

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

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2004 JUL 21 P 12:24

Form #1

**NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: OFFICE OF WATER RESOURCES TITLE NUMBER: 47

RULE TYPE: LEGISLATIVE 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: \_\_\_\_\_

DATE OF PUBLIC HEARING: AUGUST 23, 2004 TIME: 6:00 P.M.

LOCATION OF PUBLIC HEARING: WV DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)

1356 Hansford Street, Charleston, WV 25301  
2nd Floor Conference Room

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH   
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Jessica Greathouse

WV DEP

1356 Hansford Street  
Charleston, 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



Authorized Signature



Executive Office  
1356 Hansford Street  
Charleston, WV 25301  
304-558-5929  
FAX 304-558-6576

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## West Virginia Department of Environmental Protection

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Bob Wise  
Governor

Stephanie R. Timmermeyer  
Cabinet Secretary

July 21, 2004

Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

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2004 JUL 21 P 12:25  
SECRETARY OF STATE

Re: Refiling of 47CSR10 and Revised Public Hearing Date for 47CSR26

Dear Ms. Cooper:

We recently discovered that we filed an incorrect version of a rule we filed with your office on July 14, 2004 -- 47CSR10, "National Pollutant Discharge Elimination System (NPDES) Program." We are today refiling the correct version of the rule, along with a new form #1 and a new public hearing date. We wish to withdraw the version of 47CSR10 that was filed on July 14, 2004.

We had also filed another rule under our water pollution control program on July 14, 2004 -- 47CSR26, "Water Pollution Control Permit Fee Schedules," and we had set the public hearing for the same date as the hearing on 47CSR10. We would therefore like to change the hearing date on 47CSR26 to conform to the new hearing date on 47CSR10. Please find enclosed a new form #1 for 47CSR26 that will effectuate this change.

We apologize for any inconvenience these changes may have caused, and appreciate as always, your cooperation.

Sincerely,

Karen G. Watson  
Assistant General Counsel

Enclosures



West Virginia Department  
of Environmental Protection

"Promoting a healthy environment."

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TITLE 47  
LEGISLATIVE RULE

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF WATER RESOURCES

SERIES 26  
WATER POLLUTION CONTROL PERMIT FEE SCHEDULES

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COMMONWEALTH OF 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 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. --

1.4. Effective Date. --

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 Rule. -- This legislative rule repeals and replaces 47 C.S.R. 26 "Water Pollution Control Permit Fee Schedules" that was filed on May 4, 2000 and became effective on May 4, 2000.

**§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

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 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 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 40C.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 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 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 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 (CAFO). The initial permit application fee for a concentrated animal feeding operation 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 (CAFO). The permit renewal application fee for a concentrated animal feeding operation 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.

#### **§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 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 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.

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

TABLE A

Industrial Wastes Only

Average Discharge Volume (gallons per day)	Volume Fees	
	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

Average Discharge Volume (gallons per day)	Volume Fees	
	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**

<b>Type of Waste</b>	<b>Waste Factor</b>
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**

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**Number of Customers**

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**

<b>Average Discharge Volume (gallons per day)</b>	<b>Annual Permit Fee</b>
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**

<b>Average Discharge Volume (gallons per day)</b>	<b>Annual Permit Fee</b>
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**

<b># Feed/Month</b>	<b>Annual Fee</b>	<b>Application Fee (Initial and Reissuance)</b>
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.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**Rule Title:** 47CSR26 – “Water Pollution Control Permit Fee Schedules”

**A. AUTHORITY:** W.Va. Code §22-11-10

**B. SUMMARY OF RULE:**

This rule establishes a permitting fee schedule designed to offset the administrative costs of processing permit applications under the Water Pollution Control Program. It covers fees related to the State National Pollutant Discharge Elimination System (NPDES), a federal program that has been delegated by the U.S. Environmental Protection Agency to the State pursuant to the federal Clean Water Act.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

The proposed rule revisions are necessary to assess an application fee and a subsequent annual fee to be paid by certain concentrated animal feeding operations (CAFOs). Recent revisions to the counterpart federal regulations at 40 C.F.R. Parts 122, 123 and 412 require these sources to obtain an NPDES permit and necessitate the changes being proposed in the State rule.

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

Although there is no direct federal counterpart regulation establishing a fee schedule for sources that apply for a water pollution control permit, the changes to 47CSR26 are necessitated by new permitting requirements established by the federal counterpart regulation for the NPDES program, as discussed above.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with W.Va. Code §§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 June 24, 2004 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

**ADVISORY COUNCIL MEETING MINUTES**

Thursday, June 24, 2004

1356 Hansford Street, Charleston, WV

1<sup>st</sup> Floor Conference Room – OER Conference Room

**ATTENDEES:**

**Advisory Council Members:**

Larry Harris (via conference call)

Jackie Hallinan

Rick Roberts

Debra Bias for Lisa Dooley

Bill Raney

**DEP:**

Joe Dawley, General Counsel

Ken Ellison, Director - Division of Land Restoration

Allyn Turner, Director – Division of Water and Waste Management

Bill Brannon, Division of Water and Waste Management

Mike Dorsey – Division of Water and Waste Management

Mike Zeto – Office of Environmental Enforcement

Joe Parker, Director, DEP Division of Mining and Reclamation

Charlie Sturey – DEP Division of Mining and Reclamation

Cindy Maynard – DEP Office of Environmental Advocate

Laura Crowder – DEP Division of Air Quality

Jim Mason – DEP Division of Air Quality

Connie Graytop Lewis – WV Environmental Council

Liz Garland – WV Rivers Coalition

Jason Bostic – WV Coal Association

Tim Beli – Nelson Brothers

Bruce Gilbert – Nelson Brothers

Joseph M. Dawley, WVDEP – General Counsel, called the meeting to order at 10:00 a.m.

Updates on rules were presented as follows:

**Division of Air Quality - Jim Mason and Laura Crowder**

- 45CSR14 - PSD rule under Part C of the CAA, 45CSR14 has not been revised since 1995. This rule establishes permit requirements for major sources in attainment areas. Revisions to the rule are required to incorporate revisions of federal counterpart language.
- 45CSR15 - NESHAP incorporation by reference ("IBR") rule under Part 61, is typically updated each year. Revisions to the rule accommodate annual IBR updates.
- 45CSR16 - NSPS IBR rule under Part 60, is typically updated each year. Revisions to the rule accommodate annual IBR updates.
- 45CSR19 - NSR rule under Part D of the CAA, 45CSR19 has not been revised since 1993. This rule establishes permit requirements for major sources in non-attainment areas or that cause or

contribute to non-attainment areas. Revisions to the rule are required to incorporate revisions of federal counterpart language.

- 45CSR25 - Hazardous waste IBR rule is typically updated each year. Revisions to the proposed rule include general annual IBR updates: stylistic, citing and technical corrections, and revisions required to maintain consistency with the DW&WM's rule 33CSR20 and federal counterpart regulation. The consistency of 45CSR25, 33CSR20 and federal counterpart regulation is important to maintain EPA delegation of authority to implement and enforce the West Virginia RCRA Hazardous Waste Management Program.
- 45CSR34 - NESHAP IBR rule under Part 63, is typically updated each year. Revisions to the rule accommodate annual IBR updates.

*Bill Raney inquired about the table in which mercury is crossed out. This was deleted from EPA's rule so it was deleted from DEP's rule.*

*Larry Harris also raised a question regarding the definition of visibility.*

**Office of Waste Management – presented by Mike Dorsey, Deputy Chief, DEP Division of Water and Waste Management**

- 33 CSR 20 - Hazardous Waste Management Rule - The revisions in the proposed rule will adopt by reference federal regulations in effect as of July 1, 2004, primarily clarifications and technical corrections. These revisions allow the State to remain consistent with the federal program and to maintain State authorization of the federal program.
- 33 CSR 31 (Underground Storage Tank Fee Assessments) - This rule will increase the annual registration fee for the Underground Storage Tank Program from \$25 per tank to \$65 per tank. An emergency rule is already in place to implement the increase in fees.
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**The following were presented by Allyn Turner, Director, DEP Division of Water and Waste Management**

- 33 CSR 2 (Sewage Sludge Management Rule) - The revision modify the restriction and location standards to allow disposal at the discretion of the secretary where the soil on the land has a surface permeability of less than 0.6 inches per hour and the applicant can demonstrate that the surface water and ground water will be adequately protected.
- 33 CSR 8 (Beneficial Sludge Management Rule) - The revision modify the restriction and location standards to allow disposal at the discretion of the secretary where the soil on the land has a surface permeability of less than 0.6 inches per hour and the applicant can demonstrate that the surface water and ground water will be adequately protected.

**Office of Explosives and Blasting – presented by Joe Parker, Acting Director, DEP Division of Mining and Reclamation**

- 199 CSR 1 (Surface Mining Blasting Rule) - The revisions include incorporation of several provisions from the Surface Mining Rule (38 SCR 2). These include adding the definitions of "community or institutional building," "public building," and "structure" and including provisions for the erection and maintenance of blasting signs. The proposed rule also includes revisions to the Certified Blaster enforcement provisions to address inconsistencies identified by the Federal Office of Surface Mining. Lastly, the proposed rule includes a provision that allows the Office of Explosives and Blasting to conduct an evaluation of a certified blasters performance.

*Bill Raney inquired about page 22/Performance Evaluation – raising point about suspending license procedures. Mr. Raney indicated he would request a meeting to reconcile differences.*

## **Office of Water Resources – presented by Allyn Turner, Director, DEP Division of Water and Waste Management**

- 47CSR26 (NPDES Permit Fee Rule) - Proposed revision includes a new permit fee provision for concentrated animal feedlot operations (“CAFO”) to implement a new federal permit program for CAFOs.
- 47 CSR 10 (NPDES Permit Rule) - Proposed revisions include provisions to implement the federal Phase II Storm Water program and the CAFO permitting program.

*Rick Roberts inquired about the definition of storm water and permitted and non-permitted enforcement strategy. Director Turner indicated that this matter is still in discussion and there is no answer at this point.*

## **Division of Mining and Reclamation**

- 38CSR2 (Surface Mining and Reclamation Rule) The proposed revisions (1) change various sections of the rule to be consistent with its federal counterpart, (2) correct sections of the rule not approved by the Federal Office of Surface Mining, and (3) provide clarifications and remove contradictory language. These provisions pertain to the following subject areas: definition of previously mined areas, incidental boundary revisions, design criteria for impoundments, commercial forestry post-mining land use, homestead post-mining land use, revegetation standards, and the water supply replacement waiver.

## **Environmental Excellence Rule**

- Optimistic about proposing at next session.
- Dave Bassage is working on draft, but has nothing to share at this point.

## **Rule Schedule**

- July 28, 2004 – last day for filing proposed rules for public comment.
- August 27, 2004 – Must file rules with Secretary of State and Legislative Rule-Making Review Committee

## **DEP Division Updates**

### ***Division of Water and Waste Management***

- Rick Roberts posed question regarding phosphorous and nitrogen in the Potomac River
- Allyn Turner explained about the Chesapeake Bay Program and the Gulf of Mexico Hypoxia actions nutrient criteria working group.

### ***Air Quality***

- NT, CT, NJ and PA are suing Allegheny Energy, Inc. – which affects 5 WV plants and three PA plants.
- States assert Allegheny modified power plants in violation of Prevention Significant Deterioration provision of ACT and such modifications caused excess NOx and SO2 emissions damage.
- States allege violations in construction/operation of major modifications to power plans without obtaining pre-construction permits.
- EPA not pursuing enforcement at this time.
- West Virginia previously declined to join in a suit against AEP alleging same type of violations.

### ***Abandoned Mine Lands***

#### Science Advisory Committee Statement

- Agency should have benefit of science before promulgating rules.
- Jackie Hallinan expressed concern about state agencies with political influence and what kind of science they intend to use in rulemaking.
- Ken Ellison wants science to be transparent with supporting and substantiating credit to help make better-informed decisions and move forward so all can see what is happening.

Proposed AML Enhancement Rule distributed.

- Will bring DEP in-line with Office of Surface Mining initiative.

#### **DEP Web Page**

- Link with web page not up yet.

#### **Upcoming Advisory Council meetings tentative dates:**

- September 16, 2004
- December 16, 2004

Joe Dawley adjourned meeting at 12:15 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Water Pollution Control Permit Fee Schedule (47 CSR, Series 26)

Type of Rule:  Legislative     Interpretive     Procedural

Agency: Dept. of Environmental Protection - Div. of Water and Waste Management

Address: 414 Summers Street, Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	0			0	0
<b>PERSONAL SERVICES</b>					
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERATIONS</b>					
<b>EQUIPMENT</b>					
<b>OTHER</b>					

2. Explanation of Above Estimates:

The proposed rule will not result in any significant increase in the total cost of administering the fee schedule.

3. Objectives of These Rules:

The objective of this rule is to calculate a fee to be paid by new permittees which will offset the small administrative costs associated with the new permitting requirements and resulting changes to the state program.

Rule Title: Water Pollution Control Permit Fee Schedule (47 CSR, Series 26)

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The rule will provide a small amount of funding to comply with new federal permitting requirements and provide service to the public via the processing and review of permit applications.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of

Citizens: Certain concentrated animal feeding operations (cafo) will be required to obtain permit coverage as mandated by new federal requirements and will be required to pay an application fee and subsequent annual fee.

C. Economic Impact on Citizens/Public at Large.

Same as 4.B.

Date: \_\_\_\_\_

Signature of Agency Head or Authorized Representative:

\_\_\_\_\_