

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF THE SECRETARY OF STATE WEST VIRGINIA

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: DIVISION ENVIRONMENTAL PROTECTION
OFFICE WATER RESOURCES TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY 22-11-10

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

TITLE OF RULE BEING AMENDED: Water Pollution Control
Permit Fee Schedule

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 21, 1999 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: DEP - OFFICE OF WATER RESOURCES/Conference Room
1201 Greenbrier Street
Charleston, WV 25301

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

DEP Office Water
Resources
1201 Greenbrier Street
Chas., WV 25301

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

ATTN: JERRY RAY

Carrie J. Chambers
Authorized Signature

7.00



Executive Office
10 McJunkin Road
Nitro, West Virginia 25143-2506
Telephone: 304-759-0515
Fax: 304-759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

June 14, 1999

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

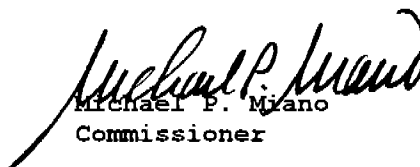
RE: 47CSR26 - "WATER POLLUTION CONTROL PERMIT FEE SCHEDULE"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office as "Notice of Public Hearing/Comment Period."

If you should have questions or require additional information, please contact Carrie Chambers in my office at 759-0515. Your cooperation in this regard is very much appreciated.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Barbara Taylor
Jerry Ray
Carrie Chambers

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
BRIEFING DOCUMENT**

Rule Title: WATER POLLUTION CONTROL PERMIT FEE SCHEDULES

A. AUTHORITY: WV Code Chapter 22, Article 11

B. SUMMARY OF RULE:

This rule proposes to double the permit application fees and annual permit fees for all facilities applying for or holding water pollution control permits or national pollutant discharge elimination system permits for all facilities except those discharging sewage and aquaculture facilities.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

House Bill 2684 passed on March 11, 1999 requires the director to promulgate an emergency rule by July 1, 1999 to implement the fee schedules authorized by the amendment to the WV Code, Chapter 22, Article 11, Section 10. The revenues generated from these fee increases will allow the Office of Water Resources to maintain its current permitting staff.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

There is no federal counterpart regulation.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

"In accordance with §22-1A-1 and 3(c), the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America."

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

This proposed rule was reviewed by the DEP Advisory Council at their meeting on June 10, 1999, and was recommended to the Director for filing as amended.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

June 10, 1999, Director's Conference Room, Nitro

The sixteenth meeting of the DEP Advisory Council was held Thursday, June 10, 1999, in the Director's Conference Room located in Nitro. Chairman Mike Miano called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Miano, Chairman
Jacqueline Hallinan
William Raney
Rick Roberts
William Samples

Environmental Protection:

Bill Adams	Pam Nixon
Andy Gallagher	Rocky Parsons
Tony Grbac	Cap Smith
Randy Huffman	Charlie Sturey
Mike Johnson	Barbara Taylor
Mike Lewis	Karen Watson
Robert Keatley	Mike Zeto

1) Review and Approval of March 22, 1999 Minutes. Chairman Miano called the meeting to order at 10:00 a.m. The first item on the agenda was approval of the minutes of the March 22 Advisory Council; they were approved as written.

2) Discussion of Proposed Rule Amendments - 2000 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's new rule-making procedure that was implemented by Director Miano in September 1998 to involve the Advisory Council in DEP's rule-making process as early as possible to enable the Council to review, comment, and make recommendations to the Director on DEP's proposed legislative rule changes before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

Chairman Miano said he would like to begin by saying he hoped all Council members had received their draft rules by E-mail without any complications and they were able to review them before the meeting. He informed the Council that due to the large number of rules being proposed for the 2000 Legislative Session, DEP's program offices would review them with the

Council as thoroughly as possible, in the allotted time frame, and try to answer any questions or concerns the Council may have.

The following Office of Air Quality's proposed rule amendments were discussed by Karen Watson, OAQ, with assistance from Richard Keatley, also from the OAQ office:

- **45CSR1 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE DISPOSAL AREAS"**
- **45CSR2 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS"**
- **45CSR3 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF HOT MIX ASPHALT PLANTS"**
- **45CSR4 - "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"**
- **45CSR5 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS"**
- **45CSR6 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE"**
- **45CSR7 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MANUFACTURING PROCESSES AND ASSOCIATED OPERATIONS"**
- **45CSR10 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF SULFUR OXIDES"**
- **45CSR12 - "AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE"**
- **45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"**
- **45CSR17 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER"**
- **45CSR18 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM DIRECT MEAT-FIRING DEVICES"**
- **45CSR23 - "TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS"**
- **45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES"**
- **45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"**
- **45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"**

Karen began by bringing the Council up to date on the status of two OAQ rules that were filed during the last session (or late in the session). 45CSR8 revised the ambient air quality for sulfur oxides and particulate matter, and 45CSR9 pertained to ambient air quality standards for carbon monoxide and ozone. The DC Circuit Court of Appeals has ordered EPA to show how they arrived at the new standards - EPA may go back to the previous standards. Karen also apprised the Council on the N_{ox} State Implementation Plan. The Circuit Court stayed the implementation of that rule and there are no plans to develop any other amendments in the

immediate future. 45CSR28, which is the emissions trading rule that was filed late in the 1999 Session, was not taken up by the Legislature, but plans are to put the rule on the July agenda of the Interim Legislative Committee.

Karen explained the reason for the unusually large number of DEP rules that are being filed for the next Legislative Session. She informed the Council that several of the rules were outdated and were amended for consistency and streamlining, and are a result of months of on-going meetings with stakeholders -- involving both the regulated community and citizens. A particulate matter and sulfur oxide work group was also involved. Those rule amendments as a result of the stakeholders process include: 45CSR1 (which is being repealed and replaced with language in 45CSR5), 45CSR2, 3, 4, 5, 6, 7, 10, 12, 17, and 18 (which is being repealed since the rule is no longer deemed necessary). The amendments to the remainder of the rules, 45CSR16, 23, 25, 33, and 34 were necessary to adopt by reference definitions, clarifications, technical amendments, etc., recently adopted by US EPA.

After several minutes of discussion, the Advisory Council recommended to the Director that the following amendments be made to the OAQ rules:

Mr. Samples pointed out that 45CSR2 and 45CSR7 contain different definitions for the term "opacity." The agency responded that this discrepancy was inadvertent and the language should be as it is in 45CSR2. The agency agreed to revise 45CSR7, subsection 2.23, accordingly.

Mr. Larry Harris was unable to attend the meeting; however, he expressed the following comments on 45CSR10 and 45CSR33 by e-mail. He stated that the State's rules should be more stringent than the federal counterpart regulations, since the State's streams are being adversely impacted. The agency responded that, at this point in time, it does not possess sufficient evidence to make the written finding that is required by WV Code §22-2-3a before promulgating a rule which is more stringent than a counterpart federal regulation.

Cap Smith and Mike Zeto discussed the following Office of Waste Management proposed rule amendments:

- 33CSR2 - "Sewage Sludge Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"

Mike Zeto briefed the Council on the proposed amendments to 33CSR2. He stated that in 1996 the Legislature mandated DEP to perform a study on soil limitations for sewage sludge land application sites. These amendments (as a result of the study) were to be proposed by June 30, 1999. Other amendments to the rule include specifying the analytical method used for soil analysis, placing conditions on variances from the soil limits for land application sites, providing an incentive for municipalities to produce higher quality compost products, and adjusting the sewage sludge limits for four metals. Mr. Zeto told the Council these amendments are being proposed to update other related areas of the rule in an attempt to provide better management of sewage sludge within the state.

Cap Smith discussed 33CSR20 with the Council. He informed the Council that amendments are proposed in section 2 of the rule that will allow the Office of Waste Management to delist hazardous wastes, which has previously been handled by EPA. The other significant amendments that are being proposed by adoption of the Federal Register pertain to revision standards for owners and operators of closed and closing hazardous waste management facilities, post closure permit requirements, and the closure process. These amendments are referenced throughout the rule and will hopefully expedite site cleanup while maintaining environmental protection.

There were several minutes of discussion on OWM's proposed rule amendments; however, no recommendations were made to the Director concerning the amendments.

Mike Lewis, Office of Oil and Gas, discussed the following new proposed rule:

- **35CSR7 - "Well Operations - Within and Around Gas Storage Reservoirs"**

Mike informed the Council that 35CSR7 is a proposed "new" rule for the O&G Office. The rule is needed to provide protection of the environment, the public, and the state's natural gas resources. It is the intent of the proposed rule to accomplish this by addressing certain operating procedures that oil and gas and gas storage operators are to use when drilling into or through a gas storage reservoir or the gas storage reservoir protective area. In order to assure absence of leaking gas, the proposed rule requires gas storage operators to conduct monitoring and inspections of gas storage wells.

There were no questions or discussion by the Council on this proposed rule.

The following proposed rules were discussed by the Office of Mining and Reclamation:

- **38CSR2 - "Surface Mining and Reclamation Rule"**
- **38CSR2A - "Rules for Mining and Restoration for Sandstone, Limestone, and Sand"**
- **38CSR2B - "RULES FOR MINING AND RECLAMATION OF MINERALS OTHER THAN COAL"**

Ed Griffith, Office of Surface Mining, discussed the proposed amendments to the Surface Mining and Reclamation Rule. Ed told the Council that there are only minor amendments being proposed to this year's rule. The proposed definition of "woodlands" in subsection 2.136 relates to the utilization of commercial woodlands in Approximate Original Contour variance areas. This change is being proposed in order for the state to meet the federal policy that is expected to change in July 1999. The proposed amendment to change the bonding requirements of mining operations that request variances from contemporaneous reclamation to the maximum amount per acre bond (\$5,000 per acre) is found in subdivision 14.15.f. All other amendments are being proposed in order to meet the requirements of the Office of Surface Mining's program amendments.

Rocky Parsons, OMR's Philippi Office, next addressed OMR's proposed rules 38CSR2A and 2B. Rocky explained to the Council members that 38CSR2B has been in place since 1983 and regulates all minerals other than coal. However, in accordance with the requirement that separate rules for limestone, sandstone, and sand are to be promulgated, DEP is proposing

38CSR2A which will regulate only those minerals - 38CSR2B will regulate all minerals other than limestone, sandstone, sand, and coal. Both proposed rules will regulate roads, blasting, drainage control, methods of operation, excess spoil disposal, revegetation, mapping, transfer of permits, permit renewals, revisions and incidental boundary revisions. 38CSR2A will provide provisions for restoration and 38CSR2B will include provisions for reclamation. Rocky gave the Council a brief history on the roadblocks the agency has encountered in the past several years in their attempt to amend the quarry statute. He said since the agency has been unsuccessful in that approach, it has become necessary to try to accomplish this through rule making. He informed the Council of a public meeting held the previous week to discuss the two proposed rules. He said the meeting was well attended and he believes the rules were well received by everyone in attendance.

The three OMR proposed rules were discussed by the Council members. Bill Raney said that although Rocky stated that the quarry rules have been well received by industry and the citizens, he is concerned about whether there has been enough time for the review of the proposed rules after they were drafted. He believes there would be a smoother transition into the rule making process, i.e., the public hearing/comment period, etc., if there had been more involvement from outside DEP during the drafting of the rules.

Mr. Larry Harris commented by e-mail 38CSR2A and 2B. His question is whether the siltation measures include silt fences where runoff might enter streams. He said it is not apparent what best management practices are for this situation, and he wonders if it needs to be spelled out. He knows of some operations in quarries where streams muddy after rainfalls, such as the Elkins and Waco quarries near Snowshoe, and he feels this is harming the streams. Do the new rules address this?

Rocky Parsons responded by saying that design criteria for drainage control structures is found in the technical handbook. Silt fences are not adequate for sediment control. The drainage system must be designed to hold .125 ac/ft of sediment for each acre of disturbed land. All runoff must pass through a drainage control structure. There is a provision for less sediment control (1/2 factor) for certain circumstances as approved by the Director. Effluent limits as established in the NPDES permit must be met.

Tony Grbac, Office of Surface Mining, addressed the following rule:

199CSR1 - "SURFACE MINING BLASTING RULE"

Tony began by briefing the Council on the history of the Surface Mining Blasting Rule. This rule is being proposed to comply with SB681 - passed during the last session. This bill created the Office of Explosives and Blasting and the Office of Coalfield Community Development, which is under the West Virginia Development Office. The proposed rule will regulate blasting laws and rules associated with all surface-mining operations. All duties currently performed by OMR related to blasting, and all rules which now regulate blasting (38CSR2C) will be transferred to this new office. Besides regulating blasting on all surface mining operations, it will also implement and oversee pre-blast survey processes; maintain and operate a system to receive and address questions, concerns and complaints relating to mining

operations; determine the qualifications for individuals and firms performing pre-blast surveys; establish the education, training, examination and certification of blasters; administer a claims process for property damage caused by blasting; and conduct a study of blasting and make recommendations regarding any appropriate rule or code changes.

Tony explained that the revenue generated by the proposed fee in 199CSR1 (one-half cent times the number of pounds of explosive material used during the preceding month for any purpose on the surface mining operations) would fund both the offices, as required by SB681. After one year of collection, both offices are to report to the Legislature as to whether the revenue collected is sufficient to operate both offices.

After several minutes of discussion between DEP and the Council members, Bill Raney expressed his concern in filing the rule for public hearing in the specified time frame. Mr. Raney asked if anyone outside DEP has been involved in drafting the rule. OMR answered by saying the rule was drafted by several staff within OMR. Mr. Raney replied that he believes there will be serious concerns with this rule once industry has had an opportunity to review it. He believes the rule drafting process definitely needs input from firms and individuals outside DEP, and he thinks the process will go smoother once everyone has had the opportunity to address their concerns. Mr. Raney recommended that the Director withhold this rule from the list of rules DEP proposes to file for public hearing/comment period in the coming week to give all interested parties a chance to participate in drafting the rule.

After discussion of this recommendation, Chairman Miano said he believes the best approach would be to continue with the filing of the proposed rule for public hearing, start the rule in the normal process and time frame, and in the meantime he would commit to putting together a work group of interested parties to discuss the rule. If DEP feels that more time is needed once the group begins their work on the rule, he will consider the possibility of either extending the comment period or filing for another public hearing. He said he will also decide in the near future whether DEP will file the rule as an "Emergency Rule" since HB 681 will become effective on June 11.

Council members also pointed out a typographical error in subdivision 3.9.a.3. of the rule relating to cross-references that will be corrected by DEP.

Barb Taylor and Mike Johnson, Office of Water Resources, briefed Council on the following rules:

- 47CSR57A - "Groundwater Protection Standards at Steam Electric Generating Facilities"
- 47CSR26 - "Water Pollution Control Permit Fee Schedule"
- 47CSR31 - "State Water Pollution Control Revolving Fund Program Rule"

Barb described the proposed "new" rule relating to Groundwater Protection Standards at Steam Electric Generating Facilities. She noted that the rule is a result of a Notice of Intent filed on October 24, 1994, by the West Virginia Steam Electric Generation Industry, with the Director of DEP, in accordance with 47CSR57 to apply for a class variance for all West Virginia power stations and associated disposal sites. At that time, DEP provided AEP and AP with the

opportunity to conduct a four-year study to gather the necessary data to support their variance request. The objectives were met by assembling and reviewing data, estimating potential impacts to receptors, and performing an economic assessment impact analysis to the industry, commercial enterprises, and citizens at large if compliance with the Groundwater Protection Act were required without benefit of the variances. After review of the four-year study, the Director determined that granting this request for a variance at these locations would not pose adverse effects to human health or the environment. There are no human or environmental sensitive receptors between the coal storage areas or as ponds; therefore, it is unlikely there will be adverse affects. Barb gave each member a copy of the four-year study on which the Director made his determination.

Chairman Miano told Council that DEP is definitely willing to look at such cases where extensive research and study have been done by the regulated community to back up their findings before granting such variances, and believes DEP will see more studies like this in the future.

Barb next apprised the members on the proposed amendments of the Water Pollution Control Permit Fee Schedule. She stated that amendments are being proposed as a result of HB 2684, passed March 11, 1999, and effective ninety days from passage. The Director is required to implement an emergency rule to implement the fee schedule authorized by the amendments by July 1, 1999. This rule was filed as an "Emergency Rule" on June 7, 1999.

Mike Johnson, Office of Water Resources' Construction Assistance Office, briefed the Council on 47CSR31 - the Water Pollution Control Revolving Fund Program rule. The amendments to this rule are being proposed to allow the State Revolving Fund low interest terms to be extended from 20 years to 30 years for communities that qualify as "disadvantaged." There is only one other state in the country to receive such approval from EPA. Mike informed the Council that he was only recently made aware of this extension by EPA to extend the low interest loans from 20 to 30 years while attending a meeting out of state. This rule was filed as an "Emergency Rule" on May 24, 1999.

Council members unanimously agreed that Mike Johnson should be commended for gathering this information and proposing the amendment to the rule that will enable disadvantaged communities to immediately take steps toward constructing watershed projects that will provide affordable monthly sewer rates.

Open Discussion:

Chairman Miano and Council members expressed their compliments to the program offices for all their hard work, especially with the stakeholders process -- it is obvious a lot of hard work has gone into the process in order to make their efforts more productive.

Bill Raney asked a question relating to the "More or Less" Stringency statement that appears on the front of some DEP rules, but not on others, and voiced his concern if DEP is paying close attention to this, or if the same statement is appearing with all proposed rules. Carrie Chambers from the Director's Office explained that statement was once required to be included in the "General" section of each rule; however, it is now placed in the briefing document that is attached to each rule, and required by the Secretary of State's Office and the

Legislative Rule-Making Review Committee, before it is filed. She went on to explain that with the rush to get draft copies of the rules to Council members as soon as possible, some of the Briefing Documents had not been completed, but would be attached to all DEP rules before they are filed for public hearing. Chairman Miano went on to say it is his belief that all program offices are carefully scrutinizing each rule before that decision is made.

Chairman Miano thanked Council for taking time from their busy schedules to review the extensive list of DEP's proposed rules. He informed the Council that the minutes would be left open for comment until Wednesday, June 16, at which time the minutes will be attached to the rules and filed with the Secretary of State's Office and the Legislative Rule-Making Review Committee for notice of public hearing/comment period.

Before adjourning the meeting, the Council informed Chairman Miano that they would prefer beginning future meetings at 10:00 a.m., instead of the usual time of 1:00 p.m. The meeting was then adjourned at 3:30 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: WATER POLLUTION CONTROL PERMIT FEE SCHEDULES

Type of Rule: X Legislative Interpretive Procedural

Agency DIVISION OF ENVIRONMENTAL PROTECTION

Address 10 McJUNKIN ROAD
NITRO, WV 25143

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$	\$	\$	\$ 460,000	\$ 690,000
PERSONAL SERVICES				315,100	472,650
CURRENT EXPENSE				142,140	213,210
REPAIRS & ALTERNATIONS				2,760	4,140
EQUIPMENT				0	0
OTHER				0	0

2. Explanation of above estimates:

In accordance with the Stakeholder Agreement signed December 10, 1998, the proposed rule would generate an additional \$690,000 per year from permit application fees and annual permit fees charged to facilities handling industrial wastes which are applicants and holders of water pollution control permits. The proposed rule would allow the permit holder 90 days to pay the annual fee after being billed, therefore we would project that in the first year only about two-thirds of the increased revenue would actually be collected.

3. Objectives of these rules:

The increase in revenue provided by this rule would assist toward offsetting the current shortfall in agency resources, as confirmed by the Stakeholder Agreement, to implement the water pollution control permit program as required by statute and implementing rules.

Rule Title: WATER POLLUTION CONTROL PERMIT FEE SCHEDULES

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The fees associated with this rule are paid by permit applicants and permit holders and are therefore user fees. Consequently, there will be no additional associated costs to the State.

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

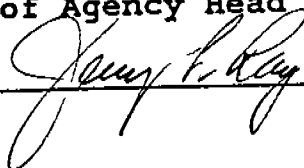
Only dischargers of industrial waste will be impacted by this rule, as their permit fees will be doubled, to which they have already agreed.

C. Economic Impact on Citizens/Public at Large.

There is no impact on the citizens or public at large due to this rule.

Date: 6/14/99

Signature of Agency Head or Authorized Representative



TITLE 47
LEGISLATIVE RULE
BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES

77 20
Jan 17 11 13 AM '99
OFFICE OF THE SECRETARY OF ENVIRONMENTAL PROTECTION

SERIES 26
WATER POLLUTION CONTROL PERMIT FEE SCHEDULES

§ 47-26-1. General.

1.1. Scope and Purpose. -- This legislative rule establishes schedules of permit application fees and annual permit fees for state water pollution control permits and national pollutant discharge elimination system permits issued by the chief of the 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 conduct an activity that is enumerated in W. Va. Code §22-11-8.

1.2. Authority. -- W. Va. Code §22-11-10.

1.3. Filing Date. -- ~~July 1, 1993.~~

1.4. Effective Date. -- ~~July 1, 1993.~~

1.5. Incorporation by Reference. Whenever federal or State statutes or regulations are incorporated into this rule by reference, the reference is to the statute or regulation in effect on ~~July 1, 1989.~~ the effective date of this rule.

1.6. Repeal of Formal Rule. -- This legislative rule repeals and replaces 47 C.S.R. 26 "Water Pollution Control Permit Fee Schedules" that was filed on April 13, 1992 and became effective on April 13, 1992.

§ 47-26-2. Definitions.

2.1. "Activity" means an activity for which a permit is required pursuant to the provisions of W. Va. Code §22-11-8.

2.2. "Average Discharge Volume" or "ADV" means:

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

2.2.b. For a national pollutant discharge elimination system permit for industrial wastes or for other wastes, the sum of the average flows reported on the permit application, as described in 47CSR10, paragraph 4.4.b.3.

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

2.3. "Chief" means the chief of the Office of Water Resources of the Division of Environmental Protection of the West Virginia Bureau of Environment.

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

2.5. "Customer" means a person who is provided wastewater disposal services from a facility permitted under W. Va. Code §22-11. For the purpose of these regulations, commercial customers and residential customers other than single family dwellings (e.g., apartment complexes, trailer parks) shall be translated into customer equivalents by dividing their total daily estimated volume of wastewater by three hundred and fifty gallons per day (350 gpd).

2.6. "Existing Facility" means a facility for which a State water pollution control permit or a national pollutant discharge elimination system permit ~~had been issued by the chief prior to July 1, 1989.~~ has been previously issued by the chief.

2.7. "Facility" means any plant, means, system, disposal field, lagoon, pumping station, constructed drainage ditch, surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, earthen pit, incinerator, solid waste facility, or other works that is installed for the purpose of treating, neutralizing, stabilizing, holding, disposing, or controlling the quality and rate of flow of sewage, industrial wastes, or other wastes.

2.8. "Industrial Wastes" means any liquid, gaseous, solid, or other waste substance, or a combination thereof, resulting from or incidental to any process of industry, manufacturing, trade, or business, or from or incidental to the development, processing, or recovery of any natural resources. The term "industrial wastes" includes the admixture of industrial wastes with sewage or other wastes.

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

2.10. "Major Modification" means a modification of an issued permit made in accordance with the provisions of 47CSR10, subdivision 9.2.b.

2.11. "Minor Modification" means a modification of an issued permit made in accordance with the provisions of 47CSR10, subdivision 9.2.a.

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

2.13. "New Facility" means a facility for which a State water pollution control permit or a national pollutant discharge elimination system permit ~~had not been issued by the chief prior to July 1, 1989.~~ has not been issued previously by the chief. This definition includes a new entity at a site for which a

previous entity may have held a water pollution control permit or a national pollutant discharge elimination system permit.

2.14. "Other Wastes" means garbage; refuse; decayed wood, sawdust, shavings, bark and other wood debris and residues resulting from secondary processing; sand; lime; cinders; ashes; offal; night soil; silt; oil; tar; dyestuffs; acids; chemicals; heat; and all other materials and substances that are not, by definition, sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the State.

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

2.16. "Person" means:

2.16.a. Any industrial user, public or private corporation, institution, association, firm, or company organized or existing under the laws of this or any other state or country;

2.16.b. The State of West Virginia;

2.16.c. Any governmental agency, including federal facilities;

2.16.d. Any political subdivision of this State, including a county commission, municipality, sanitary district, public service district, drainage district, soil conservation district, or watershed improvement district;

2.16.e. Any partnership, trust, or estate;

2.16.f. Any person or individual;

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

2.16.h. Any other legal entity.

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

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

2.19. "Publicly-Owned Treatment Works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality as defined by section 502(4) of the Clean Water Act. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

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

2.21. "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments, or other places together with such groundwater infiltration and surface waters as they may be present.

2.22. "Solid Waste Facility" means any system, facility, land, contiguous land, improvements on the land, structures, or other appurtenances or methods used for processing, recycling, or disposing of solid waste including landfills, transfer stations, incinerators, resource recovery facilities, recycling facilities, and other such facilities not herein specified.

2.23. "Toxic Chemical" means:

2.23.a. Any substance listed in Table V of 33CSR20;

2.23.b. Any substance listed in Table VI of 33CSR20;

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

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

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

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

2.23.g. Any substance for which replicated test data exist to indicate that exposure to that substance poses a risk of injury to human health or the environment.

§ 47-26-3. Fee Assessment and Collection.

3.1. Assessment of Permit Application Fees. Any person who applies for a permit shall pay the appropriate permit application fee in accordance with the provisions of sections 4 through 6 of this rule.

3.2. Assessment of Annual Permit Fees. Any person who holds a permit shall pay an annual permit fee in accordance with the provisions of section 7 of this rule.

3.3. Method of Fee Payment. All fees assessed under this rule shall be submitted to the chief by check or money order payable to the West Virginia Division of Environmental Protection, Office of Water Resources.

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

3.4.a. A person may seek verification of the correct amount of a permit application fee by submitting his calculation of the fee to the chief in writing. This calculation shall be submitted sufficiently in advance of the permit application so that the provisions of 47CSR10 subsection 4.3 are met. Within thirty (30) days of the receipt of this calculation, the chief shall notify the applicant of the accuracy of his calculation. If the applicant's calculation is incorrect, the chief shall advise him of the correct amount to be submitted as the permit application fee.

3.4.b. If the chief determines that a submitted application is incomplete and must be returned to the applicant for additional information, the permit application resubmission fee shall accompany the refiled application. This fee shall be either a sum equivalent to five percent (5%) of the permit application fee or ~~forty~~ one hundred dollars (~~\$50~~), (\$100), whichever is greater.

3.5. Collection of Annual Permit Fees. The annual permit fee shall be submitted to the chief by no later than the anniversary of the date of permit issuance in each year of the term of the permit.

3.5.a. A permit will become void if the annual permit fee has not been paid within ~~one hundred and eighty~~ ninety (~~180~~) (90) days of the due date.

3.5.b. A permit will not be reissued until all annual permit fees due during the term of that permit have been paid in full.

3.5.c. A permit will not be issued to an entity at a new location, until all annual permit fees due during the term of any permit held at any previous location by that entity have been paid in full.

3.5.d. A permit will not be transferred for a facility which has failed to pay all annual permit fees due during the term of the permit.

§ 47-26-4. Initial Permit Application Fees.

4.1. Fee Calculation. Except as provided in subsections 4.2 through 4.4 of this rule 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.a. The appropriate volume fee shall be determined through the use of the "New Facility" column of Table A of this rule.

4.1.b. The appropriate facility factor shall be determined through the use of Table B of this rule.

4.1.c. The appropriate waste factor shall be determined through the use of Table C of this rule.

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.a. The initial permit application fee for a closed system facility where priority pollutants or toxic chemicals are present in the system shall be ~~seven~~ fifteen thousand ~~five hundred~~ dollars (~~\$7,500~~) (\$15,000).

4.3.b. 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~~ seven hundred ~~fifty~~ dollars (~~\$350~~) (\$700).

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 33CSR1.

§ 47-26-5. Permit Renewal Application Fees.

5.1. Fee Calculation. Except as provided in subsections 5.2 through 5.4 of this rule 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.a. The appropriate volume fee shall be determined through the use of the "Existing Facility" column of Table A of this rule.

5.1.b. The appropriate facility factor shall be determined through the use of Table B of this rule.

5.1.c. The appropriate waste factor shall be determined through the use of Table C of this rule.

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.a. The permit renewal application fee for a closed system facility where priority pollutants or toxic chemicals are present in the system shall be ~~two five~~ thousand ~~five hundred~~ dollars (\$2,500) (\$5,000).

5.3.b. 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 three~~ hundred ~~seventy five~~ ~~fifty~~ dollars (~~\$175~~) (\$350).

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 33CSR1.

§ 47-26-6. Permit Modification Application Fees.

6.1. Fee Calculation. Except as provided in subsections 6.2 through 6.6 of this rule, 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.a. The appropriate volume fee shall be determined through the use of the "Existing Facility" column of Table A of this rule. Only the discharge volume of the activity affected by the modification shall be used in determining the appropriate volume fee.

6.1.b. The appropriate facility factor shall be determined through the use of Table B of this rule.

6.1.c. The appropriate waste factor shall be determined through the use of Table C of this rule.

6.2. Publicly-Owned Treatment Works.

6.2.a. 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.b. 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.a. 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.b. The permit modification application fee for a closed system facility shall be two percent (2%) of the initial permit application fee or ~~fifty one~~ hundred dollars (~~\$50~~) (\$100), 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 33CSR1.

6.5. Non-Volume-Related Major Modifications. Except as provided in subsections 6.2 through 6.4 of this rule, the permit modification application fee shall be ten percent (10%) of the initial permit application fee for sewage facilities and ten percent (10%) of the initial permit application fee, or five hundred dollars (\$500) whichever is greater for industrial facilities for an

application seeking a major modification where no discharge volume is involved.

6.6. Non-Volume-Related Minor Modifications. Except as provided in subsections 6.2 through 6.4 of this rule, the permit modification application fee shall be fifty dollars (\$50) for sewage only facilities and one hundred dollars (\$100) for industrial facilities for an application seeking a minor modification where no discharge volume is involved.

§ 47-26-7. Annual Permit Fees.

7.1. Facilities Discharging Sewage. The annual permit fee for a facility that discharges sewage shall be determined through the use of Table D of this rule.

7.2. Facilities Discharging Industrial Wastes or Other Wastes. The annual permit fee for a facility that discharges industrial wastes or other wastes shall be determined through the use of Table E of this rule.

7.3. Publicly-Owned Treatment Works. The annual permit fee for a POTW that operates a collection system only shall be determined through the use of Table D of this rule.

7.4. Closed System Facilities.

7.4.a. The annual permit fee for a closed system facility where priority pollutants or toxic chemicals are present in the system shall be ~~two five thousand five hundred~~ two five thousand dollars (~~\$2,500~~) (\$5,000); Provided, That if the chief determines that a facility is in substantial compliance with its existing permit, the fee is ~~one two thousand two five hundred fifty~~ two five hundred dollars (~~\$1,250.00~~) (\$2,500).

7.4.b. The annual permit fee for a closed system facility where no priority pollutants or toxic chemicals are present in the system shall be ~~fifty one hundred~~ one hundred dollars (~~\$50~~) (\$100).

7.5. Solid Waste Facilities. The annual permit fee for a solid waste facility shall be ~~two five thousand five hundred~~ two five thousand dollars (~~\$2,500~~) (\$5,000).

7.6. Facilities Discharging Stormwater. The annual permit fee for a facility that discharges stormwater only shall be determined through the use of Table F of this rule.

7.7. Aquaculture facilities. The annual permit fees for aquaculture facilities that are subject to the provisions of the water pollution control regulations shall be determined by Table G of this rule.

TABLE A

Industrial Wastes OnlyVolume Fees

Average Discharge Volume (gallons per day)	Existing Facility Volume Fee	New Facility Volume Fee
less than 1,001	\$50 <u>\$100</u>	\$200 <u>\$400</u>
1,001 to 5,000	\$100 <u>\$200</u>	\$300 <u>\$600</u>
5,001 to 50,000	\$150 <u>\$300</u>	\$500 <u>\$1,000</u>
50,001 to 100,000	\$200 <u>\$400</u>	\$600 <u>\$1,200</u>
greater than 100,000	\$250 <u>\$500</u>	\$750 <u>\$1,500</u>

Sewage OnlyVolume Fees

Average Discharge Volume (gallons per day)	Existing Facility Volume Fee	New Facility Volume Fee
less than 1,001	\$50	\$200
1,001 to 5,000	\$100	\$300
5,001 to 50,000	\$150	\$500
50,001 to 100,000	\$200	\$600
greater than 100,000	\$250	\$750

Note: Stormwater runoff shall be included when calculating the average discharge volume of a facility that discharges industrial waste or other waste. Calculations of the average discharge volume for stormwater runoff shall be made in accordance with the provisions of Appendix A of these rules.

TABLE B

Facility Factors

Factor	Type of Facility	Facility
	Major Facility	5.0
	Primary Industry Category (except Auto and Other Laundries)	5.0
	Secondary Industry Category	3.0
	<u>Water Plants</u>	<u>3.0</u>
	Minor POTWs	2.0
	Auto and Other Laundries Category	1.0
	Facility covered under a General Permit	0.9
	All other facilities and activities	1.0
	<u>Home Aeration Units Replacing Failing Septic Systems</u>	<u>0.45</u>

TABLE C
Waste Factors

Type of Waste	Waste Factor
Process Waste	2.0
Sewage	1.7
Contact Cooling Water	1.5
Contaminated Stormwater	1.3
Blowdowns	1.1
Once-Through Cooling Water With Additives	1.1
Once-Through Cooling Water Without Additives	1.0
Uncontaminated Stormwater	1.0
Other Waste	1.0

Note: When an industrial facility discharges more than one type of waste, the highest applicable waste factor shall be used in the calculation of the permit application fee.

TABLE D
Annual Permit Fees For
Facilities Discharging Sewage

Number of Customers	Annual Permit Fee
less than 100	\$50
100 to 499	\$100
500 to 999	\$250
1,000 to 1,499	\$500
1,500 to 1,999	\$750
2,000 to 2,499	\$1,000
2,500 to 2,999	\$1,250
3,000 to 3,499	\$1,500
3,500 to 3,999	\$1,750
4,000 to 4,499	\$2,000
4,500 to 4,999	\$2,250
greater than 5,000	\$2,500

TABLE E

**Annual Permit Fees For Facilities Discharging
Industrial Wastes Other Wastes**

Average Discharge Volume (gallons per day)	Annual Permit Fee
less than 1,001	\$50 <u>\$100</u>
1,001 to 2,500	\$125 <u>\$250</u>
2,501 to 5,000	\$250 <u>\$500</u>
5,001 to 10,000	\$500 <u>\$1,000</u>
10,001 to 15,000	\$750 <u>\$1,500</u>
15,001 to 50,000	\$1,000 <u>\$2,000</u>
greater than 50,000	\$2,500 <u>\$5,000</u>

TABLE F

**Schedule of Annual Permit Fees for
Facilities Discharging Stormwater**

Average Discharge Volume (gallons per day)	Annual Permit Fee
less than 5,001	\$50 <u>\$100</u>
5,001 to 15,000	\$125 <u>\$250</u>
15,001 to 50,000	\$250 <u>\$500</u>
50,001 to 100,000	\$500 <u>\$1,000</u>
greater than 100,000	\$750 <u>\$1,500</u>

TABLE G

**Schedule of Annual Permit Fees For
Aquaculture Facilities**

# Feed/Month	Annual Fee	Application Fee (Initial and Reissuance)
5,000 to 9,999	\$ 250	\$ 250
10,000 to 14,999	\$ 500	\$ 250
15,000 to 19,999	\$ 750	\$ 250
20,000 to 24,999	\$1,000	\$ 250
25,000 to 29,999	\$1,250	\$ 250
greater than 30,000	\$1,750	\$ 250

APPENDIX A

**Calculation of the Average
Discharge Volume for Stormwater Runoff**

The following formula shall be used to determine the average discharge volume for stormwater runoff:

$$\text{Average Discharge Volume for Stormwater Runoff (gallons per day)} = \frac{\text{Annual Stormwater Runoff Volume}}{366 \text{ days per year}}$$

where Annual Stormwater Runoff Volume (gallons) =

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

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

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