



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Air Quality

TITLE-SERIES: 45-22

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Air Quality Management Fee Program

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/05/2022 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual. Register by 5:00pm 7/5/22 at <https://forms.gle/DKdxExuwnr1cQ53v6> or by calling Sandie Adkins or Stephanie Hammonds at (304)926-0475.

DATE WRITTEN COMMENT PERIOD ENDS: 07/05/2022 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Sandra Adkins

ADDRESS: WV Department of Environmental Protection, DAQ

601 57th Street, SE Charleston WV 25304

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule establishes a program to collect fees for Certificates to Operate (CTO) and for permits to construct, modify or relocate sources of statutory air pollution in accordance with 45CSR13, 45CSR14 and 45CSR19. All sources subject to air emission rules promulgated under Title 45, including air permit or registration requirements, are subject to this rule. The fees collected under this rule fund the Division of Air Quality's non-Title V program budget to maintain an effective air quality management program.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Summary of changes in the rule:

This rule has not been submitted to the Legislature since 1991. Revisions to the rule generally include updating the rule and increasing the fees since the rule was last revised over 30 years ago. Highlights of proposed changes include: (1) added CAA §111(d) requirements, PSD netting analysis and synthetic minor review as additional fees and provided clarification at §45-22-3.4.b, (2) revised title to Transfer of Certificate to Operate, clarified language, and increased the transfer fee from \$200 to \$500 at §45-22-4.2., (3) added Consumer Price Index riser language to keep fees in line with inflation in the future, with the effective date lagging the one-year at §45-22-4.3.e.; and (4) doubled each group fee and revised some group assignments at §45-22-4.4. Specific revisions include:

Section 1 (General).

*1.1 and 1.2 The scope and authority were clarified.

*1.5 The sunset provision was added.

Section 2 (Definitions).

*Air Pollution, Reserved, Director, Major Modification, Major Modification for Ozone, Major Stationary Source, Major Stationary Source for Ozone, and Plant were deleted.

*Certificate Holder, Fiscal Year, PSD Netting Analysis, Responsible Official, Secretary, Statutory Air Pollution, Synthetic Minor, and Transferee were added.

*Chemical Processing Unit, Complete Application, NSPS, Person, Process Unit, PSD, Source, Stationary Source, and Toxic Air Pollutant were clarified.

*Emissions Unit and Modification were corrected.

Section 3 heading was updated (Permit Application Requirements).

*3.1 Titles from 45CSR13, 45CSR14, and 45CSR19 were deleted to streamline the requirement because the previous practice of re-using the rule number for new rules is no longer in practice. 45CSR15 was removed because the rule was repealed in 2008. Clarified the requirement.

*3.2 Clarified.

*3.3 Clarified and updated payment options.

*3.4 Updated the title

*3.4.a Removed the fee amount (that is specified in 45CSR13) and provided clarification.

*3.4.b Added CAA §111(d) requirements, PSD netting analysis and synthetic minor review as additional fees and provided clarification.

*3.4.d This is a new requirement that reflects current practice.

Section 4 heading was updated to add acronym.

*4.1 (Requirements) Updated terminology in 4.1.a and 4.1.b.

*4.1.c - This is a new requirement that reflects current practice.

*4.2 Revised title to Transfer of Certificate to Operate, clarified language, and increased the transfer fee from \$200 to \$500.

*4.3 (Fee Payment)

*4.3.a The fee schedule previously identified as 4.4 is now identified as Table 45CSR22-B.

Subsection 4.5 continues to apply; however, it is no longer referenced by 4.3.a.

New CPI riser provisions are added to the requirement.

*4.3.b This was previously identified as 4.4.b, with some clarifying language.

*4.3.c Clarifying language that matches current practice was added.
*4.3.d This was previously identified as 4.4.c.
*4.3.e Consumer Price Index riser language has been added to keep fees in line with inflation in the future, with the effective date lagging the one-year.
*4.3.f Moved the penalty language from 4.6 to this section and clarified language that matches current practice. There is no increase to the penalty.
*4.4 - Revised title for clarification.
Each group fee in this table doubled.
Updated/clarified stationary source descriptions as needed.
The following stationary sources were assigned (or re-assigned) as follows:
- Nonmetallic Mineral Processing was consolidated to Group 8 (previously 7, 8, & 9)
- Natural Gas Compressors and Dehydration Sources were consolidated & moved to Group 7
- Natural Gas Production Sources were identified as a source category (Group 7)
- Natural Gas Sweetening Sources were moved to Group 7
- Concrete Batch Sources were identified as a source category (Group 8)
- 4.4.b and 4.4.c were moved to 4.3.b and 4.3.d, respectively
*4.5 (Operating Year)
*4.5.a Clarified certificate valid through July 31, to reflect current practice
*4.5.b Identified the operating fee schedule as Table 45CSR22-C
*4.5.c Clarifying current practice
*4.5.d Clarifying current practice
*4.5.e Clarifying current practice
*4.6 (Penalty). Moved penalty requirement to paragraph 4.3.f
Section 6 (Inconsistency Between Rules) was added for consistency with other DAQ rules.

Statement of circumstances requiring the rule:

The DAQ does not receive General Revenue to fund its non-Title V program, instead it relies on funding from the sources that it regulates. Revenues collected from Rule 22 are not sufficient to cover the non-Title V expenses. The average shortfall over the past 7 years is approximately \$370,000/yr. This shortfall has been made up from a combination of federal grant money (that must be matched) and penalties collected from sources that have been found to be out of compliance. It is not in the best interest of the agency nor the industries it regulates to rely on penalty money to fund the program. Revenues collected under the Title V program are not allowed to be used for non-Title V expenses. Additional detail is provided in the fiscal note.

This rule is exempt from the Regulatory Moratorium of Executive Order 2-18 under (q) Rules deemed necessary by the Governor.

Determination of Stringency:

A federal counterpart to this proposed rule does not exist. The proposed rule does not have a federal counterpart regulation; therefore, no determination of stringency is required.

Consultation with the Environmental Protection Advisory Council:

The Environmental Protection Advisory Council received a copy of this proposed rule in advance of the scheduled June 9, 2022 meeting.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Revenues of the State Government will not be impacted by this change. The Division of Air Quality is funded under a Special Revenue Account.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

Revisions to 45CSR22 will have a positive impact on special revenues of state government. The

revenues collected under Rule 22 currently run at a deficit from -\$486,617 in FY2020 (highest deficit in past 7 years) to -\$171,837 in FY2021 (lowest deficit in past 7 years) With the average deficit over the past 7 years being -\$368,505.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

Revisions to 45CSR22 are not anticipated to have an economic impact on the state or its residents; however, there will be an increase to regulated sources subject to this rule.

Fees regulated under 45CSR22 have not changed in over 30 years (since May 1991 when \$1 was equivalent to \$2.07 in January 2022). The last fee change for minor sources was introduced over 20 years ago (2003 and 2000) under 45CSR13 and it was a decrease to funding resulting from program efficiencies implemented for the creation of General Permits and Administrative Updates with corresponding General Permit registration fees and Administrative Update fees.

The proposed fee increase to the non-Title V program will come from:

- (i) Changes to Major source permit application fee and creation of new complexity application fee for synthetic minors/netting (\$15,000 a year),
- (ii) re-categorizing natural gas production pads as a specific group (currently considered all other sources, moving from Group 9 to Group 7) (\$392,800),
- (iii) re-categorizing concrete batch plants as a specific group (currently considered all other sources, moving from Group 9 to Group 8) (\$61,600),
- (iv) increasing the Certificate to Operate (CTO) transfer fee from \$200 to \$500 (\$12,000),
- (v) doubling the CTO Group fees to reflect inflation over the past 30 years (\$170,250), and
- (vi) applying a Consumer Price Index (CPI) riser to CTO fees to keep up with future inflation.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
	0	\$651,650	\$664,143

2. Estimated Total Revenues			
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E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The effective date of this rule is anticipated to be June 1, 2023. The re-categorization of natural gas production wells and concrete batch pads, increase to transfer fees, and increase to the CTO fees are proposed to go into effect at the start of fiscal year (FY) 2024 (July 1, 2023).

The proposed rule applies the CPI riser to the CTO fees effective July 1, 2024 (FY2025), 1 year following the effective date of the rule. The explanation for FY2024 is summarized under (1) and the explanation for FY2025 (upon full implementation) is summarized under (2) below.

- (1). The increase in total revenues of \$ \$651,650 for FY2024 is based on the following FY2021 data:
- (i) The increase from doubling the major source permit application fee and adding a permit complexity fee for synthetic minor and netting applications is \$15,000.
 - (ii) The increase from re-categorizing natural gas production sources (491 sources x \$800/source) is \$392,800, after taking into consideration the CTO fee increase.
 - (iii) The increase from re-categorizing concrete batch sources (77 sources x \$800/source) is \$61,600, after taking into consideration the CTO fee increase.
 - (iv) The increase from the revised CTO transfer fee is \$12,000 based on 40 CTO transfers multiplied by the \$300 increase per transfer.
 - (v) The increase from doubling the remaining CTO fees is calculated by subtracting the amount of G70 annual certification and CTO fees from natural gas production sources and the amount of concrete batch CTO fees from the corresponding sub-account revenue. $\$774,850 - (491 \times \$1,200) - (77 \times \$200) = \$170,250$.
 - (vi) The overall increase for FY2024 is calculated by adding (i) through (v) above ($\$15,000 + \$392,800 + \$61,600 + \$12,000 + \$170,250$) and equals \$651,650. This assumes no sources shutdown, all permitted sources pay their fees, and the same number of sources are being permitted.

- (2). The increase in revenues for FY2025 (upon full implementation) is \$664,143. The revenues for FY2025 include the FY2024 increase with the CPI riser applied to the CTO fees after subtracting out the transfer fees and application fees from the FY2024 increase. The CPI riser will not be applied to

permit fees and transfer fees. For these calculations, the historical CPI riser is estimated to be 2%; the actual CPI is published by the U.S. Bureau of Labor Statistics. The CPI riser will be applied each year according to the formula provided in proposed rule 45CSR22.

The calculation for FY2025 upon full implementation is:

$\$651,650 - \$12,000 - \$15,000 = \$624,650$ (FY2024 increase, subtracting transfer fees and application fees and applying the CPI riser.

$[\$624,650 + (\$624,650 * 2\%)] = \$637,143$

The total increase for FY2025 is the CPI riser adjusted annual fees plus the transfer fees and application fees that did not factor into the CPI riser calculation. $\$637,143 + \$12,000 + \$15,000 = \$664,143$.

In accordance with W. Va. Code §22-1A 3(c), the Secretary has determined that this rule will not result in a taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jason E Wandling -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 45
LEGISLATIVE RULES ~~RULE~~
~~DIVISION~~ DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

SERIES 22
AIR QUALITY MANAGEMENT FEE PROGRAM

§45-22-1. General.

1.1. Scope. -- This rule establishes a program to collect fees for Certificates to Operate (CTO) and for permits to construct, modify or relocate sources of statutory air pollution in accordance with 45CSR13, 45CSR14 and 45CSR19. All sources subject to air emission rules promulgated under Title 45 including air permit or registration requirements are subject to this rule. ~~Funds collected from~~ These fees ~~will be used to supplement fund the Director's Secretary's non-Title V program budget for the purpose of~~ to maintaining an effective air quality management program.

1.2. Authority. -- W. Va. Code ~~§22-5-1 et seq.~~ § 22-5-4.

1.3. Filing Date. -- ~~May 6, 1991.~~

1.4. Effective Date. -- ~~May 6, 1991.~~

1.5. Sunset Provision -- Does not apply.

§45-22-2. Definitions.

2.1. ~~"Air Pollution" has the meaning ascribed to it in W. Va. Code §22-5-2.~~ "Certificate Holder" means the responsible official holding a valid Certificate To Operate in accordance with the conditions specified in subsection 4.1 of this rule.

2.2. "Chemical Processing Unit" has the meaning ~~described~~ defined in 45CSR27.

~~— 2.3. [RESERVED]~~

~~— 2.4. "Completed"~~ 2.3. "Complete Application" means an application submitted with the appropriate fee paid to the ~~Director~~ Secretary and which contains all of the information required by the ~~Director~~ Secretary to determine whether a permit or ~~certificate~~ general permit registration should be issued or denied ~~by the Director.~~

~~— 2.5. "Director" means the Director of the West Virginia Division of Environmental Protection or such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.~~

~~— 2.6~~ 2.4. "Emissions Unit" has the meaning ~~described in 45CSR14~~ defined in 45CSR13.

~~— 2.7. "Major Modification"; "Major Modification for Ozone" have the meanings described in 45CSR14 and 45CSR19.~~

~~— 2.8. "Major Stationary Source"; "Major Stationary Source for Ozone" have the meanings described in 45CSR14 and 45CSR19.~~

2.5. "Fiscal Year" means the fiscal year for the State of West Virginia that begins July 1 and concludes June 30.

~~— 2.9 2.6. "Modification" has the meanings described meaning defined in 45CSR13 and 45CSR27.~~

~~— 2.10 2.7. "NESHAPs" means National Emission Standards for Hazardous Air Pollutants as described regulated in 45CSR15—45CSR34.~~

~~— 2.11 2.8. "Nonattainment Review/Bubble Concept "Nonattainment major new source review (NNSR) program" has the meanings as described meaning defined in 45CSR19.~~

~~— 2.12 2.9. "NSPS" means New Source Performance Standards as described regulated in 45CSR16.~~

~~— 2.13 2.10. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state and all agencies or divisions thereof, any state political subdivision, the United States of America, any municipal, public, statutory, or private corporation or association organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature has the meaning defined in W. Va. Code § 22-5-2.~~

~~— 2.14 2.11. "Process Unit" means components assembled to produce any chemical as a final or intermediate product. A process unit can operate independently if supplied with sufficient utilities, feed or raw materials and sufficient storage facilities for the product "chemical process unit" as defined in 45CSR27.~~

~~— 2.15 2.12. "PSD" means Prevention of Significant Deterioration, as described regulated in 45CSR14.~~

2.13. "PSD Netting Analysis" means the review required in accordance with 45CSR14 to determine if the source meets the definition of a major modification, as defined in 45CSR14.

2.14. "Responsible Official" has the meaning defined in 45CSR13.

2.15. "Secretary" means the Secretary of the Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W. Va. Code § 22-1-6 or § 22-1-8.

~~2.16 2.16. "Source" and "Stationary Source", and "Plant" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended. for the purpose of this rule means "stationary source" as defined in 45CSR13.~~

2.17. "Statutory Air Pollution" has the meaning defined in 45CSR13.

2.18. "Synthetic Minor" means a permit to limit physical and operational capacity below major stationary source thresholds (including 45CSR14, 45CSR19, 45CSR30 and 45CSR34).

~~— 2.17 2.19. "Toxic Air Pollutant" has the meaning described defined in 45CSR27.~~

2.20. "Transferee" means the Responsible Official who accepted the Certificate To Operate in accordance with the conditions specified in subsection 4.2 of this rule.

§45-22-3. Permit Application Requirements for Permit to Construct, Modify or Relocate.

3.1. For ~~the~~ sources or emission units subject to the permitting requirements of 45CSR13 ("~~Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation~~"), 45CSR14 ("~~Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration~~"), and 45CSR19 ("~~Requirements for Pre-Construction Review, Determination of Emissions Offsets for Proposed, New or Modified Stationary Sources of Air Pollutants and Bubble Concept Trading for Intrasource Pollutants~~"), and 45CSR15 ("~~Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61~~"), no person may commence construction, modification or relocation without first filing notifying the Secretary of such intent by submitting a completed complete permit application and obtaining a permit pursuant to 45CSR13, 45CSR14 and 45CSR19, as applicable.

3.2. Applications for permits for construction, modification ~~or~~ relocation, temporary, general permit registrations, or administrative updates shall be submitted in accordance with 45CSR13, 45CSR14, and 45CSR19, ~~and 45CSR15, whichever may be~~ as applicable.

3.3. Permit Application Fee Payment.

3.3.a. A person applying for a permit ~~to construct, modify or relocate pursuant to 45CSR13, 45CSR14 and 45CSR19~~ shall pay ~~a~~ the applicable fee when submitting the application. The fee shall be paid by a negotiable instrument (electronic funds transfer, credit card, check, ~~draft, warrant,~~ money order, etc.) made payable to the "WVDEP - Division of Air Quality" for deposit in the "Air Pollution Control Fund". ~~Any A permit application for a permit to construct, modify or relocate pursuant to 45CSR13, 45CSR14 and 45CSR19 shall not be deemed to have been received nor complete unless payment of the permit application fee is included paid in full.~~

3.3.b. An application fee paid hereunder is not refundable.

3.4. Permit Application Fee Schedule.

3.4.a. All persons required to submit ~~an a permit~~ application ~~for a permit to construct, modify or relocate pursuant to 45CSR13~~ shall pay ~~an a base~~ application fee of one thousand dollars (\$1,000), unless otherwise specified in 45CSR13.

3.4.b. In addition to the fee required in section 3.4.a. of this rule, ~~all~~ persons subject to PSD requirements (45CSR14), nonattainment major new source review ~~Review/Bubble Concept~~ requirements (45CSR19), NSPS requirements (45CSR16, 45CSR18, and 45CSR23), CAA §111(d) requirements, NESHAPs requirements (~~45CSR15~~ 45CSR34), ~~or~~ toxic air pollutant requirements (45CSR27) and persons with applications that include a PSD netting analysis or synthetic minor review shall pay additional fees as described in Table 45CSR22-A below:

Table 45CSR22-A. Additional Fees.

Category	Fee
NSPS requirements	\$1,000
<u>CAA §111(d) requirements</u>	<u>\$1,000</u>

NESHAPs or requirements	\$2,500
Toxic air pollutant requirements	\$2,500
PSD or requirements	\$10,000 <u>\$20,000</u>
Nonattainment Review/Bubble Concept for (1) New Major Sources and Bubble Plans, or (2) Major Modifications <u>major new source review requirements</u>	\$5,000 <u>\$10,000</u>
PSD netting analysis	\$2,500
<u>Synthetic minor review</u>	<u>\$2,500</u>

3.4.c. Fees for each category requirement in Section 3.4.b. of this rule are cumulative.

3.4.d. Sources subject to multiple NSPS, NESHAP, or toxic air pollutant requirements shall pay the category fee only once per application.

§45-22-4. Certificate to Operate (CTO).

4.1. Requirements.

4.1.a. No person may operate nor cause to operate a ~~plant or~~ stationary source of air pollution without first obtaining and having in effect a valid Certificate to Operate.

4.1.b. Any person in possession of a Certificate to Operate shall maintain the certificate on the premises for which the certificate has been issued and shall make the certificate immediately available for inspection by the ~~Director or his duly authorized representative~~ Secretary.

4.1.c. A Certificate to Operate is valid for a maximum of 13 months to allow sufficient time for the issuance of the Certificate to Operate at the beginning of a new fiscal year.

4.2. ~~Transfer of Operating Certificate to Operate.~~ Any person holding a ~~valid~~ Certificate to Operate may request ~~that the Director~~ Secretary transfer the certificate to another person providing the following conditions are met:

4.2.a. The Certificate to Operate is valid, meaning the fees are paid in full and the account is not in arrears.

~~4.2.a~~ 4.2.b. The certificate holder describes, in writing, the reasons for or circumstances of the transfer and certifies that the ~~plant~~ stationary source for which the certificate pertains is in compliance with all permits issued by the ~~Director and the Director's emission rules~~ Secretary and the Air Quality rules under Title 45.

~~4.2.b~~ 4.2.c. The transferee identifies and acknowledges, in writing, that it accepts and will comply with all permits issued by the ~~Director~~ Secretary and will comply with all applicable Air Quality rules of the Director under Title 45.

~~4.2.e.~~ 4.2.d. The certificate holder or transferee pays, at the time of the transfer request ~~for transfer~~, a transfer fee of ~~two hundred dollars (\$200)~~ five hundred dollars (\$500) payable to the “WVDEP - Division of Air Quality” for deposit in the “Air Pollution Control Fund”.

4.3. Fee Payment.

~~_____ A person applying for a certificate to operate shall pay a fee to the Director in accordance with the fee schedule of Sections 4.4. and 4.5. of this rule. The fee shall be paid by negotiable instrument made payable to the "Air Pollution Control Fund".~~ 4.3.a. All stationary sources which are or will be required to obtain a Certificate to Operate under this rule shall pay fees in accordance with the fee schedule provided in Table 45CSR22-B and the CPI riser provisions provided in subdivision 4.3.e. except as provided in subdivision 4.3.g. Fees shall be made payable to the "WVDEP – Division of Air Quality" for deposit in the "Air Pollution Control Fund".

4.3.b. If a stationary source is described by more than one of the groups in Table 45CSR22-B or contains individual emitting facilities listed under more than one of the groups, only the single highest fee shall apply. For each stationary source, no person shall be required to pay more than one listed fee on an annual basis.

4.3.c. The Secretary shall not issue a Certificate to Operate until the CTO fee has been paid in full.

4.3.d. A CTO fee paid hereunder is not refundable.

4.3.e. Consumer Price Index (CPI) riser. -- Effective July 1, 2024, the fee schedule provided in Table 45CSR22-B below shall be increased by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the reference calendar year 2023. For the purpose of this rule:

4.3.e.1. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers (CPI-U) published by the U.S. Bureau of Labor Statistics, as of the close of the twelve (12) month period ending on August 31 of each calendar year.

4.3.e.2. The CPI-U area coverage is U.S. city average, the series title is all items and the index base period is 1982-84 equals 100 or the revision of the CPI most consistent with this paragraph.

4.3.e.3. On or before May 1, 2024, and each May 1 thereafter, the Secretary shall determine the CPI riser for the coming fiscal year. The fees adjusted pursuant to this subdivision are not cumulative and shall remain adjusted for not more than one year.

4.3.e.4. The CPI riser and CPI adjusted group fee are calculated as follows:

CPI riser = ((CPI current year - CPI reference year)/(CPI reference year)) +1; and

CPI adjusted group fee = CPI riser x Table 45CSR22-B group fee.

4.3.f. Penalties and Interest -- Any person who operates a stationary source in violation of section 4 of this rule shall be subject to a penalty equal to five (5) percent of the applicable group fee for each calendar month in which the violation continues in addition to the annual fee required to be paid under section 4 of this rule.

4.3.f.1. Fees due for the fiscal year beginning July 1 shall not be subject to any penalties if paid on or before July 31 of that fiscal year.

4.3.f.2. The delinquent payment penalty is separate from and unrelated to any other penalties assessed by a court or collected by the Secretary pursuant to W.Va. Code §22-5-1 et seq., or any other rules of the West Virginia Department of Environmental Protection.

4.3.g. Any source subject to the operating permit program in 45CSR30 shall pay the fee required under 45CSR30.

4.4. ~~Fee Schedule~~ Annual CTO Fee Schedule.

4.4.a. ~~Fee~~

Table 45CSR22-B. Annual Fee Schedule.

<u>Group number</u>	<u>Stationary Source Industry</u>	<u>Group Fee</u>
Group 1	Integrated Steel Plant <u>Source</u>	\$10,000 <u>20,000</u>
	Electric Utility Plant <u>Source</u> (rated 300 MW or greater)	
Group 2	Primary Aluminum Plant <u>Source</u>	\$8,000 <u>16,000</u>
	Furnace and Foundry Coke Production Plant <u>Source</u>	
	Portland Cement Plant <u>Source</u>	
	Kraft Pulp Mill	
Group 3	Chemical Production Plant <u>Source</u> with Steam Plant <u>Source</u> (s) having total design heat input greater than 350 mmBtu/hr	\$5,000 <u>10,000</u>
	Hazardous Waste Incinerator	
	Electric Utility Plant <u>Source</u> (rate less than 300 MW)	
Group 4	Petroleum Refinery	\$4,000 <u>8,000</u>
	Ferroalloy Production Plant <u>Source</u> Any source containing chemical processing units emitting one or more toxic air pollutants and subject to regulation under 45CSR27 for which a higher operating certificate fee is not applicable	
Group 5	Chemical Production Plant <u>Source</u> (three process units or greater)	\$3,000 <u>6,000</u>
	Primary Metals Plant <u>Source</u> (not otherwise listed)	
Group 6	Rocket Fuel Plant <u>Source</u>	\$2,000 <u>4,000</u>
	Chemical Production Plant <u>Source</u> (less than three process units)	
	Carbon Products Plant <u>Source</u> (not otherwise listed)	
	Petroleum Storage and Distribution Facility <u>Source</u> (greater than 20 million gal/yr gasoline throughput)	

	Glass Production Plant <u>Source</u> (total pull rate greater than 6,000 lb/hr) Commercial/Industrial or Commercial Infectious Waste Disposal Facility <u>Source</u>	
Group 7	Nonmetallic Mineral Products Processing Plant (500 ton/hr or greater primary crushing capacity) Coil, Can or Sheet Coating Facility <u>Source</u> Coal Preparation Plant with Thermal Dryer Coal or other Solid Fuel-Fired Boilers or Process Equipment (total design heat input greater than 100 mmBtu/hr, excluding all boilers less than 10 mmBtu/hr design heat input) Lead, Aluminum or Copper Recovery Plant <u>Source</u> Asphalt Building Product Plant <u>Source</u> Secondary Metals Plant <u>Source</u> (not otherwise listed) Charcoal Plant <u>Source</u> Lime Manufacturing Plant <u>Source</u> <u>Natural Gas Compressor and/or Dehydration Source</u> <u>Natural Gas Production Source</u> <u>Natural Gas Sweetening Source</u>	\$1,000 <u>2,000</u>
Group 8	Hot Mix Asphalt Paving Plant <u>Source</u> <u>Concrete Batch Source</u> Wool Fiberglass Insulation Production Plant <u>Source</u> Sewage Sludge Incinerator Natural Gas Compressor Station (total reciprocating engine capacity greater than 1,000 h.p.) Natural Gas Compressor Station (total turbine capacity greater than 8,000 h.p.) Nonmetallic Minerals Processing Plant (primary crushing capacity greater than 100 tons/hr but less than 500 tons/hr) Source	\$500 <u>1,000</u>

	Sulfuric Acid Manufacturing Plant <u>Source</u> Coal or other Solid Fuel-Fired Boilers or Process Fuel Burning Equipment with total design heat input greater than 50 mmBtu/hr but less than 100 mmBtu/hr, excluding all boilers less than 10 mmBtu/hr Refractory Manufacturing Plant <u>Source</u> Metal Reclamation Furnace (wire, electrical equipment, batteries) Miscellaneous Surface Coating (not otherwise listed and greater than 100 tons/yr maximum emissions of volatile organic compounds) Coal Preparation Plant <u>Source</u> (wet washing or pneumatic cleaning not otherwise listed) Clay Processing/Brick Manufacturing	
Group 9	On-site Pathological/Infectious Waste Incinerator Crematory Incinerator Other Glass Manufacturing Including Specialty Manufacturing Plastic Products Recovery Facility <u>Source</u> Miscellaneous Surface Coating (not otherwise listed and greater than 25 tons/yr maximum emissions of volatile organic compounds) Tank Truck and Railroad Tank Car Cleaning/Repair Facility <u>Source</u> Metal or Ore Briquet Manufacturing/Recovery Facilities <u>Sources</u> Gray Iron Foundry Coal Processing and Handling (not otherwise listed) Nonmetallic Minerals Processing Plant (primary crusher capacity less than 100 tons/hr) Natural Gas Sweetening Plant Printing Facility <u>Source</u> (emitting greater than 150 lbs/day of volatile organic compounds)	\$200 <u>400</u>

	All other sources (excluding indirect affected sources) subject to emission rules, permit, and/or registration requirements promulgated by the Director	
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~~4.4.b. If a plant or source is described by more than one of the groups in Section 4.4.a. or contains individual emitting facilities listed under more than one of the groups in Section 4.4.a., only the single highest fee shall apply. For each stationary source, no person shall be required to pay more than one fee listed in Section 4.4.a.~~

~~4.4.e. A fee paid hereunder is not refundable.~~

4.5. Operating Year.

4.5.a. A Certificate to Operate shall be issued for the fiscal year period July 1 through June 30 of each year or for any portion of such year remaining upon initial new source start-up. The certificate will be valid through July 31 of the following year.

4.5.b. For those persons making application after July 1 of the current operating year for a Certificate to Operate in the current operating year, such person shall pay a fee or prorated fee in accordance with ~~the following schedule~~ the schedule provided in Table 45CSR22-C below:

Table 45CSR22-C. Prorated Fee Schedule.

Month	% of Fee
July	100
August	100
September	100
October	100
November	100
December	100
January	90
February	80
March	70
April	60
May	50
June	50

~~4.5.c. For new sources that do not begin construction within the current fiscal year, the Certificate to Operate fee will be waived. Certificate to Operate fees will be collected for all sources, regardless of construction or start-up, or operating status beginning in the next fiscal year.~~

~~4.5.d. Certificate to Operate fees must be paid annually, regardless of the operating status of the source.~~

~~4.5.e. Failure to pay the Certificate to Operate fee, and any penalties as set forth in subdivision 4.3.f may be used as evidence in determining if the source should be considered permanently shutdown. Permits or general permit registrations may be revoked if determined to be permanently shutdown.~~

Reapplication or application for new permits may be required for any source determined to be permanently shutdown.

— 4.6. ~~Penalty.~~

~~Any person who operates a plant in violation of the requirements of Section 4 of this rule shall be subject to a penalty equal to five percent (5%) of the certificate to operate fee for each month of violation and payable to the Director in addition to the annual certificate fee. This penalty for delinquent payment is separate from and unrelated to any penalties assessed by a court or collected by the Director pursuant to W. Va. Code §22-5-6 for violations of the Code or the Director's rules.~~

§45-22-5. Collection.

5.1. Any fee or penalty due under this rule is a debt due the State of West Virginia and may be collected pursuant to law.

§45-22-6. Inconsistency Between Rules.

6.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.