

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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FILED
1990 JUN -1 4 10:35
DEPARTMENT OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

W Department of Commerce, Labor and Environ-
AGENCY: mental Resources, Division of Natural Resources TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §20-5A-6a

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 26

TITLE OF RULE BEING PROPOSED: _____

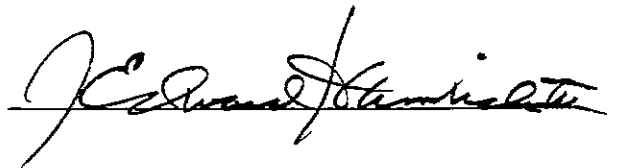
"Water Pollution Control Permit Fee Schedules"

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 2, 1990 AT 4:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

DNR Rule Comments
Room 712, Building 3
State Capitol Complex
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE FOR A PROPOSED RULE

Rule Title: Water Pollution Control Permit Fee Schedules

Type of Rule: Legislative Interpretive Procedural

Agency: Department of Commerce, Labor and Environmental Resources,
Division of Natural Resources

Address: Building 3, State Capitol Complex, Charleston, West Virginia

| 1. Effect of Proposed Rule (Estimated Total Cost) | Increase \$ | ANNUAL | | FISCAL YEAR | |
|--|----------------|----------------|---------------|-------------|------------------|
| | | Decrease \$ | Current \$ | Next \$ | Thereafter \$ |

| | | | | | |
|-------------------------|--|--|--|--|-----------|
| Personal Services | | | | | |
| Current Expense | | | | | |
| Repairs and Alterations | | | | | NO CHANGE |
| Equipment | | | | | |
| Other | | | | | |

2. Explanation of Above Estimates:

This rule provides for the collection of fees for an existing program; no new administrative expenditures are anticipated.

3. Objectives of These Rules:

This rule reduces the annual permit fee assessed upon certain permittees so that a more equitable fee structure will result.

4. Explanation of Overall Economic Impact of Proposed Rule.


A. Economic Impact on State Government: No impact.

B. Economic Impact on Political Subdivisions, Specific Industries, and Specific Groups of Citizens:

Municipalities, mobile home parks, housing subdivisions, and like entities that own or operate wastewater treatment facilities which serve fewer than 1,000 customers will pay lower annual permit fees. Some industrial waste dischargers will also pay lower fees.

C. Economic Impact on Citizens/Public at Large: No impact.

Date:


J. Edward Hamrick III
Director

MEMORANDUM OF CONSENT

TO: J. Edward Hamrick III, Director
Division of Natural Resources

FROM: John M. Ranson, Secretary
Department of Commerce, Labor, and
Environmental Resources

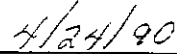
SUBJECT: Consent to File A Proposed Rule

RULE TITLE: "Water Pollution Control Permit Fee Schedules"
(Series 26, Title 47 of the Code of State Rules)

I have reviewed the proposed rule and authorize its filing for public comment in accordance with the provisions of the West Virginia Administrative Procedures Act.



John M. Ranson
Secretary



Date

**PREAMBLE TO A LEGISLATIVE RULE CONCERNING
WATER POLLUTION CONTROL PERMIT FEES**

STATE AGENCY: West Virginia Department of Commerce, Labor and Environmental Resources, Division of Natural Resources

REGULATIONS: Title 47, Series 26, "Water Pollution Control Permit Fee Schedules"

AUTHORITY: West Virginia Code §20-5A-6a

ACTION: Proposed Rule; Notice of Public Comment Period

SUMMARY: The Division of Natural Resources is proposing a legislative rule that would replace a nearly identical rule approved by the Legislature during the 1990 Regular Session. In approving that rule, the Legislature amended the schedule of annual permit fees proposed by the agency in order to ease a perceived financial burden imposed upon small public service districts and municipalities. In amending this schedule to establish fees based upon number of customers, rather than upon volume of discharge as originally proposed by the agency, the Legislature inadvertently raised the minimum fee from \$50 to \$250. As a result, both public and private sewage treatment facilities that serve fewer than 1,000 customers are to be assessed this higher annual fee.

The economic impact on a sewage system serving only a very few customers is apparent. The higher fee can be a detriment to the attraction of new commercial enterprises and the construction of new housing units. In order to prevent substantial harm to the public interest that will result from lost economic development opportunities, the proposed rule subdivides the permit fee structure for facilities serving fewer than 1,000 customers into three smaller categories, with a minimum annual permit fee of \$50 for the smallest facility. For the same reason, this rule also lowers the annual permit fees for those facilities, in particular water treatment works, that discharge relatively small amounts of industrial or other wastes. By these fee reductions, no facility will pay a fee higher than originally proposed by the agency in 1989. In fact, under the proposed rule, many facilities will pay lower fees, thereby reducing economic hardship as was intended by the Legislature.

A public comment period for the proposed rule begins on June 1, 1990 and ends on July 2, 1990 at 4:00 p.m. Written comments may be mailed or delivered to: DNR Rule Comments, Room 712, Building 3, State Capitol Complex, Charleston, West Virginia 25305.

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

FILED
JUN -1 4:35
WEST VIRGINIA
GOVERNMENT OFFICE

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. --

1.4. Effective Date. --

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 Former Rule. -- This legislative rule repeals and replaces 47 C.S.R. 26 "Water Pollution Control Permit Fee Schedules" that was filed on April 10, 1990 and became effective on June 1, 1990.

§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 any 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 Industry 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 Industry 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 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, a 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).

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 or 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) =

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

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.

TITLE 47
LEGISLATIVE RULES
DEPARTMENT 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 a schedule of annual permit fees for state water pollution control permits and national pollutant discharge elimination system permits issued by the chief of the Division 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 10, 1990.

1.4. Effective Date. -- June 1, 1990.

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 3, 1989.

§47-26-2. Definitions.

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

2.2. "Applicant" means a "person" as defined in these regulations.

2.3. "Average Discharge Volume" means:

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

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

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

TO BE REPEALED

2.4. "Chief" means the chief of the Division of Water Resources of the West Virginia Department of Natural Resources.

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

2.6. "Customer" means any person that purchases waste disposal services from a facility permitted under W. Va. Code §20-5A. For the purposes of these regulations, commercial and other non-single family dwelling customers shall be translated into customer equivalents by dividing the total daily estimated volume of waste water by three hundred and fifty gallons per day.

2.7. "Division" means the Division of Water Resources of the West Virginia Department of Natural Resources.

2.8. "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.

2.9. "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.

2.10. "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.

2.11. "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.

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

TO BE REPEALED

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

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

2.15. "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.

2.16. "Other Wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, 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.

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

2.18. "Person" means:

2.18.1. 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;

2.18.2. The State of West Virginia;

2.18.3. Any governmental agency, including federal facilities;

2.18.4. 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;

2.18.5. Any partnership, trust, or estate;

2.18.6. Any person or individual;

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

2.18.8. Any legal entity whatsoever.

TO BE REPEALED

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

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

2.21. "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.

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

2.23. "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 may be present.

2.24. "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.

2.25. "State Agency" means an agency of the executive, judicial, or legislative branch of the government of the State of West Virginia. The term "state agency" does not include county commissions, county boards of education, municipalities, public service districts, or sanitary districts.

2.26. "Toxic Chemical" means:

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

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

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

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

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

TO BE REPEALED

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

2.26.7. 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. Except as provided in Section 3.1.1 of these regulations, any person who applies for a State water pollution control permit or a national pollutant discharge elimination system permit from the chief must pay the appropriate permit application fee in accordance with the fee schedules established in Sections 4 through 6 of these regulations.

3.1.1. A state agency that applies for a permit is exempt from the payment of any permit application fee.

3.1.2. A federal fish hatchery that applies for a permit is exempt from the payment of any permit application fee.

3.2. Assessment of Annual Permit Fees. Except as provided in Section 3.2.1 of these regulations, any person who holds a State water pollution control permit or a national pollutant discharge elimination system permit issued by the chief must pay an annual permit fee in accordance with the fee schedule established in Section 7 of these regulations.

3.2.1. A state agency that holds a permit is exempt from the payment of the annual permit fee.

3.2.2. A federal fish hatchery that holds a permit is exempt from the payment of the annual permit fee.

3.3. Payment of Fees. All fees required under these regulations must be submitted to the Division by check or money order payable to the West Virginia Department of Natural Resources.

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

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

TO BE REPEALED

calculation must 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 Division will notify the applicant of the accuracy of his calculation. If the applicant's calculation is incorrect, the Division will advise him of the correct amount to be submitted as the permit application fee.

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

3.5. Collection of Annual Permit Fees. The annual permit fee must be submitted to the Division 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.

TO BE REPEALED

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).

TO BE REPEALED

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 6.5 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.

TO BE REPEALED

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. Fee Calculation. Except as provided in Sections 7.2 through 7.4 of these regulations, all annual permit fees shall be calculated through the use of Table D of these regulations.

7.2. Publicly-Owned Treatment Works. The annual permit fee for a POTW that operates a collection system only shall be determined using Table D, but in no case shall be less than two hundred and fifty dollars (\$250).

7.3. Closed System Facilities.

7.3.1. 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).

7.3.2. 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).

7.4. 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: In order to determine the average discharge volume for stormwater runoff, see 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
 Schedule of Annual Permit Fees

- Sewage Facilities -

| Number of Customers | Annual Permit Fee |
|---------------------|-------------------|
| less than 1,000 | \$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 |

- Industrial or Other Waste Facilities -

| Average Discharge Volume (gallons per day) | Annual Permit Fee |
|---|-------------------|
| less than 1,000 | \$50 |
| 1,001 to 10,000 | \$500 |
| 10,001 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 may 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) =

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

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

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