



West Virginia Department of
Commerce, Labor & Environmental Resources
Air Pollution Control Commission

1558 Washington Street, East
Charleston, West Virginia 25311

Telephone: (304) 348-4022
or (304) 348-3286

TO: Legislative Rule-Making Review Committee
FROM: Air Pollution Control Commission
DATE: August 10, 1990
RE: Regulation 22 "Air Quality Management Fee Program"

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BRIEF SUMMARY OF CONTENTS

Based upon dire need for additional funding (See Statement of Facts and Circumstances requiring rule) the West Virginia Air Pollution Control Commission has proposed Regulation 22, has given sixty (60) days notice of hearing, has held a public hearing, has held additional comment period open for written comments, has reviewed and responded to both comments made at the public hearing and written comments and has adopted Regulation 22 for submission to the West Virginia Legislative Rule-Making Review Committee. Regulation 22 simply imposes fees for permit applications based primarily upon the work necessary to review and issue and enforce such permit and has proposed annual operating fees on categories of pollution sources for which agency emission standards, permits, or registration are required. The intent of the regulation is to raise approximately \$650,000 annually which money will be used to supplement the budget of the agency.



West Virginia Department of
Commerce, Labor & Environmental Resources
Air Pollution Control Commission

1558 Washington Street, East
Charleston, West Virginia 25311

Telephone: (304) 348-4022
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TO: West Virginia Secretary of State
FROM: The West Virginia Air Pollution Control Commission
DATE: August 10, 1990
RE: Emergency Filing of Regulation 22

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FACTS AND CIRCUMSTANCES CONSTITUTING THE
EMERGENCY FILING OF REGULATION 22 -
"AIR QUALITY MANAGEMENT FEE PROGRAM"

The West Virginia Air Pollution Control Commission is a statutory agency of the State of West Virginia created pursuant to Chapter 16, Article 20 of the Code. The agency's mandate is to implement a program to protect air quality in West Virginia pursuant to the Code and the federal Clean Air Act as well as other statutes. In order for the agency to function and meet its mandate the Commission has established offices in Charleston, Fairmont and Wheeling. Including on-going contract assistance the agency is currently operating with an actual staff level of 40. The maximum budgeted staff level is now 48 under all programs compared with approximately 63 budgeted positions in fiscal year 1987.

In the past four years an increased workload has been created by requirements to address non-attainment of National Ambient Air Quality Standards for ozone, PM10, and sulfur dioxide in several regions of West Virginia, a significantly increased number of permit applications for construction/modification of regulated air pollution sources, and the need to carry out a regulatory program and otherwise address the emission of toxic air pollutants throughout the state. Even prior to these workload increases the APCC did not have the resources to maintain overall an adequate air quality management program.

APCC operations demand the employment of competent technical professional staff (engineers) and support staff and in the past several years demand for engineers and engineering salaries have been increasing while salaries within the APCC have stagnated.

Most APCC staff engineering salaries are now substantially below the minimal entry salary levels recently established by the State's Division of Personnel. As a result, the agency is increasingly unable to attract and retain the qualified technical personnel necessary to fulfill its responsibilities pursuant to the Code. The agency currently has only about 50% of the enforcement/permitting/planning staff necessary to maintain a simply adequate air quality management program, has inadequate funding to maintain necessary air quality monitoring and to complete the necessary air quality assessments to develop plans for attaining the National Ambient Air Quality Standards in those areas for which USEPA has required attainment plans.

The USEPA has given notice to the State of these problems via a letter of February 5, 1990 to the Governor in which a call was made for remediation of the resource problem in the air quality management program. Copies of EPA's SIP call letter are attached along with EPA's 1989 and 1990 Mid-Year Review Reports which were made a part of the hearing record on the proposed Air Quality Fee Management Regulation. USEPA requested that the State submit a plan to address the program resource limitations within sixty (60) days of the deficiency notice.

The APCC's general revenue appropriation was reduced from a FY 89-90 level of \$931,002 to a FY 90-91 level of \$789,419. The fee management regulation is intended to supplement the overall decreases in actual and effective APCC funding and otherwise bring this program up to required standards so that the agency can fulfill its Code-directed policy and purpose.

The 1990 Legislature amended Code 16-20 to provide as follows:

16-20-5(18) - "To establish by rule, permit and operating fees and penalties for nonpayment thereof. Such fees shall be deposited in a special fund in the state treasury designated "Air Pollution Control Commission Fund", to be appropriated as provided by law for the purpose of paying salaries and expenses of the commission. Any balance remaining in the fund at the end of any fiscal year shall not revert to the treasury but shall remain in the fund and may be appropriated and used as provided above in the ensuing fiscal years.

It is the agency's position that without the ability to collect fees pursuant to Regulation 22 as an emergency Regulation that the public health, safety and welfare may not be preserved and that the agency will be unable to fulfill its federally and state mandated duty to prevent substantial harm to the public interest.

45CSR22

TITLE 45
LEGISLATIVE RULES
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

SERIES 22
AIR QUALITY MANAGEMENT FEE PROGRAM

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45CSR22

TITLE 45
LEGISLATIVE RULES
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

SERIES 22
AIR QUALITY MANAGEMENT FEE PROGRAM

§45-22-1. Intent and Purpose.

1.1. This regulation establishes a program to collect fees for certificates to operate and for permits to construct, modify or relocate sources of air pollution. Funds collected from these fees will be used to supplement the Air Pollution Control Commission's budget for the purpose of maintaining an effective air quality management program.

1.2. Authority. — WV Code §16-20-5.

1.3. Filing Date. —

1.4. Effective Date. —

§45-22-2. Definitions.

2.1. "Air Pollution" has the meaning ascribed to it in Article Twenty, Chapter Sixteen of the WV Code, as amended.

2.2. "Chemical Processing Unit" has the meaning described in 45CSR27.

2.3. "Commission" means the West Virginia Air Pollution Control Commission.

2.4. "Completed Application" means an application submitted with the appropriate fee paid to the commission and which contains all of the information required by the director to determine whether a permit or certificate should be issued or denied by the director.

2.5. "Director" means the Director of the West Virginia Air Pollution Control Commission.

2.6. "Emissions Unit" has the meaning described in 45CSR14.

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2.7. "Major Modification"; "Major Modification for Ozone" have the meanings described in 45CSR14 and 45CSR19.

2.8. "Major Stationary Source"; "Major Stationary Source for Ozone" have the meanings described in 45CSR14 and 45CSR19.

2.9. "Modification" has the meanings described in 45CSR13 and 45CSR27.

2.10. "NESHAPs" means National Emission Standards for Hazardous Air Pollutants as described in 45CSR15.

2.11. "Nonattainment Review/Bubble Concept" has the meanings as described in 45CSR19.

2.12. "NSPS" means New Source Performance Standards as described in 45CSR16.

2.13. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state and all agencies or divisions thereof, any state political subdivision, the United States of America, any municipal, public, statutory, or private corporation or association organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.

2.14. "Process Unit" means components assembled to produce any chemical as a final or intermediate product. A process unit can operate independently if supplied with sufficient utilities, feed or raw materials and sufficient storage facilities for the product.

2.15. "PSD" means Prevention of Significant Deterioration, as described in 45CSR14.

2.16. "Source", "Stationary Source", and "Plant" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e.,

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which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended.

2.17. "Toxic Air Pollutant" has the meaning described in 45CSR27.

§45-22-3. Requirements for Permit to Construct, Modify or Relocate.

3.1. For sources or emission units subject to the permitting requirements of 45CSR13 ("Permits for Construction, Modification or Relocation of Stationary Sources of Air Pollution and Procedures for Registration and Evaluation"), 45CSR14 ("Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"), 45CSR19 ("Requirements for Pre-Construction Review, Determination of Emissions Offsets for Proposed, New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants"), and 45CSR15 ("Emission Standards for Hazardous Air Pollutants"), no person may commence construction, modification or relocation without first filing a completed application and obtaining a permit.

3.2. Applications for permits for construction, modification or relocation shall be submitted in accordance with 45CSR13, 45CSR14, 45CSR19, and 45CSR15, whichever may be applicable.

3.3. Fee Payment.

a. A person applying for a permit to construct, modify or relocate shall pay a fee when submitting the application. The fee shall be paid by a negotiable instrument (check, draft, warrant, money order, etc.) made payable to the "West Virginia Air Pollution Control Commission Fund". Any application for a permit to construct, modify or relocate shall not be deemed to have been received nor complete unless payment of the application fee is included.

b. An application fee paid hereunder is not refundable.

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3.4. Fee Schedule.

a. All persons required to submit an application for a permit to construct, modify or relocate pursuant to 45CSR13 shall pay an application fee of \$1000.

b. In addition to the fee required in Section 3.4.a. of this regulation, all persons subject to PSD requirements (45CSR14), Nonattainment Review/Bubble Concept requirements (45CSR19), NSPS requirements (45CSR16), NESHAPs requirements (45CSR15), or Toxic Air Pollutant requirements (45CSR27) shall pay additional fees as described below:

<u>Category</u>	<u>Fee</u>
NSPS Requirements	\$ 1,000.00
NESHAPs or Toxic Air Pollutant Requirements	\$ 2,500.00
PSD or Nonattainment Review/ Bubble Concept for (1) New Major Sources and Bubble Plans, or (2) Major Modifications	\$10,000.00 \$ 5,000.00

c. Fees for each category requirement in Section 3.4.b. of this regulation are cumulative.

§45-22-4. Certificate to Operate.

4.1. Requirements.

a. No person may operate nor cause to operate a facility or stationary source of air pollution without first obtaining and having in current effect a certificate to operate.

b. Any person in possession of a certificate to operate shall maintain the certificate on the premises for which the certificate has been issued and shall make the certificate immediately available for inspection by the director or his duly authorized representative.

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4.2. Transfer of Operating Certificate.

Any person holding a valid certificate to operate may request that the director transfer the certificate to another person providing the following conditions are met:

a. The certificate holder describes, in writing, the reasons for or circumstances of the transfer and certifies that the facility for which the certificate pertains is in compliance with all permits issued by the director or commission and the commissions' emission regulations.

b. The transferee identifies and acknowledges, in writing, that it accepts and will comply with all permits issued by the director or commission and will comply with all applicable regulations of the commission.

c. The certificate holder or transferee pays, at the time of the request for transfer, a transfer fee of \$200 payable to the "West Virginia Air Pollution Control Commission Fund".

4.3. Fee Payment.

A person applying for a certificate to operate shall pay a fee to the commission in accordance with the fee schedule of Sections 4.4. and 4.5. of this regulation. The fee shall be paid by negotiable instrument made payable to the "West Virginia Air Pollution Control Commission Fund".

4.4. Fee Schedule.

a.

Group 1

Integrated Steel Plant

Electric Utility Plant
(rated 300 MW or greater)

Fee

\$10,000

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Group 2 \$ 8,000

Primary Aluminum Plant

Furnace and Foundry Coke Production Plant

Portland Cement Plant

Kraft Pulp Mill

Group 3 \$ 5,000

Chemical Production Plant with
Steam Plant(s) having total
design heat input greater
than 350 mmBtu/hr

Hazardous Waste Incinerator

Electric Utility Plant
(rated less than 300 MW)

Group 4 \$ 4,000

Petroleum Refinery

Ferroalloy Production Plant

Any source containing chemical
processing units emitting one or
more toxic air pollutants and
subject to regulation under
45CSR27 for which a higher
operating certificate fee
is not applicable

Group 5 \$ 3,000

Chemical Production Plant
(three process units or greater)

Primary Metals Plant
(not otherwise listed)

Group 6 \$ 2,000

Rocket Fuel Plant

Chemical Production Plant
(less than three process units)

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Carbon Products Plant
(not otherwise listed)

Petroleum Storage and Distribution Facility
(greater than 20 million gal/yr gasoline throughput)

Glass Production Plant
(total pull rate greater than 6,000 lb/hr)

Commercial/Industrial or Commercial
Infectious Waste Disposal Facility

Group 7 \$ 1,000

Nonmetallic Mineral Products Processing Plant
(500 ton/hr or greater primary crushing capacity)

Coil, Can or Sheet Coating Facility

Coal Preparation Plant with Thermal Dryer

Coal or other Solid Fuel-Fired Boilers or Process
Equipment (total design heat input greater than
100 mmBtu/hr, excluding all boilers less than
10 mmBtu/hr design heat input)

Lead, Aluminum or Copper Recovery Plant

Asphalt Building Product Plant

Secondary Metals Plant
(not otherwise listed)

Charcoal Plant

Lime Manufacturing Plant

Group 8 \$ 500

Hot Mix Asphalt Paving Plant

Wool Fiberglass Insulation Production Plant

Sewage Sludge Incinerator

Natural Gas Compressor Station
(total reciprocating engine capacity
greater than 1,000 h.p.)

Natural Gas Compressor Station
(total turbine capacity greater than 8,000 h.p.)

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Nonmetallic Minerals Processing Plant
(primary crushing capacity greater than
100 tons/hr but less than 500 tons/hr)

Sulfuric Acid Manufacturing Plant

Coal or other Solid Fuel-Fired Boilers or
Process Fuel Burning Equipment
with total design heat input greater than
50 mmBtu/hr but less than 100 mmBtu/hr,
excluding all boilers less than 10 mmBtu/hr

Refractory Manufacturing Plant

Metal Reclamation Furnace
(wire, electrical equipment, batteries)

Miscellaneous Surface Coating (not otherwise
listed and greater than 100 tons/yr maximum
emissions of volatile organic compounds)

Coal Preparation Plant
(wet washing or pneumatic cleaning not otherwise listed)

Clay Processing/Brick Manufacturing

Group 9 \$ 200

On-site Pathological/Infectious Waste Incinerator

Crematory Incinerator

Other Glass Manufacturing Including
Specialty Manufacturing

Plastic Products Recovery Facility

Miscellaneous Surface Coating
(not otherwise listed and greater than 25 tons/yr
maximum emissions of volatile organic compounds)

Tank Truck and Railroad Tank Car
Cleaning/Repair Facility

Metal or Ore Briquet Manufacturing/
Recovery Facilities

Gray Iron Foundry

Coal Processing and Handling
(not otherwise listed)

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Nonmetallic Minerals Processing Plant
(primary crusher capacity less than 100 tons/hr)

Natural Gas Sweetening Plant

Printing Facility
(emitting greater than 150 lbs/day of volatile
organic compounds)

All other sources (excluding indirect affected
sources) subject to emission regulations,
permit, and/or registration requirements
promulgated by the commission

b. If a plant or source is described by more than one of the groups in Section 4.4.a. or contains individual emitting facilities listed under more than one of the groups in Section 4.4.a., only the single highest fee shall apply. For each stationary source, no person shall be required to pay more than one fee listed in Section 4.4.a.

c. A fee paid hereunder is not refundable.

4.5. Operating Year.

a. A certificate to operate shall be issued for the fiscal period July 1 through June 30 of each year or for any portion of such year remaining upon initial new source start-up.

b. For those persons making application after July 1 of the current operating year for a certificate to operate in the current operating year, such person shall pay a fee or prorated fee in accordance with the following schedule:

<u>Month</u>	<u>% of Fee</u>	<u>Month</u>	<u>% of Fee</u>
July	100	January	90
August	100	February	80
September	100	March	70
October	100	April	60
November	100	May	50
December	100	June	50

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4.6. Penalty.

Any person who operates a facility in violation of the requirements of Section 4 of this regulation shall be subject to a penalty equal to five percent (5%) of the permit to operate fee for each month of violation and payable to the commission in addition to the annual certificate fee. This penalty for delinquent payment is separate from and unrelated to any penalties assessed by a court or collected by the commission pursuant to §16-20-8 for violations of the Code or the commission's regulations.

§45-22-5. Collection.

Any fee or penalty due under this regulation is a debt due the State of West Virginia and may be collected pursuant to law.

ATTACHMENT 1

A. PROJECTED YEARLY FUNDS FROM FEES FOR PERMITS TO CONSTRUCT, MODIFY OR RELOCATE:

<u>Permits</u>	<u>Number Projected</u>	<u>Projected Funds</u>
45CSR13 Sources	80	\$ 80,000
NSPS	15	\$ 15,000
NESHAPS/TAPS	5	\$ 7,500
PSD or Non-Attainment Review/Bubble Concept	2	\$ 20,000
PERMIT TOTAL:		\$122,000

B. PROJECTED YEARLY FUNDS FROM FEES FOR CERTIFICATES TO OPERATE:

<u>Category</u>	<u>No. Sources Affected</u>	<u>Projected Funds</u>
<u>Group 1</u>	11	\$110,000
Integrated Steel Plant		
Electric Utility Plant (rated 300 MW or greater)		
<u>Group 2</u>	3	\$24,000
Primary Aluminum Plant		
Furnace and Foundry Coke Production Plant		
Portland Cement Plant		
Kraft Pulp Mill		
<u>Group 3</u>	14	\$70,000
Chemical Production Plant with Steam Plant (total design heat input greater than 350 mmBtu/hr)		
Hazardous Waste Incinerator		
Electric Utility Plant (rated less than 300 MW)		
<u>Group 4</u>	10	\$40,000
Petroleum Refinery		
Ferroalloy Production Plant		

Any source containing chemical process units emitting one or more toxic air pollutants and subject to regulation under 45CSR27 for which a higher operating certificate fee is not applicable

<u>Group 5</u>	6	\$18,000
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Chemical Production Plant
(three units or greater)

Primary Metals Plant
(not otherwise listed)

<u>Group 6</u>	22	\$44,000
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Rocket Fuel Plant

Chemical Production Plant
(less than three units)

Carbon Products Plant
(not otherwise listed)

Petroleum Storage and Distribution
Facility (greater than 20 million
gal/yr gasoline throughput)

Glass Production Plant
(total pull rate greater than
6,000 lb/hr)

Commercial/Industrial or Commercial
Infectious Waste Disposal Facility

<u>Group 7</u>	65	\$65,000
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Nonmetallic Mineral Products
Processing Plant (500 ton/hr or
greater primary crushing capacity)

Coil, Can or Sheet Coating Facility

Coal Preparation Plant with Thermal Dryer

Coal or other Solid Fuel-Fired Boilers
or Process Equipment (with total design
heat input greater than 100 mmBtu/hr,
excluding all boilers less than 10 mmBtu/hr
design heat input)

Lead, Aluminum or Copper Recovery Plant		
Asphalt Building Product Plant		
Secondary Metals Plant (not otherwise listed)		
Charcoal Plant		
Lime Manufacturing Plant		
<u>Group 8</u>	242	\$121,000
Hot Mix Asphalt Paving Plant		
Wool Fiberglass Insulation Production Plant		
Sewage Sludge Incinerator		
Natural Gas Compressor Station (total reciprocating engine capacity greater than 1,000 h.p.)		
Natural Gas Compressor Station (total turbine capacity greater than 8,000 h.p.)		
Nonmetallic Minerals Processing Plant (primary crushing capacity greater than 100 tons/hr but less than 500 tons/hr)		
Sulfuric Acid Manufacturing Plant		
Coal or other Solid Fuel-Fired Boilers or Process Equipment (with total design heat input greater than 50 mmBtu/hr but less than 100 mmBtu/hr, excluding all boilers less than 10 mmBut/hr)		
Refractory Manufacturing Plant		
Metal Reclamation Furnace (wire, electrical equipment, batteries)		
Miscellaneous Surface Coating (not otherwise listed and greater than 100 tons/yr maximum emissions of volatile organic compounds)		
Coal Preparation Plant (wet washing or pneumatic cleaning not otherwise listed)		
Clay Processing/Brick Manufacturing		

Group 9

30

\$38,800

On-Site Pathological/Infectious
Waste Incinerator

Crematory Incinerator

Other Glass Including
Specialty Manufacturing

Plastic Products Recovery Facility

Miscellaneous Surface Coating
(not otherwise listed and greater than
25 tons/yr maximum emissions of volatile
organic compounds)

Tank Truck and Railroad Tank Car
Cleaning/Repair Facility

Metal or Ore Briquet Manufacturing/
Recovery Facilities

Gray Iron Foundry

Coal Processing and Handling
(not otherwise listed)

Nonmetallic Minerals Processing Plant
(primary crusher capacity less than
100 tons/hr)

Natural Gas Sweetening Plant

Printing Facility
(emitting greater than 150 lbs/day of
volatile organic compounds)

All other sources (excluding indirect affected
sources) subject to emission regulations,
permit, and/or registration requirements
promulgated by the commission

CERTIFICATE TOTAL: \$530,800

CERTIFICATE AND PERMIT TOTAL: **\$653,300**

DATE: August 10, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Department of Commerce, Labor and Environmental Resources

FROM: G. Dale Farley, Director - West Virginia Air Pollution Control Commission

LEGISLATIVE RULE TITLE: Regulation 22 - Air Quality Management Fee Program

1. Authorizing statute(s) citation _____

WV Code Chapter 16, Article 20, Section 5

2. a. Date filed in State Register with Notice of Hearing:

May 11, 1990

b. What other notice, including advertising, did you give of the hearing?

Notice of hearing was provided in each of the ten (10)

designated air quality control regions in the state. (See

attached list with dates of publication).

c. Date of hearing (s): July 10, 1990

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached ☒ X

No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 13, 1990

f. Name and phone number of agency person to contact for additional information:

G. Dale Farley, Director

WV Air Pollution Control Commission

1558 Washington Street, East

Charleston, West Virginia

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

_____ N/A _____

b. Date of hearing: _____ N/A _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

_____ N/A _____

d. Attach findings and determinations and reasons:

Attached _____ N/A _____

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Regulation 22 - "Air Quality Management Fee Program"

Type of Rule: X Legislative Interpretive Procedural

Agency Air Pollution Control Comm. address 1558 Washington St., E.
Charleston, WV 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	\$30,000	----	\$30,000	\$15,000	\$15,000
Current Expense	\$12,000	----	\$12,000	\$7,500	\$7,500
Repairs and Alterations	----	----	----	----	----
Equipment	----	----	----	----	----
Other	\$3,200	----	\$3,200	----	----

2. Explanation of above estimates: In the first (current) year enforcement and planning staff time in addition to accounting work will be involved in setting-up the program, updating facility information and otherwise setting-up the fee system. Legal services would be anticipated for failure to comply with the regulation and non-payment. A dedicated PC and accounts receivable software to be purchased first year. Subsequent years costs reflect on-going program operation.

3. Objectives of these rules: To supplement the APCC's funding from general revenue and federal grant monies so as to fully carry out the required air quality management program in West Virginia per Section 16-20 and the federal Clean Air Act.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The Air Quality Fee Management Program set-up by this regulation will partially fund the state air pollution control program. Year-to-year costs to manage the program are projected to be \$22,500 following program establishment.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

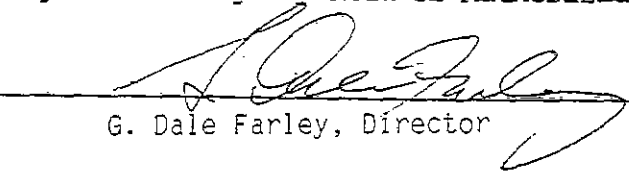
Industrial and commercial facilities subject to APCC regulations in West Virginia will be required to pay estimated annual fees totaling approximately \$530,000. Application fees for permits for new facilities would range from \$1,000 to \$14,000. Political subdivisions and groups of citizens should not be affected.

C. Economic Impact on Citizens/Public at Large.

Minimal economic impacts upon citizens at large should result from this regulation.

Date: August 10, 1990

Signature of Agency Head or Authorized Representative



G. Dale Farley, Director

SC. 1. 1. 43

WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION
PUBLIC HEARING

IN RE: Proposed Regulation 22 - "Air Quality Management
Fee Program"

Transcript of proceedings had in the Conference
Room at the offices of West Virginia Air Pollution Control
Commission at 1558 Washington Street, East, Charleston,
Kanawha County, West Virginia, on the 10th day of July,
1990, at 10:15 a.m., pursuant to notice duly given, and
taken by Christy L. Morris, a Certified Court Reporter.

S U P E R I O R C O U R T R E P O R T I N G
Suite 313 Morrison Building - 815 Quarrier Street
Charleston, West Virginia (304) 343-1404

A P P E A R A N C E S

BEFORE: The West Virginia Air Pollution Commission

CREDE DOUGLAS, Chairman

JOSEPH SHOCK

SAMUEL KUSIC

L. NEWTON THOMAS

CLEVE BENEDICT

PRESENT:

LARRY G. KOPELMAN, Attorney at Law

DALE FARLEY, West Virginia
Air Pollution Control Commission;

TAMMY MOWHER, Executive Secretary, West
Virginia Air Pollution Control Commission.

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MR. DOUGLAS: I'd like to call the meeting of the Air Pollution Control committee to order. I want the record to show that we have Commissioner Cleve Benedict, Mr. L. Newton Thomas, Jr., Mr. Samuel Kusic and Commissioner Joseph Shock. We have on hand a Court Reporter, Ms. Christy Morris, and she will be taping this morning on Reg. 22. We will not record comments after Reg. 22.

So, first thing, Dale, do you have anything to add?

MR. FARLEY: I've been told that people have a hard time hearing; that's the reason I'll stand up and make just a couple general comments about this Reg.--this proposed Regulation.

Quickly, the purpose of the Regulation is to put in place a structure for collection of fees for what we call certificates to operate on an annually review of this basis and for permit for application fees for sources of modifications of facility. The Reg. is intended to generate something that we estimate in the range of about five hundred thousand dollars per year to augment the--or to supplement the Commission's budget which now comes totally from either General Revenue appropriations by the State, or 105 grant funding through EPA with a small supplement to that being past refunds from DNR to handle a

segment of the hazardous waste regulations.

It's our suggestion to the Commission, I request to the Commission to adopt this Regulation and file it as an emergency rule, the follow up the notice of deficiency from the EPA sent to the governor in February of this year relative to inadequate state resources for the entire Air Management Program.

As a part of the record on the hearing of the EPA's notice of deficiency in that area and some information that was conveyed to us by EPA and the 1989 and 1990 mid-year reviews of this program will be made part of the record.

The agency has been underfunded for quite a number of years. We're finding great difficulties in both obtaining and retaining technical staff to run the program. We estimate that many of our incumbent engineering staff were probably being paid six to seven thousand a year below even entry level salaries for engineering positions in general. That's obviously something that has to be remedied over a long-term help of the agency and/or carrying out the types of programs that we have to here.

We're also finding that in terms of equipment, air monitoring activities were falling behind. Some of our equipment was getting antiquated and needs replacement. We very frequently get comments from the citizens in the state

that we are not doing an adequate air monitoring effort in terms of the areas being monitored for criteria, air pollutions and the scope of monitoring activities as far as other pollutions.

We're also facing probably this year the passage of a new Clean Air Act which will greatly expand what will be required of the state in terms of developing and implementing extensive new operating permit programs that the agency has not historically handled and many other facets of that.

As far as what's occurred in the last couple of years, we've seen our budget in effect from, say the 1988 level decrease as noted effectively by nearly twenty-percent. We've seen a real slight reduction in the 1988 budget level we've had, and we're not much above in terms of personnel and personal services funding, much above where we were in 1980.

In terms of this Regulation structure and the background of it, this proposal we have out today was talked about over a period of about year here with the Commission, it was developed by looking at either existing state Regulations in the region or proposals that were put out in terms of construction of the Reg. as to the fees would be set and the category of the sources that would be regulated and so forth. The fee levels generally overall,

we tried to conform those levels to what we were seeing in some other states. I'm sure we will get comments on some of the source categories as they may or may not be levels we're proposing today, may or not be in good align with those. Overall, I think we conformed this more to the pattern or the proposal we saw in Maryland, I believe last year when we did the proposal.

It's necessary at this time in implementing this program as a new program and there again, I'll emphasize the agency has not special revenue money at all now. It collects no fees for anything other than just general copying and so forth now. So, the structure of this thing in terms of setting it up has to be relatively simple; it cannot be--we don't think it can be a pollution tax based or some complex formulas used to figure fees on an annual basis, and I think this is about as simple as we can make it. With that, right back to you.

MR. DOUGLAS: Thank you. We have several people who would to make comments on this Reg. 22.

MR. SHOCK: Dale, what's your current state support, what's your current EPA grant support for your program?

MR. FARLEY: In the year just concluding, of course, we're starting a new year. In the year just concluded as far as the State General Revenue appropriation

I think we were around nine hundred thousand, approximately, just over nine hundred thousand. The federal grant for that year or the year we're really still in here, was about approximately the same amount, and there's some supplemental funding we're requesting from what we call left over PAWVOH funds, some twenty-five to thirty thousand dollars, and then there is available, although we haven't been able to utilize very much of it some--money for hazardous waste activities through DNR. So, that's where we are now. For the coming year, the year we're in, excuse me, the fiscal year just started, our General Revenue appropriation was around seven hundred eighty-nine thousand dollars. The projection is because of the Clean Air Act implementation, there may be when there is a federal budget, there may be a substantial increase at least for the year, the upcoming year, fiscal year, federal fiscal year '90-91, a substantial increase is in federal funding. The one thing I might note and I'll note that later here, too, is that we will not be able to obtain that full grant or projected grant award without at least another one hundred forty thousand dollars in expenditures beyond our General Revenue budget because of matching requirements, federal and state matching fund requirements. So, there is a need just to obtain at least that much in matching--

MR. SHOCK: What about FTE's support currently?

MR. FARLEY: Current budget starting this year, we would project with support only maybe in the area of forty-six, forty-eight people. We are not fully staffed now, and perhaps another one or two people with the past year's funding with DNR.

MR. SHOCK: With the increased fee schedule, how many more positions?

MR. FARLEY: With the increased fee schedule, we're looking ahead only about a year, but we have such a substantial re-staffing job to do here. We would be looking at something in the fifty-six, fifty-seven total positions. I think EPA has emphasized to us that for the long-term we recognize that, that to implement all would need requirements of the--probably need the requirements of Clean Air Act, we're going to need a substantial larger staff than that.

MR. DOUGLAS: All right, any other questions? Then, the first person we have on our list is Norman Steenstra. If you will swear him in.

(Speaker sworn.)

THEREUPON came,

N O R M A N S T E E N S T R A

)
appearing before the Commission was duly sworn according to law and testified as follows:

MR. STEENSTRA: Ladies and gentlemen, thank you for the opportunity to speak to you today. I wanted to give you a brief history of our involvement in this bill that created Regulation 22. The West Virginia Environmental Counsel of which I'm a member, met in September, that's seventy-five unified groups through the state a list of priorities that we felt had to be achieved in West Virginia.

One of the top six of the priorities was increased funding for this agency. You're going to hear today--we worked very hard on that bill, in fact, I don't mean to be show and tell, but here's my personal copy of the bill signed by the Governor and Speaker of the House and Senate President.

We lobbied that bill because we felt this agency desperately needed the money, was underfunded and was understaffed and in such a bad shape that the federal government was about to take it over. The citizens of West Virginia are increasingly becoming more environmentally aware and we thought an opportunity to provide some money and quite frankly, up front, the proposal in front of you in our opinion is ridiculously low. You're going to hear several arguments today on why these things are probably too high or shouldn't be done at all.

The first one is you're going to hear that other

states as it's relative to other states in their fee structure. Other states do not have a program in as bad a shape as the State of West Virginia. Other states have a state government committed to the health and safety of the people of that state. Other states are not about to have their program taken away by the federal government because of underfunding or perhaps ineptness or whatever it is, certainly lack of commitment. Therefore again, when you hear that argument, keep in mind we are not another state, and in this law 2813 where two sections, one, providing the fee structure; the second one was an unprecedented for West Virginia opportunities to set standards more strictly than the federal government's minimal, if in fact, it was unique to West Virginia, and we know of many cases in which that is the case.

The second issue you're going to hear we hear it all the time is that we're going to drive business out of this state. I've got a bag in front of me and I'm going to pick on several companies, but I certainly don't mean to single any one out or get anybody, but this bag here I got from Union Carbide through health and safety fair. Everybody got it; every potential juror got it, okay, thousands of them. They bought thousands of cases of free Coke and Sprite and free hot dogs and catered this, so when they say they don't have the money to perhaps triple what

we're talking about here; let's think about that. This is something that Ashland Oil gave my son in the mall, my fourteen year old son. I'd love to show you some of the stuff in it. This is where they spend their money, while the people of this state are getting sick and dying. I support Ashland--well, I can pass this around if anybody's interested.

Here's one of my favorites. This is DuPont's. This is a little thing that they spend their money on. They give kids arrangements, too. So, I'm asking you when you hear that this is going to drive business out of the state to think twice about that. The cost of a power plant to build a John Amos size power plant, the fee structure is ten thousand dollars; most of us drive cars that cost more than that. Ten thousand dollars does not even cover the printing of the propaganda that goes in your utility bills saying they're not responsible for acid rain.

The third thing, and I heard this from a top ATC official and it probably made me the angriest and that was, "Gee, we've got to propose the things low, or they'll never get passed in the House or in the Senate next year," and I'm saying, "Please gentlemen, that's my job and the people in this room; we'll get it through." Be consciousness, environmental consciousness of the House and the Senate and the administration is increasing, it's at

least proportionally to what the average citizen is in this state, their consciousness. I'm asking you to take a bold move and at least trouble every single one of these proposed permit fees in order to give us the ability to monitor air instead of having every stack in the state self-monitored industry. Another example, Ashland Oil case, we have no data because Kentucky crosses the border and takes the data and then brings it back. The Town of Chester is about to be--an incinerator, a hazard waste incinerator is about to be located exactly across the river from the Town of Chester. We're not going to know what's blowing in West Virginia.

We're asking you, the citizens are asking the leaders and people like yourself to show the kind of foresight that we need to protect our environment through the '90's. Thank you very much.

(Speaker excused.)

MR. DOUGLAS: Thank you. The next speaker on the list is Joe Lapcevic.

(Speaker sworn.)

THEREUPON came,

J O E L A P C E V I C

appearing before the Commission after being duly sworn according to law testified as follow:

MR. LAPCEVIC: Good morning. I'm Joe Lapcevic

with Allegheny Power. I'm representing Monongahela Power this morning, and we'd like to offer the following comments on the proposed rates.

Monongahela Power acknowledges the fact that sufficient funding is necessary to properly implement the duties of the Commission. However, funding of the Air Pollution Control Commission by way of a fee charged for permits and certificates to operate, is in reality a tax on West Virginian industry. The general revenue tax should provide adequate funding for state programs such as those implemented by the Commission. Additional monies raised through a fee program should be used to enhance the management and administration of the existing programs and not as a means to alleviate the Air Pollution Control Commission's burden on the general tax revenue.

The establishment of group categories and the assessment of fees based on those categories appears to be related to ability to pay and not actual cost imposed by the group. Monongahela Power believes that the proposed fee schedule is excessive and not commensurate with either the service being provided or the cost of implementing the programs. A certificate to operate requires minimal resources to issue, but the annual fee can run as high as ten thousand dollars; while the fee for a permit to construct, which should require a substantial expenditure

of the Commission's resources, is only one hundred dollars. The total fee assessed Monongahela Power will be forty-five thousand annually for a certificate to operate our facilities located in West Virginia. The fees paid by Monongahela Power should provide ample funding for an additional Commission employee. We believe that a Commission employee would be capable of working on more than just Monongahela Power facilities. We believe the amount of fee should be based upon the amount of resources the Commission must expend to issue a permit or certificate to operate.

We understand the Commission's need to raise funds; however, we feel the assessment of a ten thousand dollar annual fee on major facilities for a certificate to operate is burdensome and unwarranted considering the effort required by the Commission to issue a certificate to an established facility. Pennsylvania recently established a similar fee program. Stationary sources are assessed an annual fee of two hundred dollars for a certificate to operate. The two hundred dollar fee encompasses all air pollution sources within the state rather than listing group categories and heavily burdening major facilities. We urge the Commission to attempt to identify all regulated facilities to which these regulations might apply, and thus spread the burden more equitably among all regulated

facilities.

Some specific comments to the Regulation.

Section 3.1 refers to sources subject to various permit requirements; however, the term is not defined in the proposed regulations. The term sources should be changed to facilities to maintain consistent terminology in the proposed regulation and to properly identify what entities are required to obtain a permit.

Section 4.1.a. requires a certificate to operate for any facility or stationary source. As defined, several stationary sources could exist at one facility. We believe the intent of the regulation is to require each facility to obtain one certificate to operate. Also, only facilities subject to section 3.1 should be required to obtain a certificate to operate. To clarify that only one certificate to operate is required for each facility subject to section 3.1, please delete the words, or stationary source, from section 4.1.a and add, subject to the provisions of section 3.1. Furthermore, section 4.1 requires all facilities to obtain a certificate to operate before operating a facility within the state; however, only facilities specified in the nine categories of section 4.4 are subject to a fee. We suggest that Group 9 include the phrase, all other facilities subject to the provisions of section 3.1, and that commercial facilities such as dry

cleaners, gasoline service stations, photo developing and processing facilities, etc., also be included in Group 9.

Final comment is all boilers and process equipment should be identified in a group. Group 7 of section 4.4 includes coal or other solid fuel-fired boiler or process equipment with a total design heat input greater than one hundred million BTU's. per hour. Group 8 includes similar boilers or process equipment with design heat input greater than fifty million BTU hours but less than one hundred million BTU hours, however, the boilers or process equipment with a design heat input between the ten million and fifty million are not mentioned. We suggest that such boilers or process equipment be included in Group 9.

Thank you for allowing us to come and speak with you.

(Speaker excused.)

MR. DOUGLAS: Thank you, sir. The next person on the list is Brian Lee Hagenbuch.

(Speaker sworn.)

THEREUPON came,

B R I A N L E E H A G E N B U C H

appearing before the Commission after being duly sworn according to law testified as follows:

MR. HAGENBUCH: Commissioners, thank you for the opportunity to address the Air Pollution Control Commission

in regards to proposed fees schedule for pollution emitting industries in West Virginia.

First, I will state firmly that the proposed fee schedule is too low for many industries. When you consider many of the mega-corporations such as Union Carbide, GE, Dupont, BASF in Huntington where I live, which are the primary emitters of toxic substances, they'll look at this fee schedule, they won't even wince at it, they won't even wink at it; that's cost of doing business. Much like, I need about ten bucks a day, I figure in my budget to eat, so, I say, okay, ten dollars and I won't even look at it; that's what's going to eat. Industries are going to look at ten thousand dollars a year, we can put up with that, fine, no problem. So, for those big industries, they're not seeing a problem, but for the small industries, maybe the mom and pop dry cleaners, maybe they will have a problem with two hundred dollars or three hundred dollars, whatever you propose.

The proposed fee schedule does not adequately compensate the Air Pollution Control Commission for their responsibilities and it does absolutely nothing to reduce air pollution. That's our goal, right, producing air pollution. This schedule that you have proposed allows industry to continue to pollute and offers no incentives to industries who are reducing emissions or who are developing

alternate chemicals and processes to eliminate the necessity of producing hazardous wastes.

What I'd like to do is propose a radically different fee schedule, but I don't want you to get hung up on the word radical, because what this is is progressive. We have to progress if we're going to start cleaning up the environment. This fee schedule considers each polluters separately. More importantly, it rewards polluters who are cleaning up their act, punishes those that fail to reduce emissions and provides economic benefits to industries attempting to reduce the production of hazardous chemicals.

To my knowledge, this plan has not been implemented for air emissions anywhere in the country yet, but one that has been discussed in many states. I believe New Jersey has this proposed fee schedule for ground water.

Simply put, I propose that we make polluters pay by the pound, and I'll give you an example of this. Can you put that up on the blackboard or something. I've four or five--I've listed four classes of chemical emitters. The emissions classes are those chemicals, they're not by industry, they're by chemicals. Most standing chemicals which are currently regulated by the EPA, your particulates, your sulphur dioxide, your nitrogen oxide. Then the second line is the Clean Air Act additions, the

other one hundred eighty or ninety chemicals that are going to be regulated by the EPA under the new Federal Clean Air Act. The third line is the other chemicals that are listed in Sara Title III, the other hundred and twenty or thirty that do not fall under the Clean Air Act, but instead are considered Sara Title III, and the fourth category is the other emissions, maybe those that have been delisted by the EPA.

Now, how will this system work? I've got four years up there, 1990, 1993, 1995, and the year 2000, and the proposed fees per pound for each of these emissions. Now, let's say that we have a fictitious chemical company called Dirty Air Chemical Company. Under the proposed schedule by APCC, let's say they have to pay five thousand dollars a year. Well, that would be the cost of doing business, five thousand dollars a year. We could put up with that. Under my fee schedule, let's say that this Dirty Air Chemical Company is putting out one hundred thousand pounds of particulates, a hundred thousand pounds of VOCS, ten thousand pounds of sodium sulfate, ten thousand pounds of sodium hydroxide. I think that's one for each of those classes up there. Under my proposed fee schedule, Dirty Air Chemical will pay \$15,400 in 1990. One hundred thousand pounds of the particulates at ten cents a pound, that's ten thousand dollars. That's not a fine,

that's just a fee for them to emit the particulates. Now, we bring in \$15,400 in 1990 from this particular chemical company. Let's Dirty Air is concerned about the environment. They're concerned about the high cost of paying for these fees, and they have idea; they have a proposal, and in the research and development department they say, "We've got an idea here and we can reduce our particulates, to say fifty thousand pounds." So, where can we go for money for investment. One of the things that has been done in other states is that the air pollution agencies have provided technical assistance grants for research or development grants to industries so that they can re-invest money to look at pollution reduction methods.

Let's say in 1990, Dirty Air Chemical goes and gets a grant from the APCC to look into their particulates and VOCS emissions, okay, 1993 rolls around and they have particulate emissions are reduced to fifty thousand pounds, and their VOCS emissions are reduced to fifty thousand pounds. They've cut those two in half. Now, under the 1993 proposed fees, the amount that Dirty Air Chemical will pay in fees will be \$8,300. They've almost cut it in half. If Dirty Air Chemical would maintain business as usual, not do anything to reduce their emissions, their fees in 1993 would be \$25,800. Under the APCC schedule, it's still \$5,000 per year.

Although this is a very simplistic example, industry has obtained a financial reward for reducing their emissions, and the health and welfare of the public and the environment has benefited greatly.

Another way to assess fees is across the board rates per pound, and this was proposed in Ohio in a tough on toxics bill last year. They said, well, in 1990, we'll make it a nickel a pound, in 1991, we'll up it to ten cents a pound, etc., but there's some flaws in that system because it doesn't consider the toxicity and the hazards of individual chemicals much like what we're doing here. That's just an across the board emissions. If you have a million pounds in emissions then it's a nickel, and it's fifty thousand pounds that you owe. Instead by pro-rating fees based on the hazard assessments for each emission, a fair and equitable fees system can be developed. This also provides incentives to reduce emissions of the most hazardous chemicals, and we can leave the other ones, the other emissions to minor Sara Title III alone for now; we'll worry about them later.

Now, you're saying, gosh, \$15,000, that just tripled the fees, but what are we going to do with that money? Well, the Air Pollution Control Commission is woefully underfunded. The funds provided by this fee schedule can go for inspectors, equipment, enforcement,

monitoring, all the things that the Air Pollution Control Commission needs to operate as an agency to regulate and enforce environmental laws in this state. But, the other thing is that grants program that I talked about, technical assistance grants and the grants for research and development proposals that have industry-wide implications. Here, we're actually taking the industry's money, giving it back to them in a pot and say use it for research which reduce the emissions. That has to be the overall role whether it be in a local state or a national level.

Under the proposed scheme, industry does not only benefit from reduced fees. Industries will experience a direct savings on handling, the storage, the transport and treatment or disposal of hazardous waste. Indirect savings will result based on regulatory compliance, and all the paper work you have to go through right now to emit these hazardous chemicals, legal advice, insurance and managerial time, savings will be enormous. They add up over a time. It's never--these savings are never considered when industry says that cost too much money. Reductions will also be found in raw material use, operating costs, hazards from workers, to workers and from public exposure, marketing, public relations were reduced in emissions. You heard all the industries on Earth Day say that. The rewards to the environment by such a fee system and such

research and development should be obvious.

The U. S. Office of Technology Assessment, OTA, in their 1986 pamphlet, Serious Reduction of Hazardous Waste, states the following:

Over ninety-nine percent of federal and state spending is devoted to controlling pollution after the waste is generated. Less than one percent is spent to reduce the generation of waste. Let's not make it; let's eliminate it. What we've got here under this fee schedule is a way that we can put money into research and development to eliminate the waste from being produced. Another thing they say at OTA is they reduce wastes to prevent pollution from being generated at its source is now a practical way to complement the costly pollution control regulatory system. Despite claims to the contrary, industry has not taken advantage of all effective waste reduction opportunities that are available. One example I like to use. Let's use mechanical scrubbers instead of organic solvents will reduce our VOCs emissions.

Federal law states that waste reduction is the preferred anti-pollution method, but government actions often send a different or ambiguous message to waste generators, permitting polluters to pollute. It goes against the Federal Clean Air Act. It goes against what we're trying to do. A schedule like this, we're trying to

reduce emissions.

In 1986, national spending for pollution control was seventy billion dollars. Two thirds of this was spent by industry. A lot of that I think they figured out is like a million dollars per page of regulations. That's just paper work. Many hazardous wastes are not yet regulated. We can expect as these hazardous wastes are regulated, the expenditures will increase because the paper work is going to increase.

Pollution control does not pay, straight from the OTA manual. Once pollution is produced, it is too late. Efforts must be guided toward eliminating pollution at the source.

Commissioners, this is the decade of the environment. Let us show the residents of this great state that you are truly concerned about their health and welfare. Let us make the West Virginia Air Pollution Control program a model to be emulated by the other forty-nine states. Let us also be an example of how industry, government and the environmental community can work together by developing the model schedule I have outlined to reduce the amount of air pollution being emitted into our skies. Thank you.

(Speaker excused.)

MR. DOUGLAS: Our next speaker will be Mildred

Holt.

(Speaker sworn.)

THEREUPON came,

M I L D R E D H O L T

appearing before the Commission after being duly sworn according to law spoke as follows:

MS. HOLT: Good morning, my name is Mildred Holt, and I am co-chairman of People Concerned about MIC, a community-based organization from Institute, West Virginia.

I thank the Chair and the members of the Air Pollution Control Commission for this opportunity to provide comments pertaining to implementation of the Air Quality Management Fee Program which is one of the major components of the Air Pollution Control Bill enacted by the West Virginia Legislature in March, 1990.

Citizens throughout our state worked tirelessly for passage of the Clean Air Amendments known as House Bill 2813. Now we are equally concerned that the key provisions of this bill are fully implemented. I am here, therefore, to speak for adoption of an air quality management fee program which will do two things: Establish a program to collect fees from designated categories of air pollutions sources for certificates to operate and for permits to construct, modify or relocate, and to provide, number two,

provide critically needed funds to supplement the budget of the historically underfunded State Air Pollution Control Commission.

As a reminder to everyone, the West Virginia Air Pollution Control Administration was created by the West Virginia Legislature in 1961 to provide a co-ordinated statewide program to prevent and control air pollution and assure air quality. This law then created the APCC as the agency of State Government to develop--implement and enforce air pollution control regulations and requirements. Then, of course, in March, 1990, we have the new amendment which empower the agency to act to alleviate long-standing pollution problems.

By being chronically underfunded and thus unable to do the job it was originally intended to do, a support financing mechanism for the beleaguered Air Pollution Control Commission is long overdue. The Legislature's intent was to change this oversight by allowing the collection of permit and operating fees to be applied to paying salaries for technical personnel and for operating expenses of the APCC.

The Air Pollution Control Commission now has the opportunity to become more accountable to the public by taking leadership in setting West Virginia's own regulations for toxic air pollutants as well as improved

monitoring of compliance of the law by both new and existing plants and factories.

The efforts of the chemical industry to voluntarily reduce toxic emissions are certainly recognized and welcomed. However, by their own reports, millions of pounds of toxic emissions continue to be poured into the atmosphere. It is time that West Virginia industries and businesses begin paying for this massive environmental contamination. The projected fee schedules will help level the playing field which has always been grossly uneven.

The Fee Program. The premise of the recommended fee schedules has merit. However, there are serious questions as to whether health, safety, environmental impact of some polluting sources may be greater than others. Under the section, Requirement for Permit to Construct, Modify or Relocate, for example, should not the construction of a large plant or factory as opposed to the construction, relocation or modification of a small factory require different fee charges, or, why should the construction permit fee for a huge electric power plant, for example, be the same as for modifying a plant of similar or smaller size?

The point I wish to make is that base fees as recommended should be established for the listed categories with escalating fee charges in relation to the impact

variables of a polluting source, that is, plant size, proximity to residential areas, toxicity, volume emitted, etc.

Under Certification to Operate, the fee schedule seems quite low when the purpose, pollutant-emitting potential, and size of the plant or factory are used as a part of the criteria for establishing fees. Further, it is believed that the combined projected certificate and permit fee total of a little more than a half million dollars should be much more for the entire State of West Virginia. It is understood that every variable cannot be addressed in determining fees, but the criteria should have the common thread of impact accountability.

Though our awareness level is much improved since the advent of SARA Title III, the public desperately wants an independent agent to analyze and interpret information pertaining to air pollution. The APCC could provide this service to concerned citizens. In addition to becoming more accountable to the public, the Commission can become more than just a monitoring agency. It can help educate the public about its mission and thus acquire much needed grassroots support. It also can work cooperatively with educational systems and other agencies such as the National Institute of Chemical Studies for the common good of West Virginia.

Finally, an improved quality of environmental life demands co-existence between business and society. This new decade is beginning with many positive signs that tolerance of pollution by both business and the citizenry is on the decline. Hopefully, the best spinoff will be the development of new technology which in turn will create expanded production and more jobs while taking into account the environmental factor. Thank you.

(Speaker excused.)

MR. DOUGLAS: The next speaker on our list is Bob Foster.

(Speaker sworn.)

THEREUPON came,

R O B E R T L. F O S T E R

appearing before the Commission after being duly sworn according to law testified as follows:

MR. FOSTER: Good morning, my name is Robert L. Foster, and I am the Chairman of the West Virginia Manufacturers Association's Committee on Health Safety and the Environment. I'm here on behalf of the over two hundred fifty companies which comprise the Association, many of whom will be affected by the Air Quality Management Fees being discussed today.

The WVMA appreciates the need for supplemental funding by the Air Pollution Control Commission and accepts

the decision to raise funds with those Air Quality Management fees. We encourage the APCC to use the fees to bolster the Commission's permit section, so that permits are considered and issued expeditiously. If the APCC staff levels cannot be increased to take advantage of the increased funding provided by these fees, we suggest that the APCC consider contract employees to write permits under the APCC's supervision.

While the WVMA acknowledges the need for Air Quality Management Fees, it is very concerned that the fees, which are in fact a tax, will continue to grow. Industry in West Virginia already bears a significant general revenue tax burden, some of which necessarily goes to support state regulatory agencies like the APCC. Forcing industry to pay fees such as these is double taxation and results in industry paying twice to support the same program. The WVMA would strongly oppose any attempts to increase its members tax burden by increased fees in future years.

The Association generally commends the APCC for development a simple program that raises the desired funds without unnecessary regulation. However, certain rule changes would aid in clarifying its intent. For example, rule establishes fees for the issuance of permits and operating certificates, but does not do so in a uniform

manner. The regulated entities are referred to variously as sources, stationary sources, and facilities. The regulations should make clear that the only regulated entity is a facility, as that term includes not just individual stationary sources, but each group of sources that fits the facility definition. The rule should also clarify that a group of sources which qualifies as a facility would only have to obtain a single permit or operating certificate for the group rather than a permit or operating certificate for each source in the facility. We believe this is the intent of the APCC, but further refinement of the rule could clear up this matter.

Not all stationary sources of air emissions are subject to regulation. Section 3 requires fees of those sources which are subject to other state air quality regulations. Section 4 should be drafted to reference Section 3, so that the same facilities which get construction, modification and relocation permits are also required to obtain operating certificates. There is no reason why facilities which are exempted from permitting requirements should be obligated to obtain an operating certificate.

The facilities listed in the nine groups set out in Section 4.4 do not contain all possible categories of facilities, and consequently it is possible that a facility

could be ordered to obtain an operating certificate but would not be required to pay a fee since it did not belong in any of the identified categories. Consequently, the WVMA has suggested that the last category be changed to a catch-all provision which includes all other facilities for which an operating certificate is required but for which a fee has not been established.

The changes I have outlined would have the effect of making all non-exempt facilities subject to permitting requirements of Section 3, require the same facilities to obtain an operating certificate under Section 4, and require an operating certificate fee from each of the same facilities. This approach would eliminate potential misunderstandings regarding the scope of the rule and give clear notice to the facilities to which it applies.

The WVMA has proposed a number of other changes to the regulations which it believes allow more effective implementation and fairer application of the Air Quality Management Fees. Those proposals are contained within the written comments which we have submitted to the Commission today. We commend those comments to your close scrutiny, as we feel they are constructive changes that will enhance operation of the permit program.

Thank you for the opportunity for presenting these comments.

(Speaker excused.)

MR. DOUGLAS: All right, the next speaker is David Grubb.

(Speaker sworn.)

THEREUPON came,

D A V I D G R U B B

appearing before the Commission after being duly sworn according to law spoke as follows:

MR. GRUBB: May it please the Commission, my name is David Grubb. I'm an Attorney licensed to practice law in West Virginia. I'm also a Member of the House of Delegates and serve on judiciary committee which considers the legislation that gave rise to the regulation that's before you today. I also serve when I'm not at the Legislature, as Executive Director of the West Virginia Citizens Action Group, an organization that has been involved in the issue of air pollution for the past sixteen years in our state. Sadly, many of my comments today could be almost identical to comments that have been given a decade ago. In terms of the issue of funding in the agency. We've been saying that for a long, long time, this agency is underfunded. We've been talking about these issues toxic air pollution and need to do something. To this day, twenty years after the passage of the Clean Air Act, only seven toxic air pollutants are regulated by the

Federal government. It's criminal what's happening in the area of toxics.

What I want to do briefly is talk a little bit about legislative history of the legislation, House Bill 2813 that became law and gave rise to the regulation. In doing so, I find myself oddly enough in agreement with at least one point that Bob Foster made, and that point is that there was no intention that there be double taxation. In fact, the legislative intent, and on this issue because I worked so closely with the speaker and other members of the Senate and the House, I think I understand I understand the legislative intent where that it eventually this principle of the polluter paying will ultimately supplant general revenue funding for agencies dealing with environmental matters. The problem we have is that depending on general revenue funds to fund these kind of activities that can be financed for user fees is going to be an ongoing struggle with dwindling resources, increase in demands, we've got the education summit coming up in less than a month; those kinds of issues are--or a little over a month, those kind of issues are going to become increasingly troublesome for Legislators as a public policy matter and for the Governor to deal with. As a consequence, this idea of the polluter pays a user paid principle is something that has caught on in other parts of

the country and really for the first time in this piece of legislation is being introduced in West Virginia on a broad scale.

Our idea was that it would go further than the present rule contemplates, and that instead of raising approximately five hundred thousand, this agency would have raised an additional source of money, at least as much as the general revenue and something in addition to that to allow to begin to doing the job. Then, we could come back next year and take a look at the general revenue issues and hopefully find a way to phase some of those out or reduce them a little bit so that we can fund the agency from the individuals who are causing the agency to do its work.

Importantly, there was a comment made by the individual testifying on behalf of the electric utility industry. He indicated that the fees should only be commensurate with costs to do the service, that is to provide the licensing and the operating cost in-house. Clearly, that was not the legislative intent. If you'll read the legislation, the purpose of the legislation was to provide the cost of regulating the industries that are polluting, not just the cost of issuing the permits or getting out the licenses or those kinds of things. It's a much broader mandate. So, I think when you look at the cost of the agency and compare that to how much this piece

of legislation--this regulation is generating, it's not doing as much as I think as a legislator it was intended to do.

Importantly, the context in which occurs has to be considered of utmost importance. A little over three weeks ago we released a report entitled Poisons in Our Neighborhoods Toxic Pollution in West Virginia that I'd like to present as part of the record and have it lodged with the Commission. The findings in their report are an ongoing revelation for all of us. First of all, I think it's important to understand that that report has a number of limitations before we start extolling it's virtues, there's some things that are limited in it. Number one, it only deals with those manufacturers who are required under Sara Title III to report to EPA. So, it only addresses the larger manufacturers, not a lot of the small sources of toxic pollution. So, with a glimpse of the problem, not the total problem, in addition in the last couple years several chemicals that had previously been part of this Sara Title III list has been de-listed. So, it's hard to compare the data from 1988 with the data from 1987, for example.

Another point is that the analysis that we have in the 1988 that's contained in that report is broken down into several different categories. We chose those

categories, others could have chosen different categories. We looked at toxic air pollution, toxic water pollution, carcinogenic pollutions, pollution related to birth defects and things of that nature. But, in each of these areas that we chose and I think in any of the other areas that you would tend to look at, you'd find the same startling kinds of revelations.

First of all, on a same wide basis about fifty-eight million pounds of toxic chemicals reported as being released or discharged in West Virginia in 1988. That brings up another important limitation of the study. It only is compiled on the basis of self-reporting by industries. One of the problems is there are a lot of different ways that industries can report. They can estimate through engineering estimates what their discharges are, or they can actually monitor. There's no law requiring them to use a particular method to report. They are able to pick the method that they want to use. There has been some concern in other states about the accuracy of that data when measured against actual monitoring by State agencies and by Federal agencies. So, there's a question of whether or not we're getting the full extent of the problem. But, with that limitation, still the data is very useful. Of the fifty-eight million pounds that are discharged or generated in West Virginia, fifty-

five percent or thirty-two million pounds are air pollutants, toxic air pollutants. The importance of that is that for most people, the major way that they come in contact with a toxic substance is through air pollution. We on the average drink about two liters of water a day, but we breath in fifteen thousand to twenty thousand liters of air a day. And, if you happen to live in one of the areas that are toxic hot spots in West Virginia, Kanawha County over in the Cabell, Wayne area, in the northern panhandle, in Wood County, if you live in those regions then the major way you're confronted with toxic chemicals is by breathing that chemical in and out on a daily basis.

Importantly, we also found that of the thirty-two million pounds that were discharged in West Virginia, seventy percent were derived from the largest ten manufacturing companies. Huge percentage on a very small number. This also indicates one of the problems with the rules. If the idea is to get at the problem and to make polluters pay, then there should be some relationship between the amount a polluter discharges and the amount of the fees. I think because of that, my feeling is that we need to look at the kinds of proposals that have been given today which would combine an adequate and fair and equitable fee structure with an incentive to not pollute, and certainly that's something that the Legislature is

going to be looking at. We have an Interim Committee that's going to be starting meeting next month dealing with source reduction, toxic source reduction, and that's one of the issues that we're going to be studying, and I think this concept that Ohio's debating and that is being debated by states all over the country, the tough-on-toxic idea is something that we're going to be looking at.

What I would recommend is that we go forward with perhaps a slightly enhanced emergency rule as suggested by the Director today so that the process can get in place, but then, prior to the time of promulgating your final rule or throughout the Legislative rule making process, we look at an alternative system that would combine the twin goals of reducing pollution and funding this agency adequately.

Members of the Commission, I think the task before you is a great one, but for once, I think we can say fairly conclusively that the people of this state are behind. I know many times in the past there has been a feeling that, gee if we went too far it might cause public reaction against what the agency's doing. Many has indicated today before me that this is the decade of the environment. I think that it is. Public opinion poll after public opinion polls say that people want and are ready for the kind of action that you all have the authority to take. I encourage you to take that action.

Thank you very much.

(Speaker excused.)

MR. DOUGLAS: That is all the people that has requested to speak. Are there any others that may want to say something on the record? The record will remain open for thirty days for any further written comments. At that time the Commission will continue further discussion.

MR. BENEDICT: Mr. Chairman, would there be a procedure in thirty days when the Commission will consider again this regulation and take some action?

MR. SHOCK: I think that's appropriate. I would would also charge Dale to take a hard look at some of the problems.

MR. BENEDICT: I agree with my friend, Thomas.

MR. DOUGLAS: I would certainly compliment the people who made presentations today to give us a better understanding. It shows an awful lot of working interest in air pollution in the State of West Virginia.

MR. FARLEY: Just as a comment on that, the whole idea of having a pollution--I'll call it a pollution--I'll call it that for simplicity. That's something I think there's a big, or at least a vision of Clean Air Act change is being debated--something on a tons or dollars per ton pollutant basis. It's probably a good idea. The reason we didn't try to proceed with something like that at

WVAPCC
PROPOSED REGULATION 22 (45CSR22)
SUMMARY OF PUBLIC COMMENT
AND STAFF RESPONSE

LIST OF COMMENTERS

JULY 10, 1990/PUBLIC HEARING

- (1) Joe Lapcevic, Allegheny Power System - Monongahela Power Company
- (2) Brian E. Hagenbuch, West Virginia Environmental Council
- (3) Mildred Holt, People Concerned About MIC
- (4) Charlotte D. Costello, League of Women Voters of West Virginia
- (5) Robert L. Foster, West Virginia Manufacturers Association
- (6) Norm Steenstra, West Virginia Environmental Council
- (7) David Grubb, House of Delegates/WV Citizens Action Group

RECEIVED IN POST HEARING COMMENT PERIOD

- (1) Benjamin C. Greene, West Virginia Mining and Reclamation Association
Letter to Dale Farley, APCC Director, Received July 20, 1990
- (2) Patrick M. Gallagher, West Virginia Manufacturers Association
Letter to L. Newton Thomas, Jr., APCC Chairman, Received August 1, 1990
- (3) Brian E. Hagenbuch, West Virginia Environmental Council
"Pay by the Pound" Received August 3, 1990

An attempt has been made to summarize and characterize public comments and to provide a response to these comments. In general, comments received from representatives of potentially affected manufacturing facilities, the environmental organization coordinators and others were very constructive. There were no absolute objections to an air quality fee management program received and comments from all but one commenter were supportive of slightly or significantly higher fee generation. The

Summary of Public Comment
Regulation 22
Page 2

manufacturers comments generally reflected support of the proposed fee approach while environmental organization representatives favored higher, pollution emissions-based fee schedules. The number in parenthesis following the comment letter is the number of commenters making the same or a similar comment.

Comment A (1) - The \$10,000 per year fee for electric utility plants is too high and is not commensurate with the burden placed on the APCC.

Response: In drafting the proposed nine annual fee groupings the APCC staff considered a number of factors including facility emission rates of regulated pollutants. The industry's ability to pay the fees was obviously considered but was not the over-riding factor. The state's electric utility plants emit a very high percentage of total criteria air pollutant emissions within the APCC's statewide point source emissions inventory. For example, the thirteen electric utility plants in West Virginia account for 85 to 90% of all point source emissions of nitrogen oxides and sulfur dioxide statewide. Although utility compliance with existing regulations is believed to be generally good, the high levels of air pollutant emissions involved warrant a higher level of agency monitoring and auditing than now possible. Much of the work in air quality analyses and possible Implementation Plan revisions facing the APCC is also related to utility plant air quality impacts. Such planning work is integral to an air quality management program including a permit program.

Comment B (4) - The proposed fees/fee schedules are much too low.

Response: In addressing this and several other comments it is necessary to provide some extended explanation of the circumstances and history in which the proposed regulation was drafted.

It has been evident for a number of years that the APCC's funding level is insufficient to provide an adequate and stable professional program staff and to fund complex investigation and/or air monitoring efforts necessary for carrying out an adequate air quality management program. The severe funding problem was discussed at length with the Commission in early 1989 with the intent of seeking the Commission's approval for the staff to approach Legislative leaders with proposed legislation to provide fee collection authority in the State Air Pollution Control Law (§16-20). The need for additional funding was deemed to be sufficiently severe to warrant a request for actual introduction of a fee regulation in the 1989 Legislative Session. In March, 1989 the Commission approved the staff request to seek the fee authorization legislation as well as changes to the Code to

strengthen the agency's ability to enforce its regulations. The Commission, however, was concerned that any fee management program implemented by the agency be generally in line with other states' programs particularly in those states bordering West Virginia. The Commission also wanted an accounting of needs and probable uses of any fee-generated revenue.

The APCC staff made a review of the status of other states air management fee programs or proposed programs and reported the findings to the Commission in February and March 1989. The proposed Regulation 22 was accordingly drafted to be sensitive to the Commission's concern for general consistency with other border state fee approaches and levels. Based upon information obtained in 1989 and updated in 1990 the proposed fee regulation would establish a fee schedule and generate a fraction of total agency funding not significantly out of line with most other states having well established fee programs. Unfortunately, agency deliberations relative to fee authorization and regulation development could not be completed with sufficient time to obtain consideration by the Legislature in 1989 despite Speaker Robert Chambers support and sponsorship (HB 2813).

Following passage of HB 2813 in the 1990 Legislative Session which provides the necessary authority for the Commission to develop fee regulations, APCC staff proposed that the Commission hold a public hearing on the original draft fee regulation. This suggestion was based upon the consistency issues discussed above as well as several other factors including:

°The draft regulation was already complete and had been previously reviewed by the Commission.

°The projected Regulation 22 fee generation level in conjunction with the (reduced) FY 90-91 general revenue appropriation and adequate \$105 Grant award increases in FFY 91 appeared to provide an adequate funding level for the short-run when considering the extremely low level of on-board professional staff as well as the staffing limitations, work and time that would be involved in building an agency staff.

°A simple fee implementation approach like that of the proposed regulation was believed to be necessary for a beginning program.

It must be clearly stated that the APCC staff does not and cannot represent that funding generated by Regulation 22 as now proposed will necessarily be adequate for the long-term. The necessary level of funding from fees for the long-run is dependent upon several now uncertain factors including the passage of a new Clean Air Act and the definition of its requirements,

administrative and legislative intentions relative to agency general revenue funding, CAA \$105 Grant levels, and possibly environmental agency reorganization. Since passage of a new Clean Air Act is projected for this fall and the other factors affecting fee requirements will be better defined in 1991, the APCC staff anticipates that the fee regulation will have to be re-evaluated with revisions possibly proposed in 1991 or 1992. It is vital, however, that a fee program be put in place at this time in order for the agency to have any ability to meet its current responsibilities, match possible increases to the \$105 Grant funding for new Clean Air Act requirements and have the ability to better assess program/funding requirements within the next two years.

The Manufacturers' concern that fees if adopted will be frequently and significantly raised is understood, however, any future proposal to increase fees will be subject to the normal rule-making process and would require the agency's justification for increased funding.

A single response to the following comments expressing opposite viewpoints is provided.

Comment C (3) - The fee schedule should be based upon the amount of air pollutants, particularly toxic air pollutants emitted.

Comment D (1) - Implementation of a "pollution tax"-based fee schedule would exceed the fee authority granted to the Commission by the Legislature.

Response: The implementation of an emissions-based fee regulation has appeal from the standpoint of clearly prescribing fees to a polluting source in proportion to its probable environmental impact and in potentially encouraging emission reductions. Earlier proposals for mandatory operating permit/fee programs in the developing new federal Clean Air Act entailed the collection of fees commensurate with the annual level of regulated air pollutant emissions.

The APCC staff does not believe that fees based upon emission rates are precluded by §16-20-5(18) of the Code as established by the Legislature in the 1990 Legislative Session and such an approach may warrant consideration in the future.

As noted in the July 10, 1990 hearing, however, the APCC has attempted to draft and propose a fee structure that is relatively simple to administer at this time. An emissions-based

fee program would have to be built upon a comprehensive well-established operating permit program or a comprehensive accurate and up-to-date emission inventory data base. Due to the current regulatory structure and resource limitations, the APCC does not now have either of these bases in place. The facility class fee proposal is intended to provide at this time additional funding to deal with the severe enforcement/permitting/air quality planning shortfalls now being experienced. As noted in the response to Comment B an analyses of future funding sources and program needs will be made within the next calendar year to determine the nature and scope of any revised fee regulation if necessary.

Comment E (2) - Fees should be spread over all regulated sources. Fees should be spread more evenly within the regulated source classes.

Response: The proposed facility class fee schedule considers to the extent possible the amount of emissions, number of regulated pollutants, facility size, and current degree of regulation in establishing the groupings. A particular facility's place within the groupings can be questioned particularly at the low (\$200/yr) end, however, the APCC staff believes that the listings are generally reasonable.

The suggestion that a catch-all provision be added for fees on unlisted source types has been addressed by the proposed addition of such a provision under Group 9.

Comment F (2) - The term "source", "plant" and "facility" are confusing and the number of certificates to operate that would be required is unclear.

Response: The intent of the annual certificate to operate fee program is that only one - the highest fee in any applicable classification be required for any single plant. If the various pollutant emitting operations within one plant fall under different plant descriptions in the proposed groupings, 4.4.b. provides that only the single highest classification be considered. The wording of section 4.4.b. has been revised, source definitions from APCC Regulations 14 and 19 added and the term "source" and "plant" defined to hopefully clarify the proposed regulation's intent.

Comment G (1) - The term "unit" as relates to chemical production plants should be defined.

Response: A definition of "process unit" derived from 40 CFR 60 has been added to address this comment.

Comment H (1) - Only sources or facilities requiring permits under Section 3.1 should be required to obtain certificates to operate.

Response: Section 3.1 attempts to assess fees to cover, at least in part, the APCC's costs in evaluating applications for permits to construct, modify or relocate air pollution sources. Although construction permits contain permanent operating provisions per the permit application and agency regulations, the construction/modification/relocation permit is not an annual operating permit or certificate. Most major air pollutant emission sources in West Virginia are "grandfathered" facilities that did not require and are not subject to a construction permit. Clearly any fee system to support APCC enforcement, monitoring, and other air quality management activities must involve annual fee assessments on "grandfathered" sources as well as the newer sources under construction permits to be adequate.

Comment I (2) - Certificates to operate should be transferable.

Response: Section 4.2 of the proposed regulation has been revised to provide for transfer of operating certificates when transfer/compliance certification is submitted to the APCC. A modest transfer fee equivalent to the lowest annual fee is provided.

Comment J (1) - Notice of fee applicability and Group classification should be provided to all facilities known to be subject to the fee regulation.

Response: If the proposed rule is enacted, APCC notification of the requirements for a certificate to operate and source classification is to be provided as the APCC updates and compiles the necessary source information.

Closely related to several previously summarized comments on APCC funding requirements and means, the following divergent comments are addressed together:

Comment K (2) - The APCC should be funded completely or in large part through general revenue appropriations. Fees should not be relied upon as the primary or sole source of APCC funding.

Comment L (3) - The cost of controlling and regulating air pollution should fall entirely on predominantly on pollutant emitting facilities. The proposed fees do not conform with the Legislative intent of shifting the agency to a special revenue funding basis.

Response: To address the funding issue for the long-term the APCC will have to ascertain the views of departmental and Legislative leadership relative to the preferred means of funding. The adequacy of the now proposed fee program is dependant upon the maintenance of general revenue funding and federal \$105 Grant funding at or near the current level. If the State administration and Legislative leadership believe that reductions in general revenue funding must or will occur, substantial increases to the proposed fees would be required with revision to the fee regulation. Since the staff is requesting immediate emergency adoption of a fee regulation, however, a substantial re-work of the fee proposal is not deemed to be appropriate at this time. As noted previously, new Clean Air Act requirements and other factors will most likely necessitate a re-evaluation and potential restructuring of the fee program within the next two years.

Subsequent to receipt of comments at the July 10, 1990 hearing and pursuant to the Commission's discussions on this matter on that hearing date, increases to the proposed new source permit fees were drafted for Commission consideration at its August 10, 1990 meeting. The amended fee schedule would increase general new and modified source permit application fees above the original proposal. The revised schedule would raise fees to be much more in line with the cost requirements of the new source review activity.

In summary, proposed revisions to Regulation 22 are:

(1) Additions or references to "source", "unit", "plant" and "modification" definitions from other APCC regulations to clarify the intent and scope of the regulation.

(2) Incorporating specific language, new source permit fees, and fees for certificates to operate into the regulation relative to toxic air pollutant sources now being regulated under the Commissions newly promulgated Regulation 27.

(3) Adding a catch-all category (with \$200/yr fee) for sources not specifically identified in the classification groupings.

(4) Establishing provisions and a nominal fee for transfer of annual certificates to operate.

Summary of Public Comment
Regulation 22
Page 8

(5) Adding other clarifying language to a number of parts of the regulation.

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WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

"PAY BY THE POUND"
APCC PROPOSED FEES SCHEDULE

Brian E. Hagenbuch, Regional Coordinator
West Virginia Environmental Council
522-7557

In 1988, West Virginia manufacturer's released 57.9 million pounds of toxic chemicals into the air, water, and land. Of this total, 10.9 million pounds were known or suspected carcinogens. Discharges of toxic chemicals into the air represent the most direct threat to public health because breathing polluted air is the principal means by which people are exposed to toxic substances. In 1988, industries in West Virginia released 31.9 million pounds of toxic chemicals into the air.

The West Virginia Air Pollution Control Commission (WVAPCC) is drastically underfunded and understaffed. Historically, state funding for operation of the APCC has come directly from taxpayer dollars. Because of minimal State funding, inspections, permit evaluations, enforcement of environmental laws, and monitoring of polluting industries have been inadequate.

In 1990, a bill signed into law by Governor Caperton allowed the APCC to develop a fees schedule in which polluting industries would be required to pay fees into a West Virginia Air Pollution Control Fund. Monies from these fees would augment APCC funding from the general revenue account.

The proposed fees do not fairly compensate the APCC for their prescribed mission and will result in the APCC continuing to be seriously underfunded. It should not be the responsibility of the taxpayer to fund an agency responsible for regulating polluters. That responsibility should fall on the polluters.

The environmental community endorses fee schedules in which the polluter pays the costs of monitoring and enforcement of environmental laws. To this end, we advocate a "pay by the pound" approach for industries which pollute our air, water, and land resources.

Let's suppose that Dirty Air Chemical does not want to pay these high fees, is actually concerned about the environmental and health effects of their emissions, and would like to investigate pollution reduction technologies. In 1991, Dirty Air Chemical receives a technical assistance grant from the WVAPOC (money available from a portion of the fees paid by industries) for \$10,000. As a result of the investment from the technical assistance grant, Dirty Air Chemical reduces their sulfur dioxide and VOCs emissions by 50% in the year 1993, to 50,000 pounds each. No reductions were reported in Class 3 or 4 emissions. Thus,

Class 1-- sulfur dioxide	50,000 pounds	X \$0.15	=	\$7,500
Class 2-- VOCs	50,000 pounds	X 0.10	=	5,000
Class 3-- sulfuric acid	10,000 pounds	X 0.05	=	500
Class 4-- sodium hydroxide	10,000 pounds	X 0.03	=	300
TOTAL				<u>\$13,300</u>

With reduced emissions, fees for 1993 would be \$13,300 as compared to \$25,800 without any pollution reduction methods, a 48% reduction in fees.

ADVANTAGES OF THE "PAY BY THE POUND" SCHEDULE

1. Pay by the pound rewards polluters who are cleaning up their act by providing economic and environmental incentives for pollution reduction.
2. Pay by the pound punishes polluters that fail to reduce toxic emissions by increasing their fees and uses that money to help industries prevent future pollution.
3. Pay by the pound provides economic benefits to industries attempting to reduce the production of hazardous and toxic chemicals through technical assistance and direct grants.
4. Pay by the pound provides adequate funding for operation of the WVAPOC to increase enforcement personnel, permit reviewers, and other technical specialists. APCC will also be able to meet federal guidelines and requirements established by the EPA.

DISADVANTAGES OF THE FEE SCHEDULE PROPOSED BY THE WVAPCC

1. The proposed fee schedule does not adequately compensate the WVAPCC for their responsibilities. The APCC will remain underfunded, without adequate numbers of inspectors, permit reviewers, etc. to operate the agency and protect the vital interests of the public from air pollution.
2. The APCC would still be dependent on taxpayers moneys for operation.
3. The proposed fee schedule does absolutely nothing to reduce air pollution!! The proposed schedule "permits" industry to continue to pollute, and offers no incentives to industries who are reducing emissions and developing alternate chemicals and processes to eliminate the necessity of producing hazardous wastes.

WHY INDUSTRY HATES THE "PAY BY THE POUND" APPROACH

1. Industry claims any fees imposed on them is a form of double taxation: WRONG!! Since they pay no fees for the privilege to poison our air, water, and land resources, this is actually a life-threatening tax break!! It is double taxation when consumers are forced to pay industries for their products and pay government agencies to regulate polluting industries.
2. Industry claims they will not be able to reduce toxic and hazardous chemical production:

WRONG!! According to the U.S. Government's Office of Technology and Assessment (OTA), reducing wastes to prevent pollution from being generated at its source is now a practical way to complement the costly pollution control regulatory system.

Despite claims to the contrary, industry has not taken advantage of all effective waste reduction opportunities that are available.

3. Industry claims that it would be a financial burden to invest in pollution reduction technologies.

6. Industry will only pass the costs of increased fees on to the consumer. RIGHT, BUT!! Pay-by-the-pound requires that industry pay the costs of protecting the environment from the pollution resulting from their activities. This is important because it has the potential to cause the environmental costs of development to be reflected in the prices that consumers pay for goods, thereby biasing consumer choice in favor of those goods whose production, use, and disposal have the least impact on the environment.



**WEST VIRGINIA
MANUFACTURERS ASSOCIATION**

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AIR POLLUTION
CONTROL COMMISSION

July 30, 1990

Mr. H. Newton Thomas, Jr.
Chairman, West Virginia Air
Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

Re: Regulation 22 - Air Quality
Management Fee Program

Dear Chairman Thomas:

At the meeting of the West Virginia Air Pollution Control Commission held July 10, 1990, the Commission heard comments by several persons regarding proposed air quality management fees. One speaker, Mr. Brian Hagenbach, advocated replacement of the Commission's fee system with a "pollution tax" based on the amount of contaminants emitted by a regulated facility. Revenue generated under this system would be used to fund the Commission and a grant program. Some Commission members indicated a tentative interest in such a tax.

The West Virginia Manufacturers Association opposes the creation of any "air pollution tax" to replace the air quality management fees proposed by the Commission. The WVMA does not oppose creative ways of encouraging emissions reduction, but the system advocated by Mr. Hagenbach would require the Commission to exceed the authority granted to it by the Legislature. W.Va. Code §16-20-5(18) only empowers the Commission "[t]o establish by rule permit and operating fees and penalties for nonpayment thereof ... for the purpose of paying salaries and expenses of the Commission." The Commission's power to set fees has been narrowly circumscribed and extends only to assessing fees for issuance of permits or certificates of operation. Those fees may be used only for paying salaries and expenses of the Commission. There is absolutely no authority for the development of a program which would tax facilities based upon the type or quantity of emissions, or for the use of funds other than as directed by statute. Consequently, we continue to urge the Commission to approve the fee system as originally proposed.



WEST VIRGINIA
MANUFACTURERS ASSOCIATION

Mr. L. Newton Thomas, Jr.
July 30, 1990
Page 2

Thank you for your consideration of these additional
comments.

Sincerely yours

Patrick M. Gallagher
President, West Virginia
Manufacturers Association

PMG:shb

cc: G. Dale Farley, Director
Mr. Robert L. Foster



WEST VIRGINIA MINING
AND RECLAMATION ASSOCIATION

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1624 KANAWHA BOULEVARD, EAST • CHARLESTON, WEST VIRGINIA 25311 • (304) 346-5318

July 19, 1990

Mr. Dale Farley, Director
WV Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

Dear Dale:

RE: Air Quality Management Fee Program

With reference to our recent visit and on behalf of the West Virginia Coal Association and the West Virginia Mining and Reclamation Association, representing 95% of the West Virginia Coal industry, we are pleased to summarize our comments as they relate to the proposed fee program.

1. 3.3 b. - We suggest that this term be application fee rather than permit fee. As discussed, this seems to involve administrative costs to review and should be termed as such.

2. 4.2 - We urge the Commission to give consideration to transferring or assigning certificates to operate. There have been many recent coal acquisitions across the state that should not be required to reprocess the application and acquire a new valid certificate to operate when there is a name change only. As we suggested, there could be a nominal fee for reassigning the certificate.

3. 4.6 - The penalty provision should be clarified to demonstrate the negligence of the application procedure as it could be misconstrued to be a violation of the permit, air quality standard or other kinds of operational violation.

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Mr. Dale Farley
Page 2
July 19, 1990

We appreciate the opportunity to discuss these issues with you and urge that you give serious consideration to these recommendations. We stand ready to provide any additional data or information you may deem necessary.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ben", is written over the typed name.

Benjamin C. Greene
President

BCG/pqb

CC: Gary White

this time is because of the complexity of administering that. When you look at some of the--just looking at some of the comments about the complexities or the uncertainty made to the Commission, and that's been a real problem for some time. I think in the long run that may be something that's the kind of regulation will might have to be law, but I don't think that's something that could be very easy administer in a short run.

MR. SHOCK: I'm also, frankly, I'm concerned about the proposed fees and the amount of funds it can generate, but you're telling you're understaffed now and yet you've still got the Clean Air package coming out on top of you. I almost feel that the level that you're proposing and the fourteen positions would maybe just bring you up to the responsibilities and yet you're going have the Clean Air Act on top of this, and, you know--

MR. FARLEY: That's a good point.

MR. FARLEY: There's a lot of things that we need to do even when funding is put in place here to start building an Air Pollution Control Program from sort of a current level. I think we were projecting and I put these proposals out that we would try to re-build up into the fifties even, or looking at another year or so to handle maybe the current workload and some additional planning activities as far as the Clean Air Act. But, it is very

difficult to absorb people, a lot of people over a very short period of time, and I think we really weren't looking ahead more than maybe a year or two.

MR THOMAS: When are you going to anticipate the workload on the Clean Air Act?

MR. FARLEY: Well, as I understand it there may be an action and, as I recall some of the activities that would ensue from that, some things would have to be put in place within, or at least proposed or developed within maybe a year of enactment, so we're talking about maybe a year and a half, time wise to start putting the things in place or the development program. But I don't think, and I try to clarify those to EPA, I don't think that--there again, let me back up. Part of this whole thing is built on the assumption that we will go to our governor budget office, secretary, and so forth to get approval to substantially upgrade technical staff salaries, because in my opinion if that problem is not fixed, there is no fix for the situation. So, I think that's where a lot of the money would go if we get that approved.

MR. DOUGLAS: One comment I'd like to make here is this construction permit. I think you made a comment or two as to that how to many hundreds of hours some of the man power, hours we have now, would it ever touch it?

MR. FARLEY: The proposal here I think when we

put this thing together last year, we just brought it forward as it was. We handle a lot of permit applications which are very simple, I mean they don't really demand a lot of time. One hundred dollars won't cover the time, but I mean, that's just the filing fee or copying or whatever we have to do with that. The thing was--the proposal is graduated somewhat in that the biggest fee, the \$5,000

increment, the potential total would be geared towards major facilities requiring PSC permits and so forth. From our experience in dealing with a few of these things in the last couple years, \$5,000 is not even close to cover an adequate review of PSD applications. We are really going to look at covering the potential expenditure, stack expenditures, time and so forth that may be at least triple that, maybe more, but I think when we put this thing together originally, we were trying to be I think and that was somewhat with the interactions of the Commission, we were trying to be somewhat consistent with other states were doing. There is some states that charge very substantial fees for these source permits. There's some that charge very low fees and some charge presumably no fees. I think we looked at our region at the time we did this.

MR. SHOCK: I think you'll find that those states who charged no fees or low fees had tremendous state

support to the program. Another point made by the last speaker, I like his concept of regulating industries. If you're going to establish a fee simply based on the man hours it takes for somebody to review a set of plans and specifications, then it's not fair I don't think--I think there's more work to be done as far as going out and making inspections and monitoring and making into evaluations and buying equipment you're going to need to do that. It's just much broader than just individual-- I'd like to see that concept integrated into your research.

MR. DOUGLAS: Any other comments?

MR. THOMAS: I think you ought to take a look at the construction on the fee schedule in relation to its adequacy.

MR. FARLEY: Okay, sure will.

MR. DOUGLAS: All right then, Ms. Morris, you can be excused.

(WHEREUPON, the meeting was
adjourned.)

REPORTER'S CERTIFICATE

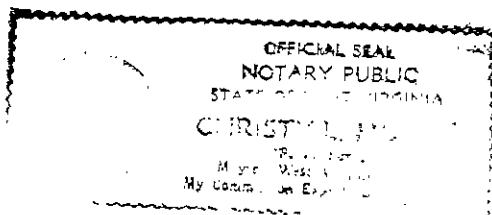
STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, the undersigned, Christy L. Morris, Certified Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true, accurate and complete transcript of all the proceedings heard as set forth in the caption hereof during said public hearing.

Given under my hand this 7th day of

August, 1990.

Christy L. Morris - CCR
Certified Court Reporter



COMMISSION MEETING - JULY 10, 1990
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REGISTER

Date	Name	Address	Company Affiliation
	Norm Steensha	1324 Virginia St	WV Enviro Council
	Ann Kathryn Bisbee	"	"
	Joe Lapcevic	800 Cabin Hill Dr. Greensburg, PA. 15601	Allegheny Power System Marion-Galea Power Co.
	Sheila McEntee	1324 Virginia St.	WV Environmental Council
	Brian E. Hagenbuch	126 Shockay Dr. Huntington WV 25701	WV Environmental Council
	Mildred Holt	P.O. Box 367 INSTITUTE WV 25112	People - Concerned About WVC.
	Bob Foster	So. Chas	UCC
	Ed Sabatino	Willow Island	American Gyromid
	Bob Brotemarkle	LACKERSBURG, WV	A.B. Chance Co.
	Jim Balow		Chas Gazette

COMMISSION MEETING - JULY 10, 1990

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Date	Name	Address	Company Affiliation
	Becky Fleming		Daily Mail
	K. B. Poland	Charleston	Robinson Mc Elwaine
	Dave Yaussey	"	"
	Kathleen Gandy		WSAZ
	Craig G. Galloway		WSAZ
	Yaussey Norton	Charleston	WV/CAC WV Environmental Council
	Charles Schmand	Phillips	WVEC
	Joe Sampson	Phillips	WVEC
	Wayne Keppinger	Phillips	
	Matt Harney	Associated Press	

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[illegible]

People Concerned About MIC

P. O. Box 423, Institute, WV 25112

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90 JUL 10 AM 9:37

STATEMENT OF MILDRED HOLT OF PEOPLE CONCERNED ABOUT MIC

WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

BEFORE THE WV AIR POLLUTION CONTROL COMMISSION
AT A PUBLIC HEARING ON PROPOSED RULE
AIR QUALITY MANAGEMENT FEE PROGRAM

JULY 10, 1990

My name is Mildred Holt. I am co-chairman of People Concerned About MIC, a community-based organization in Institute, West Virginia.

I thank the Chair and members of the Air Pollution Control Commission for the opportunity to provide oral and written comments on the implementation of the Air Quality Management Fee Program which is one of the major components of the Air Pollution Control Bill enacted by the West Virginia Legislature in March 1990.

Citizens throughout the State worked tirelessly for passage of the Clean Air Amendments (H.B. 2813). Now we are equally concerned that the key provisions of this bill are fully implemented.

Therefore, I am here to speak for adoption of an air quality management fee program which will do two things:

1. Establish a program to collect fees from designated categories of air pollution sources for certificates to operate and for permits to construct, modify or relocate, and
2. Provide critically needed funds to supplement the budget of the historically underfunded State Air Pollution Control Commission.

As a reminder--The West Virginia Air Pollution Control Administration was created by the WV Legislature in 1961 to provide a coordinated statewide program to prevent and control air pollution and assure air quality. This law then created the APCC as the agency of State Government to develop, implement and enforce air pollution control regulations and requirements. Then, in March 1990, the Legislature passed the Air Pollution Control Act Amendments which empower the Agency to act to alleviate long-standing pollution issues.

By being chronically underfunded and thus unable to do the job it was originally intended to do, a support financing mechanism for the beleaguered Air Pollution Control Commission is long overdue. The Legislature's intent, then, was to change this oversight by allowing the collection of permit and operating fees to be applied to paying salaries for technical personnel and for operating expenses of the APCC.

The Air Pollution Control Commission now has the opportunity to become more accountable to the public by taking leadership in setting West Virginia's own regulations for toxic air pollutants as well as improved monitoring of compliance of the law by both new and existing plants and factories.

The efforts of the chemical industry to voluntarily reduce toxic emissions are certainly recognized and welcomed. However, by their own reports, millions of pounds of toxic emissions continue to be poured into the atmosphere. It is time that West Virginia industries and businesses begin paying for this massive environmental contamination. The projected fee schedules will help level the playing field which has always been grossly uneven.

The Fee Program

The premise of the recommended fee schedules has merit. However, there are serious questions as to whether health/safety/environmental impact of some polluting sources may be greater than others. Under the section "Requirements for Permit to Construct, Modify or Relocate," for example--

1. Should not the construction of a large plant or factory as opposed to the construction, relocation or modification of a small factory require different fee charges? OR
2. Why should the construction permit fee for a huge electric power plant, for example, be the same as for modifying a plant of similar or smaller size?

as recommended

The point I wish to make is that base fees/should be established for the listed categories (Section 3.4.a.) with escalating fee charges in relation to the impact variables of a polluting source (i.e., plant size, proximity to residential areas, toxicity, volumes emitted).

Under "Certification to Operate", the fee schedule seems quite low when the purpose, pollutant-emitting potential, and size of the plant or factory are used as a part of the criteria for establishing fees.

Further, it is believed that the combined projected certificate and permit fee total of a little more than a half million dollars should be much more for the entire State of West Virginia.

It is understood that every variable cannot be addressed in determining fees, but the criteria should have the common thread of impact accountability.

Conclusion

Though our awareness level is much improved since the advent of SARA Title III, the public desperately wants an independent agent to analyze and interpret information pertaining to air pollution. The APCC could provide this service to concerned citizens. In addition to

becoming more accountable to the public, the Commission can become more than just a monitoring agency. It can help educate the public about its mission and thus acquire much needed grassroots support. It also can work cooperatively with educational systems and other agencies such as the National Institute of Chemical Studies for the Common Good of West Virginians.

Finally, an improved quality of environmental life demands coexistence between business and society. This new decade is beginning with many positive signs that tolerance of pollution by both business and the citizenry is on the decline. Hopefully, the best spinoff will be the development of new technology which in turn will create expanded production and more jobs while taking into account the environmental factor.

Thank you.

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90 JUL 10 AM 10:44

WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

PUBLIC HEARING ON FEES STRUCTURE
JULY 10, 1990

Brian E. Hagenbuch, Regional Coordinator
West Virginia Environmental Council
126 Shockey Drive
Huntington, West Virginia 25701
(304) 522-7557

Thank you for the opportunity to address the Air Pollution Control Commission in regards to the proposed fees schedule for pollution emitting industries in West Virginia.

First, I will state firmly that the proposed fees schedule is too low for many industries. Many mega-corporations such as Union Carbide, GE, Dupont, BASF in Huntington, which are the primary emitters of toxic substances, would not even wince at these proposed annual fees. It can be attributed to the cost of doing business, much like I need \$15 a day for food, so I have to dedicate those fees. Some small mom and pop dry operations, however, may be unfairly punished by these schedules.

The proposed fee schedule does not adequately compensate the WVAPCC for their responsibilities and it does absolutely nothing to reduce air pollution. This schedule allows industry to continue to pollute, and offers no incentives to industries who are reducing emissions and developing alternate chemicals and processes to eliminate the necessity of producing hazardous wastes.

I am proposing a radically-different fee schedule. One that considers each polluter separately. More importantly, it rewards polluters who are cleaning up their act, punishes those that increase emissions and provides economic benefits to industries attempting to reduce the production of hazardous and toxic chemicals.

To my knowledge, this plan has not been implemented for air emissions anywhere in the country yet, but one that has been discussed in many states. Simply put, make polluters pay by the pound.

WHAT TO DO WITH THE FUNDING:

The WVAPCC is woefully underfunded. The funds provided from this proposed fee schedule can be used for the following:

- Increase APCC funding for inspectors, equipment, enforcement, monitoring, etc.
- Establish a grants program to fund programs aimed at waste reduction such as technical assistance grants (which are issued in other states) and generic Research and Development proposals with industry-wide implications.
- Establish stringent reporting requirements on waste reduction
- Allow regulatory concessions
- Create independent Waste Reduction board to implement objectives.

PROPOSED APCC FEE SCHEDULE

<u>EMISSIONS CLASSIFICATION</u>		<u>FEES BY THE POUND</u>			
		<u>1990</u>	<u>1993</u>	<u>1995</u>	<u>2000</u>
7 EPA REGULATED CHEMICALS	--	\$0.10	0.15	0.20	0.50
CLEAN AIR ACT ADDITIONS	--	0.05	0.10	0.15	0.40
SARA TITLE III	--	0.03	0.05	0.10	0.30
OTHER EMISSIONS	--	0.01	0.03	0.05	0.20

How will this system work?

Suppose Charleston Chemical (fictitious) is a chemical production plant that emits the following:

- 100,000 pounds of particulates
- 100,000 pounds of VOCs
- 10,000 pounds of sodium sulfate
- 10,000 pounds of sodium hydroxide

Under the proposed fees, Charleston Chemical pays \$5,000.

Under this fee schedule, Charleston Chemical pays \$15,400 in 1990

Now, let's say Charleston Chemical does not want to pay these high costs, is concerned about the environment and invests in waste reduction methods. In 1993, particulate emissions are reduced to 50,000 pounds, VOC emissions to 50,000 pounds. Those two reductions alone, with 1993 fees, result in a fee reduction to \$8,300. If Charleston Chemical maintains business as usual, the fees in 1993 would be \$25,800. Under the APCC schedule, fees remain at \$5000.

Although this is a very simplistic example, industry has obtained a financial reward for reducing emissions, and the health and welfare of the public and the environment has benefited.

Another way to assess fees is across the board rates per pound, i.e. \$0.05 per pound. This, however, does not consider toxicity and hazards of the chemical being emitted. By pro-rating fees based on the hazard assessment of each emission, a fair and equitable fees system can be developed. This also provides incentives to reduce emissions of the most hazardous chemicals.

WASTE REDUCTION AT THE SOURCE PAYS:

Under the proposed scheme, industry does not only benefit from reduced fees. Industries will experience a direct savings on handling, storage, transport, and treatment or disposal of hazardous wastes. Indirect savings will result on costs of regulatory compliance, legal advice, insurance, and managerial time.

Reductions will also be found in raw material use, operating costs, hazards from workers and public exposure, marketing, public relations, and financial transactions.

The rewards to the environment should be obvious.

The U.S. Office of Technology Assessment in the 1986 pamphlet "Serious Reduction of Hazardous Waste" states the following:

-- Over 99% of Federal and State spending is devoted to controlling pollution after the waste is generated. Less than 1% is spent to reduce the generation of waste.

-- Reducing wastes to prevent pollution from being generated at its source is now a practical way to complement the costly pollution control regulatory system.

-- Despite claims to the contrary, industry has not taken advantage of all effective waste reduction opportunities that are available.

-- Federal law states that waste reduction is the preferred anti-pollution method, but government actions often send a different or ambiguous message to waste generators-- permitting polluters to pollute.

-- In 1986, national spending for pollution control was \$70 billion. Two-thirds was spent by industry. Many hazardous wastes are not yet regulated, annual expenditures will increase.

-- Pollution control does not pay. Once pollution is produced, it is too late. Efforts must be guided toward eliminating pollution at the source.

Commissioners: This is the Decade of the Environment. Let us show the residents of this great state that you are truly concerned about their health and welfare. Let us make the West Virginia Air Pollution Control program a model to be emulated by the other 49 states. Let us also be an example of how industry, government and the environmental community can work together by developing the model schedule I have outlined to reduce the amount of air pollution being emitted into our skies. Thank you!!



LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA

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90 JUL 10 PM 1:54

917 Brierwood Ct.

Morgantown, WV 26505

July 5, 1990

WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

WV Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

Re: Comments Legislative Rule 45 CSR 22
Air Quality Management Fee Program

The League of Women Voters of West Virginia supports the general concept of the WV Air Pollution Control Commission charging appropriate fees for certificates and permits. We do not have the technical expertise to comment on the specific fees proposed for each service, but we feel fees should be sufficient to offset the expense the WVAPCC must incur to provide the services. The fees should be regarded as a necessary cost of doing business by industry.

We assume that the fee schedule proposed is based upon some published fee schedule and will be consistent with the recommendations of the US Environmental Protection Agency and similar to fees either presently charged or being proposed in other states.

The League is very concerned about the present understaffing and underfunding of the WVAPCC. We feel that these proposed fees may help us correct some of the problems we are having in WV in the area of air pollution law enforcement.

Very truly yours,

Charlotte D. Costello
Charlotte D. Costello
Natural Resources Chair
Nancy Novak
President



**WEST VIRGINIA
MANUFACTURERS ASSOCIATION**

SUITE 503
405 CAPITOL STREET
CHARLESTON, WV 25301
TELEPHONE (304) 342-2123

STATEMENT OF ROBERT L. FOSTER, CHAIRMAN
OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION
REGARDING PROPOSED AIR QUALITY MANAGEMENT FEES

My name is Robert L. Foster, and I am the Chairman of the West Virginia Manufacturers Association's Committee on Health Safety and the Environment. I am here on behalf of the over 250 companies which comprise the Association, many of whom will be affected by the Air Quality Management Fees being discussed today.

The WVMA appreciates the need for supplemental funding for the Air Pollution Control Commission, and accepts the decision to raise those funds with those Air Quality Management Fees. We encourage the APCC to use the fees to bolster APCC's permit section, so that permits are considered and issued expeditiously. If APCC staff levels cannot be increased to take advantage of the increased funding provided by these fees, we suggest that the ^{APCC} ~~APCC~~ consider contract employees to write permits under the APCC's supervision.

While the WVMA acknowledges the need for Air Quality Management Fees, it is very concerned that the fees, which are in fact a tax, will continue to grow. Industry in West Virginia already bears a significant general revenue tax burden, some of which necessarily goes to support state regulatory agencies like the APCC. Forcing industry to pay fees such as these is double taxation and results in industry paying twice to support the same



WEST VIRGINIA
MANUFACTURERS ASSOCIATION

Statement of Robert L. Foster
Page 2

program. The WVMA would strongly oppose any attempts to increase its members tax burden by increased fees in future years.

The Association generally commends the APCC for development a simple program that raises the desired funds without unnecessary regulation. However, certain rule changes would aid in clarifying its intent. For example, rule establishes fees for the issuance of permits and operating certificates, but does not do so in a uniform manner. The regulated entities are referred to variously as sources, stationary sources, and facilities. The regulations should make clear that the only regulated entity is a facility, as that term includes not just individual stationary sources, but each group of sources that fits the facility definition. The rule should also clarify that a group of sources which qualifies as a facility would only have to obtain a single permit or operating certificate for the group rather than a permit or operating certificate for each source in the facility. We believe this is the result intended by the APCC, but further refinement of the rule could clear up this matter.

Not all stationary sources of air emissions are subject to regulation. Section 3 requires fees of those sources which are subject to other state air quality regulations. Section 4 should be drafted to reference Section 3, so that the same facilities which get construction, modification and relocation permits are



Statement of Robert L. Foster
Page 3

also required to obtain operating certificates. There is no reason why facilities which are exempted from permitting requirements should be obligated to obtain an operating certificate.

The facilities listed in the nine groups set out in Section 4.4 do not contain all possible categories of facilities, and consequently it is possible that a facility could be ordered to obtain an operating certificate but would not be required to pay a fee since it did not belong in any of the identified categories. Consequently, the WVMA has suggested that the last category be changed to a catch-all provision which includes all other facilities for which an operating certificate is required but for which a fee has not been established.

The changes I have outlined would have the effect of making all non-exempt facilities subject to permitting requirements of Section 3, require the same facilities to obtain an operating certificate under Section 4, and require an operating certificate fee from each of the same facilities. This approach would eliminate potential misunderstandings regarding the scope of the rule and give clear notice to the facilities to which it applies.

The WVMA has proposed a number of other changes to the regulations which it believes allow more effective implementation and fairer application of the Air Quality Management Fees. Those proposals are contained within the written comments which we have



WEST VIRGINIA
MANUFACTURERS ASSOCIATION

Statement of Robert L. Foster
Page 4.

submitted to the Commission today. We commend those comments to your close scrutiny, as we feel they are constructive changes that will enhance operation of the permit program.

Thank you for the opportunity to comment on a program that is of great interest to the Association's members.

West Virginia Manufacturers Association

Robert L. Foster, Chairman
Committee on Health, Safety
and the Environment



WEST VIRGINIA MANUFACTURERS ASSOCIATION

COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION REGARDING PROPOSED AIR QUALITY MANAGEMENT FEE REGULATIONS

I. INTRODUCTION

On May 3, 1990 John M. Ranson, Secretary of the Department of Commerce, Labor & Environmental Resources, authorized the Air Pollution Control Commission ("APCC") to initiate rule-making for a regulation to establish fees for air quality management operating certificates and permits. The proposed legislative rule, to be placed at Series 22 of Title 45 of the Code of State Regulations, was filed with the Secretary of State on May 11, 1990, with a public hearing scheduled for 9:15 a.m. on July 10, 1990.

The West Virginia Manufacturers Association ("WVMA") is a statewide trade organization representing approximately 250 businesses and industries in West Virginia. The membership reflects a broad-based constituency from all aspects of the manufacturing sector of this state's economy. The WVMA has been integrally involved for a number of years in constructively commenting on all aspects of state regulations. Based on our review of the proposed regulations filed with the Secretary of State on May 11, 1990, the WVMA continues its constructive role by offering the comments which are set forth below.

II. GENERAL COMMENTS

A. The WVMA Supports Air Quality Management Fee Regulations.

The WVMA acknowledges the need for a properly funded APCC and agrees that a reasonable method of supplementing the APCC's funding by the legislature is through payment of fees for issuance of operating certificates and permits to construct, modify or relocate stationary sources. The WVMA also wishes to commend the APCC for the simplicity of the program represented by its air quality management fee regulations. This relatively straightforward scheme for assessing fees should be significantly easier for the APCC to administer than the considerably more cumbersome systems used by several neighboring states.

B. The APCC Should Make Appropriate Use Of Fees It Collects.

The fees paid by the regulated community will be placed in a fund which is to be used to pay the salaries and expenses of the APCC. The WVMA suggests that the proper use of the fund is for the hiring and maintenance of sufficient personnel to properly administer the permitting functions of the APCC. We are aware that a hiring freeze has been put into effect by the governor and suggest that, if necessary, the APCC consider the use of contract employees to help produce permits and certificates to operate in a timely manner.

Because of our concerns that the fees collected under these proposed regulations be used in an appropriate manner, the WVMA suggests that an annual report of the fund's operation be created. Such an annual report could provide information regarding

the source of fees, the manner in which they were employed in furtherance of the APCC's mission, and other information that would allow some oversight of the fund's operation.

C. The APCC Should Seek Complete Compliance With The Regulation.

The air quality management fee system is equitable only if the burden of paying the fees is spread among all regulated facilities. The WVMA urges that an effort be made to identify all facilities to which these regulations might apply, not just those which have been regulated in the past by the APCC.

As for those facilities which have already been identified by the APCC as subject to these regulations, the WVMA suggests that a notice of the need to apply for a certificate of operation or an invoice for the operating fee be sent annually to such facilities. A reminder that an application for a certificate of operation and accompanying fee is due would help assure that fees are paid and that deadlines for applying for operating certificates are not missed.

D. Air Quality Management Fees Should Not Become The Sole Or Primary Means Of Funding The APCC.

The WVMA is concerned that air quality management fees, which supply supplemental funding to the APCC, not become the sole or primary source of APCC funding. The "fee" charged for issuance of certificates to operate or permits is in reality nothing other than a tax, which is added to the significant general revenue tax burden already borne by industry in West Virginia. Those general revenue taxes should already be providing funding for state

programs such as the APCC. Any requirement that the industry pay significantly greater fees to fund most or all of the APCC would be an unacceptable double taxation.

While we are aware that the APCC does not set its own budget, we strongly encourage the Commission to take the position when budgets are set by the legislature that state funding of the APCC should not be diminished in any way by the payment of air quality management fees by industry.

III. SPECIFIC COMMENTS

A. The WVMA Suggests Clarifying The Definition Of A "Facility".

The definition of "Facility" or "Plant" at Section 2.5 suggests that each activity or group of activities that falls within the same major SIC Code grouping is a separate facility and requires an individual certificate or permit. The WVMA requests clarification of this matter so that it is apparent that only one permit or certificate is required of each group of stationary sources that fall within the same category, rather than a certificate or permit for each stationary source.

B. The Term "Unit" Should Be Defined.

The fee schedule groups set out at Section 4.4 of the proposed regulations differentiate between chemical production plants with 3 or more units (Group 5) and those with fewer units (Group 6). The definition of a unit is not provided; consequently, it will be difficult for a chemical production plant to determine which category it falls within. A definition of "unit" in the context of chemical plants is needed to clarify the APCC's intent,

and we suggest that the definition of "chemical processing unit" found in Series 27 of Title 45 be used in these rules.

C. Only "Facilities" Should Be Required To Obtain Permits And Certificates To Operate.

Section 3.1 refers to "sources" which are subject to various permit requirements, although there is no definition of that term in the proposed regulations. The term "sources" should be changed to "facilities" to properly identify the entity that is required to obtain a permit.

Section 4.1.a. requires a certificate of operation for any "facility or stationary source." This leaves open the possibility of the APCC requiring a certificate from each stationary source, even though such a stationary source is part of a group of sources which would qualify as a facility and need only a single permit. Furthermore, a certificate to operate should be required of only those facilities that are required to obtain permits under section 3.1. Otherwise, the regulations would require certificates to operate of every facility, even those exempted from permitting requirements. The WVMA therefore urges deleting the words "or stationary source of air pollution" from Section 4.1.a. and replacing them with "for which a permit is required under Section 3.1".

D. The APCC Should Clarify That All Facilities Are Required To Obtain A Certificate To Operate.

Section 4.1 requires any person to have a certificate to operate before operating a facility, but there is no fee required of industrial facilities other than those specifically listed in

the nine categories found in Section 4.4. We suggest that Group 9 be changed to delete the specific facilities identified and instead require a fee of \$200.00 from "all other facilities for which a permit is required under Section 3.1."

E. Notice Of The Regulations Should Be Provided To All Known Facilities.

In calculating the sums to be raised by the proposed regulations the APCC has already identified the number of facilities in each group in Section 4.4 from which it expects to receive air quality management fees. Presumably, the APCC has already determined an appropriate category for every stationary source in West Virginia that it is aware of. As there may be some question of the category applicable to a particular facility, the APCC should help avoid confusion by notifying each known facility of the category which it believes pertains to that facility. For example, electric generating plants which only supply electricity to a single facility (such as on-site power generating plants) may fall under the definition of an electric utility plant or some other category, such as coal or other solid fuel-fired boiler. Notification of facility classification would aid in resolving such questions and might improve the level of compliance with the regulations by advising the regulated community of the rules existence.

F. Certificates To Operate Should Be Transferrable.

There is no reason that a certificate to operate should not be transferable - the certificate to operate is similar to a permit, and it is common in other West Virginia regulatory programs

to allow transfer of operating permits. Accordingly, the WVMA suggests that section 4.2 be deleted, and replaced with an explicit statement that certificates to operate are transferrable.

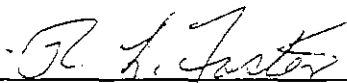
G. The Regulations Should Identify A Category For All Boilers And Process Equipment.

Group 7 of section 4.4 sets the operating certificate fee for "Coal or other Solid Fuel-Fired Boiler or Process Equipment (total design heat input greater than 100mm Btu/hr, excluding all boilers less than 10mm Btu/hr design heat input)". Group 8 sets the fee for similar boilers or process equipment with design heat input greater than 50mm Btu/hr but less than 100mm Btu/hr. No mention is made, however, of boilers or equipment with a design heat input between 10mm Btu/hr and 50mm Btu/hr. The WVMA suggests that such boilers or equipment be subsumed within the Group 9 "all other" category it is proposing. (See III.D., above.)

IV. CONCLUSION

The WVMA appreciates the opportunity to comment on the proposed air quality management fees. We believe the changes that we have proposed would create a more equitable system, and we encourage your careful consideration of them.

West Virginia Manufacturers Association



Robert L. Foster, Chairman
Environmental, Health and
Safety Committee



Allegheny Power System

Bulk Power Supply
800 Cabin Hill Drive
Greensburg, PA 15601 (412) 837-3000

July 9, 1990

Mr. G. Dale Farley, Secretary
WV Air Pollution Control Commission
1558 Washington Street, East
Charleston, WV 25311

RE: Air Quality Management Fee Program

Dear Mr. Farley:

Attached for filing are the comments of Monongahela Power Company concerning the West Virginia Air Pollution Control Commission's (WVAPCC) Air Quality Management Fee Program.

Monongahela Power Company acknowledges the need for a sufficiently funded APCC and conceptually, we have no objections to a fee system so long as expenditures from the collection of these fees are applied to enhancing the management and administration of the existing programs of the APCC and not used to create or expand additional burdens on West Virginia industry. Our main objection to the proposed regulation is that for Monongahela Power, the fee schedule is excessive and not commensurate with either the service being provided or the cost to implement the program.

We thank you for the opportunity to comment and hope that the comments will be given conscientious review by your commission as they formulate the final regulations for the fee program.

Sincerely yours,

L. D. Myers
Manager,
Environmental Control

General Comments

A. Sufficient Funding of the Air Pollution Control Commission (APCC) is Necessary

Monongahela Power Company acknowledges the fact that sufficient funding is necessary to properly implement the duties of the Commission. However, funding of the APCC by way of a fee charged for permits and certificates to operate, is in reality a tax on West Virginian industry. The general revenue tax should provide adequate funding for state programs such as those implemented by the Commission. Additional monies raised through a fee program should be used to enhance the management and administration of the existing programs and not as a means to alleviate the APCC burden on the general tax revenue fund.

B. Air Quality Management Fees Should be Based on the Administrative Burden of Issuing Permits or Certificates

The establishment of group categories and the assessment of fees based on those categories appears to be related to ability to pay and not actual cost imposed by the group. Monongahela Power believes that the proposed fee schedule is excessive and not commensurate with either the service being provided or the cost of implementing the programs. A certificate to operate requires minimal resources to issue, but the annual fee can run as high as \$10,000; while the fee for a permit to construct, which should require a substantial expenditure of commission's resources, is only \$100. The total fee assessed Monongahela Power will be \$45,000 annually for a certificate to operate our facilities located in West Virginia. We believe the amount of the fees should be based upon the amount of resources the Commission must expend to issue a permit or certificate to operate.

C. Equity of Fee Program for Certificate to Operate

We understand the APCC's need to raise funds; however, we feel the assessment of a \$10,000 annual fee on major industry for a certificate to operate is burdensome and unwarranted considering the effort required by the Commission to issue a certificate to an established facility. Pennsylvania recently established a similar fee program. Stationary sources are assessed an annual fee of \$200 for a certificate to operate. The \$200 fee encompasses all air pollution sources within the state rather than listing group categories and heavily burdening major industry. We urge the Commission to attempt to identify all regulated facilities to which these regulations might apply, and thus spread the burden more equitably among all regulated facilities.

Specific Comments

- A. Section 3.1 refers to "sources" subject to various permit requirements; however, the term is not defined in the proposed regulations. The term "sources" should be changed to "facilities" to maintain consistent terminology in the proposed regulation and to properly identify what entities are required to obtain a permit.
- B. Section 4.1.a. requires a "certificate to operate" for any "facility or stationary source." As defined, several "stationary sources" could exist at one "facility." We believe the intent of the regulation is to require each facility to obtain one certificate to operate. Also, only facilities subject to section 3.1 should be required to obtain a certificate to operate. To clarify that only one certificate to operate is required for each facility subject to section 3.1, please delete the words "or stationary source" from section 4.1.a and add "subject to the provisions of section 3.1." Furthermore, section 4.1 requires all facilities to obtain a certificate to operate before operating a facility; however, only facilities specified in the nine categories of section 4.4 are subject to a fee. We suggest that Group 9 include the phrase "all other facilities subject to the provisions of section 3.1" and that commercial facilities such as dry cleaners, gasoline service stations, photo developing and processing facilities, etc., also be included in Group 9.
- C. All boilers and process equipment should be identified in a group. Group 7 of section 4.4 includes "Coal or other Solid Fuel-Fired Boiler or Process Equipment (total design heat input greater than 100mm Btu/hr., excluding all boilers less than 10mm Btu/hr. design heat input)". Group 8 includes similar boilers or process equipment with design heat input greater than 50mm Btu/hr. but less than 100mm Btu/hr. However, boilers or process equipment with a design heat input between 10mm Btu/hr. and 50mm Btu/hr. are not mentioned. We suggest that such boilers or process equipment be included in Group 9.

RECEIVED
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WEST VIRGINIA
AIR QUALITY
CONTROL DISTRICT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

FEB 08 1988

Honorable W. Gaston Caperton III
Governor of West Virginia
Charleston, West Virginia 23511

Dear Governor Caperton:

Section 110 of the Clean Air Act (the Act) requires each State to adopt plans which provide for the implementation, maintenance and enforcement of the national ambient air quality standards (NAAQS). West Virginia submitted an initial State Implementation Plan (SIP) in response to these requirements which was approved by the Environmental Protection Agency (EPA) on May 31, 1972. However, Section 110 also requires that the State revise that plan under certain conditions. A key feature of Section 110 of the Act requires the State to revise the plan whenever the plan is "substantially inadequate" to achieve the basic purposes of the Act.

In determining whether the plan is sufficient to achieve the NAAQS, EPA must consider whether the State has provided the "necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan" [Section 110(a)(2)(F)(i)]. This Section requires the State to commit and maintain adequate resources in the air quality management program to implement and enforce the SIP as well as carry out the essential planning activities which are important to a viable program.

It has become increasingly apparent that West Virginia has not maintained a sufficient resource commitment to the air quality management program. The lack of an appropriate resource commitment has manifested itself in several ways. Among these are failure to submit a plan for attainment and maintenance of the new particulate matter (PM10) NAAQS, failure to respond to a May 26, 1988 SIP call for ozone and carbon monoxide, and continuing violations of the NAAQS for sulfur dioxide. West Virginia's failure to provide adequate resources has resulted in continued violations of the NAAQS which not only endanger the public, but, under federal permitting requirements, may be preventing the construction of major new sources or modification of existing sources of sulfur dioxide. Further details on all of these situations are discussed in the enclosure to this letter.

This letter takes two actions. First, I am notifying you that EPA finds the West Virginia SIP substantially inadequate to attain and maintain the ambient air quality standards due to inadequate resources. EPA makes this finding pursuant to Section 110(a)(2)(H)(ii), based on the State's failure to comply with the requirements of Section 110(a)(2)(F)(i) of the Act. We are requesting that within 60 days you respond to our concerns and provide an action plan to: (1) examine the resource needs of the air quality management program; and (2) prepare a plan for allocating resources to this program to resolve all the identified program deficiencies.

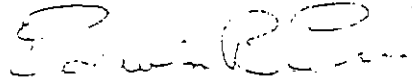
Second, please also be advised that EPA finds the West Virginia SIP substantially inadequate to attain and maintain the NAAQS for sulfur dioxide in Hancock County. EPA makes this finding pursuant to Section 110(a)(2)(H)(ii) of the Act, based on the State's failure to correct violations of the NAAQS, and in so doing calls for a revision to the West Virginia SIP to attain and maintain the NAAQS for sulfur dioxide in Hancock County. We are requesting that within 60 days you submit an action plan to EPA with a schedule for identifying and adopting control strategies to enforceably reduce sulfur dioxide emissions in Hancock County sufficient to attain and maintain the NAAQS.

Mr. Thomas J. Maslany, Director, Air, Toxics and Radiation Management Division, is sending a more detailed letter to Mr. G. Dale Farley, Director, West Virginia Air Pollution Control Commission, identifying what should be included in the action plan for addressing the resource deficiencies as well as in the action plan to respond to the call for a plan to achieve the NAAQS for sulfur dioxide in Hancock County. The staff of the Air, Toxics and Radiation Management Division is prepared to work with the State of West Virginia in developing these plans and in identifying the resource needs.

It is important to note that, should West Virginia fail to respond to these findings that the SIP is substantially inadequate, EPA may be required to impose certain sanctions under the Act. Among these sanctions is a moratorium on source permitting for major new sources and existing sources seeking expansion. As the finding of inadequacy due to inadequate resources applies to implementation of the entire SIP and not to a specific pollutant or geographic area, this sanction could become effective State-wide. Any EPA action that would result from an inadequate response to this letter, however, will be effective only after notice-and-comment procedures.

The EPA is committed to providing the necessary technical and administrative assistance to define the scope and timing of actions which must be taken by the State to resolve the identified SIP inadequacies. I trust that EPA and the State will work closely together in the coming months so that together we can protect the citizens of West Virginia while fostering economic development at the same time. I look forward to this cooperative undertaking.

Sincerely,



Edwin B. Erickson
Regional Administrator

Enclosure

cc: Leonard Harvey, Secretary
Commerce, Labor & Environmental Resources
L. Newton Thomas, Chairman
WVAPCC
G. Dale Farley, Director
WVAPCC

Background Information

The Environmental Protection Agency (EPA) has previously identified to West Virginia a number of air quality problems which must be addressed. The first step in addressing these problems is the commitment of sufficient resources to effectively design air quality management programs. Failure to initiate or complete planning in the following areas endangers the health of the public and may prevent the construction of new major stationary sources or expansion of existing sources.

PM10

On July 1, 1987, EPA promulgated a new ambient air quality standard for particulate matter. The former Governor of West Virginia was notified that a plan to attain and maintain the new NAAQS for the Follansbee area of Brook County was to be submitted to EPA for approval by April 30, 1988. While West Virginia has undertaken certain activities related to the development of a plan, the final plan is seriously overdue. This is of particular concern since EPA has recently received notice of a potential lawsuit to promulgate Federal plans in those areas where States have failed to fulfill the requirements as they relate to PM10. In addition to the Follansbee area, West Virginia must evaluate the adequacy of the current State regulations for the control of PM10 in the remainder of Brook County and Hancock County. This assessment and revisions to the SIP, as appropriate, must be submitted to EPA by August 31, 1990.

Ozone/CO

On May 26, 1988, EPA notified former Governor Arch A. Moore that the Huntington and Parkersburg areas had failed to attain and maintain the ozone NAAQS and that Weirton had failed to attain the NAAQS for carbon monoxide. On November 8, 1989, you were notified that the Charleston area and Greenbrier County are considered nonattainment with respect to the ozone NAAQS. Both these "SIP calls" require the State to undertake the planning process for development of new attainment plans. While the one-year schedule for the 1989 SIP call is just beginning, I am concerned that West Virginia has been unable to meet the SIP development schedule in the 1988 SIP call.

Sulfur Dioxide

By this letter, EPA has notified Governor W. Gaston Caperton III that the West Virginia SIP is substantially inadequate to attain and maintain the NAAQS for sulfur dioxide in Hancock County. This finding, made pursuant to Section 110 (a)(2)(H)(ii) of the Act, calls for a revision to the West Virginia SIP. Within 60 days, West Virginia is to respond to this SIP call by submitting an action plan with a schedule for identifying and adopting control strategies to reduce sulfur dioxide emissions in Hancock County sufficient to attain and maintain the NAAQS. EPA is currently assisting West Virginia with the review of permit applications for the construction of new source and the expansion of existing sources of sulfur dioxide. Air quality analyses performed in conjunction with these applications have identified additional areas that may not be attaining the NAAQS for sulfur dioxide. It appears that the NAAQS are not being attained in Marshall and Monongalia counties. In addition, EPA has concerns with the West Virginia SIP as it applies to sulfur dioxide ambient levels in Grant and Harrison Counties.

NOT RECORDED
SOHMR-1 7/19/81

ATTACHMENT II
Sulfur Dioxide Issues

In conjunction with preliminary evaluations for the Pennsylvania-West Virginia-Ohio (PAWVOH) study, violations of the NAAQS were modeled to result from emissions of Weirton Steel in Hancock County. The predicted violations were confirmed by monitored violations at the Oak Street site in Weirton. The occurrence of measured violations due to identified local sources indicates that the resources previously committed to studying long-range transport in the PAWVOH study could be more efficiently and effectively used to resolve the localized problems associated with Weirton Steel and, perhaps, other nearby sources. Title V of the proposed Clean Air Act Amendments will require substantial emission reductions from many of the sources for which long range transport was considered a problem. The equipment and preliminary evaluations associated with PAWVOH can be used to support more immediate problems. West Virginia, however, should be compiling an inventory of sources, including, Weirton Steel, to be evaluated in a demonstration for a revision of the SIP.

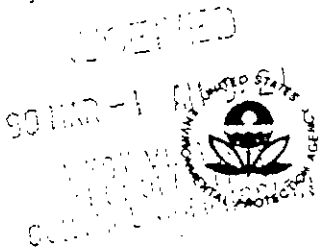
The issue of complying with stack height regulations by the Kammer plant in Marshall County has revealed associated problems with attaining the SO₂ NAAQS. The requirement to model the allowable emissions of all nearby sources as part of an attainment demonstration led to the discovery of predicted violations attributable to two low-level sources, BP Oil (formerly known as MOCAR) and Columbian Chemical. These sources operate with emissions well below those allowed by Regulation X. The review of the emission limit for Kammer is required by the revised stack height regulation. It is possible that the SIP revision for Kammer can proceed without first resolving the potential nonattainment problem in Marshall County. A necessary first step in the resolution, however, will be a finding that the Kammer impact is incidental to the predicted violations. If this cannot be demonstrated, a full area-wide SIP demonstration will be required.

Violations of the 3-hour secondary and 24-hour primary SO₂ NAAQS in Monongalia and Marion Counties were indicated by a dispersion modeling analysis and submitted to the APCC as a part of an application for a Prevention of Significant Deterioration (PSD) permit by the American Bituminous Power Partners' proposed facility at Grant Town. The dispersion modeling demonstrated that violations of the SO₂ NAAQS are caused by emissions from the Rivesville power station which are limited by Section 3.03.(2) of Regulation X. In order to move forward with the new project, a provisional reduction at Rivesville is required along with a commitment, already agreed to by the APCC, to fully evaluate the allowable emissions from Rivesville. Unit 2 of Rivesville is an affected unit under Title V of the proposed Clean Air Act

Amendments and will be allocated an emission allowance, beginning January 1, 2001, approximately equivalent to 60% of its present allowable emissions.

Violations of the 3-hour secondary and 24-hour primary SO₂ NAAQS in Grant County were indicated by a dispersion modeling analysis submitted to the APCC as a part of an application for a PSD permit for the proposed N.B. Partners facility near Bayard. The dispersion modeling demonstrated that violations of the SO₂ NAAQS are caused by emissions from the Mount Storm power station which are limited by Section 3.01.(4) of Regulation X. The allowable emissions for Mount Storm should be re-evaluated to ensure attainment of the NAAQS. Mount Storm is a source affected by Title V of the proposed Clean Air Act Amendments. The Phase 1 allowances, effective January 1, 1996, are roughly equivalent to the present allowable emissions. There is a need to establish emission limits which protect the NAAQS to preclude trading of allowances which could lead to continuing violations in Grant County.

On August 14, 1980 (45 FR 54051), EPA approved an interim emission limit for the Harrison power plant until a permanent emission limit could be approved. The amended, revised Regulation X, submitted by West Virginia on September 13, 1978, did not contain an adequate demonstration of attainment of the secondary NAAQS. In 1983, and again in 1985, and yet again in 1988, Monongahela Power, the owner of Harrison, submitted demonstrations of attainment which, upon review by EPA, were found to be flawed. Harrison is a source affected by Title V of the proposed Clean Air Act Amendments. The Phase 1 allowances, effective January 1, 1996, are roughly one-half of the present allowable emissions (5.12 lbs/mmBtu).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III841 Chestnut Building
Philadelphia, Pennsylvania 19107

FEB 22 1990

Mr. G. Dale Farley, Director
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

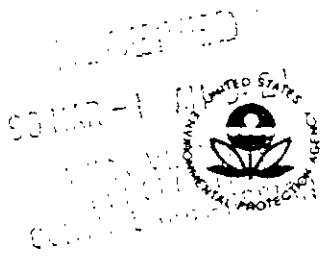
Dear Mr. Farley:

Enclosed is a copy of a letter to Governor Caperton notifying him that West Virginia is not providing adequate resources to carry out its State Implementation Plan (SIP) as required by the Clean Air Act (CAA) (Attachment I). That letter also notifies Governor Caperton that the SIP is inadequate to attain and maintain the sulfur dioxide (SO₂) national ambient air quality standards (NAAQS) in the Weirton area of Hancock County. The purpose of my letter is to provide you with more detailed information regarding the SIP call.

Section 110 (a)(2)(F)(i) of the CAA requires the State to commit and maintain adequate personnel, funding, and authority to carry out the implementation plan required by Section 110 (a)(1). Pursuant to Section 110, West Virginia submitted an initial SIP which was approved by the Environmental Protection Agency (EPA) on May 31, 1972. As part of the initial SIP, West Virginia adopted provisions which require the State to revise the plan in the event a NAAQS is revised or whenever EPA makes a finding that the plan is inadequate to achieve the NAAQS.

As indicated in the enclosure to the letter sent to Governor Caperton, EPA notified the State of West Virginia, on May 26, 1988, that the SIP was inadequate to attain and maintain the NAAQS for ozone and carbon monoxide. EPA also notified the State of West Virginia, on November 8, 1989, of additional ozone nonattainment areas.

On July 1, 1987, EPA promulgated a revised NAAQS for particulate matter, commonly referred to as PM₁₀. EPA identified the Follansbee area of Brooke County as an area for which the submittal of a revised plan was required by April 30, 1988. The remainder of Brooke County and Hancock County were identified as areas where West Virginia should evaluate the adequacy of the existing plan by August 31, 1990. The West Virginia Air Pollution Control Commission (APCC) has been cooperatively working with EPA and the State of Ohio to complete the required activity for the Follansbee area and the adjoining area in Ohio. However, the SIP revision is long overdue. Furthermore, in 1989 a violation of the PM₁₀ NAAQS was monitored in Hancock County.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

FEB 22 1990

Mr. G. Dale Farley, Director
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

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On December 20, 1989, the Sierra Club Legal Defense Fund, Inc., filed suit against EPA to force the Agency to promulgate federal implementation plans for all areas which have failed to submit their PM₁₀ SIPs and for quick action to approve or disapprove all pending PM₁₀ SIPs. Given West Virginia's inability to satisfy the April 30, 1988 deadline for the submittal of a PM₁₀ SIP for the Follansbee area and the monitored violations of the PM₁₀ NAAQS in Hancock County, West Virginia will be affected by this suit.

On November 9, 1978, the EPA approved a revision to Regulation X - To Prevent and Control Air Pollution From The Emission of Sulfur Oxides, of the West Virginia SIP. EPA's decision to approve the revision was, in part, based upon the demonstration, required by Section 110 of the Clean Air Act, that the revised regulation would provide for attainment and maintenance of the NAAQS for SO₂. Information has been obtained which indicates that West Virginia Regulation X is not adequate to provide for attainment and maintenance of the SO₂ NAAQS. In particular, the Weirton area of Hancock County has been identified as an area in which revisions to Regulation X are required. (See Attachment II for further details.)

Many of the problems in West Virginia have materialized because of the State's desire to promote industrial growth. We are aware of four outstanding issues (also detailed in Attachment II) and at least four additional proposed projects which have the potential to generate questions about the adequacy of the SO₂ SIP. The ability to anticipate and avoid these problems will be essential to avoid endangering public health and impeding the projected economic growth.

As stated in the February 5, 1990 letter to Governor Caperton, the failure of the West Virginia SIP to adequately provide for attainment and maintenance of the NAAQS for several criteria air pollutants indicates an insufficient resource commitment to the State's air quality management program. For that reason, EPA's February 5, 1990 letter requires the submittal of a workplan by April 6, 1990 with a schedule for

- (1) conducting an examination of the resource needs of the air quality management program, and
- (2) completing the preparation of a plan for allocating resources to this program to resolve the SIP deficiencies.

With regard to the sulfur dioxide problem in Hancock County, the February 5, 1990 letter requires the submittal of a workplan by April 6, 1990 with a schedule for

(1) conducting an analysis to identify the control strategies necessary to reduce emissions sufficient to attain and maintain the NAAQS, and

(2) imposing the identified control strategies on the applicable sources in enforceable documents and submitting formal SIP revisions.

Region III is willing to make every effort to assist the APCC in developing this workplan and in carrying out its tasks. We are also committed to assist the APCC with the sulfur dioxide ambient problems discovered in the course of conducting PSD analyses. I have asked my staff to prepare an action plan to address all of West Virginia's sulfur dioxide problems in priority order. (Obviously Hancock County will head the list.) This action plan will project reasonable timelines for resolving each problem and scope out each step from the identification of the necessary control strategies through the adoption and submittal of the necessary SIP revision. The contact for this effort is Denis Lohman, (215) 597-8375.

As an interim measure, because of the resource shortfall, we suggest that the APCC consider using its authority to require information from sources to reduce the burden on the APCC. With this authority, specific sources can be required to provide evaluations of their emissions to ensure the adequacy of a control strategy. Please let us know if the issuance of letters, under the authority of Section 114, to secure the needed information from the affected sources is something EPA should consider in the near term.

Please feel free to contact me or Marcia Spink to arrange for more detailed and technical discussions of these issues.

Sincerely,



Thomas J. Maslany, Director
Air, Toxics & Radiation
Management Division

Enclosures (2)

cc: J. Benedict (WVAPCC)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

AUG 4 1989

Mr. G. Dale Farley, Director
West Virginia Air Pollution Control
Commission
1558 Washington Street, East
Charleston, West Virginia 25311

Dear Mr. Farley:

Enclosed is a copy of EPA Region III's FY'89 mid-year review of West Virginia's progress in meeting its commitments in the Section 105 Grant. To the best of our ability, we have attempted to reflect our understanding of the progress your Agency has made in the first two quarters of FY'89. Information was gathered in conversations between our respective staff members and our recently conducted on-site review.

Please note that this review covers only the time period of October 1, 1988 through March 31, 1989. While some noted deficiencies may have been subsequently addressed by your Agency, this review will not reflect these changes if they occurred after March 31, 1989. However, we will consider any substantive comments on the report content. All comments should be submitted no later than two weeks after receipt of this report.

Thank you for the effort your office expended toward this report. I look forward to West Virginia's continued efforts towards full satisfaction of its Section 105 commitments.

If you have any questions regarding planning issues, please contact Henry J. Sokolowski, Chief, Air Programs Branch at (215) 597-9075, or if you have any questions regarding enforcement issues, contact Bernard E. Turlinski, Chief, Air Enforcement Branch at (215) 597-3989.

Sincerely,

Thomas J. Maslany, Director
Air Management Division

Enclosure

WEST VIRGINIA
AIR POLLUTION CONTROL COMMISSION
FY '89 105 GRANT
MIDYEAR REPORT

During the month of April, 1989, EPA Region III conducted a review of West Virginia Air Pollution Control Commission's (WVAPCC) progress in meeting its FY'89 105 grant commitments for planning and enforcement activities. As can be concluded from a reading of the attached grant activity output form, a number of activities were either submitted to the Region late or have not been satisfied as of the time of the review. Predominantly, the deficiencies fell into three general categories: 1) failure to adhere to reporting commitments; 2) failure to complete planning work; or 3) failure to follow through with administrative activities. Brief examples of each would be, for category 1 - late submittal of enforcement action and NSPS Excess Emission reports, failure to submit monthly asbestos activity reports, and failure to submit grant progress reports on a quarterly basis; for category 2 - late submittal of a PM10 SIP development action plan, and failure to submit the WVAPCC an O3 regulation development plan; and for category 3 - lack of timely resolution of significant violators, late submittal to the WVAPCC of PM10 committal SIP and GEP regulation changes, and failure to submit revised PM10 New Source Review (NSR) regulations to the State Legislative Rulemaking Committee.

West Virginia's failure to adequately satisfy these commitments in a timely manner has produced criticism of the Regional Office on the part of EPA Headquarters. Late submittal or failure to submit reports on activities accomplished by the State gives the perception to senior level management that the State is not conducting a sound environmental program. Failure to put forth action plans for accomplishing the necessary activities for new SIP development or revision, along with failure to satisfy previous commitments to adopt regulations, further strengthens this perception. Such unsatisfied activities also compromise the Region's ability to successfully argue and provide for additional resources at both State and Regional offices.

In analyzing the results of this midyear review, Region III Air Management Division has concluded that the shortfalls on the part of WVAPCC are not the result of a non-responsive agency, but rather are due to several factors outside the direct control of WVAPCC. Briefly these factors are: 1) The retirement of the WVAPCC Director in January, 1989; 2) A hiring freeze imposed by the Governor's office; 3) Inability of WVAPCC to attract and retain experienced professional staff due to low salary scale; and 4) an imbalanced skill mix in the current on-board staffing level. Of all the factors, the inability to attract and retain experienced professional staff is possibly the most important factor that needs to be rectified for WVAPCC to maintain a viable

air pollution control program.

At the time of the midyear review, WVAPCC had a staffing plan of 59 full time employees plus two (2) part time employees. Of the 59 full-time positions, there were a total of 15 vacancies: 12 in the professional ranks and three (3) in the organizational support profession. Ten (10) of the 12 professional staff vacancies are engineering positions representing slightly more than 62% of the total engineering staff compliment. The remaining two (2) positions are managerial positions at the division level. At such a low on-board staffing compliment it is noteworthy that WVAPCC has been able to maintain some vestige of an air pollution control program. It has, however, become impossible for WVAPCC to effectively deal with the environmental priorities of today.

Current engineering staff vacancies are a direct result of the low salary scale the WVAPCC is able to offer professional engineers, the Governor's budgetary restrictions in operating costs granted to the WVAPCC and the hiring freezes imposed by the Governor's office statewide. Industry is paying engineers starting salaries of approximately \$30,000 per year while WVAPCC is at \$22,000. Furthermore, experienced engineers in the air pollution control field are being compensated at an even higher rate by local industry than WVAPCC. These discrepancies have produced a talent drain on WVAPCC and have prevented them from finding qualified engineers to fill existing vacancies. EPA Region III will contact the Governor in an effort to persuade him to lift hiring restrictions as they apply to WVAPCC, to increase the pay scale for environmental engineers and to actively consider WVAPCC budget increases to allow for the hiring of qualified staff at competitive salary rates.

One area in which staff vacancy has had a deleterious effect is ambient air modeling expertise. Recently, WVAPCC lost its only meteorologist/modeler to the Commonwealth of Virginia, which offered approximately a 20% increase in salary to the individual a lesser level of job responsibilities. The loss of this expertise has seriously affected WVAPCC's ability to deal with SO2 emission standards revision and PM10 SIP development commitments. EPA Region III will be working with WVAPCC to provide training, both formal and on the job, to current staff in the area of ambient air modeling. As of the writing of this midyear report, Region III's modeling expert has already arranged for training of a WVAPCC staff person at EPA Region III office, using actual WVAPCC modeling projects. Using ongoing State projects accomplishes not only training needs, but also effectively augments State staff workload.

While trying to deal with a high vacancy rate, WVAPCC's new Director recognizes the need for staff reorganization. In most of the operating division the staffing plan, ignoring vacancies, is

at the appropriate level for accomplishing state and federal air program goals. The Planning Division, however, is seriously understaffed. Given the future work that is needed in the areas of O3 SIP planning, PM10 SIP planning, SO2 emission standards revision and air toxic regulation promulgation and implementation, a division having a staff compliment of one is inadequate to effectively accomplish any meaningful progress. EPA Region III recommends that this division be expanded to 2-3 engineers with one full time secretary.

One area in which WVAPCC is starting to make improvements in operating efficiency is office computer utilization. In the past, WVAPCC relied upon a Digital mini-system to process air quality data, meteorological data and emissions inventory update. This system is no longer efficient due to its lack of flexibility, high yearly maintenance cost and complexity of operation. To address these disadvantages WVAPCC is proposing replacement of this system with a PC-based local area network system (PC-LANS). In addition to producing greater efficiency in the handling of air quality, meteorological and emissions inventory data, the proposed PC-LABS will have the potential to improve overall administrative and office functions. Using a PC-based system, WVAPCC will be able to use readily available software, such as d-Base III Plus, Lotus 1-2-3, WordPerfect and Crosstalk, to track grant fund expenditures and commitment accomplishments, more efficiently prepare both routine and specialized correspondence, update reports on a real time basis and communicate with EPA through the electronic mail (EMAIL) system. EPA is encouraged by WVAPCC's proposal and is willing to work with the State in providing funds for the new System and/or the reprogramming of current allocations to allow for hardware and software purchase.

EPA Region III recognizes the numerous difficulties WVAPCC is attempting to resolve and is committed to work with the State to arrive at acceptable solutions. For the long term, it is the opinion of the Region that the State needs to deal with the large salary inequities that exist between the WVAPCC employees and their industry counterparts. Short term solutions, such as reprioritization of grant commitments, lengthening of schedules and redirection of grant funds to hire contractor assistance should be jointly explored by EPA and WVAPCC to accomplish the high priority commitment facing the agencies. EPA intends to explore these options through the remainder of this grant year and during the FY '90 grant negotiations.

EPA wishes to thank the WVAPCC staff for the time and effort they expended in the FY '89 midyear review.

West Virginia Air Pollution Control Commission
FY'89 Mid-Year Review
Special Enforcement Conditions

1. The recipient agrees that for sources it reports in violation it will provide a written summary describing the source, indicating the nature of the violation, and discussing the documentation (inspection report, stack test, VE readings, etc.) which confirms the violations.

The WVAPCC did not submit written reports on violators as required. The WVAPCC did provide verbal reports.

2. EPA agrees to assume the enforcement lead for any asbestos demolition/renovation violations which the recipient discovers and deems it more appropriate for Federal action. Any violation designated for EPA lead should be reported to the EPA, Regional Office, Walter Wilkie, by telephone at 215-597-6550 within 24 hours after discovery followed by written documentation no later than seven days after the initial notification.

EPA has assumed the enforcement lead for all West Virginia asbestos demolition/renovation cases. The WVAPCC has provided supporting documentation.

3. The recipient will provide EPA with computer disk reports on asbestos demolition and renovation projects on a monthly basis, as described in its narrative grant commitments, rather than on a quarterly basis, as the grant commitment output form indicates.

The WVAPCC did not submit computer disk reports on asbestos demolition and renovation projects on a monthly basis, as required. Instead, the WVAPCC submitted one computer disk report, which contained data on asbestos projects for the second quarter. The WVAPCC submitted written reports on asbestos projects done in the first quarter.

WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

FY '89 MID-YEAR REVIEW

PERSONNEL/FINANCIAL REVIEW

I. Personnel

- a. Number of vacancies as of 3/31 ? - 10.1
- b. Total positions funded ? - 55.45
- c. Impact of vacancies on program activities ? - Of the 10.1 vacancies one is the Chief of the Engineering Division, six (6) engineers, one chemist, one data entry clerk, and one file clerk. Because of the vacancies in engineers the WVAPCC is unable to perform a number of activities in which they performed including air toxics, emission inventory development and permitting.

II. Budget

- a. Non-Federal expenditures as of 3/31 - \$323,334.42
Federal expenditures as of 3/31 - \$369,651.54
Total - \$692,985.96
- b. Non-Federal amount in grant award - \$725,750.00
Federal amount in grant award - \$904,643.00
Total - \$1,630,393.00
- c. Will the State/local agency meet its matching requirement for the fiscal year ? - Yes

WEST VIRGINIA
AIR POLLUTION CONTROL COMMISSION
FY '90 SECTION 105 GRANT
MIDYEAR REVIEW

Prepared by:
Air Programs Branch
Air Enforcement Branch
EPA Region III

EXECUTIVE SUMMARY

Introduction

On April 2, 1990, EPA Region III and the West Virginia Air Pollution Control Commission (WVAPCC) met to discuss the midyear status of the FY'90 105 grant commitments.

Attendees:	Dale Farley	Bernard Turlinski
	John Benedict	Marcia Spink
	Robert Weser	David Campbell
		Ray Chalmers

The purposes of this midyear review are to:

- highlight the strengths of WVAPCC's air program,
- review the midyear status of the grant commitments,
- identify areas of concern (including resource-related issues) and,
- provide a forum in which WVAPCC's may offer suggestions as to how EPA could more effectively perform its oversight role

The report includes the rationales provided by WVAPCC for why certain commitments were not met according to the schedules outlined in the grant. Revised completion dates for those commitments were negotiated during the April 2, 1990 meeting. The attached grant activity status form reflects these revised dates and has been updated to include any additional information provided by WVAPCC during the midyear review meeting.

WVAPCC and EPA can use this report to identify any midyear corrective actions necessary to ensure completion of this fiscal year's grant commitments and to determine those activities that may carry over to the FY'91 grant.

Performance Highlights

During the first two (2) quarters of FY'90, WVAPCC has performed with a high level of competence considering the extensive resource problems that continue to plague the Commission. The WVAPCC is currently operating with a staff of 42 employees. A staff of at least 55 employees is necessary to perform the required tasks, however, a staff of this minimum size would prove inadequate on a long-term basis. Though the WVAPCC is currently accomplishing most of the grant commitments, albeit late, the need for additional staff and resources should be emphasized. It has been the technical aptitude and consistent effort of the Commission's staff that has enabled the major grant commitments to be completed.

Air Program Planning Activities

WVAPCC has submitted workplans for O₃/CO nonattainment areas and PM₁₀ SIP development, along with completing significant work in air toxics. The Commission is currently drafting revised O₃/CO regulations and a contractor has begun compiling a CO/VOC/NO_x emission inventory. EPA is parallel processing a PM₁₀ committal SIP revision for Group II and III areas and WVAPCC is developing a SIP revision for its Group I area, as per the workplan. The Commission also submitted SIP revisions for GEP - Stack Heights and TP-2 which are presently being processed by EPA. Furthermore, air toxics studies for three (3) industrial sources have been completed and an air toxics regulation has been submitted to the West Virginia Legislative Rulemaking Review Committee.

Though the above represents significant accomplishment, steps still need to be taken by WVAPCC to resolve the SO₂ National Ambient Air Quality Standards (NAAQS) violations situation and to adhere to the schedules of its other planning activities. WVAPCC is currently behind schedule in submitting to the Governor of West Virginia an action plan to resolve the SO₂ NAAQS violations in Marshall County. EPA is aware of the technological complexities involved in the Marshall County situation and is willing to provide technical support. Also, it is crucial that the workplans for O₃/CO nonattainment areas and PM₁₀ SIP development are adhered to as strictly as possible. This will require a concerted effort on the part of WVAPCC and EPA.

Air Enforcement Activities

In the first two (2) quarters of FY'90, WVAPCC actively resolved significant violators, took enforcement action on stationary sources, and met the continuous emissions monitoring (CEM) program commitments. The Commission was successful in

resolving and obtaining penalties from four (4) Significant Violators. The stationary enforcement program issued 20 Notifications of Violation (NOV), 11 Cease and Desist Orders, and 11 Consent Orders. WVAPCC has completed the required CEM reports and is requiring all West Virginia power plants to commit to reporting fuel sampling and analysis data.

The asbestos program in West Virginia needs to become more active in both inspections and necessary enforcement actions. WVAPCC should also complete the compliance monitoring strategy (CMS), emphasizing the more environmentally significant sources, and perform the required inspections pursuant to the CMS. EPA understands that WVAPCC is in the process of training a new staff person and a current staff person to inspect various types of sources. This should provide for more staff time devoted to the preparation of enforcement reports.

Additional Concerns

During the meeting, several areas in which EPA could assist WVAPCC in accomplishing certain commitments were discussed. WVAPCC has expressed the need for modeling assistance in regard to the PM₁₀ and SO₂ SIP calls. Also, EPA has offered to review extension requests to the 120-day resolution time table for certain complex Significant Violator cases. Furthermore, WVAPCC would benefit from training in the following areas: counter-flow inspection, coal preparation sources, stack testing procedure, Prevention of Significant Deterioration (PSD) permit writing, and control equipment.

Conclusion

The West Virginia Air Pollution Control Commission continues to implement an adequate air program, from both the planning and enforcement perspectives, as evidenced by its midyear progress in satisfying the FY'90 105 grant commitments. The April 2, 1990 meeting provided a venue for constructive exchanges of information and concerns between WVAPCC and EPA.

AFFIDAVIT OF PUBLICATION
BECKLEY NEWSPAPERS INC.
BECKLEY, WEST VIRGINIA 25801

June 7, 1990

STATE OF WEST VIRGINIA,
COUNTY OF RALEIGH, to wit:

I, Robert E. Zutaut being first duly sworn upon my oath, do depose and say that I am Advertising Manager of Beckley Newspapers Inc., a corporation, publisher of the newspaper entitled The Register/Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily, for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of Notice of Public Hearing
(Description of notice)

was duly published in said newspaper once a week for
2 successive weeks (Class II), commencing
with the issue of the 31 day of May
1990, and ending with the issue of the 7th day
of June, 1990 (and was posted at the _____

on the _____ day of _____ 19____); that said annexed notice was published on the following dates: 5/31 & 6/7/90

and that the cost of publishing said annexed notice as aforesaid was
\$ 18.95

Signed Robert E. Zutaut
Robert E. Zutaut, Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this
7 day of June, 1990

My commission expires Sept. 17, 1996

Sharon Crook
Notary public of Raleigh County,
West Virginia

R/H

COPY OF PUBLICATION

NOTICE OF PUBLIC HEARING
ON Tuesday, July 10, 1990
beginning at 9:15 a.m., the West
Virginia Air Pollution Control
Commission will hold a public
hearing on proposed Regulation 22-
Air Quality Management Fee
Program. The hearing will be held
in the Commission's Conference
Room at 1558 Washington Street,
East, Charleston, Kanawha County,
West Virginia.
This hearing is open to the public
and written and oral testimony by
all interested parties will be heard
and made a part of the record.
Copies of the proposed
Regulation are available for public
review in the Raleigh County Public
Library, P.O. Box 1876, Beckley,
WV 25802.
G. Dale Farley
Secretary
West Virginia Air Pollution Control
Commission
1558 Washington Street, East
Charleston, West Virginia 25311
6-7-Thu-2-RH

90 JUN 12 AM 10:37
WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION
RECEIVED

RECEIVED

50 JUN -7 AM 10:08

WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

PUBLISHER'S CERTIFICATE

VS.

STATE OF WEST VIRGINIA,
COUNTY OF HARRISON

I, Deborah S. Veltri

Classified Office Manager of THE CLARKSBURG EXPONENT, a newspaper of general circulation published in the City of Clarksburg, County and State aforesaid, do hereby certify that the annexed

Notice of Public Hearing

was published in said THE CLARKSBURG EXPONENT once a week for 2 successive weeks,

commencing on the 30th day of May 1990

and ending on the 6th day of June 1990

The publisher's fee for said publication is \$ 11.11

Given under my hand this 6th day of June 1990

Deborah S. Veltri
Classified Office Mgr. of The Clarksburg Exponent

SEAL

Subscribed and sworn to before me this 6th day
of June 1990

James J. Spurr
Notary Public in and for Harrison County, WV.

My commission expires on the 24th day of October 1993.

NOTICE OF PUBLIC HEARING
On Tuesday, July 10, 1990 beginning at 9:15 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed Regulation 22:1 Air Quality Management Fee Program. The hearing will be held in the Commission's Conference Room at 1558 Washington Street, East Charleston, Kanawha County, West Virginia. This hearing is open to the public and written and oral testimony by all interested parties will be heard and made a part of the record. Copies of the proposed Regulation are available for public review in the office of the WV Air Pollution Control Commission, North Central Regional Office, 517 1/2 Park Avenue, Fairmont, WV 26554.
G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington St. East
Charleston, WV 25311

**NOTICE OF
PUBLIC HEARING**

On Tuesday, July 10, 1990 beginning at 9:15 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed Regulation 22 "Air Quality Management Fee Program". The hearing will be held in the Commission's Conference Room at 1558 Washington Street, East, Charleston, Kanawha County, West Virginia.

This hearing is open to the public and written and oral testimony by all interested parties will be heard and made a part of the record.

Copies of the proposed Regulation are available for public review in the Martinsburg-Berkeley County Public Library, 1101 West King Street, Martinsburg, West Virginia 25401.

G. Dale Farley
Secretary
West Virginia Air
Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia
25311
5/20, 5/6(2)

90 JUN 11 AM 10:14

WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

Certificate of Publication

This is to certify the annexed advertisement

AIR POL. CONT. COMM., MS. SITTON

PUBLIC HEARING.....

appeared for 2..... consecutive ^{days}_{weeks}
in EVENING JOURNAL PUBLISHING CO.
a newspaper published in the City
of Martinsburg, W. Va., in its issue
beginning

5/30

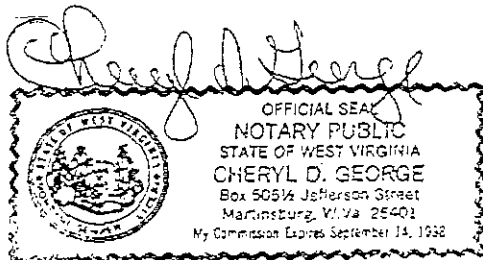
.....
and ending

6/6

THE EVENING JOURNAL

Pamela K. McCreary

Fee \$..... 21.81



COPY

AFFIDAVIT OF PUBLICATION

NOTICE

NOTICE OF PUBLIC HEARING

On Tuesday, July 10, 1990 beginning at 9:15 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed Regulation 22 - "Air Quality Management Fee Program". The hearing will be held in the Commission's Conference Room at 1558 Washington Street, East Charleston, Kanawha County, West Virginia.

This hearing is open to the public and written oral testimony by all interested parties will be heard and made a part of the record.

Copies of the proposed Regulation are available for public review in the Cabell County Public Library, 455 9th Street Plaza, Huntington, WV 25701.

G. Dale Fraley
Secretary
West Virginia Air
Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311
LH-756 5-30,4-6,70

STATE OF WEST VIRGINIA, COUNTY OF CABELL, TO-WIT:

I, Dianna Webb being first duly sworn, depose and say that I am Legal Clerk for Huntington Publishing Company, a corporation, who publishes at Huntington, Cabell County, West Virginia, the newspaper: The Herald-Dispatch, a independent newspaper, in the morning seven days each week, Monday through Sunday including New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas; that I have been duly authorized by the Board of Directors of such corporation to execute this affidavit of publication for and on behalf of such corporation and the newspaper mentioned herein; that the legal advertisement attached in the left margin of this affidavit and made a part hereof and bearing number LH-756 was duly published in

The Herald-Dispatch

one time, once a week for 2 successive weeks, commencing with its issue of the 30th day of May, 1990, and ending with the issue of the 6th day of June, 1990, and was posted at the East Door of Cabell Co. Courthouse

on the 30th day of May, 1990; that said legal advertisement was published on the following dates: May 30, 1990 June 6, 1990

; that the cost of publishing said annexed advertisement as aforesaid was \$20.68; that such newspaper in which such legal advertisement was published has been and is now published regularly, at least as frequently as once a week for at least fifty weeks during the calendar year as prescribed by its mailing permit, and has been so published in the municipality of Huntington, Cabell County, West Virginia, for at least one year immediately preceding the date on which the legal advertisement set forth herein was delivered to such newspaper for publication; that such newspaper is a newspaper of "general circulation" as defined in Article 3, Chapter 59, of the West Virginia Code, within the publication area or areas of the municipality of Huntington, Cabell and Wayne Counties, West Virginia, and

that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper on each date published consists of not less than four pages without a cover; and that it is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

Dianna Webb

Taken, subscribed and sworn to before me in my said county this 6th day of June, 1990

My commission expires 22 March 1992

Ben L. Howard

Notary Public
Cabell County,
West Virginia

State of West Virginia, County of Randolph, ss.

Legal Notice

NOTICE OF PUBLIC HEARING

On Tuesday, July 10, 1990 beginning at 9:15 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed Regulation 22 — "Air Quality Management Fee Program." The hearing will be held in the Commission's Conference Room at 1558 Washington Street, East, Charleston, Kanawha County, West Virginia.

This hearing is open to the public and written and oral testimony by all interested parties will be heard and made a part of the record.

Copies of the proposed Regulation are available for public review in the Elkins-Randolph County Public Library, 416 Davis Avenue, Elkins, West Virginia 26241.

G. Dale Farley

Secretary

West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

5-29, 6-6

I, James Hoffman, Publisher of THE INTER-MOUNTAIN, a newspaper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

May 29 June 05

19 90 as required by law.

Given under my hand this 05 day of June 19 90

James Hoffman
Publisher

Printer's Fee: \$ 18.38

Subscribed and sworn to before me this 05 day of June 19 90

G. Dale Farley
Notary Public

My Commission Expires the 24 day of April 19 94

RECEIVED
JUN -6 AM 10:17
WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

DEIVED

90. 113 AM10.09

VIRGINIA
POLLUTION

I, W. D. Tetrick, publisher of the
NEWS-TRIBUNE, a daily newspa-
per published at Keyser, Mineral
County, West Virginia, hereby cer-
tify that the Notice of Public

Hearing in the case of
Air Quality Management
Fee Program

vs. _____
a copy whereof is hereto annexed has
been published for 2
consecutive weeks
in said NEWS-TRIBUNE, the first
publication being on the 1st
day of June, 19 90

Given under my hand at Keyser
this 8th day of

June, 19 90

Walter D. Tetrick

Publisher

Publisher's Fee 20.65

OFFICIAL SEAL
NOTARY PUBLIC, STATE OF WEST VIRGINIA
A. JUDITH LAYMAN
24 Armstrong St.
Keyser, W.V. 26726
My Commission Expires February 8, 1993

**NOTICE OF
PUBLIC HEARING**

On Tuesday, July 10, 1990 begin-
ning at 9:15 a.m., the West Virginia
Air Pollution Control Commission
will hold a public hearing on pro-
posed Regulation 22 - "Air Quality
Management Fee Program." The
hearing will be held in the Commis-
sion's Conference Room at 1558
Washington Street, East, Charleston,
Kanawha County, West Virginia.

This hearing is open to the public
and written and oral testimony by all

interested parties will be heard and
made a part of the record.

Copies of the proposed Regulation
are available for public review in the
Keyser-Mineral County Public Li-
brary, 105 North Main Street, Key-
ser, WV 26726

G. Dale Farley, Secretary
West Virginia Air
Pollution Control
Commission

1558 Washington St., East
Charleston, West Virginia 25311
6-1, 8

Given under my hand on this
the 11th day of June, 1990.

My commission expires Feb. 8, 1993

A. Judith Layman
Notary Public

NOTICE OF PUBLIC HEARING

On Tuesday, July 10, 1990 beginning at 9:15 a.m., the West Virginia Air Pollution Control Commission will hold public hearing on proposed Regulation 22, "Air Quality Management Fee Program". The hearing will be held in the Commission's Conference Room at 1558 Washington Street, East, Charleston, Kanawha County, West Virginia.

This hearing is open to the public and written and oral testimony by all interested parties will be heard and made a part of the record.

Copies of the proposed Regulation are available for public review in the office of the WV Air Pollution Control Commission, Northern Panhandle Region Office, 11 Warwood Avenue, Wheeling, WV 26003.

G. Dale Farley

Secretary

West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

R. May 30

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I, Linda Miller

for the publisher of the

WHEELING NEWS-REGISTER

~~WHEELING INTELLIGENCER~~

newspapers published in the CITY OF

WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

May 30, 1990

commencing on the 30th day of May, 1990

Given under my hand this 30th day of May, 1990

Linda Miller

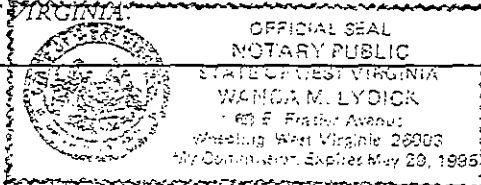
Sworn to and subscribed before me this 30th day of May, 1990 at WHEELING, OHIO COUNTY, WEST VIRGINIA

Linda M. Lydick

Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA

My Commission expires _____



NOTICE OF PUBLIC HEARING

Tuesday, July 10, 1990 beginning at 9:15 a.m., the Virginia Air Pollution Control Commission will hold a public hearing on proposed Regulation 22: "Air Quality Management Fee Program". The hearing will be held in the Commission's Conference Room at 1553 Washington Street, East, Charleston, Kanawha County, West Virginia. The hearing is open to the public and written and oral testimony by all interested parties will be heard and a part of the record. Copies of the proposed Regulation are available for review in the office of the WV Air Pollution Control Commission, Northern Panhandle Region Office, Warwood Avenue, Wheeling, WV 26003.
G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1553 Washington Street, East
Charleston, West Virginia 25311
May 30; June 6

RECEIVED
90 JUL -6 AM 10:38
WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I, Linda Miller for the publisher of the

WHEELING NEWS-REGISTER
~~WHEELING INTELLIGENCER~~

newspapers published in the CITY OF

WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

May 30; June 6, 1990

commencing on the 30th day of May, 19 90

Given under my hand this 6th day of June, 19 90

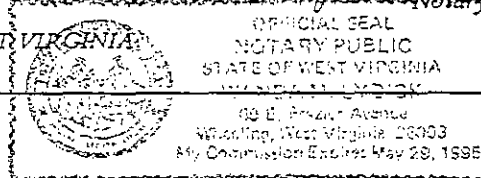
Linda Miller

Sworn to and subscribed before me this 16th day of June, 19 90 at WHEELING, OHIO COUNTY, WEST VIRGINIA

Linda M. Lydick

of, in and for OHIO COUNTY, WEST VIRGINIA

My Commission expires _____



LEGAL NOTICE

NOTICE OF PUBLIC HEARING

On Tuesday, July 10, 1990 beginning at 9:15 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed Regulation 22-"Air Quality Management Fee Program". The hearing will be held in the Commission's Conference Room at 1558 Washington Street, East, Charleston, Kanawha County, West Virginia. This hearing is open to the public and written and oral testimony by all interested parties will be heard and made a part of the record.

Copies of the proposed Regulation are available for public review in the Parkersburg/Wood County Public Library, 3100 Emerson Avenue, Parkersburg, WV 26104.

G. Dale Farley

Secretary

West Virginia Air Pollution Control Commission

1558 Washington Street, East

Charleston, West Virginia 25311

May 30, June 6

Tina Brooks
being first duly sworn, says that the

Notice of Public Hearing
Air Quality Management Fee Program

hereto attached was printed in the Parkersburg News
a daily newspaper published
in the City of Parkersburg, Wood County, West Virginia, and posted
at the front door of the Court House for two
successive weeks, the first publication and posting thereon being on
the 30th day of May, 1990, and subse-
quent publication on the 6th day of June, 1990,
the day of , 19 , the day of
 , 19 , the day of
 , 19 , and the day of , 19 .

Printer's Fee \$15.86
145 Words @ 10.9375

Subscribed and sworn to before me this 6th day of
June, 1990.

Stephen A. Brown
Notary Public for Wood County, West Virginia

My commission expires 2-20-91

State of West Virginia, County of Upshur, ss:

..... Hunter Long Advertising Manager
Record Delta, a newspaper published at Buckhannon in the said county, do hereby
certify that the annexed

Notice of Public Hearing

..... was published once a week for .. two (2) successive weeks in
said Record Delta newspaper published as aforesaid, commencing on the
30th of May and 6th of June days of 19..... 90

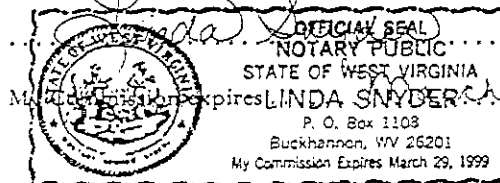
Given under my hand this 11th of June day of 19..... 90

..... Advertising Manager

Printers fee \$. 10.41

WEST VIRGINIA, UPSHUR COUNTY, TO-WIT:

Subscribed and sworn to before me this 11th day of June day of 1990



..... Notary Public.

..... 2-9, 1999

Legal Notice



NOTICE OF PUBLIC HEARING

On Tuesday, July 10, 1990 beginning at 9:15 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed Regulation 22 - "Air Quality Management Fee Program." The hearing will be held in the Commission's Conference Room at 1558 Washington Street, East, Charleston, Kanawha County, West Virginia.

This hearing is open to the public and written and oral testimony by all interested parties will be heard and made a part of the record.

Copies of the proposed Regulation are available for public review in the Gassaway Public Library, 100 Birch Street, Gassaway, WV 26624.

G. Dale Farley
Secretary

West Virginia Air
Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311
5-30.6-6.90





DEPARTMENT OF COMMERCE,
LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol

Charleston, West Virginia 25305

304/348-3255

May 3, 1990

Mr. G. Dale Farley
Secretary
West Virginia Air Pollution
Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

Dear Mr. Farley:

I hereby authorize the Air Pollution Control Commission to initiate the rule-making process for a regulation to establish fees for permits and certificates to operate for designated stationary sources of air pollution in West Virginia.

The Commission is specifically authorized to file proposed WVAPCC Regulation 22 "Air Quality Management Fee Program" with the Office of the Secretary of State and to schedule hearings for the possible promulgation of this rule as an emergency and a permanent rule.

Sincerely yours,

John M. Ranson
Secretary
Department of Commerce Labor &
Environmental Resources

JMM-GDF/tlm