jobs will be lost; and the waste stream will be burdened with the increase in tonnage, of waste that would otherwise have been recycled, from Monongalia County and West Virginia University.

From the Post, Metro-Region Section, January 21, 1992:

"To make matters worse, a \$20,000 state grant promised to We Recycle has been placed on hold until the State Solid Waste Management Board rewrites its grant regulations, SWA Secretary Warren Mock said: Facing low to non-existent market prices for glass, aluminum and plastic, and wage expenses that eat up the operation's budget, the River Road recycler's future appears dim at best."

"The tight cash flow may mean We Recycle can no longer afford to serve some of its customers, Mock suggested--WVU, for instance."

We Recycle's Recycle Coordinator, Donna Gorby Michael said, "Things we were doing before are costing us money now. We're going to have to pay to take it away. It's not going to sit well with a lot of people, I'm sure. I've run into a lot of people upset that their garbage bill would go up to include recycling, (but) it's been pushed as a money-making project, and I think that's false."

We Recycle is still operating, but is barely making ends meet. The last grant received (FY 91) was used for overhead instead of the equipment and facilities it was intended for. The company is trying to get back on its feet and needs grant money to continue its programs.

Fayette County

Fayette County Solid Waste Authority
202 Church Street
Fayetteville, WV 25840
574-1617

George Bragg, Chairman

Through the grant program, Fayette County has started a Dumps Clean Up and Litter Program using inmates from the Fayette County Jail. Without funding, the program will have to be discontinued, the supervisor would lose his job, and the worthwhile program of using the inmates to clean up the dumps would be lost.

This program has had excellent results in the cleanup of open dumps which cause contamination to the groundwater and spread of disease through rats, insects and other pests. Up and Litter Program using inmates from the Fayette County Jail. They have:

- Hired a full time supervisor
- Bought a 9 passenger Dodge Van to haul "inmates"
- Pay 5-7 inmates 40 hours/week for the cleanup

One of the future goals of Fayette County is to clean up the New River area of open dumps. The New River is a national river, and tourism is important to the state for jobs with white water rafting and all the secondary business associated with it. (Hotels, restaurants, inns, equipment, etc.)



David C. Callaghan
Joyce Manyik
John H. Martin
Martha H. Moore
Mark Nesselroad
Harold A. Taylor
William Wallace
BOARD MEMBERS

SOLID WASTE MANAGEMENT BOARD
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
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Charleston, WV 25311-2126
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Gaston Caperton
GOVERNOR
John M. Ranson
CABINET SECRETARY
Charles F. Jordan
ACTING DIRECTOR

October 2, 1992

The Honorable Ken Hechler
Secretary of State
State Capitol
Building One, Suite 157K
Charleston, West Virginia 25305

Re: Emergency Rules; Title 54, Series 5, Relating to the
Disbursement of Grants by the Solid Waste Management Board

Dear Mr. Hechler:

This letter is written as a supplement to the September 29, 1992 letter filed with and explaining the nature of the emergency necessitating the above-referenced rules. These rules were filed pursuant to the provisions of West Virginia Code section 29A-3-15, which states in part:

For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

W.Va. Code 29A-3-15(g).

An emergency exists per this definition for each of the reasons set forth above. Anyone who has glimpsed a smattering of the abundant media and scientific coverage of the state-wide and global solid waste crisis should have a good education on the environmental and health problems created by inadequate solid waste disposal means. The Legislature has found that, among other problems, inadequately controlled and improperly disposed solid



waste is: "a public nuisance and a clear and present danger to people;" gives rise to conditions "harmful to the public health, safety and welfare;" and decreases property values. W.Va. Code 20-5F-1(b). Further found is that "proper disposal, materials recovery or recycling of solid waste is for the general welfare of the citizens of this state." Id.

I. EMERGENCY

A. Counties with no landfill

With this background in mind, please be aware of the following: attached as Attachment I is a list of the counties which have no landfill presently, and the additional counties which may not have landfills after October 1, 1993. With no county landfill, these counties rely solely upon Board grants and other third-party funding to meet the planning and implementation deadlines of solid waste control mandated by W.Va. Code sections 20-9-1 and 20-11-1.

B. New legislative deadlines

Last October the legislature significantly rewrote major provisions of the state's solid waste laws. These include:

1. Recycling

By October 1, 1992, each authority is to submit a proposal describing the establishment and implementation the mandatory recycling program. W.Va. Code 20-11-5(a). As of today's date only seven such proposals have been submitted. The most common use of grant money distributed previously was used by the counties to develop recycling programs; without such grant money proposals have been delayed and the deadline missed.

By October 1, 1993, municipalities of 10,000 or more shall establish and commence implementation of a source separation and curbside collection program for recyclable materials, which must include: a recycling ordinance; a recycling collection schedule; a recycling system; ordinance enforcement provisions; and a comprehensive public information and education program. W.Va. Code 20-11-5(b).

Recycling programs are not planned and implemented overnight. Once funding is acquired, many months are needed to develop the appropriate plan, purchase the necessary trucks, recycling bins and other equipment, pass an ordinance, and start educating people on how to separate materials and recycle before the program is implemented. Our grant money can be used to fund the development of such projects, but months are needed for application submission, review, approval and disbursement once the rules are in place. Statutorily mandated deadlines will continue to be unmet without the immediate implementation of these rules. An emergency exists.

2. Yard waste, Batteries, Tires

By June 1, 1993, yard waste, including grass clippings and leaves, batteries and tires cannot be deposited in solid waste facilities. W.Va. Code 20-11-8. Many months are needed to develop composting programs, and to explore alternate methods of disposing of tires and batteries. Again, our grant money can be used to fund the development and implementation of such programs, but it all takes time. Deadlines will be missed. That constitutes an emergency.

None of these materials will be permitted in a landfill after June 1. Unless there are alternate methods in place for their disposal or recycling, people will resort to unsightly illegal dumps, causing fire hazards, breeding grounds for rats and mosquitoes, ground and surface water pollution and foul odors. Additional expenditures will then be required to clean up the illegal dumps. Such programs cannot wait until after the legislature approves the rules as legislative rules at the end of the 1993 session. An emergency exists.

C. Loss of existing programs

We are informed by several county solid waste authorities that in the absence of grant money established solid waste programs will be lost.

1. Fayette

Fayette's "Dumps Clean Up and Litter Program" will be lost when current funding through the county expires January 1, 1993. This program cleans roadway litter and illegal open dumps which pollute groundwater and harbor rats and mosquitoes. The Fayette landfill closes January 1, 1993, thus eliminating any internally generated source of funding.

2. Greenbrier

A prototype tire and plastics recycling program is on hold pending the disbursement of grant money. This facility needs to be operating as an alternate tire disposal location before the June 1, 1992 statutory deadline. As a prototype, the more quickly this facility is able to begin operation, the more quickly others may follow in additional counties to meet the June 1, 1993 deadline.

3. Calhoun

Has lost its recycler due to loss of funding. Is in desperate need of grant money to re-establish recycling, regarding which October 1, 1992 was their statutory deadline for the submission of their recycling proposal. Calhoun has no landfill to generate income for such programs.

4. Nicholas

Their landfill will statutorily close September 1993 unless statutorily required improvements are made. Grant money is necessary to begin these improvements which will take months to complete once actual construction begins.

5. Monongalia

Loss of their landfill in September 1993, due to statutory closure, will increase transportation costs for any solid waste created in their county. Their recycling program will cease December 1992 without grant money necessary to maintain it. Continued recycling will lessen the burden on the waste stream (thereby protecting the public health, safety and welfare), and will reduce transportation costs, since recyclables will not be added.

II. SUMMARY

For all of the above-stated reasons, and those of the September 29 letter, we request that you find an emergency exists, and approve the rules filed as emergency rules pursuant to W.Va. Code 29A-3-15.

Sincerely,


Chris Quasebarth
Legal Counsel

CQ/ms

COUNTIES WITH NO LANDFILLS, OCTOBER 1, 1992

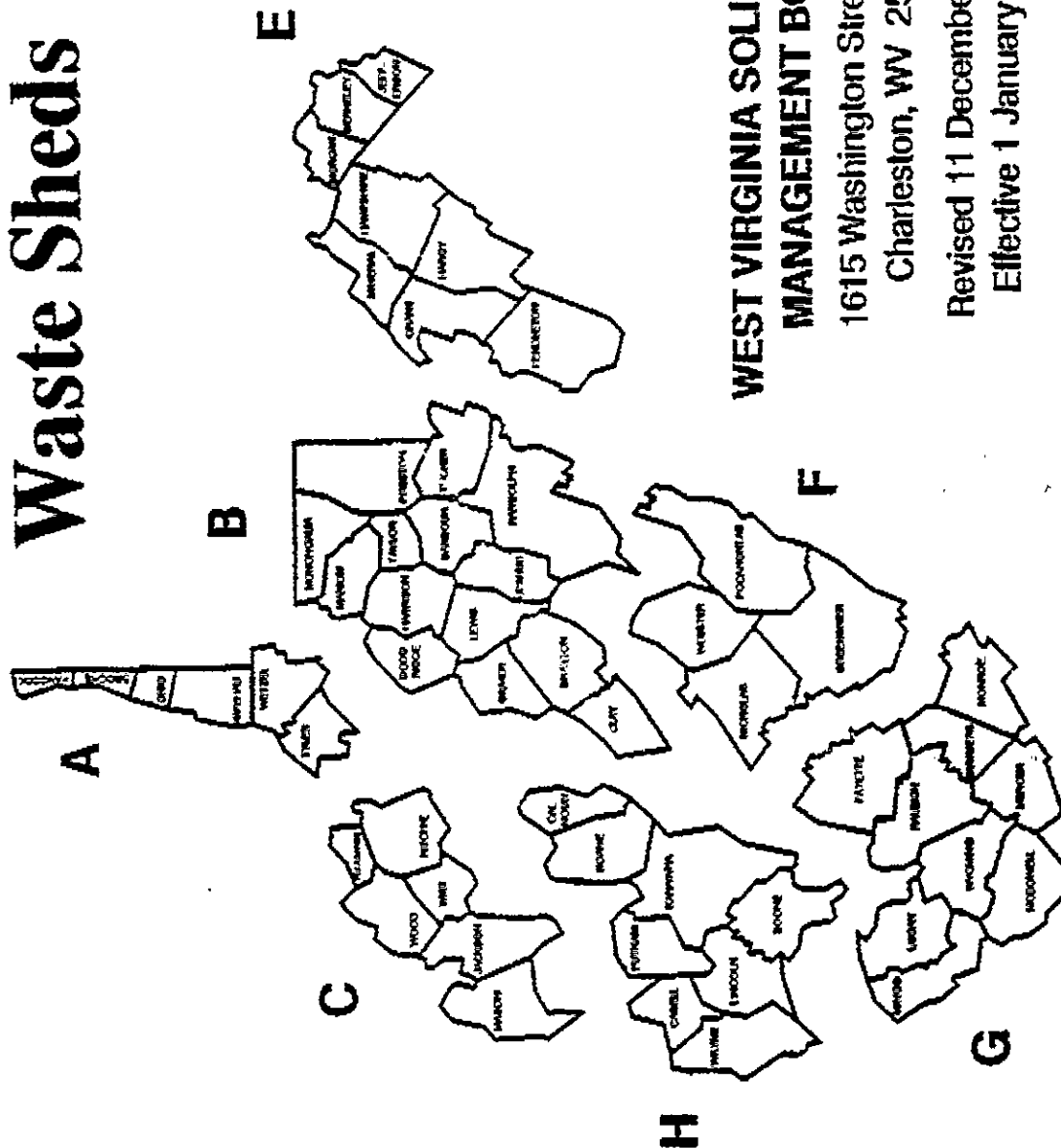
WASTESHED	COUNTY
A	Hancock, Tyler
B	Preston, Doddridge, Taylor, Barbour, Lewis, Gilmer, Clay
C	Pleasants, Ritchie, Wirt
E	Mineral, Hardy, Pendleton, Jefferson
F	
G	Summers
H	Boone, Lincoln, Calhoun, Roane

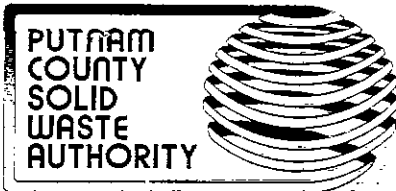
COUNTIES THAT MAY NOT HAVE LANDFILLS, OCTOBER 1, 1993

WASTESHED	COUNTY
A	Hancock, Tyler, MARSHALL
B	Preston, Doddridge, Taylor, Barbour, Lewis, Gilmer, Clay, UPSHUR, MONONGALIA
C	Pleasants, Ritchie, Wirt, JACKSON, MASON
E	Mineral, Hardy, Pendleton, Jefferson, MORGAN, HAMPSHIRE, GRANT
F	WEBSTER
G	WYOMING, MCDOWELL, LOGAN, MINGO, FAYETTE
H	Boone, Lincoln, Calhoun, Roane

ADDED COUNTIES AFTER OCTOBER 1, 1992, ARE IN CAPS

Waste Sheds





FILED

OCT 5 9 43 AM '92

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

October 1, 1992

Honorable Kenneth Heckler
Secretary of State
Bldg. 1, Suite 157K
1908 Kanawha Blvd. East
Charleston, WV 25305-0770

Dear Secretary Heckler,

Pursuant to S.B.18, article 20-11-5a and HI, the recycling proceeds are established to benefit counties and municipalities engaged in recycling programs, education and recycling market procurement.

Putnam County is currently engaged in a program utilizing county probationary clientele to support our recycling efforts in order to educate the general public. The proceeds from 20-11-5a and HI, respectively will benefit our county for continuance of this program and promote funding for additional educational recycling programs. Without these proceeds, the quality of our programs will diminish and recycling education for county residents will be non existent.

We respectfully request that you approve the "Emergency Rules and Regulations", promulgated by the State Solid Waste Management Board. Funding must be made available to all counties who are engaged in Recycling Programs for their residents.

Very truly yours,

Robert Meneses Jr
Executive Director
Putnam County Solid Waste Authority





Post-It™ brand fax transmittal memo 7871		# of pages > 1
TO	KENNETH HECKLER	FROM
CC	SEC. OF STATE	CO.
Dept.		Phone #
Fax #	553-0900	Fax #
		757-7847
		757-7748

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Secretary of State
Bldg. 1, Suite 157K
1908 Kanawha Blvd. East
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Very truly yours,

Robert Meneses Jr
Executive Director
Putnam County Solid Waste Authority



MONONGALIA COUNTY SOLID WASTE AUTHORITY

235 HIGH STREET, SUITE 625
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE (304) 292-3801

October 1, 1992

Honorable Ken Hechler
Secretary of State
Building 1, Suite 157K
1900 Kanawha Blvd., East
Charleston, WV 25305

Re: West Virginia Solid Waste Management Board
Grant Program

Dear Mr. Hechler,

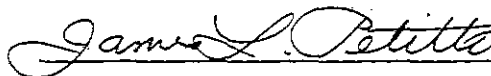
We wish to request that the West Virginia Solid Waste Management Board grant funds be made available to county solid waste authorities as quickly as possible in order that local authorities may begin organizing recycling efforts as mandated for the year 1993.

In Monongalia County, we are working with the City of Morgantown and We Recycle in order to continue the present recycling program that diverts much waste from local landfills.

We Recycle has notified us that it may barely survive (financially) until December of this year without further funding. We feel that it is extremely important that recycling programs that are presently in place survive in order to initiate further county wide recycling efforts as required by law next year.

Please assist our County Authority by making the grant program funds available to us immediately in order that the non-profit group We Recycle may continue to provide recycling and waste stream reduction for the citizens of Morgantown and Monongalia County.

Sincerely,



James L. Petitto, Chairman

JLP/k1b



25% POST CONSUMER

MONONGALIA COUNTY SOLID WASTE AUTHORITY

235 HIGH STREET, SUITE 625
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE: 304-292-3801

October 1, 1992

Honorable Ken Hechler
Secretary of State
Building 1, Suite 157K
1900 Kanawha Blvd., East
Charleston, WV 25305

Re: West Virginia Solid Waste Management Board
Grant Program

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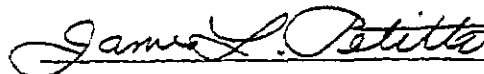
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Sincerely,



James L. Petitto, Chairman

JLP/kib



10% POST CONSUMER

FILED

NORTH CENTRAL WV RECYCLING COOPERATIVE, INC.
200 Jackson Street
Fairmont, WV 26554

OCT 5 9 43 AM '92

Telephone: (304) 367-5400

FAX: (304) 367-5371
OFFICE OF THE SECRETARY OF STATE

October 2, 1992

The Honorable Kenneth Hechler
Secretary of State
Capitol Complex
Charleston, WV 25301

Dear Mr. Hechler:

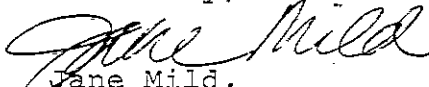
The North Central West Virginia Recycling Cooperative, Inc. is writing to ask that you honor the request of the West Virginia Solid Waste Management Board to approve the Rules and Regulations filed with your office on an emergency basis. The grants made available through the WV Solid Waste Management Board are crucial to many programs throughout the State, including ours.

The North Central West Virginia Recycling Cooperative, Inc. is an eight-county co-marketing group formed at the urging of the State and Federal governments. Currently, we are supported with an Environmental Protection Agency grant for administrative costs and we were looking to the WV Solid Waste Management Board for further funding. This is a one of a kind program in rural areas of the United States and the EPA is looking to this region to be the model for the rest of the country. I am sure that ours is not the only program in jeopardy if the Rules and Regulations are not promulgated on an emergency basis.

The Cooperative is concerned that if the regulations are submitted to the political process, it could delay these important programs for up to 18 months. In the face of Senate Bill 18 and all the changes called for in the document every county in West Virginia and many groups such as ourselves, are trying to meet those directives. The grant money which would be made available by granting the WV Solid Waste management Board's request would enable us to do even more to come into compliance with the law.

Mr. Hechler, we ask that you once again consider promulgating the Rules and Regulation on an emergency basis. Thank you for your time and thought in this important matter.

Sincerely,


Jane Mild,
Executive Director

cc: Martha Huffman
Charles Jordan
Al Babcock

NORTH CENTRAL WV RECYCLING COOPERATIVE, INC.
200 Jackson Street
Fairmont, WV 26554

Telephone: (304) 367-5400

FAX: (304) 367-5374

October 2, 1992

The Honorable Kenneth Hechler
Secretary of State
Capitol Complex
Charleston, WV 25301

Dear Mr. Hechler:

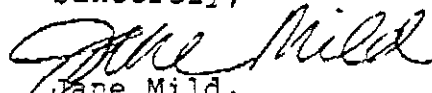
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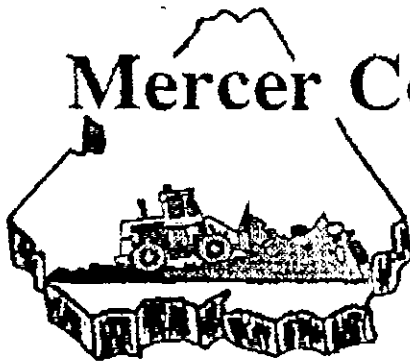
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Mr. Hechler, we ask that you once again consider promulgating the Rules and Regulation on an emergency basis. Thank you for your time and thought in this important matter.

Sincerely,


Jane Mild,
Executive Director

cc: Martha Huffman



Mercer County Solid Waste Authority

P.O. Box 1789
Princeton, West Virginia 24740
304-425-3366

October 1, 1992

Mr. Glen Jerrold
Acting Director
West Virginia Solid Waste
Management Board
1212 Stewart Plaza
Dunbar, WV 25064

Dear Mr. Jerrold:

As you are aware, the Mercer County Solid Waste Authority applied for a \$20,000 grant to continue the operation of the cleanup program. The program is conducted using jail release forces directed by a full time employee of the Mercer County Sanitary Landfill.

This program, which began in May of 1991, has been very successful and as of August 1992 has removed over 1,700,000 lbs. of garbage from Mercer County highways.

It is my understanding that of all the grant applications that were submitted, only Mercer, Monroe, and Summers Counties have not been granted. It is imperative that this grant be approved as soon as possible if we are to keep this very beneficial program intact.

Your cooperation will be greatly appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Robert Culler', is written over the typed name and title.

Robert Culler
Chairman

pj

Roane County S.W.A.
P.O. Box 713
Spencer, W.Va. 25276

WV Solid Waste Management Board
1815 Washington Street East
Charleston, W.Va. 25311

Dear Charles F. Jordan:

I am writing this letter on behalf of the Roane County Solid Waste Authority concerning the status of this year's grants. The R.C.S.W.A. has several projects pending upon these monies and would appreciate any assistance you might be able to give in speeding the process along.

Sincerely,

Leonard Poxton
Leonard Poxton

RSCWA Coordinator



Ritchie County
Solid Waste Authority
P. O. Box 161, Ellenboro, WV 26346

RESOLUTION

BE IT RESOLVED, On the 13th day of Aug.,
1992, that the Ritchie County Solid Waste Authority
voted to request the freeze on the Solid Waste
Management Board Grant Fund Program be lifted as
soon as possible.

Date 8/24/92

Chair Jane Heame

cc: Governor Caperton

John Ranson

WV Solid Waste Management Board, Charles Jordan

Wasteshed "C"

Association of WV Solid Waste Authorities, Martha Huffman

AUG 27 1992

MANAGEMENT BOARD



Recycle for a sustainable future



Calhoun County Solid Waste Authority
Box 63 • Chloe, West Virginia 25235

October 1, 1992

Judy Cooper
Building 1, Suite 157 K
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Ms. Conner

I am writing concerning the Solid Waste Management Board's Grant Regulations, Title 54, Series 5. It is my understanding that the Secretary of State's office does not feel that there is sufficient reason to file that rule as emergency. I feel quite strongly that an emergency does exist and I would like to explain my reasons.

The local solid waste authorities were created in response to a great citizen outcry for a responsible solid waste management policy. The intention being to create "... a local governmental forum where citizens can most easily participate in the decision-making process and the land use values of local communities ..." (§20-9-1). The local solid waste authorities are responsible for the planning and implementation of solid waste facilities in their jurisdictions. However, the funding mechanism for the local authorities is limited. Most of the local authorities' sole source of funding is a monthly check derived from one half of the assessment fee authorized by §20-9-13. This amounts to about \$16 - 18,000.00 per year per county. Needless to say, this is an insufficient amount of money to run any kind of program and develop solid waste facilities. The Board's grant program is derived from the other half of the aforementioned assessment fee and is a fund dedicated to the local authorities. These grants are an essential element in most local authorities' programs, the suspension of the program during 1992 has jeopardized many of them, and if this rule is not approved as emergency, many of these programs could very well fail.

In our own county, Calhoun, our local recycler had been in financial trouble due to the unstable markets for recyclables. Our solid waste authority had been working with him in exploring ways to help him out. Every scenario that we explored involved obtaining grant funding through

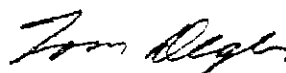
the Solid Waste Management Board. This summer, that recycler went out of business, leaving our county with no recycling program. Now, instead of the waste stream being reduced, as mandated by West Virginia Recycling Act (§20-11), the waste stream in Calhoun County is increasing. The authority would like very much to re-establish a recycling program in the county, but without the funding that the Board's grant program would provide, this will not happen.

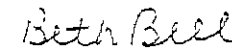
In addition, I would like to point out that pursuant to §20-11-8, "Effective the first day of June, one thousand nine hundred ninety-three, it shall be unlawful to deposit yard waste . . . in a solid waste facility in West Virginia." It is clear that many composting facilities are going to have to be established in the next eight months. The grant program administered by the DNR under Title 47 Series 43, specifically excludes yard waste and composting facilities from eligibility. This leaves most local authorities effectively unable to develop and implement composting facilities and puts the state's solid waste management program at risk.

The lack of funding for local authorities prohibits them from performing their mandated tasks and undermines the concept of local control on which West Virginia's solid waste legislation is based. I am aware of Ken Hechler's long standing support of the average citizens of the state and am surprised that this office does not seem to realize the importance of the local solid waste authorities. I would greatly appreciate it if the Secretary of State would reconsider the facts and approve the Title 54 Series 5 regulations as an emergency rule.

I appreciate your consideration of this matter.

Sincerely,


Tom Degen, Secretary


Beth Bell, Vice-chair

cc: Charles Jordan, Acting Executive Director, Solid Waste Management Board

NICHOLAS COUNTY SOLID WASTE AUTHORITY

P.O. BOX 821
CRAIGSVILLE, WV 26205
(304) 742-3803

October 2, 1992

Secretary of State Office
Attention: Ken Heckler

Dear Mr. Heckler:

It has come to my attention that the State Solid Waste Management Board is no longer authorized to distribute grants.

This is of great concern to the Nicholas County Solid Waste Authority. If these grants are no longer made available to Solid Waste Authorities, there are many necessary steps that must be taken that could not be met by individual landfills due to the high cost of operation. These grants help in developing leachate treatment systems, which contaminate ground and stream waters if left untreated. These grants will be of great assistance in putting into effect recycling, which is mandated by state law, which I am sure you are aware.

With these funds no longer being available it will become a hardship on county authorities, who try to keep their facilities open and operating for the public under the stringent guidelines set by Federal and State Laws. This would mean the closing of many landfills, and the loss of jobs and income to the state and to the counties.

We hope that you would consider this matter very carefully before making a final decision.

If the Nicholas County Solid Waste Authority can be of any assistance to you feel free to contact me at the above phone number.

Sincerely:


George Hayslette, Manager
Nicholas Coun Solid Waste Authority

cc: State Solid Waste Management Board
Glen Jarroll

NICHOLAS COUNTY SOLID WASTE AUTHORITY

P.O. BOX 821
CRAIGSVILLE, WV 26205
(304) 742-3803

October 2, 1992

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Attention: Ken Heckler

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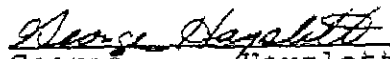
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Sincerely:


George Hayslette, Manager
Nicholas Coun Solid Waste Authority

cc: State Solid Waste Management Board
Glen Jarroll



The Senate of West Virginia

Charleston

October 2, 1992

J. D. BRACKENRICH
P. O. Box 767
LEANSBURG 24901

The Honorable Ken Heckler
Secretary of State
Building I, Suite 157K
1900 Kanawha Blvd., E.
Charleston, WV 25305-0770

COMMITTEES:
NATURAL RESOURCES
(VICE CHAIRMAN)
BANKING AND INSURANCE
EDUCATION
ENERGY, INDUSTRY AND MINES
FINANCE
GOVERNMENT ORGANIZATION
JOINT COMMITTEE ON
GOVERNMENT OPERATIONS

Re: Rules and Regulations
Solid Waste Board

Dear Mr. Secretary:

After discussions with our local solid waste authority, I was advised they are having numerous funding problems with reference to the continued development of the local landfill and development of the recycling center.

If the local landfill does not have lined effluent ponds in place in the near future WV D.E.P. will close the landfill thus an additional cost to the local consumer to take the waste out of shed.

We are also working on a facility for reprocessing tires by cutting in small pieces and manufacturing usable products for the consumer. This project has involved many local individuals also the Coca Cola Bottling Company has donated the building to the Solid Waste Authority. Our basic needs is for grant funds from the Solid Waste Management Board to complete this project to allow this major recycling project the move forward.

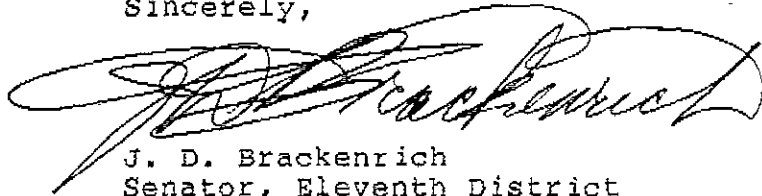
Post-It™ brand fax transmittal memo 7671		# of pages <i>2</i>
To <i>Honorable Ken Heckler</i>	From <i>J.D. Brackenrich</i>	
Co. <i>Secretary of State</i>	Co. <i>Senate (WV)</i>	
Dept. <i>10</i>	Phone # <i>1-45-6235</i>	
Fax # <i>1-558-0700</i>	Fax # <i>1-47-5950</i>	

The Honorable Ken Heckler
Secretary of State
October 2, 1992
Page 2

It is very essential to the Solid Waste Management Board have approval on their rules and regulations to allow movement of grants to needy and properly documented projects.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. D. Brackenrich", is written over a horizontal line. The signature is fluid and cursive, with the last name being more prominent.

J. D. Brackenrich
Senator, Eleventh District

JDB/db

"JUST THE FAX"
 FROM: WV SOLID WASTE MANAGEMENT BOARD
 1615 WASHINGTON ST E CHAS., WV 25311-2126
 OFFICE PHONE: 304-558-0844 FAX: 304-558-0899
 DATE: 9/30 PAGES: 1 FAX: (8-0900)
 TO: Sec. of State
 FROM: R. Meneses ATTN: _____
 MESSAGE: _____

Mr. George A. Bragg
 Chairman
 Fayette County Solid Waste Authority
 Box 307
 Fayetteville, WV 25840

September 29, 1992

RE: Litter control and open dump
 cleanup grant

Dear Mr. Jordan,

This letter is to request strong consideration for the \$20,000 dollar grant concerning the litter control and open dump cleanup program.

As you may know, Fayette County has led the way in West Virginia in the proper use of these funds by providing the salary of a very responsible person to design and implement a very successful program. One that utilizes an average of 6 - 7 county inmates per day to clean up roadway litter, open dumps, and provide hand unloading of recyclables at our Kroger bins in order to save bin transportation costs. Literally thousands of tons of trash has been cleaned up, old cars have been crushed, thousands of pounds of recyclables have been recycled and many violators have been warned and made to clean up their own property.

The person whose wages are paid by this grant is not only the inmate supervisor but also the recycling coordinator and enforcer of the mandatory disposal law in Fayette County. As you can see, he is a very valuable employee and it is imperative that he be retained.

As we depleted the grant funds in August, I requested from the county commission financial support to pay our coordinator's salary until January 1, 1993. They agreed, but indicated that no further funding would be available after that date. As you can see, unless we received funding by January 1, the program will have to be discontinued.

Due to the undeniable fact that Fayette County is the center of tourism in W. Va., it is very important that our visitors be treated to clean highways, and maybe more importantly, clean waterways.

So far, this grant has provided an avenue to success in our endeavors. Your continued support will help to insure that this is also the case in the future. Thank you for any consideration.

Sincerely,

George Bragg

George A. Bragg
 Chairman
 Fayette County Solid Waste Authority

FILED

SEP 31 8 49 AM '92

OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

SEP 30 8 51 AM '92

FILED



MARION COUNTY SOLID WASTE AUTHORITY

P. O. Box 589
Fairmont, West Virginia 26554
October 1, 1992

The Honorable Kenneth Hechler
Secretary of State
Capitol Complex
Charleston, WV 25301

RE: Emergency Rules & Regulations Promulgated by the
Solid Waste Management Board to Assist County Solid
Waste Authorities to Implement Solid Waste Manage-
ment & Recycling Programs

Dear Mr. Hechler:

As a possible recipient of funding to implement our county's recycling program, I am writing to urge that you honor the request of the West Virginia Solid Waste Management Board to approve the Rules and Regulations filed with your office to authorize monetary grants to qualified county authorities.

Not to do so prior to the convening of the next session of the Legislature would, in our opinion, unnecessarily delay many worthwhile projects including our own and make it impossible for us to meet mandated guidelines for initiating our recycling program. We have been religiously collecting those tipping fees at our landfill and submitting the monies to Charleston and to tie up public funds would seem to be an unconscionable decision.

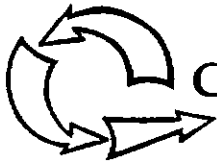
To again submit the program to the political processes within the halls of the Legislature could delay this vitally needed program for months. The proper treatment of our ever growing waste stream has to be one of the top priorities facing the State, and even the Nation, and to not act with dispatch on this matter will just increase the cost of the necessary corrective action.

I have learned to respect your judgement in such matters over the years and trust your rationale as being a fair and just person has not changed. Therefore, I would implore you to grant the SWMB this authority on an "emergency basis". Please give this request your prayerful consideration.

Sincerely,

Allan W. Babcock
Secretary

cc: Charles Jordan
L. O. Bickel



Calhoun County Solid Waste Authority
Box 63 • Chloe, West Virginia 25235

October 1, 1992

Judy Cooper
Building 1, Suite 157 K
1900 Kanawha Blvd. East
Charleston, WV 25305

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OCT 7 9 11 AM '92

FILED

Dear Ms. Cooper,

I am writing concerning the Solid Waste Management Board's Grant Regulations, Title 54, Series 5. It is my understanding that the Secretary of State's office does not feel that there is sufficient reason to file that rule as emergency. I feel quite strongly that an emergency does exist and I would like to explain my reasons.

The local solid waste authorities were created in response to a great citizen outcry for a responsible solid waste management policy. The intention being to create "... a local governmental forum where citizens can most easily participate in the decision-making process and the land use values of local communities . . . " (§20-9-1) The local solid waste authorities are responsible for the planning and implementation of solid waste facilities in their jurisdictions. However, the funding mechanism for the local authorities is limited. Most of the local authorities' sole source of funding is a monthly check derived from one half of the assessment fee authorized by §20-9-13. This amounts to about \$16 - 18,000.00 per year per county. Needless to say, this is an insufficient amount of money to run any kind of program and develop solid waste facilities. The Board's grant program is derived from the other half of the aforementioned assessment fee and is a fund dedicated to the local authorities. These grants are an essential element in most local authorities' programs, the suspension of the program during 1992 has jeopardized many of them, and if this rule is not approved as emergency, many of these programs could very well fail.

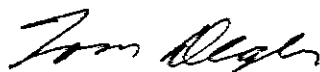
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FILED
JUN 1 1993
CALHOUN COUNTY, WV
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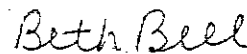
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I appreciate your consideration of this matter.



Tom Degen, Secretary

Sincerely,



Beth Bell, Vice-chair

cc: Charles Jordan, Acting Executive Director, Solid Waste Management Board

CLAY COUNTY SOLID WASTE AUTHORITY

P. O. BOX 35
CLAY, WEST VIRGINIA 25043

Margaret Mills
Chairman

Nancy Fackner
Vice Chairman

October 8, 1992

Secretary of State
Building 1, Suite 175-K
1900 Kanawha Blvd E.
Charleston, Wv 25305-0770

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OCT 13 3 59 PM '92

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Dear Sir:

The Clay County Solid Waste Authority has been in the process of obtaining state grants from the State Solid Waste Management Board for implementation of its composting and recycling programs as well as studying the feasibility of a Class C county landfill or transfer station.

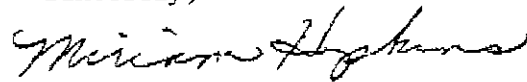
However, we are told grant applications are not being accepted until the rules and regulations are adopted.

If your office has any influence in seeing that these guidelines are adopted, we would greatly appreciate your positive input.

Without grant moneies, programs that we were commissioned to do by the state legislative code could not be implemented in Clay County. It is only through these state grants that we can work to clean up unhealthy dump sites, encourage recycling efforts of businesses, schools, and residents, as well as plan for the future of solid waste disposal in the county.

Any assistance you can give in granting approval for the Solid Waste grant regulations would be deeply appreciated.

Sincerely,



Miriam Hopkins
Sec./Treas. Clay Co SWA

cc: State Solid Waste Management Board

Rt. 3, Box 357
Buckhannon, WV 26201

October 7, 1992

Honorable Ken Hechler
Secretary of State
Capitol Complex
Charleston, WV 25305

Dear Sir:

Greetings to you from our Citizens Volunteer Clean-up group here in Upshur County.

I enjoyed talking to you last Friday. Though our talk was of short duration, we will follow your advice and submit this letter, clarifying in detail, our accomplishments to date and what we wish to do in the future, and our needs to complete the task here in Upshur County. We sincerely want to get the job done well in helping make West Virginia more beautiful, reflecting our pride and Governor Caperton's mandate.

Our Upshur County Litter Control Board initiated a Bounty Program on junk vehicles and appliances on September 28, 1992. The first funds for the bounty came from the Upshur County Solid Waste Authority in the amount of \$5,000. To be specific the Bounty Program is paying \$2.00 per junk appliance, and \$10.00 per junk vehicle. In just one week 133 junk vehicles and 196 junk appliances have been brought in. For this we have paid out \$1,722. In order to clean up Upshur County of more junk vehicles and appliances, additional funds of \$23,450 are needed.

We have also listed additional illegal dump sites for reclamation, at an estimated cost of \$87,000.

Our remaining funds will very soon be exhausted with good weather prevailing. Also, our land fill is scheduled to be closed March, 1993. This will of course all be terminated soon and come to a standstill. We urgently need your help in this way of financial assistance, as outlined herein, to see this clean up job in our environment satisfactorily completed.

Our citizens involvement or participation in the Bounty reimbursement has proved a worthwhile incentive in our clean up approach and expectations are being realized. However, we have much more to do and the job is far from finished. The bounty money is helping our community of needy people during the period of economic downturn. It is further acknowledged in this approach will save the state money from having to hire contractors to do the job, since the haulers and bounty recipients are now doing this on their very own effort and time.

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OCT 14 12 00 PM '92

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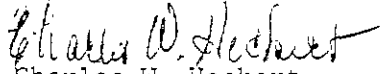
Honorable Ken Hechler
Secretary of State
October 7, 1992
Page 2.

We have herein stipulated in a precise way, our real and exacting needs. It is indeed our real hope, that we can see this project completed. Financial help from you in our state government will truly be a real asset to be dearly appreciated and move us to greater accomplishments as proud compatriots of our proud state and homeland.

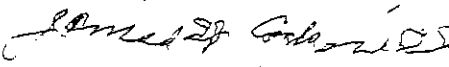
If additional information is needed, please contact us at this address. We acknowledge our accountability.

We anxiously await your reply.

Yours very sincerely,


Charles W. Heckert
Corresponding Secretary


Mary Ellen Corder
Secretary - Phone: 472-5561


James W. Cockerill
President
Upshur County Litter Control Board

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

October 2, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

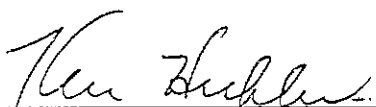
AGENCY: Solid Waste Management Board

RULE: Repeal & Replace, Series 5, Rules and Regulations for the
Disbursement of Grants to Solid Waste Authorities

DATE FILED AS AN EMERGENCY RULE: September 29, 1992

DECISION NO. 25-92

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

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SECRETARY OF STATE

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DECISION

EMERGENCY RULE DECISION (ERD 25-92)

AGENCY: Solid Waste Management Board
RULE: Repeal & Replace, Series 5, Rules & Regulations for
the Disbursement of Grants to Solid Waste
Authorities

FILED AS AN EMERGENCY RULE: September 29, 1992

- par. 1 The Solid Waste Management Board (Board) has filed the above rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

- par. 6 The Board filed this emergency rule with supporting documents with the Secretary of State September 29, 1992 and with the LRMRC September 29, 1992.
- par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- WV Code 20-9-13-(h)(2)(A) reads:
- (h) Dedication of proceeds. -- The net proceeds of the fee collected by the tax commissioner pursuant to this section shall be deposited, at least monthly, which is hereby created. The solid waste management board shall allocate the proceeds of the said fund as follows:
- (2) Fifty percent of the total proceeds shall be expended by the solid waste management board for:
- (A) Grants to the county or regional solid waste authorities for the purposes of this article.
- par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.
- par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:
- (g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.
- par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.
- par. 12 The facts and circumstances as presented by the Board are as follows:
- The Legislature determined that "the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) a public nuisance and a clear and present danger to the citizens of West Virginia; (2) the degradation of the state's environmental quality including both surface and groundwater which provide essential and irreplaceable sources of domestic

and industrial water supplies; (3) provides harborage and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare; (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state; (5) has adverse social and economic effects on the state and its citizens; and (6) results in the waste and squandering of valuable and nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state." West Virginia Code §20-9-1.

The Legislature also determined that "the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and the lack of proper and effective solid waste collection services and disposal facilities demands that the state of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors." West Virginia Code §16-26-1 et seq., & 20-9-1 et seq.

Pursuant to West Virginia Code §16-26-6(1) & (5), rules and regulations were promulgated by the Solid Waste Management Board in regard to disbursing grants to local solid waste authorities; the effective date was October of 1991. These grants are to aid the local solid waste authorities in acquiring and/or constructing solid waste disposal projects. Initially, interpretive regulations were promulgated; however, there were several deficiencies in the regulations and they were not enforceable. Therefore, the Solid Waste Management Board on February 19, 1992, suspended the grant program until the deficiencies could be corrected. Since February of 1992 one director, one acting director/senior planner, and an attorney resigned; also, the office of the Solid Waste Management Board was recently relocated. Due to these problems, the Board was unable to develop these rules and regulations in a timely fashion.

The local authorizes have been waiting for grant monies to be disbursed to help fund their solid waste projects. Until regulations are in place, the authorities will not obtain the funds needed to properly operate, acquire and construct their various solid waste projects. This delay is disturbing because projects will be shut down resulting in: termination of innumerable employees throughout the state; causing further degradation of the state's surface and groundwater; providing breeding places for injurious insects, rodents, and other pests, all of which affect the public health and welfare of the citizens. Our notes taken from discussions had with five of the county Solid Waste Authorities to which grants were previously issued document examples of the ability of these counties to take strides in complying with the state's solid waste laws, as well as show the imminent loss of jobs and progress if the program is not immediately re-established.

par. 13 Further facts and circumstances submitted include:

Last October the legislature significantly rewrote major provisions of the state's solid waste laws. These include: 1. Recycling. By October 1, 1992, each authority is to submit a proposal describing the establishment and implementation the mandatory recycling program. As of today's date only 7 such proposals have been submitted. The most common use of grant money distributed previously was used by the counties to develop recycling programs; without such grant money proposals have been delayed and the deadline missed.

By October 1, 1992, municipalities of 10,000 or more shall establish and commence implementation of a source separation and curbside collection program for recyclable materials, which must include: a recycling ordinance; a recycling collection schedule; a recycling system; ordinance enforcement provisions; and a comprehensive public information and education program.

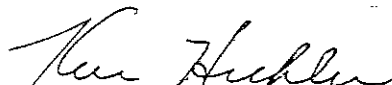
Recycling programs are not planned and implemented overnight. Once funding is acquired, many months are needed to develop the appropriate plan, purchase the necessary trucks, recycling bins and other equipment, pass an ordinance and start educating people on how to separate materials recycle before the program is implemented. Our grant money can be used to fund the development of such projects, but months are needed for application submission, review, approval and disbursement once the rules are in place. Statutorily mandated deadlines will continue to be unmet without the immediate implementation of these rules. An emergency exists.

2. Yard waste, batteries, tires. By June 1, 1993, yard waste, including grass clippings and leaves, batteries and tires cannot be deposited in solid waste facilities. Many months are needed to development composing programs, and to explore alternate methods of disposing of tires and batteries. Again, our grant money can be used to fund the development and implementation of such programs, but it all takes time. Deadlines will be missed. That constitutes an emergency.

None of these materials will be permitted in a landfill after June 1. Unless there are alternate methods in place for their disposal or recycling, people will resort to unsightly illegal dumps, causing fire hazards, breeding grounds for rats and mosquitoes, ground and surface water pollution and foul odors. Additional expenditures will then be required to clean up the illegal dumps. Such programs cannot wait until after the legislature approves the rules as legislative rules at the end of the 1993 session. An emergency exists.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g).

par. 15 This decision shall be cited as Emergency Rule Decision 25-92 or ERD 25-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Solid Waste Management Board, the Attorney General and the Legislative Rule Making Review Commission.



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