§ 72-0402. Hazardous waste program fees.

1. a. For the period beginning January 1, 2010, all generators of equal to or greater than fifteen tons per year of hazardous waste shall submit annually to the department a fee in the amount of one hundred thirty dollars per ton of hazardous waste generated not to exceed $300,000, except not to exceed $400,000 for those with greater than 4,000 tons generated and less than or equal to 10,000 tons generated, and not to exceed $800,000 for those with greater than 10,000 tons generated.

b. $3,000 for generators of equal to or greater than fifteen tons per year of hazardous wastewater, payable in addition to fees for hazardous wastes, other than wastewater, as required by paragraph a of this subdivision.

c. $6,000 for generators of equal to or greater than fifteen thousand tons per year of hazardous wastewater, payable in addition to the fees for hazardous wastes, other than wastewater, as required by this subdivision.

d. No fee shall be payable for waste resulting from services which are provided:

(i) under a contract with the department, or with the department's written approval and in compliance with department regulations, or pursuant to an order of the department, the United States environmental protection agency or a court of competent jurisdiction, related to the cleanup or remediation of a hazardous materials or hazardous waste spill, discharge, or surficial cleanup, pursuant to this chapter; or

(ii) under a contract for, or with the department's approval and in compliance with department regulations for, the cleanup and removal of a petroleum spill or discharge, pursuant to subdivision seven of section one hundred seventy-six of the navigation law; or

(iii) under the order of a court, the department or the department of health, or the United States environmental protection agency related to an inactive hazardous waste disposal site pursuant to section 27-1313 of this chapter, section thirteen hundred eighty-nine-b of the public

health law, or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.); or

(iv) voluntarily and without expectation of monetary compensation in accordance with subdivision one of section 27-1321 of this chapter; or

(v) under permit or order requiring corrective action pursuant to title nine of article twenty-seven of this chapter, title twenty-seven of article seventy-one of this chapter or the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or

(vi) under a brownfield site cleanup agreement with the department pursuant to section 27-1409 of this chapter or under a written agreement with a municipality which has entered into a memorandum of agreement with the department related to the remediation of brownfield sites as of August fifth, two thousand ten; or

(vii) under an environmental restoration project state assistance contract with the department pursuant to section 56-0503 of this chapter.

e. Notwithstanding any other provision of this section, no fee shall be payable for the generation of universal wastes. For purposes of this paragraph, "universal wastes" shall mean those defined and listed in regulations promulgated pursuant to this title, provided that such wastes are regulated consistent with rules adopted by the administrator pursuant to RCRA for the management of universal wastes.

f. In any case where a generator either (i) recycles more than ninety percent of the total tons of hazardous waste or more than ninety percent of the total tons of hazardous wastewater which it generated during that calendar year, as certified to the commissioner, or (ii) recycles more than four thousand tons of hazardous waste or more than four thousand tons of hazardous wastewater which it generated in that calendar year, as certified to the commissioner, the fee imposed pursuant to this section shall be calculated and imposed based upon the net amount of hazardous waste or the net amount of hazardous wastewater generated that is not recycled in that calendar year, rather than upon the gross amounts of hazardous waste and hazardous wastewater generated in such calendar year.

2. All facility operators required to obtain a permit or certificate for the treatment, storage or disposal of hazardous waste pursuant to title nine of article twenty-seven of this chapter shall submit annually to the department a fee in an amount to be determined for all methods of hazardous waste treatment, storage or disposal as follows:

a. $12,000 for each facility that receives less than or equal to one thousand tons per year of hazardous waste; and

b. $30,000 for each facility that receives greater than one thousand tons per year of hazardous waste.

In addition, the fee determined pursuant to this section shall include:

(i) $100,000 for each facility when the gross receipts tax is below 3.3 million dollars per year; $200,000 for each facility when the gross receipts tax is between 3.3 million dollars per year and 4.4 million dollars per year; and $300,000 for each facility when the gross receipts tax exceeds 4.4 million dollars per year for which a permit pursuant to title nine of article twenty-seven of this chapter is required to operate one or more landfills to receive hazardous waste at such facility, except that such fee shall be $100,000 if such facility is used by the facility operator or owner for the disposal of hazardous waste generated solely by such facility operator or owner; and

(ii) $10,000 for each incinerator as defined in section 72-0401 of this title which is and each unit which burns listed hazardous waste for energy recovery located at the facility operator's hazardous waste treatment, storage or disposal facility; and

(iii) $10,000 for each unit which burns listed hazardous waste for energy recovery at the facility operator's hazardous waste treatment, storage or disposal facility; and

(iv) $24,000 for each facility which provides for the treatment, storage or disposal of hazardous waste in one or more surface impoundments.

3. All facility operators required to obtain a permit, certificate or approval for the post-closure care period pursuant to title nine of

article twenty-seven of this chapter shall submit annually to the department a fee in the amount of $3,000 for each such closed hazardous waste management facility.

4. Bills issued for annual hazardous waste program fees shall be based upon actual hazardous waste generated for the prior calendar year, as demonstrated to the department's satisfaction. During the first year of implementation of this subdivision, bills will be based on the average quantity of hazardous waste generated for the previous three calendar years.