

No. 743

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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1984



ENROLLED

SENATE BILL NO. 743

(By ME Chace Mr. White Mr. Jones et al)



PASSED March 10 1984

In Effect virtually day 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)

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

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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  
2 hazardous waste are generated within the state, and that  
3 emergency situations involving hazardous waste can and  
4 will arise which may present a hazard to human health,  
5 safety, or the environment. The Legislature also recogniz-  
6 es that some hazardous waste has been stored, treated or  
7 disposed of at sites in the state in a manner insufficient to  
8 protect human health, safety or the environment. The  
9 Legislature further recognizes that the federal govern-  
10 ment has enacted the Comprehensive Environmental  
11 Response, Compensation and Liability Act of 1980, which  
12 provides for federal assistance to respond to hazardous  
13 substance emergencies and to remove and remedy the  
14 threat of damage to the public health or welfare or to  
15 the environment, and declares that West Virginia desires  
16 to produce revenue for matching the federal assistance  
17 provided under the federal act. Therefore, the Legislature  
18 hereby creates a hazardous waste emergency fund to pro-  
19 vide state funds for responding to hazardous waste emer-  
20 gencies, matching federal financial assistance for restoring  
21 hazardous waste sites and other costs or expenses in-  
22 curred in the administration of this article.

**§20-5G-2. Definitions.**

1 As used in this article, unless the context clearly re-  
2 quires a different meaning:

3 (1) "Generator" means any person, corporation, part-  
4 nership, association, or other legal entity, by site location,  
5 whose act or process produces hazardous waste as identi-  
6 fied or listed by the director in regulations promulgated  
7 pursuant to section six of such article, in an amount  
8 greater than twelve thousand kilograms per year;

9 (2) "Cleanup" means such actions as may be necessary  
10 to monitor, assess and evaluate the threat of release of  
11 hazardous waste, the containment, collection, control,

12 identification, treatment, dispersal, removal or disposal  
13 of hazardous waste or other such actions as may be  
14 necessary to respond to hazardous waste emergencies or  
15 to prevent, minimize or mitigate damage to the public  
16 health, safety, welfare or to the environment, and in-  
17 cludes, where necessary, replacement of existing, or pro-  
18 vision of alternative, drinking water supplies that have  
19 been contaminated with hazardous waste as a result of an  
20 emergency;

21 (3) "Cleanup costs" shall mean all costs incurred by  
22 the director, or with the approval of the director, by any  
23 state agency or person participating in the cleanup of a  
24 hazardous waste emergency or remedial action;

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

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

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

6 (b) All generator fee assessments, any interest or  
7 surcharge assessed and collected by the director, interest  
8 accruing on investments and deposits of the fund, and  
9 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.**

1 (a) Each generator of hazardous waste within this state  
2 shall pay a fee based upon the amount of hazardous waste  
3 generated as reported to the director in the generator's  
4 most recent annual report submitted pursuant to article  
5 five-e of this chapter. The director shall establish a fee  
6 schedule according to the following: Full assessment for  
7 generated hazardous waste disposed or treated off-site;  
8 ninety percent of the full assessment for generated haz-  
9 ardous waste either treated or disposed on-site; seventy-

10 five percent of the full assessment for generated hazard-  
11 ous waste treated off-site so that such waste is rendered  
12 non-hazardous; and twenty-five percent of the full assess-  
13 ment for generated hazardous waste treated on-site so  
14 that such waste is rendered non-hazardous: *Provided*,  
15 That the generator fee assessment shall not apply to the  
16 following: (1) Those wastes listed in paragraph (A),  
17 subdivision two, subsection (a), section six, article five-e  
18 of this chapter on the effective date of this article; (2)  
19 sludge from any publicly owned treatment works in the  
20 state; (3) any discharge to waters of the state of hazard-  
21 ous waste pursuant to a valid water pollution control  
22 permit issued under federal or state law; (4) any hazard-  
23 ous wastes beneficially used or reused or legitimately  
24 recycled or reclaimed; (5) hazardous wastes which are  
25 created or retrieved pursuant to an emergency or remed-  
26 ial action plan; (6) hazardous wastes whose sole charac-  
27 teristic as a hazardous waste is based on and which are  
28 subjected to on-site elementary neutralization in contain-  
29 ers or tanks.

30 (b) Each generator of hazardous waste within the state  
31 subject to a fee assessment under subsection (a) of this  
32 section shall pay a fee based on its annual tonnage of  
33 generated hazardous waste. For calendar year one thou-  
34 sand nine hundred eighty-five, the total fees assessed  
35 shall be sufficient to produce revenue of five hundred  
36 thousand dollars. At the end of each fiscal year, any un-  
37 expended balance of such collected fees shall not be  
38 transferred to the general revenue fund, but shall remain  
39 in the fund. For subsequent years, the director shall vary  
40 the fees annually to a level necessary to produce a fund  
41 of at least one million dollars at the beginning of each  
42 calendar year, but in no event shall the fees established  
43 be set to produce revenue exceeding five hundred thou-  
44 sand dollars in any year. When the fund's unobligated  
45 balance exceeds one million five hundred thousand dollars  
46 at the end of the calendar year, generator assessments  
47 under this article shall cease until such time as the fund's  
48 unobligated balance at the end of any year is less than  
49 one million dollars.

50 (c) Generator fee assessments shall be due and payable  
51 to the department of natural resources on the fifteenth  
52 day of January, one thousand nine hundred eighty-five,  
53 and each succeeding year thereafter. Such payments shall  
54 be accompanied by information in such form as the direc-  
55 tor may prescribe.

56 (d) If the fees or any portion thereof are not paid by  
57 the date prescribed, interest shall accrue upon the unpaid  
58 amount at the rate of ten percent per annum from the  
59 date due until payment is actually made. Such interest  
60 payments shall be deposited in the fund. If any generator  
61 fails to pay the fees imposed before April one of the year  
62 in which they are due, there shall be imposed in addition  
63 to the fee and interest determined to be owed, a sur-  
64 charge equivalent to the total amount of the fee which  
65 shall also be collected and deposited in the fund.

**§20-5G-5. Director's responsibilities; fee schedules; authorized  
expenditures; other powers of director; authoriz-  
ing civil actions; assistance of attorney general or  
prosecuting attorney.**

1 (a) The director shall collect all fees assessed pursuant  
2 to this article and administer the fund.

3 The fee schedule shall be published in the state  
4 register by the first day of August of each year. Each  
5 generator who filed an annual report with the director  
6 pursuant to article five-e of this chapter shall be notified  
7 and provided with a copy of the fee schedule by certified  
8 mail. In the event the fee schedule is not published by  
9 the first day of August, the date prescribed for payment  
10 in section four of this article shall be advanced by the  
11 same number of days that the publication of the fee sche-  
12 dule is delayed. The interest and surcharge provisions of  
13 section four of this article shall be similarly advanced.

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

17 (1) Responding to hazardous waste emergencies when,  
18 based on readily available information, the director deter-  
19 mines that immediate action may prevent or mitigate

20 significant risk of harm to human health, safety or the  
21 environment from hazardous wastes in situations for  
22 which no federal funds are immediately available for  
23 such response cleanup or containment: *Provided*, That  
24 the director shall apply for and diligently pursue avail-  
25 able federal funds for such emergencies at the earliest  
26 possible time: *Provided, however*, That funds shall not be  
27 expended under this subsection to cleanup or contain  
28 off-site releases of hazardous waste which are classified  
29 as such only as a result of such releases;

30 (2) Reimbursing any person for reasonable cleanup  
31 costs incurred with the authorization of the director in  
32 responding to a hazardous waste emergency pursuant to  
33 authorization of the director;

34 (3) Financing the nonfederal share of the cleanup and  
35 site reclamation activities pursuant to the federal Com-  
36 prehensive Environmental Response, Compensation and  
37 Liability Act of 1980, as well as future operation and  
38 maintenance costs for these sites; and

39 (4) Financing any and all preparations necessary for  
40 responding to hazardous waste activities and emergencies  
41 within the state, including, but not limited to, the pur-  
42 chase or lease of hazardous waste emergency response  
43 equipment: *Provided*, That after the fifteenth of January,  
44 one thousand nine hundred eighty-seven, no funds shall  
45 be expended under this subdivision unless the fund is  
46 greater than one million dollars and any expenditure will  
47 not reduce the fund below one million dollars.

48 (c) Prior to making expenditures from the fund pur-  
49 suant to subdivision (1), (2) or (3), subsection (b) of this  
50 section, the director will make reasonable efforts to secure  
51 agreements to pay the costs of cleanup and remedial  
52 actions from owners or operators of sites or other respon-  
53 sible persons.

54 (d) The director is authorized to promulgate and revise  
55 rules and regulations in compliance with chapter twenty-  
56 nine-a of this code to implement and effectuate the  
57 powers, duties and responsibilities vested in him under  
58 this article. Prior to the assessment of any fees under  
59 this article, the director shall promulgate rules or regula-

60 tions which account for the mixture of hazardous and  
61 non-hazardous constituents in the hazardous waste which  
62 is generated. The director shall not assess a fee on the  
63 non-hazardous portion, including, but not limited to, the  
64 weight of water.

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

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

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

87 (h) The director is authorized to enter into contracts  
88 or cooperative agreements with the federal government  
89 to secure to the state the benefits of funding for action  
90 taken pursuant to the requirements of the federal Com-  
91 prehensive Environmental Response, Compensation and  
92 Liability Act of 1980.

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

96 (j) The director is authorized to invest the fund to  
97 earn a reasonable rate of return on the unexpended bal-  
98 ance.



**§20-5G-6. State hazardous waste contingency plan.**

1 No later than eighteen months after the effective date  
2 of this article, the director shall promulgate rules or  
3 regulations, in compliance with chapter twenty-nine-a of  
4 this code, establishing a state hazardous waste contin-  
5 gency plan which shall set forth procedures and standards  
6 for responding to hazardous waste emergencies, for con-  
7 ducting remedial cleanup and maintenance of hazardous  
8 waste sites and for making expenditures from the fund  
9 after the date of promulgation of the plan. The plan shall  
10 include:

11 (a) Methods for discovering, reporting and investigat-  
12 ing sites at which hazardous waste may present significant  
13 risk of harm to the public health and safety or to the  
14 environment;

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

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

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

24 (e) Methods to identify the most appropriate and cost-  
25 effective emergency and remedial actions in view of the  
26 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.

*David E. Colman*

Chairman Senate Committee

*Donald Anello*

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Todd C. Wills*

Clerk of the Senate

*Donald L. Kopp*

Clerk of the House of Delegates

*Walter R. Mullan*

President of the Senate

*John M. See, Jr.*

Speaker House of Delegates

The within is approved this the 20

day of March, 1984

*John P. Ryan*  
Governor



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