WEST VIRGINIA CODE CHAPTER 22 ARTICLE 18

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§22-18-1. Short title.

This article may be known and cited as the “Hazardous Waste Management Act”.

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§22-18-2. Declaration of policy.

(a) The Legislature finds that:

(1) Continuing technological progress and increases in the amount of manufacture and the abatement of air and water pollution have resulted in ever increasing quantities of hazardous wastes;

(2) The public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound manner;

(3) The knowledge and technology necessary for alleviating adverse health, environmental and aesthetic impacts resulting from current hazardous waste management and disposal practices are generally available;

(4) The manufacture, refinement, processing, treatment and use of coal, raw chemicals, ores, petroleum, gas and other natural and synthetic products are activities that make a significant contribution to the economy of this state; and

(5) The problem of managing hazardous wastes has become a matter of statewide concern.

(b) Therefore, it is hereby declared that the purposes of this article are:

(1) To protect the public health and safety and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes;

(2) To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes;

(3) To assure the safe and adequate management of hazardous wastes within this state; and

(4) To assume regulatory primacy through Subtitle C of the Resource Conservation and Recovery Act.

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§22-18-3. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(1) “Director” means the director of the Division of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter;

(2) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including groundwaters;

(3) “Division” means the Division of Environmental Protection;

(4) “Generation” means the act or process of producing hazardous waste materials;

(5) “Hazardous and Solid Waste Amendments of 1984” means the federal Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616) amending the Resource Conservation and Recovery Act;

(6) “Hazardous waste” means a waste or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may: (A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed;

(7) “Hazardous waste fuel” means fuel produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a), section six of this article, or produced from any hazardous waste identified or listed pursuant to section six;

(8) “Hazardous waste management” means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes;

(9) “Land disposal” means any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave;

(10) “Manifest” means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage;

(11) “Person” means any individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, state or federal agency, the United States

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government, this state or any other state, municipality, county commission or any other political subdivision of a state or any interstate body;

(12) "Resource Conservation and Recovery Act" means the federal Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, as amended;

(13) "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste;

(14) "Subtitle C" means Subtitle C of the Resource Conservation and Recovery Act;

(15) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

(16) "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, as amended, or source, special nuclear or by-product material as defined by the federal Atomic Energy Act of 1954, as amended.

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§22-18-4. Designation of Division of Environmental Protection as the state hazardous waste management lead agency.

The Division of Environmental Protection is hereby designated as the hazardous waste management lead agency for this state for purposes of Subtitle C of the Resource Conservation and Recovery Act, and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this article, the director is hereby authorized to cooperate with the federal environmental protection agency and other agencies of the federal government, this state and other states and other interested persons in all matters relating to hazardous waste management.

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§22-18-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.

(a) In addition to all other powers and duties prescribed in this article or otherwise by law, and unless otherwise specifically set forth in this article, the director shall perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of the Resource Conservation and Recovery Act.

(b) The director shall integrate all provisions of this article for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable, with the appropriate provisions of: The public health laws in chapter sixteen of this code; article sixteen-a, chapter nineteen of this code; this chapter; and chapters twenty-two-b and twenty-two-c of this code.

(c) The director may enter into any agreements, including reimbursement for services rendered, contracts or cooperative arrangements, under such terms and conditions as he or she deems appropriate, with other state agencies, educational institutions or other organizations and individuals as necessary to implement the provisions of this article.

(d) The director shall cooperate with and may receive and expend money from the federal government and other sources.

(e) The director shall: (1) Encourage, participate in and conduct an ongoing investigation and analysis of methods, incentives, technologies of source reduction, reuse, recycling or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste; and (2) investigate the feasibility of operating an information clearinghouse for hazardous wastes.

(f) The director shall provide for the continuing education and training of appropriate division personnel in matters of hazardous waste management.

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§22-18-6. Promulgation of rules by director.

(a) The director has overall responsibility for the promulgation of rules under this article. The director shall promulgate the following rules, in consultation with the Department of Health, the Office of Emergency Services, the Public Service Commission, the state Fire Marshal, the department of public safety, the Division of Highways, the Department of Agriculture, and the environmental quality board. In promulgating and revising such rules, the director shall comply with the provisions of chapter twenty-nine-a of this code, shall avoid duplication to the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection (b), section five of this article and shall be consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act:

(1) Rules establishing a plan for the safe and effective management of hazardous wastes within the state;

(2) Rules establishing criteria for identifying the characteristics of hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of this article: *Provided*, That:

(A) Each waste listed below shall, except as provided in paragraph (B) of this subdivision, be subject only to regulation under other applicable provisions of federal or state law in lieu of this article until proclamation by the Governor finding that at least six months have elapsed since the date of submission of the applicable study required to be conducted under Section 8002 of the federal Solid Waste Disposal Act, as amended, and that regulations have been promulgated with respect to such wastes in accordance with Section 3001 (b)(3)(C) of the Resource Conservation and Recovery Act, and finding in the case of the wastes identified in subparagraph (iv) of this paragraph that the regulation of such wastes has been authorized by an act of Congress in accordance with Section 3001 (b)(2) of the Resource Conservation and Recovery Act:

(i) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(ii) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore;

(iii) Cement kiln dust waste; and

(iv) Drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy.

(B) Owners and operators of disposal sites for wastes listed in paragraph (A) of this subdivision may be required by the director through rule prescribed under authority of this

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section:

(i) As to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future; and

(ii) To provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record;

(3) Rules establishing such standards applicable to generators of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall establish requirements respecting: (A) Record-keeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to public health or the environment and the disposition of such wastes; (B) labeling practices for any containers used for the storage, transport or disposal of such hazardous waste such as will identify accurately such waste; (C) use of appropriate containers for such hazardous waste; (D) furnishing of information on the general chemical composition of such hazardous wastes to persons transporting, treating, storing or disposing of such wastes; (E) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage or disposal in, and arrives at treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) with respect to which permits have been issued which are required: (i) By this article or any rule required by this article to be promulgated; (ii) by Subtitle C of the Resource Conservation and Recovery Act; (iii) by the laws of any other state which has an authorized hazardous waste program pursuant to Section 3006 of the Resource Conservation and Recovery Act; or (iv) by Title I of the federal Marine Protection, Research and Sanctuaries Act; and (F) the submission of reports to the director at such times as the director deems necessary setting out the quantities of hazardous wastes identified or listed under this article that the generator has generated during a particular time period, and the disposition of all such hazardous waste;

(4) Rules establishing such performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such rules and shall include, but need not be limited to, requirements respecting: (A) Maintaining records of all hazardous wastes identified or listed under this article which are treated, stored or disposed of, as the case may be, and the manner in which such wastes were treated, stored or disposed of; (B) satisfactory reporting, monitoring and inspection and compliance with the manifest system referred to in subdivision (3) of subsection (a) of this section; (C) treatment, storage or disposal of all such waste received by the facility pursuant to such operating methods, techniques and practices as may be

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satisfactory to the director; (D) the location, design and construction of such hazardous waste treatment, disposal or storage facilities; (E) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any such hazardous waste; (F) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility as may be necessary or desirable; however, no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste; and (G) compliance with the requirements of section eight of this article respecting permits for treatment, storage or disposal;

(5) Rules specifying the terms and conditions under which the director shall issue, modify, suspend, revoke or deny such permits as may be required by this article;

(6) Rules for the establishment and maintenance of records; the making of reports; the taking of samples and the performing of tests and analyses; the installing, calibrating, operating and maintaining of monitoring equipment or methods; and the providing of any other information as may be necessary to achieve the purposes of this article;

(7) Rules establishing standards and procedures for the certification of personnel at hazardous waste treatment, storage or disposal facilities or sites;

(8) Rules for public participation in the implementation of this article;

(9) Rules establishing procedures and requirements for the use of a manifest during the transport of hazardous wastes;

(10) Rules establishing procedures and requirements for the submission and approval of a plan, applicable to owners or operators of hazardous waste storage, treatment and disposal facilities, as necessary or desirable for closure of the facility, post-closure monitoring and maintenance, sudden and accidental occurrences and nonsudden and accidental occurrences;

(11) Rules establishing a schedule of fees to recover the costs of processing permit applications and permit renewals;

(12) Rules, including exemptions and variances, as appropriate: (A) Establishing standards and prohibitions relating to the management of hazardous waste by land disposal methods; (B) establishing standards and prohibitions relating to the land disposal of liquid hazardous wastes or free liquids contained in hazardous wastes and any other liquids which are not hazardous wastes; (C) establishing standards applicable to producers, distributors or marketers of hazardous waste fuels; and (D) as are otherwise necessary to allow the state to assume primacy for the administration of the federal hazardous waste management program

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under the Resource Conservation and Recovery Act and in particular, the Hazardous and Solid Waste Amendments of 1984: *Provided*, That such rules authorized by this subdivision shall be consistent with but no more expansive in coverage nor more stringent in effect than rules and regulations promulgated by the federal environmental protection agency under Subtitle C;

(13) Rules: (A) Establishing air pollution performance standards and permit requirements and procedures as may be necessary to comply with the requirements of this article and in accordance with the provisions of article five of this chapter. Such permits shall be in addition to those permits required by section eight of this article;

(B) For the monitoring and control of air emissions at hazardous waste treatment storage and disposal facilities, including, but not limited to, open tanks, surface impoundments and landfills, as may be necessary to protect human health and the environment; and

(C) Establishing standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a) of this section or which is produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a) of this section and any other material, as may be necessary to protect human health and the environment: *Provided*, That such legislative rules shall be consistent with Subtitle C.

Any person aggrieved or adversely affected by an order of the director made and entered to implement or enforce the rules required by this subdivision or by the failure or refusal of said director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted under the provisions of the rules required by this subdivision, may appeal to the air quality board in accordance with the procedure set forth in article one, chapter twenty-two-b of this code, and orders made and entered by said board are subject to judicial review in accordance with the procedures set forth in article one, chapter twenty-two-b of this code, except that as to cases involving an order granting or denying an application for a permit, revoking or suspending a permit or approving or modifying the terms and conditions of a permit or the failure to act within a reasonable time on an application for a permit, the petition for judicial review shall be filed in the circuit court of Kanawha County.

(14) Rules developing performance standards and other requirements under this section as may be necessary to protect public health and the environment from any hazard associated with the management of used oil and recycled oil. The director shall ensure that such rules do not discourage the recovery or recycling of used oil. For these purposes, "used oil" shall mean any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

(15) Such other rules as are necessary to effectuate the purposes of this article.

(b) The rules required by this article to be promulgated shall be reviewed and, where

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necessary, revised not less frequently than every three years. Additionally, the rules required to be promulgated by this article shall be revised, as necessary, within two years of the effective date of any amendment of the Resource Conservation and Recovery Act and within six months of the effective date of any adoption or revision of rules required to be promulgated by the Resource Conservation and Recovery Act.

(c) Notwithstanding any other provision in this article, the director shall not promulgate rules which are more properly within the jurisdiction and expertise of any of the agencies empowered with rule-making authority pursuant to section seven of this article.

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§22-18-7. Authority and jurisdiction of other state agencies.

(a) The Commissioner of the Division of Highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, legislative rules governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such legislative rules shall be consistent with applicable rules issued by the federal Department of Transportation and consistent with this article: *Provided*, That such legislative rules apply to the interstate transportation of hazardous waste within the boundaries of this state, as well as the intrastate transportation of such waste.

In lieu of those enforcement and inspection powers conferred upon the Commissioner of the Division of Highways elsewhere by law with respect to the transportation of hazardous waste, the Commissioner of the Division of Highways has the same enforcement and inspection powers as those granted to the director, or authorized representative or agent, or any authorized employee or agent of the division, as the case may be, under sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of this article. The limitations of this subsection do not affect in any way the powers of the Division of Highways with respect to weight enforcement.

(b) The Public Service Commission, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, rules governing the transportation of hazardous wastes by railroad in this state. Such rules shall be consistent with applicable rules and regulations issued by the federal Department of Transportation and consistent with this article: *Provided*, That such rules apply to the interstate transportation of hazardous waste within the boundaries of this state, as well as the intrastate transportation of such waste.

In lieu of those enforcement and inspection powers conferred upon the Public Service Commission elsewhere by law with respect to the transportation of hazardous waste, the Public Service Commission has the same enforcement and inspection powers as those granted to the director or authorized representative or agent or any authorized employee or agent of the division, as the case may be, under sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of this article.

(c) The rules required to be promulgated pursuant to subsections (a) and (b) of this section apply equally to those persons transporting hazardous wastes generated by others and to those transporting hazardous wastes they have generated themselves or combinations thereof. Such rules shall establish such standards, applicable to transporters of hazardous waste identified or listed under this article, as may be necessary to protect public health, safety and the environment. Such standards shall include, but need not be limited to,

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requirements respecting: (A) Recordkeeping concerning such hazardous waste transported, and its source and destination; (B) transportation of such waste only if properly labeled; (C) compliance with the manifest system referred to in subdivision (3), subsection (a), section six of this article; and (D) transportation of all such hazardous waste only to the hazardous waste treatment, storage or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under: (1) This article or any rule required by this article to be promulgated; (2) Subtitle C; (3) the laws of any other state which has an authorized hazardous waste program pursuant to Section 3006 of the Resource Conservation and Recovery Act; or (4) Title I of the Federal Marine Protection, Research and Sanctuaries Act.

(d) The Secretary of the Department of Health, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules required to be promulgated pursuant to this article by the director or any other rule-making authority, shall promulgate rules pursuant to article five-j, chapter twenty of this code. The Secretary of the Department of Health shall have the same enforcement and inspection powers as those granted to the director or agent or any authorized employee or agent of the division, as the case may be, under sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of this article, and in addition thereto, the Department of Health shall have those inspection and enforcement powers with respect to hazardous waste with infectious characteristics as provided for in article five-j, chapter twenty of this code.

(e) The Environmental Quality Board, in consultation with the director, and in accordance with the provisions of chapter twenty-nine-a of this code, shall, as necessary, promulgate water quality standards governing discharges into the waters of this state of hazardous waste resulting from the treatment, storage or disposal of hazardous waste as may be required by this article. The standards shall be consistent with this article.

(f) All legislative rules promulgated pursuant to this section shall be consistent with rules and regulations promulgated by the federal environmental protection agency pursuant to the resource conservation and recovery act.

(g) The director shall submit written comments to the Legislative Rule-Making Review Committee regarding all legislative rules promulgated pursuant to this article.

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§22-18-8. Permit process; undertaking activities without a permit.

(a) No person may own, construct, modify, operate or close any facility or site for the treatment, storage or disposal of hazardous waste identified or listed under this article, nor shall any person store, treat or dispose of any such hazardous waste without first obtaining a permit from the director for such facility, site or activity and all other permits as required by law. Such permit shall be issued, after public notice and opportunity for public hearing, upon such reasonable terms and conditions as the director may direct if the application, together with all supporting information and data and other evidence establishes that the construction, modification, operation or closure, as the case may be, of the hazardous waste facility, site or activity will not violate any provisions of this article or any of the rules promulgated by the director as required by this article: Provided, That in issuing the permits required by this subsection, the director shall not regulate those aspects of a hazardous waste treatment, storage or disposal facility which are the subject of the permitting or licensing requirements of: (1) Section seven of this article, and which need not be regulated in order for the director to perform his or her duties under this article; or (2) subdivision (13), subsection (a), section six of this article, which need not be regulated under any other provision of this article.

(b) The director shall prescribe a form of application for all permits issued by the director.

(c) The director may require a plan for the closure of such facility or site to be submitted along with an application for a permit which plan for closure shall comply in all respects with the requirements of this article and any rules promulgated hereunder. Such plan of closure is subject to modification upon application by the permit holder to the director and approval of such modification by the director.

(d) An environmental analysis shall be submitted with the permit application for all hazardous waste treatment, storage or disposal facilities which are major facilities as that term may be defined by rules promulgated by the director: Provided, That facilities in existence on November 19, 1980, need not comply with this subsection. Such environmental analysis shall contain information of the type, quality and detail that will permit adequate consideration of the environmental, technical and economic factors involved in the establishment and operation of such facilities:

(1) The portion of the applicant’s environmental analysis dealing with environmental assessments shall contain, but not be limited to:

(A) The potential impact of the method and route of transportation of hazardous waste to the site and the potential impact of the establishment and operation of such facilities on air and water quality, existing land use, transportation and natural resources in the area affected by such facilities;

(B) A description of the expected effect of such facilities; and

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(C) Recommendations for minimizing any adverse impact.

(2) The portion of the applicant's environmental analysis dealing with technical and economic assessments shall contain, but not be limited to:

(A) Detailed descriptions of the proposed site and facility, including site location and boundaries and facility purpose, type, size, capacity and location on the site and estimates of the cost and charges to be made for material accepted, if any;

(B) Provisions for managing the site following cessation of operation of the facility; and

(C) Qualifications of owner and operation, including a description of the applicant's prior experience in hazardous waste management operations.

(e) Any person undertaking, without a permit, any of the activities for which a permit is required under this section or under section seven of this article, or any person violating any term or condition under which a permit has been issued pursuant to this section or pursuant to section seven of this article, is subject to the enforcement procedures of this article.

(f) Notwithstanding any provision to the contrary in subsections (a) through (e) of this section or section seven of this article, any surface coal mining and reclamation operation that has a permit covering any coal mining wastes or overburden which has been issued or approved under article three of this chapter, shall be considered to have all necessary permits issued pursuant to this article with respect to the treatment, storage or disposal of such wastes or overburden. Rules promulgated under this article are not applicable to treatment, storage or disposal of coal mining wastes and overburden which are covered by such a permit.

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§22-18-9. Corrective action.

(a) All permits issued after the date the state is delegated authority by the federal environmental protection agency to administer the portion of the federal hazardous waste program covered under the Hazardous and Solid Waste Amendments of 1984 shall contain conditions requiring corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this article regardless of the time at which waste was placed in such unit. Permits issued under this article shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(b) The director shall amend the standards under subdivision (4), subsection (a), section six of this article, regarding corrective action required at facilities for the treatment, storage or disposal of hazardous waste listed or identified in rules promulgated pursuant to subdivision (2), subsection (a), section six of this article, to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the director that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such rules shall take effect immediately upon promulgation, and shall apply to:

(1) All facilities operating under permits issued under subdivision (4), subsection (a), section six of this article; and

(2) All landfills, surface impoundments and waste pile units (including any new units, replacement of existing units or lateral expansions of existing units) which receive hazardous waste after July 26, 1982. Pending promulgation of such rules the director shall issue corrective action orders for facilities referred to in subdivisions (1) and (2) above on a case-by-case basis consistent with the purposes of this subsection.

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§22-18-10. Public participation in permit process.

Before the issuing of a permit to any person with respect to any facility for the treatment, storage or disposal of hazardous waste under sections seven or eight of this article, the director or other permit issuing authority shall:

(a) Cause to be published as a Class I-0 legal advertisement in a newspaper of general circulation, and the publication area is the county wherein the real estate or greater portion thereof is situate, and broadcast over local radio stations notice of the director's or other permit issuing authority's intention to issue such permit; and

(b) Transmit written notice of the director's or other permit issuing authority's intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each state agency having any authority under state law with respect to the construction or operation of such facility.

If within forty-five days the director or other permit issuing authority receives written notice of opposition to the director's or other permit issuing authority's intention to issue such permit and a request for a hearing, or if the director or other permit issuing authority determines on his or her own initiative, to have a hearing he or she shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he or she should issue a permit for the proposed facility. Whenever possible the director or other permit issuing authority shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time and subject matter of such hearing.

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§22-18-11. Transition program for existing facilities.

Any person who owns or operates a facility required to have any permit under this article, which facility was in existence on July 9, 1981, shall be treated as having been issued such permit until such time as final administrative disposition is made with respect to an application for such permit: Provided, That on said date such facility is operating and continues to operate in compliance with the interim status requirement of the federal environmental protection agency established pursuant to section 3005 of the federal Solid Waste Disposal Act, as amended, if applicable, and in such a manner as will not cause or create a substantial risk of a health hazard or public nuisance or a significant adverse effect upon the environment: Provided, however, That the owner or operator of such facility shall make a timely and complete application for such permit in accordance with rules promulgated pursuant to this article specifying procedures and requirements for obtaining such permit.

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§22-18-12. Confidential information.

Information obtained by any agency under this article shall be available to the public unless the director certifies such information to be confidential. The director may make such certification where any person shows, to the satisfaction of the director, that the information or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets. Nothing in this section may be construed as limiting the disclosure of information by the division to any officer, employee or authorized representative of the state or federal government concerned with effecting the purposes of this article.

Any person who knowingly and willfully divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

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§22-18-13. Inspections; right of entry; sampling; reports and analyses; subpoenas.

(a) The director or any authorized representative, employee or agent of the division, upon the presentation of proper credentials and at reasonable times, may enter any building, property, premises, place, vehicle or permitted facility where hazardous wastes are or have been generated, treated, stored, transported or disposed of for the purpose of making an investigation with reasonable promptness to ascertain the compliance by any person with the provisions of this article or the rules promulgated by the director or permits issued by the director hereunder. Nothing contained in this section eliminates any obligation to follow any process that may be required by law.

(b) The director or his or her authorized representative, employee or agent shall make periodic inspections at every permitted facility as necessary to effectively implement and enforce the requirements of this article or the rules promulgated by the director or permits issued by the director hereunder. After an inspection is made, a report shall be prepared and filed with the director and a copy of such inspection report shall be promptly furnished to the person in charge of such building, property, premises, place, vehicle or facility. Such inspection reports shall be available to the public in accordance with the provisions of article one, chapter twenty-nine-b of this code.

(c) Whenever the director has cause to believe that any person is in violation of any provision of this article, any condition of a permit issued by the director, any order or any rule promulgated by the director under this article, he or she shall immediately order an inspection of the building, property, premises, place, vehicle or permitted facility at which the alleged violation is occurring.

(d) The director or any authorized representative, employee or agent of the division may, upon presentation of proper credentials and at reasonable times, enter any establishment, building, property, premises, vehicle or other place maintained by any person where hazardous wastes are being or have been generated, transported, stored, treated or disposed of to inspect and take samples of wastes, soils, air, surface water and groundwater and samples of any containers or labelings for such wastes. In taking such samples, the division may utilize such sampling methods as it determines to be necessary, including, but not limited to, soil borings and monitoring wells. If the representative, employee or agent obtains any such samples, prior to leaving the premises, he or she shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. The division shall promptly provide a copy of any analysis made to the owner, operator or agent in charge.

(e) Upon presentation of proper credentials and at reasonable times, the director or any authorized representative, employee or agent of the division shall be given access to all records relating to the generation, transportation, storage, treatment or disposal of hazardous wastes in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste, the director or an authorized

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representative, employee or agent shall be furnished with copies of all such records or given the records for the purpose of making copies. If the director, upon inspection, investigation or through other means, observes or learns of a violation or probable violation of this article, he or she is authorized to issue subpoenas and subpoenas duces tecum and to order the attendance and testimony of witnesses and to compel the production of any books, papers, documents, manifests and other physical evidence pertinent to such investigation or inspection.

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§22-18-14. Monitoring, analysis and testing.

(a) If the director determines, upon receipt of any information, that: (1) The presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated or disposed of; or (2) the release of any such waste from such facility or site may present a substantial hazard to human health or the environment, he or she may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis and reporting with respect to such facility or site as the director deems reasonable to ascertain the nature and extent of such hazard.

(b) In the case of any facility or site not in operation at the time a determination is made under subsection (a) of this section with respect to the facility or site, if the director finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he or she may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a) of this section.

(c) An order under subsection (a) or (b) of this section shall require the person to whom such order is issued to submit to the director within thirty days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis and reporting. The director may, after providing such person with an opportunity to confer with the director respecting such proposal, require such person to carry out such monitoring, testing, analysis and reporting in accordance with such proposal, and such modifications in such proposal as the director deems reasonable to ascertain the nature and extent of the hazard.

(d) The following duties shall be carried out by the director:

(1) If the director determines that no owner or operator referred to in subsection (a) or (b) of this section is able to conduct monitoring, testing, analysis or reporting satisfactory to the director, if the director deems any such action carried out by an owner or operator to be unsatisfactory or if the director cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) of this section who is able to conduct such monitoring, testing, analysis or reporting, he or she may conduct monitoring, testing or analysis (or any combination thereof) which he or she deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or authorize a state or local authority or other person to carry out any such action, and require, by order, the owner or operator referred to in subsection (a) or (b) of this section to reimburse the director or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the director which confirms the results of the order issued under subsection (a) or (b) of this section.

(e) If the monitoring, testing, analysis and reporting conducted pursuant to this section

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indicates that a potential hazard to human health or the environment may or does exist, the director may issue an appropriate order requiring that the hazard or risk of hazard be eliminated.

(f) The director may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the circuit court in which the defendant is located, resides or is doing business. Such court has jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed $5,000 for each day during which such failure or refusal occurs.

WV Legislature

§22-18-15. Enforcement orders; hearings.

(a) If the director, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any permit, order or rules issued or promulgated hereunder, he or she may:

(1) Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (c) of section seventeen of this article;

(3) Institute a civil action in accordance with subsection (c) of section seventeen of this article; or

(4) Request the Attorney General, or the prosecuting attorney of the county in which the alleged violation occurred, to bring a criminal action in accordance with section sixteen of this article.

(b) Any person issued a cease and desist order may file a notice of request for reconsideration with the director not more than seven days from the issuance of such order and shall have a hearing before the director contesting the terms and conditions of such order within ten days of the filing of such notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of such cease and desist order.

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§22-18-16. Criminal penalties.

(a) Any person who knowingly: (1) Transports any hazardous waste identified or listed under this article to a facility which does not have a permit required by this article, Section 3005 of the Federal Solid Waste Disposal Act, as amended, the laws of any other state which has an authorized hazardous waste program pursuant to Section 3006 of the federal Solid Waste Disposal Act, as amended, or Title I of the federal Marine Protection, Research and Sanctuaries Act; (2) treats, stores or disposes of any such hazardous waste either: (A) Without having obtained a permit required by this article, or by Title I of the federal Marine Protection, Research and Sanctuaries Act, or by Section 3005 or 3006 of the federal Solid Waste Disposal Act, as amended; or (B) in knowing violation of a material condition or requirement of such permit, is guilty of a felony, and, upon conviction thereof, shall be fined not to exceed $50,000 for each day of violation or confined in the penitentiary not less than one nor more than two years, or both such fine and imprisonment or, in the discretion of the court, be confined in jail not more than one year in addition to the above fine.

(b) Any person who knowingly: (1) Makes any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with this article; or (2) generates, stores, treats, transports, disposes of or otherwise handles any hazardous waste identified or listed under this article (whether such activity took place before or takes place after the effective date of this article) and who knowingly destroys, alters or conceals any record required to be maintained under rules promulgated by the director pursuant to this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed $25,000, or sentenced to imprisonment for a period not to exceed one year, or both fined and sentenced to imprisonment for each violation.

(c) Any person convicted of a second or subsequent violation of subsections (a) and (b) of this section, is guilty of a felony, and, upon such conviction, shall be confined in the penitentiary not less than one nor more than three years, or fined not more than $50,000 for each day of violation, or both such fine and imprisonment.

(d) Any person who knowingly transports, treats, stores or disposes of any hazardous waste identified or listed pursuant to this article in violation of subsection (a) of this section, or having applied for a permit pursuant to subdivision (13), subsection (a), section six or sections seven and eight of this article, and knowingly either: (1) Fails to include in a permit application any material information required pursuant to this article, or rules promulgated hereunder; or (2) fails to comply with applicable interim status requirements as provided in section eleven of this article and who thereby exhibits an unjustified and inexcusable disregard for human life or the safety of others and he or she thereby places another person in imminent danger of death or serious bodily injury, is guilty of a felony, and, upon conviction thereof, shall be fined not more than $250,000 or imprisoned not less than one year nor more than four years or both such fine and imprisonment.

(e) As used in subsection (d) of this section, the term "serious bodily injury" means:

(1) Bodily injury which involves a substantial risk of death;

(2) Unconsciousness;

(3) Extreme physical pain;

(4) Protracted and obvious disfigurement; or

(5) Protracted loss or impairment of the function of a bodily member, organ or mental faculty.

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§22-18-17. Civil penalties and injunctive relief.

(a)(1) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the secretary, of not more than $7,500 for each day of violation, not to exceed a maximum of $22,500. In assessing a penalty, the secretary shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by the secretary by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment may be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the secretary a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the secretary shall inform the alleged violator of the time and place of the hearing. The secretary may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the secretary concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the secretary shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the secretary's decision, the alleged violator may request a formal hearing before the Environmental Quality Board in accordance with the provisions of article one, chapter twenty-two-b of this code. The authority to levy an administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator under this section may exceed $25,000 per day of each violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this section may not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with rules issued pursuant to subsection (a), section six of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the hazardous waste emergency response fund established pursuant to section three, article nineteen of this chapter.

(2) No assessment levied pursuant to subdivision (1), of this subsection becomes due and payable until the procedures for review of the assessment have been completed.

(b)(1) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil penalty not to exceed $25,000 for each day of violation, which penalty shall be recovered in a civil action either in the circuit court in which the violation occurs or in the circuit court of Kanawha County.

(2) In addition to the powers and authority granted to the secretary by this chapter to enter into consent agreements, settlements and otherwise enforce this chapter, the secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish a mechanism for the administrative resolution of violations set forth in this section through consent order or agreement as an alternative to instituting a civil action.

(c) The secretary may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the secretary to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom the relief is sought.

(d) Upon request of the secretary, the Attorney General, or the prosecuting attorney of the county in which the violation occurs, shall assist the secretary in any civil action under this section.

(e) In any action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

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§22-18-18. Imminent and substantial hazards; orders; penalties; hearings.

(a) Notwithstanding any provision of this article to the contrary, the director, upon receipt of information, or upon observation or discovery that the handling, storage, transportation, treatment or disposal of any hazardous waste may present an imminent and substantial endangerment to public health, safety or the environment, may:

(1) Request the Attorney General or the appropriate prosecuting attorney to commence an action in the circuit court of the county in which the hazardous condition exists to immediately restrain any person contributing to such handling, storage, transportation, treatment or disposal to stop such handling, storage, transportation, treatment or disposal or to take such other action as may be necessary; or

(2) Take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

(b) Any person who willfully violates, or fails or refuses to comply with, any order of the director under subsection (a) of this section may, in an action brought in the appropriate circuit court to enforce such orders, be fined not more than $5,000 for each day in which such violation occurs or such failure to comply continues.

WV Legislature

§22-18-19. Citizen suits; petitions for rulemaking; intervention.

(a) Any person may commence a civil action on his or her own behalf against any person who is alleged to be in violation of any provision of this article or any condition of a permit issued or rules promulgated hereunder, except that no action may be commenced under this section prior to sixty days after the plaintiff has given notice to the appropriate enforcement, permit issuing or rule-making authority and to the person against whom the action will be commenced, or if the state has commenced and is diligently prosecuting a civil or criminal action pursuant to this article: Provided, That such person may commence a civil action immediately upon notification in the case of an action under subsection (b) of this section. Such actions may be brought in the circuit court in the county in which the alleged violation occurs or in the circuit court of Kanawha County.

(b) Any person may commence a civil action against the appropriate enforcement, permit issuing or rule-making authority where there is alleged a failure of such authority to perform any nondiscretionary duty or act under this article. Such actions may be brought only in the circuit court of Kanawha County.

(c) Any person may petition the appropriate rule-making authority for rule-making on an issue arising under this article. The appropriate rule-making authority, if it believes such issue to merit rule making, may commence any studies and investigations necessary to issue rules. A decision by the appropriate rule-making authority not to pursue rule making must be set forth in writing with substantial reasons for refusing to do so.

(d) Nothing in this article restricts any rights of any person or class of persons under statute or common law.

(e) In issuing any final order in any action brought pursuant to this section any court with jurisdiction may award costs of litigation, including reasonable attorney's fees and expert witnesses fees, to any party whenever the court determines such award to be appropriate.

(f) Any enforcement, permit issuing or rule-making authority may intervene as a matter of right in any suit brought under this section.

(g) Any person may intervene as a matter of right in any civil action or administrative action instituted under this article.

(h) Notwithstanding any provision of this article to the contrary, any person may maintain an action to enjoin a nuisance against any permit holder or other person subject to the provisions of this article and may seek damages in said action, all to the same extent and for all intents and purposes as if this article were not enacted, if such person maintaining such action and seeking such damages would otherwise have standing to maintain such action and be entitled to damages by any other rule of law.

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§22-18-20. Appeal to Environmental Quality Board.

Any person aggrieved or adversely affected by an order of the director made and entered in accordance with the provisions of this article, or by the failure or refusal of the director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the director under the provisions of this article, may appeal to the environmental quality board, in accordance with the provisions of article one, chapter twenty-two-b of this code.

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§22-18-21. Disclosures required in deeds and leases.

(a) The grantor in any deed or other instrument of conveyance or any lessor in any lease or other instrument whereby any real property is let for a period of time shall disclose in such deed, lease or other instrument the fact that such property or the subsurface of such property, (whether or not the grantor or lessor is at the time of such conveyance or lease the owner of such subsurface) was used for the storage, treatment or disposal of hazardous waste. The provisions of this subsection only apply to those grantors or lessors who owned or had an interest in the real property when the same or the subsurface thereof was used for the purpose of storage, treatment or disposal of hazardous waste or who have actual knowledge that such real property or the subsurface thereof was used for such purpose or purposes at any time prior thereto.

(b) Any grantee of real estate or of any substrata underlying said real estate or any lessee for a term who intends to use the real estate conveyed or let or any substrata underlying the same for the purpose of storing, treating or disposing of hazardous waste shall disclose in writing at the time of such conveyance or lease or within thirty days prior thereto such fact to the grantor or lessor of such real estate or substrata. Such disclosure shall describe the proposed location upon said property of the site to be used for the storage, treatment or disposal of hazardous waste, the identity of such waste, the proposed method of storage, treatment or disposal to be used with respect to such waste and any and all other information required by rules of the director.

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§22-18-22. Appropriation of funds; Hazardous Waste Management Fund.

(a) The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by section five, article XII of the Constitution of West Virginia. For the purposes of this section, the net proceeds of the fines, penalties and forfeitures are considered the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for defraying the cost of administering this article. All permit application fees collected under this article shall be paid into the State Treasury into a special fund designated the Hazardous Waste Management Fund. In making the appropriation for defraying the cost of administering this article, the Legislature shall first take into account the sums included in that special fund prior to deducting additional sums as may be needed from the fines, penalties and forfeitures collected pursuant to this article.

(b) Effective on July 1, 2003, there is imposed an annual certification fee for facilities that manage hazardous waste, as defined by the federal Resource Conservation and Recovery Act, as amended. The secretary shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to establish the certification fee. The rule shall be a product of a negotiated rule-making process with the facilities subject to the rule. The rule shall, at a minimum, establish different fee rates for facilities based on criteria established in the rule. The total amount of fees generated raise no more funds than are necessary and adequate to meet the matching requirements for all federal grants which support the hazardous waste management program, but shall not exceed $700,000 per year.

(c) The revenues collected from the annual certification fee shall be deposited in the State Treasury to the credit of the Hazardous Waste Management Fee Fund, which is continued. Moneys of the fund, together with any interest or other return earned on the fund, shall be expended to meet the matching requirements of federal grant programs which support the hazardous waste management program. Expenditures from the fund are for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq*. of this code and upon the fulfillment of the provisions set forth in §5A-2-1 *et seq*. of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts by appropriation of the Legislature.

(d) The fee provided in subsection (b) of this section and the fund established in subsection (c) of this section shall terminate on June 30, 2030. The department shall, by December 31 of each year, report to the Joint Committee on Government and Finance regarding moneys collected into the Hazardous Waste Management Fee Fund and expenditures by the agency, including any federal matching moneys received and providing an accounting on the collection of the fee by type of permit activity, funds being expended and current and future projected balances of the fund.

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§22-18-23. State program to be consistent with and equivalent to federal program.

The program for the management of hazardous waste pursuant to this article shall be equivalent to and consistent with the federal program established pursuant to Subtitle C of the federal Solid Waste Disposal Act, as amended.

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§22-18-24. Duplication of enforcement prohibited.

No enforcement proceeding brought pursuant to this article may be duplicated by an enforcement proceeding subsequently commenced under some other article of this code with respect to the same transaction or event unless such subsequent proceeding involves the violation of a permit or permitting requirement of such other article.

WV Legislature

§22-18-25. Financial responsibility provisions.

(1) Financial responsibility required by subdivision (4), subsection (a), section six of this article may be established in accordance with rules promulgated by the director by any one, or any combination, of the following: Insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer. In promulgating requirements under this section, the director is authorized to specify policy or other contractual terms, conditions or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this article.

(2) In any case where the owner or operator is in bankruptcy reorganization, or arrangement pursuant to the federal bankruptcy code or where (with reasonable diligence) jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this article. Nothing in this subsection limits any other state or federal statutory contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection diminishes the liability of any person under section 107 or 111 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 or other applicable law.

(4) For the purposes of this section, the term "guarantor" means any person other than the owner or operator who provides evidence of financial responsibility for an owner or operator under this section.

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