

Form #3

FILED

2008 AUG 26 PM 3: 01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

AGENCY: Waste Management
Department of Environmental Protection, DWWM

TITLE NUMBER: 33

CITE AUTHORITY: W.Va. Code 22-18-22(b) and (c)

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 24

TITLE OF RULE BEING AMENDED: Hazardous Waste Management Fee

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 26, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No) Department of Environmental Protection, DWWM
601 57th Street, SE
Charleston, WV 25304
304-926-0495

LEGISLATIVE RULE TITLE: 33 CSR 24 Hazardous Waste Management Fee

1. Authorizing statute(s) citation W.Va. Code 22-18-22(b) and (c)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 8, 2008

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

Class I legal ad in the Charleston Gazette and Charleston Daily Mail
Agency mailing list
Agency website

c. Date of Public Hearing(s) *or* Public Comment Period ended:

August 12, 2008, 7:30 pm

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

Attached X

No comments received

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

August 26, 2008

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Lisa A. McClung, Director
Division of Water and Waste Management
601 57th Street, SE
Charleston, WV 25304
Telephone: 304-926-0499, extension 1244
Fax: 304-926-0463

- g. **IF DIFFERENT FROM ITEM 'f',** please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Terrie Sangid, Assistant Director
Program Support Branch
Division of Water and Waste Management
601 57th Street, SE
Charleston, WV 25304
Telephone: 304-926-0499, ext 1285
Fax: 304-926-0463

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: 33 CSR 24, Hazardous Waste Management Fee

A. AUTHORITY:

W. Va. Code §§22-18-22(b), (c), and 29A-1, et seq.

B. SUMMARY OF RULE:

The rule sets procedures for assessing and collecting the hazardous waste management fees. The proposed amendment will increase the fees and stabilize the fee collection to adequately sustain the current Hazardous Waste Management Program. No spending authority increase will be sought as a result of the proposed amendment.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The certification fee has not generated the expected revenue since its implementation in 2003. Due to the shortfall, the certification fee fund is projected to reach a zero balance in state fiscal year 2010. The proposed rule increases the fee assessments to the level minimally necessary to sustain the hazardous waste management program, by helping to ensure sufficient revenue to meet the matching requirements for supporting federal grants. Also, the Appendix I form is being replaced with a form that better meets the data management needs of the program. The layout of the form has been modified and two new categories were added to the table – “No longer generating hazardous waste, but still in business” and “No longer in business, closed”.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

There is no federal counterpart regulation, thus no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its meeting on June 24, 2008, the Environmental Protection Advisory Council discussed the proposed rule. (See attached minutes for Council's discussion).

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Tuesday, June 24, 2008

601 57th Street, SE, Charleston, WV

West Virginia Room – 3rd Floor

IN ATTENDANCE:

Members of the Council:

Jackie Hallinan
Karen Price
Bill Raney
Rick Roberts

DEP:

Randy Huffinan	Cabinet Secretary
Lisa McClung	Deputy Cabinet Secretary and Director, Division of Water and Waste Management
Raymond Franks II	General Counsel
Karen Watson	Associate General Counsel
Kathy Cosco	Communications Director
Pam Nixon	Environmental Advocate
Ken Politan	Mining & Reclamation
Lewis Halstead	Mining & Reclamation
Charlie Sturey	Mining & Reclamation
Carroll Cather	Water & Waste Management
Don Martin	Land Restoration
Brian Long	Water & Waste Management
Dan Arnold	Water & Waste Management
Mike Zeto	Environmental Enforcement
Terrie Sangid	Water & Waste Management
Jim Mason	Air Quality
Mike Johnson	Water & Waste Management
Kathy Emery	Water & Waste Management
Scott Mandirola	Water & Waste Management

Visitors:

Tom Boggs	Chamber of Commerce
Don Garvin	WV Environmental Council
Ruth Lemmon	WV Auto/Truck Dealers Association

OLD BUSINESS:

Secretary Huffman called the meeting to order at 1:35 p.m., and he announced that Members Lisa Dooley and Larry Harris would not be attending. On motion made by Mr. Raney and seconded by Ms. Hallinan, the Council approved the minutes from the March 18, 2008 meeting. Secretary Huffman then ceded the floor to Mr. Franks.

NEW BUSINESS:

Mr. Franks noted that for the 2009 regular legislative session, DEP was proposing changes to 20 rules, grouped by Division for presentation to the Council. Depending on who had shepherded the rule through its initial drafting, either Mr. Franks or Ms. Watson would lead the discussion, with program administrators available to assist in answering the Council's questions.

Ms. Watson presented 60 CSR 3, the "Brownfields" Rule. Ms. Watson explained that the Rule was currently pending before the Secretary of State for authorization as an emergency rule, and that the proposed changes included adjustments to the "de minimis" table and enhancing DEP's flexibility in obtaining risk assessments.

Ms. Price referred to a letter recently sent to DEP seeking clarification of the Rule's provisions concerning land use covenants and long-term maintenance agreements. Secretary Huffman stated that the letter would be retrieved and the issue noted for further consideration by the agency.

Mr. Raney inquired whether the Council could recommend changes to the rules as presented. Ms. Watson responded in the affirmative. Mr. Raney then asked whether written comments, such as those submitted by Mr. Harris prior to the meeting, would be appended to the minutes. Mr. Franks responded in the negative, and Ms. Watson expounded that Mr. Harris's comments would be summarized and addressed orally during the discussion of the particular rules involved.

Mr. Franks then presented 38 CSR 2, the Surface Mining Reclamation Rule. Mr. Franks explained that the proposed changes would expand the Secretary's oversight of "approved persons" authorized to render technical certifications contained within mining permit applications, and would clarify certain collateral activities as being within the scope of requests for incidental boundary revisions to existing permits. Mr. Franks also noted that the proposed Rule would set forth more relevant and exacting criteria for the Secretary to consider in evaluating applications for revisions.

Mr. Raney inquired generally about the provisions with respect to approved persons. Secretary Huffman replied that the increased oversight is necessary to improve the initial quality of the permit applications, such that the delays occasioned by subsequent corrections would be reduced or eliminated. Mr. Raney asked whether approved persons could include anyone other than engineers, and Mr. Halstead responded that the definition extended to surveyors and geologists. Mr. Raney noted the need to establish a procedure for suspension or revocation to limit the agency's unfettered discretion, to which Secretary Huffman and Mr. Franks replied that the Rule provided for notice and hearing prior to curtailing the privileges of anyone on the approved-person list.

Ms. Watson presented 47 CSR 30, establishing NPDES requirements for coal mining facilities. Ms. Watson explained that the proposed changes were relatively minor, designed to enhance consistency with the non-coal rule, to allow for digital signatures, and to permit correction of clerical errors.

The Council then considered the Air Quality rules. Mr. Franks presented 45 CSR 1 and 45 CSR 26, relating to control and reduction of nitrogen oxides from, respectively, non-electric and electric generating units, the latter by means of a budget trading program. The rules are to be repealed in their entireties, and Mr. Mason explained that both are being subsumed within the Clean Air Interstate Rule program.

Mr. Franks then presented 45 CSR 8, the Ambient Air Quality Rule. Mr. Franks explained that the 1-hour primary and secondary ozone standards were being replaced with 8-hour standards, with the maximum tolerance being reduced slightly. Mr. Raney inquired as to the practical effect of the proposed change, particularly with regard to whether non-compliance areas within the State might be expanded. Mr. Mason replied that an expansion might occur, but that it was difficult to predict at this early stage. Mr. Mason added that the time-period increase would inevitably lead to more accurate measurements.

Ms. Watson presented 45 CSR 13, governing permits for constructing and modifying non-major stationary sources of air pollutants. Ms. Watson explained that the Rule was being amended to reflect the recent statutory changes reducing the lag time for issuing permits and authorizing certain pre-permit construction. It was noted that Mr. Harris had submitted in writing his concern that courts would be loath to enforce agency cease-and-desist orders based on defects discovered during the permitting process after construction had already begun. Ms. Watson pointed out that the statute had been carefully crafted to avoid facile invocation of detrimental reliance, with Mr. Franks observing that the Rule strove to conform to the statute. Ms. Price wondered whether one or more of the timeframe provisions included within the existing Rule had been inadvertently omitted from the proposed version. Ms. Watson responded that the Rule had been carefully checked for completeness, but that she would once again verify the language to assure its accuracy.

Mr. Franks presented 45 CSR 14, governing permits for constructing and significantly modifying major stationary sources of air pollutants. Mr. Franks explained that references to pollution control projects and clean units were deleted in accordance with a federal appellate court decision vacating those provisions.

Mr. Franks went on to present 45 CSR 16, 45 CSR 25, and 45 CSR 34, relating respectively to performance standards for new stationary sources, pollution from hazardous waste treatment, storage, and disposal facilities, and emission standards for hazardous air pollutants. Mr. Mason noted that the changes incorporate revisions to the Rules' federal counterparts, except that some of the new standards were not incorporated within 45 CSR 34, because they constituted unfunded mandates. Mr. Garvin was recognized, and he asked whether the failure to incorporate equated to a lack of regulation. Mr. Mason responded in the negative, explaining that the monitoring and regulation would be performed by the federal government. Mr. Garvin inquired as to the affected industries, and Mr. Mason referred to a list including smaller gas facilities and paint-stripping shops.

Ms. Watson presented 45 CSR 37, detailing the budget trading program to reduce mercury emissions. Ms. Watson explained that the rule is being repealed as inconsistent with a federal appellate court decision, pending alternative action by the EPA. Mr. Garvin inquired whether the Rule repealed two years ago would be reinstated upon revocation of the current version, to which Ms. Watson and Mr. Franks replied that it would not, if there had indeed been a previous rule in place, which was somewhat in question. Mr. Mason explained that mercury emissions would be monitored and regulated as usual, except that budget trading would not be available as a method of reduction. He also stated that there have been discussions on a national level as to whether to reinstate the federal mercury monitoring requirements.

The Council then turned its attention to the Water and Waste Management Rules. Ms. Watson presented 33 CSR 20, governing hazardous waste management systems. Ms. Watson explained that the Rule incorporated by reference its federal counterpart, the most salient change to which is its attempt to reduce disposal by permitting facilities to stage hazardous waste for three days pending recycling. Mr. Raney asked whether three days was sufficient time, and Mr. Cather responded in the affirmative.

Mr. Franks presented 33 CSR 24, the Hazardous Waste Management Fee Rule. Mr. Franks explained that increases to the fee assessments are necessary to sustain the underlying Fund by ensuring sufficient matching revenue for federal grants. Ms. Price indicated her belief that, as part of the legislative compromise extending the fee's duration, no increases would be forthcoming until completion and review of the Fund's legislative audit. Secretary Huffman responded that the preliminary audit findings in no way indicate any misallocation within the Fund or contravene the agency's determination that fee increases are necessary. Ms. Lemmon was recognized, and she commented that the proposed increase was unfair to automobile and truck dealers, as well as other small generators. Ms. Lemmon suggested that a study be done to identify the industries causing DEP to incur program costs, with fee assessments to be made proportionately.

Ms. Watson presented 33 CSR 22 and 47 CSR 56, governing the assessment of civil administrative penalties for, respectively, hazardous and solid waste violations and violations relating to groundwater. Ms. Watson explained that the Rules were being modified for the first time since their initial promulgation, with the purpose of clarifying their application by listing additional factors to be considered in calculating penalties, providing ratings examples, and expanding facility categories.

Ms. Watson then presented 47 CSR 31, addressing the State Water Pollution Control Revolving Fund. Ms. Watson explained that the proposed changes include the creation of a state review process for sewer projects in lieu of a wholesale adoption of the federal requirements. Mr. Roberts observed that many of the eligibility criteria would be deleted, but Ms. Emery assured the Council that inasmuch as the criteria were not being uniformly met, the deletion would have no practical effect on the Fund's administration. Ms. Watson advised Mr. Roberts that if he continued to have concerns upon further review, he should submit written suggestions for changes during the formal comment period.

Mr. Franks presented 47 CSR 32, governing the certification of laboratories conducting analyses of waste and wastewater. Mr. Franks explained that the proposed changes are designed to modernize outdated procedures and protocols that have remained constant since 1995, and to increase program funding through increased certification fees and a new application fee. Mr. Raney asked whether the new fees would render the program self-sustaining, and Mr. Arnold replied that it would for the time-being. In response to further inquiry, Mr. Arnold stated that DEP conducts annual, on-site audits of commercial and industrial labs, with municipal labs typically audited every two years, depending on the experience of the support personnel.

Ms. Watson presented 47 CSR 34, the Dam Safety Rule. Ms. Watson explained that the Rule is being extensively augmented to govern disbursement and use of a new Revolving Fund to finance repair and rehabilitation of deficient dams. Secretary Huffman commented that it appeared imminent that the Legislature would approve a transfer of \$350,000 from excess general revenue as seed money for the Fund.

Lastly, Ms. Watson presented 47 CSR 2, the Water Quality Standards Rule. Ms. Watson explained that the proposed revisions are designed to clarify the definition of Category A use, while providing specific standards to be applied in the permitting process to determine in a more streamlined fashion whether the use is unsuitable in cases of insufficient flow and hydrologic modification. Mr. Raney commented that the Category A determination process has always been a significant problem for the coal industry. Ms. Price also agreed for her members. Mr. Garvin noted that the environmental community had expressed some initial concern regarding the proposed streamlining mechanisms, but that there was some general support for taking the matter out of the legislative arena. Mr. Huffman affirmed that the revisions are designed solely for the benefit of the regulated public and that the revisions must include the clarification that Category A applies statewide.

Ms. Watson reported that the rules will proceed to be filed with the Secretary of State, some perhaps as early as the week following the Council meeting, and that some will have an extended 45-day comment period.

Mr. Franks requested closing comments from Council members and from the public. Following the cessation of discussion, Mr. Franks reminded the Council that the next meeting is scheduled for 1:30 p.m. on September 9, 2008.

Secretary Huffman declared the meeting adjourned at 3:25 p.m.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: 33 CSR 24

Type of Rule: X Legislative Interpretive Procedural

Agency: Division of Environmental Protection

Address: 601 57th Street SE
Charleston, WV 25304

Phone Number: 926-0495

Email: lmclung@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

This rule amendment will increase the hazardous waste management program revenue to a level to sustain the current program and adequately meet the matching requirements for federal grants which support the program. There will be no increase in program costs.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2009 Increase/Decrease (use "-")	2010 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	\$ 0	\$ 332,912	\$ 332,912

Rule Title: 33 CSR 24

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Based on the current fee schedule, it is projected the certification fee fund will reach a zero balance by FY2010, as current expenditures exceed current revenue.

This proposed rule amendment will increase fees imposed on hazardous waste generating facilities to adequately support the State's Hazardous Waste Management Program. The current fee schedule would change as listed below:

Treatment, Storage and/Disposal facilities – fee would remain the same.

Large Quantity Generating facilities – fee would increase \$200, from \$2,000 to \$2,200 annually.

Small Quantity Generating facilities – fee would increase \$300, from \$200 to \$500 annually.

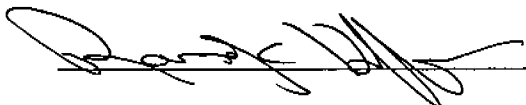
Conditionally Exempt Small Quantity facilities – fee would increase \$76, from \$24 to \$100 annually.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 7/7/08

Signature of Agency Head or Authorized Representative

_____

TITLE 33
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
~~DIVISION OF WASTE MANAGEMENT~~

SERIES 24
HAZARDOUS WASTE MANAGEMENT FEE

FILED

2008 AUG 26 PM 3:01

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§33-24-1. General.**

1.1. Scope. -- The purpose of this rule is to establish procedures for the assessment and collection of hazardous waste management fund fees pursuant to W. Va. Code §§22-18-22-(b) and (c).

1.2. Authority. -- W. Va. Code §§22-18-22(b), (c), and 29A-1, et seq.

1.3. Filing Date. -- ~~April 17, 2003.~~

1.4. Effective Date. -- ~~April 17, 2003.~~

1.5. Incorporation by Reference. -- Whenever either federal statutes or rules or state statutes or rules are incorporated by reference into this rule, the reference is to the statute in effect on ~~September 21, 2002~~ July 1, 2008.

§33-24-2. Definitions.

2.1. Definitions of all terms used shall have the meaning prescribed in the State Hazardous Waste Management Act, W. Va. Code §§22-18-1 et seq. and the rules promulgated thereunder.

§33-24-3. Fee Assessment and Deposits.

3.1. An annual certification fee shall be assessed for all facilities that manage hazardous waste. Calculation of the certification fee assessment shall be in accordance with the requirements of section five of this rule.

3.1.a. If a fee schedule projection for any year shows the annual certification assessment would generate an amount in excess of that authorized by WV Code 22-18-22(b), the assessment will be equitably prorated to ensure compliance with the statute.

3.2. Deposits to the Fund.

3.2.a. All monies collected from the fees assessed pursuant to this rule shall be deposited in the State Treasury in a special fund designated "The Hazardous Waste Management Fee Fund."

3.2.b. Deposits shall include all certification fee assessments and all interest accruing on investments and deposits of the Fund.

§33-24-4. Information and Reporting Requirements.

4.1. Annual Reporting.

Each calendar year, all large quantity generators (LQG), small quantity generators (SQG), conditionally exempt small quantity generators (CESQG), and treatment, storage and disposal facilities (TSD) shall provide the information to the ~~director or his designee~~ Secretary on the form identified as Appendix I attached to this rule and shall submit the completed form to the ~~division~~ department, along with the required fee payment, by the first day of October, ~~2003 and each succeeding year thereafter.~~

4.2. Review of Information. All information submitted pursuant to this rule is subject to review by the ~~director~~ Secretary to ensure that accurate and verifiable information is obtained. The ~~director~~ Secretary may request clarifications, corrections, or additional information to supplement the information received to enable the ~~division~~ department to properly calculate or recalculate fee assessments.

4.3. Exemptions.

4.3.a. No fee shall be assessed on the management of any wastes that have been excluded from classification as a hazardous waste by state or federal law or rule.

~~4.3.b. No fee shall be assessed on any large quantity generator, small quantity generator, conditionally exempt small quantity generator, or treatment, storage, and disposal facility that has in the same calendar year paid any assessment required under W.Va. Code §§22-19-1 et seq. and the rules promulgated thereunder.~~

~~4.3.e.~~ 4.3.b. No fee shall be assessed on the management of waste from any underground storage tanks containing regulated substances that are registered pursuant to the requirements of Title 33 CSR Series 30 and which are otherwise subject to this rule; Provided however, that other management of hazardous waste at facilities containing such underground storage tanks is subject to the requirements of this rule.

§33-24-5. Fee Assessment.

5.1. All persons subject to this rule shall annually pay the hazardous waste management fee in accordance with the following schedule:

<u>Category</u>	<u>Fee</u>
TSD	\$3,000 per facility
Large Quantity Generator	\$2,000 <u>\$2,200</u> per facility or a maximum of \$5,000 <u>\$5,600</u> for multiple facilities owned by the same person, whichever is lower
Small Quantity Generator	\$200 <u>\$500</u> per facility or a maximum of \$2,000 <u>\$5,000</u> for multiple facilities owned by the same person, whichever is lower
Conditionally Exempt Small Quantity Generator	\$24 <u>\$100</u> per facility

5.2. Payment of Fees.

5.2.a. Fee assessments ~~will~~ shall be remitted in accordance with the form identified as Appendix I and attached to this rule.

~~5.2.b. Fee assessments under this rule are due and payable to the division on the first day of October, 2003, and each succeeding year thereafter.~~

~~5.2.c.~~ 5.2.b A fee assessment paid pursuant to this rule shall be made by submitting a money order, check, or electronic funds transfer made payable to the Hazardous Waste Management Fee Fund along with the completed Appendix ~~I~~ I form. Such fee payment must be transmitted to the ~~director~~ Secretary. If such fee payment is mailed, then the payment must be postmarked by the date specified by these rules. Electronic funds transfers shall be made in accordance with procedures established by the State Treasurers Office.

~~5.2.d.~~ 5.2.c. If the facility of a person subject to this rule is described by more than one of the categories identified in section 5.1, only the category resulting in the highest fee shall apply. No person shall be required to pay more than one category of fees for each facility listed in section 5.1.

~~5.2.e.~~ 5.2.d. If a person owns or operates more than one facility in the large quantity generator or small quantity generator category, such person shall be required to pay the fee established in section 5.1 for each facility or the maximum amount for multiple facilities, whichever is less.

5.3. Fees submitted after November 15 of each calendar year are subject to a late charge of twenty-five percent of the fee assessed. Persons with a facility subject to this rule who have not paid the fee assessment and any late charge by December 31 of each calendar year may be subject to the provisions of W. Va. Code §22-18.

5.4. Reconsideration of Assessed Fees.

5.4.a. Any person assessed a fee for a facility pursuant to this rule may request the ~~director~~ Secretary to reconsider the amount of fee assessed. Such request, accompanied by supporting documentation, must be submitted to the ~~director~~ Secretary, in writing, by August 15 of the year for which the assessment is due, and must specify the reasons for requesting such reconsideration.

5.4.b. Upon reviewing a request submitted pursuant to subdivision 5.4.a. ~~of this rule~~, the ~~director~~ Secretary shall reconsider the applicable calculations and shall ~~notify the party by letter of the results~~ respond in writing. If the ~~director revises the fee assessment~~ is revised, ~~the party shall be sent the~~ Secretary shall issue a revised fee assessment invoice.

5.4.c. Any person aggrieved or adversely affected by a decision of the ~~director~~ Secretary made and entered in accordance with the provisions of this section or by the failure or refusal of the ~~director~~ Secretary to act pursuant to this section may appeal to the environmental quality board in accordance with the provisions of W. Va. Code §22b-1.

5.5. Reassessment of Fee.

The ~~director~~ Secretary shall not be authorized to recalculate the fee assessments provided for by section 5.1. of this rule, except as provided for by section 5.4 of this rule.

West Virginia Department of Environmental Protection
Hazardous Waste Management Program
Hazardous Waste Management Fee Fund Appendix 1
1356 Hansford Street
Charleston, WV 25301

EPA ID No.: WVD

Generator's Name:
Physical Address:

Owner's Name:
Mailing Address:

Operation Manager's Name:
Title:
Mailing Address:

Telephone Number:
E-mail Address:

Contact Person Name:
Title:
Address:

Telephone No.:
E-mail Address:

Generator Status:

Active _____ Inactive _____ Date Ceased Operation _____

TSD _____ \$3,000 per facility

Large Quantity _____ \$2,000 per facility or a maxi-
(>1,000 kg or >2,200 lbs/mo) _____ mum of \$5,000 for multiple
_____ facilities owned by the same
_____ person, whichever is lower

Small Quantity _____ \$ 200 per facility or a maxi-
(100-1,000 kg/mo) (220-2200 lbs/mo) _____ mum of \$2,000 for multiple
_____ facilities owned by the same
_____ person, whichever is lower

C. E. Small Quantity _____ \$ --24 per facility
(<100 kg/mo) (<220 lbs/month)

Fee assessments are due October 1 of each calendar year. Fees submitted after November 15 of each calendar year are subject to a late charge of twenty-five percent of the fee assessed. Persons with a facility subject to this rule who have not paid the fee assessment and any late charge by December 31 of each calendar year may be subject to the provisions of chapter twenty-two, article eighteen of the West Virginia Code. Persons with multiple facilities subject to this rule may utilize copies of the attachment to Appendix 1 to comply with this rule

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 assume that qualified personnel properly gather and evaluate the information as submitted. Based on my inquiry of the person or persons who manage the system, as the persons directly responsible for gathering this information, the information 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.

NAME _____ TITLE _____ DATE _____

West Virginia Department of Environmental Protection
Hazardous Waste Management Program
Hazardous Waste Management Fee Fund Appendix I

Generator:
EPA Identification Number:
Location:
Mailing Address:

Operation Manager's Name & Title: _____

Mailing Address: _____

Telephone Number: _____

E-Mail Addr: _____

Contact Person Name & Title: _____

Mailing Address: _____

Telephone Number: _____

E-Mail Addr: _____

Has your facility ceased generating hazardous waste? Yes _____ No _____

If so, what is the date that your facility ceased generating waste? _____

Please review the categories below and mark an "X" next to the category that represents your facility's current hazardous waste generating status.

Place an "X" in one of the categories below	Generating Category	Fee Amount Per Facility
	Treatment, Storage or Disposal Facility (Permitted)	\$3,000
	Large Quantity Generator (LOG) Generates 1000 kg (about 2,200 pounds or 300 gallons) or more of hazardous waste, or more than 1 kg of acutely hazardous waste in a month	\$2,200
	Small Quantity Generator (SQG) Generates more than 100 and less than 1,000 kg (between 220 and 2,200 pounds or about 25 to under 300 gallons) of hazardous waste, or no more than 1 kg acutely hazardous waste in a month	\$500
	Conditionally Exempt Small Quantity (CESQG) Generates no more than 100 kg (about 220 pounds or 25 gallons) of hazardous waste or no more than 1 kg of acutely hazardous waste in a month	\$100
	No longer generating hazardous waste, but still in business	
	No longer in business, closed	

Fee payments are due October 1 of each calendar year. Fees submitted after November 15 of each calendar year are subject to a late charge of twenty-five percent (25%) of the fee assessed. Persons with a facility subject to this rule who have not paid the fee assessment and any late charge by December 31 of each calendar year may be subject to the provisions of chapter twenty-two, article eighteen of the West Virginia Code. Persons with multiple facilities subject to this rule may utilize copies of the attachment to Appendix I to comply with this rule.

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 assume that qualified personnel properly gather and evaluate the information as submitted. Based on my inquiry of the person or persons who manage the system, as the person directly responsible for gathering this information, the information 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.

NAME: _____

TITLE: _____

DATE: _____

**West Virginia Department of Environmental Protection
Hazardous Waste Management Program
Hazardous Waste Management Fee Fund - Appendix 1 I – Multiple Site Form
~~1356 Hansford Street~~
Charleston, WV-25301**

Company Name:	Responsible Corporate Official:
Mailing Address:	Title:
	Telephone No:
Physical Address:	E-mail Address:
	Facsimile No.:

Site Name & Location:	Site Contact Person:
Physical Address:	Title:
EPA ID No:	Mailing Address:
Status 9TSD, LQG, SQG, CESQG):	Telephone No:
<u>Current Status (mark applicable box)</u>	E-Mail Address:
<u> TSD LQG SQG CESQG No Longer a generator of hazardous waste, but still in business No longer in business</u>	

Site Name & Location:	Site Contact Person:
Physical Address:	Title:
EPA ID No:	Mailing Address:
Status 9TSD, LQG, SQG, CESQG):	Telephone No:
<u>Current Status (mark applicable box)</u>	E-Mail Address:
<u> TSD LQG SQG CESQG No Longer a generator of hazardous waste, but still in business No longer in business</u>	

Site Name & Location:	Site Contact Person:
Physical Address:	Title:
EPA ID No:	Mailing Address:
Status 9TSD, LQG, SQG, CESQG):	Telephone No:
<u>Current Status (mark applicable box)</u>	E-Mail Address:
<u> TSD LQG SQG CESQG No Longer a generator of hazardous waste, but still in business No longer in business</u>	

ORIGINAL

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT

IN THE MATTER OF:

PROPOSED RULE 33CSR24,
HAZARDOUS WASTE MANAGEMENT FEE

TRANSCRIPT OF PROCEEDINGS had or testimony adduced pursuant to the West Virginia Rules of Civil Procedure in the above-entitled action, on the 12th day of August, 2008, commencing at 7:30 p.m. and concluding at 7:32 p.m., at the West Virginia Department of Environmental Protection, 601 57th Street S.E., Charleston, Kanawha County, West Virginia, taken by Jo Ann Wilson, Certified Court Reporter, duly certified by the West Virginia Supreme Court of Appeals and Notary of West Virginia, pursuant to notice to all interested parties.

BEFORE: KATHY COSCO, Moderator

NANCY MCNEALY
CERTIFIED COURT REPORTER
Post Office Box 13415
Charleston, West Virginia 25360-0415
(304) 988-2873 FAX (304) 988-1419

I N D E X

Reporter's Certificate.....Page 4

1 MS. COSCO: Good Evening. My name is Kathy
2 Cosco. I'm with the Public Information Office. Welcome to
3 the DEP at the public hearing of Proposed Rule 33CSR24.
4 The rule sets procedures for assessing and collecting the
5 hazardous waste management fees.

6 The proposed amendment will increase the
7 fees, and stabilize the fee collection, to adequately
8 sustain the current Hazardous Waste Management Program. No
9 spending authority increase will be sought as a result of
10 the proposed amendment.

11 Being as how there is no one present to
12 make a public comment, I will close this public hearing for
13 Proposed Rule 33CSR24. The Agency will review all comments
14 it has received in writing, which will be filed when the
15 final rule is filed with the Secretary of State.

16 Thank you very much.

17 (WHEREUPON, the public hearing was concluded.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to wit:

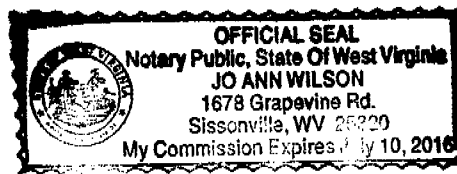
I, **JO ANN WILSON**, Certified Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

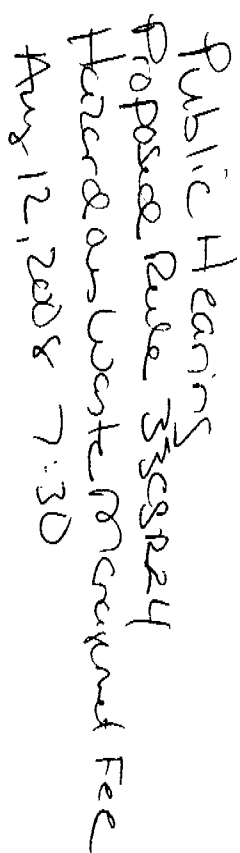
Given under my hand this 21st day of August, 2008.

My commission expires July 10, 2016.

Jo Ann Wilson, C.C.R.

Certified Court Reporter





Public Hearing
Proposed Rule 338824
Hazardous Waste Management Fee
Aug 12, 2008 7:30

Sign In Sheet

west virginia department of environmental protection

Name (please print)

Address

Organization

Phone/Fax

E-mail

Comment
Yes/No

[illegible]



ROBERT E. LANNAN
ATTORNEY AT LAW

P.O. BOX 1791
CHARLESTON, WV 25326

DIRECT DIAL: (304) 347-8346
E-MAIL: rel@ramlaw.com

August 12, 2008

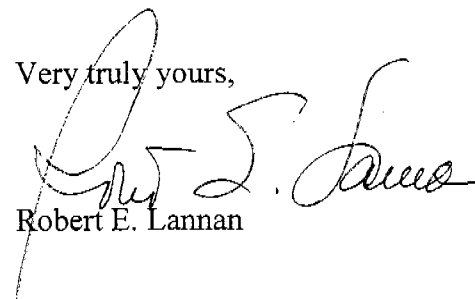
VIA HAND DELIVERY

Ms. Kathy Cosco
Communications Director
Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

Dear Ms. Cosco:

Please find enclosed for filing the original Comments of the West Virginia Manufacturers Association on the West Virginia Department of Environmental Protection, Division of Water and Waste Management's 2008 Proposed Rule Regarding the Hazardous Waste Management Fee (33 CSR 24).

Very truly yours,



Robert E. Lannan

REL:dlm
Enclosure

400 FIFTH THIRD CENTER • 700 VIRGINIA STREET, EAST • CHARLESTON, WV 25301 • (304) 344-5800
140 WEST MAIN STREET • SUITE 300 • CLARKSBURG, WV 26302 • (304) 622-5022
www.ramlaw.com

ROBINSON & MCELWEE PLLC IS A MEMBER OF ALFA INTERNATIONAL

{R0332185.1}

**COMMENTS OF THE WEST VIRGINIA MANUFACTURERS
ASSOCIATION ON THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, DIVISION OF
WATER AND WASTE MANAGEMENT'S 2008 PROPOSED RULE
REGARDING THE HAZARDOUS WASTE MANAGEMENT FEE (33 CSR 24)**

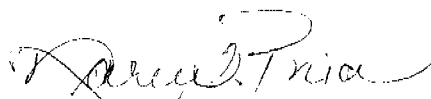
The West Virginia Manufacturers Association ("WVMA") represents numerous manufacturing entities throughout the State which are subject to the regulations of the West Virginia Department of Environmental Protection, Division of Water and Waste Management. The WVMA submits the following comments on DEP's proposed revisions to the hazardous waste management fee rule, 33 CSR 24. The so-called "certification fee" was originally enacted into the State hazardous waste management program in 2002. (W.Va. Code § 22-18-22(b) *et seq*; 33 CSR 24). The WVMA was one of several trade organizations cooperatively working with DEP representatives to address a short-term funding need of the State in order to, as the WVMA and others were informed at that time by DEP, maintain delegation of the State RCRA program and meet the matching requirements for certain federal EPA grants in the hazardous waste management area. Subsequently, rules were negotiated through a cooperative process between a number of affected trade associations and DEP representatives, which created a regulatory framework for calculating and billing the fee. These rules went into effect in April 2003. During this time period, it was always the understanding of the WVMA and its members that the certification fee was to be imposed for a limited time and a specific purpose.

Subsequent actions of DEP in later years have indicated its intention otherwise, however. In 2006 and again in 2008, DEP has twice sought to legislatively continue the fund beyond its sunset provision and now it proposes to increase the fees charged to

entities regulated under the hazardous waste management program. While the WVMA supports having a federally delegated RCRA program in the State of West Virginia, we oppose the fee increases proposed in the rule and we will continue to oppose without further justification from DEP any extension to the certification fee program by either statute or regulation. The certification fee is nothing more than a tax and its impact falls disproportionately on our members. The benefits of the State hazardous waste management program inure to all the citizens of West Virginia and DEP must start looking now at different ways of obtaining funding and other streams of revenue, such as the general revenue fund, to maintain a viable hazardous waste management program which now appears to be primarily, if not totally, funded by the regulated community.

We additionally oppose DEP's proposed removal of the provision which prohibits DEP from collecting the certification fee from facilities which have made a payment for that year into the Hazardous Waste Emergency Response Fund created by Chapter 22, Article 19 of the Code. See Proposed §4.3.b. No justification has been given by DEP for the removal of this provision which was agreed to by all parties at the time the original rule was negotiated in 2002. The WVMA appreciates the opportunity to provide comments on the proposed rule and hopes that the DEP seriously consider the suggestions and comments made herein.

Respectfully submitted,



Karen S. Price
President
West Virginia Manufacturers Association
2001 Quarrier Street
Charleston, West Virginia 25311

RESPONSE TO COMMENTS – 33 CSR 24

The following is a response to the comments provided during the public comment period on the Department of Environmental Protection's Rule 33 CSR 24—"Hazardous Waste Management Fee." Written comments were accepted until August 13, 2008. A public hearing was held on August 12, 2008. Only one written comment was received.

1. COMMENTER: The West Virginia Manufacturers Association (WVMA)

The West Virginia Manufacturers Association (WVMA) and its members have been under the impression, since 33 CSR 24 became effective in April 2003 that the hazardous waste certification fee was to be imposed for a limited time and specific purpose. While the WVMA supports having a federally delegated RCRA program in the State of West Virginia, we oppose the fee increase proposed in the rule. WVMA suggests DEP start looking at different ways of obtaining funding and other streams of revenue, such as the general revenue fund, to maintain a viable hazardous waste management program. Additionally, WVMA opposes DEP's proposed removal of the provision which prohibits DEP from collecting the certification fee from facilities which have made a payment for that year into the Hazardous Waste Emergency Response Fund created by Chapter 22, Article 29 of the Code.

RESPONSE: The West Virginia Department of Environmental Protection worked with several trade organizations (stakeholders), including the WVMA, to implement the hazardous waste certification fee. The fee was developed to reduce the hazardous waste management program's reliance on penalty monies, which at the time were the program's main source for state match to the \$1.7 million federal Resource Conservation and Recovery Act (RCRA) grant. The state match requirement was, and still remains at approximately \$800,000 per year. The fee was supposed to yield nearly \$700,000 annually, but did not. Furthermore, because of subsection 4.3.b, which specifies that no fee shall be assessed on any [generator] that in the same calendar year paid an assessment under W. Va. Code 22-19, DEP has not had a consistent revenue source, only collecting between \$193,000 and \$360,000 per year. The program has been successful in moving away from utilizing penalty monies as a main source for state match for the grant; however, the hazardous waste certification revenue has not been sufficient to support the program's needs. Without increasing the fees, the hazardous waste certification fee fund is projected to reach a zero balance in State Fiscal Year 2010. Lastly, because DEP recognized this shortfall in 2006, we reassembled the original stakeholders in May 2006 in order to open discussions to resolve the hazardous waste management program's funding problems. DEP continues to seek input from these organizations to allow the State of West Virginia to maintain its federally delegated RCRA Hazardous Waste Management Program.