

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

FILED
1992 APR 13 PM 12:49
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

Department of Commerce, Labor and Environmental
Resources,

AGENCY: Division of Natural Resources TITLE NUMBER: 47

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

TITLE OF RULE BEING AMENDED: Water Pollution Control Permit Fee
Schedules

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

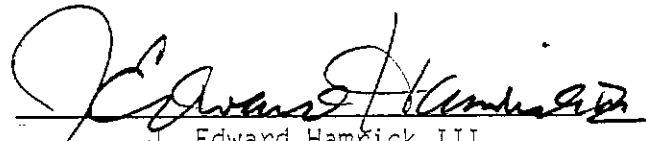
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 1 (1992)

SECTION 64-3-8(tt), PASSED ON April 1, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 13, 1992

April 9, 1992
Date


J. Edward Hamrick III
Division of Natural Resources

3.40

TITLE 47
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF NATURAL RESOURCES

SERIES 26
WATER POLLUTION CONTROL PERMIT FEE SCHEDULES

§ 47-26-1. General.

1.1. Scope and Purpose. -- This legislative rule establishes schedules of permit application fees and annual permit fees for state water pollution control permits and national pollutant discharge elimination system permits issued by the chief of the Section of Water Resources. This rule applies to any person who is required to apply for and obtain a permit from the chief in order to conduct an activity that is enumerated in W. Va. Code §20-5A-5.

1.2. Authority. -- W. Va. Code 20-5A-6a.

1.3. Filing Date. -- April 13, 1992.

1.4. Effective Date. -- April 13, 1992.

1.5. Incorporation by Reference. Whenever federal or State statutes or regulations are incorporated into these regulations by reference, the reference is to the statute or regulation in effect on July 1, 1989.

1.6. Repeal of Formal Rule. -- This legislative rule repeals and replaces 47 C.S.R. 26 "Water Pollution Control Permit Fee Schedules" that was filed on April 5, 1991 and became effective on April 22, 1991.

§ 47-26-2. Definitions.

2.1. "Activity" means an activity for which a permit is required pursuant to the provisions of W. Va. Code §20-5A-5.

2.2. "Average Discharge Volume" or "ADV" means:

2.2.1. For a State water pollution control permit, the flow reported on the permit application.

2.2.2. For a national pollutant discharge elimination system permit for industrial wastes or for other wastes, the sum of the average flows reported on the permit application, as described in 46 C.S.R. 2 §4.4.b.3.

2.2.3. For a national pollutant discharge elimination system permit for sewage, the design flow reported on the permit application.

2.3. "Chief" means the chief of the Section of Water Resources of the Division of Natural Resources of the West Virginia Department of Commerce, Labor and Environmental Resources.

2.4. "Closed System Facility" means a facility that is required by effluent limitation guidelines or other statutory or regulatory mandates to maintain no discharge or to maintain a recycle system or that otherwise maintains a closed system.

2.5. "Customer" means a person who is provided wastewater disposal services from a facility permitted under W. Va. Code §20-5A. For the purpose of these regulations, commercial customers and residential customers other than single family dwellings (e.g., apartment complexes, trailer parks) shall be translated into customer equivalents by dividing their total daily estimated volume of wastewater by three hundred and fifty gallons per day (350 gpd).

2.6. "Existing Facility" means a facility for which a State water pollution control permit or a national pollutant discharge elimination system permit had been issued by the chief prior to July 1, 1989.

2.7. "Facility" means any plant, means, system, disposal field, lagoon, pumping station, constructed drainage ditch, surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, earthen pit, incinerator, solid waste facility, or other works that is installed for the purpose of treating, neutralizing, stabilizing, holding, disposing, or controlling the quality and rate of flow of sewage, industrial wastes, or other wastes.

2.8. "Industrial Wastes" means any liquid, gaseous, solid, or other waste substance, or a combination thereof, resulting from or incidental to any process of industry, manufacturing, trade, or business, or from or incidental to the development, processing, or recovery of any natural resources. The term "industrial wastes" includes the admixture of industrial wastes with sewage or other wastes.

2.9. "Major Facility" means a facility or activity classified as a major facility by the Regional Administrator of the United States Environmental Protection Agency for Region III in joint consultation with the chief.

2.10. "Major Modification" means a modification of an issued permit made in accordance with the provisions of 46 C.S.R. 2 §9.2.b.

2.11. "Minor Modification" means a modification of an issued permit made in accordance with the provisions of 46 C.S.R. 2 §9.2.a.

2.12. "Minor POTW" means a POTW that is not a major facility.

2.13. "New Facility" means a facility for which a State water pollution control permit or a national pollutant discharge elimination system permit had not been issued by the chief prior to July, 1 1989.

2.14. "Other Wastes" means garbage; refuse; decayed wood, sawdust, shavings, bark and other wood debris and residues resulting from secondary processing; sand; lime; cinders; ashes; offal; night soil; silt; oil; tar; dyestuffs; acids; chemicals; heat; and all other materials and substances that are not, by definition, sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the State.

2.15. "Permit" means a State water pollution control permit or a national pollutant discharge elimination system permit issued by the chief.

2.16. "Person" means:

2.16.1. Any industrial user, public or private corporation, institution, association, firm, or company organized or existing under the laws of this or any other state or country;

2.16.2. The State of West Virginia;

2.16.3. Any governmental agency, including federal facilities;

2.16.4. Any political subdivision of this State, including a county commission, municipality, sanitary district, public service district, drainage district, soil conservation district, or watershed improvement district;

2.16.5. Any partnership, trust, or estate;

2.16.6. Any person or individual;

2.16.7. Any group of persons or individuals acting individually or as a group; or

2.16.8. Any other legal entity.

2.17. "Primary Industrial Category" means any industry category listed in Appendix A of 40 C.F.R. Part 122.

2.18. "Priority Pollutant" means any substance listed in 40 C.F.R. §401.15.

2.19. "Publicly-Owned Treatment Works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality as defined by Section 502(4) of the Clean Water Act. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

2.20. "Secondary Industrial Category" means any industry category not listed in Appendix A of 40 C.F.R. Part 122.

2.21. "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments, or other places together with such groundwater infiltration and surface waters as they may be present.

2.22. "Solid Waste Facility" means any system, facility, land, contiguous land, improvements on the land, structures, or other appurtenances or methods used for processing, recycling, or disposing of solid waste including landfills, transfer stations, incinerators, resource recovery facilities, recycling facilities, and other such facilities not herein specified.

2.23. "Toxic Chemical" means:

2.23.1. Any substance listed in Table V of 47 C.S.R. 35;

2.23.2. Any substance listed in Table VI of 47 C.S.R. 35;

2.23.3. Any substance listed in 40 C.F.R. §116.4;

2.23.4. Any substance listed in 40 C.F.R. §302.4;

2.23.5. Any substance listed in 40 C.F.R. §372.65;

2.23.6. Any substance listed in 40 C.F.R. §712.30 or 40 C.F.R. §716.120; or

2.23.7. Any substance for which replicated test data exist to indicate that exposure to that substance poses a risk of injury to human health or the environment.

§ 47-26-3. Fee Assessment and Collection.

3.1. Assessment of Permit Application Fees. Any person who applies for a permit shall pay the appropriate permit application fee in accordance with the provisions of Sections 4 through 6 of these regulations.

3.2. Assessment of Annual Permit Fees. Any person who holds a permit shall pay an annual permit fee in accordance with the provisions of Section 7 of these regulations.

3.3. Method of Fee Payment. All fees assessed under these regulations shall be submitted to the chief by check or money order payable to the West Virginia Division of Natural Resources.

3.4. Collection of Permit Application Fees. The permit application fee shall be submitted to the chief with the permit application. No permit application will be processed until the appropriate fee has been received by the chief.

3.4.1. A person may seek verification of the correct amount of a permit application fee by submitting his calculation of the fee to the chief in writing. This calculation shall be submitted sufficiently in advance of the permit application so that the provisions of 46 C.S.R. 2 §4.3 are met. Within thirty (30) days of the receipt of this calculation, the chief shall notify the applicant of the accuracy of his calculation. If the applicant's calculation is incorrect, the chief shall advise him of the correct amount to be submitted as the permit application fee.

3.4.2. If the chief determines that a submitted application is incomplete and must be returned to the applicant for additional information, the permit application resubmission fee shall accompany the refiled application. This fee shall be either a sum equivalent to five percent (5%) of the permit application fee or fifty dollars (\$50), whichever is greater.

3.5. Collection of Annual Permit Fees. The annual permit fee shall be submitted to the chief by no later than the anniversary of the date of permit issuance in each year of the term of the permit.

3.5.1. A permit will become void if the annual permit fee has not been paid within one hundred and eighty (180) days of the due date.

3.5.2. A permit will not be reissued until all annual permit fees due during the term of that permit have been paid in full.

§ 47-26-4. Initial Permit Application Fees.

4.1. Fee Calculation. Except as provided in Sections 4.2 through 4.4 of these regulations, all initial permit application fees shall be calculated through the use of the following formula: the initial permit application fee shall equal the volume fee multiplied by the facility factor multiplied by the waste factor (i.e., Initial Permit Application Fee = Volume Fee X Facility Factor X Waste Factor).

4.1.1. The appropriate volume fee shall be determined through the use of the "New Facility" column of Table A of these regulations.

4.1.2. The appropriate facility factor shall be determined through the use of Table B of these regulations.

4.1.3. The appropriate waste factor shall be determined through the use of Table C of these regulations.

4.2. Publicly-Owned Treatment Works. The initial permit application fee for a POTW that operates a collection system only shall be two thousand five hundred dollars (\$2,500).

4.3. Closed System Facilities.

4.3.1. The initial permit application fee for a closed system facility where priority pollutants or toxic chemicals are present in the system shall be seven thousand five hundred dollars (\$7,500).

4.3.2. The initial permit application fee for a closed system facility where no priority pollutants or toxic chemicals are present in the system shall be three hundred fifty dollars (\$350).

4.4. Solid Waste Facilities. The initial permit application fee for a solid waste facility shall be set and collected in accordance with the provisions of 47 C.S.R. 38.

§ 47-26-5. Permit Renewal Application Fees.

5.1. Fee Calculation. Except as provided in Sections 5.2 through 5.4 of these regulations, all permit renewal application fees shall be calculated through the use of the following formula: the permit renewal application fee shall equal the volume fee multiplied by the facility factor multiplied by the waste factor (i.e., Permit Renewal Application Fee = Volume Fee X Facility Factor X Waste Factor).

5.1.1. The appropriate volume fee shall be determined through the use of the "Existing Facility" column of Table A of these regulations.

5.1.2. The appropriate facility factor shall be determined through the use of Table B of these regulations.

5.1.3. The appropriate waste factor shall be determined through the use of Table C of these regulations.

5.2. Publicly-Owned Treatment Works. The permit renewal application fee for a POTW that operates a collection system only shall be one thousand dollars (\$1,000).

5.3. Closed System Facilities.

5.3.1. The permit renewal application fee for a closed system facility where priority pollutants or toxic chemicals are present in the system shall be two thousand five hundred dollars (\$2,500).

5.3.2. The permit renewal application fee for a closed system facility where no priority pollutants or toxic chemicals are present in the system shall be one hundred seventy five dollars (\$175).

5.4. Solid Waste Facilities. The permit renewal application fee for a solid waste facility shall be set and collected in accordance with the provisions of 47 C.S.R. 38.

§ 47-26-6. Permit Modification Application Fees.

6.1. Fee Calculation. Except as provided in Sections 6.2 through 6.6 of these regulations, all permit modification application fees shall be calculated through the use of the following formula: the permit modification application fee shall equal the volume fee multiplied by the facility factor multiplied by the waste factor (i.e., Permit Modification Application Fee = Volume Fee X Facility Factor X Waste Factor).

6.1.1. The appropriate volume fee shall be determined through the use of the "Existing Facility" column of Table A of these regulations. Only the discharge volume of the activity affected by the modification shall be used in determining the appropriate volume fee.

6.1.2. The appropriate facility factor shall be determined through the use of Table B of these regulations.

6.1.3. The appropriate waste factor shall be determined through the use of Table C of these regulations.

6.2. Publicly-Owned Treatment Works.

6.2.1. The permit modification application fee for a POTW that operates a collection system only shall be ten percent (10%) of the initial permit application fee for an application seeking a major modification.

6.2.2. The permit modification application fee for a POTW that operates a collection system only shall be two percent (2%) of the initial permit application fee or fifty dollars (\$50), whichever is greater, for an application seeking a minor modification.

6.3. Closed System Facilities.

6.3.1. The permit modification application fee for a closed system facility shall be ten percent (10%) of the initial permit application fee for an application seeking a major modification.

6.3.2. The permit modification application fee for a closed system facility shall be two percent (2%) of the initial permit application fee or fifty dollars (\$50), whichever is greater, for an application seeking a minor modification.

6.4. Solid Waste Facilities. The permit modification application fee for a solid waste facility shall be set and collected in accordance with the provisions of 47 C.S.R. 38.

6.5. Non-Volume-Related Major Modifications. Except as provided in Sections 6.2 through 6.4 of these regulations, the permit modification application fee shall be ten percent (10%) of the initial permit application fee for an application seeking a major modification where no discharge volume is involved.

6.6. Non-Volume-Related Minor Modifications. Except as provided in Sections 6.2 through 6.4 of these regulations, the permit modification application fee shall be fifty dollars (\$50) for an application seeking a minor modification where no discharge volume is involved.

§ 47-26-7. Annual Permit Fees.

7.1. Facilities Discharging Sewage. The annual permit fee for a facility that discharges sewage shall be determined through the use of Table D of these regulations.

7.2. Facilities Discharging Industrial Wastes or Other Wastes. The annual permit fee for a facility that discharges industrial wastes or other wastes shall be determined through the use of Table E of these regulations.

7.3. Publicly-Owned Treatment Works. The annual permit fee for a POTW that operates a collection system only shall be determined through the use of Table D of these regulations.

7.4. Closed System Facilities.

7.4.1. The annual permit fee for a closed system facility where priority pollutants or toxic chemicals are present in the system shall be two thousand five hundred dollars (\$2,500): Provided, That if the chief determines that a facility is in substantial compliance with its existing permit, the fee is one thousand two hundred fifty dollars (\$1,250.00).

7.4.2. The annual permit fee for a closed system facility where no priority pollutants or toxic chemicals are present in the system shall be fifty dollars (\$50).

7.5. Solid Waste Facilities. The annual permit fee for a solid waste facility shall be two thousand five hundred dollars (\$2,500).

TABLE A
Volume Fees

Average Discharge Volume (gallons per day)	Existing Facility Volume Fee	New Facility Volume Fee
less than 1,001	\$50	\$200
1,001 to 5,000	\$100	\$300
5,001 to 50,000	\$150	\$500
50,001 to 100,000	\$200	\$600
greater than 100,000	\$250	\$750

Note: Stormwater runoff shall be included when calculating the average discharge volume of a facility that discharges industrial waste or other waste. Calculations of the average discharge volume for stormwater runoff shall be made in accordance with the provisions of Appendix A of these regulations.

TABLE B
Facility Factors

Type of Facility	Facility Factor
Major Facility	5.0
Primary Industry Category (except Auto and Other Laundries)	5.0
Secondary Industry Category	3.0
Minor POTWs	2.0
Auto and Other Laundries Category	1.0
Facility covered under a General Permit	0.9
All other facilities and activities	1.0

TABLE C
Waste Factors

Type of Waste	Waste Factor
Process Waste	2.0
Sewage	1.7
Contact Cooling Water	1.5
Contaminated Stormwater	1.3
Blowdowns	1.1
Once-Through Cooling Water With Additives	1.1
Once-Through Cooling Water Without Additives	1.0
Uncontaminated Stormwater	1.0
Other Waste	1.0

Note: When an industrial facility discharges more than one type of waste, the highest applicable waste factor shall be used in the calculation of the permit application fee.

TABLE D
 Annual Permit Fees For
 Facilities Discharging Sewage

Number of Customers	Annual Permit Fee
less than 100	\$50
100 to 499	\$100
500 to 999	\$250
1,000 to 1,499	\$500
1,500 to 1,999	\$750
2,000 to 2,499	\$1,000
2,500 to 2,999	\$1,250
3,000 to 3,499	\$1,500
3,500 to 3,999	\$1,750
4,000 to 4,499	\$2,000
4,500 to 4,999	\$2,250
greater than 5,000	\$2,500

TABLE E

Annual Permit Fees For
Facilities Discharging
Industrial Wastes
Other Wastes

Average Discharge Volume (gallons per day)	Annual Permit Fee
less than 1,001	\$50
1,001 to 2,500	\$125
2,501 to 5,000	\$250
5,001 to 10,000	\$500
10,001 to 15,000	\$750
15,001 to 50,000	\$1,000
greater than 50,000	\$2,500

APPENDIX A

Calculation of the Average
Discharge Volume for Stormwater Runoff

The following formula shall be used to determine the average discharge volume for stormwater runoff:

$$\begin{array}{l} \text{Average Discharge Volume} \\ \text{for Stormwater Runoff} \\ \text{(gallons per day)} \end{array} = \frac{\text{Annual Stormwater Runoff Volume}}{366 \text{ days per year}}$$

where Annual Stormwater Runoff Volume (gallons) =

$$\begin{array}{l} \text{Annual} \\ \text{Rainfall} \\ \text{(ft/yr)} \end{array} \times \begin{array}{l} \text{Drainage} \\ \text{Area} \\ \text{(ft-sq)} \end{array} \times \begin{array}{l} 7.48 \\ \text{gallons} \\ \text{per ft-cu} \end{array} \times \begin{array}{l} \text{Runoff Coefficient} \end{array}$$

where the Runoff Coefficient shall be
0.90 for areas covered by concrete or asphalt
and 0.25 for areas covered by vegetation.

Note: An alternative method of stormwater runoff calculation may be substituted for this formula upon approval from the chief.



KEN HECHLER
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(Plus all the volunteer
that we can get)

TO: Frank Pleurie

AGENCY: Division of Natural Resources

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: January 29, 1993

DIV. OF NATURAL RESOURCES
OFFICE OF ENVIRONMENTAL &
REGULATORY AFFAIRS

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 26 TITLE: 47 Division of Natural Resources

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: F. B. Pleurie

TITLE OF PERSON SIGNING: Administrator

DATE: 3/5/93

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.