

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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1987 OCT 30 AM 10:14

SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Natural Resources TITLE NUMBER: 47

RULE TYPE: Procedural; CITE AUTHORITY W. Va. Code §20-5G-5(d)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 40A

TITLE OF RULE BEING AMENDED: Hazardous Waste Emergency Response Fund,
Procedural Rules Concerning Fee Assessment

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

~~NOTICE OF A PUBLIC HEARING~~ A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON December 2, 1987 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Dr. Paul L. Hill

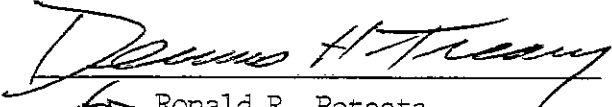
WV Department of Natural Resources

1800 Washington Street, East

Room 842

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Ronald R. Potesta

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

PREAMBLE TO PROPOSED AMENDMENTS TO
PROCEDURAL RULES CONCERNING FEE ASSESSMENT

FILED
1987 OCT 30 AM 10:14

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

AUTHORITY: W. Va. Code §20-5G-5(d)

ACTION: Proposed Rule; Notice of Hearing and Comment Period

DATES: A public hearing on this proposal will be held at
3:00 p.m. on Monday, November 30, 1987 in the Director's
Conference Room 674, 1800 Washington Street, East,
Charleston, West Virginia. Written comments will be
received until 4:30 p.m. on Wednesday, December 2, 1987.

CONTACT: For further information regarding this filing,
please contact Mr. Jeffrey E. Herrold, WV Department of
Natural Resources, 1800 Washington Street, East, Charleston,
West Virginia 25305, telephone (304) 348-2761.

SUMMARY: The Department is proposing the adoption of a
revision to its procedural rules concerning the assessment
of hazardous waste generator fees. The proposed revision
concerns the setting of a date of payment for assessed fees.
The wording of Section 5.2.1 of the current regulations
inadvertently allows fee payments to be made up to one year
after the date on which a Fee Schedule is published in the
West Virginia Register. The statutory construction of
Article 5G clearly shows that the Legislature intended fee
payments to be made no later than 168 days after the
publication of a Fee Schedule. Section 5.2.1 was originally
drafted to express this intent but was modified based upon
industry comments. As currently worded, this section closes
with the phrase "whichever is later." Thus, if a Fee
Schedule were to be published on January 16, a generator fee
payment could be made as late as January 15 of the following
calendar. Today's proposal corrects this flaw in order to
restore the original legislative intent that fee payments be
made no later than 168 days after fee schedule publication.

*10 TITLE 47
 PROCEDURAL RULES
 DEPARTMENT OF NATURAL RESOURCES

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1987 OCT 30 AM 10:15

SERIES 40A
 HAZARDOUS WASTE EMERGENCY RESPONSE FUND REGULATIONS
 PROCEDURAL RULES CONCERNING FEE ASSESSMENT

*09 §47-40A-1. General.

1.1. Scope. -- 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. -- W. Va. Code §§20-5G-5(d) and 29A-3.

1.3. Filing Date. --

1.4. Effective Date. --

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 the date on which these regulations were proposed (October 30, 1987).

~~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.~~

1.6. Promulgation History. -- These regulations replace West Virginia Administrative Regulations, Department of Natural Resources, Series 40A, that were filed on April 14, 1987 and became effective on May 14, 1987.

*09 §47-40A-2. Definitions.

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

2.2. "Article 5G" means Chapter 20, Article 5G of the West Virginia Code.

~~2-2-~~ 2.3. "Chief" means the chief of the Division of Waste Management of the West Virginia Department of Natural Resources.

~~2-3-~~ 2.4. "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-~~ 2.5. "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-~~ 2.6. "HWMR" or "DNR Hazardous Waste Management Regulations" means West Virginia Administrative Regulations, Department of Natural Resources, Series 35, Hazardous Waste Management Regulations, ~~promulgated-pursuant-to-Chapter-20,~~ ~~Article-5E-of-the-West-Virginia-Code~~

~~2-6-~~ 2.7. "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-~~ 2.8. "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-meanings-as~~ ~~prescribed-in-the-DNR-Hazardous-Waste-Management-Regulations~~ ~~and-Chapter-20, Article-5G-of-the-West-Virginia-Code-~~

2.9. All other terms shall have the meaning prescribed in the DNR Hazardous Waste Management Regulations and Article 5G.

*09 §47-40A-3. Fee Assessment Deposits.

3.1. Deposits to the Fund.

3.1.1. 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."

3.1.2. 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.

*09 §47-40A-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. All generators must provide the following information to the Department, for the applicable calendar year, on the form identified as Appendix I 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 Section 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 must be stated on the form identified as Appendix I to these regulations.

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

4.1.3. Hazardous wastes listed in Section 4 of Series 40B must be excluded from the information reported under Section 4.1.1 of these regulations.

4.1.4. Once he completes the form identified as Appendix I to these regulations, a generator shall submit that form to the Department as an attachment to the annual report.

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~~ Department 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~~ must 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~~ must 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.

***09 §47-40A-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 in accordance with the provisions of Article 5G. 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 (15) day of January 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 payment 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.~~

5.2.1. Generator fee assessments are due and payable to the Department on the fifteenth day of January (January 15) of 1985 and each succeeding year thereafter, except as provided in Section 5.2.2 of these regulations.

5.2.2. If a fee schedule is not published by the first day of August (August 1) of each year, generators upon whom fees are assessed pursuant to Article 5G must pay such fees within one hundred and sixty-eight (168) days after the publication of the fee schedule in the state register.

5.2.3. A fee payment 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 payment must 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~~ must 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 (\$200.00) or less, 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 ~~(1)~~ year by ~~Chapter 20, Article 5G of the West Virginia Code,~~ Article 5G, the director shall cause all fee assessments to be recalculated and new fee assessment invoices to be transmitted to each generator. The payment due date shall, in such situation, be extended by the same number of days as the revised assessment date is beyond the original date of assessment.

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
APPENDIX I

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

APPENDIX I continued

Hazardous Waste Emergency Response Fund
Fee Assessment Report

COMPANY NAME: _____

EPA I.D. #: _____

GENERATOR LOCATION: _____

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 through #5 is not equal to item #1, provide reasons for the difference.

APPENDIX I continued

Hazardous Waste Emergency Response Fund

Fee Assessment Report

COMPANY NAME: _____

EPA I.D. #: _____

GENERATOR LOCATION: _____

CERTIFICATION:

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 upon 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 of
 Authorized Representative

 Title

 Signature

 Date Signed