

DEP drops plan to finalize stream list

By Ken Ward Jr.
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State regulators have dropped their plan to finalize a list of protected West Virginia streams, saying they don't want to pick a fight with lawmakers over the issue.

Earlier this year, the Legislature declined to act on the list of more than 300 streams the state Department of Environmental Protection said deserved tougher pollution protections.

DEP Secretary Stephanie Timmermeyer said she planned to finalize the list anyway. Timmermeyer said the DEP had the legal authority to do so.

On Friday, Deputy DEP Secretary Randy Huffman said the agency now plans to start all over.

A new list will be published in draft form. The DEP will accept public comments and then finalize the list. The resulting version will be submitted for legislative review during the 2008 session.

"It was maybe a subversion of the leg-

islative process for us to just go out and file the rule," Huffman said. "It's a legislative process whether you agree or not."

The list in question covers streams that are deemed to qualify for "Tier 2.5" protection under West Virginia's water quality anti-degradation policy.

Under that policy, clean streams are generally supposed to be kept that way. Streams on the Tier 2.5 list could not be degraded by more than 10 percent.

DEP officials had already whittled down the Tier 2.5 list and allowed three separate rounds of public comments. But lawmakers, at the urging of coal companies, timber operators and the Farm Bureau, were slashing dozens of streams from the list.

Originally, the DEP proposed Tier 2.5 protection for about 300 streams, about 4 percent of the waterways in the state, agency officials said.

Don Garvin, lobbyist for the West Virginia Environmental Council, said the DEP's action would help regulated industries gut the stream list.

"It's going to be almost impossible to protect streams in this state," Garvin said. Huffman said he doesn't believe the DEP ever made a definite decision to move forward without legislative action on the stream list.

"My understanding was that was an option that was on the table at the time," said Huffman, who is running the DEP while Timmermeyer is on maternity leave. "There were a number of options there."

In a March 15 interview, Timmermeyer and DEP spokeswoman Jessica Greathouse said the agency planned to file the final rules, despite legislative inaction.

Timmermeyer cited several state Supreme Court decisions she said supported the DEP's plan.

Under those rulings, she said, lawmakers can approve, reject or amend state agency rules, but she said the Legislature can't veto an agency rule by simply not acting on it at all.

To contact staff writer Ken Ward Jr., use e-mail or call 348-1702.

The following technical changes have been made to grant rule 33CSR10:

1. Page numbers were added to rule.
2. 5.1.1. - removed the words "A grant is limited to"
3. 5.1.2. - removed the word "are" that was originally between the words "expenses" and "limited"
4. 5.1.3. - removed the words "A grant is limited to"
5. 5.1.4. - removed the words "A grant is limited to"
6. 5.1.5. - removed the words "A grant is limited to"
7. 5.1.6. - removed the words "A grant is limited to"
8. 5.1.7. - removed the words "A grant is limited to"
9. 5.1.8. - removed the words "A grant is limited to"
10. 5.1.9. - removed the words "A grant is limited to"
11. 5.1.10. - removed the words "A grant is limited to" and added the "and" at the end of the sentence
12. 5.1.11 - removed the word "and" at the end of the sentence
13. 5.1.12 - has been renumbered as 5.1A.
14. 5.4 - removed the word "directly" and replaced with the word "financially" to better fit the definition.

15. 7.2. - removed the word "applications" and replaced with the word "proposals"
16. 8.1.12. - removed the word "application" and replaced with the word "proposal"
17. 8.1.14. - removed the word "application" and replaced with the word "proposal"
18. 9.2. - removed the word "application" and replaced with the word "proposal"
19. 9.3. - removed the words "application" and "Applications" and replaced with the words "proposal" and "Proposals"
20. 10.2. - removed the word "application" and replaced with the word "proposal"
21. 12.3. - struck through the word "application" and replaced with the word "proposal"
22. 12.5. - struck through the word "application" and replaced with the word "proposal"

TITLE 58 33
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SERIES 5 10

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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 - The salary costs ~~associated with~~ 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;

5.1.2. ~~Travel~~ 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 - ~~allowed for~~ 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 – 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 - 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 - ~~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 - Costs associated with printing educational materials on recycling such as pamphlets, posters, flyers, etc;

~~5.1.7~~ 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;

~~5.1.8.~~ 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/lease charges related to a recycling program for a building, land, or office space are not allowable expenditures; and

~~5.1.9.~~ 5.1.11. 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.

~~5.1.10. 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 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.

§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>
<u>Recycling Promotion, Collection Drive</u>		
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 proposals 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 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.

§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 proposal~~, 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 proposal~~, 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.~~