

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #1

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2002 JUN 24 A 9:15

WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: WV Department of Environmental Protection TITLE NUMBER: 33

RULE TYPE: Division of Waste Management  
~~legislative~~ Procedural CITE AUTHORITY: 22-19-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

DATE OF PUBLIC HEARING: July 24, 2002 TIME: 6:30 p.m.

LOCATION OF PUBLIC HEARING: WV Department of Environmental Protection  
Division of Waste Management  
1356 Hansford Street  
Charleston, WV 25301-1401

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

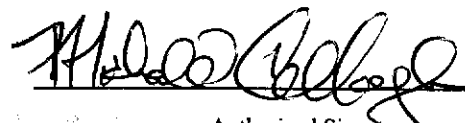
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV Department of Environmental Protection

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Division of Waste Management  
1356 Hansford Street  
Charleston, WV 25301-1401  
ATTN: Carroll Cather

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

  
Authorized Signature  
**SCANNED**

### 33 CSR 26 Summary

This rule amends the current 33 CSR 26 Rule, the Hazardous Waste Emergency Response Fund rule to reflect the Statutory changes of 2000. The weight limit for fee collection was lowered from 12,000 kg. (26,400 lbs.) to 5,000 kg. (11,000 lbs.) of hazardous waste, and the reassessment section was eliminated as it was determined to be unnecessary. The assessment and collection of fees under this rule is to replenish the State Emergency Response Fund when it goes below the set level (two million dollars).

FILED

TITLE 33  
PROCEDURAL RULE  
~~DIVISION~~ DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE DIVISION OF WASTE MANAGEMENT

2000 JUN 24 A 9:15  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 26  
HAZARDOUS WASTE EMERGENCY RESPONSE FUND PROCEDURAL  
RULE CONCERNING FEE ASSESSMENT

§ 33-26-1. General.

1.1. Scope. -- The purpose of this rule is to establish procedures for the assessment and collection of hazardous waste generator fees pursuant to W. Va. Code §22-19-1 et seq.

1.2. Authority. -- W. Va. Code §§22-19-5(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 rules are incorporated by reference into this rule, the reference is to the statute in effect on the date on which this rule ~~was originally~~ is now proposed (~~October 30, 1987~~).

1.6. Repeal of Former Rule. -- This rule repeals and replaces ~~47CSR40A, filed December 2, 1987, and effective January 1, 1988; 33CSR26 filed December 16, 1999, and effective January 19, 2000.~~

§33-26-2. Definitions.

Definitions of all terms used, but not defined in this subsection, shall have the meaning prescribed in the HWMR and Article 19.

2.1. "Article 19" means W. Va. Code §22-19-1 et seq.

2.2. "Director chief" means the ~~chief~~ chief director of the ~~Office~~ Division of Waste Management of the West Virginia ~~Division~~ Department of Environmental Protection.

2.3. "Generator" means any person, corporation, partnership, association, or other legal entity, by site location, whose act or process produces hazardous waste as defined or listed by the director in rules promulgated pursuant to W. Va. Code §22-18-6 in an amount greater than ~~twelve~~ five thousand kilograms (~~12,000~~ 5,000 kg) per year.

2.4. "HWMR" or "The Hazardous Waste Management Rule" means Title 33, Series 20, ~~Division~~ Department of Environmental Protection's Hazardous Waste Management Rule (33CSR20).

2.5. "Hazardous Components" shall be equivalent to the term "Hazardous Constituent" as used in Article 19, and shall mean that portion of a mixture of hazardous waste and other waste which is identified or listed in HWMR.

2.6. "Nonhazardous Constituents" means that portion of a mixture of hazardous waste and other waste which is neither identified nor listed pursuant to HWMR. (Note: Water which is mixed with a hazardous waste is considered a nonhazardous constituent for the purposes of this rule.)

**§33-26-3. Fee Assessment Deposits.**

3.1. Deposits to the Fund.

3.1.a. All monies collected from generators under Article 19 will be deposited in the State Treasury in a special fund designated "The Hazardous Waste Emergency Response Fund."

3.1.b. 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.

**§33-26-4. Information and Reporting Requirements.**

4.1. Annual Reporting.

4.1.a. All generators shall provide the following information to the division for the applicable calendar year on the form identified as Appendix I and attached to this rule:

4.1.a.1. Total amounts (in tons) of hazardous waste generated, excluding nonhazardous constituents;

4.1.a.2. The amounts (in tons) of the quantity of hazardous waste reported for paragraph 4.1.a.1 of this rule which was treated or disposed of off-site;

4.1.a.3. The amounts (in tons) of that quantity of hazardous waste reported for paragraph 4.1.a.1 of this rule which was treated or disposed of on-site;

4.1.a.4. The amount (in tons) of that quantity of hazardous waste reported for paragraph 4.1.a.1 of this rule which was treated off-site so that such waste was rendered nonhazardous; and

4.1.a.5. The amount (in tons) of that quantity of hazardous waste reported for paragraph 4.1.a.1 of this rule which was treated on-site so that such waste was rendered nonhazardous.

4.1.b. If the total amount of hazardous waste reported under paragraph 4.1.a.1 of this rule is not equal to the sum of hazardous waste reported under paragraphs 4.1.a.2 through 4.1.a.5 of this rule, the reasons for the difference must be stated on the form identified as Appendix attached to this rule.

4.1.c. Once he or she completes the form identified as Appendix I to this rule, a generator shall submit that form to the division.

4.2. Review of Information.

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

4.2.b. The result of any sample analyzes performed for reporting the quantity of hazardous waste generated shall be made available to the chief director upon request.

4.3. Separation of Hazardous Waste and Nonhazardous Constituents.

4.3.a. 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.a.1. If the hazardous waste is listed in subsection 3.1 of the HWMR, or exhibits any of the characteristics described in subsection 3.1 of the HWMR, the amount of hazardous waste generated must represent the total amount of hazardous waste generated prior to mixing;

4.3.a.2. If the hazardous waste exhibits the characteristic described in subsection 3.1 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.a.3. If the hazardous waste exhibits any of the characteristic described in subsection 3.1 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; and

4.3.a.4. If the hazardous waste is a mixture of nonhazardous constituents and a hazardous component listed in subsection 3.1 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.

4.3.b. If the generator finds, when making determinations as described under paragraphs 4.3.a.2 through 4.3.a.4 of this rule, 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.c. For all determinations performed pursuant to section 4 of this rule which require chemical analysis, reported weight determinations must be completed by employing total analytical concentration values.

4.4. No fee shall be assessed on any wastes that have been excluded from classification as a hazardous waste by state or federal law, rule or regulation.

**§33-26-5. Fee Assessment.**

5.1. Dissemination of Fee Schedule.

5.1.a. Fee assessments will be computed by the division department for all generators in accordance with the provisions of Article 19. Generators for whom fee assessments are computed by the division department to be less than five dollars (\$5.00) will not be sent a fee assessment invoice, nor are they required

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**ADVISORY COUNCIL MEETING MINUTES**

**Wednesday, June 5, 2002**

**DMR Conference Room - 10 McJunkin Road, Nitro, WV**

**ATTENDEES:**

**Advisory Council Members:**

Larry Harris  
Bill Samples  
Rick Roberts  
Lisa Dooley  
Bill Raney

**DEP:**

Bill Adams  
Lewis Halstead  
James Martin  
Brett Loflin  
Allyn Turner  
Charles Sturey

Ken Ellison  
Bill Brannon  
Mike Zeto  
Greg Adolfson  
Jim Mason  
Karen Watson

**Citizens:**

Rebecca Robertson, NiSource

The meeting was called to order at 9:00 a.m. by William E. Adams, Jr., General Counsel.

**Welcome/Opening Remarks - Bill Adams**

Bill Adams opened by informing everyone that in Secretary Callaghan's absence, he would chair the meeting. Bill further explained that Secretary Callaghan was preparing for his appearance before a Congressional Committee, he sends his regrets. Bill further announced that Director Ellison was present and later, Director Turner as well as Chief James Martin. There was an introduction of the Advisory Council

members, an explanation of what group or interest each member represents.

## **PRESENTATION OF PROPOSED RULES**

### **Division of Mining and Reclamation**

Charles Sturey presented rules 38CSR2 and 38CSR4 to the Council.

Mr. Raney asked what the genesis of the coal dam safety rule was. Lewis Halstead explained that the changes were being made mostly due to recent flooding and DEP's experience with a large coal dam near Welch. Mr. Harris inquired generally whether the language in the rules that says DEP's goal is to "restore and protect the environment" should place "protect" as the first priority. This suggestion was taken under advisement.

### **Division of Water Resources**

Bill Brannon presented rules 47CSR20 and 47CSR26 to the Council. He stated that general stormwater fees would be \$300 rather than the \$500 suggested by EPA. An inquiry was made as to how linear footage for water/sewer lines would be used to calculate whether 1-3 acres would be disturbed in order to qualify for a general permit. Director Turner stated that the agency would rely on the applicant's application information but that some clarification would be appropriate. Director Turner also agreed that clarification was needed on whether a \$300 renewal fee would be required and whether it would be based on flow calculations. She noted also that an agreement similar to that with the coal division would be reached with the Office of Oil & Gas to issue the general permits and that Water and Oil & Gas would split the fee.

### **Office of Innovation**

Greg Adolfson announced that he was now employed at the Office of Innovation, but still worked on the Stream Partners program. He presented rule 60CSR4 to the Council dealing with the Stream Partners Program Grants. Mr. Adolfson also gave a brief history of the Office of Innovation and stated that the Office was directed toward more forward thinking instead of reaction oriented.

### **Division of Waste Management**

Ken Ellison presented rules 33CSR20 and 33CSR26 to the Council.

Mr. Ellison explained that these two rules are now identical to the federal regulations.

### **Environmental Enforcement**

Mike Zeto presented rule 33CSR8 to the Council.

Mr. Zeto explained that this was a new rule dealing with establishing a mechanism and requirements for the permitting and use of sludge (specifically not sewage sludge) or other materials that have beneficial properties similar to sewage sludge. Mr. Samples questioned whether the requirement that the sludge comprise at least 50% of the applicant's agricultural requirements was too stringent and whether the Secretary should be allowed to waive this requirement. Mr. Zeto responded in the negative and also stated that the sludge must be shown to have significant nutrient value before DEP would approve its use.

### **Office of Oil and Gas**

James Martin was introduced as the Chief of the Office of Oil and Gas.

Brett Loflin (Oil and Gas Conservation Commission) presented rules 39CSR1 and 39CSR2 to the Council. Mr. Loflin explained that 39CSR1 is currently a procedural rule but will be filed as a legislative rule because it contains substantive legal requirements.

### **Division of Air Quality**

Jim Mason presented rules 45CSR1, 16, 26 and 34 to the Council.

Karen Watson presented rules 45CSR13, 25, 30 and 33 to the Council.

Rick Roberts inquired as to whether there would be a budget hole created due to the reduction of fees in the presented rules. Ms. Watson explained that the calculations had not been done regarding this subject but that as soon as the figures were available, they would be presented to the Council. Mr. Adams noted that as with all rules, a fiscal note would be prepared containing this analysis.

## **OTHER BUSINESS**

Upon conclusion of the rules presentations, it was determined that the rules would need to be filed with the Secretary of State's office by June 12, 2002 to begin the thirty-day comment public comment/hearings period.

The Council agreed that proposed rules should be submitted to the Council members via e-mail in the future so that they can be distributed to other interested parties prior to meetings. Moreover, the proposals should be sent more than 3 days before the Council meeting. Past practice apparently gave

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June 12, 2002

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little or no time to review the proposals prior to the meeting. Mr. Adams agreed that this would be an appropriate change for future Council meetings.

Bill Samples suggested that action be taken as soon as possible regarding the predictability of permitting. Mr. Adams assured him and the Council that is a DEP priority and noted that all divisions and offices were under the Secretary's mandate to respond to permit applications within 24-48 hours.

The meeting adjourned at 12:07 p.m.