

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 27, 2996

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No)* Department of Environmental Protection

601 57th Street

Charleston, WV 25304

LEGISLATIVE RULE TITLE: Recycling Assistance Grant Program

1. Authorizing statute(s) citation Chapter 22, Article 15A

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 16, 2006

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

NONE

c. Date of Public Hearing(s) or Public Comment Period ended:

July 17, 2006

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)

July 27, 2006

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Ken Ellison, Director

Division of Land Restoration

601 57th Street, SE, Charleston, WV 25304

(304) 926-0499 Ext 1263 / Fax (304) 926-0457 / kellison@wvdep.org

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same

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 or comment period:

July 17, 2006

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

July 27, 2006

d. Attach findings and determinations and reasons:

Attached

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: Recycling Assistance Grant Program

A. AUTHORITY: Chapter 22 Article 15A

B. SUMMARY OF RULE: Updates and streamlines recycling grant requirements. Establishes rule definitions. Consolidates the type of grants available. Simplifies the grant eligibility criteria. Clarifies uses of grant funding. Clarifies and restructures general conditions and requirements for an applicant and then for a grant recipient. Increases the maximum grant funding levels. Clarifies grant proposal content and submission requirements. Establishes agency review criteria and revises Recycling Assistance Fund Grant Review Committee.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE: Senate Bill 428 enacted Article 15A, The A.James Manchin Rehabilitation Environmental Action Plan. Article 15A transferred the Recycling Assistance Grant Program from the Division of Natural Resources to the Department of Environmental Protection. The law authorizes the Secretary to promulgate updated rules.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

There is no federal counterpart regulation, thus no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL: May 31, 2006.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Recycling Assistance Grant Program

Type of Rule: Legislative Interpretive Procedural

Agency: Department of Environmental Protection

Address: 601 57th Street, S.E.
Charleston, WV 25304-2345

Phone Number: (304) 926-0455 Email: kellison@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This proposed rule amendment makes programmatic guidance and procedural changes and will have no impact on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	FISCAL YEAR		
	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Recycling Assistance Grant Program

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The proposed rule amendment consolidates the former Division of Natural Resources' Recycling Assistance Grant program into the Department of Environmental Protection's Rehabilitation Environmental Action Plan (REAP) program. The rule amendments also updates and clarifies programmatic guidance and procedures. The proposed rule has no overall or specific effect on the existing or future revenue or program budgets.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The rule amendment does not have a fiscal impact because it does not propose any change to the existing revenue nor does it impose any new requirements that would have a fiscal impact.

Date: June 9, 2006

Signature of Agency Head or Authorized Representative

Ken Elman

TITLE 58 33

FILED

LEGISLATIVE RULE

2006 JUL 27 P 2:16

~~BUREAU OF COMMERCE~~

OFFICE WEST VIRGINIA
SECRETARY OF STATE

~~DIVISION OF NATURAL RESOURCES~~

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SERIES 5 10

RECYCLING ASSISTANCE GRANT PROGRAM

§58-5 33-10-1. General.

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

1.2. Authority. -- West Virginia Code ~~§20-11-5a(h)(1)~~. §22-15A-19(h)(1).

1.3. Filing date. -- ~~April 14, 2000~~

1.4. Effective Date. -- ~~May 1, 2000~~

§58-5 33-10-2. Definitions.

2.1. ~~“Director” means the director of the Division of Natural Resources, or his or her, authorized representative.~~

2.2. ~~“Instrumentality” means an agency authorized by state law.~~

2.3. ~~“Municipality” means an incorporated community.~~

~~2.4. "Other Interested Party" means private enterprise and nonprofit organizations.~~

~~2.5. "Recycling Market Procurement" means developing markets for the materials generated by recycling programs.~~

~~2.6. "Recyclable Materials" includes, but is not limited to steel and bimetal cans, aluminum, glass, paper, plastic, tires, white goods and yard waste~~

~~2.7. "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.~~

~~2.8. "White Goods" means bulky appliances such as stoves, hot water heaters, sinks, washers, dryers, refrigerators, and dishwashers.~~

~~2.9. "Division" means the West Virginia Division of Natural Resources.~~

~~2.10. The terms as defined in the Solid Waste Management Rule, 47 C.S.R. 38, are adopted for use, where applicable, in this rule.~~

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 that new product.

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

§58-5 33-10-3. Grants Available From Recycling Assistance Grant Program.

3.1. The recycling assistance grant program provides grants to assist ~~municipalities, counties and others~~ local governments and other interested parties in:

3.1.1. ~~implementation~~ initiating, expanding, or upgrading of 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 the 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 Promotion, Collection Drive, and Office Paper Recovery~~

~~Grant - This grant is available to instrumentalities and state and private colleges in the absence of a county, municipal, or state recycling program, as provided for in West Virginia Code §20-11-6. The grant is for the purpose of implementing recycling programs consisting of source separation, collection and transportation activities; and may include school projects, drop-off collection bins, paper collection equipment and special events which increase public awareness of recycling and its benefits.~~

~~3.3.3. 3.3.2. Local Government Recycling Program Assistance Grant -~~

~~This grant is for the implementation initiating, or expansion of county, municipal and regional expanding, or upgrading recycling programs, and emphasizes the integration of source reduction and recycling. The local or regional solid waste authority shall have a comprehensive solid waste management and siting plan developed and approved by the West Virginia Solid Waste Management Board to qualify for the grant.~~

~~3.3.4. Recycling Market Development Grant~~ This grant is available to state, regional, county or local governments to assist in developing markets for materials collected and/or processed.

~~§58-5 33-10-4. Grant Program Eligibility and Priority and Other Criteria.~~

4.1. All West Virginia ~~municipalities, county commissions, county and regional solid waste authorities, instrumentalities, proprietorships, partnerships, corporations and private schools, 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 subdivisions ~~3.3.1. through 3.3.4.~~ 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 ~~implement recycling programs~~ recycle as a result of a county referendum or pursuant to the provisions of West Virginia Code ~~§20-11-5 and 20-11-6~~ §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 ~~§20-11-5(e)~~ §22-15A-18(c) for the applicant to receive priority for a grant. If the county has one or more municipalities each with a population greater than 10,000, ~~the municipality's program shall, at a minimum, be consistent and coordinated with the county's recycling program.~~ Grant proposals shall meet the following criteria:

~~4.1.1. Municipalities with populations over 10,000; county governments; cooperatives; and other interested parties:~~

~~4.1.1.a. Proposals for grants under subdivision 3.3.1. of this rule shall have work elements that are at a minimum consistent with the provisions of subsections (a) and (b) of West Virginia Code §20-11-5; and~~

~~4.1.1.b. Proposals for grants under subdivision 3.3.3. of this rule shall document that the plan to be implemented has been approved by the solid waste management board. Grant proposals shall include, but not be limited to the following:~~

~~4.1.1.b.A. source separation of at least three recyclable materials;~~

~~4.1.1.b.B. collection and transportation of materials to a processing center; and~~

~~4.1.1.b.C. public education programs which promote recycling.~~

~~4.1.2. A county government required pursuant to West Virginia Code §20-11-5(e) to implement a comprehensive recycling solid waste program shall at a minimum develop a program that is in compliance with the provisions of West Virginia Code §20-11-5(e).~~

~~4.1.3. Special funding proposals for five or more communities or two or more counties combining their efforts to provide a cooperative countywide or multi-county recycling program shall have a comprehensive recycling plan which has been approved by the solid waste management board.~~

~~4.2. Municipalities with a population under 10,000; absence of a municipal program; other interested parties:~~

~~4.2.1. Municipalities with a population under 10,000 may implement a curbside or drop-off recycling program that includes public education, providing transportation of recyclable materials to a processing center, and integration of other recyclable materials into the program;~~

~~4.2.2. In the absence of either a municipal or a countywide recycling program, all instrumentalities, primary and secondary schools, private colleges and universities are eligible to receive grants under subdivisions 3.3.2. and 3.3.4. of this rule. Grant proposals shall include, but not be limited to the following:~~

~~4.2.2.a. source separation of at least two recyclable materials;~~

~~4.2.2.b. collection and transportation of materials to a processing center; and~~

~~4.2.2.c. public education programs which promote recycling.~~

~~4.2.3. Other interested parties may apply for grants provided that grant proposals are consistent with one or more of the objectives listed under subsection 3.1 of this rule, and include, but are not limited to the recycling activities listed under subdivision 4.2.2. of this rule; and~~

~~4.2.4. 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 §20-11-5a §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.

§58-5 ~~33-10~~-5. Use of a Grant.

5.1. A recycling assistance grant shall be used for:

5.1.1. Personnel - A grant is limited to the salary costs associated with adding new or additional positions of a recycling manager, coordinator, or recycling program laborers. No more than a total of \$20,000 may be used from grant funds for the combined wages and/or benefits of a recycling manager, coordinator, and/or laborers;

5.1.2. Travel Conference Attendance - Educational recycling conference expenses are 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 - A grant is ~~allowed for~~ limited to general office supplies, ~~and other supplies, such as collection bags or household bins used for the collection/storage of recyclables;~~ 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 - A grant is limited to operational supplies used in the collection, transportation and processing of recyclable material, such as collection bags, household bins, gaylord boxes, baling wire and gloves.

~~5.1.4.~~ 5.1.5. Equipment - A grant is limited to collection equipment, processing equipment, material handling or storage equipment, scales, and safety equipment used in recycling activities. ~~The equipment is to remain in the grantee's name and may be leased, but not transferred to a third party. The Division of Natural Resources shall by grant agreement acquire a lien interest in property and equipment purchased with grant monies. This lien shall state the terms of release and the period of years in which the lien attaches, in accordance with subdivision 6.1.11. of this rule. All equipment becomes property of the Division of Natural Resources if the recycling program dissolves. At the discretion of the Director, equipment which has not been productively used for 180 days shall become property of the Division of Natural Resources;~~

5.1.5. 5.1.6. Recycling Vehicle Expense - A grant is limited to the lease/purchase, maintenance, fuel, mileage and insurance for a truck or van used in

approved recycling activities. Collecting and Transporting transporting materials to market using the program's vehicle and labor is an approved recycling activity;

~~5.1.6.~~ 5.1.7. Printing - A grant is limited to costs associated with printing educational materials on recycling such as pamphlets, posters, flyers, etc;

~~5.1.7.~~ 5.1.8. Advertising - A grant is limited to 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;

~~5.1.8.~~ 5.1.9. Promotional Items - A grant is limited to 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 - A grant is limited to 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/lease charges related to a recycling program for a building, land, or office space are not allowable expenditures;

~~5.1.9.~~ 5.1.11. Professional Services - A grant is to assist in planning and implementation of recycling projects including feasibility studies; ~~and~~ .

5.1.12. 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.

~~5.1.10. Development Work—A grant is directed towards recycling market procurement.~~

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 acquisition, buildings, fences, or any permanent item to be constructed or affixed to real property;

5.2.3. The cost for office equipment including such items as desks, chairs, telephones, typewriters, files 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.);

5.2.8. Computer hardware/software, provided that, the ~~director~~ 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 fund existing personnel or 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 directly 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.

§58-5 33-10-6. General Conditions Applicable to Grants Proposals.

6.1. The following general conditions apply to ~~counties, municipalities, and instrumentalities~~ all proposals applying for funding under the recycling assistance grant program:

~~6.1.1. The applicant shall be an eligible municipal or county government, and/or instrumentality with an expressed commitment to recycling as a long term solid waste management strategy. This commitment shall be in the form of a formal resolution or ordinance from the local governing body, or a formal policy or rule from a state agency or state instrumentality;~~

~~6.1.2. The proposed recycling project shall be a logical extension of the applicant's current solid waste management services and/or authority to manage solid waste through recycling;~~

~~6.1.3. 6.1.1. The proposed project shall be designed to affect a significant and measurable reduction in the municipal solid waste stream. All grant proposals shall include analysis and projection of materials that will be diverted from the solid waste currently being landfilled and the costs and/or savings that will directly result from the proposed project;~~

~~6.1.4. 6.1.2. All county or municipal 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.

~~6.1.5. Projects proposed for funding shall be designed to collect and recycle at least three items with respect to municipal and county programs and two items with respect to state agency and state instrumentality programs. These items shall be those that are typically discarded with household solid waste (i.e., newspaper, aluminum, steel and bi-metal cans, glass bottles and jars, and number 1 and 2 plastic containers);~~

~~6.1.6. Project proposals shall include a plan to identify markets able to handle the projected volumes of materials to be collected;~~

~~6.1.7. The proposal shall clearly demonstrate that the county, municipality, or state instrumentality will be directly involved in the planning, administration, implementation, monitoring and evaluation of the project. The overall operation and coordination of the project shall be conducted directly by an agency of local or state government, or one of its instrumentalities;~~

~~6.1.8. 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 so long as the bid for the services is in accordance with the appropriate local or state government competitive bidding process;~~

~~6.1.8.a. 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 grant;~~

~~6.1.8.b. 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 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 have available upon request for review by the Division of Natural Resources or its designated representative, bid documentation and other evidence of compliance with these procedures; and~~

~~6.1.8.c. 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 those services are needed;~~

~~6.1.9. A grant may not be used to replace existing personnel, equipment or funding which is currently being provided by the local government;~~

~~6.1.10. All grant recipients shall hold the title to equipment listing the West Virginia Division of Natural Resources as first lienholder for the lien term. The lien shall apply to equipment purchased with West Virginia Division of Natural Resources grant in whole or part. A copy of the title shall be submitted to the division at the address shown in subsection 14.2 of this rule. The grant recipient shall assume the risk of loss;~~

~~6.1.11. The division 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 division may make that determination; and~~

~~6.1.12. Public and private sector grants involving equipment shall have subsequent on-site inspections for the term specified.~~

~~6.2. The following general conditions apply to non profit organizations and private enterprises applying for funding under the recycling assistance grant program:~~

~~6.2.1. The proposed project shall be designed to affect a significant and measurable reduction in the municipal solid waste stream;~~

~~6.2.2. The project may provide recycling market procurement efforts; and~~

~~6.2.3. The project shall be consistent with one or more of the objectives listed under subsection 3.1. of this rule, and include, but is not limited to the recycling activities listed under subdivision 4.2.2. of this rule.~~

~~6.3. Private Sector Grant Guidelines:~~

~~6.3.1. An applicant shall demonstrate through a narrative its past performance in recycling;~~

~~6.3.2. All equipment specifications shall be a part of the grant application and include the equipment seller's name and the price of the equipment;~~

~~6.3.3. All equipment purchases shall be done by public bid;~~

~~6.3.4. The maximum amount of a grant is \$50,000;~~

~~6.3.5. The grantee shall submit quarterly reports showing totals of all recyclables whether or not they relate directly to the grant; and~~

~~6.3.6. All private sector grants are subject to the general grant guidelines in this rule. Where there is a contradiction, subsection 6.3. applies.~~

~~§58-5 33-10-7. Schedule of Grants Available Funding Levels.~~

7.1. ~~Schedule for one applicant:~~ 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:

<u>Type of Grant</u>	<u>Maximum Grant</u>	
<u>Recycling Feasibility Study and Planning Grant</u>		
<u>Local Government</u>		<u>\$ 20,000</u>
 <u>Recycling Program Assistance Grant</u>		
Municipality over 10,000 population.	\$100,000	<u>\$125,000</u>
Community/Municipality under 10,000.	\$ 50,000	<u>\$ 75,000</u>
County or Regional Solid Waste Authority.	\$100,000	<u>\$125,000</u>
<u>County Commission</u>		<u>\$125,000</u>
State agency/state instrumentality or school.	\$ 50,000	<u>\$ 75,000</u>
Recycling Promotion, Collection Drive and Office Paper Recovery.		\$ 50,000
Recycling Feasibility Study/Planning.		\$ 20,000
Recycling Market Development.		\$ 20,000
Non-Profit/Other Interested Party.	\$ 50,000	<u>\$ 75,000</u>

7.2 ~~Schedule for cooperatives~~ For a cooperative recycling between counties, municipalities, or private sector entities, the maximum amount of funding for a cooperative grant shall not exceed \$200,000, or the cumulative of the maximum amount allowable for each individual applicant as stated in subsection 7.1 of this section, whichever is smaller. An entity, program, organization or facility shall not receive more than \$250,000 during a grant year, regardless of the number of applications submitted for that entity, program, organization or facility.

§58-5 33-10-8. ~~Criteria for Developing a Grant Proposal.~~ Proposal Content.

~~8.1. 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.~~

~~8.2. All applicants shall submit to the county or regional solid waste authority in which the proposed project is located, a copy of their application to be reviewed by the members of the solid waste authority to avoid duplication, ensure coordination of solid waste programs, and maximize the market for recyclables.~~

~~8.3. 8.1. The proposal for a recycling program assistance grant shall contain the following:~~

~~8.3.a. A policy statement and/or resolution or ordinance as required by the provisions of this rule;~~

~~8.3.b. 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;~~

~~8.3.c. 8.1.2. A public information program to ensure receipt of good clean quality materials;~~

~~8.3.d. 8.1.3. A description of a collection system;~~

~~8.3.e. Provisions where required to ensure compliance with West Virginia Code §20-11-1, including incentives and penalties;~~

~~8.3.f. 8.1.4. A projection of the cost effectiveness and self-sufficiency of the proposed project;~~

~~8.3.g. 8.1.5. Documentation of the type of in-kind services to be provided by the grantee;~~

~~8.3.h.~~ 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

~~8.3.i.~~ 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 application 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 application;

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 application to the county or regional solid waste authority in which the proposed project is located.

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

§58-5-9 33-10-11. Recycling Assistance Fund Grant Review Committee.

~~9-1. 11.1.~~ All grant proposals will be reviewed by a The recycling assistance grant review committee, shall be composed of the following: a member of a county or regional solid waste authority a representative of the municipal league, a representative of business or industry, and a representative from the solid waste industry, to be appointed by the Director; the Executive Director 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; the Director of the Division of Environmental Protection; and the Director of the Division of Natural Resources; and the Secretary of the Department of Environmental Protection or any other person to whom the agency ~~Director~~ 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 ~~Director~~ 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 approved grants meeting the program's criteria to the Director of the Division of Natural Resources

proposals recommended for funding to the Secretary of the Department of Environmental Protection for final approval and awarding.

~~9.2. The division through the recycling assistance grant review committee reserves the right to reject any and all proposals. Applicants not selected for grants will be notified by the division within a reasonable time after award decisions have been made. Unsuccessful applicants may discuss their proposals with the appropriate staff.~~

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.

~~§58-5-10 33-10-12. Submittal of Grant Applications; Awarding of Grants; Financial Management; and Unexpended Grant and Termination of Grant. Requirements of Grant Recipients.~~

~~10.1. 12.1. All recycling assistance grants are for a one-year fourteen month period beginning the first of January and ending the last day in February of the following year. with a final report due for approval on or before March 31 of the following year.~~

~~10.2. A grant applicant shall submit its complete recycling assistance fund grant application to the division prior to the first day of August each year. The division shall notify all grant applicants in relation to funding of their proposal.~~

~~10.3. 12.2. Unless a grant applicant recipient specifically requests and can demonstrate a need for a larger portion of the awarded grant to initiate the project, the division 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.

~~10.4. 12.3.~~ The ~~grantee~~ grant recipient shall retain and make available upon request by the ~~Division of Natural Resources~~ Department of Environmental Protection for a period of ~~three~~ five years after the grant period, all financial records, supporting documents, statistical records, and all other records as they relate to the application, acceptance and use of the grant. The provisions of West Virginia Code §12-4-14 apply to all recycling assistance grants. The ~~grantee~~ grant recipient shall provide the ~~division~~ department with a copy of the ~~grantee's grant recipient's independently audited financial records~~ independent audit report or sworn statement of expenditures, whichever may apply, that cover the entire grant period.

~~10.5. 12.4.~~ The ~~grantee~~ grant recipient shall return any unexpended grant funds remaining as of March 1 of the following year to the ~~Recycling Assistance Fund~~ West Virginia Department of Environmental Protection. If the ~~grantee~~ grant recipient expends any grant funds on or after March 1 this shall be considered an unauthorized expenditure.

~~10.6. 12.5.~~ If, through any cause, the ~~grantee~~ grant recipient fails to fulfill in a timely and proper manner its obligation as proposed in the grant application, and as accepted and approved by the ~~division~~ department, the ~~division~~ department shall terminate payment of the remaining grant funds. The ~~grantee~~ 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.

~~10.7.~~ 12.6. The grantee grant recipient shall comply with all applicable federal, state and local laws, codes, ordinances, rules and regulations. The division department may withdraw all funds from grantees grant recipients who fail to comply with grant guidelines, ~~and may not give future consideration of grants.~~

~~10.8.~~ 12.7. The grantee 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.

~~10.9.~~ ~~Grantees with a current grant are not eligible for the next cycle of grants. The Grant Review Committee may recommend exceptions for final approval by the Director of the division. A grantee who files a delinquent final report is ineligible for future grants.~~

~~10.10.~~ 12.8. The division department shall ~~grant a 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. ~~(Example: Budgeted \$20,000 for the purchase of a baler. The baler costs \$18,000. The extra \$2,000 may be rebudgeted upon approval.)~~ 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.

~~§58-5-11. Site Visits and Reports Required.~~

~~11.1.~~ 12.11. ~~Grantees~~ Grant recipients shall submit a final report for approval on or before March 31 ~~of the year~~ following the end of the grant award period. The report shall include the following:

~~11.1.1.~~ 12.11.1. An evaluation of successes and failures encountered in implementing the original proposal's work tasks;

~~11.1.2.~~ 12.11.2. An evaluation of the operating costs and community support for the project;

~~11.1.3.~~ 12.11.3. An analysis of the economic development achievements, such as job creation;

~~11.1.4.~~ 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

~~11.1.5.~~ 12.11.5. A complete accounting of the grant expended for the entire year.

~~11.2.~~ 12.12. A progress status report and expenditure statement shall be submitted by all ~~grantees~~ grant recipients to the ~~division~~ 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.

~~11.2.1.~~ 12.12.1. The ~~grantee~~ 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.

~~11.2.2.~~ 12.12.2. The ~~division~~ department shall return an incomplete quarterly report to the ~~grantee~~ grant recipient for completion. The ~~division~~ department shall withhold any remaining grant payments until it receives a complete report as required in section ~~ten (10)~~ 12.2. of this rule.

~~11.3.~~ 12.13. The ~~division~~ department shall periodically conduct site visits with grant recipients. These visits ~~will~~ shall be conducted to provide assistance, to review progress, ~~and~~ 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. ~~Site visits present important opportunities for direct, on-site communications between the division and grant recipients, and may include inspections from the Division of Environmental Protection and site visits from the West Virginia Solid Waste Management Board.~~

~~§58-5-12~~ 33-10-13. **Equal Employment Opportunity.**

~~12.1.~~ 13.1. To implement the recycling assistance grant, grantee shall agree:

~~12.1.1.~~ 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

~~12.1.2.~~ 13.1.2. That all solicitations or advertisements for employees placed by or on behalf of grantee shall state that all qualified applicants ~~will~~ shall receive consideration for employment without regard to race, color, age, religion, sex, or national origin.

~~§58-5-13. Certification Regarding Drug-Free Workplace Requirements.~~

~~13.1. 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 application.~~

~~§58-5-14. Submission of an Application.~~

~~14.1. The application for a recycling assistance grant shall contain in addition to a description of the proposed project, an applicant profile, an estimated budget with justification, certification regarding a drug-free workplace, an application checklist, a time line graph, attested financial documents, a letter of receipt of application from county solid waste authority, and equipment specifications. The division shall not consider incomplete applications and shall mark them "incomplete" and return them to the applicant. The applicant may complete the returned application and resubmit it before the grant submission deadline date.~~

~~14.2. The original and one copy of the application must be received by the division on or before 5:00 p.m. of the last business day in July. Applications shall be hand delivered or mailed to: West Virginia Division of Natural Resources, 1900 Kanawha Boulevard, East, Building 3, Room 732, Charleston, West Virginia 25305-0665.~~

**BEFORE THE WEST VIRGINIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION
DIVISION OF LAND RESTORATION**

IN THE MATTER OF:

**Public Hearing, Division of Land Restoration
West Virginia Department of Environmental Protection
Recycling Assistance Grant Program 22-15a**

**TRANSCRIPT OF PROCEEDINGS had in the
above-styled matter, taken pursuant to notice, at the offices of the
West Virginia Department of Environmental Protection, Hawks Nest
Conference Room, 601 57th Street, S.E., Charleston, West Virginia,
commencing at 6:00 p.m., on the 17th day of July, 2006.**

**BILLANTI & ASSOCIATES
COURT REPORTERS
1033 RIDGEMONT DRIVE
ELKVIEW, WV 25071
304-965-7444**

APPEARANCES:

**GARY ROGERS, AUDITOR
REAP PROGRAM
WV DEPARTMENT OF ENVIRONMENTAL PROTECTION**

ALSO PRESENT:

Sandy Rogers

I N D E X

<u>SPEAKERS:</u>	<u>PAGE</u>
Greg Sayre	5
Cubert Smith	12

Reporter's Certificate..... 14

P R O C E E D I N G S

(6:00 p.m.)

1
2
3 MR. ROGERS: My name is Gary Rogers and
4 I am with the REAP Program. I'm the auditor for
5 that program. Welcome to the DEP and the public
6 hearing for the Recycling Assistance Grant
7 Program Rule.

8 These rules update and streamline
9 recycling grant requirements, establish rule
10 definitions, consolidate types of grants
11 available, simplifies the grant eligibility
12 requirements for applicants and recipients,
13 increases the maximum grant funding levels,
14 clarifies grant proposal content and submission
15 requirements, establishes agency review criteria
16 and revises the Grant Review Committee.

17 Please make sure that you have
18 signed in and indicated that you would like to
19 make a comment. We appreciate that you made the
20 trip to participate in the rule-making process.

21 We'll be accepting your comments,
22 both written and oral. Please note that the

1 comment period officially closes at the end of
2 this meeting. If you have already submitted or
3 are going to submit written comments, you do not
4 also have to make them orally. Written comments
5 are as much a part of the record as oral
6 comments. Please submit those by the end of the
7 hearing.

8 We're here this evening to listen
9 to you and to include your thoughts in the
10 official record. We understand that you may
11 have some questions as well. A question in and
12 of itself is a comment. Please enter your
13 question into the record along with your
14 comments and we will respond to those as well.

15 Before we begin accepting comments,
16 is there anyone here who wants to attend another
17 hearing that is currently being conducted in the
18 building?

19 (No response.)

20 MR. ROGERS: No? All right. Then we'll
21 go ahead and accept comments. Greg Sayre.

22 MR. SAYRE: Yes, thank you. My name is

1 Greg Sayre and I'm the Executive Director of the
2 Association of Independent Professional
3 Recyclers, which is an organization that
4 represents private recycling companies.

5 I have reviewed the proposed grant
6 rules and I think our association probably
7 agrees with most of the changes that the
8 individuals who worked on the revision have
9 made. Therefore, my comments really are pretty
10 much limited primarily to one item, and that's
11 primarily proposed rule 5.1.1. That item deals
12 with personnel or grant dollars allocated to
13 personnel.

14 The proposed rule reads, "A grant
15 is limited to the salary costs of adding new or
16 additional positions of a recycling manager,
17 coordinator, or recycling program laborers. No
18 more than a total of \$20,000 may be used from
19 grant funds for the combined wages or benefits
20 of a recycling manager, coordinator, and/or
21 laborers."

22 What the proposed rule does

1 is -- currently the rule allocates \$20,000 and
2 that funding can be used for the funding of
3 recycling positions, whether they are new or
4 pre-existing positions. I understand, I think,
5 the philosophy of the agency in revising that.

6 However, the association feels that
7 there is a strong interest and a strong
8 connection between recycling and litter control.
9 We think the two go hand-in-hand. We think
10 there is an interest in trying to do things with
11 litter, and many times litter or clean-up
12 projects have a recycling component.

13 Several years ago the Kanawha
14 County Commission applied for a grant to fund or
15 help fund and support their community clean-ups
16 that they have each year four or five times. At
17 those community clean-ups generally there is a
18 metal collection program and in the last couple
19 of years, the Kanawha County Solid Waste
20 Authority has also had a recycling bin there for
21 newspapers and other items.

22 So you have people coming in and

1 yes, they're bringing in a lot of trash, but
2 they're also bringing in metal items that get
3 recycled, and oftentimes they're bringing in
4 newspapers and other things that get thrown into
5 the bin. So there is a recycling component to
6 that program.

7 However, that project was denied
8 several years ago on the basis that you are
9 paying for the garbage pickup and the recycling,
10 the county was getting money or it was being
11 done for free. But if you hadn't had the
12 garbage clean-up, you wouldn't have got the
13 recyclables.

14 And so, what my thought is, is that
15 perhaps there's a way to fund projects like
16 that, and what we are recommending is a change
17 to the rule that reads basically that,
18 "Personnel. A grant is limited to the salary or
19 wages of the following: recycling manager,
20 coordinator, recycling program laborers, or 2,
21 litter control and community clean-up laborers
22 or managers, and that no more than a total of

1 \$12,500 may be used from grant funds for these
2 purposes."

3 So what we have done or what we
4 have recommended is that we expand what local
5 governments can use the personnel line item for,
6 but we've also reduced it, and we've also said,
7 you know, I don't really care if it's a new
8 person or an old person, or an existing person.
9 You know, we basically reduced the amount, but
10 given them more flexibility on how they can
11 spend it.

12 It's our belief that just by hiring
13 a day laborer, if you went out here and you
14 hired a Manpower, or Labor Ready, or whatever,
15 that for \$12,500 you could clean up 150 or more
16 highway miles. And that's a lot of miles.
17 That's a lot of miles. And you probably, you
18 know, you could probably set up a program where
19 the aluminum cans are segregated from the rest
20 of the trash you pick up and maybe some other
21 items.

22 The other thing that we looked at

1 perhaps though is that if you would agree to
2 this rule, that for a community to get money for
3 the litter control, they have to have a
4 recycling program; meaning if the City of
5 Charleston which has a recycling program wanted
6 to get \$12,500 to hire people to clean up the
7 streets of Charleston, fine, they've got a
8 recycling program.

9 Now let's say if we went to
10 Princeton. Well, Princeton doesn't have a
11 recycling program. Well, you can't get the
12 \$12,500, and that was kind of our concept.

13 But basically, and I'll quit here,
14 we think this is something the committee should
15 look at. I'm familiar with your litter control
16 grants and the matching grants. I know you're
17 trying to address some issues with that, but I
18 just don't think there's enough money there, I
19 don't think there will ever be enough money
20 there.

21 I think what I'm looking at is
22 something that, you know, maybe gives the

1 program a little more, a little bit of a new
2 direction but may be a little bit of a lift. I
3 think you have a lot of people, especially the
4 small towns -- and again, this is not something
5 that I could say the private sector, we're
6 asking for the \$12,500.

7 We think, though, this is something
8 that would be good for the state, good for the
9 public, and ultimately, you know, we'll get the
10 recyclables from a lot of these litter or
11 clean-up projects. I don't think we'll be
12 getting the \$12,500, but I think it would be a
13 good change and we've got it written down here
14 so you-all can mark it all up in red.

15 But the idea, basically, is to take
16 that money for personnel, maybe give some of our
17 existing people, maybe some new people a new
18 direction and allow a lot of our local
19 governments that have been doing recycling to
20 maybe be rewarded for doing something else.

21 And like the project that the
22 Kanawha County Commission does, this doesn't

1 even cover their costs I know, but it's more
2 than what we've been able to help them with in
3 the past. I just think it's a good rule change
4 and encourage its adoption. Thank you.

5 MR. ROGERS: Okay. Does anybody else
6 want to make any comments?

7 MR. SMITH: I haven't read the -- I was
8 told that this was -- I'm Cubert Smith -- that
9 this meeting was occurring, but I haven't read
10 that document that seems to have gone out to
11 everybody in this room.

12 MR. ROGERS: Would you like the
13 opportunity to read it and then comment on it in
14 a few minutes or something?

15 MR. SMITH: Yeah. He had mentioned one
16 thing that -- right here I think it is -- that
17 on the board made to evaluate these grants, they
18 had removed the representative from the solid
19 waste authorities. And I was just wanting to
20 ask a question and replace it with someone else.
21 What was the rationale for that?

22 MR. ROGERS: Okay. I can't answer that

1 question here, but we can provide you with a
2 comment on that.

3 MR. SMITH: Okay.

4 MR. ROGERS: If you want to make that
5 part of the record, your comment, we can send
6 you a response.

7 MR. SMITH: I'd appreciate that, yes.
8 But that's all. Can I stop by your office and
9 get one of these for my file?

10 MR. ROGERS: Oh, absolutely.

11 All right. If we don't have
12 anybody else for public comments, this completes
13 the official comment period. We'll file the
14 rule with our responses to your comments on or
15 before July 28 with the Secretary of State's
16 Office.

17 MR. SMITH: When will this go into
18 effect, Gary?

19 MR. ROGERS: Honestly, I don't know.

20 MR. SMITH: Okay.

21 MS. ROGERS: Not for this grant year,
22 right?

1 MR. ROGERS: No.

2 MR. SAYRE: No. It will have to go
3 through legislative rule-making. That's a copy
4 that you've got.

5 MR. SMITH: Okay.

6 MR. ROGERS: Is that your comment?

7 MR. SAYRE: That's a written comment,
8 yeah.

9 MR. ROGERS: We'll give that to Ken and
10 everybody else. That's it. If you want to sign
11 up for the public notice mailing list, you can
12 do that as well.

13 MR. SMITH: Can this be used, can this
14 address be used for that? This is my home
15 address.

16 MR. ROGERS: Yes. We can sign you up
17 for that.

18 MR. SAYRE: Okay. I appreciate that.

19 MR. ROGERS: All right.

20 (WHEREUPON, the hearing was
21 concluded at 6:15 p.m.)

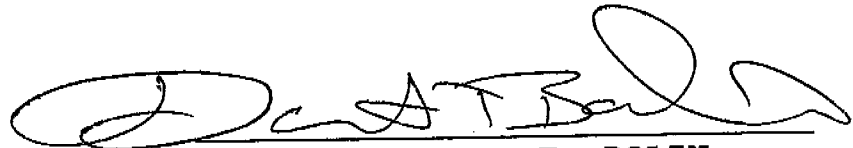
REPORTER'S CERTIFICATE

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STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

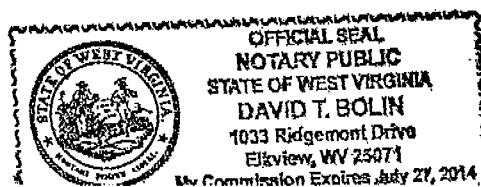
I, DAVID T. BOLIN, Court Reporter and
Notary Public in and for the State of West
Virginia, hereby certify that the foregoing is a
true and correct transcript of all proceedings
had and evidence adduced, together with all the
objections made and rulings thereon, and
exceptions thereto, as stated in the caption
hereto, as reported by me by means of the
stenomask and stenographic characters and
transcribed into the English language.

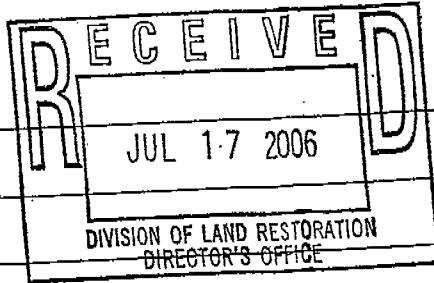
Given under my hand, this 19th day of
July, 2006.



DAVID T. BOLIN
Court Reporter
and Notary Public

My commission expires July 27, 2014.





July 15, 2006
SATURDAY

DEAR O.E.P.:

MY NAME IS JUDY WOLFRAM AND I AM THE CHAIRMAN OF THE WILKINSON COUNTY SOLID WASTE AUTHORITY. AS SUCH I HAVE RECEIVED AND READ A COPY OF YOUR ^{PROPOSED} REQUIREMENTS TO APPLY FOR A GRANT, AND MY GOODNESS, I MUST SAY THAT IT DOESN'T LOOK PROMISING FOR US TO RECEIVE ONE OF YOUR GRANTS

WE ARE A RECYCLING CENTER IN A SMALL POOR COUNTY. EVERYONE THAT HAS BEEN INVOLVED WITH OUR PROGRAM HAS WORKED VERY HARD AND WE HAVE ACHIEVED MINIMAL SUCCESS. WE ARE PROUD OF OUR PROGRAM AND ALL WHO ARE INVOLVED.

WE ONLY HAVE ONE PAID EMPLOYEE WHO WORKS VERY HARD, BUT ACCORDING TO YOUR REQUIREMENTS, WE HAVE THREE ANOTHER PERSON IN ORDER TO GET MONEY FOR SALARIES. IT HARDLY SOUNDS FAIR TO ME.

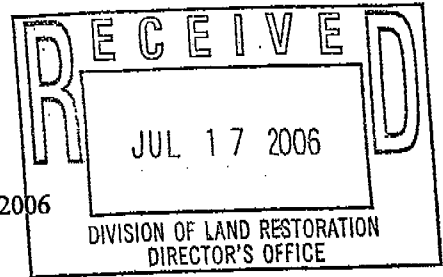
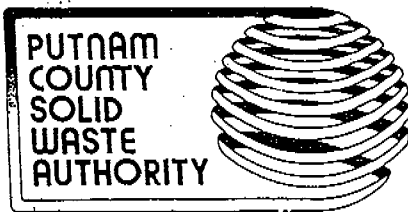
ALSO ACCORDING TO YOUR ^{PROPOSED} REQUIREMENTS WE CAN RECEIVE GRANT MONEY FOR AIR FARE, MEALAGE, MEALS, LODGING, PARKING, AND REGISTRATION FEES FOR CONFERENCES BUT NO MONEY FOR EXTRA OFFICE SUPPLIES WHICH IS WHAT WE DEPERATELY NEED AND USE. AND LET ME GET THIS STRAIGHT, WE COULD USE GRANT MONEY FOR PROMOTIONAL FEES, AWARDS, DECALS, PATCHES, BUTTONS AND MAGNETS BUT THERE IS NO MONEY TO FIX OR PAIR THE BUILDING THAT IS THE VERY HEART OF OUR PROGRAM. I JUST THOUGHT THAT I WOULD VOICE MY OPINION ON TH

WHOLE PROCESS, NONE OF WHICH SOUNDS VERY SOLID WASTE
OR RECYCLING CENTER FRIENDLY.

I LOVE MY VOLUNTEER WORK AS CHAIRMAN OF OUR SOLID WASTE
AUTHORITY, I FEEL GOOD WHEN I RECYCLE. I LOVE KNOWING
THAT I HAVE SAVED A SMALL SPOT IN SOME LAND FROM
BEING FILLED, IT MAKES ME PROUD TO HELP CLEAN UP OUR VERY
BEAUTIFUL STATE. HOW ABOUT YOU? I SURE HOPE SO.

SINCERELY

MRS. JUDY WOLFRAM



Division of Land Restoration
Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304-2345

July 10, 2006

Dear DEP Officials:

The Putnam County Solid Waste Authority would like to make the following comments on the proposed rule changes to the Recycling Assistance Grant Program.

In respect to proposed rule 5.1.1 Personnel-A grant is limited to the salary costs of adding new or additional positions of a recycling manager, coordinator, or recycling program laborers. No more than a total of \$20,000 may be used from grant funds for the combined wages and/or benefits of a recycling manager, coordinator, and/or laborers.

The Putnam County Solid Waste Authority suggests the following revision to the rule:

- 5.1.1 Personnel-A grant is limited to the salary or wages of the following:
- 1.) recycling manger, coordinator, or recycling program laborers
 - 2.) litter control or community cleanup laborers
 - 3.) building contractors

No more than a total of \$20,000 may be used from grant funds for these purposes.

The Putnam County Solid Waste Authority believes recycling grant funds could be better utilized by both maintaining existing personnel and by expanding the scope of what types of activities personnel can be involved in. By adding litter control, community clean-ups, and contractors the DEP can assist grant applicants in more varied ways. Recycling and community clean-ups often go hand in hand. Our county clean-up activities always involve a recycling component and this is often one of our most effective ways to recycle

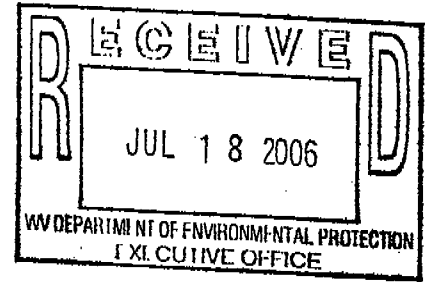
In Putnam County our recycling program would have been severely hampered without buildings and concrete funded by the Recycling Grant Program. In previous years grant funds have been used to construct concrete pads at our recycling drop-off locations at Red House, Nitro and Hurricane. We have also received funding for two buildings that not only have improved our recycling activities but have been an aid in controlling storm water run-off. We think this twenty thousand dollar limit placed upon grant applicants for building contractual expenses would allow applicants to improve their physical recycling infrastructure without involving the DEP in the placing of liens on buildings, loading docks and concrete pads. Attractive drop-off locations increase public participation in recycling, reduce litter around drop-off sites, and add to a community's sense of pride.

The Putnam County Solid Waste Authority respectfully asks that the Department of Environmental Protection to consider these comments. We feel that these changes will improve the, "State of the Environment in West Virginia", and provide grant applicants greater flexibility in utilizing the \$20,000 in personnel expense.

Sincerely yours,

Wayne Bennett, Chairman





ASSOCIATION OF INDEPENDENT PROFESSIONAL RECYCLERS
PO BOX 3706
Charleston, WV 25337
Phone 342-4388

Division of Land Restoration
Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304-2345

July 17, 2006

The Association of Independent Professional Recyclers would like to make the following comments on the proposed rule changes to the Recycling Assistance Grant Program.

The Association has reviewed proposed rule 9.2

All applicants shall submit to the county or regional solid waste authority in the proposed project is located, a copy of their application to be reviewed by the members of the solid waste authority to avoid duplication, ensure coordination of solid waste programs and maximize the market for recyclables.

The Association believes the rule goes beyond the statutory authority of 22-15A-18(6). Only municipalities which adopt a recycling ordinance are required to do this. Even in this case it is only the ordinance that the solid waste authority is consulted with. The Association suggests that the proposed rule be modified as follows:

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

In respect to proposed rule 5.1.1 Personnel-A grant is limited to the salary costs of adding new or additional positions of a recycling manager, coordinator, or recycling program laborers. No more than a total of \$20,000 may be used from grant funds for the combined wages and/or benefits of a recycling manager, coordinator, and/or laborers.

The Association of Independent Professional Recyclers suggests the following revision to the rule:

- 5.1.1 Personnel-A grant is limited to the salary or wages of the following:
1.) recycling manger, coordinator, or recycling program laborers

2.)litter control and community cleanup laborers, or managers

No more than a total of \$12,500.00 may be used from grant funds for these purposes.

The Association feels that recycling grant funds could be better utilized by expanding the range of activities personnel funded by grant dollars can be involved in. By adding litter control, and community clean-ups as a permissible grant fund use, new resources can be directed toward these local problems. Municipalities and county governments can begin to put in place active roadside litter pick-up programs in conjunction with their recycling programs. Recycling and community clean-ups often go hand in hand. In Kanawha County, the County Commission clean-up activities always involve a recycling component. Clean-up projects like the one in Kanawha County are not currently eligible for funding from your recycling grant program. **The Association estimates that \$12,500.00 would allow a county or municipality to hire day laborers to pick-up at least 150 highway miles of roadside litter.** That is quite a bit of litter. The proposed rule change will add new vitality to the existing recycling grant program. The change will address an important community and statewide problem. The change will also utilize the existing financial resources of DEP to improve the state of the environment.

The Association feels that such a change would be within the statutory framework of the recycling grant program. Grant applicants may have to demonstrate they operate a recycling program that source separates at least three recycled items. Many communities in West Virginia do this. The availability of grant funds for litter control would be an additional reward for communities that are providing recycling services. The Association is also recommending that the total maximum awarded for personnel be reduced to \$12,500.00. This will allow more funds to be available to more local communities. The Association does not think that it matters that funds are used by new or existing local government personnel. The important thing is that the funds are used to clean-up the environment and recycle as much of these resources as possible.

The Association hopes these comments are helpful, and they will add to the success of REAP, the next generation. Copies of these comments are being forwarded to Senator McCabe. He has shown an ongoing concern about roadside litter throughout West Virginia.

Sincerely yours,



Greg Sayre, Executive Director

Cc Senator Brooks McCabe

RESPONSE TO COMMENTS - - 33CSR10

The comment period for the Recycling Assistance Grant Program rule, 33CSR10, closed July 17, 2006. Written comments were received from the Calhoun County Solid Waste Authority (CCSWA), the Putnam County Solid Waste Authority (PCSWA), and the Association of Independent Professional Recyclers (AIPR). A public hearing was held on July 17, 2006, at which representatives from the Kanawha County Solid Waste Authority (KCSWA) and the Association of Independent Professional Recyclers (AIPR) presented their comments.

COMMENT A:

The CCSWA suggested increasing the maximum amount of grant funding that can be used for personnel costs to \$30,000 plus payroll taxes.

RESPONSE A:

The grant program currently allows a maximum of \$20,000 to be used for all personnel costs. The grant program's intent is to initiate new recycling programs and expand current programs. The grant program does provide for certain operating costs such as personnel costs, supplies, vehicle operating costs, utilities, advertising and promotional costs. However capital expenditures are the primary concern in the initiation or expansion of recycling programs, which reduces or eliminates long-term capital outlay and allows programs to operate more efficiently and effectively. Programs can then redirect their own funding toward operating costs.

COMMENT B:

The CCSWA commented that the grant program is funded by taxpayer dollars and that funneling public money to private companies amounts to little more than corporate welfare. The CCSWA feels that public money should be spent on public programs and that solid waste authorities should be given preference.

RESPONSE B:

Historically, private sector recyclers have proven to operate more effectively and efficiently than public recycling facilities. When comparing the amount of grant dollars awarded to the private sector to the large amount of material they recycle, their "grant dollars per tons recycled" is significantly lower than that of the public operations. The private sector recyclers are also contributors to the assessment fee from which the grants are awarded through the disposal costs paid to the waste haulers that serve them.

COMMENT C:

The CCSWA commented that it should be clearly stated in the rule that proposed projects be consistent with solid waste authority recycling plans, and be approved by the area solid waste authorities.

RESPONSE C:

Grant applicants are required to submit their application to their county solid waste authority for review. The solid waste authorities have the opportunity to express any concerns regarding those applications to the Department of Environmental Protection (DEP) and the grant review committee prior to the awarding of the grants. Those concerns are considered in awarding the grants. Solid waste authorities are eligible to apply for grants and therefore should not be in a position approve any application from their county. By allowing them to express their concerns to the DEP, which will make the decision of whether to award the applicant, it eliminates any appearance of conflict for the authorities.

COMMENT D:

The CCSWA commented that grants awarded to private enterprise should only be funded for serving underserved areas or for handling materials that are not profitable.

RESPONSE D:

To limit private sector grants to under served areas or unprofitable materials, without putting the same stipulation on public entities, would insinuate that the State of West Virginia does not want the private sector competing with local governments in a free market for the valuable materials.

COMMENT E:

The CCSWA commented that, in the case of waste haulers, grants should only be awarded to those that offer proof that they are actually recycling.

RESPONSE E:

The recycling assistance grant program's purpose is to help entities initiate or expand their recycling operation. Ensuring that any entity is recycling prior to applying for a grant defeats part of the purpose of the grant program.

COMMENT F:

The CCSWA commented that facility improvements should qualify for grants on long-term leased real property.

RESPONSE F:

The DEP attaches and perfects liens through the Secretary of State's Office (SOS) on all equipment purchased with grant funds. These liens ensure that the grantee will be in operation long enough to justify the capital expenditure and protects the State's financial interests. If the operation fails within the lien period the DEP will repossess the equipment and place it at another operating recycling facility. The DEP is unable to secure and perfect liens on real property through the SOS or at the county level. With this in mind, and considering that leases generally contain thirty-day cancellation clauses, this provides no real protection for the lessee's operation or the State's investment in the improvements made on the real property.

COMMENT G:

The CCSWA commented that flexibility should be built into the rules.

RESPONSE G:

The flexibility, which is already in the rule, is that virtually any West Virginia entity can apply for a grant. There are only two major spending restrictions, which are (1) \$20,000 limitation for personnel costs, and (2) no real property expenditures. As long as the grant is used for the purpose and benefit of recycling, the rules are flexible.

COMMENT H:

The CCSWA recommended that the representative from the solid waste industry be replaced with a representative from the recycling industry.

RESPONSE H:

A member from the solid waste industry is more apt to understand the most effective and efficient collection methods for the various areas in West Virginia, the types of materials being discarded by West Virginia residents, and the various markets available for those materials. A representative from the recycling industry is usually an expert in receiving and processing only one or a few materials and is less likely to know the best methods of collection or establishing recycling programs.

COMMENT I:

Both CCSWA and PCSWA commented on the issue of grants being used to fund only new or additional personnel.

RESPONSE I:

The grant program is designed for the initiation or expansion of recycling programs. One of the goals of the grant program is to establish and expand self-sustaining programs that would allow future available grant funds to continue the cycle of creation and growth. Funding the same existing personnel each time a grant is awarded indicates no growth in the program and in fact, implies the inability to be a self-sustaining program. By funding programs that are not self-sustaining it reduces the amount of annual funding available to new and growing programs.

COMMENT J:

The CCSWA commented that the grant rule does not allow the purchase of extra office supplies.

RESPONSE J:

The rule limits the purchase of office supplies such as paper, stamps, notebooks and filing supplies to \$1,000, but does not limit the purchase of operating supplies. Operating supplies are those items needed for the collection, transportation and processing of recyclable material, which would include, but is not limited to, collection bins and bags, baling wire and gloves.

COMMENT K:

Both PCSWA and AIPR suggested that the cost of litter control personnel should be an allowable use of grants, provided that the litter control projects contain some component of recycling.

RESPONSE K:

Litter control projects that involve any significant component of recycling are short term, generally in the form of collection drives or clean up projects lasting only a few days. The DEP's Pollution Prevention and Open Dump (PPOD) Program is available to the county to conduct similar types of collection drives and clean up projects. The Litter Control Grant Program, which is a small matching grant program, is also available to local governments for litter control programs.

COMMENT L:

The KCSWA commented on the removal of a member of the grant review committee, specifically the representative of a county or regional solid waste authority.

RESPONSE L:

Under the previous rule, the grant review committee included a member from a county or regional solid waste authority and the Executive Director of the Solid Waste Management Board, which oversees the county authorities' comprehensive plans and provides assistance, including financial assistance through grants, to all West Virginia solid waste authorities. This situation created the appearance of one member having influence over another member of the committee as well as having two members representing one type of applicant, the solid waste authorities.

COMMENT M:

The AIPR commented that section 9.2 of the rule "goes beyond the statutory authority of §22-15A-18(6). Only municipalities with a population of 10,000 or greater are required to consult with the solid waste authority in order to avoid duplication and ensuring coordination of solid waste programs.

RESPONSE M:

The Department of Environmental Protection (DEP) agrees with the comment and will revise section 9.2 of the rule to read, "All applicants shall submit a copy of their application to the county or regional solid waste authority in which the proposed project is located". The intent of section 9.2 is to ensure that county solid waste authorities are aware of the recycling programs in their county. This will assist the authorities in updating their comprehensive plans and enable them to provide accurate information to the citizens of the county regarding the recycling activities in the area.

RESPONSE TO COMMENTS - - 33CSR10

The comment period for the Recycling Assistance Grant Program rule, 33CSR10, closed July 17, 2006. Written comments were received from the Calhoun County Solid Waste Authority (CCSWA), the Putnam County Solid Waste Authority (PCSWA), and the Association of Independent Professional Recyclers (AIPR). A public hearing was held on July 17, 2006, at which representatives from the Kanawha County Solid Waste Authority (KCSWA) and the Association of Independent Professional Recyclers (AIPR) presented their comments.

COMMENT A:

The CCSWA commented that facility improvements should qualify for grants on real property.

RESPONSE A:

The DEP attaches and perfects liens through the Secretary of State's Office (SOS) on all equipment purchased with grant funds. These liens ensure that the grantee will be in operation long enough to justify the capital expenditure and protects the State's financial interests. If the operation fails within the lien period the DEP will repossess the equipment and place it at another operating recycling facility. The DEP is unable to secure and perfect liens on real property through the SOS or at the county level.

COMMENT B:

Both CCSWA and PCSWA commented on the issue of grants being used to fund only new or additional personnel.

RESPONSE B:

The grant program is designed for the initiation or expansion of recycling programs. One of the goals of the grant program is to establish and expand self-sustaining programs that would allow future available grant funds to continue the cycle of creation and growth. Funding the same existing personnel each time a grant is awarded indicates no growth in the program and in fact, implies the inability to be a self-sustaining program. By funding programs that are not self-sustaining it reduces the amount of annual funding available to new and growing programs.

COMMENT C:

The CCSWA commented that the grant rule does not allow the purchase of extra office supplies.

RESPONSE C:

The rule limits the purchase of office supplies such as paper, stamps, notebooks and filing supplies to \$1,000, but does not limit the purchase of operating supplies. Operating supplies are those items needed for the collection, transportation and processing of recyclable material, which would include, but is not limited to, collection bins and bags, baling wire and gloves.

COMMENT D:

Both PCSWA and AIPR suggested that the cost of litter control personnel should be an allowable use of grants, provided that the litter control projects contain some component of recycling.

RESPONSE D:

Litter control projects that involve any significant component of recycling are short term, generally in the form of collection drives or clean up projects lasting only a few days. The DEP's Pollution Prevention and Open Dump (PPOD) Program is available to the county to conduct similar types of collection drives and clean up projects. The Litter Control Grant Program, which is a small matching grant program, is also available to local governments for litter control programs.

COMMENT E:

The KCSWA commented on the removal of a member of the grant review committee, specifically the representative of a county or regional solid waste authority.

RESPONSE E:

Under the previous rule, the grant review committee included a member from a county or regional solid waste authority and the Executive Director of the Solid Waste Management Board, which oversees the county authorities' comprehensive plans and provides assistance, including financial assistance through grants, to all West Virginia solid waste authorities. This situation created the appearance of one member having influence over another member of the committee as well as having two members representing one type of applicant, the solid waste authorities.

COMMENT F:

The AIPR commented that section 9.2 of the rule "goes beyond the statutory authority of §22-15A-18(6). Only municipalities with a population of 10,000 or greater are required to consult with the solid waste authority in order to avoid duplication and ensuring coordination of solid waste programs.

RESPONSE F:

The Department of Environmental Protection (DEP) agrees with the comment and will revise section 9.2 of the rule to read, "All applicants shall submit a copy of their application to the county or regional solid waste authority in which the proposed project is located". The intent of section 9.2 is to ensure that county solid waste authorities are aware of the recycling programs in their county. This will assist the authorities in updating their comprehensive plans and enable them to provide accurate information to the citizens of the county regarding the recycling activities in the area.