

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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FILED

JUN 22 2 58 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY 22C-2-6

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 33

TITLE OF RULE BEING PROPOSED: State Construction Grants Program

DATE OF PUBLIC HEARING: July 23, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: WV Division of Environmental Protection
Office of Water Resources
1201 Greenbrier Street
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WVDEP

617 Broad Street

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Charleston, WV 25301

Attn: Mike Johnson

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



Authorized Signature

\$2.80



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

Michael P. Miano
COMMISSIONER

June 17, 1998

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

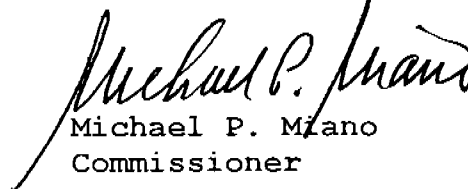
RE: 47CSR33 - "State Construction Grants Program Rule"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced legislative rule with your office as notice of public hearing/comment period.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please contact Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

cc: Carrie Chambers
Mike Johnson, OWR

BUREAU OF ENVIRONMENTAL
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: State Construction Grants Program

A. AUTHORITY: WV Code 22C-2-6

B. SUMMARY OF RULE:

This rule allows the WV Division of Environmental Protection to make grants to communities to provide adequate wastewater collection and/or treatment services.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

PL 104-134 passed by Congress in 1996 makes available federal grant money to States to provide wastewater facilities in certain rural communities. This federal Hardship Grants Program will be supplement to the WV Water Pollution Control Revolving fund.

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

The federal counterpart regulation is contained in the Federal Register dated March 30, 1997, entitled "Environmental Protection Agency, Rural Communities Hardship Grants Program Implementation Guidelines, Part X". The WV DEP is proposing to adopt the rule by reference in addition to including additional State requirements within the rule. The additional State requirements further define a hardship situation within a community that is comparable to the federal requirements.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

"In accordance with §22-1A-1 and 3(c), the Director 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:

“This amendment (or these amendments) to the rule will be reviewed by the Advisory Council during its meeting in July, 1998. Recommendations of the Council and the Director’s response to Council’s recommendations will be included in the August 1, 1998 filing with the Secretary of State’s Office and the Legislative Rulemaking Review Committee.”

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: State Construction Grants Program

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency Division of Environmental Protection

Address Office of Water Resources

617 Broad Street

Charleston, WV 25301

1. Effect of Proposed Rule

	ANNUAL 1999		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$	\$	\$	\$	\$
PERSONAL SERVICES	0	0	1,409,080	approximately	
CURRENT EXPENSE	0	0	200,145	the	
REPAIRS & ALTERNATIONS	0	0	14,000	same	
EQUIPMENT	0	0	101,900		
OTHER	0	0	* 36,387,500		

2. Explanation of above estimates:

Personal Services from FIMS #3329. "Other" is construction money paid to Local governments form #3329. All other costs from FIMS# 3342.

3. Objectives of these rules:

To govern the disbursement and use of grants to communities for wastewater treatment works from moneys held in the State Construction Grants Fund.

Rule Title: State Construction Grants Program

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Municipalities and Public Service Districts will be able to install new or upgraded wastewater collection and treatment facilities.

C. Economic Impact on Citizens/Public at Large.

Monthly sewer rates paid by customers receiving service.

Date:

June 22, 1998

Signature of Agency Head or Authorized Representative

Garne J. Chambers

FILED

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION JUN 22 2 58 PM '98
OFFICE OF WATER RESOURCES

SERIES 33
STATE CONSTRUCTION GRANTS PROGRAM RULE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§47-33-1. General.

1.1. Scope and Purpose.-- This legislative rule establishes requirements to govern the disbursement and use of grants from moneys held in the State Construction Grants Fund. Such grants will be made to communities for the planning, design, and/or construction of wastewater treatment works.

1.2. Authority.-- W.Va. Code §§22C-2-6.

1.3. Filing Date.--

1.4. Effective Date.--

1.5. Incorporation by Reference.-- The director hereby adopts and incorporates by reference the provisions contained in 40 C.F.R. Part X, Environmental Protection Agency, Rural Communities Hardship Grants Program Implementation Guidelines, dated March 20, 1997.

§47-33-2. Definitions.

2.1. "Act" means the Water Pollution Control Revolving Fund Act, W.Va. Code §22C-2, et seq.

2.2. "Community" means a local government such as a city, town, municipal corporation, authority, district, public service district or political subdivision in West Virginia.

2.3. "Council" means the West Virginia Infrastructure and Jobs Development Council created pursuant to W.Va. Code §31-15A.

2.4. "Division" means the Division of Environmental Protection.

2.5. "Fund" or "SRF" means the State Water Pollution Control Revolving Fund created pursuant to W.Va. Code §22C-2.

2.6. "Grant" means a hardship or any other type of grant

authorized by the West Virginia Legislature or the United States Congress.

2.7. "Grants Fund" means the State Construction Grants Fund created pursuant to W.Va. Code §22C-2-6.

2.8. "Hardship Grant" means a specific type of grant as authorized by the United States Congress under Public Law 104-134, "Consolidated Omnibus Appropriations and Rescissions Act of Fiscal Year 1996".

2.9. "Recipient" means a community that has received a grant pursuant to the provisions of this rule.

§47-33-3. State Water Pollution Control Revolving Fund.

3.1. The grants fund is created to complement and supplement the SRF. The project will be administered as an SRF project under the authority contained in 47CSR31. A grants fund community's project shall also be a recipient of an SRF loan.

§47-33-4. Fund Establishment and Administration.

4.1. Establishment of the Grants Fund.-- The director shall establish a permanent and perpetual fund to be known as the "State Construction Grants Fund". The grants fund shall be kept separate and apart from the SRF and all other funds or programs of the division.

4.2. Sources of Money for the Grants Fund.-- The grants fund shall be comprised of moneys appropriated by the Legislature, assessments on existing wastewater treatment facilities, and all other sums designated for deposit to the grants fund from any source, public or private, including applicable federal grant funds received at any time by the division for wastewater treatment purposes.

4.3. Uses of Money in the Grants Fund.-- Moneys in the grants fund shall be used solely for the state construction grants program to make grants to communities and to defray the costs incurred by the division in administering the grants fund and the programs created by the Act and this rule.

4.4. Investment of Moneys in the Grants Fund.-- The division shall invest the moneys in the grants fund that are not needed for immediate disbursement or use in obligations or

securities that are lawful investments for public funds for the state.

4.5. Disbursement of Moneys from the Grants Fund.-- Moneys shall be disbursed from the grants fund only upon written authorization from the director or his duly authorized designee.

4.6. Grants from the Grants Fund.-- Moneys in the grants fund may be granted to communities for wastewater projects that are in compliance with provisions of the state and federal water pollution control acts and this rule.

4.7. Applications for Grants.-- A community that has the authority under applicable law to undertake a wastewater project may apply for a grant. A community desiring a grant shall make a separate application to the director, on the prescribed forms, for each project for which a grant is desired. Following approval the director may provide a binding commitment letter to the community setting forth specific terms of the grant.

4.8. Grant Agreements.-- Prior to construction the director shall execute and enter into a formal grant agreement with a community that is binding under the laws of the state and shall contain such provisions as required by the director.

4.9. Disbursement of Grant Moneys.-- On a monthly basis, the director may disburse to each recipient the amount certified to the director as costs incurred for the project. Said certification shall be made in the form prescribed by the director.

§47-33-5. Hardship Grants Program State Requirements.

5.1. The recipient shall receive a SRF loan in addition to the hardship grant equal to at least 15% of the SRF eligible project costs.

5.2. The recipient shall receive a funding recommendation from the Council prior to obtaining a hardship grant commitment.

5.3. The average customer's monthly bill based upon 4,500 gallons water usage shall be at or above 1.75% of the median household income as determined and published by the latest United States Department of Commerce, Bureau of the Census report. Individual geographic area income surveys are allowable as a substitute if prior approval is obtained from the director.

5.4. The amount of the hardship grant shall be \$1,000,000 or less.

§47-33-6. Review Guidelines.

6.1. When evaluating any request for grant assistance, the director shall consider the following:

6.1.a. The public health benefits;

6.1.b. The environmental benefits;

6.1.c. The degree to which the overall project will correct deficiencies in any existing facilities involving compliance with state and federal laws, regulations or standards;

6.1.d. The cost effectiveness of the project in terms of cost per customer and total present worth or equivalent annual cost;

6.1.e. The applicants ability to operate and maintain the system if the project is approved;

6.1.f. The degree to which the project achieves other state or regional planning goals;

6.1.g. The extent that consolidation of facilities will be accomplished;

6.1.h. Readiness to proceed to construction; and

6.1.i. Such other considerations as the director may consider necessary and appropriate.