

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED
1992 AUG 14 AM 6 06
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

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(h)-(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

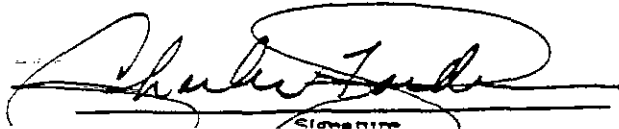
TITLE OF RULE BEING FILED AS AN EMERGENCY: Rules and Regulations

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



J. Edward Hamrick, III
Joyce Manyik
John H. Martin
Martha H. Moore
Mark Nesselroad
Harold A. Taylor
William Wallace
BOARD MEMBERS

SOLID WASTE MANAGEMENT BOARD

1615 Washington Street East
Charleston, WV 25311-2126
Phone: (304) 558-0844 FAX: (304) 558-0899

Gaston Caperton
GOVERNOR

Charles F. Jordon
ACTING DIRECTOR

August 11, 1992

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]. 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, 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 West Virginia Code, Section 16-16-1 et seq. and West Virginia Code, Section 20-9-1 et seq.]

Pursuant to West Virginia Code, Section 16-26-5 and West Virginia Code, Section 16-26-(5) rules and regulations were to be 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. Until such regulations are implemented, grant monies cannot be disbursed.

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, as it is causing further degradation of the state's surface and groundwater, providing breeding places for injurious insects, rodents, and other pests which could affect the public health and welfare of the citizens.

To conclude, it is our contention that pursuant to West Virginia Code, Section 29A-15a(g), an emergency does exist in regard to these rules, and therefore, it is imperative that they be implemented as soon as possible.

Page Three
SoS-Justification
August 11, 1992

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

Sincerely yours,



Charles Jordan,
Acting Director

CFJ:gke

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.**

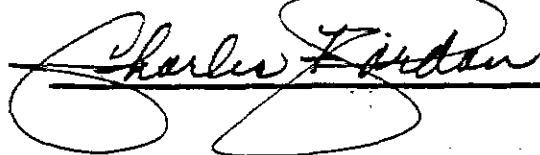
Provide funds to assist local solid waste authorities with funds to implement an integrated solid waste management plan pursuant to WV Code § 20-9-12.

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



DATE: August 14, 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: August 14, 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 14, 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 there:

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

1992 AUG 14 AM 6:06

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 54
EMERGENCY RULES
SOLID WASTE MANAGEMENT BOARD
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, 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.

2.12. "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 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 this article, 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, and services 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 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 and the Secretary of Commerce, Labor and Environmental Resources, 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 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 citing plans in accordance with the requirements of W. Va. Code, §§ 20-9-7, 20-9-12a and the regulations promulgated thereunder.

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 citing 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.

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 supplies related to any projects 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. Donated overtime 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;

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 waste with little or no processing.

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 resource 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 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.



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

TITLE 54
INTERPRETIVE RULES
SOLID WASTE MANAGEMENT BOARD

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. - January 4, 1991.

1.4. Authority. - W. Va. Code §15-26-5; 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.

§54-3-5. 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.

§ 54-3-6. 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.

§54-5-7. 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.

§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. 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.

RULE REQUEST FORM

DATE _____

PHONE NO. 3412 659-3412

NAME Peter Schumacher

ADDRESS _____

Series 5

Rural Co level - Solid Waste -
Recycle -

Pitcher Co