



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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8/25/2016 3:33:43 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY **Waste Management Division Of Water And Waste Management**
RULE TYPE **Legislative** **AMENDMENT TO EXISTING RULE** **No** **TITLE-SERIES** **33-41**
RULE NAME **Awarding of Matching Grants for Local Litter Control Programs**

CITE AUTHORITY **W.Va. Code § 22-15A-3(f)**

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 33-41



Rule Id: 10190



Document: 28873



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)

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PRIMARY CONTACT

Casey Korbini
131A Peninsula Street

Wheeling, STATE ZIP

SECONDARY CONTACT

Sandra Rogers
601 57th Street SE
601 57th Street SE
Charleston, STATE SECONDARY ZIP SECONDARY

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AUTHORIZING STATUTE(S) CITATION
W.Va. Code § 22-15A-3(f)

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD
Wednesday, June 29, 2016

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?
Announcement on agency website
Announcement via DEP Public Notice mailing list

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED
Thursday, August 11, 2016

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 2)

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ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED,
AMENDMENTS, REASONS FOR AMENDMENTS.

No comments received

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE
FOLLOWING PUBLIC HEARING: (BE EXACT)

Monday, August 15, 2016

**Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in
accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION, 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.

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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DATE OF HEARING OR COMMENT PERIOD

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS
REQUIRED TOGETHER WITH THE REASONS THEREFOR?

ATTACH FINDINGS AND DETERMINATIONS AND REASONS
None

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

**Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in
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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

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CITE AUTHORITY **W.Va. Code § 22-15A-3(f)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

The proposed rule will have no impact on costs and revenues of state government.

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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CITE AUTHORITY **W.Va. Code § 22-15A-3(f)**

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	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0.00	0.00	0.00
PERSONAL SERVICES			
CURRENT EXPENSES			
REPAIRS AND ALTERATIONS			
ASSETS			
OTHER			
ESTIMATED TOTAL REVENUES	0.00	0.00	0.00

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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CITE AUTHORITY **W.Va. Code § 22-15A-3(f)**

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 will not cause any increase or decrease in fees.

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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CITE AUTHORITY W.Va. Code § 22-15A-3(f)

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 proposed rule replaces 58CSR6. The Litter Control Grant Program was originally established by legislature under the jurisdiction of the Division of Natural Resources. During the 2005 session of the Legislature, the creation of the A. James Manchin Rehabilitation Environmental Action Plan (W.Va. Code § 22-15A-1, et. seq.) moved the Litter Control Program from the Division of Natural Resources to the Department of Environmental Protection. Under W.Va. Code § 22-15A-3(d), the promulgation of an updated legislative rule is necessary to identify the program as being under the jurisdiction of the Department of Environmental Protection.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Waste Management Division Of Water And Waste Management**
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RULE NAME **Awarding of Matching Grants for Local Litter Control Programs**

CITE AUTHORITY **W.Va. Code § 22-15A-3(f)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

The proposed rule replaces 58CSR6. The Litter Control Grant Program was originally established by legislature under the jurisdiction of the Division of Natural Resources. During the 2005 session of the Legislature, the creation of the A. James Manchin Rehabilitation Environmental Action Plan (W.Va. Code § 22-15A-1, et. seq.) moved the Litter Control Program from the Division of Natural Resources to the Department of Environmental Protection. Under W.Va. Code § 22-15A-3(d), the promulgation of an updated legislative rule is necessary to identify the program as being under the jurisdiction of the Department of Environmental Protection.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

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Title-Series: 33-41



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**TITLE 33
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WASTE MANAGEMENT**

**SERIES 41
AWARDING OF MATCHING GRANTS FOR LOCAL
LITTER CONTROL PROGRAMS**

§33-41-1. General.

1.1. Scope. – This rule sets out guidelines and procedures for providing matching assistance grants to counties and municipalities for the initiation and administration of litter control programs.

1.2. Authority. – W. Va. Code § 22-15A-3(f).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Former Rules. – This legislative rule replaces 58CSR6, “Awarding of Matching Grants for Local Litter Control Programs”, to reflect that responsibility for this program transferred from the Division of Natural Resources to the Department of Environmental Protection through W. Va. Code § 22-15-3.

§33-41-2. Definitions.

Unless the context dictates otherwise, the following words and their meanings as used in this rule are defined below.

2.1. “Applicant” means the local government applying for a grant.

2.2. “Application” means the written request submitted to the Secretary by the applicant on forms provided by the Secretary.

2.3. “Cooperative Program” means a program involving two or more local governments and coordinated by one of the participating local governments.

2.4. “Coordinator” means the individual who is responsible for coordinating the implementation and administration of a cooperative program.

2.5. “Department” means the West Virginia Department of Environmental Protection.

2.6. “Grant” means matching grant funds allocated to an approved program applicant by the Department pursuant to W. Va. Code § 22-15A-3(f).

2.7. “Grantee” means the entity to whom a grant has been awarded.

2.8. “Grant Period” means July 1 of one calendar year through June 30 of the subsequent calendar year.

2.9. “In-kind Services” means any personnel, equipment, supplies or other items for a local litter control

program supplied or obtained by the applicant with funds or by methods other than the use of any other grant moneys.

2.10. "Litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, covered electronic devices, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming, or manufacturing.

2.11. "Litter Control Fund" means the fund created pursuant to W. Va. Code § 22-15A-4(c).

2.12. "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.

2.13. "Local Litter Control Program" means a program sponsored by a local government for the purposes stated in its application.

2.14. "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.

2.15. "Resolution" means a resolution adopted by a local government that authorizes the creation of a local litter control program.

2.16. "Secretary" means the Secretary of the Department of Environmental Protection or his or her designee.

§33-41-3. Applicability.

3.1. Grants may be used by eligible local governments, singly or in cooperative groups, in a local litter control program.

3.2. The Secretary shall award grants for a period not to exceed one year. Subsequent grants may be obtained by a grantee through submission of a revised application to the Department, so long as all objectives of the current grant have been completed to the satisfaction of the Secretary.

3.3. The Secretary shall award grants on a one-to-one matching basis. For each dollar budgeted by an applicant for a local litter control program, the Department shall award up to one dollar (\$1.00) in matching grant funds upon approval of the application. The Department reserves the right to limit the amount of a grant in accordance with the amount of money in the Litter Control Fund available for distribution as matching grants.

3.4. Grant awards are limited to a maximum amount of five thousand dollars (\$5,000).

3.5. Applications must be postmarked no later than May 31 for consideration in the next grant period.

§33-41-4. In-kind Services.

4.1. The Department shall give credit for in-kind services when determining the amount of local government funding to be matched by a grant.

4.2. The Department shall value volunteer services at the minimum hourly wage unless the applicant can demonstrate that the services would normally be valued above that wage in the area served by the applicant's program.

4.3. The Department shall value donated equipment at its fair market value prorated over the life of the grant.

§33-41-5. Authorized Uses Of Grant Funds.

5.1. A grantee may use a grant for the initiation, continuation or expansion of a local litter control program.

5.2. Authorized uses of grant funds in an approved local litter control program may include the following:

5.2.a. Enforcement of anti-litter statutes;

5.2.b. Expenses incurred in traveling to Department-sponsored or approved workshops, conferences or other meetings;

5.2.c. Implementation and administration of the approved litter control program;

5.2.d. Implementation of local litter cleanup campaigns;

5.2.e. Public informational and educational programs, such as those which increase public awareness or solicit public support in promoting citizen responsibility toward reducing litter;

5.2.f. Purchase of equipment which will specifically serve to fulfill litter control program objectives;

5.2.g. Research or development of local solid waste recycling programs;

5.2.h. Surveys and evaluation studies made for the purpose of identifying and prioritizing local littering problems;

5.2.i. Costs associated with razing abandoned buildings or other structures which are unsightly or offensive and promote possible health hazards; and

5.2.j. Other relevant items upon the approval of the Secretary.

§33-41-6. Unauthorized Uses of Grant Funds.

6.1. Grants shall not be used in any way to replace local funds currently budgeted or being used to maintain and operate a local litter control program during the grant period.

6.2. Grants shall not be used for expenditures not related to litter prevention, elimination or control.

6.3. Grants shall not be used for the following:

6.3.a. To fund beautification projects such as landscaping (tree or shrub purchases) or the removal of roadside vegetation;

6.3.b. To purchase lawn, tree or shrub maintenance equipment;

6.3.c. To purchase equipment routinely used to collect or transport solid waste;

6.3.d. To fund landfill operations or management;

6.3.e. To buy office furniture or equipment or to decorate or renovate an office; or

6.3.f. To pay for professional consultation or production in the development of litter control films, slide shows or similar programs.

§33-41-7. Reporting Requirements.

7.1. The grantee shall submit a final performance and accounting report for approval on or before July 31 of the year the grant ends. The report shall include the following:

7.1.a. An evaluation of accomplishments in implementing the original proposal's work tasks;

7.1.b. An accounting of in-kind services provided;

7.1.c. An accounting of grant funds expended;

7.1.d. Evidence supporting in-kind services and grant expenditures; and

7.1.e. An analysis of and evidence supporting the amount of litter collected or material recycled during the period.

§33-41-8. Grant Withdrawal and Penalty.

8.1. The Department reserves the right to withdraw a grant upon determination of the grantee's unsatisfactory compliance with either this rule or the specifications in the application.

8.2. The Department may cancel a grant in the event a grantee fails to commence litter control program activities within 90 days after receiving a notice of award from the Department.

8.3. A grantee is responsible for the reimbursement to the Department the total sum of a grant not properly used or accounted for pursuant to this rule. The total sum constitutes a debt owed by the applicant or its successors or assignees by appropriate legal action. At its option, the Department may proceed against any local government participating in a cooperative program for the total sum owed by the applicant or its successors or assignees, or may hold each local government participating in a cooperative program individually liable to the State of West Virginia for its pro rata share of the total liability.

8.4. The Department reserves the right to conduct an on-site inspection or audit of a grantee's litter control program records during or after the grant period for a period of three years.

8.5. Applicants and grantees shall be in compliance with all federal, State, and local laws, codes, ordinances, rules, and regulations in order to be eligible for a grant. The Department reserves the right to deny applications or withhold funding from grantees failing to comply with this subsection.

§33-41-9. Unexpended Funds.

9.1. All unexpended funds remaining at the end of the grant period shall be returned to the Department.