Do Not Mark In This Box

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

TUED
THE 25 P 12: 01

Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Dept. of Environmental Protection	TITLE NUMBER:33						
Division of Waste Management							
RULE TYPE: Procedural	_ CITE AUTHORITY:22-19-1 et. seq.						
AMENDMENT TO AN EXISTING RULE: YES.							
IF YES, SERIES NUMBER OF RULE BEING AM	MENDED:26						
TITLE OF RULE BEING AMENDED: Hazardous Waste Emergency Response Fund Procedural Rule							
concerning fee assessment							
IF NO, SERIES NUMBER OF RULE BEING PRO	NDOSED.						
TITLE OF RULE BEING PROPOSED:							
	The state of the s						
IN LIEU OF A PUBLIC HEARING, A COMMEN	T PERIOD HAS BEEN ESTABLISHED DURING WHICH						
ANY INTERESTED PERSON MAY SEND COMM	MENTS CONCERNING THESE PROPOSED RULES. THIS						
	7. 2002 AT 6:00 p.m. ONLY WRITTEN						
COMMENT FERIOD WILL END ON	7. 2002 AT 0.00 p.m. UNLY WRITTEN						
COMMENTS WILL BE ACCEPTED AND ARE	TO BE MAILED TO THE FOLLOWING ADDRESS:						
WV Department of Environmental Protection	Extended Public Comment Period						
Division of Waste Management	THE ISSUES TO BE HEARD SHALL BE						
	LIMITED TO THIS PROPOSED RULE.						
1356 Hansford Street							
Charleston, WV 25301-1401							
ATTN: Carroll Cather	71100/00/00						
	Authorized Signature						

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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).

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: Hazardous Waste Management 33 CSR 26

A. AUTHORITY: WV Code <u>§22-19-5(d)</u> and 29 A-3

B. SUMMARY OF RULE:

The proposed amendment updates established procedures for the assessment and collection of hazardous waste generator fees pursuant to W.Va. Code §22-19-1 *et seq*. These fees are placed in "The Hazardous Waste Emergency Response Fund".

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

This rule is proposed to reflect structural changes to the State hazardous waste program and the implementing agency, the Department of Environmental Protection. The definition of "Generator" is revised to include persons producing more than 5,000 Kg per/year of hazardous waste.

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

There is no federal counterpart regulation to this rule.

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:

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title:	Title 33, Series 26, Hazardous Waste Management					
_						
Type of Rule:	LegislativeInterpretiveXProcedural					
Agency	Department of Environmental Protection					
Address	Division of Waste Management					
	1356 Hansford Street					
-	Charleston, WV 25301-1401					
-						

1. Effect of Proposed Rule

	ANNUAL					FISCAL YEAR				
	INCREASE		DECREASE		CURRENT		NEXT		THEREAFTER	
ESTIMATED TOTAL COST	\$	0	\$	0	\$	0	\$	0	\$	0
PERSONAL SERVICES										
CURRENT EXPENSE										
REPAIRS & ALTERATIONS							_			
EQUIPMENT										
OTHER										

2. Explanation of above estimates:

These amendments are not projected to require additional operating expenses above the current level.

3. Objectives of these rules:

The objective of this rule is to update the rule to reflect the revised structure of the agency and to revise the definition of "generator".

Rule Title:	Title 33, Series 26 Hazardous Waste Management

- 4. Explanation of Overall Economic Impact of Proposed Rule.
 - A. Economic Impact on State Government.

Not anticipated to be appreciable.

B. Economic Impact on Political Subdivisions; Specific Industries, Specific groups of Citizens.

Not anticipated to be appreciable.

C. Economic Impact on Citizens/Public at Large.

N/A

III ED

TITLE 33 PROCEDURAL RULE

DIVISION DEPARTMENT OF ENVIRONMENTAL PROTECTION 25 P 12: 01 OFFICE DIVISION OF WASTE MANAGEMENT

SERIES 26

CHICE WEST VIRGINIA SECRETARY OF STATE

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. "<u>Director chief</u>" means the <u>chief director</u> of the <u>Office Division</u> of Waste Management of the West Virginia <u>Division</u> <u>Department</u> 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, 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

to pay such fees.

- 5.1.b. 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.c. An invoice for the fee required pursuant to this rule 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.a. Generator fee assessments are due and payable to the <u>division department</u> on the fifteenth day of January (January 15) of 1985 2004 and each succeeding year thereafter, except as provided in subdivision 5.2.b of this rule.
- 5.2.b. 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 19 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.c. A fee payment made pursuant to this rule 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.a. Any generator assessed a fee pursuant to this rule 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 subdivision 5.1.c of this rule, and must specify the reasons for requesting such reconsideration.
- 5.3.b. Upon reviewing a request submitted pursuant to subdivision 5.3.a of this rule, 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.c. If a revision of fee assessment made pursuant to subdivision 5.3.d of this rule determines that a generator has made an overpayment greater than two hundred dollars (\$200.00), the generator may choose to either receive a fund of the excess amount or use that excess as a credit against the subsequent fee assessment. If the overpayment is two hundred dollars (\$200.00) or less, the excess amount will be credited against the subsequent fee assessment.

5.4. Reassessment.

5.4.a. If the director finds that the aggregate amount of fees assessed, after adjustments pursuant to subdivision 5.3.b of this rule, is more than twenty-five thousand dollars (\$25,000.00) below the maximum amount authorized to be collected in any one year by Article 19, the director shall cause all fee assessments to be recalculated and new fee assessment invoices to be transmitted to each generator. The payment due

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date shall, in such situations, be extended by the same number of days as the revised assessment date is beyond the original date of assessment.

5.4.b. 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 subdivision 5.4.a of this rule.

APPENDIX I

HAZARDOUS WASTE EMERGENCY RESPONSE FUND

FEE ASSESSMENT REPORT

Com	pany Name:
EPA	I.D.#:
Gen	erator Location:
1.	The amount of hazardous wastes generated during the 19 20 calendar year EXCLUDING NONHAZARDOUS CONSTITUENTS.
	Tons
2.	The amount of hazardous wastes generated (from the amount determined in #1)that were treated or disposed of off-site, but remained hazardous.
	Tons
3.	The amount of hazardous wastes generated (from the amount determined in #1) that were treated or disposed of on-site, but remained hazardous.
	Tons
4.	The amount of hazardous wastes generated (from the amount determined in #1) that were treated off-site, so that such wastes were rendered nonhazardous.
	Tons
5.	The amount of hazardous wastes generated (from the amount determined in #1) that were treated on-site, so that such wastes were rendered nonhazardous.
	Tons
6.	Provide a brief narrative of the method(s)used to determine the amount given in #1,

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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.

CERTFICIATION:

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	Title	
Representative		

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 reqrets. 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.

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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.

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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 little or no time to review the proposals prior to the meeting. Mr. Adams agreed that

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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.