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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

— ● —

## ENROLLED

HOUSE BILL No. *2676*

(By Mr. *Speaker McChamber and Del. R. Burk*)  
*[By Request]*

— ● —

Passed *April 8,* 1989

In Effect *Ninety Days From* Passage

**ENROLLED**  
**H. B. 2676**

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE R. BURK)  
[By Request]

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[Passed April 8, 1989; in effect ninety days from passage.]

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AN ACT to amend and reenact sections three, four, five and six, article five-g, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hazardous waste emergency response fund; specifying that moneys in said fund do not expire; clarifying certain requirements as to payment of generator fee; deleting certain monetary limitation on use of said fund, and extending time in which director shall promulgate certain rules.

*Be it enacted by the Legislature of West Virginia:*

That sections three, four, five and six, article five-g, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5G. HAZARDOUS WASTE EMERGENCY RESPONSE  
FUND.**

**§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,  
8 interest accruing on investments and deposits of the  
9 fund, and any other moneys designated shall be paid  
10 into the fund.

11 (c) Notwithstanding any provisions of this code to the  
12 contrary, all moneys within the fund on the last day of  
13 any fiscal year shall remain in the fund and shall not  
14 be deemed to have expired for a period of ten years.

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

1 (a) Each generator of hazardous waste within this  
2 state shall pay a fee based upon the amount of hazardous  
3 waste generated as reported to the director in the  
4 generator's most recent annual report submitted  
5 pursuant to article five-e of this chapter. The director  
6 shall establish a fee schedule according to the following:  
7 Full assessment for generated hazardous waste disposed  
8 or treated off-site; ninety percent of the full assessment  
9 for generated hazardous waste either treated or dis-  
10 posed on-site; seventy-five percent of the full assessment  
11 for generated hazardous waste treated off-site so that  
12 such waste is rendered nonhazardous; and twenty-five  
13 percent of the full assessment for generated hazardous  
14 waste treated on-site so that such waste is rendered  
15 nonhazardous: *Provided*, That the generator fee assess-  
16 ment shall not apply to the following: (1) Those wastes  
17 listed in paragraph (A), subdivision two, subsection (a),  
18 section six, article five-e of this chapter on the effective  
19 date of this article; (2) sludge from any publicly owned  
20 treatment works in the state; (3) any discharge to  
21 waters of the state of hazardous waste pursuant to a  
22 valid water pollution control permit issued under  
23 federal or state law; (4) any hazardous wastes benefi-  
24 cially used or reused or legitimately recycled or  
25 reclaimed; (5) hazardous wastes which are created or  
26 retrieved pursuant to an emergency or remedial action  
27 plan; (6) hazardous wastes whose sole characteristic as  
28 a hazardous waste is based on corrosivity and which are  
29 subjected to on-site elementary neutralization in con-  
30 tainers or tanks.

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

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

57 (d) If the fees or any portion thereof are not paid by  
58 the date prescribed, interest shall accrue upon the  
59 unpaid amount at the rate of ten percent per annum  
60 from the date due until payment is actually made. Such  
61 interest payments shall be deposited in the fund. If any  
62 generator fails to pay the fees imposed before April one  
63 of the year in which they are due, there shall be imposed  
64 in addition to the fee and interest determined to be owed  
65 a surcharge equivalent to the total amount of the fee  
66 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.**

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

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

17 (1) Responding to hazardous waste emergencies when,  
18 based on readily available information, the director  
19 determines that immediate action may prevent or  
20 mitigate significant risk of harm to human health,  
21 safety or the environment from hazardous wastes in  
22 situations for which no federal funds are immediately  
23 available for such response cleanup or containment:  
24 *Provided*, That the director shall apply for and dili-  
25 gently pursue available federal funds for such emergen-  
26 cies at the earliest possible time: *Provided, however*,  
27 That funds shall not be expended under this subsection  
28 to clean up or contain off-site releases of hazardous  
29 waste which are classified as such only as a result of  
30 such releases;

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

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

40 (4) Financing any and all preparations necessary for

41 responding to hazardous waste activities and emergen-  
42 cies within the state, including, but not limited to, the  
43 purchase or lease of hazardous waste emergency  
44 response equipment. (c) Prior to making expenditures  
45 from the fund pursuant to subdivision (1), (2) or (3),  
46 subsection (b) of this section, the director will make  
47 reasonable efforts to secure agreements to pay the costs  
48 of cleanup and remedial actions from owners or  
49 operators of sites or other responsible persons.

50 (d) The director is authorized to promulgate and  
51 revise rules and regulations in compliance with chapter  
52 twenty-nine-a of this code to implement and effectuate  
53 the powers, duties and responsibilities vested in him  
54 under this article. Prior to the assessment of any fees  
55 under this article, the director shall promulgate rules  
56 or regulations which account for the mixture of  
57 hazardous and nonhazardous constituents in the hazard-  
58 ous waste which is generated. The director shall not  
59 assess a fee on the nonhazardous portion, including, but  
60 not limited to, the weight of water.

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

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

79 (g) Upon request by the director, the attorney general  
80 or prosecuting attorney for the county in which an

81 action was brought shall assist the director in any civil  
82 action instituted pursuant to this section and any  
83 proceedings relating thereto.

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

90 (i) The director is authorized to accept gifts, dona-  
91 tions, contributions, bequests or devises of money,  
92 security or property for deposit in the fund.

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

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

1 By no later than the first day of July, one thousand  
2 nine hundred ninety-one, the director shall promulgate  
3 rules, in compliance with chapter twenty-nine-a of this  
4 code, establishing a state hazardous waste contingency  
5 plan which shall set forth procedures and standards for  
6 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  
10 shall include:

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

  
Chairman Senate Committee

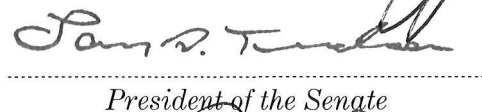
  
Chairman House Committee

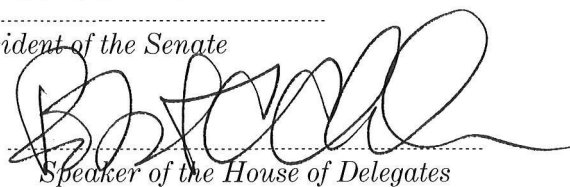
Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 27<sup>th</sup>  
day of April 1989.

  
Governor

PRESENTED TO THE

GOVERNOR

Date

4/24/89

Time

2:11