

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

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MAY 7 2 31 PM '99

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

Form #5

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

DIVISION ENVIRONMENTAL PROTECTION
AGENCY: OFFICE OF WATER RESOURCES TITLE NUMBER: 47

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 33

TITLE OF RULE BEING PROPOSED: State Construction Grants Program Rule

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

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2533

SECTION 64-3-1(m) PASSED ON March 21, 1999; signed 4/2/99

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: May 7, 1999


Authorized Signature

\$2.80



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone: (304) 759-0515
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West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

April 22, 1999

Ms. Judy Cooper
Director, Administrative
Law Division
Secretary of State's Office
Capitol Complex
Charleston, WV 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 rule with your Office as a final rule authorized by HB 2533, signed by Governor Underwood April 2, 1999.

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

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Barbara Taylor
Mike Johnson
Carrie Chambers

RULE PROMULGATION HISTORY

TITLE 47 - SERIES 33 DIVISION OF ENVIRONMENTAL PROTECTION OFFICE OF WATER RESOURCES

STATE CONSTRUCTION GRANTS PROGRAM RULE

JUNE 22, 1998	NOTICE OF PUBLIC HEARING FILED WITH SECRETARY OF STATE'S OFFICE
JULY 23, 1998	PUBLIC HEARING HELD
JULY 30, 1998	AGENCY APPROVED RULE FILED WITH LEGISLATIVE RULE-MAKING AND SECRETARY OF STATE'S OFFICE
MARCH 21, 1999	HB 2533 PASSED THE LEGISLATURE
APRIL 2, 1999	HB 2533 SIGNED BY THE GOVERNOR
MAY 6, 1999	FINAL FILED WITH SECRETARY OF STATE'S OFFICE
MAY 6, 1999	EFFECTIVE DATE OF 47CSR33

TITLE 47
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES

FILED

May 7 2 31 PM '99

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. -- May 7, 1999

1.4. Effective Date. -- May 7, 1999

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. Application 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.

987C

H. B. 2486

1 Bill-DEF

2

(By Delegates Hunt, Linch, Compton, Faircloth,
Jenkins and Riggs)

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[Introduced February 1, 1999; referred to the
Committee on the Judiciary.]

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10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to the state construction grants program.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 **ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**
22 **PROMULGATE LEGISLATIVE RULES.**

23 **§64-3-1. Division of environmental protection.**

1 (a) The legislative rule filed in the state register
2 on the first day of August, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 seven, article five, chapter twenty-two, of this code,
5 relating to the division of environmental protection (acid
6 rain provisions and permits, 45 CSR 33), is authorized.

7 (b) The legislative rule filed in the state register
8 on the first day of August, one thousand nine hundred
9 ninety-seven, authorized under the authority of section
10 seven, article five, chapter twenty-two of this code,
11 relating to the division of environmental protection
12 (emission standards for hazardous air pollutants pursuant
13 to 40 CFR Part 63, 45 CSR 34), is authorized.

14 (c) The legislative rule filed in the state register
15 on the first day of August, one thousand nine hundred
16 ninety-seven, authorized under the authority of section
17 six, article eighteen, chapter twenty-two of this code,
18 relating to the division of environmental protection
19 (hazardous waste management, 33 CSR 20), is authorized.

20 (d) The legislative rule filed in the state register
21 on the fourteenth day of August, one thousand nine hundred
22 ninety-seven, authorized under the authority of section
23 four, article five, chapter twenty-two, of this code,

1 relating to the division of environmental protection (to
2 prevent and control particulate air pollution from
3 manufacturing process operations, 45 CSR 7) is authorized.

4 (e) The legislative rule filed in the state register
5 on the first day of August, one thousand nine hundred
6 ninety-seven, authorized under the authority of section
7 four, article five, chapter twenty-two, of this code,
8 modified by the division of environmental protection to
9 meet the objections of the legislative rule-making review
10 committee and refiled in the state register on the seventh
11 day of January, one thousand nine hundred ninety-eight,
12 relating to the division of environmental protection (to
13 prevent and control of emissions from municipal solid waste
14 landfills, 45 CSR 23), is authorized.

15 (f) The legislative rule filed in the state register
16 on the first day of August, one thousand nine hundred
17 ninety-seven, authorized under the authority of section
18 seven, article one, chapter twenty-two of this code,
19 modified by the division of environmental protection to
20 meet the objections of the legislative rule-making review
21 committee and refiled in the state register on the second
22 day of December, one thousand nine hundred ninety-
23 seven, relating to the division of environmental protection

1 (to prevent and control air pollution from hazardous waste
2 treatment, storage or disposal facilities, 45 CSR 25), is
3 authorized.

4 (g) The legislative rule filed in the state register
5 on the first day of August, one thousand nine hundred
6 ninety-seven, authorized under the authority of section
7 three, article one, chapter twenty-two of this code,
8 modified by the division of environmental protection to
9 meet the objections of the legislative rule-making review
10 committee and refiled in the state register on the fifth
11 day of January, one thousand nine hundred ninety-eight,
12 relating to the division of environmental protection
13 (surface mining and reclamation regulations, 38 CSR 2), is
14 authorized.

15 (h) The legislative rule filed in the state register
16 on the thirtieth day of July, one thousand nine hundred
17 ninety-eight, authorized under the authority of section
18 six, article two, chapter twenty-two-c, of this code,
19 relating to the division of environmental protection (state
20 construction grants program, 47 CSR 33), is authorized.

21

22 NOTE: The purpose of this bill is to authorize the
23 Division of Environmental Protection to promulgate a
24 legislative rule relating to the State Construction Grants

1 Program.

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3 Strike-throughs indicate language that would be
4 stricken from the present law, and underscoring indicates
5 new language that would be added.