

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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AUG 4 3 20 PM '94

OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Solid Waste Management Board TITLE NUMBER: 54

CITE AUTHORITY W.Va. Code §§22C-3-6; 22C-4-30

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 the
Disbursement of Grants to Solid Waste Authorities

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Jane B. Manjib
Authorized Signature

8,40



DIVISION OF ENVIRONMENTAL PROTECTION

GASTON CAPERTON
GOVERNOR

10 McJunkin Road
Nitro, WV 25143-2506

DAVID C. CALLAGHAN
DIRECTOR

August 3, 1994

Ms. Judy Cooper
Director, Administrative Law Division
Secretary of State's Office
Building 1, Suite 157K
Charleston, West Virginia 25305

RE: CSR-54-5 - Rules and Regulations for the
Disbursement of Grants to Solid Waste Authorities

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule with your Office and the Legislative Rule-Making Review Committee as an agency-approved rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Roger T. Hall at 759-0515.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "David C. Callaghan".

David C. Callaghan
Commissioner
Bureau of Environment

DCC;RTH:cc

Attachment

STATEMENT OF CIRCUMSTANCES

TITLE 54 LEGISLATIVE RULES SOLID WASTE MANAGEMENT BOARD

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

Since the last filing of these rules in 1992, H.B. 4065 was passed changing W.Va. Code. Also, substantial definition changes were made in other solid waste legislation. Since 1992, the number of landfills in the state has decreased and more will be closing in September 1994. The closures will reduce income for the solid waste authorities and create hardships in complying with state laws. Legislation has also produced a decline in the amount of solid waste being disposed through limits on out of state trash, landfill bans and recycling. Using the *INSPIRE* process, we attempted to make the rules more "customer friendly" and to eliminate unnecessary and duplicate paperwork. This will produce a savings in time and money for both the agency and the solid waste authorities yet still provide for the prudent use of state mandated special revenue funds.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: x Legislative Interpretive Procedural

Agency Solid Waste Management Board

Address 1615 Washington Street East
Charleston, West Virginia 25311-2126

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	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 §22C-3-6; §22C-4-30 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.

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

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.

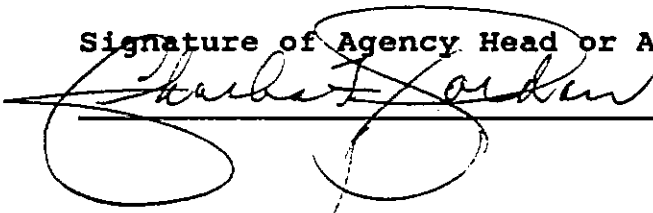
Provide funds to assist local solid waste authorities with funds to implement and integrated solid waste management plan pursuant to WV Code §22C-4-23.

C. Economic Impact on Citizens/Public at Large.

Makes available a more cost effective solid waste disposal system.

Date: June 22, 1994

Signature of Agency Head or Authorized Representative



DATE: August 3, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Solid Waste Management Board

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

1. Authorizing statute(s) citation W.Va. Code §§ 22-3-6; 22C-4-30

2. a. Date filed in State Register with Notice of Hearing

June 28, 1994

b. What other notice, including advertising, did you give
of the hearing?

Interested or affected state and local agencies; Interested
or affected associations; Interested or affected legislators
and the Governor's Office; SWMB Electronic Bulletin Board.

c. Date of Hearing(s) July 29, 1994

d. Attach list of persons who appeared at hearing,
comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing:
(be exact)

August 4, 1994

f. Name and phone number(s) of agency person(s) to
contact for additional information:

Charles F. Jordan, Director 558-0844

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

SUMMARY

TITLE 54 LEGISLATIVE RULES SOLID WASTE MANAGEMENT BOARD

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

The modifications to the above rule include:

1. Changing W.Va. Code citations to conform to the new legislation passed during the 1994 Legislative Session as H.B. 4065.
2. Removing definitions that were not used in the rules and updating existing definitions.
3. Providing language to conform to current code.
4. Combining sections that are redundant. (§54-5-6 and §54-5-7)
5. Removing matching and in kind requirements (§54-5-5). Many landfills will be closing thus limiting authorities in the funds available to follow the legislative intent of implementing an integrated solid waste management plan. This will provide a more equitable distribution of funds.
6. Making the rules more "customer friendly" in order to carry out legislative intent in the implementation of solid waste management plans.
7. Providing for one grant period instead of two thus making for a better use of time involved in grant preparation and reporting. This will provide for cost effective solid waste management for the agency and for the solid waste authorities.

TITLE 54
LEGISLATIVE 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, §22C-4-1 et seq.

1.2. Filing Date.

1.3. Effective Date.

1.4. Authority. -- W. Va. Code, §22C-3-6; W. Va. Code, ~~§ 20-9-13(h)(2)(A)~~ §22C-4-30.

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~~ June 9, 1993, and effective ~~January 4, 1991~~. June 9, 1993.

§ 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 W. Va. Code, ~~§ 20-5f-1~~ §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, ~~§§ 20-9-3, 20-9-4~~ §§22C-4-3, 22C-4-4; or the County Commission of any county which elected not to establish an authority, as allowed by W. Va. Code, ~~§ 20-9-5a~~ §22C-4-6.

2.4. "Board" -- means the Solid Waste Management Board created in W. Va. Code, ~~§ 16-26-4~~ § 22C-3-4, or its authorized representatives.

2.5. "Buy back facility 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. "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 W. Va. Code, § 29A-1-1 et seq.~~

~~2.8. "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.~~

~~2.9.~~ 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 shall does 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 such person and another other persons on a cost-sharing or non-profit basis and shall does not include the legitimate reuse and recycling of materials land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

~~2.10.~~ 2.7. "Construction" -- includes reconstruction, enlargement, improvement and providing furnishings or equipment for a solid waste disposal project.

~~2.11.~~ 2.8. "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 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 this article W.Va. Code §22C-3-1.

~~2.12. "Energy recovery incinerator" -- means any solid waste facility at which solid wastes are incinerated, with the intention of using the resulting energy for generation of steam, electricity, or any other use not specified in these regulations.~~

~~2.13. 2.9. "Grant" -- means a grant made by the Board to an applicant pursuant to these regulations rules.~~

~~2.14. 2.10. "Government agency" -- means the state government ~~of~~ 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.~~

~~2.15. "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.~~

~~2.16. "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.~~

~~2.17. "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.~~

~~2-18. 2.11. "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. any solid waste facility for the disposal of solid waste on land. Such facility, for the purposes of this rule, is situated in the county where the majority of the spatial area of such facility is located.~~

~~2-19. 2.12. "Materials recovery facility" -- means any solid waste facility at which solid wastes source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded, or separated, so that materials are recovered from the general waste stream for purposes of reuse and recycling, but does not include a composting facility.~~

~~2-20. 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 article.~~

~~2-21. "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.~~

~~2-22. 2.14. "Recycle" or "Recycling" -- means the collection, separation, recovery and sale or reuse of metals, glass, paper and other materials.~~

~~2-23. 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. Sorting of recyclables into separate categories may occur, but the manual or mechanical separation of recyclable from the general waste stream may not.~~

~~2-24. "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.~~

~~2-25. 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 materials in~~

irrigation return flows or industrial discharges which are point sources and have permits under W. Va. Code, ~~§ 20-5A-4~~ § 22-11-1 et seq., 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 W. Va. Code, ~~§ 20-5E-1~~ § 22-18-5 et seq., 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 W. Va. Code, § 22-1-1 et seq., § 22A-1-1 et seq. or § 22B-1-1 et seq., 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.~~

~~2-26.~~ 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 ~~any solid waste~~.

~~2-27.~~ 2.18. "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.~~ the development of Comprehensive Solid Waste and Litter Control Plans, Commercial Solid Waste Facility Siting Plans, administrative costs, open dump clean-up and other purposes for expenditure of grant monies approved by the Board at its discretion.

~~2-28.~~ 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, sewage sludge processing facilities, 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 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: Provided, That a salvage yard, licensed and regulated pursuant to W.Va. Code §17-23-1, 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 ~~a separate an~~ application to the Board on forms prescribed by the Board ~~for each project for which such participation is desired.~~ One form can be used to apply for separate projects.

3.2. All applications must be submitted with a properly executed and 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~~ April 30 to be considered at the ~~May~~ July 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. The Board may consider grant applications or revisions for emergency or extraordinary purposes at any time at its sole discretion.~~

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 project budget and narrative.~~

3.5. Grants will be awarded to solid waste authorities for the purchasinge of equipment, materials, services, land and buildings to be done on behalf of the solid waste authority. Grant monies cannot be passed on to a third party for use. Equipment, buildings, and land purchased with grant funds may be leased to other solid waste authorities or another party provided that such lease will directly assist in the implementation of Comprehensive Solid Waste and Litter 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.

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~~ §54-5-8 of these ~~regulations~~ rules, following review of the application by staff, presentation of the application to the grants committee, and recommendation by the committee to the full Board. ~~Disbursement of any approved grant by the Board shall be contingent upon the prior written approval of the Secretary of Commerce, Labor and Environmental Resources, if such approval is required pursuant to W. Va. Code, § 16-26-6(b) or any other statutory provision.~~

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

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

4.2. Grants will be awarded for a maximum period of one year, provided that the Board may extend this period for up to ~~sixty (60)~~ ninety (90) 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~~ at the sole discretion of the Board.

~~However, recycling projects showing exceptional innovation and merit may receive grants for more than two years at the sole discretion of the Board. All projects shall be~~

consistent with the goals, objectives and recommendations of the Comprehensive Solid Waste and Litter Control Plan.

~~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 a maximum amount of funds as determined by the Board per fiscal year. The Board will determine both the total amount of funds available for grants and the maximum grant award amount at its January meeting. This amount will be subject to the availability of funds. This amount of grant monies may, at the sole discretion of the Board, be increased at subsequent meetings if the Board's funding exceeds the its fiscal projections, made by the Board. 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 facility siting plans in accordance with the requirements of W. Va. Code, §§ 20-9-7, 20-9-12a and the regulations promulgated thereunder, and provided that eligibility will be reinstated upon the approval of such required plans and the payment to the Board of all cost and expenses incurred by the Board for its preparation of such plans pursuant to W. Va. Code, §§ 20-9-7(e) and 20-9-12a(h).~~

~~4.6. 4.4. After December 31, 1992, grants Grants will not be awarded for purposes other than completion of the Comprehensive Solid Waste and Litter Control Plan and the Commercial Solid Waste Facility Siting Plan or updates of such plans to solid waste authorities which do not have comprehensive litter and solid waste control plans and commercial solid waste facility siting such plans approved by the Board in accordance with the requirements of W. Va. Code, § 20-9-7, 20-9-12a §§ 22C-4-8, 22C-4-24 and the regulations promulgated thereunder, and provided that e. Eligibility for projects other than completion of the Comprehensive Solid Waste and Litter Control Plan and the Commercial Solid Waste Facility Siting Plan will be reinstated upon the approval of such required plans or updates of such plans, and the payment to the Board of all cost and expenses incurred by the Board for its preparation of such plans pursuant to W. Va. Code, §§ 20-9-7(e) and 20-9-12a(h).~~

~~4.7. 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 regulations rules 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 by State agencies and/or departments.~~

~~4.8.~~ 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, ~~as well as funds provided as the applicant's matching share.~~ 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.

~~4.9.~~ 4.7. The applicant shall cause an audit of this program to be included in the ~~its annual audit of the applicant performed by the State Tax Department or its designated representative pursuant to W.Va. Code §6-9-7.~~ The audit shall be performed in conformance with generally acceptable accounting procedures as referred to in W. Va. Code, § 16-26-15. The audit requirements of the Tax Department include specific procedures relating to the purchase of property and equipment with grant funds. A copy of the audit report shall be forwarded to the Solid Waste Management Board by the applicant.

~~4.10.~~ 4.8. 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.~~ 4.9. The applicant shall solicit sealed bids for all construction-related contracts or purchases which have an estimated value of over five thousand dollars (\$5,000). Any attempts by the applicant to segregate the project into sections having an estimated value of less than \$5,000 may be cause for termination of an agreement.

~~4.11.1.~~ 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 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.~~ 4.9.2. 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.~~ 4.10. ~~Unless a grant applicant specifically requests and can demonstrate a need for a larger portion of the awarded grant to initiate the project, all~~ Whenever practicable 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. ~~Provided, however, that upon a finding that disbursement by this schedule will adversely affect continuity of the project, the Board may disburse funds on a schedule to facilitate this continuity~~ 50% at the time of grant award with a subsequent payment of 50% after the applicant has: 1.) demonstrated to the Board that approximately 50% of total project funds have been expended, and 2.) prepared a semi-annual report described in §54-5-10.1. Provided, however, that upon a finding that disbursement by this schedule will adversely affect continuity of the project, the Board may disburse funds on a schedule to facilitate this continuity.

~~4.13.~~ 4.11. 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 or which would be available whether you operated the project or not. Example, space in a community center;~~

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

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

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

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

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

~~5.6.2. Tangible personal property;~~

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

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

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

§ 54-5-5 Personnel Qualifications

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 Grant Award. Such personnel shall not be employees of or have any contractual relationship with the Solid Waste Management Board.

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

5.9. The applicant agrees to the following conditions:

5.9.1. 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;

5.9.2. 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; 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.~~ 6.3. 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 contained in W. Va. Code, § 5-11-1 et seq.;

~~5.9.4.~~ 6.4. 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. The contractor and license number will be included in the final report.

~~5.10.~~ 6.5. 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.~~ 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 RG #5 must be completed and accompany the grant application.

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

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

~~6.1.1. Source reduction in toxicity or volume.~~

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

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

~~6.1.4. Open dump clean-up and litter control.~~

~~6.1.5. Transfer stations.~~

~~6.1.6. Landfills and other solid waste facilities.~~

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

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

~~§54-5-7. Factors Considered in Evaluating Applications.~~

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

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

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

~~7.3. Financial sustainability 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.~~

§54-5-7 Authorized Use of Grants 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 needs to be consistent with the local authority's Comprehensive Solid Waste and Litter Control Plan and the State Solid Waste Management Plan. 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, §22C-4-1. The Board will give preference to grant projects in the following order of priority:

7.1.1 Source reduction in toxicity or volume.

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

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

7.1.4. Open dump clean-up and litter control.

7.1.5. Transfer stations.

7.1.6. Landfills and other solid waste facilities.

7.1.7. Administrative costs for any of the above items or other projects, such as salary, operations and maintenance or administrative equipment. However, reasonable cost of computer hardware and software may be an exception.

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 to the applicant from other sources.

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. 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 center agrees in writing not to pay more for commodities than the price paid for such commodities by the private enterprise.

7.8. Applications for physical resources, such as equipment or facilities, may 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 semi-annual period of the grant period ~~will~~ 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.

~~8.4.~~ 8.5. 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~~ Semi-annual reports. -- If grant monies are for an ongoing project within a fiscal year, reports shall be submitted to the Board on a ~~quarterly~~ semi-annual basis within fourteen (14) calendar days of the end of the ~~quarter~~ six-month period and shall contain the following information:

9.1.1. A detailed listing of all funds expended or received during the ~~quarter~~ semi-annual period 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 t~~ 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~~ semi-annual reports must include a copy of the authorities current balance sheet and current income statement.

9.2. For purposes of ~~§ 9.1, §10.1~~ of these ~~regulations~~ rules, the ~~fiscal quarters~~ First semi-annual period ends with the following dates: September 30, December 31, March 31, and June 30. ends 6 months after the grant award date. The second semi-annual period ends one year after the grant award date.

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 ~~§ 9.1, of these regulations, §10.1~~ of these rules. The final report should also include a project description, goals and objectives and a description of project accomplishments. The final report should address questions applicable to the project as posed by the Board.

9.3.1. If an extension is authorized in regard to the project, pursuant to §4.2, then the filing deadline will automatically be extended for a 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 including all accrued interest 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~~ §22C-4-30. In the event that those funds are diminished by ~~legislative action or a decrease in waste disposed of at landfills~~ waste disposed at landfills or legislative action, the Board will adjust the amount of each grant accordingly.



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**MINUTES OF THE PUBLIC HEARING ON RULES AND REGULATIONS
FOR THE DISBURSEMENT OF GRANTS TO SOLID WASTE AUTHORITIES**
July 29, 1994

The public hearing on the Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities was held July 29, 1994, 2 p.m., in the conference room of the WV Solid Waste Management Board, 1615 Washington Street, East, Charleston, WV.

Present at this meeting were Board members: Joyce Manyik, Max Robertson, Joe Schock. Staff: Charlie Jordan, Mike Volpe, Rita Meneses. Visitors: Greg Sayre.

Mike Volpe, chief planner for the Board, helped conduct the public hearing on the draft Title 54, Series 5, Rules For The Disbursement Of Grants To Solid Waste Authorities. He asked that those wanting to comment on the draft rules sign the register so their comments could be recorded. Notice of the public hearing was placed in the State Register on July 1, 1994. He announced that the comment period is now open. He then noted that no one was present to make public comments but they would wait fifteen (15) minutes to receive anyone that might come in and register to speak.

Greg Sayre, president of One World Company, Morgantown, WV, and also director of Mon Recycle, addressed the draft rules. He has worked for over seventeen (17) Solid Waste Authorities in some way and is in favor of the grants rules changes. (1) He favors removing the matching requirements due, in part, to the diminishing revenues of SWAs, since some of their landfills will close. (2) He also favors the removal of the \$20,000 grant limit since it can affect the quality of equipment purchased or facility to be built. He favors the Board determining the maximum grant amount. (3) He favors changing the reporting requirement from quarterly to once a year.

Mr. Volpe stated since there were no further comments, the hearing was closed. Hearing closed 2:20 p.m.

Respectfully submitted,

Mike Volpe
Chief Planner



PRINTED ON RECYCLED PAPER

***Solid Waste Management Board
Grant Rules Hearing
July 29, 1994 - 2:00 p.m.***

Summary of Comments

***Greg Sayre
President
One World
432 Dorsey Avenue
Morgantown, WV 26505***

Comment: Mr. Sayre stated that he has worked with over 17 SWAs in some way. He is in favor of the grants rules changes.

Most of the solid waste authorities have very little revenue. Some authorities will have less money to spend and use as a matching requirement since some of their landfills will close. He is in favor of removing the matching requirements.

The removal of the amount of grant that can be obtained is good for the solid waste authorities. They often are limited by the \$20,000 as to the type and quality of equipment that can be purchased or facility that could be built. He is in favor of the Board being able to determine the maximum grant amount.

As to the reporting requirement change from quarterly to once a year, it will be beneficial to the solid waste authorities, especially the smaller ones who have no staff. Anything that would alleviate paperwork would be helpful to the authorities. He is in favor of the change from quarterly to yearly reporting.

Response: The Board agrees that these revisions are necessary. During the revision process, consideration was given to the adverse impact that declining revenues are having on many of the solid waste authorities. To ensure that they can carry out their legislatively mandated programs, the Board has tried to make the rules more "customer friendly" in such areas as reporting requirements, matching funds and in-kind contributions without sacrificing accountability.

Amendments: No changes were made.

WEST VIRGINIA ASSOCIATION OF WASTE HAULERS AND RECYCLERS
Comments on
PROPOSED RULE CHANGES
RULES AND REGULATIONS FOR DISBURSEMENTS OF GRANTS
TO SOLID WASTE AUTHORITIES

POLICY POSITION

The West Virginia Association of Waste Haulers and Recyclers, Inc. compliments the Solid Waste Management Board for developing proposed modifications to the Solid Waste Management Board (SWMB) grant rules.

The West Virginia Association of Waste Haulers and Recyclers, Inc., is supportive of the legislative goals articulated in the enabling legislation. In addition, our trade Association is aggressively pursuing all means and methods to assure that appropriate facilities, programs, plans and an adequate delivery system exists in West Virginia to provide our customers with appropriate programs and facilities to deal with their solid waste needs.

GENERAL COMMENT

In reviewing the existing rules, codified at Title 54, Series 5, Rules and Regulations for the Disbursements of Grants to Solid Waste Authorities, we find that the rule title is not consistent with West Virginia Code as found at 22 C -3 -6 (5). The title of the rules call for "disbursements of grants to solid waste authorities, however the law at 22 C -3 -6 is more inclusive. The law says: "(5) Make loans and grants to persons and to government agencies for the acquisition or construction of solid waste disposal projects and adopt rules and procedures for making such loans and grants. "

West Virginia Code generally liberally interprets the term "person" and it is our understanding that a good deal of case law substantiates the liberal use of the term "person" when administering West Virginia Law.

We would request that the rule be renamed pursuant to 22 C -3 -6 (5) to include an accurate representation of the code cite which enables the grants to both "persons" and to "government agencies". Appropriate change to procedures to accommodate grants and loans to "persons" should be included where appropriate throughout the rule.

COMMENTS ON COST BENEFIT ANALYSIS

Although the rule at 7.3 address the factor of cost effectiveness of the project, it is the opinion of this Association that many previous grants have been

awarded to county solid waste authorities resulting in little or no benefit to the public. At the same time, it should be noted that some of the grants awarded by the Solid Waste Management Board have resulted in great public benefit. Because of the diversity of outcomes on previous grant cycles, it is recommended that a cost of benefit analysis be done in a more formal fashion.

It is the position of the West Virginia Association of Waste Haulers and Recyclers Inc., that the rule be modified to require the Solid Waste Management Board to subject all grant applications to a cost-benefit analysis before awarding grants. It is acknowledged that many of the benefits from the planning grants and public education programs are difficult to quantify. We believe that facility development, program development, recycling programs and investment in facilities, materials handling equipment and structures should be subject directly to cost-benefit analysis. This requirement, by rule, would assure that the public gets the most recycling facilities and the most efficient system possible for its investment of public funds.

CONCLUSION

The West Virginia Association of Waste Haulers and Recyclers Inc., is happy for this opportunity to submit these comments and urge that the Solid Waste Management Board consider the same and amend their draft rules and regulations accordingly. The Association further would like to point out to the Solid Waste Management Board that their policy position regarding grant availability to county solid waste authorities has been flawed both as public policy and according to West Virginia Law. West Virginia Law has been previously stated in these comments and it is abundantly clear that the law does allow the Solid Waste Management Board to grant funds to "persons" who can carry out the mandates of the public law. It would appear that the rules previously adopted ignored that provision of law and thus limited the grants to Solid Waste Authorities of a regional or county nature. This position by the Solid Waste Management Board in drafting its rules is directly in conflict with state law. The law was amended in earlier years by the efforts of waste haulers and non-profit corporations who sought to provide recycling facilities and develop recycling programs that were to be done in the most cost-effective way. Since the Solid Waste Management Board took the position in publishing rules that eliminated the possibility of "persons" from the grant process, they seem to be telling the people of the State of West Virginia that recycling facilities should be, must be and had to be developed by government agencies.

Volunteer government groups, no matter how well meaning, are not always well positioned to become providers. By investing solely in the development of government run facilities, our State has begun to develop a bureaucracy within the recycling industry that has expanded the government employment base and has proven, in many cases, to be not cost-effective. Clearly the West Virginia Legislature did not intend for all facilities in West Virginia to be developed by government and government employees. Sadly, the Solid Waste Management Board's rules have attempted and have effectively denied non-profit corporations working in concert with municipal governments or other "persons" to even have their grant applications considered. As a result, a government bureaucracy has developed surrounding recycling and the development of recycling facilities. In many cases many of these programs, while very well meaning, have not proven to be workable or cost-effective and are perpetuated by continuing investment of public funds.

We believe that the recommendations outlined for change in the proposed rules will allow the taxpayers of West Virginia to invest in a recycling system that accomplishes the task at hand, while at the same time does not artificially raise their rates and is not designed merely to satisfy the need of a growing bureaucracy. We urge the modification of your proposed rule.

**Solid Waste Management Board
Grant Rules Comments
July 29, 1994**

West Virginia Association of Waste Haulers and Recyclers
205 First Avenue
Nitro, WV 25143-2237

Comment: "We would request that the rule be named pursuant to 22C-3-6(5) to include an accurate representation of the code cite which enables the grants to both "persons" and to "government agencies." Appropriate changes to procedures to accommodate grants and loans to "persons" should be included where appropriate throughout the rule."

Response: This comment was referred to Mr. David Lahr, Assistant Attorney General, Environment and Energy Division, for a written interpretation. The interpretation dated August 2, 1994, states in part:

"However the actual scope of the Title 54 Series 5 Rules" is to provide interpretation and guidance concerning the awarding of grants to county and regional solid waste authorities. . . under W.Va. Code § 20-9-1 et seq. (now W.Va. Code § 22-C-4 et seq.)

The disposition of any proceeds from the Solid Waste Planning Fund, as established in Section 30, Subsection (h), was strictly mandated by the Legislature in W.Va. Code § 22C-4-30(h)(2). It states:

Fifty percent of the total proceeds shall be expended by the solid waste management board for: (A) Grants to the county or regional solid waste authorities for the purposes of this article . . . (Emphasis added.)

A review of the Series 5 rules reveals that as a whole they delineate the procedures that SWAs must follow and the criteria the State SWMB

must apply in accordance with Subsection h(2)(A). The legislature clearly did not and does not intend for person(s) other than a county or regional SWAs to be enabled to obtain grants from the Solid Waste Planning Fund."

Amendment: No changes made. The SWMB must adhere to W.Va. Code.

Comment: "It is the position of the West Virginia Association of Waste Haulers and Recyclers Inc., that the rule be modified to require the Solid Waste Management Board to subject all grant applications to a cost-benefit analysis before awarding grants."

Response: Cost-benefit analysis is a complex process that attempts to quantify and compare costs and benefits. It is, however, fraught with pitfalls. In some instances, it is not clear what elements should be included as costs and what elements should be included as benefits. How should the services of a contractor and its employees be counted in an open dump clean-up program? The cost of their salaries can be viewed as an expense or the additional employment income generated with its multiplier effects can be viewed as a benefit.

It is very difficult, in many instances, to place a dollar value on the benefits that may accrue as a result of funding a particular project. Funding for public information and education programs on recycling would probably be a wise use of public funds. However, it would be difficult to place a dollar value on the benefits. Additionally, should (quantifiable) benefits be accrued over the life span of the project only or should they accrue indefinitely?

Cost-benefit analyses usually require a significant amount of detailed data. This data in many instances is not readily available; and thus, a significant amount of staff time may be required to analyze the grants. Since maximum grant awards have been limited (\$20,000 per county) and probably will continue to be in that range, it would be highly ineffective to spend an inordinate amount of staff time (money) on a relatively small program.

A great deal of staff time is spent reviewing, discussing and processing grant applications. This includes evaluating the applicant's past grant history, consistency with county and state solid waste management plans and legislation, the application's cost effectiveness and the degree to which the applicant promotes the efficient use of funds by combining efforts in a regional approach. The Regional Council reviews the program for duplication. It should also be noted that the Solid Waste Management Board has an arrangement with the Tax Department to have the grants

audited as a part of the annual audit of the solid waste authorities. The audit includes a physical inspection to verify that any equipment purchased with grant funds is in the possession of the solid waste authorities. This ensures maximum accountability and that tax dollars have been prudently spent.

These proposed rule modifications are designed to make this process more efficient and permit staff to concentrate their efforts analyzing potential program impacts. If a cost-benefit analysis were required for each grant, a significant amount of additional time would be required making the procedure so complex it would impede the overall effectiveness of the program.

Amendment: No changes made.

Comment: "By investing solely in the development of government run facilities, our state has begun to develop a bureaucracy within the recycling industry that has expanded the government employment base and has proven, in many cases, to be not cost-effective. Clearly the West Virginia Legislature did not intend for all facilities in West Virginia to be developed by government and government employees. Sadly, the Solid Waste Management Board's rules have attempted and have effectively denied non-profit corporations working in concert with municipal governments or other "persons" to even have their grant applications considered.

Response: The Solid Waste Management Board grant program is operated pursuant to W.Va. Code §22C-4-30(h)(2)(A). This section of the code requires the Board to issue grants to local solid waste authorities for the purposes of this article. W.Va. Code §22C-4-1 states:

It is further the purpose of the Legislature to reduce our solid waste management problems and to meet the purposes of this article by requiring county and regional solid waste authorities to establish programs and plans based on an integrated waste management hierarchy. In order of preference, the hierarchy is as follows:

- (1) Source Reduction.--This involves minimizing waste production and generation through product design, reduction of toxic constituents of solid waste, and similar activities.
- (2) Recycling, reuse and materials recovery.

-- This involves separating and recovering valuable materials from the waste stream, composting food and yard waste, and marketing of recyclables.

(3) Landfilling.--To the maximum extent possible, this option should be reserved for nonrecyclables and other materials that cannot practically be managed in any other way. This is the lowest priority in the hierarchy and involves the waste management option of last resort.

Many local solid waste authorities have entered into agreements with non-profit organizations and the private sector to implement recycling programs or clean-up open dumps. In a number of instances, local solid waste authorities that received grants and purchased equipment have in turn leased that equipment to non-profit organizations. The vast majority (approximately 50%) of local SWAs have no employees. Most of the remainder have one employee. SWAs have been working with non-profit organizations and the private sector whenever possible.

Amendment:

No Change. W.Va. Code requires that the grants are to be awarded to solid waste authorities. This does not exclude the solid waste authority from working with the non profit or private sector.