



FILED

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

2003 JAN -8 A 10: 34

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January 08, 2003

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Jessica Welsh
DEP-Water Resources, Office of
1356 Hansford Street
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Water Pollution Control Permit Fee Schedules, 47CSR26**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

FILED

2002 DEC 31 A 9 11

Agency: WV Department of Environmental Protection, Division of
Water Resources

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Subject: Water Pollution Control Permit Fee Schedules, 47CSR26

Date: December 26, 2002

Counsel: Rita A. Pauley

PERTINENT DATES

Filed for public comment: June 25, 2002

Public comment period ended: July 25, 2002

Filed following public comment period: July 26, 2002

Filed LRMRC: July 26, 2002

Filed as emergency: In effect since October 11, 2002 as an
Emergency Rule

Fiscal Impact: No impact to general revenue funds. However, the proposed rule will generate approximately \$600,000 as a result of permit and annual fees assessed to fund the new federal permitting requirements. The agency anticipates reviewing and processing 1,900 to 2,000 new permit applications resulting from the new federal requirements which will require additional personnel.

BRIEF SUMMARY

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 (NPDES) permits issued by the Chief of the Office 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 discharge or dispose of any pollutant into waters of this state.

Changes in federal requirements mandate that by the end of 2002 all covered construction activities which disturb more than one acre of land must have a permit.

Under the current rule, without the proposed amendment, covered activities which disturb more than one acre will be required to pay a \$700.00 application fee. Prior to the change, federal law did not require permits for disturbances of less than three acres. This rule change will create a separate category of one to three acres and fee of \$300.00 for small construction activities which will now be required to apply for and maintain a permit.

ABSTRACT

The proposed rule is being amended. The following is a section by section synopsis of the two proposed changes to the rule.

Section 2 is the definition section which is being amended to include "Minor Construction Activity". "Minor Construction Activity" means any activity which disturbs an area equal to one acre of land but less than three acres.

Section 4 contains the initial permit application fees. The proposed change creates a new subsection, 4.5, which establishes the initial permit fee for a minor construction activity of \$300.00.

AUTHORITY

Statutory authority: W.Va. Code, §22-11-4, which provides, in part, as follows:

(a) In addition to all other powers and duties the director has and may exercise, subject to specific grants of authority to the chief or the board in this article or elsewhere in this code, the following powers and authority and shall perform the following duties:

(16) To adopt, modify, repeal and enforce rules, in accordance with the provisions of chapter twenty-nine-a of this code: (A) Implementing and making effective the

declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in the director and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; and (C) facilitating the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: Provided, That no rule adopted by the director shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant; and

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.