WEST VIRGINIA CODE: §22-19-5

§22-19-5. Director's responsibilities; fee schedules; authorized expenditures; other powers of director; authorizing civil actions; assistance of Attorney General or prosecuting attorney.

(a) The director shall collect all fees assessed pursuant to this article and administer the fund. The fee schedule shall be published in the State Register by August 1, of each year. Each generator who filed the fee assessment form prescribed by the director shall be notified and provided with a copy of the fee schedule by certified mail. In the event the fee schedule is not published by August 1, the date prescribed for payment in section four of this article shall be advanced by the same number of days that the publication of the fee schedule is delayed. The interest and surcharge provisions of section four of this article shall be similarly advanced.

(b) The director is authorized to enter into agreements and contracts and to expend the moneys in the fund for the following purposes:

(1) Responding to hazardous waste emergencies and releases of hazardous substances when, based on readily available information, the director determines that immediate action may prevent or mitigate significant risk of harm to human health, safety or the environment from hazardous wastes or releases of hazardous substances in situations for which no federal funds are immediately available for such response cleanup or containment: Provided, That the director shall apply for and diligently pursue available federal funds for such emergencies at the earliest possible time;

(2) Reimbursing any person for reasonable cleanup costs incurred with the authorization of the director in responding to a hazardous waste emergency or release of hazardous substances pursuant to authorization of the director;

(3) Financing the nonfederal share of the cleanup and site reclamation activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 as well as future operation and maintenance costs for these sites; and

(4) Financing any and all preparations necessary for responding to hazardous waste and hazardous substance activities and emergencies within the state, including, but not limited to, the purchase or lease of hazardous waste emergency response equipment.

(c) Prior to making expenditures from the fund pursuant to subdivision (1), (2) or (3), subsection (b) of this section, the director will make reasonable efforts to secure agreements to pay the costs of cleanup and remedial actions from owners or operators of sites or other responsible persons.

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(d) The director is authorized to promulgate and revise rules in compliance with chapter twenty-nine-a of this code to implement and effectuate the powers, duties and responsibilities vested in him or her under this article. Prior to the assessment of any fees under this article, the director shall promulgate rules which account for the mixture of hazardous and nonhazardous constituents in the hazardous waste which is generated. The director may not assess a fee on the nonhazardous portion, including, but not limited to, the weight of water.

(e) The director is authorized to recover through civil action or cooperative agreements with responsible persons the full amount of any funds expended for purposes enumerated in subdivision (1), (2) or (3), subsection (b) of this section. All moneys expended from the fund which are so recovered shall be deposited in the fund. Any civil action instituted pursuant to this subsection may be brought in either Kanawha County or the county in which the hazardous waste emergency occurs or the county in which remedial action is taken.

(f) The director is authorized to institute a civil action against any generator for failure to pay any fee assessed pursuant to this article. Any action instituted against a generator pursuant to this subsection may be brought in either Kanawha County or the county in which the generator does business. The generator shall pay all attorney fees and costs of such action if the director prevails.

(g) Upon request by the director, the Attorney General or prosecuting attorney for the county in which an action was brought shall assist the director in any civil action instituted pursuant to this section and any proceedings relating thereto.

(h) The director is authorized to enter into contracts or cooperative agreements with the federal government to secure to the state the benefits of funding for action taken pursuant to the requirements of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986.

(i) The director is authorized to accept gifts, donations, contributions, bequests or devises of money, security or property for deposit in the fund.

(j) The director is authorized to invest the fund to earn a reasonable rate of return on the unexpended balance.

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