

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

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

WEST VIRGINIA SECRETARY OF STATE

Department of Commerce, Labor and Environmental Resources  
Division of Environmental Protection/OWM

AGENCY: \_\_\_\_\_ TITLE NUMBER: Title 47

CITE AUTHORITY: West Virginia Code §20-10-5(b)

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO

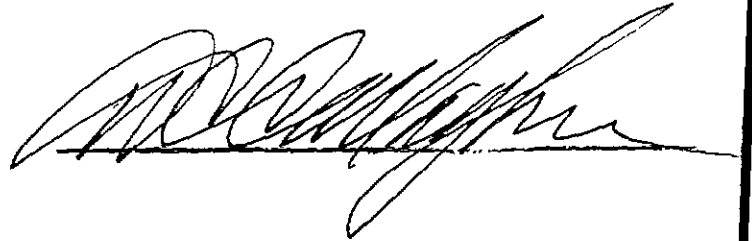
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 35A

TITLE OF RULE BEING PROPOSED: "Commercial Hazardous Waste  
Management Facility Siting Fees"

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.



6.80



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
 OFFICE OF THE SECRETARY  
 State Capitol, Room M-146  
 Charleston, West Virginia 25305-0310  
 Telephone: (304) 558-0400  
 Fax No.: (304) 558-4983

GASTON CAPERTON  
 Governor

JOHN M. RANSON  
 Cabinet Secretary

July 6, 1993

David C. Callaghan  
 Director  
 Division of Environmental Protection  
 #10 McJunkin Road  
 Nitro, West Virginia 25143-2506

OFFICE OF WEST VIRGINIA  
 SECRETARY OF STATE

Aug 16 10 12 AM '93

FILED

Re: Title 47, Series 35A - "Commercial Hazardous Waste  
 Management Facility Siting Fees"

Dear Director Callaghan:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby  
 consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the  
 Secretary of State as evidence of my consent.

Sincerely yours,

*John M. Ranson*  
 John M. Ranson  
 Cabinet Secretary

JMR/lab  
 cc: Ken Ellison

t:\dep47-35A.rul

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Title 47 Series 35A: "Commercial Hazardous Waste Management Facility Siting Fees"

Rule Title: \_\_\_\_\_  
 Type of Rule: XX Legislative      \_\_\_\_\_ Interpretive      \_\_\_\_\_ Procedural  
 Agency: Department of Commerce, Labor and Environmental Resources  
 Address: Division of Environmental Protection/Office of Waste Management  
 1356 Hansford Street  
 Charleston, WV 25301

**1. Effect of Proposed Rule**

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEW	RECAPITAL
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. **Explanation of above estimates:** All expenses incurred will be recovered from the Siting Application Fees.

3. **Objectives of these rules:** These regulations establish the procedure for obtaining a Certificate of Site Approval prior to submitting the permit application for the construction of a commercial hazardous waste management facility.

Rule Title: Title 47 Series 35A: "Commercial Hazardous Waste Manager  
Facility Siting Fees"

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No impact.

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

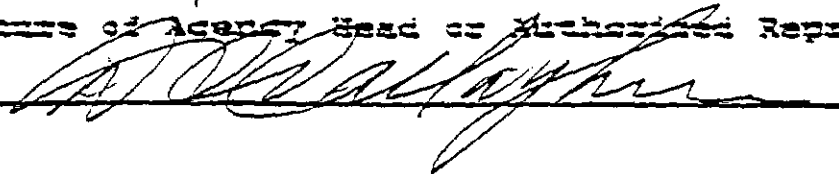
No impact.

C. Economic Impact on Citizens/Public at Large.

No impact.

Date: 7/1/93

Signature of Agency Head or Authorized Representative



DATE: August 16, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Environmental Protection  
Office of Waste Management

LEGISLATIVE RULE TITLE: "Commercial Hazardous Waste Management Facility

Siting Fees" WV Code §20-10-5(b)

1. Authorizing statute(s) citation

2. a. Date filed in State Register with Notice of Hearing:

Filed July 6, 1993--No Hearing

b. What other notice, including advertising, did you give of the hearing?

NA

c. Date of hearing(s): NA

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

Attached NA No comments received

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

Filed August 16, 1993--No Hearing

f. Name and phone number(s) of agency person(s) to contact for additional information:

Dale Moncer --Office of Waste Management

1356 Hansford Street, Charleston, WV 25301

558-5929

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.

NA

b. Date of hearing: NA

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

NA

d. Attach findings and determinations and reasons:

Attached NA

**SUMMARY TO A LEGISLATIVE RULE CONCERNING THE  
COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING BOARD REGULATIONS**

**AGENCY:** Department of Commerce, Labor and Environmental Resources  
Division of Environmental Protection  
Office of Waste Management

**Regulation:** Title 57 Series 1  
"Commercial Hazardous Waste Management Facility  
Siting Board Certification Requirements"

**Authority:** West Virginia Code §20-10-3(j)

**Action:** Filing of a Legislative Rule

On April 8, 1989, the Commercial Hazardous Waste Management Facility Siting Board (CHWMFSB) Act became effective. It established the Board itself, and directed that regulations be promulgated for the siting of commercial hazardous waste facilities.

This proposed Legislative Rule will establish the procedures whereby an applicant can file a Pre-Siting Notice and/or a Siting Application with the CHWMP Siting Board.

TITLE 47  
LEGISLATIVE RULES  
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 35A  
COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING FEES

§47-35A-1. General.

1.1. Scope and Purpose. -- These regulations establish fees to be charged each person, as defined in Title 56, Series 1, Section 2.5 of the Code of State Regulations, applying for a certificate of site approval of a commercial hazardous waste management facility. These fees will recover the reasonable and necessary expenses of the Commercial Hazardous Waste Management Facility Siting Board, the Division of Environmental Protection, and the WV Attorney General's Office which such agencies incur pursuant to the activities under West Virginia Code §20-10 et seq.

1.2. Authority. -- West Virginia Code §20-10-5(b).

1.3. Filing Date. --

1.4. Effective Date. --

§47-35A-2. Definitions.

2.1. "Board" means the Commercial Hazardous Waste Management Facility Siting Board established pursuant to West Virginia Code §20-10-3.

2.2. "Commercial Hazardous Waste Management Facility" or "Commercial Facility" means any hazardous waste treatment, storage, or disposal facility, which accepts hazardous waste, as identified or listed by the director of the Division of Environmental Protection under Title 47, Series 35 "Hazardous Waste Management Regulations" (47 C.S.R. 35), generated by sources other than the owner or operator of the facility and shall not include an approved hazardous waste facility owned and operated by a person for the sole purpose of disposing of hazardous waste created by that person or such person or other persons on a cost-sharing or nonprofit basis (ie., captive facility).

2.3. All other terms shall have the meaning prescribed in Title 47, Series 35 "Hazardous Waste Management Regulations" (47 C.S.R. 35).

§47-35A-3. Application Fees.

3.1. Any person(s) who submits an application to the Board pursuant to Title 57, Series 1 "Certification Requirements" (56 C.S.R. 1), shall include a certified cashier's check in the amount of sixty thousand dollars (\$60,000) that is made payable to "The Commercial Hazardous Waste Management Facility Siting Fund" of the State Treasury pursuant to West Virginia Code §20-10-5.

3.2. The application fee shall underwrite the necessary expenses of the Board, and the administrative, professional, and the support services provided by the Division of Environmental Protection and other participating State agencies. In addition to the fee, the applicant is responsible for all legal expenses associated with processing the application.

3.3. An additional fee of two thousand five hundred dollars (\$2,500) shall be paid by the applicant for each incomplete application that must be resubmitted to the Board, or for any subsequent major modifications offered by the applicant after the Board has determined the application to be complete pursuant to the "Commercial Hazardous Waste Management Facility Siting Board Regulations" under Title 57, Series 1.

FILED

TITLE 47  
LEGISLATIVE RULES  
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

AUG 16 10 13 AM '93

SERIES 35A  
COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING FEES

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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3.2. The application fee shall underwrite the necessary expenses of the Board, and the administrative, professional, and the support services provided by the Division of Environmental Protection and other participating State agencies. In addition to the fee, ~~all legal expenses associated with processing the application shall be billed to the applicant~~ the applicant is responsible for all legal expenses associated with processing the application.

3.3. An additional fee of two thousand five hundred dollars (\$2,500) shall be paid by the applicant for each incomplete application that must be resubmitted to the Board, or for any subsequent major modifications offered by the applicant after the Board has determined the application to be complete pursuant to the "Commercial Hazardous Waste Management Facility Siting Board Regulations" under ~~Title 56, Series 1~~ Title 57, Series 1.

The Office of Waste Management received comments on the proposed rule from the West Virginia Manufacturers Association during the thirty-day comment period. The following are the comments submitted and the responses thereto.

Proposed Rule 47 C.S.R. 35A

**Comment/Page 1:** "The filing of the regulations is contrary to the Administrative Procedures..."

**Response:** In the footnote, a reference is made to §20A-3-6 concerning the cut-off date for written comments. You probably intended to cite §20A-3-5, but the point is this--notice of a thirty-day written comment period was published in the State Register. Also published was a notice for a public hearing at which both written and oral comments will be accepted. Written comments received at the Office of Waste Management after 8:30 am on August 5, 1993, will not be acknowledged. However, additional comments may be submitted at the hearing on August 10, 1993.

**Comment/Page 2-A:** "Application Fee."

**Response:** The OWM conducted an extensive study in order to establish an adequate, but equitable fee for siting applications (reference--"The 1990 Guide To State Taxes and Fees For Hazardous Waste Generation and Management", published by the National Solid Waste Management Association). The proposed fee is less than the median fee for the U.S. The breakdown is as follows:

Compensation	:	(\$75/day)(7 members)(13 days)	=	\$ 6825
Travel	:	(200/day)(7 members)(8 days)	=	14400
Rental space	:	(for hearings/meetings)	=	300
Admin./Support	:	(Board, DEP & AG)		
		(\$30/hr)(1000 hrs)**	=	30000
				51525
Contingencies	:	(Subtotal)(15%)		7700
				<u>\$59225</u>

\*\*These hours and rates are the result of a time/management study commissioned by the Pennsylvania DER. They do not include legal fees in their estimates.

The Association claims that legal expenses are not likely to be excessive because the applicant will intervene, however, past experience shows that the State or Agency is named as a co-defendant in nearly all litigation which involves waste management. Siting is controversial, so we can expect most decisions to be challenged.

**Comment/Page 5-B:** "Absence of Fee Refund Provisions."

**Response:** There is, indeed, no provision for refunds. Likewise, there is no mechanism to recoup expenses which exceed the fee. The withdrawal of an application does not represent a windfall for the Board, it represents poor planning and management by the applicant.

**Comment/Page 5-C: "Incomplete Application Fee and Modification Fee."**

**Response:** You infer that the completeness outline (Appendix III) requires "an extensive list of information" . Appendix III merely puts the information in a convenient format, and provides a useful check list for both the applicant and the reviewer(s). The Board is committed to a fairly ambitious turn-around time for processing these applications (as little as 180 days) and the completeness review is one step in the process which can be expedited when the submittal absolutely follows a prescribed form. This leaves more time for the technical review.

In the matter of additional fees, consider this: when applications are incomplete or deficient, DEP must devote many hours and resources, at taxpayer expense, to provide what amounts to free consulting services to correct them. The fee rewards those applicants who do not submit annoying, time-delaying and substandard documents. Therefore, it is rationally related to anticipated inconvenience.

Please remember that in this context, 'complete' means only that all of the requisite sections of the application are submitted in the order specified in Appendix III. If, during the technical review, additional information is necessary, a simple request will be made. This has nothing to do with completeness and portends no fee. The OWM does not believe that the completeness/modification fees "lead to the opportunity for abuse", rather they will help to eliminate abuse.

As for setting up a tiered fee schedule, in neighboring states minor modifications average \$675, while major modifications can be as much as \$62,460. A flat, reasonable fee is much easier to administer. The term, 'major', has been inserted into Section 3.3 .

**Comment/Page 7-D: "Legal Expenses."**

**Response:** §20-10-6(d) provides legal services to the Board, and §20-10-5(3) provides for recouping these expenses from the applicant. OWM understands the ethical considerations of the WV Rules of Conduct, and has modified the language in Section 3.2 . We are willing to discuss other alternatives.

**Comment/Page 8-E: "Technical Error."**

**Response:** The references in Title 47 C.S.R. Series 35A have been changed to Title 57 C.S.R. 1 .



WEST VIRGINIA  
MANUFACTURERS ASSOCIATION

August 4, 1993

Mr. Buddy Davidson, PIO  
WV DEP/Office of Waste Management  
1356 Hansford Street  
Charleston, West Virginia 25301

Re: Commercial Hazardous Waste Management  
Facility Siting Fees - 47 C.S.R. 35A

Dear Mr. Davidson:

Enclosed please find an original and three copies of The West Virginia Manufacturers Association's Comments Regarding Commercial Hazardous Waste Management Facility Siting Fees 47 C.S.R. 35A.

Very truly yours,

Robert L. Foster

RLF:cdl  
Enclosure

WV  
DEP  
OFFICE OF WASTE MANAGEMENT  
AUG 5 1993

AUG 5 7 49 AM '93

RECEIVED

**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
ON PROPOSED  
DIVISION OF ENVIRONMENTAL PROTECTION  
COMMERCIAL HAZARDOUS WASTE  
MANAGEMENT FACILITY SITING FEES  
47 C.S.R. 35A**

Prepared By:

Environmental, Safety & Health Committee  
West Virginia Manufacturers Association

and

Robinson & McElwee  
600 United Center  
Post Office Box 1791  
Charleston, West Virginia 25326

Counsel for  
West Virginia Manufacturers Association

August 4, 1993

COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
ON PROPOSED  
DIVISION OF ENVIRONMENTAL PROTECTION  
COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING FEES  
47 C.S.R. 35A

August 4, 1993

I. INTRODUCTION

On July 6, 1993, the Department of Commerce, Labor, and Environmental Resources, Division of Environmental Protection ("DEP"), Office of Waste Management ("OWM") filed with the Secretary of State proposed Regulation 35A, "Commercial Hazardous Waste Management Facility Siting Fees" of Title 47 of the West Virginia Code of State Regulations to fund the activities of the Hazardous Waste Management Facility Siting Board ("Board") in siting commercial hazardous waste management facilities. Accompanying the proposed rule was a notice inviting written comment until August 5, 1993 at 8:30 a.m. and a public hearing to be held August 10, 1993 at the Office of Air Quality in Charleston, West Virginia.<sup>1</sup> Pursuant

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<sup>1</sup> In the first instance, the filing of the regulations is contrary to the Administrative Procedures Act set forth in W. Va. Code § 29A-3-1 et seq. The notice accompanying the proposed rule states that the last day for filing written comments is August 5, 1993, five days earlier than the August 10, 1993

to this notice, the West Virginia Manufacturers Association ("WVMA") files these comments.

The WVMA represents a broad cross-section of large and small industrial concerns throughout West Virginia. The WVMA has historically participated in filing comments on periodic revisions to the Hazardous Waste Management Regulations of the OWM and other waste management issues. Because WVMA members are potentially affected by the siting of a commercial hazardous waste management facility, and because the proposed rule exceeds the statutory jurisdiction of the DEP, the WVMA is compelled to comment on the proposed rule. These comments represent a continuation of the active and supportive role the WVMA has played in the development of a reasonable hazardous waste management program for West Virginia.

The comments that follow address the various concerns with respect to both the scope and application of the rule as well as specific concerns on proposed individual sections of the rule.

## II. COMMENTS

### A. Application Fee

The \$60,000 fee in the first instance is exorbitant and not reasonably related to the expenses the Board may incur. West Virginia Code § 20-10-5

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public hearing. West Virginia Code § 29A-3-6 requires that the last day for submitting comments is the day of the hearing unless the agency allows an extension to file comments beyond the day of the hearing as permitted by W. Va. Code § 29A-3-7.

establishes a special revenue fund entitled the "Commercial Hazardous Waste Management Facility Siting Fund," which is to be expended by the Director of the DEP for expenses of the Board including expenses and compensation for Board members; administration, professional and support services provided by DEP to the Board; and, legal counsel and representation provided by the Attorney General to the Board.

In addition, the Director of the DEP is charged with promulgating rules establishing:

reasonable fees to be charged to each applicant for a certificate of site approval. Such fees shall be calculated to recover the **reasonable and necessary expenses** of the board, [Division of Environmental Protection] and attorney general which such agencies incur as pursuant to this article.

W. Va. Code, § 20-10-5(b) (emphasis supplied). Pursuant to this Code provision, the DEP promulgated a rule which requires a certified cashier's check in the amount of \$60,000 to accompany an application for certification for siting a commercial hazardous waste management facility. 47 C.S.R. 35A, § 3.1 The fee is to be deposited in the aforesaid mentioned fund and spent on necessary expenses of the Board and the administrative, professional and support services provided by DEP and "other participating state agencies". 47 C.S.R. 35A § 3.2.

However, the DEP or the Board makes no finding or justification for a fee of \$60,000. By statute, the fee is required to be calculated to recover the "reasonable and necessary expenses." There is no indication in the rule of the how the anticipated or expected expenses of the Board, DEP or Attorney General were calculated. Accordingly, the WVMA submits that this fee is excessive and does not

correspond to, nor is the fee rationally related to, anticipated "reasonable and necessary" expenses.

Instead, the WVMA submits that a reasonable fee would likely be approximately \$15,000 or \$20,000.<sup>2</sup> First, the bulk of the information needed to make the decision on siting a facility would be submitted by the applicant. The review of the application could take as many as ten meetings of the Board, for which Board expenses must be paid. The analysis of the geology and hydrology of the proposed location would be submitted by the applicant, checked for accuracy by the DEP staff and analyzed against the facility location standards set forth in the Hazardous Waste Management Rule (47 C.S.R. 35). Moreover, the legal expenses are not likely to be excessive because the applicant will intervene in any challenge to a permit issuance and the applicant can be expected to vigorously defend any challenge to issuance of a permit by the Board.

The WVMA submits that because the fee is excessive, the DEP's proposed rule conflicts with the statutory requirement of "reasonable and necessary" fees. In addition, the \$60,000 fee would exceed the authority established by W. Va. Code, § 20-10-5(b) requiring the establishment of "reasonable fees." Furthermore, the prohibitive nature of the fees could constitute a barrier to the Capacity Assurance Plan, which could lead to federal sanctions.

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<sup>2</sup> Idaho has established a siting fee of \$7,500 to recover anticipated costs.

## **B. Absence of Fee Refund Provisions**

The fee represents a substantial investment on the part of an applicant desiring to site a facility. If the application takes limited time and resources on the part of the Board, DEP and/or Attorney General, then the applicant should be entitled to a refund of unexpended amounts. There is no reason for the Board to receive a windfall for work it has not done. For example, if an applicant withdraws its application soon after filing, for instance the day after filing the application and the Board has spent little time or resources in reviewing the application, the applicant should be entitled to a refund of the application fee. Therefore, the WVMA requests that a refund provision be inserted in the rule.

## **C. Incomplete Application Fee and Modification Fee.**

A fee of \$2,500 is to be paid by the applicant for each incomplete application that must be resubmitted to the Board and for any subsequent modifications offered by the applicant after the Board has determined the application to be complete. The standard for determining whether an application is complete is found in the rule on Certification Requirements and states that "applications that do not explicitly follow the outline will be deemed incomplete." The completeness outline set forth in Appendix 3 provides an extensive list of information which is required. It is extremely likely that even the most carefully prepared application will be deemed incomplete, if only because the Board wants more information on some aspect of the proposed project. Furthermore, the requirement that the Certification Requirements

must be followed "explicitly" leads to the opportunity for abuse by repeatedly rejecting applications as incomplete in order to charge an additional \$2,500 each time the application is resubmitted.

Accordingly, the WVMA believes the additional fee provision should be deleted. In the alternative, the additional fee should reflect, to some degree, the extent of incompleteness. If the application is substantially complete and additional information would not constitute full-scale review, there should not be an incomplete application fee or the fee should be de minimis. Fees for minor modifications should be small, for example, \$100.00. For major modifications, the fee should depend on the extent of additional review required by the Board or the type of modification. For instance, a major modification such as changing the site location may be reason for a higher fee than submittal of supplemental information to the Board or DEP.

The WVMA submits that the \$2,500 for incomplete applications or modifications is not rationally related to any anticipated inconvenience or additional expense on the part of those reviewing the application. The WVMA requests the rule be modified by deleting the requirement of the modification fee or incomplete application fee. In the alternative, the additional fee for an incomplete application or modification should be related to the degree of incompleteness or the type of modification, either major or minor.

#### D. Legal Expenses

All legal expenses associated with the processing of the application are to be billed to the applicant. 47 C.S.R. 35A, § 3.2 These costs are in addition to the application fee. The requirement that the applicant reimburse the Board for its legal expenses exceeds the grant of authority of the statute. There is no statutory provision that allows the Board to require legal expenses associated with processing the application to be billed directly to the applicant. The legal expenses of the Board should be charged to the siting fund and not to the applicant.

In addition, requiring the applicant to reimburse the Board for legal expenses might violate the Rules of Professional Conduct for attorneys in West Virginia. Requiring the applicant pay the legal fees of the Board could constitute a conflict of interest in violation of Rules 1.7 and/or 1.8 of the West Virginia Rules of Professional Conduct. Rule 1.8 states, in pertinent part:

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship;

West Virginia Rules of Professional Conduct, Rule 1.8.

In this instance, the lawyer is representing a client whose interest may be directly adverse to the applicant which would be paying the legal fees of the Board. There potentially could be substantial interference with an attorney's professional judgement, actual or perceived, if the applicant must pay attorney fees for the attorney which is defending or asserting a position adverse to the applicant. The

relationship is much less direct if the legal fees of the Board are paid from the application fee and other Board funds.

Therefore, the WVMA requests the DEP modify its rule to delete the provision requiring reimbursement of legal fees to the Board.

**E. Technical Error**

On a technical note, the application fee rule references the certification requirements rule of the Board. However, the proper cite is to Title 57, instead of Title 56, Series 1.

**III. CONCLUSION**

The WVMA appreciates the opportunity to comment on proposed Commercial Hazardous Waste Management Facility Siting Fees, 47 C.S.R. 35A. To assist the DEP is developing a reasonable rule that more accurately reflects the statutory intent and authority, the WVMA has prepared an alternative rule incorporating the changes suggested by this comments. For convenience, we would be pleased to provide the full text of suggested changes to the DEP on computer disc. Any questions concerning the comments should be directed to Robert L. Foster, Chairman, Environmental, Safety and Health Committee of the West Virginia Manufacturers Association at (304) 342-0161.

Submitted August \_\_\_\_\_, 1993.

**§ 47-35A-1. General.**

1.1. Scope and Purpose. -- These regulations establish fees to be charged each person, as defined in Title 56, Series 1, Section 2.5 of the Code of State Regulations, applying for a certificate of site approval of a commercial hazardous waste management facility. These fees will recover the reasonable and necessary expenses of the Commercial Hazardous Waste Management Facility Siting Board, the Division of Environmental Protection, and the WV Attorney General's Office which such agencies incur pursuant to the activities under West Virginia Code § 20-10 et seq.

1.2. Authority. -- West Virginia Code § 20-10-5(b).

1.3. Filing Date. --

1.4. Effective Date. --

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2.1. "Board" means the Commercial Hazardous Waste Management Facility Siting Board established pursuant to West Virginia Code § 20-10-3.

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2.3. All other terms shall have the meaning prescribed in Title 47, Series 35 "Hazardous Waste Management Regulations" (47 C.S.R. 35).

**§ 47-35A-3. Application Fees.**

3.1. Any person(s) who submits an application to the Board to site a commercial facility pursuant to Title 56, Series 1 "Certification Requirements" (56 C.S.R. 1, shall include a certified cashier's check in the amount of ~~sixty thousand dollars (\$60,000)~~ fifteen thousand dollars (\$15,000) that is made payable to "The Commercial Hazardous Waste Management Facility Siting Fund" of the State Treasury pursuant to West Virginia Code § 20-10-5.

3.2. The application fee shall underwrite the necessary expenses of the Board, and the administrative, professional, and the support services provided by the Division of Environmental Protection and other participating State agencies. ~~In addition to the fee, all legal expenses associated with processing the application shall be billed to the applicant.~~

3.3. ~~An additional fee of two thousand five hundred dollars (\$2,500) shall be paid by the applicant for each incomplete application that must be resubmitted to the Board, or for any subsequent modifications offered by the applicant after the Board has determined the application to be complete pursuant to the "Commercial Hazardous Waste Management Facility Siting Board Regulations" under Title 56, Series 1.~~

An additional fee not to exceed one thousand dollars (\$1,000) shall be paid by the applicant for any subsequent modifications offered by the applicant after the Board has determined the application to be complete pursuant to the "Commercial Hazardous Waste Management Facility Siting Board Regulations" under Title 56, Series 1. Each modification that is submitted and offered by the applicant shall be accompanied by a fee in accordance with the following schedule:

3.3.1. 0 - \$100 for submission of minor modifications;

3.3.2. \$100 - \$500 for submission of significant modifications. Significant modifications require substantial additional resources to address the modification; and

3.3.3. \$500 - \$1,000 for submission of major modifications that significantly change the scope and breadth of the application and require the application process to start again from the initial application submittal.

3.3.4. All modification fees shall be related to the relative degree of extra resources or additional commitments necessary to review the modifications. No modification fee is required for modifications suggested or required by the Board.

3.4 At any time following withdrawal of an application or modification, the Board shall issue a refund to the applicant in an amount that represents the remainder of funds attributable to the fees submitted by the applicant that have not been expended (on an accrual basis) by the Board.



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

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Director

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Deputy Director

August 13, 1993

**MEMORANDUM**

To: Secretary of State & LRMRC

From: Dale Moncer *DM*  
Office of Waste Management

Re: Section 6B/Rule-Making Process  
47 C.S.R. 35A

This attachment is to satisfy the conditions in Section 6B of the memorandum authored by Judy Cooper concerning the rule-making process.

- 1) There was no public hearing.
- 2) The comments and responses are in separate attachments.
- 3) All amendments/revisions to the proposed rule are denoted by strike-throughs or underlined text.
- 4) All amendments/revisions were made in response to comments received during the 30-day comment period.