



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

ARCH A. MOORE, JR.
Governor

April 14, 1987

RONALD R. POTESTA
Director


ROBERT K. PARSONS
Deputy Director

NOTICE OF AGENCY ADOPTION

RULE TITLE: Hazardous Waste Emergency
Response Fund Regulations

RULE TYPE: Interpretive

The attached rule constitutes the official rule adopted by the West Virginia Department of Natural Resources on the 14th day of April 1987 and filed with the West Virginia Secretary of State.



Ronald R. Potesta
Director

1987 APR 16 PM 3:45
SECRETARY OF STATE

FILED



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Director

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Deputy Director

April 14, 1987

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

1987 APR 14 PM 3:45
FILED

Re: Filing of Adopted Rules
(Hazardous Waste Emergency
Response Fund Regulations,
Procedural Rules, Series 40A)
by the Department of Natural
Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of adopted procedural rules of the Department of Natural Resources. Please note that these rules were originally proposed as Series 20A. Title 47, the compilation of Department regulations, has since been renumbered; Series 20A became Series 40A and has been so renumbered in this filing.

If you have any questions, please contact Mr. Ronald A. Shipley, Special Assistant to the Director, at 348-2761.

Sincerely,

Ronald R. Potesta
Director

RRP/jhb

Enclosures

FILED

FISCAL NOTE FOR PROPOSED RULES

1938 SEP 19 AM 11: 28

Rule Title: Hazardous Waste Emergency Response Fund Regulations

Type of Rule: Legislative X Interpretive X Procedural

Agency: Department of Natural Resources

Address: 1800 Washington Street East, Charleston, West Virginia 25305

1. Effect of Proposed Rule (Estimated Total Cost)	Increase \$	ANNUAL		FISCAL YEAR	
		Decrease \$	Current \$	Next \$	Thereafter \$
Personal Services	\$3-4,000		0	\$3-4,000	\$3-4,000
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of Above Estimates:

The above estimates reflect the administrative cost of issuing an annual fee schedule and processing collected fees.

3. Objectives of These Rules:

The proposed rules implement the provisions of Chapter 20, Article 5G of the West Virginia Code related to the collection of hazardous waste generator fees.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government:

The proposed rules provide procedures for the collection of up to \$500,000 annually from the generators of hazardous wastes for the Hazardous Waste Emergency Response Fund. An estimated \$3-4,000 per year will be required for program administration.

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

The West Virginia chemical industry will be impacted by a maximum annual collection of \$500,000 from generators of hazardous wastes as required by statute and a maximum of \$20,000 per year per generator for the completion of measurement plans required by the proposed rules.

C. Economic Impact on Citizens/Public at Large:

The proposed rules may produce an increase in costs to consumers of goods produced by generators of hazardous wastes.

Date: September 19, 1986



Director

PREAMBLE TO HAZARDOUS WASTE
EMERGENCY RESPONSE FUND REGULATIONS

PROGRAM: Hazardous Waste Emergency Response Fund

REGULATIONS: Hazardous Waste Emergency Response Fund Regulations, Procedural Rules Concerning Fee Assessment, Series 40A

AUTHORITY: Chapter 20, Article 5G, Section 5(d) of the West Virginia Code

ACTION: Adoption of Procedural Rules

TOPIC: Procedural Rules Concerning Fee Assessment

SUMMARY: The Department of Natural Resources is adopting two sets of regulations concerning fee assessments under the Hazardous Waste Emergency Response Fund (Article 5G). The first set of regulations (Series 40A) contains definitions and procedures for (1) reporting the amount of waste generated and subject to fee assessment, (2) measuring wastes considering its hazardous components and nonhazardous constituents, (3) disseminating the fee schedule, (4) paying assessed fees, and (5) the method used for reconsidering fee amounts.

The second set of regulations (Series 40B), which is published separately, contains interpretations of Article 5G for such issues as the establishment of payment schedules, the accrual of interest, and the categories of hazardous waste not subject to fee assessment. -

CONTACT: For further information contact Mr. Ron Shipley, Special Assistant to the Director, Director's Office of Regulatory Affairs, Room 842, 1800 Washington Street East, Charleston, West Virginia 25305, phone (304) 348-2761.

SUPPLEMENTAL INFORMATION: On September 19, 1986, the Department proposed procedural and interpretive rules concerning fee assessment under the provisions of Article 5G. The proposed rules were designed to replace former regulations governing the same subject originally promulgated as Series XX. The Series XX regulations were promulgated on an emergency basis on May 9, 1985; identical regulations were also proposed as a procedural rule on that date. The emergency rule expired because the Department failed to approve a rule and submit it to the Legislative Rulemaking Review Committee. The proposed procedural rule was withdrawn on December 15, 1985 because the Department did not file a notice of adoption within six months of the close of the public comment period.

The proposed rule of September 19, 1986 was not identical to the emergency rule implemented on May 9, 1985 or the procedural rule proposed on that date. Instead, the Department evaluated the comments received in response to the May 9th proposal and drafted a new proposal to reflect our response to those comments. Because the Secretary of State's Office no longer accepts rules which combine procedural and interpretive elements, the Department split apart the May 9th proposed procedural rule into both a procedural and an interpretive rule.

RESPONSE TO COMMENTS: A public hearing was held in Charleston on October 21, 1986 and comments were received until the close of business on October 24, 1986. The hearing was attended by and comments were received from two parties. Comments on the procedural rule and the Department's responses are as follows:

Definition of "Hazardous Constituents"
(Section 2.4 of the proposed regulations)

Comment: The definition provided for the term "hazardous constituents" has a potential for misleading the regulated community because the same term is used in other regulatory schemes but with different meanings. Therefore, use of the alternate term "hazardous components" with a definition as provided by the commenter is preferable.

Response: Suggestion accepted.

Definition of "Point of Generation"
(Section 2.7 of the proposed regulations)

Comment: This subsection should be eliminated in view of the request by the commenter to eliminate the measurement plan requirements contained in Section 4.6 of the proposed regulations.

Response: Suggestion accepted.

Hazardous Waste Measurement Plan
(Section 4.1 of the proposed regulations)

Comment: This subsection is unnecessary in view of the request by the commenter to eliminate the measurement plan requirements since waste reported on the fee assessment report is derived from the annual report pursuant to Section 6.4.2 or 8.5.6 of the DNR Hazardous Waste Management Regulations (HWMR).

Response: Suggestion accepted.

Annual Reporting

(Section 4.2 of the proposed regulations)

Comment: This subsection requires generators to attach an explanation for exclusion from fee assessment for wastes which are either beneficially used or recycled, created or retrieved pursuant to emergency or remedial action, or which are deemed hazardous solely based on the characteristic of corrosivity and are subjected to on-site neutralization in containers or tanks. These wastes are clearly exempted from fee assessment under Article 5G; therefore, such a requirement is irrelevant and a burden to business in West Virginia.

Response: The reason for requiring the explanation for the exempted wastes is the difficulty at times on the part of the generator to determine what is exempted and what is not. There have been instances where a generator requests a reconsideration of a fee assessment because he included some of the exempted wastes in the total wastes reported for fee assessment. Recalculation of a fee assessment, based on a new determination of assessable wastes, is an unnecessary administrative burden upon the Department. In view of the commenter's request, the explanation requirement has been deleted. However, the subsection has been modified -- once reported, total wastes may not be subject to reduction for reconsideration of fee assessment on account of the inclusion of any exempted wastes.

Reporting 1984 and 1985 Hazardous Waste Quantities

(Section 4.4 of the proposed regulations)

Comment: This subsection, by requiring information under Section 4.2 of the proposed regulations as well as methods of measuring wastes, has the effect of a de facto amendment of the annual reports of 1984 and 1985. Such an action is not consistent with the Hazardous Waste Emergency Response Fund Act and this subsection should be eliminated.

Response: Suggestion accepted. This section is no longer necessary since the Department has already collected this information.

Review of Information

(Section 4.5 of the proposed regulations)

Comment: The additional information requirement under this subsection is overly broad. The commenter objects to any information requirement which is not made in order to facilitate "funding of the State fund."

Response: The Agency does not agree that the requirement for additional information is overly broad. However, to clarify the intent of this section, the last sentence has been modified to circumscribe the Department's authority under this provision so that the information requested must be related to the Chief's ability to properly calculate or recalculate fee assessments.

Measurement Plan

(Section 4.6 of the proposed regulations)

Comment: The commenter objects in general to the requirement of a measurement plan. The commenter states that the cost of complying with the measurement plan requirements far exceeds the amount of money collected for the Fund.

Response: The Department is, for the present, willing to forego the imposition of measurement plan requirements and Section 4.6 of the proposed regulations has been deleted from these regulations.

Separation of Hazardous Waste and Nonhazardous Constituents

(Section 4.7 of the proposed regulations)

Comment: Requiring a generator to determine and report the amount of hazardous waste generated for certain categories of wastes prior to mixing with nonhazardous constituents would require the installation of additional equipment merely for this purpose. Such a requirement would unnecessarily add to compliance costs.

Response: This subsection has been modified as recommended by the commenter but places an affirmative duty on the generator to report mixtures of listed hazardous waste and nonhazardous wastes so that the amount reported represents the total hazardous waste generated prior to mixing.

Reconsideration of Fee Assessment

(Section 5.3.1 of the proposed regulations)

Comment: The 30-day reconsideration period should begin from the date of receipt of the invoice.

Response: Since the Department does not know when an invoice is received, the Department rejects the concept of starting the reconsideration period from the time of receipt. However, we recognize the point of the comment -- that the reconsideration time, in reality, is shorter than 30 days because of delivery time. The Department therefore is setting the time for reconsideration to be forty-five (45) days from the date affixed to the invoice.

Appendix A

Comment: The certification requirement in the Appendix A Report Form is not consistent with the DNR Hazardous Waste Management Regulations. Use of certification language as contained in the HWMR is suggested.

Response: Suggestion accepted.

In addition to the above changes we have altered the definition of the word "Chief" so that the rule applies to the Chief of the Division of Waste Management rather than to the Chief of the Division of Water Resources and made other miscellaneous amendments. A copy of the proposed rules, with strike-throughs and underlines showing changes made to the proposed rule, follows.

West Virginia Administrative Regulations
Department of Natural Resources
Series 40A
Hazardous Waste Emergency Response Fund Regulations
Procedural Rules Concerning Fee Assessment

Section 1. General.

1.1. **Scope and Purpose.** The purpose of these regulations is to establish procedures for the assessment and collection of hazardous waste generator fees pursuant to Chapter 20, Article 5G of the West Virginia Code.

1.2. **Authority.** These regulations are promulgated under authority of the West Virginia Code, Chapter 20, Article 5G, Section 5(d) and Chapter 29A, Article 3.

1.3. **Filing Date.** -- April 14, 1987.

1.4. **Effective Date.** -- May 14, 1987.

1.5. **Incorporation by Reference.** Whenever either federal statutes or regulations or State statutes or regulations are incorporated by reference into ~~this-series~~ these regulations, the reference is to the statute or regulation in effect on the date of enactment of the legislation authorizing these regulations.

1.6. **Promulgation History.** Legislative rules on this subject were originally promulgated on May 9, 1985 on an emergency basis. Such rules expired on November 9, 1985. The current procedural rules were filed on April 14, 1987 and became effective on May 14, 1987.

Section 2. Definitions.

~~Unless-the-context-dictates-otherwise,--the--following--words--and their-meanings-as-used-in-these-regulations-are-defined-below.~~

2.1. "Annual Report" means that report required to be submitted to the chief pursuant to the annual reporting requirements of the DNR Hazardous Waste Management Regulations, Section 6.4.2.

2.2. "Chief" means the chief of the ~~Division--of--Water--Resources~~ Division of Waste Management of the Department of Natural Resources.

2.3. "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 6 of Chapter 20, Article 5E of the West Virginia Code in an amount greater than twelve thousand kilograms (12,000 kg) per year.

2.4. "Hazardous Constituents" means hazardous wastes identified or listed in Section 3 of the DNR Hazardous Waste Management Regulations. "Hazardous Components" shall be equivalent to the term "hazardous constituent" as used in Chapter 20, Article 5G of the West Virginia Code and shall mean that portion of a mixture of hazardous waste and other waste which is identified or listed in Section 3 of the DNR Hazardous Waste Management Regulations.

2.5. "HWMR" or "DNR Hazardous Waste Management Regulations" means the West Virginia Administrative Regulations, Series 15, West Virginia Administrative Regulations, Department of Natural Resources, Series 35, promulgated pursuant to Chapter 20, Article 5E of the West Virginia Code.

2.6. "Nonhazardous Constituents" means that portion of a mixture of hazardous waste and other waste which is neither identified nor listed pursuant to Section 3 of the DNR Hazardous Waste Management Regulations. (Note: Water which is mixed with a hazardous waste is considered a nonhazardous constituent for the purposes of these regulations.)

2.7. "Point-of-Generation" means that specific location within a given process at which a specific hazardous material became a waste, consistent with Sections 3.1.2(b) and 3.1.3(e) of DNR Hazardous Waste Management Regulations.

2.7. "Series 40B" means West Virginia Administrative Regulations, Department of Natural Resources, Series 40B, Hazardous Waste Emergency Response Fund Regulations, Interpretive Rules Concerning Fee Assessment.

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

Section 3. Fee Assessment Deposits.

3.1. Deposits to the Fund. All monies collected from generators under Chapter 20, Article 5G of the West Virginia Code will be deposited in the State treasury in a special fund designated "The Hazardous Waste Emergency Response Fund." Deposits will include all generator fee assessments, all interest or surcharges assessed and collected by the director, and all interest accruing on investments and deposits of the Fund.

Section 4. Information and Reporting Requirements.

4.1 Hazardous Waste Measurement Plan

All generators shall submit a plan for measuring the quantity of hazardous waste generated to the Department by November 1, 1985. This measurement plan shall be employed to measure the quantity of

hazardous-waste-generated-by-the-generator-beginning-on-January-1,
1986.

Generators-who-started-operation--after--November--1,--1985--shall
submit--a--measurement--plan--with--their-next-annual-report.--All
subsequent-reports-shall-employ-such-a-measurement-plan-to-measure
the-quantity-of-hazardous--waste--generated.--The--first--annual
report--shall--include--the-information-required-in-Section-4.2-of
these-regulations--and--derived--from--the--most--accurate--method
available-to-the-generator.

4-2 4.1. Annual Reporting.

4.1.1. All generators shall provide the following information to the Department in the annual report required under Section 6.4.2 of the DNR Hazardous Waste Management Regulations for the applicable calendar year on the form identified as Appendix A to these regulations.

4-2-1 4.1.1.a. Total amount of hazardous waste generated, excluding nonhazardous constituents, in tons;

4-2-2 4.1.1.b. The amount (in tons) of that quantity of hazardous waste reported for Section 4-2-1--above 4.1.1.a of these regulations which was treated or disposed off-site.

4-2-3 4.1.1.c. The amount (in tons) of that quantity of hazardous waste reported for Section 4-2-1--above 4.1.1.a of these regulations which was treated or disposed on-site.

4-2-4 4.1.1.d. The amount (in tons) of that quantity of hazardous wastes reported for Section 4-2-1--above 4.1.1.a of these regulations which was treated off-site so that such waste was rendered nonhazardous.

4-2-5 4.1.1.e. The amount (in tons) of that quantity of hazardous wastes reported for Section 4-2-1--above 4.1.1.a of these regulations which was treated on-site so that such waste was rendered nonhazardous.

4-2-6 4.1.2. If the total amount of hazardous waste reported under 4-2-1--above Section 4.1.1.a of these regulations is not equal to the sum of hazardous wastes reported under Sections 4-2-2--through 4-2-5--above 4.1.1.b through 4.1.1.e of these regulations, the reasons for the difference.

Generators-of-hazardous-wastes-listed-in--Sections--4.1.7,--4.1.8,
and--4.1.9--of--the--Hazardous--Waste--Emergency--Response--Fund
Regulations,--Interpretive-Rules,--Series-20B,--shall--report--these
wastes--separately--in--an--attachment-to-the-annual-report,--along
with-a-request-for-exclusion-of-these-wastes-from-fee--assessments
under-Chapter-20,--Article-56,--Section-4-of-the-West-Virginia-Code.

Such a request shall include an explanation as to why the generator considers a waste to fall under Section 4.1.7, 4.1.8, or 4.1.9 of the aforementioned regulations.

4.1.3. Generators shall exclude from the annual report required under Section 4.1.1 of these regulations those hazardous wastes listed in Section 4 of Series 40B.

4.3-Results-of-Sample-Analysis

The results of all sample analyses performed pursuant to the measurement plan for the generator for the applicable reporting year shall be made available to the chief upon request.

4.4-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 4.2 of these regulations and a detailed description of the methods or means of measuring or estimating the quantities of hazardous wastes reported.

4.5 4.2. Review of Information.

4.2.1. All information submitted pursuant to these regulations is subject to review by the chief to ensure that accurate and verifiable information is obtained. The chief may request clarifications, corrections, and/or additional information to supplement the information received to enable the chief to properly calculate or recalculate fee assessments.

4.2.2. The results of any sample analyses performed for reporting the quantity of hazardous waste generated shall be made available to the chief upon request.

4.6-Measurement-Plans

This section describes the contents of measurement plans required by Section 4.1 of these regulations. Changes in processes or destinations made after a measurement plan has been filed with the annual report must be reported in an updated plan. Updated measurement plans must be submitted to the Department within ninety days after the change has been made.

4.6.1-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 be:

4.6.1.a-The-point-or-points-of-generation-of-the-hazardous-waste.

4.6.1.b-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)--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.

(ii)--The--reasons--for--selecting--that--alternate--point--of measurement.

(iii)--An-explanation-of-the-accuracy-obtained-by--using--such alternate-point-of-measurement.

4.6.2-Method-of-Measurement

Measurement-plans-submitted-in--accordance--with--Section--4.1--of these-regulations-shall-describe-the-method-of-measuring-the-types and--quantities--of--hazardous--waste--generated--at--each-point-of measurement--identified--pursuant--to--Section--4.6.1--of--these regulations.--Such--description--must--include,-but--need-not-be limited-to:

4.6.2.a-A-list-of--each--point--of--measurement--designated--under Section-4.6.1,-with-a-list-of-each-hazardous--waste--or--hazardous constituent-generated-at-each-point-of-measurement.

4.6.2.b-A-description-of-the-method-to-be-used-for--measuring--the quantity--of--each--hazardous--waste--or-hazardous-constituent-(in tons)-at-each-point-of-measurement.

4.6.2.c-When-waste-sampling-and-analysis-is-necessary-pursuant--to Section--4.7--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)-The-frequency-of-sampling-and-analysis,-and-the--reasons for-selecting-the-proposed-frequency.

(iii)-A-brief-description-of-the-method-or--methods--employed to-determine-the-results.

(iv)-A-statement-that-all-sampling-and-analytical-results-are available-for-inspection-by-the-chief.

4-7 4.3. Separation of Hazardous Waste and Nonhazardous Constituents.

4.3.1. The determination of the amount of hazardous waste generated must account for the mixture of hazardous components and nonhazardous constituents in the generated hazardous waste in accordance with the following:

~~4-7-1~~ 4.3.1.a. If the hazardous waste is listed in Section 3.4.4.e or 3.4.4.f of the DNR Hazardous Waste Management Regulations, or exhibits any of the characteristics described in Section 3.3.2, 3.3.3, or 3.3.4 of the HWMR, then the amount of hazardous waste generated must be determined and reported prior to mixing the waste with nonhazardous constituents must represent the total amount of hazardous waste generated prior to mixing.

~~4-7-2~~ 4.3.1.b. If the hazardous waste exhibits the characteristic described in Section 3.3.5 of the HWMR, then the amount of hazardous constituent component in the waste generated shall be determined by chemical analysis and or computed from knowledge of the amount of the waste mixture and chemical composition of the waste stream.

~~4-7-3~~ 4.3.1.c. If the hazardous waste exhibits any of the characteristics described in Section 3.3.2, 3.3.3, or 3.3.4 of the HWMR and physical separation or visual inspection can be employed to measure the proportions of hazardous components and nonhazardous constituents, then the amount of hazardous constituent component in the waste generated may be measured by visual inspection or physical separation techniques and determined directly.

~~4-7-4~~ 4.3.1.d. If the hazardous waste is a mixture of nonhazardous constituents and a hazardous constituent component listed in Section 3.4 of the HWMR, then the amount of hazardous constituent component in the waste generated must be determined and reported based on knowledge of the generation processes, 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.)

~~4-7-5~~ 4.3.2. If the generator finds, when making determinations as described under Sections 3-5(b)-(e)-or-(d)-of--the--HWMR 4.3.1.b through 4.3.1.d of these regulations, that nonhazardous constituents have chemically bonded, physically bonded, or chemically and physically bonded to an extent that prevents physical or chemical separation of nonhazardous constituents and hazardous constituents components, then the total amount of the hazardous waste mixture must be reported.

~~4-7-6~~ 4.3.3. For all procedures--described--in---this---section determinations performed pursuant to Section 4 of these regulations which require chemical analysis, reported weight determinations must be computed by employing total analytical

concentration values.

Section 5. Fee Assessment.

5.1. Dissemination of Fee Schedule.

~~5.1.3~~ 5.1.1. 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 Sections 5.3 and 5.4 of these regulations, will be computed for all generators.~~

~~5.1.1~~ 5.1.2. 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.

~~5.1.2~~ 5.1.3. 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 in the State Register. 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.

5.2. Payment of Fees.

5.2.1. 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 Chapter 20, Article 56, Section 5(a) of the West Virginia Code~~ or within one hundred and sixty eight (168) days after publication of the fee schedule in the State Register, whichever is later.

5.2.2. Fee payments made pursuant to these regulations shall be made by submitting a money order or check made payable to the "Hazardous Waste Emergency Response Fund." Such fee payments shall be transmitted to the director 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.

5.3. Reconsideration.

5.3.1. 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~~ forty-five (45) days of the date sent as noted on the fee assessment invoice required under Section

sent as noted on the fee assessment invoice required under Section 5-1-2 5.1.3 of these regulations and shall specify the reasons for requesting such reconsideration. The assessed fee shall not be subject to reconsideration because the generator included the hazardous wastes listed in Section 4 of Series 40B.

5.3.2. Upon reviewing a request submitted pursuant to Section 5.3.1 of these regulations, the director will reconsider the applicable calculations and will notify the generator by letter of the results. If the director revises the fee assessment, the generator shall be sent a revised fee assessment invoice, payable on the normal fee payment date.

5.3.3. If a revision of a fee assessment made pursuant to Section 5.3.2 of these regulations determines that a generator has made an overpayment greater than two hundred dollars (\$200.00), the generator may choose to either receive a refund of the excess amount or use that excess as a credit against the subsequent fee assessment. If the overpayment is less than two hundred dollars, the excess amount will be credited against the subsequent fee assessment.

5.4. Reassessment.

5.4.1. If the director finds that the aggregate amount of fees assessed, after adjustments pursuant to Section 5.3.2 of these regulations, is more than twenty-five thousand dollars (\$25,000.00) below the maximum amount authorized to be collected in any one year by Chapter 20, Article 5G of the West Virginia Code, 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.

5.4.2. In reassessing the new fee for any generator who requests a reconsideration, the assessment rate per unit weight of the hazardous waste computed for the original fee assessment may not be recalculated unless it is necessary to recalculate the fee assessment of every generator as required under Section 5.4.1 of these regulations.

APPENDIX A

Hazardous Waste Emergency Response Fund
Fee Assessment Report

COMPANY NAME: _____ EPA I.D. #: _____

GENERATOR LOCATION: _____

1. The amount of hazardous wastes generated during the 19__ calendar year, excluding nonhazardous constituents. _____ Tons
2. The amount of hazardous wastes generated (from the amount determined in #1) that were treated or disposed of off-site, but remained hazardous. _____ Tons
3. The amount of hazardous wastes generated (from the amount determined in #1) that were treated or disposed of on-site, but remained hazardous. _____ Tons
4. The amount of hazardous wastes generated (from the amount determined in #1) that were treated off-site so that such wastes were rendered nonhazardous. _____ Tons
5. The amount of hazardous wastes generated (from the amount determined in #1) that were treated on-site so that such wastes were rendered nonhazardous. _____ Tons
6. Provide a brief narrative of the method(s) used to determine the amount given in #1, including method(s) used to determine the nonhazardous constituents.
7. If the total of items 2, 3, 4, and 5 #2 through #5 is not equal to item #1, provide reasons for the difference.

CERTIFICATION:

~~I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.~~

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 assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system or those persons directly responsible for gathering the information, the information submitted 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.

Print or Type Name

Title

Signature of Authorized
Representative

Date Signed

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.

5.4.2. In reassessing the new fee for any generator who requests a reconsideration, the assessment rate per unit weight of the hazardous waste computed for the original fee assessment may not be recalculated unless it is necessary to recalculate the fee assessment of every generator as required under Section 5.4.1 of these regulations.

*Title 47
Procedural Rules*

FILED

APR 16 1987
WEST VIRGINIA DEPT. OF NATURAL RESOURCES

~~West Virginia Administrative Regulations~~
Department of Natural Resources
Series 40A

Hazardous Waste Emergency Response Fund Regulations
Procedural Rules Concerning Fee Assessment

Section 1. General.

1.1. **Scope and Purpose.** The purpose of these regulations is to establish procedures for the assessment and collection of hazardous waste generator fees pursuant to Chapter 20, Article 5G of the West Virginia Code.

1.2. **Authority.** These regulations are promulgated under authority of the West Virginia Code, Chapter 20, Article 5G, Section 5(d) and Chapter 29A, Article 3.

1.3. **Filing Date.** -- April 14, 1987.

1.4. **Effective Date.** -- May 14, 1987.

1.5. **Incorporation by Reference.** Whenever either federal statutes or regulations or State statutes or regulations are incorporated by reference into these regulations, the reference is to the statute or regulation in effect on the date of enactment of the legislation authorizing these regulations.

1.6. **Promulgation History.** Legislative rules on this subject were originally promulgated on May 9, 1985 on an emergency basis. Such rules expired on November 9, 1985. The current procedural rules were filed on April 14, 1987 and became effective on May 14, 1987.

Section 2. Definitions.

2.1. "Annual Report" means that report required to be submitted to the chief pursuant to the annual reporting requirements of the DNR Hazardous Waste Management Regulations, Section 6.4.2.

2.2. "Chief" means the chief of the Division of Waste Management of the Department of Natural Resources.

2.3. "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 6 of Chapter 20, Article 5E of the West Virginia Code in an amount greater than twelve thousand kilograms (12,000 kg) per year.

2.4. "Hazardous Components" shall be equivalent to the term "hazardous constituent" as used in Chapter 20, Article 5G of the

West Virginia Code and shall mean that portion of a mixture of hazardous waste and other waste which is identified or listed in Section 3 of the DNR Hazardous Waste Management Regulations.

2.5. "HWMR" or "DNR Hazardous Waste Management Regulations" means West Virginia Administrative Regulations, Department of Natural Resources, Series 35, promulgated pursuant to Chapter 20, Article 5E of the West Virginia Code.

2.6. "Nonhazardous Constituents" means that portion of a mixture of hazardous waste and other waste which is neither identified nor listed pursuant to Section 3 of the DNR Hazardous Waste Management Regulations. (Note: Water which is mixed with a hazardous waste is considered a nonhazardous constituent for the purposes of these regulations.)

2.7. "Series 40B" means West Virginia Administrative Regulations, Department of Natural Resources, Series 40B, Hazardous Waste Emergency Response Fund Regulations, Interpretive Rules Concerning Fee Assessment.

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

Section 3. Fee Assessment Deposits.

3.1. **Deposits to the Fund.** All monies collected from generators under Chapter 20, Article 5G of the West Virginia Code will be deposited in the State treasury in a special fund designated "The Hazardous Waste Emergency Response Fund." Deposits will include all generator fee assessments, all interest or surcharges assessed and collected by the director, and all interest accruing on investments and deposits of the Fund.

Section 4. Information and Reporting Requirements.

4.1. Annual Reporting.

4.1.1. All generators shall provide the following information to the Department in the annual report required under Section 6.4.2 of the DNR Hazardous Waste Management Regulations for the applicable calendar year on the form identified as Appendix A to these regulations.

4.1.1.a. Total amount of hazardous waste generated, excluding nonhazardous constituents, in tons;

4.1.1.b. The amount (in tons) of that quantity of hazardous waste reported for Section 4.1.1.a of these regulations which was treated or disposed off-site.

4.1.1.c. The amount (in tons) of that quantity of hazardous waste reported for Section 4.1.1.a of these regulations which was treated or disposed on-site.

4.1.1.d. The amount (in tons) of that quantity of hazardous wastes reported for Section 4.1.1.a of these regulations which was treated off-site so that such waste was rendered nonhazardous.

4.1.1.e. The amount (in tons) of that quantity of hazardous wastes reported for Section 4.1.1.a of these regulations which was treated on-site so that such waste was rendered nonhazardous.

4.1.2. If the total amount of hazardous waste reported under 4.1.1.a of these regulations is not equal to the sum of hazardous wastes reported under Sections 4.1.1.b through 4.1.1.e of these regulations, the reasons for the difference.

4.1.3. Generators shall exclude from the annual report required under Section 4.1.1 of these regulations those hazardous wastes listed in Section 4 of Series 40B.

4.2. Review of Information.

4.2.1. All information submitted pursuant to these regulations is subject to review by the chief to ensure that accurate and verifiable information is obtained. The chief may request clarifications, corrections, or additional information to supplement the information received to enable the chief to properly calculate or recalculate fee assessments.

4.2.2. The results of any sample analyses performed for reporting the quantity of hazardous waste generated shall be made available to the chief upon request.

4.3. Separation of Hazardous Waste and Nonhazardous Constituents.

4.3.1. The determination of the amount of hazardous waste generated must account for the mixture of hazardous components and nonhazardous constituents in the generated hazardous waste in accordance with the following:

4.3.1.a. If the hazardous waste is listed in Section 3.4.4.e or 3.4.4.f of the DNR Hazardous Waste Management Regulations, or exhibits any of the characteristics described in Section 3.3.2, 3.3.3, or 3.3.4 of the HWMR, then the amount of hazardous waste generated must represent the total amount of hazardous waste generated prior to mixing.

4.3.1.b. If the hazardous waste exhibits the characteristic described in Section 3.3.5 of the HWMR, then the amount of hazardous component in the waste generated shall be determined by chemical analysis or computed from knowledge of the amount of the waste mixture and chemical composition of the waste stream.

4.3.1.c. If the hazardous waste exhibits any of the characteristics described in Section 3.3.2, 3.3.3, or 3.3.4 of the HWMR and physical separation or visual inspection can be employed to measure the proportions of hazardous components and nonhazardous constituents, then the amount of hazardous component in the waste generated may be measured by visual inspection or physical separation techniques and determined directly.

4.3.1.d. If the hazardous waste is a mixture of nonhazardous constituents and a hazardous component listed in Section 3.4 of the HWMR, then the amount of hazardous component in the waste generated must be determined and reported based on knowledge of the generation processes, 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.)

4.3.2. If the generator finds, when making determinations as described under Sections 4.3.1.b through 4.3.1.d of these regulations, that nonhazardous constituents have chemically bonded, physically bonded, or chemically and physically bonded to an extent that prevents physical or chemical separation of nonhazardous constituents and hazardous components, then the total amount of the hazardous waste mixture must be reported.

4.3.3. For all determinations performed pursuant to Section 4 of these regulations which require chemical analysis, reported weight determinations must be computed by employing total analytical concentration values.

Section 5. Fee Assessment.

5.1. Dissemination of Fee Schedule.

5.1.1. 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.

5.1.2. 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.

5.1.3. 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 in the State Register. 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.

5.2. Payment of Fees.

5.2.1. 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 within one hundred and sixty eight (168) days after publication of the fee schedule in the State Register, whichever is later.

5.2.2. Fee payments made pursuant to these regulations shall be made by submitting a money order or check made payable to the "Hazardous Waste Emergency Response Fund." Such fee payments shall be transmitted to the director 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.

5.3. Reconsideration.

5.3.1. 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 forty-five (45) days of the date sent as noted on the fee assessment invoice required under Section 5.1.3 of these regulations and shall specify the reasons for requesting such reconsideration. The assessed fee shall not be subject to reconsideration because the generator included the hazardous wastes listed in Section 4 of Series 40B.

5.3.2. Upon reviewing a request submitted pursuant to Section 5.3.1 of these regulations, the director will reconsider the applicable calculations and will notify the generator by letter of the results. If the director revises the fee assessment, the generator shall be sent a revised fee assessment invoice, payable on the normal fee payment date.

5.3.3. If a revision of a fee assessment made pursuant to Section 5.3.2 of these regulations determines that a generator has made an overpayment greater than two hundred dollars (\$200.00), the generator may choose to either receive a refund of the excess amount or use that excess as a credit against the subsequent fee assessment. If the overpayment is less than two hundred dollars, the excess amount will be credited against the subsequent fee assessment.

5.4. Reassessment.

5.4.1. If the director finds that the aggregate amount of fees assessed, after adjustments pursuant to Section 5.3.2 of these regulations, is more than twenty-five thousand dollars (\$25,000.00) below the maximum amount authorized to be collected in any one year by Chapter 20, Article 5G of the West Virginia Code, the director shall cause all fee assessments to be recalculated and new fee assessment invoices to be transmitted to

*Title 47
Interpretive Rules*

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~~West Virginia Administrative Regulations~~
Department of Natural Resources
Series 40B
Hazardous Waste Emergency Response Fund Regulations
Interpretive Rules Concerning Fee Assessment

Section 1. General.

1.1. **Scope and Purpose.** The purpose of these regulations is to provide interpretations for implementing the powers, duties, and responsibilities vested in the director pursuant to Chapter 20, Article 5G of the West Virginia Code as they relate to the assessment of hazardous waste generator fees.

1.2. **Authority.** These regulations are promulgated under authority of the West Virginia Code, Chapter 20, Article 5G, Section 5(d) and Chapter 29A, Article 3.

1.3. **Applicability.** The regulations in this series provide interpretations for generators of hazardous waste. The Hazardous Waste Emergency Response Fund requires generators to pay a fee based upon the amount of hazardous waste generated as reported to the director in the generator's most recent annual report submitted pursuant to the Hazardous Waste Management Act.

1.4. **Filing Date.** -- April 14, 1987.

1.5. **Effective Date.** -- May 14, 1987.

1.6. **Incorporation By Reference.** Whenever either federal statutes or regulations or State statutes or regulations are incorporated by reference into these regulations, the reference is to the statute or regulation in effect on the date of enactment of the legislation authorizing these regulations.

1.7. **Promulgation History.** Legislative rules on this subject were originally promulgated on May 9, 1985 on an emergency basis. Such rules expired on November 9, 1985. The current interpretive rules were filed on April 14, 1987 and became effective on May 14, 1987.

Section 2. Definitions.

2.1. "Annual Report" means that report required to be submitted to the chief pursuant to the annual reporting requirements of the DNR Hazardous Waste Management Regulations, Section 6.4.2.

2.2 "Chief" means the chief of the Division of Waste Management of the Department of Natural Resources.

2.3. "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 6 of Chapter 20, Article 5E of the West Virginia Code in an amount greater than twelve thousand kilograms (12,000 kg) per year.

2.4. "HWERF" or "the Act" means the Hazardous Waste Emergency Response Fund, Chapter 20, Article 5G of the West Virginia Code.

2.5. "HWMA" means the Hazardous Waste Management Act, Chapter 20, Article 5E of the West Virginia Code.

2.6. "HWMR" or "DNR Hazardous Waste Management Regulations" means West Virginia Administrative Regulations, Department of Natural Resources, Series 35, promulgated pursuant to Chapter 20, Article 5E of the West Virginia Code.

2.7. "Series 40A" means West Virginia Administrative Regulations, Department of Natural Resources, Series 40A, Hazardous Waste Emergency Response Fund Regulations, Procedural Rules Concerning Fee Assessment.

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

Section 3. List of Provisions and Issues Interpreted.

3.1. Hazardous Wastes Not Subject to Fee Assessment under Chapter 20-5G-4(a) of the West Virginia Code (Section 4).

3.1.1. Exclusion of discharges to the waters of the State of hazardous wastes pursuant to a valid water pollution control permit issued under federal or State law (Section 4.2.1).

3.1.2. Exclusion of 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 4.2.2). (Reserved).

3.2. Interest Accrual and Surcharge Imposition Under Chapter 20-5G-4(d) of the West Virginia Code (Section 5).

3.2.1. Ability to Establish a Payment Schedule (Section 5.2.1).

3.2.2. Interest Accrual (Section 5.2.2).

3.2.3. Surcharge Imposition (Section 5.2.3).

3.3. Enforcement under Chapter 20-5G-5(f) of the West Virginia Code (Section 6).

3.3.1. Failure to Report (Section 6.2.1).

3.3.2. Failure to Remit Fee (Section 6.2.2).

Section 4. Hazardous Wastes Not Subject to Fee Assessment.

4.1. Provision Interpreted: W. Va. Code §20-5G-4(a).

The HWERF establishes a fee schedule designed to encourage environmentally sound treatment and disposal practices. Accordingly, the Act establishes a graduated fee assessment whereby the generator pays less per ton of generated hazardous waste if the selected treatment or disposal practice conforms to the Act's preferred practices. These practices and their associated fee levels are as follows: full assessment for generated hazardous waste treated or disposed off-site; ninety percent (90%) of the full assessment for generated hazardous waste treated or disposed on-site; seventy-five percent (75%) of the full assessment for generated hazardous waste treated off-site so that such waste is rendered nonhazardous; and twenty-five percent (25%) of the full assessment for generated hazardous waste treated on-site so that such waste is rendered nonhazardous.

In addition to graduated fee assessments, the HWERF exempts from fee assessment certain types of hazardous waste or hazardous waste which is handled in a specific manner. The exclusions are a part of the Act's goal to not only provide the State with funds for emergency response but to also provide an incentive to the generator to utilize the most environmentally sound handling practice. Accordingly, the Act enumerates categories of hazardous waste which are excluded from fee assessment.

The first group includes those wastes listed in W. Va. Code §20-5E-6(a)(2)(A) and enumerated in Sections 4.1.1 through 4.1.4 of these regulations. These wastes are currently excluded from regulation as hazardous waste under the HWMA until the completion of studies by the United States Environmental Protection Agency that are required by the federal Solid Waste Disposal Act. The second group encompasses either hazardous waste which is not regulated as a hazardous waste under the HWMA or hazardous waste which is handled in a manner which the HWERF is designed to encourage. These are enumerated in Sections 4.1.5 through 4.1.9 of these regulations.

For the purpose of determining and reporting the amount of hazardous waste generated under the Hazardous Waste Emergency Response Fund, the following wastes shall not be included:

4.1.1. 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.

4.1.2. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.

4.1.3. Cement kiln dust waste.

4.1.4. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.

4.1.5. Sludge from any publicly owned treatment works in the State.

4.1.6. Any discharge to waters of the State of hazardous wastes 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.)

4.1.7. Any hazardous wastes which are beneficially used or reused or legitimately recycled or reclaimed.

4.1.8. Hazardous wastes which are created or retrieved pursuant to an emergency or remedial action.

4.1.9. 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.

4.2. Issues Interpreted.

4.2.1. Exclusion of discharges to the waters of the State of hazardous wastes pursuant to a valid water pollution control permit issued under federal or State law (W. Va. Code §20-5G-4(a), Proviso 3).

This proviso is designed to exempt from fee assessment only the discharge to waters of the State of a treated hazardous waste when the point of generation is the actual point of discharge specified in a valid water pollution control permit. Hazardous waste which is sent to a wastewater treatment facility for treatment is included in the fee assessment calculation.

4.2.2. Exclusion of 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 (W. Va. Code §20-5G-4(a), Proviso 6). (Reserved).

Section 5. Interest Accrual and Surcharge Imposition.

5.1. Provision Interpreted: W. Va. Code §20-5G-4(d).

Section 4(d) of the HWERF contains specific provisions concerning accrual of interest and imposition of surcharges in cases where the payment of an assessed fee is overdue. If a fee assessed upon a generator has not been paid in full by the due date, interest accrues upon the unpaid amount until full payment is made. In addition, if a generator fails to pay the fee assessment in full within seventy-five (75) days of the prescribed date established under Section 5.2.1 of Series 40A, that generator must also pay a surcharge equivalent to the total amount of the fee assessed.

5.2. Issues Interpreted.

5.2.1. Ability to Establish a Payment Schedule.

The Department believes that the establishment of payment schedules is possible under the provisions of Section 4(d) of the Act. Payments are due on the prescribed date established under Section 5.2.1 of Series 40A. A generator unable to make full payment by this date may request, in writing, that a payment schedule be approved by the Department which provides for full payment of the fee and all interest accrued within a specified period of time. The Department will not allow such schedules to exceed one hundred and eighty (180) days beyond the original due date. An approved payment schedule will be an agreement signed by the director and the generator and does not constitute a waiver from the imposition of a surcharge as required by the Act and interpreted in Section 5.2.3 of these regulations.

5.2.2. Interest Accrual.

Under Section 4(d) of the HWERF, if a fee assessed upon a generator has not been paid by the prescribed date, "interest shall accrue upon the unpaid amount at the rate of ten percent per annum from the date due until payment is actually made." The Department interprets this provision to mean that interest on unpaid fees, or portions thereof, should accrue starting the day after the payment due date and continue until the full fee assessment, excluding any surcharge, is paid. Interest will be calculated only on the fee assessed, excluding any surcharge or accrued interest. Interest will accrue monthly as simple interest at a rate of 0.8333...% on the unpaid balance of the fee. This monthly rate is equivalent to the ten percent (10%) per annum rate imposed under the Act.

Interest accrual is required by law to be applied to any unpaid balance of the fee assessed and may not be waived by the Department due to a "good faith" partial payment or any other reason. Partial payments will be applied to the retirement of the

fee principal first to minimize the amount of interest accrued. Once the fee amount has been paid, interest accrual will cease.

5.2.3. Surcharge Imposition.

Section 4(d) of the Act provides for the automatic imposition of a surcharge equivalent to the total amount of the fee assessed if that fee is not paid within seventy-five (75) days of the prescribed date established under Section 5.2.1 of Series 40A. Rules, Series 40A. The Department believes that this provision does not provide the Department with the discretion to waive surcharge imposition or extend its payment. The surcharge is intended to be an incentive for timely fee payment as well as a penalty for late payment.

Section 6. Enforcement.

6.1. Provision Interpreted: W. Va. Code §20-5G-5(f).

Under Section 5(f) of the HWERF, the director is authorized to institute a civil action against any generator for failure to pay any fee assessed pursuant to the Act. Such action against a generator may be brought in either Kanawha County or the county in which the generator does business. The generator must pay all attorney fees and costs of such action if the director prevails.

6.2. Issues Interpreted.

6.2.1. Failure to Report.

Failure by the generator to report information as required in Section 4.2 of Series 40A, in the manner prescribed in that section, shall result in a fee assessment based on the amount of hazardous waste generated, as reflected in the generator annual report required under Section 6.4.2 of the HWMR or the facility annual report required under Section 8.5.6 of the HWMR, and other information available to the director to reasonably ascertain the total amount of hazardous waste generated. However, in no event may the fee assessed exceed the fee assessment for the total amount of hazardous waste reported in the annual reports filed pursuant to the HWMR provisions at the full rate of assessment.

6.2.2. Failure to Remit Fee.

If an assessed fee is not paid by the date prescribed pursuant to Section 5.2 of Series 40A, interest shall accrue as interpreted in Section 5.2.2 of these regulations. Such interest will be deposited in the Fund.

If any generator subject to fee assessment pursuant to these regulations fails to pay the fee 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.