

**WEST VIRGINIA**

**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #4

**FILED**

**JAN 21 11 26 AM '94**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

Department of Commerce, Labor & Environmental Resources  
AGENCY: Division of Environmental Protection/OWM TITLE NUMBER: Title 47

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

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

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, 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.



2.60

47-9 (o) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-three, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of January, one thousand nine hundred ninety-four, relating to the division of environmental protection (underground injection control fee schedule), are authorized.

47-36 (p) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-three, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred ninety-four, relating to the division of environmental protection (underground storage tanks), are authorized with the amendments set forth below: *Amend*

On page 3, section 3.4.5.a, following the word "closure" by inserting a period and the following: "The director can make available to applicants alternative testing procedures";

And,

On page 4, subsection 3.4.6, by striking out "\$100" and inserting in lieu thereof "\$75", and by striking out "\$50" and inserting in lieu thereof "\$35".

47-35A (q) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-four, relating to the division of environmental protection (commercial hazardous waste management facility siting fees), are authorized with the amendment set forth below: *Amended*

On page 2, section 3.1 by striking out the words "sixty thousand dollars (\$60,000)" and inserting in lieu thereof the words "one hundred thousand dollars (\$100,000)".

47-35 (r) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, relating to the division of environmental protection (hazardous waste management), are authorized.

47-34 (s) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred ninety-four, relating to the division of environmental protection (dam safety), are authorized with the amendment set forth below: *Amend.*

On page 19, by striking out the entirety of sections 7.1.1.b.A. and 7.1.1.b.B. and inserting in lieu thereof new sections 7.1.1.b.A and 7.1.1.b.B as follows:

"7.1.1.b.A. Class A Dams - Class A dams shall be designed for a minimum P100 storm of six hours in duration.

7.1.1.b.B. Class B Dams - Class B dams shall be designed for a minimum P100 storm to one-half probable maximum precipitation storm of six hours duration. The magnitude of storm must closely relate to the degree of anticipated damage downstream based upon information supplied to the Director."

47-37 (t) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the division of

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

JAN 21 11 26 AM '94

SERIES 35A  
COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING FEES

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

§47-35A-1. General.

1.1. Scope and Purpose. -- This rule establishes fees to be charged each person, as defined in Section 2.5 of 57 C.S.R. 1, 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 these agencies incur pursuant to the activities under West Virginia Code §20-10-1 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 the "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 other persons on a cost-sharing or nonprofit basis (ie., captive facility).

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

§47-35A-3. Application Fees.

3.1. Any person who submits an application to the Board, pursuant to the "Certification Requirements" of 57 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 will be responsible for all legal expenses incurred by the Board in response to a challenge to the issuance of a Certificate of Site Approval, but the applicant is not responsible for compensating the Board for the legal costs associated with processing the application in excess of the application fee, or any action or suit brought by the applicant against the state.

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".



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West Virginia Legislature  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Room M-152, State Capitol  
Charleston, West Virginia 25305  
(304) 340-3286

Senator Joe Manchin, III, Co-Chair  
Delegate Brian A. Gallagher, Co-Chair

January 9, 1994

Debra A. Graham, Counsel  
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register  
TO: David C. Callaghan, Director  
Division of Environmental Protection  
10 McJunkin Road  
Nitro, WV 25143-2506  
FROM: Legislative Rule-Making Review Committee  
PROPOSED RULE: Commercial Hazardous Waste Management Facility  
Siting Fees

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency     X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Dale Moncer  
Office Waste Mgmt.