WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
Form #2

Do Not Mark In This Box

FILED

JUN 21 9 28 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

RULE TYPE: Legislative ; CITE AUTHORITY W.Va. Code §§ 11-6A-4 & 11-10-5

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: Pollution Control Facilities

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

TITLE OF RULE BEING PROPOSED: ___

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 ~~19~~ 24, 1995 AT 5:00 P.M.

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

Legal Division
Dept. of Tax & Revenue
P.O. Box 1005
Charleston, WV 25324-1005

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

James H. Paige III
State Tax Commissioner

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.20

State of West Virginia
Department of Tax and Revenue
TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

GASTON CAPERTON
GOVERNOR

JAMES H. PAIGE III
SECRETARY

FILED

JUN 21 9 28 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

CONSENT TO FILE RULE

June 16, 1995

To Whom It May Concern:

Title of Rule: Pollution Control Facilities.

Title Number: 110

Series Number: 6

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 16th day of June, 1995.

James H. Paige, III
Secretary, Tax and Revenue

STATEMENT OF CIRCUMSTANCES

The primary purpose for amending this rule is to harmonize the rule with S.B. 524.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Pollution Control Facilities.

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: State Tax Division
Address: W-300
State Capitol
Charleston, WV

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$	$	$	$	$
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

This amended rule should not create any additional fiscal impact on Departmental expenses.

3. Objectives of these rules:

The purpose of the amendments is to harmonize the rule with S.B. 524, to include in the rule the two methods for valuing those parts of a pollution control facility which produces a profitable by-product, and to provide additional clarification on the appeal of a determination of the taxation of such a facility.

Rule Title: Pollution Control Facilities.

4. Explanation of Overall Economic Impact of Proposed Rule.

   A. Economic Impact on State Government.

      None anticipated.

   B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

      None anticipated.

   C. Economic Impact on Citizens/Public at Large.

      None anticipated.

Date: June 19, 1995

Signature of Agency Head or Authorized Representative

Robert H. Hoffman

James H. Paige III
Secretary of Tax and Revenue,
State Tax Commissioner

PROPOSED
WEST VIRGINIA LEGISLATIVE REGULATIONS
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 6

POLLUTION CONTROL FACILITIES

---

§ 110-6-1. General.

1.1 **Scope.** - These regulations established general operating procedures for the tax treatment of pollution control facilities.

1.2 **Authority.** - W. Va. Code § 11-6A-4.

1.3 **Filing Date.** -

1.4 **Effective Date.** -

§ 110-6-2. Definitions.

2.1 "Commissioner" means the State Tax Commissioner, or his delegate.

2.2 "Coal waste" means coal waste extracted from a gob pile located in West Virginia.

2.3 "Coal waste disposal power project" means an electrical generation facility designed, constructed or installed to reclaim, burn and dispose of coal wastes in compliance with applicable air and water quality standards and which meets the criteria for financing under W. Va. Code § 13-2C-21.

~~2.2~~ 2.4 "Facility" or "Pollution Control Facility" means any personal property designed, constructed, or installed primarily for the purpose of abating or reducing water or air pollution or contamination by removing, altering, disposing, treating, storing, or dispersing the concentration of pollutants, contaminants, wastes or heat in compliance with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States, the design, construction, and installation of which personal property was approved as a pollution control facility by the Water Resources Division of the Department of Natural Resources or the Air Pollution Control Commission, as the case may be. The definition of facilities eligible for salvage tax treatment shall be strictly construed so as to include only such equipment and devices as are installed primarily and immediately to abate air or water pollution. These items of personal property which may coincidentally comply with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States, but which are primarily installed for plant operations or are productive, ~~or add to the economic value of a business enterprise or have a market value after installation in excess of salvage value,~~ will not be deemed eligible for salvage tax treatment.

For purposes of W. Va. Code § 11-6A-3, with the exception of intangible personal property, furniture, fixtures, inventories, materials and supplies used in the operation of the facility, all items of personal property installed at a coal waste disposal power project are deemed a pollution control facility.

~~2.3~~ 2.5 "Personal Property" means things of value, moveable and tangible, which are the subjects of ownership. ~~This definition is found as a part of West Virginia Code § 11-15-3 and applied to all of Chapter 11.~~ For purposes of these regulations, personal property is deemed to be only machinery and equipment.

~~2.4~~ 2.6 "Moveable", as used in Section ~~2.3~~ 2.5, relates to a device or piece of equipment capable of being moved from one location to another.

~~2.5~~ 2.7 "Salvage Value" means the price for which such facility would sell in place if voluntarily offered for sale by the owner thereof; that is to say, the scrap value of the material of an eligible facility less the cost of removal of said facility. Administratively, salvage value will be five percent of original cost.

§ 110-6-3. Statement of Pollution Control Facilities Tax Treatment.

3.1 Pollution control facilities are required for the protection and benefit of the environment and the general welfare of the public. However, pollution control facilities are considered to be nonproductive, to not add to the economic value of a business enterprise, and to have no market value after installation in excess of salvage value.

~~§ 110-6-3.~~ § 110-6-4. Approval as Pollution Control Facility.

~~3.1~~ 4.1 Any owner or taxpayer requesting salvage valuation for a pollution control facility under the authority of W. Va. Code § 11-6A-3 must receive approval from the appropriate state agency governing the control of air or water pollution. The approval must state that the pollution control facility subject to salvage value consideration is designed, constructed or installed primarily for the purpose of abating air or water pollution, and does abate or reduce water or air pollution in compliance with air or water quality standards prescribed under the laws of this State or the United States.

~~§ 110-6-4.~~ § 110-6-5. **Allocation or Separation of Values.**

5.1 The value of a pollution control facility first placed in operation subsequent to July 1, 1973 is, for the purpose of ad valorem taxation, deemed to be its salvage value.

5.2 When allocating value to a coal waste disposal power project, the salvage value shall be accorded to a portion of the total personal property at the project. That portion shall be equal to the ratio of tons of West Virginia coal waste burned and disposed of at the project to the total tons of coal and coal waste burned and disposed of at the project during the immediately preceding calendar year.

5.2.1 For a project placed in service prior to March 11, 1995 at which the ratio for the calendar year ending December 31, 1994 was less than 70%, the salvage value shall be accorded to 63% of the total personal property at the project for tax years beginning after March 11, 1995, regardless of the actual ratio for any calendar year. The remaining portion of the personal property at the project, but in no event less than 25% of the total personal property at the project, must be accorded full value, that is value without reference to salvage value.

5.3 A facility will not qualify as a pollution control facility under W. Va. Code § 11-6A-5(b) if it burns coal, coal waste or fuel waste obtained from outside West Virginia after March 11, 1995.

~~4.1~~ 5.4 Where the pollution control facility produces a profitable by-product or where a part of such facility is required for the operation of the business without regard to the requirements of state or federal air or water qualify standards, the tax commissioner shall allocate or separate that portion of value attributable to the pollution control activity. Two (2) methods have been developed whereby the Tax Commissioner may accomplish that activity:

5.4.1 **Component Method.**

5.4.1.1 The component method will receive primary consideration as a method of allocation or separation of values of a pollution control facility. The component method of allocation or separation of values requires the identification of the specific item or component of machinery and/or equipment which is used for the purpose of pollution abatement control but which is also an integral part of the production process and the identification of the acquisition cost of the specific item or component. The component thus identified will be appraised at five percent (5%) of acquisition cost. (For example, a conveyor belt system is used to transport fuel to a boiler to produce energy. The conveyor belt line, while not a pollution abatement control device, contains water sprays and is totally enclosed to retard dust during the transportation process. While the belt line is not a pollution abatement control device but an integral part of the production process, the dust conveyors and the water sprays are eligible pollution abatement facilities. The acquisition costs of these items eligible for salvage value treatment are readily discernible and will receive salvage value treatment.)

5.4.1.2 If an item or the cost associated with an item is not discernible, the alternative substitution method would be used.

5.4.2 **Substitution Method.**

5.4.2.1 When acquisition costs for eligible pollution abatement control items or components are not discernible or the items or components' use or purpose are such an integral part of the production process that the specific use or task is not clearly ascertainable, the substitution method will be applied.

5.4.2.2 The substitution method of allocation or separation of valuation is based on the assumption that the value attributable to pollution control is the difference between the value of a similar facility which has the same utility without the pollution abatement attributes and the value of the subject property being appraised which has pollution abatement attributes. (For example, a double-walled pipe used for the transportation of a product from the manufacturing area of the plant to the loading area. A single-walled pipe or other means of transportation is required for the operation of the business whereas the double-walled pipe is twenty-five percent higher than single wall.) The additional cost of the twenty-five percent would represent the value attributable to pollution abatement control for the purposes of ad valorem taxation.

~~§ 110-6-5.~~ § 110-6-6. Recommendation of Values to County Assessor.

~~5.1~~ 6.1 Each county assessor will be notified before December ~~first~~ fifteenth of any eligible facility in his county on the preceding July first assessment day together with the salvage value of each such facility. Said notice will recommend that the assessor use the salvage value provided as the appraised value of such facility.

~~§ 110-6-4.~~ § 110-6-7. Annual List of Eligible Facility Items.

~~6.1~~ 7.1 The tax commissioner, annually before July tenth, will prepare a list of apparatus, equipment and components which ~~are~~ as of that date have been deemed to be eligible for salvage treatment under provisions of Article 6A, Chapter 11 of the Code and these regulations. Such list shall be revised annually to include items made eligible by administrative or judicial decision subsequent to the most recent July tenth list date. This list shall be deemed to be a listing of items contemplated for pollution control facility treatment as authorized in Section 4.1 of these regulations.

~~§ 110-6-7.~~ § 110-6-8. Administrative Remedy.

~~7.1~~ 8.1 ~~Any taxpayer or government official claiming~~ The owner of property properly the subject of a determination of the applicability of Pollution Control Facilities Tax Treatment authorized under Article 6A, Chapter 11 of the West Virginia Code, or the Assessor of the county in which such property is assessed, who claims to be aggrieved or damaged by the tax commissioner by the inclusion or exclusion of a facility or any component thereof, or an allocation of any portion thereof, ~~may~~ shall appeal such action to the commissioner under the authority of West Virginia Code § 11-3-24a. Disputes concerning whether an item of personal property qualifies as a "facility" or "pollution control facility" as defined in Section ~~2.2~~ 2.4 above shall be deemed to be matters of classification or taxability and as such are appealable under the provisions of W. Va. Code § 11-3-24a.