

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

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SECRETARY OF STATE

Form #6

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

AGENCY: Department of Environmental Protection TITLE NUMBER: 33

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 10

TITLE OF RULE BEING AMENDED: Recycling Assistance Grant Program

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

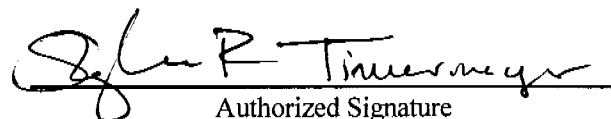
TITLE OF RULE BEING PROPOSED: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) 373

SECTION §64-3-1(t), PASSED ON March 6, 2008

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 15, 2008


Authorized Signature

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2008 APR -8 AM 10:20
COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE OF WEST VIRGINIA

TITLE 33
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SERIES 10
RECYCLING ASSISTANCE GRANT PROGRAM

§33-10-1. General.

1.1. Scope and Purpose. - This rule sets out guidelines and procedures for providing assistance grants to local governments and other interested parties for the purpose of planning, initiating, expanding, or upgrading recycling programs, provide related public education programs, and assist in recycling market procurement efforts.

- 1.2. Authority. -- West Virginia Code §22-15A-19(h)(1).
- 1.3. Filing date. -- April 8, 2008
- 1.4. Effective Date. -- April 15, 2008

§33-10-2. Definitions.

- 2.1. "Applicant" means the local government or other interested party applying for a grant pursuant to this rule.
- 2.2. "Bulky goods" means bulky appliances such as stoves, hot water heaters, sinks, washers, dryers, refrigerators, and dishwashers.
- 2.3. "Cure period" means the period between the submission deadline and 5:00 p.m. on the last business day in July.
- 2.4. "Department" means the West Virginia Department of Environmental Protection.

2.5. “Financially benefited” means to have received a benefit from a grant, whether by cash, purchases, use of assets, or payment of obligations, that if not received would have caused the beneficiary to avoid the purchase/service of that benefit or to incur and pay the costs or obligation from other financial resources.

2.6. “Grant period” means the period from January 1 to the last day in February of the following year. The total grant period consists of these fourteen months.

2.7. “Grant Recipient” or “Grantee” means an entity to whom a grant has been awarded.

2.8. “Incomplete proposal” means a proposal that does not meet Department submission requirements.

2.9. “Instrumentality” means an agency authorized by state law.

2.10. “Local government” means any unit of local government within the state, including a county, county board of education, municipality, and any other authority, board, commission, district, office, public authority, public corporation, or other instrumentality of a county, county board of education, or municipality or any combination of two or more local governments.

2.11. “Municipality” means an incorporated community.

2.12. “Other interested party” means private business and enterprise and nonprofit organizations, public and private schools, colleges and universities, and state agencies and municipalities.

2.13. “Proposal” means an application, on the proper forms, requesting a grant through the West Virginia Recycling Assistance Grant Program.

2.14. "Recyclable materials" means, for the purpose of this rule, any source separated material collected from the solid waste stream for the intended purpose of reprocessing or having that material reprocessed into a useable, marketable end product. This includes, but is not limited to, steel and bimetal cans, aluminum, glass, paper, plastic, tires, bulky goods and yard waste. Provided, That sewage sludge processing facilities are not considered recycling facilities and sewage sludge compost is not considered a recyclable material within the meaning of W.Va. Code Chapter 22, Article 15.

2.15. "Recycle" means the process by which recovered products are transformed into new products and includes the collection, separation, recovery, processing and marketing, or reuse, of the recyclable materials.

2.16. "Recycling market procurement" means developing markets for the materials generated by recycling programs.

2.17. "Recycling program" means any program, project, endeavor, or facility created for the purpose of recycling or promoting recycling.

2.18. "Secretary" means the Cabinet Secretary of the West Virginia Department of Environmental Protection.

2.19. "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments, or other places together with such groundwater infiltration and surface waters as may be present.

2.20. "Sewage sludge" means any solid, semi-solid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes,

but is not limited to, domestic septic, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge.

2.21. "Source separated" means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does not include sewage sludge.

2.22. "Submission deadline" means the latest date and time that proposals must be received by the department to be considered for funding, which is 5:00 p.m. on the first business day in July.

2.23. "Yard waste" means grass clippings, weeds, leaves, brush, garden waste, shrub or tree prunings and other living or dead plant tissue, except that, such materials which, due to inadvertent contamination or mixture with other substances which render the waste unsuitable for composting, shall not be considered to be yard waste. Provided, that the same or similar waste generated by commercial agricultural enterprises is excluded.

2.24. "Yard waste composting" means the controlled decomposition of yard waste to produce a stable and beneficial humus-like material.

§33-10-3. Grants Available From Recycling Assistance Grant Program.

3.1. The recycling assistance grant program provides grants to assist local governments and other interested parties in:

- 3.1.1. initiating, expanding, or upgrading recycling programs;
- 3.1.2. public education programs which promote recycling; and
- 3.1.3. recycling market procurement efforts.

3.2. The Recycling Assistance Fund Grant Review Committee shall evaluate the Recycling Assistance grant proposals that have met all department submission requirements and eligibility requirements established by this rule and are in compliance with one or more criteria of section 3.1 of this rule on a competitive basis considering each proposal's objectives towards maximizing the following factors:

- 3.2.1. conservation of limited natural resources;
- 3.2.2. public education regarding litter control;
- 3.2.3. recycling of valuable materials;
- 3.2.4. extending the useful life of solid waste landfills; and
- 3.2.5. reducing the need for new landfills.

3.3. The following types of grants are available:

3.3.1. Local Government Recycling Feasibility Study and Planning Grant - This grant is for researching the feasibility of community, county, and regional recycling programs including market development and requires submittal of a detailed comprehensive plan. A local government may use a professional service to assist in planning and/or implementing a comprehensive recycling program.

3.3.2. Recycling Program Assistance Grant - This grant is for initiating, expanding, or upgrading recycling programs, and emphasizes the integration of source reduction and recycling.

§33-10-4. Grant Program Eligibility and Priority.

4.1. All West Virginia entities, as defined under 2.10 and 2.12 of this rule, are eligible to apply for recycling program assistance grants as provided for in subdivision

3.3.2. of this rule, through notification of the county or regional solid waste authority in which the applicant is located. Only local governments are eligible to apply for grants as provided for in subdivision 3.3.1 of this rule, through notification of the county or regional solid waste authority in which the applicant is located. The recycling assistance fund grant review committee shall give priority to those municipalities, counties, state instrumentalities, private schools, proprietorships, partnerships, corporations, and cooperatives, required to recycle as a result of a county referendum or pursuant to the provisions of West Virginia Code §22-15A-18 and §22-15A-20. If a county has adopted a recycling ordinance by referendum vote, the ordinance shall be consistent with the provisions of West Virginia Code §22-15A-18(c) for the applicant to receive priority for a grant.

4.2. Persons responsible for collecting, hauling or disposing of solid waste who do not participate in the collection and payment of the solid waste assessment fee imposed by West Virginia Code §22-15A-19 in addition to all other fees and taxes levied by law for solid waste generated in this state which is destined for disposal, are not eligible to receive grants.

4.3 An applicant that has a current grant from the Recycling Assistance Grant Program is not eligible for the next cycle of grants.

4.4. A request for a waiver to receive consecutive funding may be submitted to the Secretary for the following reasons:

4.4.1. Significant damages, through no fault of the applicant, caused by fire, flood, or other act of nature;

4.4.2. New legislative requirements or restrictions that materially affect program operations.

4.5. A grant recipient who files a delinquent final report shall be ineligible to receive grants for a period of two years following the year in which the delinquent final report was received. A grant recipient who has a final report outstanding and due to the department shall not be eligible to receive a grant.

4.6. Applicants shall be in compliance with all federal, state and local laws, codes, ordinances, rules and regulations to be eligible for a grant.

§33-10-5. Use of a Grant.

5.1. A recycling assistance grant shall be used for:

5.1.1. Personnel - The salary costs of a recycling manager or coordinator, or recycling program laborers. No more than a total of \$25,000 may be used from grant funds for the combined wages and/or benefits of a recycling manager, coordinator, and/or laborers;

5.1.2. Conference Attendance - Educational recycling conference expenses limited to: airfare or mileage, meals, lodging, parking and registration fees. No more than a total of \$1,500 may be used from grant funds for travel;

5.1.3. Office Supplies - General office supplies used in the ordinary course of business. No more than \$1,000 may be used from grant funds for office supplies, such as paper, stamps, notebooks, and filing supplies.

5.1.4. Operational Supplies - Operational supplies used in the collection, transportation and processing of recyclable material, such as collection bags, household bins, gaylord boxes, baling wire and gloves.

5.1.5. Equipment - Collection equipment, processing equipment, material handling or storage equipment, scales, and safety equipment used in recycling activities.

5.1.6. Recycling Vehicle Expense - The maintenance, fuel, and insurance for a truck or van used in approved recycling activities. Collecting and transporting materials to market using the program's vehicle and labor is an approved recycling activity;

5.1.7. Printing - Costs associated with printing educational materials on recycling such as pamphlets, posters, flyers, etc;

5.1.8. Advertising - Costs associated with the production and/or placement of recycling advertising in newspaper, radio, business cards, and other advertising related to development and implementation of a recycling program;

5.1.9. Promotional Items - Costs associated with promotional items such as awards, decals, patches, buttons, magnets, and costs associated with the rental of a fair booth and/or exhibit space for creating public awareness;

5.1.10. Utilities - Costs associated with the utilities required to operate a recycling processing center, such as electric, gas, telephone and water. No more than a total of \$1,200 may be used for telephone costs. Rent or lease charges related to a recycling program for a building, or office space are allowable expenditures. However, to obtain grant funds for rent or lease charges, the applicant shall provide the department

with a copy of the written rental or lease agreement which shall exceed twenty years and meet the following criteria:

- a. the rental or lease agreement shall not contain any cancellation or termination clause,
- b. the rental or lease agreement shall not be transferrable, and
- c. the rental or lease agreement shall not allow for subleasing;

5.1.11 Recycling Facility Construction, Improvement and Repairs - A grant may be used for, but not limited to, new construction or repairs or minor improvements to an existing recycling facility, such as loading docks, sheds, structures, abutment walls, fences, roof repair, gravel or paving, if the land is owned or leased by the grantee. However, to obtain grant funds for construction, improvements and repairs for rental or leased property, the applicant shall provide the department a copy of the written rental or lease agreement which shall exceed twenty years and meet the criteria stated in subdivision 5.1.10 of this rule;

5.1.12. Professional Services - To assist in planning and implementation of recycling projects including feasibility studies;

5.1A. A grant may be utilized by local and state governments or state instrumentalities for recycling projects in which a private “for profit” business or a not-for-profit organization is contracted to provide a service, or services, only as long as the bid for the services is in accordance with the appropriate local or state competitive bidding process.

5.2. A recycling assistance grant may not be used for:

5.2.1. The purchase or long term lease of dumpsters or other containers, or their servicing, when they are not part of an approved recycling activity;

5.2.2. Land acquisitions;

5.2.3. The cost for office equipment including such items as desks, chairs, telephones, typewriters, filing cabinets, and photocopying equipment;

5.2.4. Street sweepers or their equivalents;

5.2.5. Entertainment costs (banquets, parties, etc.);

5.2.6. Alcoholic beverages, in-state lunches, and all gratuities;

5.2.7. Beautification projects (plantings, mowing, weeding, etc.) unless the purpose is to provide natural screening to neighboring properties;

5.2.8. Computer hardware/software, provided that, the Secretary may waive or modify this constraint where appropriately justified by the applicant; or

5.2.9. Any type of lobbying expense.

5.3. A grant shall not be used to replace funding which is currently budgeted or being provided by the applicant.

5.4. A grant shall not be used to fund an entity, program, or facility that financially benefited from a Recycling Assistance grant the previous year. A waiver to apply for a consecutive grant may be approved as provided in section 4.4. of this rule. A request for a waiver shall be submitted to the Secretary in writing.

§33-10-6. General Conditions Applicable to Proposals.

6.1. The following general conditions apply to all proposals for funding under the recycling assistance grant program:

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

6.1.2. All proposals shall plan to involve all or a substantial percentage of the community's residents located in the project area and should include a plan to provide public education regarding the recycling program;

6.1.3. The grant proposal should demonstrate the relationship to, and support of, the hierarchy established under West Virginia Code §22C-4, i.e., source reduction, recycling, reuse and resource recovery, and landfilling.

§33-10-7. Schedule of Funding Levels.

7.1. An applicant may receive one grant every other year from the Recycling Assistance Grant Program. The schedule of funding levels per applicant by type of grant is as follows:

Type of Grant	Maximum Grant
Recycling Feasibility Study and Planning Grant	
Local Government	\$ 20,000
Recycling Program Assistance Grant	
Municipality over 10,000 population.	\$150,000
Municipality under 10,000.	\$ 75,000
County or Regional Solid Waste Authority.	\$150,000
County Commission	\$150,000
State agency/state instrumentality or school.	\$ 75,000
Other Interested Party.	\$ 75,000

7.2 An entity, program, organization or facility shall not receive more than \$250,000 during a grant year, regardless of the number of proposals submitted for that entity, program, organization or facility.

§33-10-8. Proposal Content.

8.1. The proposal for a recycling program assistance grant shall contain the following:

8.1.1. An outline of the materials to be source separated and recycled. The list of recyclable material may be adjusted according to whether the generator is residential, commercial or another type of establishment;

8.1.2. A public information program to ensure receipt of good clean quality materials;

8.1.3. A description of a collection system;

8.1.4. A projection of the cost effectiveness and self-sufficiency of the proposed project;

8.1.5. Documentation of the type of in-kind services to be provided by the grantee;

8.1.6. Documentation of any other type of county, state and federal grant assistance, loans, or other financial support received within the 36 month period prior to the grant submission deadline date, including the dollar amount, type of project, purpose of funding, etc., for recycling and/or solid waste management; and

8.1.7. Economic development aspects of the project, i.e.: job creation.

8.1.8. An analysis and projection of materials that are expected to be diverted from the solid waste stream currently being landfilled and the cost and/or savings that are expected to directly result from the proposed project;

8.1.9. A description of the proposed project;

8.1.10. An estimated budget with justification;

8.1.11. Attested financial documents or complete federal tax returns for two years prior to the year in which the proposal is submitted. Local governments that have not had an audit or review in the year or fiscal year prior to the year in which the proposal is submitted shall be allowed to submit the most current two years of attested financial documents, provided that the most recent of those documents are no older than 24 months prior to the submission deadline date. Businesses or other entities that have been in existence less than two years shall submit a detailed business plan to be approved by the department;

8.1.12. A letter of receipt of proposal from the county or regional solid waste authority in which the proposed project shall be located, as required by section 9.2. of this rule;

8.1.13. A time line graph representing the objectives to be completed and the approximate dates of completion;

8.1.14. A checklist in which the applicant indicates eligibility and completion of the proposal;

8.1.15. A narrative profile demonstrating the applicant's past and current performance in recycling and operational methods;

8.1.16. All equipment specifications, provided by the seller and includes the seller's name and the price of the equipment; and

8.1.17. Identify markets able to handle the projected volumes of material to be collected.

8.1.18. The Drug Free Workplace Act of 1988, Title V-D Public Law 100-690, Federal Register, Volume 54, No. 19, and West Virginia Code §60A-2-201 requires that all state governments, federal contractors, and federal and state grant recipients maintain a drug-free workplace. The Act is implemented through additions to the Debarment and Suspension regulations published in the Federal Register on January 31, 1989. The certification form shall be completed and accompany the grant proposal.

8.1.19. Applicants requesting funding for a recycling coordinator/manager must include, as part of the grant proposal, a list of objectives to be achieved during the grant period and the methods of achieving those objectives.

§33-10-9 Submission Requirements.

9.1. All applicants shall make a proposal to the department on prescribed forms as published by the department. All proposals shall meet submission requirements established by the department to be eligible for funding.

9.2. All applicants shall submit a copy of their proposal to the county or regional solid waste authority in which the proposed project is located.

9.3. The original and one copy of the proposal shall be received and logged in by the department on or before 5:00 p.m. of the first business day in July. Proposals shall

be delivered or mailed to: West Virginia Department of Environmental Protection, REAP, 601 57th Street, SE, Charleston, WV 25304.

9.4. Proposals received by the department after the submission deadline shall not be considered for funding.

§33-10-10 Departmental Reviews of Proposals.

10.1. The department reserves the right to reject any and all proposals that do not meet eligibility and submission requirements established by the department and this rule at the department's discretion.

10.2. The department shall review all proposals received on or before the submission deadline to ensure that all required forms, documents, and attachments have been completed and included in the proposal. The department may take action to verify that the information in the proposals is correct at the department's discretion. If a proposal is found to be incomplete or incorrect, the department may, at its discretion, contact the applicant who shall be allowed to remedy the error within the cure period, which is 5:00 p.m. on the last business day in July. Incomplete or inaccurate proposals that have not been corrected by the applicant and received by the department on or before the end of the cure period shall not be considered for funding.

10.3 The department shall present all proposals meeting eligibility and submission requirements to the recycling assistance grant review committee for consideration.

§33-10-11. Recycling Assistance Fund Grant Review Committee.

11.1. The recycling assistance grant review committee, shall be composed of the following: a representative of the municipal league, a representative of business or industry, and a representative from the solid waste industry, a member or representative of the Solid Waste Management Board, each to be appointed by the Secretary; the Director of the West Virginia Development Office; and the Secretary of the Department of Environmental Protection or any other person to whom the agency Secretary has delegated his or her authority or duties. For the purpose of conducting business, four (4) members of the recycling assistance grant review committee are required for a quorum. The Secretary or his or her designee may only vote to break tie votes of the committee. The committee shall consider each proposal and make a determination as to funding. The committee shall submit proposals recommended for funding to the Secretary of the Department of Environmental Protection for final approval and awarding.

11.2. Applicants shall be notified in writing, by the department, of approval or denial of a grant within a reasonable time after proposal award recommendations of the committee have been approved by the Secretary.

§33-10-12. Requirements of Grant Recipients.

12.1. All recycling assistance grants are for a fourteen month period beginning the first of January and ending the last day in February of the following year.

12.2. Unless a grant recipient specifically requests and can demonstrate a need for a larger portion of the awarded grant to initiate the project, the department shall disburse all grants on the following schedule: 30% at the time of grant award with

subsequent payments of 30% to be made upon receipt of a quarterly report. The final payment shall be 10% and shall be withheld until receipt of the third quarterly report.

12.3. The grant recipient shall retain and make available upon request by the Department of Environmental Protection for a period of five years after the grant period, all financial records, supporting documents, statistical records, and all other records as they relate to the proposal, acceptance and use of the grant. The provisions of West Virginia Code §12-4-14 apply to all recycling assistance grants. The grant recipient shall provide the department with a copy of the grant recipient's independent audit report or sworn statement of expenditures, whichever may apply, that cover the entire grant period.

12.4. The grant recipient shall return any unexpended grant funds remaining as of March 1 of the following year to the West Virginia Department of Environmental Protection. If the grant recipient expends any grant funds on or after March 1 this shall be considered an unauthorized expenditure.

12.5. If, through any cause, the grant recipient fails to fulfill in a timely and proper manner its obligation as proposed in the grant proposal, and as accepted and approved by the department, the department shall terminate payment of the remaining grant funds. The grant recipient shall return any amount of the grant used for unauthorized expenditures. Authorized expenditures are those outlined in the original budget that was approved by the grant review committee.

12.6. The grant recipient shall comply with all federal, state and local laws, codes, ordinances, rules and regulations. The department may withdraw all funds from grant recipients who fail to comply with grant guidelines.

12.7. The grant recipient shall deposit the grant immediately upon receipt in a separate checking account. The department may waive this requirement for grant recipients who anticipate having a minimal number of expenditures from the grant during the entire grant period and can demonstrate a high level of accountability through proper internal controls.

12.8. The department shall consider requests for a change in budget only if the change does not materially alter the original grant proposal approved by the grant review committee and the adjustment is a result of conservative spending allowing any excess to be rebudgeted. All requests shall be made in writing on or before December 31 of the grant period.

12.9. The grant recipient shall solicit sealed bids for all purchases which have an estimated value of five thousand dollars (\$5,000) or more. Any attempts to segregate the project into sections having an estimated value of less than \$5,000 may be cause for termination of the grant;

12.9.a. The bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provision of W. Va. Code, §59-3-2. This notice shall be published by the grant recipient in the newspaper with the largest circulation serving the general area twice within fourteen days preceding the final date of submitting bids. The grant recipient shall submit all bid documentation and other evidence of compliance with these procedures for review and approval to the Department of Environmental Protection prior to accepting a bid.

12.10. All grant recipients shall submit the title to equipment purchased with a grant to the West Virginia Department of Environmental Protection listing the West

Virginia Department of Environmental Protection as first lienholder for the lien term. The lien shall apply to equipment purchased with the grant, in whole or part. The title shall be submitted to the department at the address shown in subsection 9.3 of this rule. The grant recipient shall assume the risk of loss and maintain adequate insurance on the equipment;

12.10.a. The department shall determine the lien period for each individual piece of equipment purchased with grant funds using the class-life depreciation schedules published by the Internal Revenue Service. If a piece of equipment is in question as to which class the equipment is to be placed in, the department shall make that determination; and

12.10.b. Public and private sector grants involving equipment shall have subsequent on-site inspections for the term specified.

12.11. Grant recipients shall submit a final report for approval on or before March 31 following the end of the grant period. The report shall include the following:

12.11.1. An evaluation of successes and failures encountered in implementing the original proposal's work tasks;

12.11.2. An evaluation of the operating costs and community support for the project;

12.11.3. An analysis of the economic development achievements, such as job creation;

12.11.4. An analysis of the project including: 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 land filling; and

12.11.5. A complete accounting of the grant expended for the entire year.

12.12. A progress status report and expenditure statement shall be submitted by all grant recipients to the department every quarter containing a brief narrative of accomplishments (including individual volumes of material recycled), projections for the next report period and detailed grant expenditures for the past three months.

12.12.1. The grant recipient shall attach evidence of all grant expenditures to the quarterly reports, including but not limited to; copies of invoices, checks, titles, bids, and bank statements.

12.12.2. The department shall return an incomplete quarterly report to the grant recipient for completion. The department shall withhold any remaining grant payments until it receives a complete report as required in section 12.2. of this rule.

12.13. The department shall periodically conduct site visits with grant recipients. These visits shall be conducted to provide assistance, to review progress, to discuss any problems encountered in project implementation, or to review financial compliancy and clarify discrepancies found in reports the grant recipient has submitted to the department.

§33-10-13. Equal Employment Opportunity.

13.1. To implement the recycling assistance grant, grantee shall agree:

13.1.1. That it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin; and

13.1.2. That all solicitations or advertisements for employees placed by or on behalf of grantee shall state that all qualified applicants shall receive consideration for employment without regard to race, color, age, religion, sex, or national origin.