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DEC 15 2 09 PM '99

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

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Delegate Mark Hunt, Co-Chairman
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Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

December 14, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Carrie Chambers
DEP
10 McJunkin Road
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Water Pollution Control Permit Fee Schedule, 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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

✓



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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Office of Water Resources
Subject: Water Pollution Control Permit Fee Schedule
CSR Cite: 47CSR26
Counsel: JAA

PERTINENT DATES

Filed for public comment: June 17, 1999
Public comment period ended: July 21, 1999
Filed following public comment period: July 28, 1999
Filed LRMRC: July 28, 1999
Approved as emergency: Approved as emergency rule on July 2, 1999.

Fiscal Impact: Increase in permit fees of \$690,000 from permit applications and annual permit renewals assessed to facilities handling industrial wastes where the applicant/permittee is required to hold a water pollution control permit.

ABSTRACT

Brief Summary

House Bill 2684 passed during the 1999 legislative session directed the filing on this emergency/legislative rule by July 1, 1999, for the purpose of increasing fees for permittees and applicants to cover the DEP's costs associated with permitting and regulation of facilities holding water pollution control permits. A December 1998 stakeholders meeting resulted in an agreement signed by the agency and affected parties to increase the fees as reflected in the rule. Other small changes are also made to the rule.

Section Summary

In Section 2 Definitions, the definition of "new facility" is amended to provide that any new entity applying to take over an existing facility is considered as application for a new facility permit.

Section 3.5 provides that a permit will not be issued or transferred until all annual permit fees due are paid to the agency.

Below is a list of changes in fees as they appear in each section of the rule:

<u>Section</u>		<u>Prior</u>	<u>New</u>
3.4.b.	Permit Application	\$50	\$100
5.3.a.	Closed system permit renewal	\$2,500	\$5,000
5.3.b	Closed fac permit w/out toxins	\$175	\$350
6.5.	Non-vol related maj mod	10% permit fee	10% or max of \$500
6.6	Non-vol minor mod	\$50	\$100
7.4.a.	Closed fac with toxins	\$2500	\$5000
7.4.a.	Closed fac with toxins but in compl with existing permit	\$1250	\$2500
7.4.b.	Closed fac w/out toxins	\$50	\$100
7.5.	Solid waste facility	\$2500	\$5000

Table A assessments on industrial wastes volume fees has doubled all current fees. Table B lists "facility factors" and has added water plants and home aeration units used to replace failed septic systems as facilities now included in the table. Table E permit fees for facilities discharging "industrial wastes other wastes" has also been amended by doubling all annual permit fees. Table F has also doubled annual permit fees for facilities discharging storm water.

AUTHORITY

Statutory authority: W.Va. Code, §22-11-10.

(a) The special revenue fund designated the "Water Quality Management Fund" established in the state treasury on the first

day of July, one thousand nine hundred eighty-nine is hereby continued.

(b) The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the director; interest accruing on investments and deposits of the fund; and any other moneys designated by the director shall be deposited into the water quality management fund. The director shall expend the proceeds of the water quality management fund for the review of initial permit applications, renewal permit applications and permit issuance activities.

(c) The director shall propose for promulgation, legislative rules in accordance with the provisions of chapter twenty-nine-a of this code, to establish a schedule of application fees for which the appropriate fee shall be submitted by the applicant to the division with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. The schedule of application fees shall be designed to establish reasonable categories of permit application fees based upon the complexity of the permit application review process required by the division pursuant to the provisions of this article and the rules promulgated thereunder: *Provided, That* no initial application fee may exceed fifteen thousand dollars for any facility nor may any permit renewal application fee exceed five thousand dollars. The division may not process any permit application pursuant to this article until the required permit application fee has been received.

(d) The director shall propose for promulgation legislative rules in accordance with the provisions of chapter twenty-nine-a of this code, to establish a schedule of permit fees to be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article. Each person holding a permit shall pay the prescribed annual permit fee to

the division pursuant to the rules promulgated hereunder: *Provided*, That no person holding a permit for a home aerator of six hundred gallons and under shall be required to pay an annual permit fee. The schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of categories or permits to degrade the waters of the state: *Provided, however*, That no annual permit fee may exceed five thousand dollars. The director may declare any permit issued pursuant to this article void when the annual permit fee is more than ninety days past due pursuant to the rules promulgated hereunder. Voiding of the permit will only become effective upon the date the director mails, by certified mail, written notice to the permittee's last known address notifying the permittee that the permit has been voided.

(e) The director shall promulgate an emergency rule and propose a legislative rule for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code by the first day of July, one thousand nine hundred ninety-nine, to implement the fee schedule authorized by the amendments to this section enacted in the year one thousand nine hundred ninety-nine. Beginning the first day of September, one thousand nine hundred ninety-nine, the director shall file a quarterly report with the joint committee on government and finance setting forth the fees established and collected pursuant to this section.

(f) The provisions of this section are not applicable to fees required for permits issued under article three of this chapter.

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.