

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #4 ▣

Do Not Mark In This Box

FILED

2003 JAN 10 P 1:41

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Department of Environmental Protection TITLE NUMBER: 33

Division of Waste Management

CITE AUTHORITY: 22-18-22 (b) (c) and 29 A-1 et. seq.

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: 24

TITLE OF RULE BEING PROPOSED: Hazardous Waste Management Fee

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

\$4.60

DEPARTMENT OF ENVIRONMENTAL PROTECTION
FILED
BRIEFING DOCUMENT

Rule Title: Hazardous Waste Management Fund Certification Procedural Rule Concerning Fee Assessment 33 CSR 24

2003 JAN 10 P 1:41
OFFICE WEST VIRGINIA
SECRETARY OF STATE

A. **AUTHORITY:** WV Code §22-18-22(b), c and 29 A-3

B. **SUMMARY OF RULE:**

Chapter 22, Article 18, Section 22(b) and (c) and 29 A-3 were enacted in June of 2002 to authorize the establishment of certification fees for facilities that manage hazardous waste.

These fees are calculated on the amount of hazardous waste generated and/or managed, and are basically proportionate to the quantity of hazardous waste generated. For example, hazardous waste Treatment, Storage and Disposal facilities pay \$3,000 per year, Large Quantity Generators pay \$2000 per year, Small Quantity Generators pay \$200 per year and Conditionally Exempt Small Quantity Generators pay \$24 per year.

C. **STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

This rule fulfills the statutory provisions of Chapter 22, Article 18, Section 22(b) and (c) by setting annual fees.

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

There is no federal counterpart regulation to this rule.

E. **CONSTITUTIONAL TAKINGS DETERMINATION:**

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

F. **CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

This proposed rule was the product of a negotiated rule-making process with agency representatives and representatives of facilities subject to the rule.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 33, Series 24, Hazardous Waste Management Fund Certification

Type of Rule: Legislative Interpretive Procedural

Agency: WV Department of Environmental Protection

Address: Division of Waste Management

1356 Hansford Street

Charleston, WV 25301-1401

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

This rule is not expected to require additional operations expenses above the current level.

3. Objectives of These Rules:

The objective of this rule is to set certification fees for hazardous waste management facilities.

Rule Title: Title 33, Series 24, Hazardous Waste Management Fund

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Not anticipated to be appreciable.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: Industries that generate hazardous waste will be subject to an economic impact proportional to the amount of hazardous waste that they generate (see summary). Political subdivisions and specific groups of citizens will not be affected.

C. Economic Impact on Citizens/Public at Large.

NA

Date: September 21, 2002

Signature of Agency Head or Authorized Representative:

Ken Ellison

QUESTIONNAIRE

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

DATE: October 23, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV Department of Environmental Protection
Division of Waste Management
1356 Hansford Street
Charleston, WV 25301-1401
Telephone: 304-558-5989

LEGISLATIVE RULE TITLE: 33 CSR 24, Hazardous Waste Management Fund Certification Legislative Rule Concerning Fee Assessment.

1. Authorizing statute(s) citation W.Va. Code §§22-18-22 (b) (c) and 29 A-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
September 20, 2002.

- b. What other notice, including advertising, did you give of the hearing?
State newspapers. News Release throughout the State dated September 23, 2002.

- c. Date of Public Hearing(s) or Public Comment Period ended:
October 21, 2002.

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached No person attended public hearing.

No comments received Comments attached

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

September 20, 2002.

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

Carroll Cather
Environmental Resource Specialist III
Division of Waste Management
1356 Hansford Street
Charleston, WV 25301-1401
Telephone: 304-558-2505
Fax: 304-558-0256
Email: ccather@dep.state.wv.us.

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

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable.

- b. Date of hearing or comment period.

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

- d. Attach findings and determinations and reasons:

Comments on proposed Rule 33 CSR 24

No commenters appeared at the public meeting for Rule 33 CSR 24.

During the public comment period for the proposed rule, two people provided written remarks regarding the rule.

The first commenter representing the West Virginia Manufacturers Association wrote a letter in support of the proposed rule. See attached letter.

The second commenter, the general counsel for the WVDEP, has determined that the rule is a legislative rule. The rule title has been changed to reflect that status. Additionally, the following corrections have been made to the proposed rule.

In Section 1.2, a part of the cited authority for the rule was changed from 29 A-3 to include 29 A-1, et seq. The phrase "et seq." has been italicized throughout the rule.

Subdivision 5.4 regarding reassessment of fees was corrected from a reference to subdivision 5.3.a. to subdivision 5.4.a.

Section 5.5 regarding reassessment of fees was corrected from a reference to Section 5.3 to a reference to Section 5.4.



WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311
Telephone: (304) 342-2122
FAX: (304) 342-4552
wvma@wvma.com

October 17, 2002

RECEIVED

OCT 21 2002

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WASTE MANAGEMENT

Mr. Carroll Cather
Special Projects and Generator Assistance
Division of Waste Management
West Virginia Department of Environmental Protection
1356 Hansford Street
Charleston, WV 25301-1401

Re: Comments of the West Virginia Manufacturers Association Concerning Department of Environmental Protection Division of Waste Management ("DEP") Proposed Procedural Rule, 33 CSR 24.

Dear Mr. Cather:

The West Virginia Manufacturers Association ("WVMA") is a trade organization comprised of over two hundred manufacturing entities and support businesses dedicated to the development and preservation of manufacturing in West Virginia. Its members are some of the largest employers in West Virginia and many are subject to the above-referenced proposed rule, insofar as they engage in the management of hazardous waste and are otherwise subject to the requirements of the State Hazardous Waste Management Act, W.Va. Code §22-18-1 et seq. and the rules promulgated thereunder. As such, the WVMA has closely followed the development of the proposed rule, and, as identified in the DEP Briefing Document, was one of those organizations involved with the negotiated rule-making process concerning the proposed rule.

The WVMA supports the adoption of the proposed rule as filed with the West Virginia Secretary of State on September 20, 2002.

Very truly yours,

Karen S. Price

President
West Virginia Manufacturers Association

KSP:dml

cc: Mr. David Altman
Ms. Alison Crane
Mr. Dana Burns
Robert E. Lannan, Esquire

Board of Directors

Alliant Techsystems, Inc.
Ashland, Inc.
BASF Corporation
Bayer Corporation
Capitol Cement Corporation
Century Aluminum
Columbia Natural Resources

The Dean Company
Downard Hydraulics, Inc.
DuPont
Eagle Manufacturing Co.
Elkem Metals Company
Flexsys
FMC Corporation

GE Plastics
Halltown Paperboard Company
Inco Alloys International, Inc.
Kanawha Manufacturing Co.
Kingsford Manufacturing
Koppers Industries, Inc.
Marble King, Inc.

Mylan Pharmaceuticals, Inc.
NKG Spark Plug, Inc.
One Valley Bank
OSB Operations - Georgia-Pacific
PPG Industries
Quebecor Printing
Rhône-Poulenc Ag Company

Toyota
U.S. Silica Company
Union Carbide Corporation
W.M. Cramer Lumber Co.
Weirton Steel Corporation

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

FILED

2003 JAN 10 P 1:42

SERIES 24
HAZARDOUS WASTE MANAGEMENT FEE FUND CERTIFICATION
~~LEGISLATIVE RULE CONCERNING FEE ASSESSMENT~~

OFFICE WEST VIRGINIA
SECRETARY OF STATE

33-24-1. General.

1.1. Scope. - - The purpose of this rule is to establish procedures for the assessment and collection of hazardous waste management fund fees pursuant to W. Va. Code §22-18-22-(b) and (c).

1.2. Authority. - - W. Va. Code §§22-18-22(b), (c), and 29A-1, *et seq.*

1.3. Filing Date. - -

1.4. Effective Date. - -

1.5. Incorporation by Reference. - - Whenever either federal statutes or rules or state statutes or rules are incorporated by reference into this rule, the reference is to the statute in effect on September 21, 2002.

§33-24-2. Definitions.

2.1 Definitions of all terms used shall have the meaning prescribed in the State Hazardous Waste Management Act, W.Va. Code §22-18-1 *et seq.* and the rules promulgated thereunder.

§33-24-3. Fee Assessment and Deposits.

3.1. An annual certification fee shall be assessed for all facilities that manage hazardous waste. Calculation of the certification fee assessment shall be in accordance with the requirements of section five of this rule.

3.2. Deposits to the Fund.

3.2.a. All monies collected from the fees assessed pursuant to this rule shall be deposited in the State Treasury in a special fund designated "The Hazardous Waste Management Fee Fund."

3.2.b. Deposits shall include all certification fee assessments and all interest accruing on investments and deposits of the Fund.

§33-24-4. Information and Reporting Requirements.

4.1. Annual Reporting.

Each calendar year, all large quantity generators (LQG), small quantity generators (SQG), conditionally exempt small quantity generators (CESQG), and treatment, storage and disposal facilities (TSD) shall provide the information to the director or his designee on the form identified as Appendix I attached to this rule and shall submit the completed form to the division, along with the required fee payment, by the first day of October, 2003 and each succeeding year thereafter.

4.2. Review of Information. All information submitted pursuant to this rule is subject to review by the director to ensure that accurate and verifiable information is obtained. The director may request clarifications, corrections, or additional information to supplement the information received to enable the division to properly calculate or recalculate fee assessments.

4.3. Exemptions.

4.3.a. No fee shall be assessed on the management of any wastes that have been excluded from classification as a hazardous waste by state or federal law or rule.

4.3.b. No fee shall be assessed on any large quantity generator, small quantity generator, conditionally exempt small quantity generator, or treatment, storage, and disposal facility that has in the same calendar year paid any assessment required under W.Va. Code §22-19-1 *et seq.* and the rules promulgated thereunder.

4.3.c. No fee shall be assessed on the management of waste from any underground storage tanks containing regulated substances that are registered pursuant to the requirements of Title 33 CSR Series 30 and which are otherwise subject to this rule; Provided however, that other management of hazardous waste at facilities containing such underground storage tanks is subject to the requirements of this rule.

§33-24-5. Fee Assessment.

5.1. All persons subject to this rule shall annually pay the hazardous waste management fee in accordance with the following schedule:

<u>Category</u>	<u>Fee</u>
TSD	\$3,000 per facility
Large Quantity Generator	\$2,000 per facility or a maximum of \$5,000 for multiple facilities owned by the same person, whichever is lower
Small Quantity Generator	\$ 200 per facility or a maximum of \$2,000 for multiple facilities owned by the same person, whichever is lower
Conditionally Exempt Small Quantity Generator	\$ 24 per facility

5.2. Payment of Fees.

5.2.a. Fee assessments will be remitted in accordance with the form identified as Appendix I and attached to this rule.

5.2.b. Fee assessments under this rule are due and payable to the division on the first day of October, 2003, and each succeeding year thereafter.

5.2.c. A fee assessment paid pursuant to this rule shall be made by submitting a money order, check, or electronic funds transfer made payable to the Hazardous Waste Management Fee Fund along with the completed Appendix 1 form. Such fee payment must be transmitted to the director. If such fee payment is mailed, then the payment must be postmarked by the date specified by these rules. Electronic funds transfers shall be made in accordance with procedures established by the State Treasurers Office.

5.2.d. If the facility of a person subject to this rule is described by more than one of the categories identified in section 5.1, only the category resulting in the highest fee shall apply. No person shall be required to pay more than one category of fees for each facility listed in section 5.1.

5.2.e. If a person owns or operates more than one facility in the large quantity generator or small quantity generator category, such person shall be required to pay the fee established in section 5.1 for each facility or the maximum amount for multiple facilities, whichever is less.

5.3 Fees submitted after November 15 of each calendar year are subject to a late charge of twenty-five percent of the fee assessed. Persons with a facility subject to this rule who have not paid the fee assessment and any late charge by December 31 of each calendar year may be subject to the provisions of chapter twenty-two, article eighteen of the West Virginia Code.

5.4. Reconsideration of Assessed Fees.

5.4.a. Any person assessed a fee for a facility pursuant to this rule may request the director to reconsider the amount of fee assessed. Such request, accompanied by supporting documentation, must be submitted to the director, in writing, by August 15 of the year for which the assessment is due, and must specify the reasons for requesting such reconsideration.

5.4.b. Upon reviewing a request submitted pursuant to subdivision 5.4.a of this rule, the director shall reconsider the applicable calculations and shall notify the party by letter of the results. If the director revises the fee assessment, the party shall be sent a revised fee assessment invoice.

5.4.c. Any person aggrieved or adversely affected by a decision of the director made and entered in accordance with the provisions of this section or by the failure or refusal of the director to act pursuant to this section may appeal to the environmental quality board in accordance with the provisions of article one, chapter twenty-two-b of the West Virginia Code.

5.5. Reassessment of Fee.

The director shall not be authorized to recalculate the fee assessments provided for by section 5.1. of this rule, except as provided for by section 5.4 of this rule.

~~5.6. Sunset Provision.~~

~~—The hazardous waste management fund fee rules shall terminate three years after the effective date of this rule (July 1, 2003).~~

**West Virginia Department of Environmental Protection
 Hazardous Waste Management Program
 Hazardous Waste Management Fee Fund - Appendix 1
 1356 Hansford Street
 Charleston, WV 25301**

Generator's Name: Physical Address: Owner's Name: Mailing Address: Operation Manager's Name: Title: Mailing Address: Telephone Number: E-mail Address: Contact Person Name: Title: Address: Telephone No.: E-mail Address:	<p style="text-align: center;">EPA ID No.: WVD</p> <hr/> Generator Status: Active <input type="checkbox"/> Inactive <input type="checkbox"/> Date Ceased Operation _____								
	<table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">TSD</td> <td style="text-align: right;">\$3,000 per facility</td> </tr> <tr> <td>Large Quantity (>1,000 kg or >2,200 lbs/mo)</td> <td style="text-align: right;">\$2,000 per facility or a maximum of \$5,000 for multiple facilities owned by the same person, whichever is lower</td> </tr> <tr> <td>Small Quantity (100-1,000 kg/mo) (220-2200 lbs/mo)</td> <td style="text-align: right;">\$ 200 per facility or a maximum of \$2,000 for multiple facilities owned by the same person, whichever is lower</td> </tr> <tr> <td>C. E. Small Quantity (<100 kg/mo) (<220 lbs/month)</td> <td style="text-align: right;">\$ 24 per facility</td> </tr> </table> <p>Fee assessments are due October 1 of each calendar year. Fees submitted after November 15 of each calendar year are subject to a late charge of twenty-five percent of the fee assessed. Persons with a facility subject to this rule who have not paid the fee assessment and any late charge by December 31 of each calendar year may be subject to the provisions of chapter twenty-two, article eighteen of the West Virginia Code. Persons with multiple facilities subject to this rule may utilize copies of the attachment to Appendix 1 to comply with this rule</p>	TSD	\$3,000 per facility	Large Quantity (>1,000 kg or >2,200 lbs/mo)	\$2,000 per facility or a maximum of \$5,000 for multiple facilities owned by the same person, whichever is lower	Small Quantity (100-1,000 kg/mo) (220-2200 lbs/mo)	\$ 200 per facility or a maximum of \$2,000 for multiple facilities owned by the same person, whichever is lower	C. E. Small Quantity (<100 kg/mo) (<220 lbs/month)	\$ 24 per facility
TSD	\$3,000 per facility								
Large Quantity (>1,000 kg or >2,200 lbs/mo)	\$2,000 per facility or a maximum of \$5,000 for multiple facilities owned by the same person, whichever is lower								
Small Quantity (100-1,000 kg/mo) (220-2200 lbs/mo)	\$ 200 per facility or a maximum of \$2,000 for multiple facilities owned by the same person, whichever is lower								
C. E. Small Quantity (<100 kg/mo) (<220 lbs/month)	\$ 24 per facility								

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assume that qualified personnel properly gather and evaluate the information as submitted. Based on my inquiry of the person or persons who manage the system, as the persons directly responsible for gathering this information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

NAME _____ TITLE _____ DATE _____

**West Virginia Department of Environmental Protection
Hazardous Waste Management Program
Hazardous Waste Management Fee Fund - Appendix 1 - Multiple Site Form
1356 Hansford Street
Charleston, WV 25301**

Company Name: _____

Responsible Corporate Official: _____

Mailing Address: _____

Title: _____

Physical Address: _____

Telephone No.: _____

E-mail Address: _____

Facsimile No.: _____

Site Name & Location: _____

Site Contact Person: _____

Physical Address: _____

Title: _____

EPA ID No.: _____

Mailing Address: _____

Status (TSD, LQG, SQG, CESQG): _____

Telephone No: _____

E-Mail Address: _____

Site Name & Location: _____

Site Contact Person: _____

Physical Address: _____

Title: _____

EPA ID No.: _____

Mailing Address: _____

Status (TSD, LQG, SQG, CESQG): _____

Telephone No: _____

E-Mail Address: _____

Site Name & Location: _____

Site Contact Person: _____

Physical Address: _____

Title: _____

EPA ID No.: _____

Mailing Address: _____

Status (TSD, LQG, SQG, CESQG): _____

Telephone No: _____

E-Mail Address: _____

Site Name & Location: _____

Site Contact Person: _____

Physical Address: _____

Title: _____

EPA ID No.: _____

Mailing Address: _____

Status (TSD, LQG, SQG, CESQG): _____

Telephone No: _____

E-Mail Address: _____