

**WEST VIRGINIA
SECRETARY OF STATE
JOEMANCHIN, III
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
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Form#6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

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

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

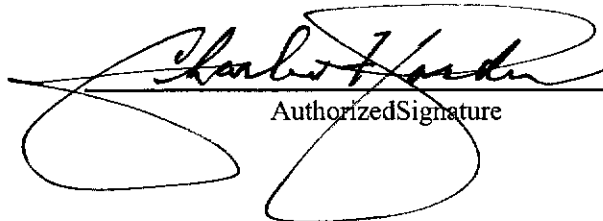
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB4163

SECTION 64-3-3, PASSED ON 3/9/2002

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE

FOLLOWING DATE: 4/15/02


Authorized Signature

SCANNED

\$4.20

FILED

TITLE 54
LEGISLATIVE RULE
SOLID WASTE MANAGEMENT BOARD

2002 APR 10 P 1:29

SERIES 5
DISBURSEMENT OF GRANTS TO SOLID WASTE AUTHORITIES SERIES

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§54-5-1. General.

1.1. Scope. – The purpose of this rule 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 of W. Va. Code § 22C-4-1 et seq.

1.2. Authority. – W. Va. Code §§ 22C-3-6 and 22C-4-30.

1.3. Filing Date.-

1.4. Effective Date. --

§54-5-2. Definitions.

The following words and terms, when used in this rule, 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 this rule.

2.2. “Approved solid waste facility” – means a commercial solid waste facility or practice which has a valid permit or compliance order under W. Va. Code § 22-15-1 et seq.

2.3. “Authority” – means any solid waste authority of any county or region in West Virginia, established by W. Va. Code §§ 22C-

4-3 and 22C-4-4; or the county commission of any county which elected not to establish an authority, as allowed by W. Va. Code § 22C-4-6.

2.4. “Board” – means the West Virginia Solid Waste Management Board, W. Va., as established by Code § 22C-3-4, or its authorized representatives.

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

2.6. “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 does not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid waste created by that person or, that person and another person on a cost-sharing or nonprofit basis, and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation, and similar applications.

2.7. “Construction” – includes reconstruction, enlargement, improvement, and providing furnishings or equipment for a solid waste disposal project.

2.8. "Cost" – means, as applied to solid waste disposal projects, the cost of their acquisition and construction; the cost of acquisition 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 (18) 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 rule 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 W. Va. Code § 22C-3-10 et seq.

2.9. "Grant" – means a grant made by the Board to an applicant pursuant to this rule.

2.10. "Government agency" – means the state government or 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.

2.11. "Landfill" – means any solid waste facility for the disposal of solid waste on or in the land for the purpose of permanent disposal. Such facility is situated, for the purpose of this rule, in the county where the majority of the spatial area of such facility is located.

2.12. "Materials recovery facility" – means any solid waste facility at which source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded or separated for purposes of reuse and recycling, but does not include a composting facility.

2.13. "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 rule.

2.14. "Recycle" or "Recycling" – means the process by which recovered products are transformed into new products, and includes the collection, separation, recovery, and sale or reuse of metals, glass, paper, tires, lead-acid batteries, and other materials.

2.15. "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: Provided, That mixed waste recovery facilities, sludge processing facilities, and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of W. Va. Code §§ 20-11-1 et seq., 22-15-1 et seq., or 22C-4-1 et seq.

2.16. "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 material in irrigation return flows or industrial discharges which are point sources and have permits under W. Va. Code § 22-11-5 et seq., or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified

or listed under W. Va. Code § 22-18-1 et seq., or refuse, slurry, overburden, or other waste or material resulting from coal-fired electric power generation, or steam 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 §§ 22-2-1 et seq., 22-3-1 et seq., 22-4-1 et seq., 22-6-1 et seq., 22-7-1 et seq., 22-8-1 et seq., 22-9-1 et seq., 22-10-1 et seq., or 22A-1-1 et seq., so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters.

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

2.18. "Solid waste disposal project" or "Project" – means any solid waste facility, the development of Comprehensive Litter and Solid Waste Control Plans and Commercial Solid Waste Facility Siting Plans, administrative costs, open dump cleanup, and other purposes for expenditure of grant monies approved by the Board at its discretion.

2.19. "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, mixed waste processing facilities, sewage sludge processing facilities, commercial composting facilities and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with W. Va. Code §22-15-20 (b). Such facilities shall be deemed to

be situated, for the purposes of this rule, in the county where the majority of the spatial area of such facility is located; Provided, That a salvage yard licensed and regulated pursuant to the terms of W. Va. Code §17-23, is not a solid waste facility.

§54-5-3. Application for Grants.

3.1. Any eligible solid waste authority which desires to participate in the program shall make an application to the Board on prescribed forms as published in the grant application package. One form may be used to apply for separate projects.

3.2. Applications must include a description of the proposed project, a detailed project budget, properly executed and signed resolution authorizing the application, and all other documentation as prescribed in the grant application package. All required documentation must be signed by the chairperson(s) of the authority or authorities where indicated.

3.3. Grant applications must be received by the Board no later than April 30 to be considered at its July meeting. The Board may consider grant applications or revisions for emergency or extraordinary purposes at any time at its sole discretion.

3.4. Incomplete applications will not be considered; they will be marked "incomplete" and returned to the applicant. Applications that fulfill all requirements may be resubmitted within the original filing deadline.

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

with grant funds may be leased to other solid waste authorities or other parties provided that such lease will directly assist in the implementation of Comprehensive Litter and Solid Waste Control Plan goals, objectives, and recommendations. Title to equipment, buildings, and land purchased with grant funds must remain with the solid waste authority unless otherwise approved by the Board. Grants will not be given for construction or improvements to facilities on property which is not owned by the authority.

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 §54-5-7 of this rule.

§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 ninety (90) days. Continued financing for long-term projects will be provided at the sole discretion of the Board. All projects shall be consistent with the goals, objectives, and recommendations of the Comprehensive Litter and Solid Waste Control Plan.

4.3. Each fiscal year, the Board will determine both the total amount of funds available for grants and the maximum grant amount for a single applicant. The total

amount will be subject to the availability of funds and appropriation by the Legislature and may, at the sole discretion of the Board, be increased/decreased at subsequent meetings of the Board as necessary. The grant amount may be increased when the applicant consists of two (2) or more counties acting collectively for the purposes of a grant.

4.4. Solid waste authorities which have not received the Board's approval of their Comprehensive Litter and Solid Waste Control Plan, Commercial Solid Waste Facility Siting Plan, or updates of such plans in accordance with the requirements of W. Va. Code §§ 22C-4-8, 22C-4-24, and the rules promulgated thereunder shall not be eligible for grants other than those awarded for purposes of completing such plans. Eligibility for projects other than completion of the Comprehensive Litter and Solid Waste Control Plan and the Commercial Solid Waste Facility Siting Plan will be reinstated upon the approval of such plans or their updates.

4.5. 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 federal and West Virginia laws and rules, including any compliance orders issued by state agencies and/or departments.

4.6. 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 grant award. The applicant shall establish a separate checking account through which all grant project related financial transactions shall take place. The applicant shall not use grant monies for any purpose other than those approved by the Board in the grant application. The applicant shall ensure that the programmatic intent and purpose for which the grant funds are

expended is implemented, utilized and maintained in an appropriate manner.

4.7. The applicant shall cause an audit of this program, including a physical inventory of all property and equipment purchased with grant funds, to be included in its annual audit performed by the Office of the State Auditor, Chief Inspector Division or its designated representative pursuant to W. Va. Code § 6-9-7. A copy of the audit report and inventory shall be forwarded to the Board by the applicant.

4.8. At any time during normal business hours, and as often as the Board may deem necessary, the applicant shall make available to the Board all of its records pertaining to this grant and permit the Board to examine and make excerpts, transcripts, or copies from such records, and audit all contracts, invoices, materials, payrolls, personnel records, conditions of employment, and other data relating to all matters covered by this grant during the period beginning with the project approval and ending three years after the final disbursement of grant funds or until audited, whichever is later.

4.9. The applicant shall solicit sealed bids for all construction-related contracts or purchases in accordance with the governing purchasing procedures and guidelines. Any attempts by the applicant to circumvent this requirement by segregating the project into sections each having an estimated value of less than the amount requiring sealed bids may be cause for termination of the agreement.

4.9.1. The bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of W. Va. Code § 59-3-2. This notice shall be published by the applicant in the newspaper with the

largest circulation serving the general area twice within fourteen (14) days preceding the final date for submitting bids. The applicant shall also, where feasible, solicit sealed bids by mailing requests to prospective suppliers or contractors. The applicant shall have available upon request for review by the Board bid documents and other evidence of compliance with these procedures.

4.9.2. The applicant shall comply with the requirements of W. Va. Code § 5G-1-1 et seq., regarding obtaining architectural or engineering services, if such services are needed.

4.10. Whenever practicable, grant funds will be disbursed according to the following schedule: fifty percent (50%) at the time of the grant award, and fifty percent (50%) after the applicant has (1) demonstrated to the Board that approximately fifty percent (50%) of the total project funds have been expended, and (2) prepared and received approval of a semi-annual report as described in § 54-5-9.1.1. Provided, however, that upon a finding that disbursement by this schedule will adversely affect the continuity of the project, the Board may disburse funds on a schedule which will ensure continuity.

4.11. Applicants with a current grant may not be eligible for the next cycle of grants.

4.12. A delinquent final report may cause ineligibility for future grants.

§54-5-5. Personnel Qualifications.

5.1. The applicant must document within the application that it has, or will secure, personnel with the necessary qualifications and experience required to perform the services under this grant award. Such personnel shall not be employees of or have

any contractual relationship with the Solid Waste Management Board.

5.2. The grant may not be used to replace existing personnel currently being provided by the local government.

§54-5-6. Compliance with Federal and State Laws.

The applicant agrees to ensure that the following conditions are met and shall submit a signed affirmation of compliance with all applicable Federal and State laws in the final report:

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

6.2. 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. All solicitations or advertisements for employees placed by or on behalf of the applicant shall state that all qualified applicants for employment will be considered without regard to race, color, age, religion, sex, national origin, or physical handicap. The applicant shall cause the provisions of this nondiscrimination clause to be inserted in all subcontracts for any work covered by the grant award so that such provisions will be binding upon each subcontractor; and shall keep such records and submit such information concerning the racial and ethnic

origin of employees and applicants for employment as the Board may require.

6.3. The applicant shall require any contractors and/or subcontractors it engages on this project to comply with Titles VI and VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000 e-2(a);- et seq.); Presidential Executive Order 11246, as amended by EEOC Guidelines, 29 C.F.R. 1604.11(a)(1)(2)(3); Presidential Executive Order 11375; and the Unlawful Discriminatory Practices of the West Virginia Human Rights Act, as contained in W. Va. Code § 5-11-9.

6.4. The applicant shall ensure that the contractor /or subcontractors has complied with the regulations issued by the Contractors Licensing Board pursuant to W. Va. Code § 21-11-1 et seq., regarding operating a contracting business in the state of West Virginia. The contractor and license number will be included in the final report.

6.5. The applicant shall require compliance of this with the standards documented within Title III of the Americans With Disabilities Act of 1991, and its applicable regulations.

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

6.7. The applicant shall insure that all personnel and contractors employed during this project work in an environment which is free from harassment in any form including, but not limited to, sexual, racial, age, or

disability.

§54-5-7. Authorized Use of Grant Funds and Factors Considered in Evaluating Applications.

Applicants may request grant money to be used for any of the purposes under W. Va. Code § 22C-4-1 et seq. The project should be consistent with the local authority's Comprehensive Litter and Solid Waste Control Plan and the state Solid Waste Management Plan.

7.1. The Board will consider all projects which are consistent with the Authority's statutory responsibilities for the purpose of W. Va. Code § 22C-4-1 et seq. Consideration will also be given to a balance in funding for programs and personnel to support the programs. The Board will give preference to grant projects and the computer hardware and software needed to achieve or enhance program or project objectives such as:

7.1.1. Source reduction in toxicity or volume.

7.1.2. Reuse of materials with little or no processing.

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

7.1.4. Mandatory disposal, open dump cleanup and litter control.

7.1.5. Transfer stations.

7.1.6. Landfills and other solid waste facilities.

7.1.7. Administrative costs (ie. salary,

operations and maintenance, administrative equipment) for any of the above items or other projects.

7.1.8. 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 from other sources.

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

7.3. Cost-effectiveness of the project.

7.4. Degree of public involvement in the project.

7.5. The applicant's ability to obtain a grant or loan from monies available under the provisions of W. Va. Code § 22C-3-1 et seq., or any other state-funded source.

7.6. The applicant's ability to implement the project as soon as practicable after receipt of the first installment of grant funds.

7.7. No grants will be approved for 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 centers agree in writing not to pay more for commodities than the price paid for such commodities by the private enterprise.

7.8. No grants will be approved for the conduct of brokering operations of recycled material or to be used to subsidize personnel who carry out such operations.

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

7.10. No grants will be approved that violate the primacy of private solid waste collection services currently operating with a certificate of necessity from the motor carrier division of the West Virginia Public Service Commission.

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

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

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

8.3. Failure to expend twenty percent (20%) of the grant funds within the first semi-annual period of the grant may result in cancellation of the grant and a recall of all funds plus any accrued interest.

8.4. The applicant shall not use grant monies to fund lobbying activities. Use of grant funds for this purpose will result in cancellation of the grant and a recall of all funds plus any accrued interest.

8.5. The Board reserves the right to conduct an on-site inspection of the applicant's facilities related to the grant, and 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 or until audited, whichever is later.

§54-5-9. Reporting Requirements.

9.1. Semi-annual reports. – Semi-annual reports shall be submitted to the Board on a semi-annual basis within fifteen (15) working days of the end of the six-month period and shall contain the following information:

9.1.1. A detailed listing of all funds expended or received during the semi-annual period with copies of: invoices, purchase orders, cancelled checks, and bank statements; titles evidencing ownership for all equipment and materials purchased; contracts, employment and bid advertisements, all bids received and service agreements; time sheets, payrolls, tax payments and reports; and, any other information deemed pertinent to the grant by the Board.

9.1.2. The balance of the grant monies remaining.

9.1.3. 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 this section the first semi-annual period ends six months after the grant award date, and the second semi-annual period ends one year after the grant award date.

9.3. Final Report. – A final report, including the same documentation for this period as required in the semi-annual report, shall be submitted to the Board within thirty (30) days of completion of the project. The report must include a narrative summary of the project's accomplishments as compared with its original goals, and an explanation of

any unachieved objectives. The report should also address any questions posed by the Board.

9.3.1. If an extension regarding the project is authorized pursuant to Section 4.2, the filing deadline will be extended accordingly.

9.3.2. An applicant must submit a final report at the time all grant funds have been expended.

9.4. All reports required under this section shall be filed with the Board on prescribed forms as published in the grant award package.

§54-5-10. Management of Grant.

10.1. The applicant shall establish a separate interest bearing checking account through which all grant project-related financial transactions, and only those transactions, shall take place. Grant monies shall be deposited into this dedicated account immediately upon receipt.

10.2. The applicant shall return to the Board all unexpended funds remaining at the end of the grant period, unless the Board finds good cause to waive this requirement. Such unexpended funds, including all accrued interest, must be returned to the Board within sixty (60) days following the end of the grant period.

§54-5-11. Disposition of Equipment.

11.1. Disposition of equipment purchased with grant funds, in whole or in part, requires prior Board approval.

11.2. The Board reserves the right to

conduct on-site inspections of all equipment purchased with grant funds.

§54-5-12. General Conditions and Requirements.

12.1. The proposed project shall be designed to affect a significant and measurable reduction in the solid waste stream.

12.2. If applicable, all grant proposals shall include an analysis and projection of materials that will be diverted from the solid waste currently being landfilled and the costs and/or savings that will directly result from the proposed project.

12.3. If applicable, project proposals shall include a plan to identify markets able to handle the projected volumes of materials to be collected and demonstrate the cost effectiveness and self-sufficiency of the proposed project.

12.4. Grant recipients may request a revision to their grant budget only after approval by the Solid Waste Authority's Board and only if it does not materially alter the original grant proposal approved by the Board.

12.5. Grant recipients will include in their final report an analysis of the project including any or all of the following when it applies: total volume (tons) of waste diverted from the solid waste stream, the estimated cost per ton to recycle that volume, the estimated revenue per ton of recycled material, and the estimated savings from recycling in lieu of landfilling.