

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

Do Not Mark In This Box

FILED

2004 AUG 27 A 11:55

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: OFFICE OF WATER RESOURCES TITLE NUMBER: 47

CITE AUTHORITY: W. VA. CODE 22-11-10

AMENDMENT TO AN EXISTING RULE: YES NO

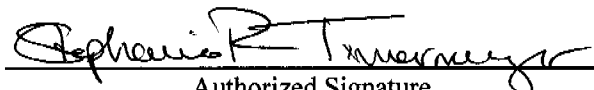
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

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 RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


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: August 27, 2004

TO: **LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

FROM: *(Agency Name, Address & Phone No.)* Department of Environmental Protection
Office of Water Resources
414 Summers Street
Charleston, WV 25301
(304) 558 2107

LEGISLATIVE RULE TITLE: Water Pollution Control Permit Fee Schedule

1. Authorizing statute(s) citation W. VA Code 22-11-10

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 21, 2004

b. What other notice, including advertising, did you give of the hearing?
Legal ad in statewide newspapers, publication in agency newsletter InDepth, email notification to subscribers of DEP's online mailing list (currently 800+ subscribers)

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 23, 2004

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)

August 27, 2004

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

Allyn G. Turner, Director

Office of Water Resources	after Sept. 22, 2004:
414 Summers Street	601 57th Street, S. E.
Charleston, WV 25301	Charleston, WV 25304
(304) 558 2107	(304) 926 0495
(304) 558 5905 (fax)	
aturner@wvdep.org	

- 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)

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.

N/A

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: 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.

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
ESTIMATED TOTAL COST	0			0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

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.

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:

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

FILED

2004 AUG 27 A 11:55
OFFICE WEST 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. 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. -- ~~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.

1.6 Former rules -- This legislative rule amends 47CSR26 "Water Pollution Control Permit Fee Schedules" that was filed on April 28, 2003 and became effective on April 28, 2003.

§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. "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 §22-11-8. 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).

2.6. "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 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. 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.

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 40C.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 of 33CSR20;

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

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 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 must 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 or her calculation of the fee to the chief 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 will notify the applicant of the accuracy of his calculation. If the applicant's calculation is incorrect, the chief will advise him or her 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 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 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 (CAFO). The initial permit application fee for a concentrated animal feeding operation will 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.~~ 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 (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 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.

§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 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 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 (CAFO). The annual permit fee for a concentrated animal feeding operation 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: 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) =

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

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

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

TRANSCRIPT

PUBLIC HEARING ON 47CSR26

AUGUST 23, 2004

A hearing was held on this rule on August 23, 2004. No one, other than the facilitator, Rich Carter, and staff from the Division of Water and Waste Management, was in attendance.

The formal record was opened and closed without any oral comments.

BROKEN W FARM
6436 US 220 N
OLD FIELDS, WV 26845

EMAIL-WALKERS_5@CITLINK.NET
304-538-7295

August 16, 2004

WV Dept. of Environmental Protection
Division of Water and Waste Management
1356 Hansford Street
Charleston, WV 25301

Dear Sir or Madam,

In response to the fees that are published for the CAFD permit that includes \$300.00 application fee, \$300.00 renewal fee, and a \$50.00 annual fee. We feel that this is quite excessive.

Family farms operate on small margins to support themselves. To force a farmer to pay to regulate himself is one thing, but to expose him to expensive fees is outrageous.

We would like to ask that you reconsider the fees to the following: Application Fee \$100.00, No Renewal Fee, and \$50.00 Annual Fee. There is no reason to have a renewal fee and annual fee; the two (2) are basically the same. The West Virginia Poultry Association feels that the renewal fee along with the first time application fee is enough.

Sincerely,

Broken W Farm

AUG 24 2004

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

West Virginia Farm Bureau

Member of American Farm Bureau Federation

1 Red Rock Road, Buckhannon, WV 26201
(304) 472-2080 • 1-800-398-4630
FAX (304) 472-6554



August 9, 2004

Ms. Jessica Greathouse
WV Dept. of Environmental Protection
1356 Hansford Street
Charleston, West Virginia 25301

Re: Proposed rule 47CSR26

Dear Ms. Greathouse:

Thank you for the opportunity to comment on proposed rule 47CSR26 (NPDES Fees). Our interest is in the new fees for Confined Animal Feeding Operations. The fee for an initial application seems excessive at \$300. We support the reduction of this fee to \$100. We also question the need for a permit renewal application fee. Once a farm is permitted, there should be no reason to charge additional and excessive fees to collect the same information that has been updated through an annual report. We recommend that this fee be eliminated. The annual permit fee of \$50 is acceptable.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Williams".

Robert L. Williams
Executive Secretary

47CSR26

WATER POLLUTION CONTROL FEE SCHEDULES

RESPONSE TO COMMENTS

On July 21, 2004, the Division of Water and Waste Management (DWWM) commenced the public comment period and subsequently held a public hearing on August 23, 2004 to accept oral comments on the proposed rule, 47CSR26. Written comments were also accepted through 6:00 PM on Monday, August 23, 2004. There were no comments at the public hearing concerning proposed rule 47CSR26. Two commenters submitted written comments on proposed rule 47CSR26. DWWM addresses these comments below.

I. COMMENTER: West Virginia Farm Bureau

COMMENT A. *Request to reduce application fee from \$300 to \$100, eliminate the renewal fee, and support of the \$50 annual fee.*

RESPONSE A: The WV legislature in 1992 initially approved this rule and established a schedule of permit application fees and annual permit fees for National Pollutant Discharge Elimination System (NPDES) permits issued by the Division of Water and Waste Management. NPDES permits can be issued for no longer than a five (5) year period, as per 47 CSR 10 -3.5.a., after which they must be reissued. We believe that there may be some confusion about the permit application fees and the annual permit fees. The initial permit application fee of \$300 would be due with the initial permit application submission. The renewal permit application fee would not be due again until the NPDES permit would be reapplied for just prior to the expiration of the general permit (five years later). This reflects a cost of \$60.00 per year for the application fee, a fee that in our opinion is not excessive, although the \$300.00 would be due in one calendar year.

The annual permit fee of \$50.00 is just that. This fee is due annually for holding an NPDES permit for the past year. This reflects a total annual expense for obtaining coverage and operating under the CAFO general NPDES permit of \$110.00. Again the \$300.00 fee would be expensed once every five (5) years with an annual fee of \$50.00 per year due for operating under an NPDES permit for the previous year.

II. COMMENTER: Broken W Farm

COMMENT A. *Same as Commenter I.*

RESPONSE A: Same as Commenter I.