

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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1989 JUL -3 11:16 28
OFFICE OF THE SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia Department of Natural Resources TITLE NUMBER: 47

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

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

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

DATE OF PUBLIC HEARING: Wednesday, August 16, 1989 TIME: 1:00 pm

LOCATION OF PUBLIC HEARING: Director's Conference Room 674

Building 3, State Capitol Complex

Charleston, West Virginia

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Department of Natural Resources

Room 712, Building 3

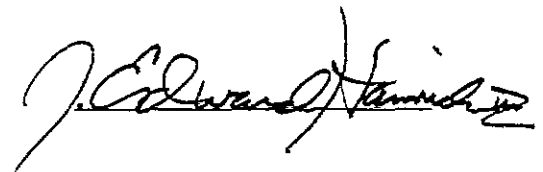
State Capitol Complex

Charleston, WV 25305

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



FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Water Pollution Control Permit Fee Schedules

JUL -3 AM 11:28

Type of Rule: X Legislative Interpretive Procedural

OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES

Agency: West Virginia Department 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 implements the provisions of 1989 House Bill 2677 which established fees paid by permit applicants and holders to fund the review of Water Pollution Control Act permit applications and related permit issuance activities.

4. Explanation of Overall Economic Impact of Proposed Rule.

- A. Economic Impact on State Government: See attachment.
- B. Economic Impact on Political Subdivisions: See attachment.
 Economic Impact on Specific Industries: See attachment.
 Economic Impact on Specific Groups of Citizens: No impact.
- C. Economic Impact on Citizens/Public at Large: See attachment.

Date: June 30, 1989


 J. Edward Hamrick III
 Director

ATTACHMENT TO FISCAL NOTE

Rule Title: Water Pollution Control Permit Fee Schedules

Agency: West Virginia Department of Natural Resources

4. Explanation of Overall Economic Impact of Proposed Rule.

Economic Impact on State Government.

The fees collected under the proposed rule will alleviate significant shortfalls in both staffing and program funding that have produced delays in the processing of permits.

Economic Impact on Political Subdivisions.

City, county, and other governmental agencies which own and operate sewage treatment works will be required to expend funds to pay permit fees. However, these agencies will be able to obtain permits and permit modifications in a shorter time frame as permit fee monies are used to hire additional Department staff to perform permit program activities.

Economic Impact on Specific Industries.

Industries, mobile home parks, housing subdivisions, and like facilities which own or operate wastewater treatment works will be required to expend funds to pay permit fees. However, these parties will also save money currently wasted by delays in obtaining permits and permit modifications as permit fee monies are used to hire additional Department staff to perform permit program activities.

Economic Impact on Citizens/Public at Large.

The fees collected under the proposed rule, by alleviating current staffing and program funding shortfalls, will provide for more timely permit processing and lead to a further reduction of the threat to public health from pollutant discharges to the waters of the State.

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

FILED

JUL -3 4:11:28

STATE AGENCY: West Virginia Department of Natural Resources

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

AUTHORITY: W. Va. Code §20-5A-6a

ACTION: Proposed Rule; Notice of Public Hearing

DATES: A public hearing on the proposed rule will be held on Wednesday, August 16, 1989 at 1:00 p.m. in the Director's Conference Room 674, Building 3, State Capitol Complex, Charleston, West Virginia. Written comments will be received by the Department until the close of the public hearing.

SUMMARY: The Department is proposing a legislative rule to implement the provisions of 1989 Enrolled House Bill 2677 relating to Water Pollution Control Act permit application and annual permit fees. Fees collected under these regulations will be deposited in a special revenue fund known as the Water Quality Management Fund. Fund proceeds will then be used for the review of Water Pollution Control Act permit applications and related permit issuance activities. This rule is also being promulgated on an emergency basis, effective July 3, 1989.

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

FILED

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STATE OF WEST VIRGINIA

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. --

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 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.

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

2.7. "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.

2.8. "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.

2.9. "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.

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

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

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

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

2.14. "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.

2.15. "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.

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

2.17. "Person" means:

2.17.1. 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;

2.17.2. The State of West Virginia;

2.17.3. Any governmental agency, including federal facilities;

2.17.4. 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;

2.17.5. Any partnership, trust, or estate;

2.17.6. Any person or individual;

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

2.17.8. Any legal entity whatsoever.

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

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

2.20. "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.

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

2.22. "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.

2.23. "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.

2.24. "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.

2.25. "Toxic Chemical" means:

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

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

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

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

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

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

2.25.7. 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.

3.2. 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.

3.3. 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. Submitted fees are not refundable.

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 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.

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 6.5 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.

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 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 application fee for a POTW that operates a collection system only shall be seven hundred fifty dollars (\$750).

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	5.0
Secondary Industry Category	3.0
Minor POTWs	2.0
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

Average Discharge Volume (gallons per day)	Annual Permit Fee
less than 1,001	\$50
1,001 to 10,000	\$200
10,001 to 50,000	\$500
50,001 to 100,000	\$1,500
100,001 to 250,000	\$2,000
greater than 250,000	\$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.