

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In this Box

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DEC -2 PM 4:38

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Department of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY: W. Va. Code §20-5G-5(d)

RULE TYPE: PROCEDURAL  INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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 ADOPTED: \_\_\_\_\_

TITLE OF RULE BEING ADOPTED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS January 1, 1988

  
\_\_\_\_\_

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

BARBARA STARCHER  
Deputy Secretary of State

RICHARD S. STEPHENSON  
Deputy Secretary of State



STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

RICH O. HARTMAN  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

TO: Jeff Harold, DNR

FROM: RICH O. HARTMAN, DIR. ADMIN. LAW DIV.

DATE: March 14, 1988

THE ATTACHED RULE(S) RECENTLY FILED BY YOUR AGENCY HAVE BEEN ENTERED INTO THE COMPUTER. PLEASE REVIEW AND PROOF AND RETURN WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS PLEASE SIGN THIS MEMO AND RETURN TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE(S) FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

*Series 40A*

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND ARE CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

✓ THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND NEEDS CORRECTED. THESE CORRECTIONS HAVE BEEN MARKED.

SIGNED: James A. Freary

TITLE OF PERSON SIGNING: Administrator

DATE: 3/18/88

RECEIVED  
MAR 17 1988

PREAMBLE TO PROPOSED AMENDMENTS TO  
PROCEDURAL RULES CONCERNING FEE ASSESSMENT

FILED

1987 DEC -2 11 4:39

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

AUTHORITY: W. Va. Code §20-5G-5(d)

ACTION: Adopted Rule

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 adopting a revision to its  
procedural rules concerning the assessment of hazardous  
waste generator fees. This 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 filing 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.

RESPONSE TO COMMENTS: A public hearing on the proposed rule  
was held on November 30, 1987 in Charleston and written  
comments were received until 4:30 p.m. on December 2, 1987.  
No written comments were submitted to the Department  
concerning the proposed rule. A representative of the West  
Virginia Manufacturers Association was the only individual  
to attend the public hearing. He presented the oral comment  
that, although the rule as revised may differ slightly from  
the construction of Article 5G, the Association understood  
the Department's intent and had no objection to the proposed  
rule revisions. Therefore, the Department is adopting this  
procedural rule as it was proposed on October 30, 1987.

FILED

1987 DEC -2 PM 4:39

\*10 TITLE 47  
PROCEDURAL RULES  
DEPARTMENT OF NATURAL RESOURCES

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. -- December 2, 1987.

1.4. Effective Date. -- January 1, 1988.

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 Title 47, Department of Natural Resources, Series 40A (47 C.S.R. 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.~~

*Stopped here*  
~~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-207, 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--207--Article--5E--of--the--West--Virginia Code.~~

2.6. "HWMR" or "DNR Hazardous Waste Management Regulations" means Title 47, Department of Natural Resources, Series 35, Hazardous Waste Management Regulations (47 C.S.R. 35).

~~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- --"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--207--Article--5G--of--the--West--Virginia--Code.~~

2.8. "Series 40B" means Title 47, Department of Natural Resources, Series 40B, Hazardous Waste Emergency Response Fund Regulations, Interpretive Rules Concerning Fee Assessment (47 C.S.R. 40B).

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--207, 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 shall 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 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.

**\*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 267-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