

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

Form #5

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WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: WV Department of Environmental Protection TITLE NUMBER: 33

Division of Waste Management

CITE AUTHORITY: 22-19-1 et. seq.

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: 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: \_\_\_\_\_

\_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS September 27, 2002

  
Authorized Signature

FILED

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

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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 is now proposed.

1.6. Repeal of Former Rule. -- This rule repeals and replaces 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" means the director of the Division of Waste Management of the West Virginia 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 five thousand kilograms ( 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. 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 director to ensure that accurate and verifiable information is obtained. The director may request clarifications, corrections, or additional information to supplement the information received to enable the 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 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 department for all generators in accordance with the provisions of Article 19. Generators for whom 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 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 department on the fifteenth day of January (January 15) of 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.

**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 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, 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.

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  
Representative

\_\_\_\_\_  
Title