



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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September 17, 2001

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FILED
2001 SEP 19 A 9:24
OFFICE OF THE
SECRETARY OF STATE

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Charles F. Jordan
Solid Waste Management Board
1615 Washington St., East
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities, 54CSR5**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: West Virginia Solid Waste Authority

Subject: Disbursement of Grants to Solid Waste Authorities

CSR Cite: 54CSR5

Counsel: JAA

FILED
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

PERTINENT DATES

Filed for public comment: May 8, 2001

Public comment period ended: June 11, 2001

Filed following public comment period: July 19, 2001

Filed LRMRC: July 19, 2001

Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Summary

Several small changes and updates are made to the current rule. The definition of "Recycling facility" Section 2.15, is amended to specify that mixed waste recovery facilities, sludge and organic material composting facilities are not considered recycling facilities for the purpose of this rule.

Section 3 establishes application requirements for grants. Section 3.1 provides that grant applicants must submit a description of the proposed project along with a detailed project budget. Section 3.4 provides that incomplete applications will not be considered and will be marked incomplete and returned. All

revised applications must be submitted within the application filing deadline. Section 3.5 provides that grants will not be awarded for improvements to facilities not owned by an authority.

Section 4 provides for eligibility for participation in receipt of grants. The rule is amended to allow the Board to decrease previously grant awards based on availability of funds.

Section 4.6 is amended to provide that grant applicants are responsible for assuring grant monies are utilized and maintained in an appropriate manner. Section 4.7 provides that grant applicants must provide a physical inventory of all property acquired by grant funds. Annual audits are to be completed by the State Auditor rather than the Tax Department as the current rule provides. Under current Section 4.8, applicants are required to make available all records to the Board for a period of 3 years. The rule is being amended to provide that those records must be maintained for three years or until the applicant is audited, whichever is later. This in effect requires all records to be retained until three years and until an audit is complete. Section 4.9 is amended to strike the \$5,000.00 threshold requirement for competitive bidding, and inserts in its place a reference to state purchasing/bidding procedures. Section 4.11 has been rewritten. The current language requires that applicants submit their applications to regional council in their area. New 4.11 provides that grantees "may not" be eligible for the next cycle of grants. New Section 4.12 states that delinquent final reports may result in ineligibility for future grants.

Section 5.2 provides that grant monies may not be used to replace personnel being provided by a local government.

Section 6 is amended to require the filing of a signed affirmation of the grantee's compliance with all state and federal laws. Section 6.7 is new and requires that the applicants insure all personnel and contractors be free from harassment in any form.

Section 7 provides factors to be considered by the Board when making grants. Two new considerations are added; first that the Board give consideration to balancing funding for programs to fairly distribute grants, and second whether a mandatory recycling program is in place. This section is also amended to provide that grants will not be awarded for brokering of recycled materials, or

in circumstances where the applicants may violate the permitted activities of a private solid waste collection service.

Section 11 has been rewritten. Sale of any equipment purchased by grant funds now requires prior Board approval. The Board preserves the right to inspect equipment purchased with grant money.

New Section 12 provides what factors the grantee must provide to the Board about the proposed grant project. This plan should include markets for the projected materials. A final report after the grant is complete will now be required to measure usefulness in this study.

AUTHORITY

Statutory authority: W.Va. Code, § 22C-3-6 which provides:

The solid waste management board may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The board may:

(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business, and rules, promulgated pursuant to the provisions of chapter twenty-nine-a of this code, to implement and make effective its powers and duties....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.