

Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 31, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.)

DEP-Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
(304) 926-0495

LEGISLATIVE RULE TITLE: Title 47, Series 26 - Water Pollution Control Permit Fee Schedule

1. Authorizing statute(s) citation WV Code 22-11-10
2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 13, 2009
 - b. What other notice, including advertising, did you give of the hearing?
WVDEP website, WVDEP mailing list, and Class I Legal Advertisement in the Charleston Gazette and the Charleston Daily Mail
 - c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 16, 2009
 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

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

July 31, 2009

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Yogesh Patel, Assistant Director

WVDEP- Division of Water and Waste Management

601 57th Street SE

Charleston, WV 25304

Phone- (304) 926-0499 Ext. 1014

Fax - (304) 926-0496

Email Address - Yogesh.P.Patel@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Robert A.Bates, Technical Analyst

WVDEP-Division of Water and Waste Management

601 57th Street SE

Charleston, WV 25304

Phone - (304) 926-0499 Ext. 1045

Email Address - Robert.a.bates@wv.gov

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:

- 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.

Not Applicable

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title:

“Water Pollution Control Permit Fee Schedules”, 47CSR26

A. AUTHORITY:

W.Va. Code 22-11-10

B. SUMMARY OF RULE:

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 Division of Water and Waste Management. 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.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The proposed revisions to the Water Pollution Control Permit Fee Schedules of Title 47, Series 26 reflect the need to incorporate the permit application fees, permit renewal application fees, permit modification fees and the annual permit fees for the new Concentrated Animal Feeding Operation (CAFO) NPDES permit category into the permit fee schedules.

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

There is no federal counterpart regulation; thus, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c), the Secretary 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:

At its meeting on June 3, 2009, the Environmental Protection Advisory Council discussed this rule. (See attached minutes for Council’s discussion.)

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Water Pollution Control Permit Fee Schedules, 47CSR26

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Department of Environmental Protection

Address: 601 57th Street, SE
Charleston, WV 25304

Phone Number: (304) 926-0495 Email: Scott.G.Mandirola@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No fiscal impacts on state government are anticipated.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title:

Water Pollution Control Permit Fee Schedules, 47CSR26

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

None anticipated

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The proposed revisions to the Water Pollution Control Permit Fee Schedules of Title 47, Series 26 reflect the need to incorporate the permit application fees, permit renewal application fees, permit modification fees and the annual permit fees from this new NPDES permit category into the permit fee schedules.

Date: June 1, 2009

Signature of Agency Head or Authorized Representative



TITLE 47
LEGISLATIVE RULE
BUREAU OF ENVIRONMENT
DIVISION DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES
SERIES 26
WATER POLLUTION CONTROL PERMIT FEE SCHEDULES

FILED
 2009 JUL 30 PM 2:49
 OFFICE WEST VIRGINIA
 SECRETARY OF STATE

§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 Division of Water Resources and Waste Management. 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. -- May 4, 2000.

1.4. Effective Date. -- May 4, 2000.

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 the effective date of this rule.

1.6. Repeal of ~~Formal~~ Former 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" ("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~~ Director of the Division of Water and Waste Management (formerly the Office of Water Resources) of the Division Department of Environmental Protection of the West Virginia Bureau of Environment as designated by the Secretary

thereof.

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 §22-11-1, et. seq. 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 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 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 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 that 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 that is owned by a state or municipality as defined by §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 ~~III~~ of ~~33CSR20~~ Appendix C of 47CSR26;

2.23.b. Any substance listed in Table VI of ~~33CSR20~~ Appendix C of 47CSR26;

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~~ Department 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 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 re-filed application. This fee shall be either a sum equivalent to five percent (5%) of the permit application fee or one hundred dollars (\$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 ninety (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 that 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 fifteen thousand dollars (\$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 seven hundred dollars (\$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.

4.5. Concentrated Animal Feeding Operations (CAFOs). The initial permit application fee for a CAFO shall be three hundred dollars (\$300).

§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 five thousand dollars (\$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 three hundred fifty dollars (\$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.

5.5. Concentrated Animal Feeding Operations (CAFOs). The permit renewal application fee for a CAFO shall be three hundred dollars (\$300).

§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 one hundred dollars (\$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.

6.7. Concentrated Animal Feeding Operations (CAFOs). The permit modification fee for a CAFO shall be fifty dollars (\$50) for an application seeking a major or minor modification.

§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 five thousand dollars (\$5,000); Provided, That if the Chief determines that a facility is in substantial compliance with its existing permit, the fee is shall be two thousand five hundred dollars (\$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 one hundred dollars (\$100).

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

7.6. Facilities Discharging Storm Water. The annual permit fee for a facility that discharges storm water 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.

7.8. Concentrated Animal Feeding Operations (CAFOs). The annual permit fee for a CAFO shall be fifty dollars (\$50).

TABLE A

Industrial Wastes Only

Volume Fees		
Average Discharge Volume (gallons per day)	Existing Facility Volume Fee	New Facility Volume Fee
less than 1,001	\$100	\$400
1,001 to 5,000	\$200	\$600
5,001 to 50,000	\$300	\$1,000
50,001 to 100,000	\$400	\$1,200
greater than 100,000	\$500	\$1,500

Sewage Only

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: Storm water 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 storm water runoff shall be made in accordance with the provisions of Appendix A of these rules.

TABLE B
Facility Factors

Type of Facility	Facility Factor
Major Facility	5.0
Primary Industry Category (except Auto and Other Laundries)	5.0
Secondary Industry Category	3.0
Water Plants	3.0
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
Home Aeration Units Replacing Failing Septic Systems	0.45

TABLE C
Waste Factors

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

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	\$100
1,001 to 2,500	\$250
2,501 to 5,000	\$500
5,001 to 10,000	\$1,000
10,001 to 15,000	\$1,500
15,001 to 50,000	\$2,000
greater than 50,000	\$5,000

TABLE F

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

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

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) =

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

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 storm water runoff calculation may be substituted for this formula upon approval from the chief.

47CSR26
WATER POLLUTION CONTROL PERMIT FEE SCHEDULES

RESPONSE TO COMMENTS

On June 12, 2009, the Division of Water and Waste Management (DWWM) commenced a thirty-day public comment period and subsequently held a public hearing on July 16, 2009 to accept oral comments on proposed revisions to legislative rule 47CSR26. Written comments were also accepted through 7:00 p.m. on Thursday, July 16, 2009. Nine commenters submitted written comments regarding proposed revisions to 47CSR26, and no commenters provided verbal comments. DWWM addresses the comments below.

No amendments were made to the rule based upon the submitted comments.

I. COMMENTERS: DALE WALKER, DENNIS FUNK, EMILY FUNK, ELZA HOTT, DENZIL HOTT, SR., JEFF SAVILLE, WENDELL SAVILLE, AND RODNEY A. BRANSON

COMMENT A. *The commenters requested that the Department consider minimum amounts for permit application fees, permit modification application fees, and annual permit fees.*

RESPONSE A. The DEP does not believe that the fees as proposed are excessive or burdensome for a small business facility. The fee structure that determined the fees as proposed was initially established for State Water Pollution Control Permits and National Pollution Elimination System (NPDES) Permits and approved by the Legislature in 1993. Permit application fees are based on three factors: (1) a volume fee based upon an average discharge volume; (2) a facility factor based upon the type of facility being permitted; and (3) a waste factor based upon the type of waste being discharged. These three factors are multiplied together to establish the application fee.

In the case of concentrated animal feeding operations (CAFOs), DEP conservatively estimated the average volume of a discharge to be five thousand one (5,001) to fifty thousand (50,000) gallons, which establishes a volume fee of three hundred dollars (\$300). DEP established the facility factor as 1.0 based on the category "all other facilities and activities," and the waste factor as 1.0 based on the category "other waste." When the three factor numbers are multiplied, this sets the permit application fee as three hundred dollars (\$300).

Both the permit modification application fee and the annual permit fee for the NPDES permit were set at the State minimum of fifty dollars (\$50). The permit fee will only be required at the time of the initial application, then every five years when the permit expires and has to be reissued. The annual permit fee is an annual fee for holding the permit for the year. Under normal circumstances, this comes to a total fee expense of one hundred ten dollars (\$110) per year.

BEFORE THE WEST VIRGINIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:

PROPOSED 2010 RULES
47CSR26 - Water Pollution
Control Permit Fee Schedules

TRANSCRIPT OF PROCEEDINGS had or testimony
adduced in the above-entitled matter, on the on the 16th
day of July, 2009, commencing at 6:15 p.m. and concluding
at 6:16 p.m., at 601 57th Street, S.E., Charleston, Kanawha
County, West Virginia, pursuant to notice to all interested
parties.

BEFORE: DIANA HAID
Public Information Office.

ORIGINAL

NANCY MCNEALY
CERTIFIED COURT REPORTER
Post Office Box 13415
Charleston, West Virginia 25360-0415
(304) 988-2873 FAX (304) 988-1419

I N D E X

Reporter's Certificate.....Page 5

1 MS. HAID: Good evening. My name is Diana
2 Haid and I am with the West Virginia Department of
3 Environmental Protection's Public Information Office.
4 Welcome to the public hearing on proposed rule changes to
5 47CSR26, Water Pollution Control Permit Fee Schedules.

6 Revisions to the rule reflect the CAFO
7 (Concentrated Animal Feeding Operations) changes made in
8 the NPDES Rule. The fees for CAFOs will be as follows:
9 \$300 for the initial application; \$300 for permit renewal;
10 \$50 for the permit modification; and \$50 for the annual
11 permit fee. Technical revisions and corrections are made
12 throughout.

13 Please make sure that you have signed in and
14 have indicated whether you are going to make a comment. If
15 you have written comments, please provide them to me when
16 you speak, or at the close of the hearing.

17 Has everyone signed in on this? If everyone
18 is ready, the floor is now open for comments and the sign-
19 in sheet indicates there are no comments please let the
20 record show.

21 This concludes the public hearing on the
22 proposed rule changes to 47CSR26, Water Pollution Control
23 Permit Fee Schedules.

24 The public comment period ends tonight. The

Proceedings

4

1 agency will review all comments and take them into
2 consideration for the rule.

3 (WHEREUPON, the hearing was concluded.)

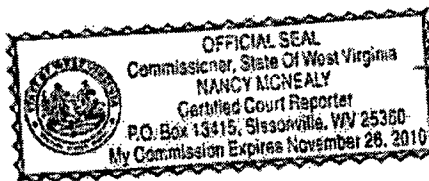
BEFORE THE WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, **NANCY MCNEALY**, Certified Verbatim Court
Reporter and Commissioner of West Virginia, do hereby
certify that the foregoing is, to the best of my skill and
ability, a true and accurate transcript of all the
proceedings as set forth in the caption hereof.

Given under my hand this 17th day of July,
2009.

My commission expires November 26, 2010.



Nancy McNealy

Certified Verbatim Reporter
Commissioner of West Virginia

Sign In Sheet
Public Hearing
Proposed revisions to 47CSR26, Water Pollution Control Permit Fee Schedules
Thursday, July 16, 2009, 7 p.m.

Name (please print)	Address	Organization	Phone/Fax	E-mail	Comment Yes/No
MARC HARMAN	8106 Kan. Blvd. E A 102	WV Poultry Assoc.			Y
Christina Richmond	60 B Moorfield Ind. Park Road Moorfield, NV 24836	WV Dept. of Agriculture			N
Dale Walker	HC 69 BOX 222 Font Seybert WV 26802	WUPA			N
Emily Funk	4222 Mt. Olive Rd Kirby, WV 26755	WUPA			N
STEVE HAMMATT	WV Dept of Agr 1900 KANAWHA BLVD E CHARLESTON	WV Dept of Agr			NO



July 8, 2009

WV Department of Environmental Protection
Public Information Office
601 57th Street, S.E.
Charleston, WV 25304

RE: Comments on Title 47 Legislative Rule, Water Resources, Series 10 NPDES Program, and Series 26 Water Pollution Control Permit Fee Schedules.

To whom it may concern:

First, let me thank you for the assistance, information and co-operation with stakeholders involved in the issues addressed in these rules. The DEP staff has made every effort to keep us informed and involved in this process and we are very appreciative.

First and foremost, we all realize these issues are driven on the national level and by a recent Federal Court ruling. We also realize this is new and "unplowed ground". We have very limited financial and technical resources available to us. Even though these limited resources are available to producers, they are limited and are very complete which make it impossible to implement them in a short time frame.

While I understand efforts are being made by the WV Dept. of Agriculture, WVU Extension Service and possibly one or more federal agencies to make some limited resources available, please remember that ultimately the burden of compliance falls on the individual grower. These undue hardships include additional financial expenditures and excessive time in record keeping in implementing this program.

With these thoughts in mind, we would ask that you carefully review the rules for clarity and "layman's" language which we can easily understand and set forth adequate definitions for various terms used in the document. For example, 13.1.h.6 and several sections following set forth conditions for making changes are "substantial" changes, NMP's need to be flexible; some consider such plans to be a "dynamic document" and by nature subject to change. The placement of poultry can vary seasonally and would be burdensome on the producer to have to reapply for a permit because of company needs and changes. Seasonal changes in stock density of poultry operations should not constitute a sufficient change and should not trigger a public comment process; instead these changes should be addressed in the Nutrient Management Plan. It would be very helpful to know what constitutes a substantial change which triggers a public notice, comment period, etc.?

Implementing changes to a NMP may occur seasonally. Land applications may need to be changed with regard to environmental factors as weather and other conditions, should only affect the Nutrient Management Plan and changes related to those circumstances certainly should not trigger the entire process.

Additional costs will occur to growers who file an NPDES permit. With the limited resources available, we would respectfully request the Department charge the absolute minimum fees. We would like to point out that the small family farmer or poultry producer has no opportunity to pass this additional cost on to anyone else even though we are classified as a small business. We suggest you amend the fee schedule as follows:

47-26-4

- 4.5 Initial permit application reduced from \$300 to \$50.
- 5.5 Renewal application fee reduced from \$300 to \$50.
- 6.7 Permit modification fee from \$50 to \$25.
- 7.8 CAFO permit fee from \$50 to \$25.

We would also request, upon implementation of this permit process that the Department make every effort to minimize the size and number of reports, forms, etc. and keep any necessary paperwork as user friendly and amendable as possible. All poultry operations are primarily a small family farm business that lacks the financial ability to hire additional human resources to compile records, forms, etc., therefore, all reports should be amendable.

We are all painfully aware of the fragile nature of the poultry industry. The economic impact of this industry is huge in terms of employment and payroll, taxes and support of growers who depend on the industry for a livelihood. We trust you will consider these difficult times as you complete work on these issues.

Sincerely,



Dale Walker, President
West Virginia Poultry Association

WV Department of Environmental Protection
Public Information Office
601 57th Street, S.E.
Charleston, WV 25304

RE: Comments on Title 47 Legislative Rule, Water Resources, Series 10 NPDES Program, and Series 26 Water Pollution Control Permit Fee Schedules.

To whom it may concern:

I am a poultry grower and I am asking for your help in modifying the Title 47 Legislative Rule, Water Resources, Series 10 NPDES Program, and Series 26 Water Pollution Control Permit Fee Schedules.

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Sincerely,

Dennis A. Jank

WV Department of Environmental Protection
Public Information Office
601 57th Street, S.E.
Charleston, WV 25304

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Sincerely,

A handwritten signature in cursive script, reading "Emily Turk". The signature is written in dark ink and is positioned below the word "Sincerely,".

WV Department of Environmental Protection
Public Information Office
601 57th Street, S.E.
Charleston, WV 25304

RE: Comments on Title 47 Legislative Rule, Water Resources, Series 10 NPDES Program, and Series 26 Water Pollution Control Permit Fee Schedules.

To whom it may concern:

I am a small cow and calf operation and I am asking for your help in modifying the Title 47 Legislative Rule, Water Resources, Series 10 NPDES Program, and Series 26 Water Pollution Control Permit Fee Schedules.

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Thanks for considering my comments.

Sincerely,

Elza A. Hott

WV Department of Environmental Protection
Public Information Office
601 57th Street, S.E.
Charleston, WV 25304

RE: Comments on Title 47 Legislative Rule, Water Resources, Series 10 NPDES Program, and Series 26 Water Pollution Control Permit Fee Schedules.

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Sincerely,



Saville Poultry
Rio, WV

WV Department of Environmental Protection
Public Information Office
601 57th Street, S.E.
Charleston, WV 25304

RE: Comments on Title 47 Legislative Rule, Water Resources, Series 10 NPDES Program, and Series 26 Water Pollution Control Permit Fee Schedules.

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Sincerely,

Denzil Hott, Sr.

WV Department of Environmental Protection
Public Information Office
601 57th Street, S.E.
Charleston, WV 25304

RE: Comments on Title 47 Legislative Rule, Water Resources, Series 10 NPDES Program, and Series 26 Water Pollution Control Permit Fee Schedules.

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Sincerely,

Wendell J. Smith



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

July 6, 2009

West Virginia Department of Environmental Protection
Public Information Process
301 57th Street SE
Charleston, WV 25304

RE: Comments on Title 47 Legislative Rule, Water Resources, Series 10 NPDES Program and Series 26 Water Pollution Control Permit Fee Schedules.

Dear Sir or Madam:

In response to the proposed 2010 NPDES Rule change affecting Concentrated Animal Feeding Operations in the State of West Virginia, the West Virginia Department of Agriculture (WVDA) would like to thank the Department of Environmental Protection (DEP) for their consideration to the producers of the state concerning this rule and only requiring what the federal rule mandated. Many agricultural producers could be negatively impacted if this rule is implemented any more stringently.

This rule has the potential to affect almost all commercial poultry operations in West Virginia as well as many small cattle producers in the State. It is WVDA's sincere hope that the DEP will continue its willingness to work with the agricultural partners in the state to help producers through this process. These are family farm operations and this program has the potential to increase the financial burden on operations as they come into compliance. Cost share programs through USDA-Natural Resources Conservation Service (NRCS) may take time for enrollment and award of monies, and a producer may not be funded the first time they apply. We hope the DEP will be willing to work with producers who are making a sincere effort to reduce pollution on their operations to utilize these programs to reduce the financial burden their farms.

There are several points in the regulation that do concern the WVDA and clarification is needed to help producers understand the rule. Our concerns are as follows:

1. In Section 13.1.c – What criteria will be used to determine that an AFO is a significant contributor of pollution? Many producers will not understand this terminology and clarification is needed.
2. Section 13.1.c.1 – If BMP's and nutrient management are in place along with State rules, who will work with EPA to ensure they are not putting undue scrutiny on operations in areas of concern such as the Chesapeake Bay Watershed.
3. Section 13.1.h.1 – The standard nutrient management plan that many farmers have in place only address six of the nine components of the new Nutrient Management Plan required by this rule. It will take time and personnel to get producers in compliance with this change. The WVDA has hired a Nutrient Management Specialist to help producers with this process. Other agencies such as WVU Extension, NRCS and West Virginia Conservation Agency (WVCA) will also be able to assist with this process, but if rule definitions exceed the current regulations, staff will be limited in updating plans and helping producers achieve compliance.
4. Section 13.1.h.6.A and B – It is the hope of WVDA that DEP will have a certified nutrient management planner on their staff to review plans and have a understanding that the nutrient management plan is a living document and changes are necessary as farm needs change.

The West Virginia Department of Agriculture would again like to thank the Department of Environmental Protection for allowing us to be a partner in this process. These rules have the potential to greatly impact production agriculture in this State. We support keeping the rules as written and not requiring producers to do more than what the federal rules require. We are very proud of our agricultural community in this state and producers have shown time and time again they want to do the right thing and protect Water Quality. As long as producers are willing to comply with the law, it is our hope this process will be very easy for those who opt to take part in permitting their operation.

Sincerely,



Gus R. Douglass
Commissioner

GRD:cr

July 12, 2009

WV Department of Environmental Protection
Public Information Office
601 57th Street, S.E.
Charleston, WV

RE: Comments on Title 47 Legislative Rule, Water Resources, Series 10 NPDES Program, and Series 26 Water Pollution Control Permit Fee Schedules.

To Whom It May Concern:

I appreciate your efforts to work with agriculture in developing regulations that are workable for Ag. It is imperative that we keep our farmlands and farms in operation, as well as producing a valuable resource for our society.

The recordkeeping required by these regulations will be overwhelming for many farmers. I hope that DEP will be patient with farmers regarding the quality and quantity of records they expect in the reporting process. There will be very few situations arising that records will indicate over applications of fertilizer which impedes water quality, and in more cases than not, problems that arise in our records will relate to inadequacies available to us in developing the recordkeeping systems (field sizes, variances in crop yields, soil conditions, field designations, etc.).

Of major concern are the constant changes that are always taking place on the farm and how much is expected of us in reporting, adjusting, reapplying, etc., by DEP. If crop yields differ each year, at what level constitutes substantial change? If hay gets wet and cannot be harvested by baling and cattle are turned in to graze that land, is that substantial change? If we loose 10 percent of our poultry in one flock due to disease, does that constitute substantial change? The list would be very long of all the changes that take place on the farm. We need a reasonable understanding of what constitutes substantial change. It has always been my understanding that a NMP is just what it says, a "plan" not something that is cast in stone and needs to be flexible as conditions on the farm warrant. It would be helpful if the regulations reflect enough flexibility to allow adjustments in application of nutrients to fields (crops) without being designated as "substantial changes" as long as the application of nutrients can be absorbed by the crop being raised.

I understand that DEP needs to cover the cost of administering this program and that it makes sense to pass this through via a permit fee. We, unfortunately, do not have the ability to pass that cost on to the customer (which is the consumer). It makes sense to me that the consumer should pay the permit fee via their taxes (that's not going to happen). Since we will have to bear this cost, it needs to be as minimal as possible. I respectfully request a substantial reduction in the fees that you are proposing. I appreciate your efforts to make this as painless as possible for the Ag Community, and recognize with the

atmosphere that exist in this county, these regulations could be much worse for the farmer. It is my belief that the "keep it simple" policy works best.

If I can be a sounding board or can help make these regulations more workable for the farmer, I will be glad to do so.

Sincerely,



Rodney A. Branson