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Charleston 25305

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1985 MAY -9 PM 3  
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PROPOSED RULES

STATE REGISTER FILING

=====

AGENCY West Virginia Department of Natural Resources  
Ronald A. Shipley  
CONTACT PERSON Special Asst. to the Director PHONE (304) 348-2754  
TYPE OF RULE Legislative  
TITLE OF RULE Hazardous Waste Emergency Response Regulations, Subpart III;  
Regulations Concerning Fee Assessment.

CHAPTER 20 ARTICLE 5G SERIES XX  
AUTHORITY W. Va. Code §20-5G-5(d)

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CHECK APPLICABLE ITEMS BELOW TO SHOW KIND OF ACTION BEING TAKEN

- NEW RULE
- AMENDMENTS TO EXISTING RULE
- REPEAL OF EXISTING RULE
- NOTICE OF HEARING
- NOTICE OF AGENCY APPROVAL (legislative rules only)
- NOTICE OF AGENCY ADOPTION (interpretive & procedural rules only)
- FINAL FILING
- EMERGENCY FILING

NOTE: ALL FILINGS REQUIRE ONLY ONE COPY, EXCEPT FINAL FILING OF RULES WHICH REQUIRES AN ORIGINAL AND A COPY.



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STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25306  
SECRETARY OF STATE

ARCH A. MOORE, JR.  
Governor

RONALD R. POTESTA  
Director

MICHAEL A. FOTOS  
Deputy Director

NOTICE OF EMERGENCY RULE

RULE TITLE: Hazardous Waste Emergency Response Regulations, Subpart III,  
Legislative Rule - Regulations Concerning Fee Assessment

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

In 1984, the West Virginia Legislature enacted S.B. 743, establishing a State Hazardous Waste Emergency Response Fund (hereafter "Fund"). The Legislature enacted S.B. 743 pursuant to its authority to provide for the general welfare and safety of the state. S.B. 743 will provide the state with the resources necessary to respond to hazardous waste emergencies.

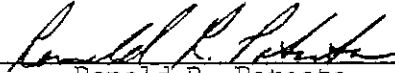
S.B. 743 authorizes the Director of the Department of Natural Resources to assess a fee on hazardous waste generated within the state. Each year the Director may assess fees which amount to a total of five hundred thousand dollars. This fee is deposited into the Fund and can be expanded for four (4) principal purposes:

- (1) Responding to hazardous waste emergencies wherever the Director determines that immediate action may prevent or mitigate a significant risk of harm to human health, safety or the environment;
- (2) Reimbursing any person for reasonable cleanup costs incurred in responding to a hazardous waste emergency with the authorization of the Director;
- (3) Financing the non-federal share of federal "superfund" projects and the future operation and maintenance of these sites;
- (4) Financing preparations necessary for responding to hazardous waste emergency response activities.

Under S.B. 743 the fee cannot be assessed against hazardous waste generators until regulations have been promulgated. The Legislature, however, required that generators be assessed by August 1, 1984. Each generator's fees were due into the department by January 15, 1985.

NOTICE OF EMERGENCY RULE (Continued)

Accordingly, as Director of the West Virginia Department of Natural Resources, I hereby find that an emergency exists pursuant to the provisions of W. Va. Code §29A-3-15 in that the Legislative Regulation entitled Hazardous Waste Emergency Response Regulations, Subpart III Regulations Concerning Fee Assessment are necessary to prevent substantial harm to the public interest and comply with a time limitation established by the West Virginia Code.



Ronald R. Potesta  
Director



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STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25306 SECRETARY OF STATE

ARCH A. MOORE, JR.  
Governor

May 8, 1985

RONALD R. POTESTA  
Director  
MICHAEL A. FOTOS  
Deputy Director

The Honorable Ken Hechler  
Secretary of State  
State Capitol, Suite 157-K  
Charleston, West Virginia 25305

Dear Mr. Hechler:

Re: Filing of Emergency Rules  
and Notice of Proposed  
Rulemaking

Enclosed please find for your filing are a copy of emergency legislative rules with the necessary ancillary filings and a copy of proposed procedural rules with a Notice of Comment and Hearing.

The emergency rules will be effective upon filing and remain in effect for fifteen months or until final regulations are promulgated. The Notice of Comment and Hearing announces that the comment period will run until 5:00 June 26, 1985 or the end of the public hearing scheduled for that date, whichever is later.

Please file these regulations at your earliest convenience.

Sincerely,

Ronald R. Potesta  
Director

RRP/rsb

Enclosure

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

CHAPTER 20-5G

1985

SERIES XX

HAZARDOUS WASTE EMERGENCY RESPONSE REGULATIONS

SUBPART III

LEGISLATIVE RULE

REGULATIONS CONCERNING

FEE ASSESSMENT

WEST VIRGINIA PROCEDURAL RULE  
DIRECTOR, DEPARTMENT OF NATURAL RESOURCES

CHAPTER 20-5G

SERIES XX

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West Virginia Administrative Regulations  
Chapter 20-5G  
1985  
Series XX  
Hazardous Waste Emergency Response Regulations  
Subpart III  
Legislative Rule  
Regulations Concerning Fee Assessment

Section 1.00 General

1.01 Scope and Purpose

The purpose of these regulations is to establish requirements for implementing the powers, duties and responsibilities vested in the Director, pursuant to Chapter 20, Article 5G of the Code of West Virginia as they relate to a fee assessment on the generators of hazardous waste.

1.02 Authority

These regulations are promulgated under authority of the West Virginia Code, Chapter 20, Article 5G, Section 5(d).

1.03 Filing Date

These regulations were filed in the Office of Secretary of State on May 9, 1985.

1.04 Effective Date

These emergency regulations shall become effective upon filing and will remain in effect for fifteen (15) months or until superceded by final regulations.

1.05 Certification

These regulations are certified authentic by the Director of the Department of Natural Resources.

Section 2.00 Definitions

Unless the context of the regulations clearly require a different meaning:

(1) "Annual Report" means that report required to be submitted to the Chief pursuant to the Annual Reporting requirements of the Hazardous Waste Regulations.

(2) "Chief" means the Chief of the Division of Water Resources of the Department of Natural Resources.

(3) "Generator" means any person, corporation, partnership, association, or other legal entity, by site location, whose act or process produces hazardous waste as identified or listed by the Director in regulations promulgated pursuant to Section six of Article 5E, Chapter 20 (Hazardous Waste Management Act) in an amount greater than twelve thousand kilograms per year.

(4) "DNR Hazardous Waste Regulations" means the West Virginia Administrative Regulations, Series XV, promulgated pursuant to Chapter 20, Article 5E of the Code of West Virginia.

(5) "Non-hazardous constituents" means that portion of a mixture of hazardous waste and other waste which is neither identified nor listed pursuant to Section 3.00 of the DNR Hazardous Waste Regulations. (Note: Water which is mixed with a hazardous waste may be a non-hazardous constituent for the purposes of these regulations.)

(6) "Point of Generation" means that specific location within a given process at which a specific hazardous material became a waste.

(7) All other terms shall have the meaning as prescribed in the DNR Hazardous Waste Regulations and Chapter 20, Article 5G of the West Virginia Code.

## Section 3.00 General

### 3.01 Applicability

The regulations in this Section apply to all generators of hazardous waste that are required to submit an Annual Report to the Chief pursuant to Section 6.04.02 of the DNR Hazardous Waste Regulations, except as provided in Section 3.02 of these regulations.

### 3.02 Exclusions

For the purpose of determining and reporting the amount of hazardous waste generated, pursuant to these regulations, the following wastes shall not be included:

(a) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(b) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore;

- (c) Cement kiln dust waste;
- (d) Drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy;
- (e) Sludge from any publicly owned treatment works in the State;
- (f) Any discharge to waters of the State of hazardous waste pursuant to a valid water pollution control permit issued under federal or state law (Note: This exclusion applies only when the point of generation is the actual point of discharge specified for such valid permit.);
- (g) Any hazardous wastes beneficially used or reused or legitimately recycled or reclaimed;
- (h) Hazardous wastes created or retrieved pursuant to an emergency or remedial action;
- (i) Hazardous wastes which are hazardous wastes based solely on the characteristic of corrosivity and which are subjected to on-site elementary neutralization in containers or tanks.

#### Section 4.00 Information and Reporting Requirements

##### 4.01 Requirement

###### (a) Hazardous Waste Measurement Plan

All generators shall submit a plan for measuring the quantity of hazardous waste generated to the department by July 1, 1985. Such measurement plan shall be employed to measure the quantity of hazardous waste generated by the generator beginning on January 1, 1986.

###### (b) Annual Reporting

All generators shall provide the following information to the department in the Annual Report required under Section 6.04.02 of the DNR Hazardous Waste Regulations for the applicable calendar year;

- (1) Total amount of hazardous waste generated, excluding non-hazardous constituents, in tons;
- (2) The amount (in tons) of that quantity of hazardous waste reported for Section 4.01(b)(1) which was disposed or treated off-site;
- (3) The amount (in tons) of that quantity of hazardous waste reported for Section 4.01(b)(1) which was treated or disposed on-site;

(4) The amount (in tons) of that quantity of hazardous wastes reported for Section 4.01(b)(1) which was treated off-site so that such waste was rendered non-hazardous;

(5) The amount (in tons) of that quantity of hazardous wastes reported for Section 4.01(b)(1) which was treated on-site so that such waste was rendered non-hazardous; and

(6) The results of all sample analysis performed pursuant to the approved measurement plan for the generator for the applicable reporting year.

#### 4.02 Reporting 1984 and 1985 Hazardous Waste Quantities

The quantities of hazardous wastes reported by each generator, for calendar years 1984 and 1985, shall be accurately estimated or measured. The Annual Report for calendar years 1984 and 1985 shall contain the information required in Section 4.01(b) and a detailed description of the methods or means of measuring or estimating the quantities of hazardous wastes reported. This paragraph shall only apply to information reported pursuant to these regulations for calendar years 1984 and 1985.

#### 4.03 Approval of Information

All information submitted pursuant to these regulations is subject to the approval of the Chief to ensure accurate, verifiable information is obtained.

#### 4.04 Measurement Plans

##### 4.04.01 Contents

This paragraph describes the contents of measurement plans required in Section 4.01(a) of these regulations.

##### (a) Points of Measurement

Measurements of the quantity and constituents of hazardous wastes must be performed at approved points of measurement described in the measurement plan. Such points of measurement may include:

(1) The point or points of generation of the hazardous waste; or

(2) An alternate point or points of measurement which will allow clear identification of the type, or types, and amount of hazardous waste generated. If a point of measurement other than the point of generation is selected the measurement plan must contain:

(i) A detailed explanation of the reasons for selecting alternate point or points of measurement and

(ii) The alternate point of measurement in the hazardous waste management system which is proposed to be used to determine the type, or types, and amounts of hazardous waste generated.

(b) Method of Measurement

Measurement plans submitted in accordance with Section 4.01(a) of these regulations shall describe the method of measuring the quantities and types of hazardous waste generated at each point of measurement identified pursuant to Section 4.04.01(a) of these regulations. Such description must include, but need not be limited to:

(1) A list of each point of measurement designated under Section 4.04.01(a), with a list of each hazardous waste or hazardous constituent generated at each point of measurement;

(2) A detailed description of the method to be used for measuring the quantity of each hazardous waste or hazardous constituent (in tons) generated at each point of measurement; and

(3) When waste sampling and analysis is necessary pursuant to Section 4.05 of these regulations, the generator must include in the measurement plan:

(i) A recommended list of parameters, and the rationale for their selection, which will identify the hazardous wastes, hazardous constituents or hazardous portions of the hazardous wastes generated;

(ii) All sampling and analytical results obtained and a description of the method or methods employed to determine the results; and

(iii) The frequency of sampling and analysis, and the reasons for selecting the proposed frequency.

4.05 Separation of Hazardous Waste and Non-Hazardous Constituents

The determination of the amount of hazardous waste generated must account for the mixture of hazardous and non-hazardous constituents in the generated hazardous waste in accordance with the following limitations:

(a) If the hazardous waste is listed in Section 3.04.04(e) or (f) of the DNR Hazardous Waste Regulations, or exhibits any of the characteristics described in Sections 3.03.02, 3.03.03 or 3.03.04 of the DNR Hazardous Waste Regulations, then the amount of hazardous waste generated must be determined and reported prior to mixing the waste with non-hazardous constituents;

(b) If the hazardous waste exhibits the characteristic described in Section 3.03.05 of the DNR Hazardous Waste Regulations, then the amount of hazardous waste generated shall be determined by chemical analysis and computed from knowledge of the amount of the waste mixture and chemical composition of the waste stream;

(c) If the hazardous waste exhibits any of the characteristics described in Sections 3.03.02, 3.03.03 or 3.03.04 of the DNR Hazardous Waste Regulations and physical separation or visual inspection can be employed to measure the proportions of hazardous and non-hazardous constituents, then the amount of hazardous waste generated may be measured by visual inspection or physical separation techniques and determined directly;

(d) If the hazardous waste is a mixture of non-hazardous constituents and a hazardous constituent listed in Section 3.04 of the DNR Hazardous Waste Regulations, then the amount of hazardous waste generated must be determined and reported based on knowledge of the generation processes, or by physical separation or chemical analysis (Note: If knowledge of the generation processes is employed, a written justification of the methods employed must accompany the Annual Report.);

(e) If the generator finds, when making determinations as described under Sections 4.05(b), (c) or (d), that non-hazardous constituents have chemically bonded, physically bonded, or chemically and physically bonded to an extent that prevents physical or chemical separation of non-hazardous and hazardous constituents, then the total amount of the hazardous waste mixture must be reported;

(f) For all procedures described in this section, which require chemical analysis, reported weight determinations must be computed by employing total analytical concentration values.

## Section 5.00 Payment of Fees

### 5.01 Dissemination of Fee Schedule

(a) The Director shall provide a copy of the fee schedule to each generator, by certified mail, within fifteen (15) days of publishing the fee schedule in the State Register.

(b) An invoice for the fee required pursuant to these regulations shall be provided by the Director to each generator upon whom a fee is assessed within fifteen (15) days of publication of the fee schedule. Such invoice shall include an itemized list of fees to be assessed and the date upon which such fees are due and payable. The invoice shall be provided in the form and manner prescribed by the Director.

(c) Fee assessments pursuant to these regulations will be computed by the Department for all generators. Generators for which fee assessments are computed by the Department to be less than five dollars (\$5.00) will not be sent a fee assessment invoice, nor are they required to pay such fee. Any revision of fee assessments, performed by the Department pursuant to Section 5.03(c) of these regulations, will be computed for all generators.

### 5.02 Payment of Fees

(a) Generators upon whom fees are assessed pursuant to these regulations shall pay such fee in full by the fifteenth day of January (January 15) of the calendar year immediately following the date of the fee invoice provided by the Director, or by such later date as may be specified by the Director pursuant to Section 5(a), Article 5G, Chapter 20 of the Code of West Virginia, as amended.

(b) Fee payments made pursuant to these regulations shall be made by submitting a money order or cashier's check made payable to the "Hazardous Waste Emergency Response Fund." Such fee payments shall be transmitted to the Director of the West Virginia Department of Natural Resources, by the date specified on the invoice. If such fee payment is mailed, then the payment must be postmarked by the date specified on the invoice.

### 5.03 Reconsideration

(a) Any generator assessed a fee pursuant to these regulations may request the Director to reconsider the amount of fee assessed. Such request must be submitted to the Director, in writing, within thirty (30) days of receiving the fee assessment and shall specify the reasons for requesting such reconsideration.

(b) Upon reviewing a request submitted pursuant to paragraph (a) of this section, the Director will reconsider the applicable calculations and will notify the generator by letter of the results. If the Director finds the original fee assessment to exceed the required amount by less than two hundred dollars (\$200.00), the generator shall be sent a revised fee assessment invoice, payable on the normal fee payment date. If the Director finds that the original fee assessment exceeds the required amount by more than two hundred dollars (\$200.00), the generator must remit the originally assessed amount, but shall be granted a credit, for the amount the original assessment exceeds the required amount, towards the next annual assessment.

(c) If the Director finds that the aggregate amount of fees assessed, after adjustments pursuant to paragraph (b) of this section, is more than \$25,000.00 less than the maximum amount authorized by Chapter 20, Article 5G, the Director shall cause all fee assessments to be recalculated and new fee assessment invoices to be transmitted to each generator. The payment due date shall, in such situation, be extended by the same number of days as the revised assessment date is beyond the original date of assessment.

## Section 6.00 Enforcement

### 6.01 Failure to Report

Failure by the generator to report the quantities required in Section 4.01(b) in the manner described in Section 4.00 of these regulations shall be considered by the Department to be a failure to comply with the Annual Report requirement pursuant to Section 6.04.02 of the DNR Hazardous Waste Regulations.

6.02 Failure to Remit Fee

(a) If the fees, or any portion thereof, are not paid by the date prescribed pursuant to Section 5.02(a) (or 5.03 if applicable) of these regulations, interest shall accrue upon the unpaid balance at the rate of ten percent (10%) per annum from the date payment is due until fee payment is actually made. Such interest shall be deposited in the fund.

(b) If any generator subject to fee assessment pursuant to these regulations fails to pay the fees imposed within seventy-five (75) days of the prescribed payment remittance date, there shall be imposed, in addition to the fee and interest determined to be owed, a surcharge equivalent to the total amount of the fee assessed, which shall also be collected and deposited in the fund.