

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Solid Waste Management Board TITLE NUMBER: 54

CITE AUTHORITY: W. Va. Code §16-26-6; §20-9-12d(h)

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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 NEW RULE BEING ADOPTED: 5

TITLE OF RULE BEING ADOPTED: Rules and Regulations for the Disbursement
of Grants to Solid Waste Authorities.

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 4, 1991.


Harold A. Taylor, Chairman

TITLE 54
INTERPRETIVE RULES
SOLID WASTE MANAGEMENT BOARD

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

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§ 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. - January 4, 1991.

1.4. Authority. - W. Va. Code §15-26-6; W. Va. Code §20-9-12d(h).

§ 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. "Authority" - means any solid waste authority of any county or region in West Virginia, established by W. Va. Code §20-9-3 and § 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.

2.3. "Board" - means the West Virginia Solid Waste Management Board as established by W. Va. Code §16-26-4, or its authorized representatives.

2.4. "Energy Recovery Facility" - means any solid waste facility at which solid wastes are incinerated, or processed for future incineration, with the intention of using the resulting energy for generation of steam, electricity, or any other use not specified in these regulations.

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

2.6. "Incinerator" - means any device used to accomplish incineration, including incinerators associated with resource recovery.

2.7. "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.

2.8. "Materials Recovery Facility" - means any solid waste facility at which solid wastes are manually or mechanically shredded, separated, and recovered from the general waste stream for the purpose of recycling or reusing the resource recovered.

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

2.10. "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 recyclables into separate categories may occur, but the manual or mechanical separation of recyclables from the general waste stream may not.

2.11. "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.

2.12. "Solid Waste" - means any garbage, paper, litter, refuse, cans, bottles, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including carcasses of any dead animal or any other offensive or unsightly matter, solid liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or from 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 W. Va. Code §20-5A, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, or a hazardous waste either identified or listed under W. Va. Code § 20-5E, or refuse, slurry, overburden or other waste or material resulting from coal-fired electric power 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 W. Va. Code Chapter 22, Chapter 22A, or Chapter 22B, 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.

2.13. "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, environmentally acceptable incinerators, resource recovery facilities, recycling facilities, materials recovery facilities, energy 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 and must be signed by the chairman of the solid waste authority.

3.3. The applicant will be notified within a reasonable period of time in writing of approval or disapproval of the grant. Approval or disapproval of the grant will be determined by the Board in its sole discretion, after consideration of the factors listed under §54-5-7 of these regulations.

§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 purposes 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. Applicants should not depend on continued financing for long-term projects under this grant program.

4.3. Applicants are only eligible for one or more grants totalling an amount not to exceed twenty thousand dollars (\$20,000), if funds are available, provided that this amount of money may be increased when the applicant consists of two or more authorities acting collectively for the purposes of a grant.

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. In the event an applicant makes such a satisfactory demonstration, the Board may award the grant with a lesser match required of the applicant or with no match required.

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 siting plans in accordance with the requirements of W. Va. Code §20-9-7 and §20-9-12a and the regulations promulgated thereunder.

4.6. 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.

§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.

§ 54-5-6. Authorized Use of Grants Funds. - Grants awarded under these regulations may be used for any of the purposes under W. Va. Code §20-9-1 et seq.

§4-5-7. Factors Considered in Evaluating Applications. - The Board will consider the following factors in evaluating an application for a grant:

7.1. Projects 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 resource recovery; and (3) landfilling.

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 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 considered before projects funded previously 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.

7.10. Any administrative costs of the authority, 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.

§4-5-8. 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. The Board reserves the right to conduct an on-site inspection of the applicant's facilities related to the grant or 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. Amount of funds expended to date.

9.1.2. The balance of the grant monies remaining.

9.1.3. The amount of matching funds utilized to date.

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.

9.2. 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 fourteen (14) days of completion of the project containing the same information required under section 9.1. of these regulations.

§ 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.

§ 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 §20-9-12d. 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.

STATE SOLID WASTE MANAGEMENT BOARD
PROPOSED REGULATIONS: SERIES 5
RESPONSIVENESS SUMMARY

The State Solid Waste Management Board filed proposed interpretive rules, Series 5, with the Secretary of State on October 23, 1990. Written comments were allowed until November 26, 1990. The Board received comments from one person.

The person commenting requested that several of the definitions be changed.

Section 2.6. "Incinerator" - The person suggested that the term be defined as the term "energy recovery facility" is. The Board disagrees and believes that the term incinerator is not necessarily co-extensive with "energy recovery facility." The Board notes also that the term "incinerator" is defined as it is in the DNR regulations.

Section 2.8. "Materials Recovery Facility" - The person suggested changing the definition of "materials recovery facility." The Board fails to understand how the changed definition is any different from the proposed one.

Section 2.11. "Resource Recovery Facility" - The person objected to the term "incinerator" being included in the term "resource recovery facility." The Board does not agree since the statute clearly places incineration under that category.

Section 2.12. "Solid Waste" - The person suggested that the definition of "solid waste" should not include sludge from an air pollution control facility. The Board disagrees, since its definition is directly from the statute.

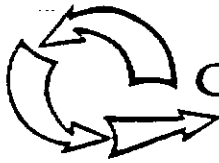
The Board responds similarly regarding the other suggested changes to the definition of "solid waste."

Section 2.13. "Solid Waste Facility" - The person suggested that the terms "solid waste" and "solid waste facility" should not include materials separated from the waste stream for recycling. The Board does not believe this position is consistent with the statute.

The person also requested that the Board establish a time period within which it must approve or disapprove an application. The Board does not agree that a fixed time

frame for action is appropriate but has inserted language requiring it to act within "a reasonable time."

The person asked the Board to impose a moratorium on the siting of new facilities until siting plans are approved and to put a cap on out-of-state garbage. The Board does not believe it has the authority to do either under current legislation.



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

November 20, 1990

To: West Virginia Solid Waste Management Board
1212 Stewart Plaza, Dunbar, WV 25064

The following are the Calhoun County Solid Waste Authority's (CCSWA) comments on WV Solid Waste Management Board's (SWMB) proposed Series V Regulations:

* Definition 2.6 "Incinerator"

CCSWA offers the following ; "Incinerator" - means any device used to accomplish incineration, including incinerators associated with energy recovery. CCSWA feels that the definition of Resource Recovery is too broad and that the incinerator operation is more accurately described in the definition of Energy Recovery Facility.

* Definition 2.8 "Materials Recovery Facility"

CCSWA offers the following; "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.

* Definition 2.11 "Resource Recovery Facility"

The definition of Resource Recovery Facility encompasses such a broad spectrum of operations that it is unworkable. Composting, having no emissions or ash, is so much cleaner and technologically simpler that it is unrealistic to include incineration with it. There are definitions for all the operations that the definition of resource recovery encompasses, so CCSWA feels that they should be used, and either the definition of resource recovery be dropped or restricted to those technologies that really do recover resources and not merely recover some energy from the destruction of resources.

* Definition 2.12 "Solid Waste"

Sludge from an air pollution control facility would seem to include ash from an incinerator. A 1988 study conducted by the Environmental Defense Fund shows that 100% of fly ash fails the EPA toxicity test for cadmium and lead. With figures like that, it would seem unwise to include these materials in with solid waste - it makes more sense to define them as hazardous waste and allow them to be considered solid waste only after testing out below the hazardous level.

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It could be argued that ash be considered solid waste and classified hazardous only after failing the EPA toxicity test, but this will discourage testing whereas our proposal would provide incentive for testing and better protect the public health and safety.

CCSWA recommends re-wording the reference to nuclear material as follows; ".....but does not include... ..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 (BRC),....".

CCSWA feels that solid waste should also not include materials separated from the waste stream and cleaned in preparation for recycling, whether delivered to a recycling center, or picked up by a recycler.

* Definition 2.13 "Solid Waste Facility"

If solid waste does not include materials separated from the waste stream and cleaned in preparation for recycling, then a recycling facility, as defined in 54-5-2.10, that deals with such materials should not be considered a Solid Waste Facility.

* 54-5-3.3

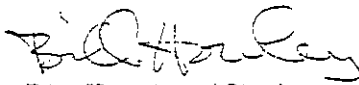
CCSWA suggests that SWMB give a time period within which it must approve or disapprove of an application.

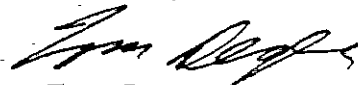
* 54-5-4.5

It is encouraging to see SWMB flex some muscle, but it would be more encouraging to see SWMB flex it's muscles in such a way as to create an atmosphere in which the local authorities can do a better job of writing their plans. Putting a cap on out-of-state garbage and imposing a moratorium on the siting of new facilities until the siting plans are approved would go a long way towards creating such an atmosphere.

CCSWA appreciates the opportunity to submit comments on these regulations and hopes that SWMB will give these, and all other comments received, serious consideration.

Sincerely,


Bill Howley (Chairman)


Tom Degen (Secretary)


Tina Brinson (Treasurer)

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SOLID WASTE
MANAGEMENT BOARD
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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)

FAX: (304) 558-0900

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AUG 31 1993

BY SOLID WASTE
MANAGEMENT BOARD

TO: Charles F. Jordan

AGENCY: Solid Waste Mngt. Bd.

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 30, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 5 TITLE: 54 Solid Waste Mngt. Bd.

THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Charles F. Jordan

TITLE OF PERSON SIGNING: Director

DATE: 9/2/93

THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

OFFICE OF WEST VIRGINIA
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