

**WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Water Resources DEP - Division of Water and Waste Management TITLE NUMBER: 47

CITE AUTHORITY: W. Va. Code § 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 Schedules

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

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

2009 SEP 17 AM 11:46

OFFICE OF VIRGINIA
SECRETARY OF STATE

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~~ Director 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~~ Director 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. -- ~~April 28, 2003~~.

1.4. Effective Date. -- ~~April 28, 2003~~.

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.

§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 Department of Environmental Protection.~~

~~2.4.~~ 2.3. "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.~~ 2.4. "Customer" means a person who is provided wastewater disposal services from a facility permitted under W. Va. Code §22-11-8. For the purpose of this rule, 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).

2.5. "Director" means the Director of the Division of Water and Waste Management (formerly the Office of Water Resources) of the Department of Environmental Protection, as designated by the Secretary thereof.

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~~ Director.

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 Director.

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 Construction Activity" means any activity which disturbs an area equal to or greater than one acre of land but less than three acres.

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

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

2.14. "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 Director. 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.

2.15. "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.

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

2.17. "Person" means:

2.17.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;

2.17.b. The State of West Virginia;

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

2.17.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;

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

2.17.f. Any person or individual;

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

2.17.h. Any other legal entity.

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

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

2.20. "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 at 33 U.S.C. §1251, et seq. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

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

2.22. "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.

2.23. "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; provided, that a "Closed Solid Waste Facility" shall mean a 'solid waste facility' as defined herein which no longer accepts solid waste for disposal, but must still maintain a permit.

2.24. "Toxic Chemical" means:

2.24.a. Any substance listed in Table V III, of ~~33CSR20~~ Appendix C of 47CSR10;

2.24.b. Any substance listed in Table VI of ~~33CSR20~~ Appendix C of 47CSR10;

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

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

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

2.24.f. Any substance listed in 40

C.F.R. §712.30 or 40 C.F.R. §716.120; or

2.24.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 must 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 must 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 must be submitted to the chief Director 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 must be submitted to the chief Director with the permit application. No permit application will be processed until the appropriate fee has been received by the chief Director.

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

3.4.b. If the chief Director determines that a submitted application is incomplete and must be returned to the applicant for additional information, the permit application resubmission fee must accompany the refiled application. This

fee will 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 must be submitted to the ~~chief~~ Director 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 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 ~~4.5~~ 4.6 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 will be determined through the use of the "New Facility" column of Table A of this rule.

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

4.1.c. The appropriate waste factor will 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 will 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 will 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 will be seven hundred dollars (\$700).

4.4. Solid Waste Facilities. The initial permit application fee for a solid waste facility will be set and collected in accordance with the provisions of 33CSR1.

4.5. Minor Construction Activities. The initial permit fee for a minor construction activity requiring a permit will be three hundred dollars (\$300).

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

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

5.1. Fee Calculation. Except as provided in subsections 5.2 through ~~5.4~~ 5.5 of this rule, all permit renewal application fees will 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 will be determined through the use of the "Existing Facility" column of Table A of this rule.

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

5.1.c. The appropriate waste factor will

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 will 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 will 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 will be three hundred fifty dollars (\$350).

5.4. Solid Waste Facilities. The permit renewal application fee for a solid waste facility will 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 fifty dollars (\$50).

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

6.1. Fee Calculation. Except as provided in subsections 6.2 through ~~6.6~~ 6.7 of this rule, all permit modification application fees will 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 will 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 will be determined through the use of Table B of

this rule.

6.1.c. The appropriate waste factor will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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. The permit modification application fee for a CAFO shall be thirty-five dollars (\$35) 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 will 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 will 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 will 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 will be five thousand dollars (\$5,000): Provided, That if the ~~chief~~ Director determines that a facility is in substantial compliance with its existing permit, the fee is will 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 will be one hundred dollars (\$100).

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

7.6. Facilities Discharging Stormwater. The annual permit fee for a facility that discharges stormwater only will 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 will be determined by Table G of this rule.

7.8. Concentrated Animal Feeding Operations (CAFOs). The annual permit fee for CAFOs will be thirty-five dollars (\$35).

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: 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

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 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	\$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) =

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

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~~ Director.