

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: -Air Pollution Control Commission TITLE NUMBER: 45CSR22

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §16-20-5

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR22

TITLE OF RULE BEING AMENDED: "Air Quality Management Fee Program"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: January 7, 1993 TIME: 2:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality

Conference Room

1558 Washington Street, East

Charleston, WV 25311

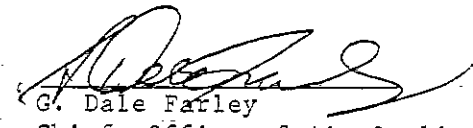
COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Same as above.

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


G. Dale Farley
Chief, Office of Air Quality

5.00-

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR22 - "Air Quality Management Fee Program"

Type of Rule: X Legislative Interpretive Procedural

Agency: Office of Air Quality, Division of Environmental Protection

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next 1993-94	1994-95
Estimated Total Cost	\$ ---	\$ ---	\$22,500	\$28,500	\$22,500
Personal Services	---	---	15,000	15,000	15,000
Current Expense	---	---	7,500	7,500	7,500
Repairs and Alterations	---	---	---	---	---
Equipment	---	---	---	---	---
Other	---	---	---	---	---

2. Explanation of above estimates:

Management of the fee collection and accounting system is accomplished within the existing permits and accounting functions. The estimates shown reflect costs associated with staff time involved in maintaining the facility database accounting, deposit of checks, etc. No increase in fee program management costs should result from the proposed revision to 45CSR22.

3. Objectives of these rules:

The primary purpose of the proposed revisions to 45CSR22 is to provide enough funding above the current and projected FY93-94 monies from general revenue, federal grants, and existing special revenues to enable the Division of Environmental Protection (Office of Air Quality) to add and develop additional staff to implement the operating permit program required by Title V of the federal Clean Air Act and new program requirements under other titles of that Act.

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

The revised Air Quality Management Fee Program is expected to generate approximately \$1,250,000 per year for partial operation of the state's air quality management program. Costs to manage the program are approximately \$22,500.

B. Economic impact on political subdivisions; specific industries; specific groups of citizens.

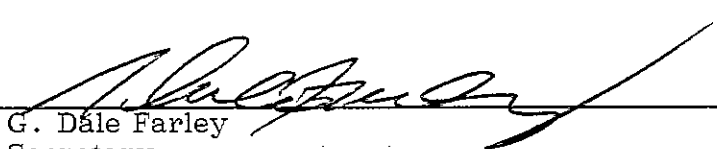
Industrial and commercial facilities subject to air quality regulations and permits will be required to pay annual fees totaling approximately \$1,150,000. In addition, application fees for permits for new facilities would range from \$1,000 to \$20,000 depending upon facility size and complexity. Most permits would cost \$1,000.

C. Economic impact on citizens/public at large.

Minimal economic impacts are projected for the public at large.

Date: November 25, 1992

Signature of agency head or authorized representative:



G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission

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[PROPOSED]

45CSR22
"AIR QUALITY MANAGEMENT FEE PROGRAM"

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SUMMARY

Title V of the Clean Air Act Amendments of 1990 requires that states submit an approvable operating permit program to the U. S. EPA on or before November 15, 1993. The Title V operating permit program is a comprehensive air permitting and fee program which is the centerpiece of the Clean Air Act Amendments of 1990. As part of the Title V operating permit program, states are required to demonstrate that adequate resources are in place for program implementation. The required demonstration of adequate resources must occur prior to the implementation of the Title V air permitting and fee program. As such, additional revenues are needed for the interim period, prior to state enactment and submission to EPA of the Title V program, to allow adequate staff resources to be in place to begin processing permits upon program approval by U. S. EPA. It is anticipated that most of the categories affected by the fee increase contained in 45CSR22 will fall under the comprehensive Title V operating permit and final fee program which must be in place by mid to late 1994. It is further anticipated that Title V sources will drop out of this fee rule (45CSR22) upon implementation of the Title V program which will supersede this proposed amended rule.

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45CSR22

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 45
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION AS PROMULGATED BY
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~~ Office of Air Quality'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. "Chief of Air Quality" or "Chief" means the Chief of the Office of Air Quality or his or her designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of §22-1-1, et seq., of the West Virginia Code.

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

2.45. "Completed Application" means an application submitted with the appropriate fee ~~paid~~ payable to the ~~Commission~~ "Air Pollution Control Commission Fund" and which contains all of the information required by the ~~Director~~ Chief to determine whether a permit or certificate should be issued or denied by the ~~Director~~ Chief.

2.56. "Director" means the Director of the ~~West Virginia Air Pollution Control Commission~~ Division of Environmental Protection or his or her designated representative.

2.7. "Division of Environmental Protection" or "DEP" means that division of the Department of Commerce, Labor and Environmental Resources which is created by the provisions of the West Virginia Code §22-1-1, et seq.

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

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

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

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

2.1012. "NESHAPs" means National Emission Standards for Hazardous Air Pollutants as described in 45CSR15.

2.1113. "Nonattainment Review/~~Bubble Concept~~Emissions Trading" has the meanings as described in 45CSR19.

2.1214. "NSPS" means New Source Performance Standards as described in 45CSR16.

2.1315. "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.

2.1416. "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.

2.1517. "PSD" means Prevention of Significant Deterioration, as described in 45CSR14.

2.1618. "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., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended.

2.1719. "Toxic Air Pollutant" has the meaning described in 45CSR27.

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

3.1. For the 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"~~ regarding pre-construction review in nonattainment areas and emissions trading), 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 or the application fee is included.

b. An application fee paid hereunder is not refundable.

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~~ Emissions Trading 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~~ Emissions Trades for(1) ~~New Major Sources and~~~~---Bubble Plans~~ PSD, Nonattainment
Review, Emissions Trades, or\$ ~~10,000.00~~

20,000.00

(2) Major Modifications

\$ ~~5,000.00~~

10,000.00

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 plant or stationary source of air pollution without first obtaining and having in effect a valid 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 ~~Chief~~ or his duly authorized representative.

~~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 plant for which the certificate pertains is in compliance with all permits issued by the Director or Commission and the Commission's emission regulation.~~

~~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 \$400 payable to the "West Virginia Air Pollution Control Commission Fund".~~

4.2. Changes in ownership.

a. A person who is a new owner or new operator of a plant or stationary source subject to this rule shall not be in violation of this rule for

operating the plant or stationary source under a previous owner's valid and current certificate to operate.

b. A person who is a new owner or new operator of a plant or stationary source subject to this rule shall, within thirty (30) days of the first day of ownership or operation, notify the Chief of the Office of Air Quality that such person has acquired ownership of the plant or is operating the plant. The notice shall provide the following:

- A. The name of the prior operating certificate holder;
- B. The name of the new owner or operator;
- C. The plant's Office of Air Quality identification number; and
- D. The effective date of the change of ownership or operation.

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.

	<u>Fee</u>
Group 1	\$10,000
Integrated Steel Plant	<u>20,000</u>
Electric Utility Plant (rated 300 MW or greater)	
Group 2	\$ 8,000
Primary Aluminum Plant	<u>16,000</u>
Furnace and Foundry Coke Production Plant	
Portland Cement Plant	
Kraft Pulp Mill	

45CSR22

Group 3	\$ 5,000 <u>10,000</u>
Chemical Production Plant with Steam Plant(s) having total design heat input greater than 350 mmBtu/hr	
Hazardous Waste Incinerator	
Electric Utility Plant (rate less than 300 MW)	
Group 4	\$ 4,000 <u>8,000</u>
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 <u>6,000</u>
Chemical Production Plant (three process units or greater)	
Primary Metals Plant (not otherwise listed)	
Group 6	\$ 2,000 <u>4,000</u>
Rocket Fuel Plant	
Chemical Production Plant (less than three process units)	
Carbon Products Plant (not otherwise listed)	

45CSR22

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
	<u>2,000</u>

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

Coil, Can or Sheet Coating Facility

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
	<u>1,000</u>

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 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)

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

Natural Gas Sweetening Plant

Printing Facility
(emitting greater than 150 lbs/day
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. 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.

d. Persons operating on-farm poultry incinerators used to incinerate only remains of poultry produced on-site shall not be subject to the fee schedule of subsection 4.4.a. but shall pay an annual operating certificate fee of \$50.00.

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:

45CSR22

<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

4.6. Penalty.

Any person who operates a plant in violation of the requirements of Section 4 of this regulation shall be subject to a penalty equal to five percent (5%) of the certificate to operate fee for each month of violation and payable to the "Air Pollution Control Commission Fund" 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 or Office of Air Quality pursuant to §16-20-8 for violations of the Code ~~or~~ for the Commission's regulations promulgated by the Commission.

§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.



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

State Capitol, Room R-151
Charleston, West Virginia 25305-0310
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GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

December 2, 1992

G. Dale Farley, Chief
Office of Air Quality
1558 Washington Street, East
Charleston, West Virginia 25311

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DEC 2 4 03 PM '92

FILED

RE: Proposed Rules - Title 45, Series 22 (Proposed Revisions
to Fee Regulation)

Dear Dale:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby
consent to the proposal of the rules specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:cjb
B:RUL-OAQ.APC