WEST VIRGINIA CODE CHAPTER 22 ARTICLE 19

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§22-19-1. Findings; purpose.

The Legislature recognizes that large quantities of hazardous waste are generated within the state, and that emergency situations involving hazardous waste can and will arise which may present a hazard to human health, safety, or the environment. The Legislature also recognizes that some hazardous waste has been stored, treated or disposed of at sites in the state in a manner insufficient to protect human health, safety or the environment. The Legislature further recognizes that the federal government has enacted the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, which provides for federal assistance to respond to hazardous substance emergencies and to remove and remedy the threat of damage to the public health or welfare or to the environment, and declares that West Virginia desires to produce revenue for matching the federal assistance provided under the federal acts. Therefore, the Legislature hereby creates a hazardous waste emergency fund to provide state funds for responding to hazardous waste emergencies, responding to releases of hazardous substances into the environment, matching federal financial assistance for restoring hazardous waste sites and other costs or expenses incurred in the administration of this article.

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§22-19-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(1) "Cleanup" means such actions as may be necessary to monitor, assess and evaluate the threat of release of hazardous waste or hazardous substances, the containment, collection, control, identification, treatment, dispersal, removal or disposal of hazardous waste or other such actions as may be necessary to respond to hazardous waste or hazardous substance emergencies or to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, and includes, where necessary, replacement of existing, or provision of alternative, drinking water supplies that have been contaminated with hazardous waste as a result of an emergency;

(2) "Cleanup costs" means all costs incurred by the director, or with the approval of the director, by any state agency or person participating in the cleanup of a hazardous waste or hazardous substance emergency or remedial action and also includes responding to emergencies that may contain petroleum products: Provided, That cleanup costs do not include expenditures for remediation of or responding to releases from underground storage tanks;

(3) "Generator" means any person, corporation, partnership, association or other legal entity, by site location, whose act or process produces hazardous waste as identified or listed by the director in rules promulgated pursuant to section six, article eighteen of this chapter, in an amount greater than five thousand kilograms per year.

All other terms have the meaning as prescribed in the rules promulgated by the director pursuant to the provisions of section six, article eighteen of this chapter.

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§22-19-3. Hazardous Waste Emergency Response Fund; components of fund.

(a) The special fund designated the Hazardous Waste Emergency Response Fund, hereinafter referred to as "the fund", shall be continued in the state Treasury.

(b) All generator fee assessments, any interest or surcharge assessed and collected by the director, interest accruing on investments and deposits of the fund, and any other moneys designated shall be paid into the fund. Expenditures from the fund shall be 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 article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending June 30, 2000, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. 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 or funds and redesignated for other purposes by appropriation of the Legislature.

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§22-19-4. Fee assessments; tonnage fees; due dates of payments; interest on unpaid fees.

(a) Each generator of hazardous waste within this state shall pay an annual fee based upon the amount of hazardous waste generated as reported to the director by the generator on a fee assessment form prescribed by the director submitted pursuant to article eighteen of this chapter. The director shall establish a fee schedule according to the following: Full assessment for generated hazardous waste disposed or treated off-site; ninety percent of the full assessment for generated hazardous waste either treated or disposed on-site; seventy-five percent of the full assessment for generated hazardous waste treated off-site so that such waste is rendered nonhazardous; and twenty-five percent of the full assessment for generated hazardous waste treated on-site so that such waste is rendered nonhazardous: Provided, That the generator fee assessment does not apply to the following: (1) Sludge from any publicly owned treatment works in the state; (2) any discharge to waters of the state of hazardous waste pursuant to a valid water pollution control permit issued under federal or state law; (3) any hazardous wastes beneficially used or reused or legitimately recycled or reclaimed; (4) hazardous wastes which are created or retrieved pursuant to an emergency or remedial action plan; (5) hazardous wastes whose sole characteristic as a hazardous waste is based on corrosivity and which are subjected to on-site elementary neutralization in containers or tanks; (6) 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; (7) solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock and overburden from the mining of uranium ore; (8) cement kiln dust waste; (9) drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geo-thermal energy; and (10) any other material that is exempted or excluded from hazardous waste regulation pursuant to the federal Resource Conservation and Recovery Act and the rules promulgated thereunder, including, but not limited to, the exemptions and exclusions set forth in 40 CFR 261.4 and 261.6, or the state hazardous waste management act, article eighteen of this chapter, and the rules promulgated thereunder.

(b) Each generator of hazardous waste within the state subject to a fee assessment under subsection (a) of this section shall pay a fee based on its annual tonnage of generated hazardous waste. Any unexpended balance of such collected fees shall not be transferred to the General Revenue Fund, but shall remain in the fund. Whenever the balance in the fund is less than $1 million , the director is authorized to impose a fee assessment as provided in this article, but in no event shall the fees established be set to produce revenue exceeding $500,000 in any year.

(c) Generator fee assessments are due and payable to the Division of Environmental Protection on January 15, of each year. Such payments shall be accompanied by information in such form as the director may prescribe.

(d) If the fees or any portion thereof are not paid by the date prescribed, interest accrues upon the unpaid amount at the rate of ten percent per annum from the date due until

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payment is actually made. Such interest payments shall be deposited in the fund. If any generator fails to pay the fees imposed before April 1 of the year in which they are due, there is imposed in addition to the fee and interest determined to be owed a surcharge equivalent to the total amount of the fee which shall also be collected and deposited in the fund.

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§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.

(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

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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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§22-19-6. State hazardous waste contingency plan.

The director shall promulgate rules in compliance with chapter twenty-nine-a of this code, establishing a state hazardous waste contingency plan which shall set forth procedures and standards for responding to hazardous waste emergencies, releases of hazardous substances, for conducting remedial cleanup and maintenance of hazardous waste sites and for making expenditures from the fund after the date of promulgation of the plan. The plan shall include:

(a) Methods for discovering, reporting and investigating sites at which hazardous waste or hazardous substances may present significant risk of harm to the public health and safety or to the environment;

(b) Methods and criteria for establishing priority responses and for determining the appropriate extent of cleanup, containment and other measures authorized by this article;

(c) Appropriate roles for governmental, interstate and nongovernmental entities in effectuating the plan;

(d) Methods for identifying, procuring, maintaining, and storing hazardous waste response equipment and supplies; and

(e) Methods to identify the most appropriate and cost-effective emergency and remedial actions in view of the relative risk or danger presented by each case or event.

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