

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #3

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FILED  
Dec 1  
1969 ~~NOV 30~~ AM 8 41  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

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

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

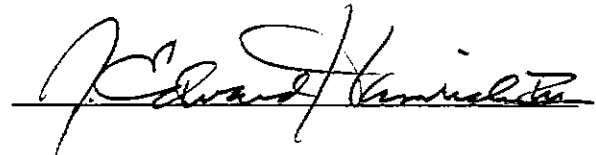
TITLE OF RULE BEING AMENDED: \_\_\_\_\_

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

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

"Water Pollution Control Permit Fee Schedules"

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



FISCAL NOTE FOR PROPOSED RULES

Rule Title: Water Pollution Control Permit Fee Schedules

Type of Rule:  X  Legislative      Interpretive      Procedural

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 Harrick 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.

DATE: December 1, 1989

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Natural Resources

LEGISLATIVE RULE TITLE: Water Pollution Control Permit Fee Schedules

1. Authorizing statute(s) citation:

West Virginia Code Chapter 20, Article 5A, Section 6a

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

July 3, 1989

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

An official Department News Release was sent to all West Virginia newspapers and radio stations.

c. Date(s) of hearing(s): August 16, 1989

d. Attach list of persons who appeared at the hearing, comments received, amendments to the proposed rule, and the reasons for those amendments.

Attached  X  No comments received \_\_\_\_\_

The comments received and the Department's responses appear in the Response to Comments filed with the agency-approved proposed Legislative Rule.

e. Date you filed in State Register the agency-approved proposed Legislative Rule following public hearing:

December 1, 1989

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

Mr. Jeffrey E. Herrold, Regulatory Analyst  
Office of Environmental & Regulatory Affairs  
348-2761

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

**NOT APPLICABLE**

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

\_\_\_\_\_

- b. Date of hearing: \_\_\_\_\_

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

\_\_\_\_\_

- d. Attach findings and determinations and reasons:

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

**STATE AGENCY:** West Virginia Department of Natural Resources

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

**AUTHORITY:** W. Va. Code §20-5A-6a

**ACTION:** Agency-Approved Rule

**SUMMARY:** The Department is approving a new rule to implement the provisions of 1989 Enrolled House Bill 2677 relating to Water Pollution Control Act permit fees. Fees collected under these regulations will be deposited in the Water Quality Management Fund, the proceeds of which will be used to fund the review of permit applications and related permit issuance activities.

**RESPONSE TO COMMENTS:** A public hearing on the proposed rule was held on Wednesday, August 16, 1989 in Charleston; written comments were received by the Department until the close of the public hearing. Twenty-eight interested individuals attended the public hearing, fourteen of whom made statements or submitted written comments for the record. Written comments were also submitted by one individual who did not attend the public hearing. The comments received and the Department's responses appear below:

**General Comments**

**Comment:** Several commenters expressed the opinion that the regulations impose outrageously unfair fees upon small public service districts (PSDs), mobile home parks, and small industry permittees. One commenter stated that the Town of Spencer will pay the same fee as the City of Charleston. Another commenter stated that the Jane Lew PSD will pay \$4.20 per customer in fees while the City of Charleston pays only \$0.12 per customer and recommended the adoption of a fee schedule that is more equitable to small PSDs. A third commenter suggested that a separate category of lower fees should be provided for small permittees.

**Response:** Contrary to the commenters' assertion, lower fees have been established for small (low discharge) permittees. The annual permit fee for wastewater discharges of less than 1,000 gallons per day (gpd) is only \$50; for discharges of 1,001 to 10,000 gpd, only \$200; and for discharges of 10,001 to 50,000 gpd, only \$500. For small PSDs (serving 4,000 people) that discharge these volumes, the per capita costs would be \$0.01, \$0.05, and \$0.13 per year respectively.

All treatment facilities that discharge more than 250,000 gallons per day will be assessed the maximum annual permit fee established by the Legislature -- \$2,500. Obviously, given their large populations, the Cities of Charleston and Huntington will have lower per capita costs than small PSDs and other small permittees. The Department estimates an annual per capita cost of approximately \$0.04 for cities such as Charleston and Huntington. For small PSDs (serving 4,000 people) that discharge more than 250,000 gallons of effluent per day, the annual per capita cost would be approximately \$0.63.

The highest per capita fee presented in public comments received by the Department was \$4.20 per customer per year for the Jane Lew PSD. According to its current permit, the Jane Lew PSD has an average discharge volume of 150,000 gpd and is designed to serve a population of 15,000. Thus, the annual fee assessed upon the Jane Lew PSD will be \$2,000, resulting in an annual per capita cost of \$1.33 (rather than \$4.20) if the treatment works serves the population for which it was designed.

In summation, although the customers of small PSDs are indeed likely to be charged more than their big city brethren, no evidence has been presented to the Department that the charges resulting from these fees will be burdensome. The maximum cost to any citizen should be no more than several dollars per year. The fees assessed pursuant to these regulations create no greater inequities between small PSDs and large cities than already exist. For facilities serving a small population base, the same per capita inequity exists for any expenditure, be it for equipment replacement or for the payment of permit fees.

**Comment:** The fees as proposed are not equitable for seasonal operations since the fees are based upon design flow rather than upon actual discharge volume. For example, a ski resort may operate at only 5% of the design capacity for eight months of the year but still be assessed as if the design flow was discharged year-round.

**Response:** By definition, the average discharge volume for a national pollutant discharge elimination system permit for sewage is the design flow reported on the permit application. Each permit issued establishes effluent limitations designed to ensure, at a minimum, that the appropriate, federally-mandated level of treatment technology is achieved. There are no restrictions in a permit regarding the discharge of effluents during particular time periods -- the permit allows the design flow volume to be discharged year-round, whether or not such volume is actually discharged. Furthermore, attempting to assess an annual fee based upon an intermittent

flow would involve extensive bookkeeping efforts on the part of the permittee and necessitate costly Department oversight.

### Section 3.2.1

**Comment:** The exemption of State agencies from the payment of fees is not expressly provided in House Bill 2677 and should therefore be eliminated.

**Response:** The Department concluded that transferring State monies from one agency to another is not cost-effective. The procedures involved for transferring monies from one account to another cannot be justified for the small amount of additional revenue which might otherwise be deposited in the Water Quality Management Fund. Furthermore, the State Water Resources Board rule on filing fees that will be superceded by these regulations (see 46 C.S.R. 3 §8.5) has exempted State agencies from the payment of fees for many years.

### Section 3.4.2

**Comment:** One commenter objected to the imposition of a resubmission fee in cases where the applicant is not at fault and suggested that no charge be assessed for clarifications. Two commenters expressed the opinion that the Department lacks the statutory authority to impose a resubmission fee. Another commenter asked the Department to define the basis used to determine whether or not an application was complete.

**Response:** Occasionally, an applicant feels that if he has submitted a permit application and that application is on file with the Department, he is then free to go on with business as usual. Such applicants submit permit application forms and attachments with obvious omissions which may not be discovered until substantive review is initiated by the Department. On these occasions, the Department is forced to return the permit application so that the missing information can be provided. This action costs the agency time and money that could be expended on an applicant who is genuinely attempting to comply with the law. The resubmission fee is necessary to cover these costs and only in instances where it is necessary to return an application is the fee assessed. When supplemental information or clarifications are requested and the permit application is not returned to the applicant, no fee is assessed.

On the question of statutory authority, House Bill 2677 is founded upon the premise that appropriate fees will be assessed by the State to cover the costs of processing applications and issuing permits. The review and processing of an application which is not complete involves costs in

addition to those covered by the permit application fee assessed under Section 4 of the regulations.

In regard to determining whether or not an application is complete, W. Va. Code §20-5A-6 states that that "an applicant shall furnish all information reasonably required by any such (application) form, including without limiting the generality of the foregoing, a plan of maintenance and proposed method of operation of the activity or activities. Until all such required information is furnished, an application shall not be considered a complete application." Instructions accompanying the application forms explain what is needed to produce a complete application.

#### Section 4.1

**Comment:** The schedule of permit application fees is to be based upon the complexity of permit review. The permit application review process is more complicated by the number of outfalls than by the volume of discharges. Therefore, the number of outfalls, rather than volume, should be used in the fee calculation. An additional benefit would be gained by encouraging centralized and combined wastewater treatment.

**Response:** The Department disagrees with the commenter for a number of reasons. Agency experience demonstrates that the larger facilities with higher volume discharges have many more sources or potential sources of wastewater pollution that must be considered in the review process. These facilities generally have multiple discharge points as well. They also have more areas where consideration of best management practices must be given. Furthermore, combining discharges does not necessarily provide additional or centralized treatment for the wastewater sources in the discharges. In general, combining discharges merely eliminates the number of pipes running directly into the receiving stream and, in fact, can complicate the situation. If the discharges are combined and no additional treatment is provided, limitations and monitoring requirements at internal outlets as well as the final discharge point may be required.

**Comment:** Power generation stations use large volumes of non-contact cooling water which present a low potential for pollution but, under the current formula, result in high fees. Application fees are to be based upon complexity; large volume does not always increase complexity.

**Response:** A review of current permits shows that all power generation stations in West Virginia generate more than 100,000 gallons of wastewater per day excluding cooling water. Thus, even without considering the quantity of

cooling water used, all of these facilities would be assessed fees based upon the highest volume category established under the regulations. Power generation station wastewaters include low volume wastes such as boiler blowdown and metal cleaning wastes, ash transport wastes, coal pile runoff, and ash pond discharges. These wastes are, by statutory definition, industrial wastes. Thus, the complexity of the application review process for a power generation station permit will relate to volume, type of facility, and type of waste, just as for any other facility, without even considering the cooling water volume involved. It should also be noted that, contrary to claims made by several commenters, non-contact cooling water does have the potential to degrade the State's water not only by means of thermal pollution but also through chemicals (e.g., algaecides) that may be added to that water.

#### Sections 4.4, 5.4, and 7.4

**Comment:** The fees for solid waste facilities imposed under these sections are duplicative of the fees set forth in 47 C.S.R. 38 (Solid Waste Management Regulations).

**Response:** House Bill 2677 provides for permit application fees for any application filed for a State water pollution control permit or national pollutant discharge elimination system permit. The bill also provides for annual permit fees to be assessed for holders of a State water pollution control permit or a national pollutant discharge elimination system permit. Solid waste facilities which apply for or hold such permits are subject to these fees.

The commenter appears to have misinterpreted Sections 4.4 and 5.4 of the regulations, believing that the permit application fee set under 47 C.S.R. 38 is also collected under these regulations (i.e., a double fee assessment). This is not the case. Instead, the Department chose to allow the permit application fee under 47 C.S.R. 38 to be the only application fee assessed upon solid waste facilities. However, Section 7.4 of the regulations does provide for an annual permit fee for solid waste facilities since 47 C.S.R. 38 does not require annual fees. In neither situation is there any duplication of fees.

#### Section 6.1

**Comment:** Two commenters expressed the opinion that the Department lacks the statutory authority by which a permit modification fee may be imposed -- only permit issuance and renewal fees are cited in the enabling statute. One of these commenters further contended that the fee for a major

modification will be the same as the fee for a new or reissued permit and thus be patently unfair. The other commenter requested that this section be deleted or, at a minimum, no fee be charged for a minor modification.

**Response:** W. Va. Code §20-5A-5(b) requires that a permit be obtained from the Department in order to modify a wastewater disposal system, or any part thereof, or to modify any point source in a manner which would cause an increase in the volume or concentration of effluent discharged into the waters of the State. W. Va. Code §20-5A-6 empowers the Chief of the Division of Water Resources to prescribe the form of application that must be submitted in order to obtain a permit for any activity specified in W. Va. Code §20-5A-5, including the aforementioned modifications, and that an application shall not be considered to be complete until all prescribed information is furnished. Again, as stated in a previous response, House Bill 2677 is founded upon the premise that appropriate fees will be assessed by the State to cover the costs of processing applications and issuing permits. The review and processing of an application for a permit modification involves costs in addition to those covered by the original permit application fee assessed under Section 4 of the regulations.

In regard to the contentions that the modification fees are unfair, the commenters may have misinterpreted the manner in which permit modification fees are to be calculated. Only the discharge volume of the activity affected by the modification will be used in determining the appropriate permit modification fee (see Section 6.1.1 of the regulations). Obviously, a fee based upon a portion of the average discharge volume will not be as much as a fee based upon the total average discharge volume. In addition, the regulations do provide for minor permit modifications with only a minimum fee being assessed. Section 6.6 of the regulations establishes a fee of only \$50 for a minor modification where no discharge volume is involved.

Finally, it should be noted that a section concerning non-volume-related major modifications was inadvertently omitted from the proposed rule. A new Section 6.5 has been added to the agency-approved rule as follows:

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.

## Section 7.1

**Comment:** The regulations do not comply with statutory provisions by which the schedule of annual permit fees is to be based upon the relative potential of the permittee's outfall to degrade the waters of the State.

**Response:** The regulations do in fact comply with this statutory provision by correlating the volume of wastewater discharged with the relative potential to degrade the waters of the State. Each permit issued by the chief of Water Resources establishes effluent limitations which represent the appropriate federally-required level of treatment technology of the wastes plus any more stringent effluent limitations necessary to assure that the State's water quality standards are not violated. Since all facilities must meet some specified level of treatment in order to comply with the federal Clean Water Act and the State's regulations, it can be presumed that the concentrations and/or poundages of pollutants allowed to be discharged are considered essentially comparable. Thus, a correlation can be drawn between a higher volume of wastewater discharged and a higher potential to degrade the waters of the State. Establishing the annual permit fee based upon the average volume of discharge is in fact establishing that fee based upon the potential to degrade the waters of the State and therefore in compliance with the statute.

The Department did explore alternative methods of annual fee calculation. The leading alternate method used to assess annual permit fees is the system that has been established by the State of New Jersey. Permit fees in New Jersey are based upon the total quantity of specific pollutants discharged by the permittee and the relative risks associated with the discharge of those pollutants. Initially, a bioassay factor is determined for a discharge. Then an environmental impact value is calculated using a trigonometric formula considering the relative pollutant risk factor for each pollutant, the loading of the pollutant, and the bioassay factor. Finally, using these values and identified constant coefficients for each category of discharge, the fee is calculated through the application of a second equation.

The Department chose not to adopt the New Jersey system despite the fact that this alternative more accurately reflects degradation potential than does the correlation with volume that was adopted instead. The simple reason for rejecting this alternative was the disparity in levels of fees that each state could assess. The State of New Jersey receives large annual fees from its permittees (in excess of \$250,000 from certain facilities) and can therefore afford to expend the resources necessary to obtain pertinent data and make the above referenced determinations. In West Virginia,

the maximum annual permit fee that may be assessed by the Department was capped at a mere \$2,500. If the Department had attempted to use the New Jersey approach, the funds generated would not have been nearly sufficient to cover the costs of compiling the data necessary for performing the above referenced determinations and then administering the bookkeeping and tracking aspects of such a program.

**Comment:** One commenter recommended that the calculation of the annual permit fee should be based upon the average discharge volume which is the sum of the average flows reported in Form 1 of the NPDES permit, as described in 46 C.S.R. 2 §4.4.b.3, or, under State water pollution control permits, the flow reported in the permit application.

**Response:** The method of calculating the annual permit fee already conforms to the commenter's recommendation. Average discharge volume is already defined in Section 2.3 of the regulations exactly as suggested in this comment.

**Comment:** The calculation of the annual permit fee should allow for the reduction of the total average discharge volume by the amount of the average daily volume of uncontaminated stormwater runoff.

**Response:** The regulations cannot provide this reduction and still do what this same commenter recommended in the previous comment. The commenter failed to provide any justification to support his suggestion and, therefore, the Department will not change its formula for calculating annual permit fees.

#### Table B

**Comment:** One commenter contended that a facility factor of 5.0 cannot be justified for some facilities in the Primary Industry Category (i.e., the application of the guidelines may be a very simple process in certain situations) and suggested that a factor of 4.0 for the Primary Industry Category be used instead.

**Response:** The commenter failed to delineate what types or categories of facilities should receive the reduced factor of 4.0 that he advocates. There are still no guidelines for certain primary industry categories and personnel at the U.S. Environmental Protection Agency have expressed the belief that there never will be. Therefore, best professional judgement must be exercised in developing permit effluent limitations and other terms and conditions in these situations. After further consideration, the Department

concludes that there is a primary industry category that should not be assigned a facility factor of 5.0 -- the Auto and Other Laundries Category -- and Table B of the regulations has been revised accordingly.

**Comment:** One commenter suggested that the terms "minor POTWs" and "all other facilities and activities" be defined. He further stated that "all other facilities and activities" would not include facilities on the major facility list or within the primary industry categories and therefore would not likely be covered by effluent guidelines requiring a best professional judgement determination which in turn would justify a factor of 1.0.

**Response:** The term "minor POTW" has in fact been defined in Section 2.13 of the regulations. The commenter errs further when he states that "all other facilities and activities" are those not listed as a "major facility" or a "primary industry." On the contrary, an industry not in either of these groupings would fall under the "secondary industry" grouping. If a situation arises where a facility cannot be placed in one of these three groupings, such a facility would clearly fall under the "all other facilities and activities" grouping. Generally speaking, this grouping covers small sewage treatment works for which at least secondary treatment effluent limitations are applicable.

#### Table C

**Comment:** The waste factor for non-contact cooling water and uncontaminated stormwater should be reduced to a factor that is significantly less than 1.0.

**Response:** To calculate the initial permit application fee, the waste factor from Table C of the regulations is multiplied by the appropriate volume factor and by the appropriate facility factor in order to determine the proper fee. If you multiply those factors by a waste factor of 1.0, you have not changed the fee calculation. Thus, non-contact cooling water and uncontaminated stormwater have been assigned a neutral waste factor. If instead you multiply by a waste factor of less than 1.0, you are reducing the fee significantly. In other words, you would be assigning such wastewaters a positive role in reducing the potential of the combined effluent to degrade the receiving waters. The commenter did not provide any such justification to support his contention and the Department chooses not to modify the waste factors set forth in this table.

Table C continued

**Comment:** Filter backwash water used at a water treatment plant should not be considered to be process waste in the fee calculations (i.e., should not be equated with waste from an industry).

**Response:** Under the State Water Pollution Control Act, wastewaters are by definition either "industrial wastes," "sewage," or "other wastes." The term "industrial wastes" is defined in W. Va. Code §20-5A-2(h) as "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 resource..." Thus, wastewater generated by the processing or recovery of any natural resource -- water in this case -- falls within the definition of industrial wastes and is therefore assessed as a process waste.

TITLE 47  
LEGISLATIVE RULES  
DEPARTMENT OF NATURAL RESOURCES

FILED  
Dec 1  
1989 ~~NOV 31~~ AM 8:42  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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 Agency 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.

3.1.2. 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. 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 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.

~~6-5-~~ 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 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 <u>(except Auto and Other Laundries)</u>	5.0
Secondary Industry Category	3.0
Minor POTWs	2.0
<u>Auto and Other Laundries Category</u>	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

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.

PUBLIC HEARING ATTENDANCE

DATE: August 16, 1989

RULE TITLE: Water Pollution Control Permit Fee Schedules

	NAME	AFFILIATION OR ADDRESS	WOULD YOU LIKE TO MAKE A STATEMENT?	
			Yes	No
1.	James R. Graley Jr	President of WWA. Public Service Dist. Manager of Malden P.S.D.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.	Ralph E. Quables	Mayor, City of Ripley	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.	William Griffith	No. Putnam P.S.D	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4.	Tom Whitt	North Putnam P.S.D	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5.	Hervey Lukis	North Beckley P.S.D.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.	Jeanel Ramsey	Field Rep Nat Rural Water Assn	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7.	A. TOKARZ	Attorney representing Silver Creek Ski Resort	<input checked="" type="checkbox"/>	<input type="checkbox"/>

PUBLIC HEARING ATTENDANCE

DATE: August 16, 1989

RULE TITLE: Water Pollution Control Permit Fee Schedules

	NAME	AFFILIATION OR ADDRESS	WOULD YOU LIKE TO MAKE A STATEMENT?	
			Yes	No
8.	Ron Bird	WV American Water Co		<input checked="" type="checkbox"/>
9.	STEVE GEE	JANE LEW WATER COMMISSION	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
10.	Freeman Nicholson	Glennville W.Va.	<input checked="" type="checkbox"/>	
11.	Jim Ramsey	Burnsville Public Utilities		<input checked="" type="checkbox"/>
12.	D. DeRighi	Franklin PSP		<input checked="" type="checkbox"/>
13.	FRED STOTTLEMYER	West Virginia Rural Water Ass.	<input checked="" type="checkbox"/>	
14.	Bob Foster	WVMA	<input checked="" type="checkbox"/>	

PUBLIC HEARING ATTENDANCE

DATE: August 16, 1989

RULE TITLE: Water Pollution Control Permit Fee Schedules

	NAME	AFFILIATION OR ADDRESS	WOULD YOU LIKE TO MAKE A STATEMENT?	
			Yes	No
15.	Gary A. Jack	Monongahela Power Fairmont	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16.	CHET FLEMING	WV RURAL WATER ASSOC.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17.	GARLAND Wilson	ELK - PINCH PSD ELKVIEW	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18.	W <sup>M</sup> S. HEROLD, JR.	STATE HEALTH DEPT.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
19.	DAVE MONTALI	WV DNR	<input type="checkbox"/>	<input checked="" type="checkbox"/>
20.	JOHN FREDERICKS	WV DNR MOUNTAIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
21.	Tim Carroll	Town of Winfield, Winfield	<input checked="" type="checkbox"/>	<input type="checkbox"/>

PUBLIC HEARING ATTENDANCE

DATE: August 16, 1989

RULE TITLE: Water Pollution Control Permit Fee Schedules

	NAME	AFFILIATION OR ADDRESS	WOULD YOU LIKE TO MAKE A STATEMENT?	
			Yes	No
22.	Janet Kay	Klev. Water Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>
23.	Stanley E. Macey	DNR Water Res	<input type="checkbox"/>	<input checked="" type="checkbox"/>
24.	JOE KOWALSK	KAN. C. PRAUNER & COMM. DEVELOP	<input type="checkbox"/>	<input checked="" type="checkbox"/>
25.	Clark K. Jenson	WASTE TRMT. Co. Hillendale Est	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
26.	Pravin G. Sangani	WV-DNR	<input type="checkbox"/>	<input checked="" type="checkbox"/>
27.	MELONY VAN METER	UNION CARBIDE	<input type="checkbox"/>	<input checked="" type="checkbox"/>
28.	Lacy T. GRADHAM	Shady Spring PSD	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Department of Natural Resources  
Proposed rule: Water Pollution Control Fee Schedules  
January 10, 1990

AMENDMENT:

On page five, Section 3.3, by deleting the following: "Submitted fees are not refundable."

The Committee determined that where smaller cities had submitted disproportionate fees that refunds could be made of the excess.