WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED
SENATE BILL NO. 743

(Passed March 10, 1984)

In Effect one year from Passage
ENROLLED
Senate Bill No. 743
(By Ms. Chace, Mr. Heck, Mr. Jones, Mr. Tucker, Mr. Holliday, Mr. White, Mr. Rogers and Mr. Boettner)

[Passed March 10, 1984; in effect ninety days from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-g, relating generally to the creation and administration of a hazardous waste emergency response fund; legislative findings and declarations related thereto; definitions of certain terms; designated revenues to be deposited in such fund; assessment of certain fees on generators of hazardous waste; exclusion of certain wastes from such assessments; maximum revenue to be collected from certain fees; interest and surcharge to be imposed on unpaid fees; fee schedules to be established by the director; notice of fee schedules to generators by certified mail; expenditures from the fund by the director for certain purposes; promulgation of certain rules and regulations by director; civil actions to recover certain expenditures from the fund and venue for such actions; civil actions to recover unpaid fees and venue for such actions; assistance from attorney general or prosecuting attorney in civil actions brought by the director; authorization to enter into agreements with federal government; authorization to accept donations to the fund and to invest the fund; the state hazardous waste contingency plan; and promulgation of rules and regulations by the director relating to such contingency plan.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by
adding thereto a new article, designated article five-g, to read as follows:

ARTICLE 5G. HAZARDOUS WASTE EMERGENCY RESPONSE FUND.

§20-5G-1. Findings; purpose.
1 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, 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 act. Therefore, the Legislature hereby creates a hazardous waste emergency fund to provide state funds for responding to hazardous waste emergencies, matching federal financial assistance for restoring hazardous waste sites and other costs or expenses incurred in the administration of this article.

1 As used in this article, unless the context clearly requires a different meaning:
2 (1) “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 regulations promulgated pursuant to section six of such article, in an amount greater than twelve thousand kilograms per year;
3 (2) “Cleanup” means such actions as may be necessary to monitor, assess and evaluate the threat of release of hazardous waste, 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 emergencies or
to prevent, minimize or mitigate damage to the public
health, safety, welfare or to the environment, and in-
cludes, where necessary, replacement of existing, or pro-
vision of alternative, drinking water supplies that have
been contaminated with hazardous waste as a result of an
emergency;

(3) "Cleanup costs" shall mean 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 emergency or remedial action;

All other terms shall have the meaning as prescribed
in the regulations promulgated by the director pursuant
to the provisions of section six, article five-e of this chap-

§20-5G-3. Creation of hazardous waste emergency response
fund; components of fund.

(a) A special fund designated "The Hazardous Waste
Emergency Response Fund," hereinafter referred to as
"the fund," shall be established in the state treasury on
the first day of July, one thousand nine hundred eighty-
four.

(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.

§20-5G-4. Fee assessments; tonnage fees; due dates of pay-
ments; interest on unpaid fees.

(a) Each generator of hazardous waste within this state
shall pay a fee based upon the amount of hazardous waste
generated as reported to the director in the generator's
most recent annual report submitted pursuant to article
five-e 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 haz-
ardous 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 non-hazardous; and twenty-five percent of the full assessment for generated hazardous waste treated on-site so that such waste is rendered non-hazardous: Provided, That the generator fee assessment shall not apply to the following: (1) Those wastes listed in paragraph (A), subdivision two, subsection (a), section six, article five-e of this chapter on the effective date of this article; (2) sludge from any publicly owned treatment works in the state; (3) any discharge to waters of the state of hazardous waste pursuant to a valid water pollution control permit issued under federal or state law; (4) any hazardous wastes beneficially used or reused or legitimately recycled or reclaimed; (5) hazardous wastes which are created or retrieved pursuant to an emergency or remedial action plan; (6) hazardous wastes whose sole characteristic as a hazardous waste is based on and which are subjected to on-site elementary neutralization in containers or tanks.

(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. For calendar year one thousand nine hundred eighty-five, the total fees assessed shall be sufficient to produce revenue of five hundred thousand dollars. At the end of each fiscal year, any unexpended balance of such collected fees shall not be transferred to the general revenue fund, but shall remain in the fund. For subsequent years, the director shall vary the fees annually to a level necessary to produce a fund of at least one million dollars at the beginning of each calendar year, but in no event shall the fees established be set to produce revenue exceeding five hundred thousand dollars in any year. When the fund's unobligated balance exceeds one million five hundred thousand dollars at the end of the calendar year, generator assessments under this article shall cease until such time as the fund's unobligated balance at the end of any year is less than one million dollars.
(c) Generator fee assessments shall be due and payable to the department of natural resources on the fifteenth day of January, one thousand nine hundred eighty-five, and each succeeding year thereafter. 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 shall accrue upon the unpaid amount at the rate of ten percent per annum from the date due until payment is actually made. Such interest payments shall be deposited in the fund. If any generator fails to pay the fees imposed before April one of the year in which they are due, there shall be 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.

§20-5G-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 the first day of August of each year. Each generator who filed an annual report with the director pursuant to article five-e of this chapter 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 the first day of August, 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 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 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 avail-
able federal funds for such emergencies at the earliest
possible time: Provided, however, That funds shall not be
expended under this subsection to cleanup or contain
off-site releases of hazardous waste which are classified
as such only as a result of such releases;
(2) Reimbursing any person for reasonable cleanup
costs incurred with the authorization of the director in
responding to a hazardous waste emergency pursuant to
authorization of the director;
(3) Financing the nonfederal share of the cleanup and
site reclamation activities pursuant to the federal Com-
prehensive Environmental Response, Compensation and
Liability Act of 1980, as well as future operation and
maintenance costs for these sites; and
(4) Financing any and all preparations necessary for
responding to hazardous waste activities and emergencies
within the state, including, but not limited to, the pur-
chase or lease of hazardous waste emergency response
equipment: Provided, That after the fifteenth of January,
one thousand nine hundred eighty-seven, no funds shall
be expended under this subdivision unless the fund is
greater than one million dollars and any expenditure will
not reduce the fund below one million dollars.
(c) Prior to making expenditures from the fund pur-
suant 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 respon-
sible persons.
(d) The director is authorized to promulgate and revise
rules and regulations in compliance with chapter twenty-
nine-a of this code to implement and effectuate the
powers, duties and responsibilities vested in him under
this article. Prior to the assessment of any fees under
this article, the director shall promulgate rules or regula-
tions which account for the mixture of hazardous and non-hazardous constituents in the hazardous waste which is generated. The director shall not assess a fee on the non-hazardous 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.

(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.

1 No later than eighteen months after the effective date of this article, the director shall promulgate rules or regulations, 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, 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 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Donald Anello  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 8th day of March, 1984

Governor