

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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FILED

1990 JUL 23 AM 11:53

DEPT. OF STATE
WEST VIRGINIA

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

AGENCY: Board of Health TITLE NUMBER: 64

CITE AUTHORITY §16-2A-6

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 30

TITLE OF RULE BEING AMENDED: Fees for Permits

IF NO, SERIES NUMBER OF NEW 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.



Taunja Willis Miller, Secretary
Dept. of Health and Human Resources

REVISED
FISCAL NOTE FOR PROPOSED RULES

Rule Title: FEES FOR PERMITS

Type of Rule: Legislative Interpretive Procedural

Agency Division of Health Address Building 3, Capitol Complex
Charleston, West Virginia 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.

The Fees for Permits Rule sets the maximum amounts which a county (local) health department may charge for the various permits which it issues and has no fiscal impact on State government.

3. Objectives of these rules:

The proposed amendments: 1) delete one existing fee; 2) increase the maximum allowable charge for nine of twelve remaining existing fees; 3) decrease one existing fee; and 4) add four new fees. The proposed amendments increase the options available to county health departments for generating revenue, which in some instances may be necessary in order to provide full-time public health services.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Various industries will be affected to the extent that county health departments elect to charge fees. The major impact of the new fees will be on restaurants and retail food stores. At the present time 38 county health departments charge fees for permits. Estimates of increased revenues per county range from \$1,500 to \$60,000. Estimates of impact on specific industries are not available.

C. Economic Impact on Citizens/Public at Large.

With the exception of the new fee for new or repairs of water wells, these fees do not directly affect the general public.

Date July 11, 1990

Signature of Agency Head or Authorized Representative



Taunja Willis Miller, Secretary
Department of Health and Human Resources

FILED

DATE: July 23, 1990
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Board of Health

1990 JUL 23 AM 11:53
DEPT OF HEALTH & HSA
SECRETARY OF STATE

LEGISLATIVE RULE TITLE: Fees for Permits

1. Authorizing statute(s) citation §16-2A-6

2. a. Date filed in State Register with Notice of Hearing:
April 23, 1990

b. What other notice, including advertising, did you give of the hearing?

WV Retailers Association, WV Association of Convenience Stores,
Association of Retail Grocers, Water Well Drillers Association
and County Health Departments

c. Date of hearing (s): May 23, 1990

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)

f. Name and phone number of agency person to contact for additional information:

Kay Howard 348-3223

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: 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

WEST VIRGINIA BOARD OF HEALTH
RULE ABSTRACT

Title: Fees for Permits

CSR Title and Series: 64 CSR 30

Type: Legislative

Summary: The Fees for Permits Rule sets the maximum amounts which a county (local) health department may charge for the various permits which it issues.

The proposed amendments: 1) delete one existing fee; 2) increase the maximum allowable charge for nine of twelve remaining existing fees; 3) decrease one existing fee; and 4) add four new fees. The proposed amendments increase the options available to county health departments for generating revenue, which in some instances may be necessary in order to provide full-time public health services.

For further information contact: Regulatory Development Section, Telephone 348-3223 or Ron Forren, Office of Environmental Health Services, telephone 348-2981, Division of Health, Building 3, Capitol Complex, Charleston, WV 25305.

[PROPOSED]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Fees for Permits

Series 30

For Filing with the Legislative
Rule-Making Review Committee

[PROPOSED]

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Fees for Permits

64 CSR 30

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[PROPOSED]
TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

SERIES 30
FEES FOR PERMITS

FILED
1990 JUL 23 AM 11:53
DEPARTMENT OF HEALTH AND HUMAN SERVICES
SECRETARY OF STATE

§64-30-1. General

1.1. Scope - These legislative rules establish the fees for permits issued by a county, municipal or combined board of health.

1.2. Authority - W. Va. Code §16-2A-6

1.3. Filing Date -

1.4. Effective Date -

1.5. Public Hearing - May 23, 1990.

1.6. Approval - These rules were approved by the West Virginia Board of Health on July 20, 1990.

1.7. Supersession and Repeal of Former Regulations - These rules supercede and repeal West Virginia Board of Health Legislative Rules, Fees for Permits, 64 CSR 30, 1983.

§64-30-2. Application and Enforcement

2.1 Application - These legislative rules apply to any county, municipal or combined board of health which charges a fee for the issuance of such permits as covered by these legislative rules.

2.2. Enforcement - The enforcement of these legislative rules is vested with the director of the West Virginia department division of health or his lawful designee.

§64-30-3. Definitions

3.1. Bathing Beach - A public bathing place located on a natural stream, pond or lake or on an artificial pond or lake which is formed by impounding a natural waterway.

3.2. Child Care Center - A facility caring for seven or more children for all or part of a day.

3-1- 3.3. Developed Site - A location for placement and hookup of a mobile home.

3-2- 3.4. Fixed Expiration Date - An annual date at which time all permits of the same type expire. The fixed expiration date for each of the permits covered by this rule are derived from the state code or the rule which authorizes the issuance of the particular permit.

3-3- 3.5. Food Service Establishment - Any fixed or mobile restaurant; coffee shop; cafeteria; short-order café; soda fountain; tavern; bar; cocktail lounge; delicatessen; nightclub; roadside stand; industrial feeding establishment; private, public, or nonprofit organization or institution routinely serving food; catering kitchen; commissary or similar place in which food or drink is prepared for sale or service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

3.6. Food Service Manager - The individual in a food service establishment who is the supervisor responsible for the day-to-day operations of the establishment.

3.7. Hotel - Any temporary or permanent buildings or structures which are maintained, offered, or used for dwelling or sleeping quarters for pay.

3.8. Individual On-Site Sewage Disposal System - A system for the collection, treatment and disposal of sewage which serves a single dwelling or establishment.

3.9. Innovative Alternative Type Sewage System - A method of sewage disposal for a single family dwelling or establishment for which design standards have been prepared and listed in the West Virginia board of health interpretive rules, Sewage Treatment and Collection System Design Standards, 64 CSR 47, as an innovative or alternative system.

3-4- 3.10. Mobile Food Unit - A vehicle-mounted food service establishment designed to be readily moveable.

3.11. Mobile Home Park - Any site, area, tract, or parcel of land upon which two (2) or more mobile homes, used or occupied for dwelling purposes, are parked, either free of charge or for a consideration.

3-5- 3.12. Organized Camp - Any area, place, parcel, or tract of land on which facilities are established or maintained to provide an outdoor group living experience for children or adults, or where one or more permanent or semi-permanent structures are established or maintained as living or sleeping quarters for children or adults, and operated for educational, social, recreational, religious instruction or activity, physical education or health, or vacation purposes either gratuitously or for compensation, provided, that this definition shall not be construed to include a hunting, fishing, or other camp privately owned and used exclusively for the personal pleasure of the owner.

3-6- 3.13. Potentially Hazardous Food or Drink - Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other in-

redients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms. The term does not include clean, whole, uncracked, odorfree shell eggs or foods which have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less.

3.14. Retail Food Store - Any place, structure, premise, vehicle, or any part thereof in which food is sold retail, offered for retail sale, or served not to be consumed on the premises. For the purpose of this rule, the term "retail food store" shall not include establishments which handle only pre-packed, non-potentially-hazardous foods; roadside markets that offer only fresh fruits or fresh vegetables; or the delicatessen operation of a retail food store.

3.15. Sewage Tank Cleaning Truck - A truck used for the removal, collection or transportation of sewage.

3.16. Subdivision - Land which has been partitioned or divided into two (2) or more lots, tracts, parcels, plats, sites, areas, units, interests or other division, any of which are less than two (2) acres in size with an average frontage of less than one hundred fifty (150) feet, for the purpose of dwelling or establishment development and including the division of land by deed, metes and bounds description, lease, map, plat or other instrument.

3.17. Swimming Pool - Any artificial basin, chamber, or tank used or intended to be used by the public for swimming, diving, or recreational type bathing.

~~3-7-~~ 3.18. Temporary Food Service Establishment - A food service establishment that operates at a fixed location for a period of time of not more than fourteen (14) consecutive days in conjunction with a single event or celebration and required by law Chapter 16, Article 6, Section 3 of the West Virginia Code to have a permit.

~~3-8-~~ 3.19. Tent and Travel Trailer Campground - A tract or parcel of land maintained, offered, or used for camping and parking of recreational house trailers. Wilderness camping areas are not included in this definition.

3.20. Vending Machine - A machine designed for the dispensing of potentially hazardous food or drink to the public by a self-service method.

3.21. Water Well - Any excavation or penetration in the ground, whether drilled, bored, cored, driven, or jetted for a water supply, for the exploration for water, or for removal of water to dewater construction site(s).

\$64-30-4. Options to Charges for Permits

4.1. Any county, municipal or combined board of health may charge a fee for the issuance of a permit covered by these rules.

4.2. Any county, municipal or combined board of health may charge for whichever permits listed and are not required to charge for all permits listed. The amount of each fee listed represents the maximum amount which shall be charged. Any county, municipal or combined board of health may charge any dollar amount up to the maximum. Provided, that a county, municipal or combined board of health shall not change the formulas utilized in section 5 and 6. §§64-30-5 and 6 of this rule.

§64-30-5. Permits and Fees

5-5--5.1. Bathing Beach and Swimming Pool Permit - \$50 per permit. The fixed expiration date is December 31.

5-1--5.2. Child Care Center Permit - \$35 \$25 per permit. The fixed expiration date is December 31.

5-12- 5.3. Food Service Establishment - See Table 64-30A found at the end of this regulation.

5.4. Food Service Manager Certification (annual) - \$50.

5-13- 5.5. Hotel Permit - See Table 64-30B found at the end of this regulation.

5-8--5.6. Individual On-Site Sewage Disposal Systems and Innovative Alternative Type Sewage Systems (excluding pit privies) - \$50 per permit for new systems. See Table 64-30C found at the end of this regulation.

5-4--5.7. Mobile Food Unit Permit - Potentially hazardous food only, \$20 \$50 per unit. The fixed expiration date is June 30.

5-2--5.8. Mobile Home Park Permit - ~~Two--(2)--to--ten--(10) developed sites---\$30;--\$1.00 per developed site above ten--(10). Fixed expiration date---December 31;--See Table 64-30D found at the end of this regulation.~~

5-10--~~Milk Transfer Station Permit---\$50 per permit;--Fixed expiration date---June 30;~~

5-6--5.9. Organized Camp Permit - \$75 per permit. The fixed expiration date is January 1.

5.10. Retail Food Store Permit - \$25 per check-out station, maximum \$150.

5-9--5.11. Sewage Tank Cleaning Truck Permit - \$25 per truck. ~~Fixed expiration date---December 31; \$50 per truck. The fixed expiration date is five years from the date of issuance.~~

5.12. Subdivisions - See Table 64-30E found at the end of this regulation.

~~5.11.~~ 5.13. Temporary Food Service Establishment Permit-
~~510~~ \$25 per unit. The fixed expiration date is June 30.

~~5.7.~~ 5.14. Tent and Travel Trailer Campground - \$35-per
~~permit.~~ Fixed--expiration--date---March-31. See Table 64-30F
found at the end of this regulation.

~~5.3.~~ 5.15. Vending Machine Permit - Potentially hazardous
food only, \$15 \$25 per machine. The fixed expiration date is
June 30.

5.16. Water Well Permit (new or repair) - \$50 per well.

§64-30-6. Prorating of Fixed Expiration Date Permit Fees - The
fee charged for an annual permit with a fixed expiration date
shall be prorated according to the following formula:--(See-Table
64-30E formula shown in Table 64-30G found at the end of this
regulation.

§64-30-7. Severability - If any provision of these rules or the
application thereof to any person or circumstance shall be held
invalid, such invalidity shall not affect the provisions or the
application of the rules which can be given effect without the
invalid provisions or application, and to this end the provisions
of these rules are declared to be severable.

§64-30-8. Administrative Due Process - Those persons adversely
affected by the enforcement of these legislative rules desiring a
contested case hearing to determine any rights, duties, interests
or privileges shall do so in a manner prescribed in the Rules of
Procedure for Protested Case Hearings and Declaratory Rulings,
West Virginia Board of Health Procedural Rules, Series-17-1983 64
CSR 1. The--aforementioned--procedural--rules--are--incorporated
herein-by-reference.

Table 64-30A. Food Service Establishment Permit Fees

<u>Seating Capacity</u>	<u>Fee for Permit</u>
0-35	\$ 50
36-75	\$-75 <u>\$100</u>
76 and over	\$100 <u>\$150</u>

The fixed expiration date is June 30.

Table 64-30B. Hotel Permit Fees

<u>Number of Rooms</u>	<u>Fee for Permit</u>
0-35	\$ 50
36-75	\$-75 <u>\$100</u>
76 and over	\$100 <u>\$150</u>

The fixed expiration date is June 30.

Table 64-30C. Individual On-Site and Innovative Alternative Type Sewage System Permit Fees

<u>Type of System</u>	<u>Fee for Permit</u>
<u>Class I (New or Modified)</u>	<u>\$150</u>
<u>Class II (New or Modified)</u>	<u>\$150</u>
<u>Home Aeration Unit</u>	<u>\$150</u>

Table 64-30D. Mobile Home Park Permit Fees

<u>Number of Developed Sites</u>	<u>Fee for Permit</u>
<u>0-35</u>	<u>\$ 50</u>
<u>36-75</u>	<u>\$100</u>
<u>76 and over</u>	<u>\$150</u>

The fixed expiration date is December 31.

Table 64-30E. Subdivision Permit Fees

<u>Number of Lots</u>	<u>Fee for Approval</u>
<u>1-5</u>	<u>\$ 50</u>
<u>6-10</u>	<u>\$100</u>
<u>11-14</u>	<u>\$150</u>

Table 64-30F. Tent and Travel Trailer Campground Permit Fees

<u>Number of Developed Sites</u>	<u>Fee for Permit</u>
<u>0-35</u>	<u>\$ 50</u>
<u>36-75</u>	<u>\$100</u>
<u>76 and over</u>	<u>\$150</u>

The fixed expiration date is March 31

Table 64-30G. Prorated Fixed Expiration Date Permit Fees Formula

less than 3 months	3 months to less than 6 months	6 months to less than 9 months	9 months to less than 12 months
25% of annual fee	50% of annual fee	75% of annual fee	100% of annual fee

Proposed Rule
Public Hearing Comments Received,
Discussion and Response

Rule Title: Fees for Permits, 64 CSR 30

A public hearing regarding the proposed amendments to this rule was held May 23, 1990. The hearing was attended by ten persons. An attendance record is attached. Thirteen sets of comments were received by mail or hand delivered. Copies of comments received are attached.

1. Comment: Nine county boards of health submitted comments supporting the rule.

2. Comment: Sections 3.5, 3.6 and 3.7. The new permit fee of \$5 established in §5.15 for food service workers, who are defined in §3.7, attracted negative comment from the Kroger Food Stores, the West Virginia Retailers Association, the Chico Dairy Company and the West Virginia Association of Convenience Stores. The proposed fee was described as burdensome and costly. Turnover among part-time employees, and in the case of larger establishments, the use of substitute workers from other areas were cited as problems creating "uncapped" costs and administrative limitations for operators. The Retailers Association questioned the scope of the definition. Chico Dairy Company estimated a total cost for its convenience stores which handle fast food at potentially \$8,000, considering the permit fees for food service workers, food service establishments (§3.5) and food service managers (§3.6). (See Comment #2 below for estimates from the Convenience Store Association.) Chico Dairy and the Association of Convenience Stores were opposed to all three permit fees; The West Virginia Retailers Association and the Kroger Company opposed only the permit fees for food service workers. The Kroger Company supported requirements of \$5.5 and \$5.6 relating to food service establishments and food service managers.

Response: The Reportable Disease Rule, 64 CSR 7, allows the county health officers discretion in requiring food service worker and food service manager training. Eighteen county health officers require food service worker training and one county conducts a voluntary manager's training program. The Board notes that many states are gradually changing their training efforts to concentrate on food service managers and let management train their individual workers. Additionally, the U.S. Food and Drug Administration promotes the training of food service establishment managers. Finally, the large numbers and high turnover rates of food service workers do create problems in providing training with sufficient frequency in sufficiently large facilities. The Board believes that local health departments might find that focusing on food manager training is a more cost-effective means of assuring proper protection of the general public from food-borne diseases and has therefore deleted the

food service worker fee and definition.

3. Comment (WV Association of Convenience Stores): Sections 3.9, 3.14, 3.15 and 3.21. The West Virginia Association of Convenience Stores noted that in combination with costs associated with the permits required for (1) Food Service Establishment, (2) Food Service Manager, and (3) Food Service Worker, the additional permit fees required for (4) Individual On-Site Sewage Disposal Systems, (5) Potentially Hazardous Foods, (6) Retail Food Stores and (7) Vending Machines might cost a rural store as much as \$430 in fees. The Convenience Store Association stated that most of its members are multi-unit operators with potential fees of over \$21,000 and urged the rejection of the proposed rule.

Response: The comment assumes every convenience store in the state will be subjected to seven permit fees. Only permit fees applicable to an individual store's specific operation would be assessed. Existing stores and stores on public systems would not be assessed fees for water and sewer systems, thus reducing their maximum potential charge to \$360. Items 4 and 5, below, discuss aspects of cost estimation and revenue utilization.

4. Comment (WV Retailers Association): "In our opinion, the fiscal note is very much under-estimated. The food store section alone will produce this much revenue."

Response: County health departments may charge for whichever permits are listed and are not required to charge for all permits. The amount of the fee represents the maximum amount which can be charged. It is difficult to estimate the amount the fee increase will generate. Presently 38 counties charge permit fees. Estimated increases in permit fee revenue for counties range from \$1,500 to \$60,000. The fiscal note has been revised.

5. Comment (WV Well Drillers Association): "There is little doubt that there is a need for the generation of funds for the enforcement of the various regulations the Department must enforce. However, as a water well driller, I must insist that funds generated by my industry should be applied to the water well industry for the purpose of achieving uniform enforcement of the Regulations and Design Standards set forth by the Department."

Response: The proposed rule sets a maximum amount which a county health department may charge for various types of permits. There is no requirement in law for the dedication of fees for specific purposes. The Board believes that in instances where county health departments elect to charge fees for various permits, that the counties intend to utilize the funds generated to support technical assistance, training and enforcement programs which generate the fees. Neither the Board nor the Division of Health have statutory authority to compel the use of specific fees for specific programs.

6. The Board has initiated the following proposed revisions: (1) added a routine supersession and repeal statement (\$1.7); (2) reduced the maximum amount for a vending machine permit to \$25, which was the originally intended amount; (3) made non-substantive revisions to a number of provisions for purposes of clarification; and (4) rearranged and renumbered the fees in alphabetical order.

PUBLIC HEARING

fees for permits

5-23-90

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)
JACK STUEMS	MORGANTOWN, WV	MAN. CO. HEALTH DEPT
CHARLES R. SAGER	CHARLESTON, WV	KAN-CUMS HEALTH DEPT
Stanley Miller	Rt2 Box 382, Bluffville, Mo.	man & Poling Health Dept
James E Sharts	Box 1314 Logan	Logan Co. Health Dept
John Cooper	44-1 WILTSWIRE RD KEANEYSVILLE WV 25430	DEFERSON CO HEALTH DEPT
EARL L. BURGESS JR.	75 MR. PARKMAN + BAYS. MORGANTOWN, WV	M.D. OHSO WALKER HEALTH DEPT.
John W. Bechtman	135 Henry Lane Wellsburg, W. Va.	Brants Co. Health Dept
DALE HAINES	Suite 714, ATLAS BLDG, CHAS. ST. 2501 W/ASSA OF COURTESY STOR	
AARON WILKES	P.O. Box 508 Beckley, W. Va. 25801	Little General Store, Inc.
Paul McKelown	One WV Retirement Assoc.	

Comments Received Concerning
Proposed Amendments to
Fees for Permits Rule
April 23, 1990 - May 23, 1990

Earl E. Allara, M.D., Director
Jefferson County Health Department

John W. Bertram, Chairman
Local Health Administration Section
West Virginia Public Health Association

Earl L. Burgess, Jr., Director
Environmental Health Program
Mid-Ohio Valley Health Department

Edward Callis, Assistant Manager
Store Operation Services
Kroger Food Stores

Samuel Chico, Jr., President
Chico Dairy Company

David Haines, Executive Director
West Virginia Association of Convenience Stores

Doug Henderson, President
West Virginia Well Drillers Association

Paul McKown, President
West Virginia Retailers Association

Harrison-Clarksburg Health Department
Correctional Center

Don Ramey, Chairman
Lincoln County Board of Health

Donald M. Rosenberg, M.D., Medical Director
Kanawha-Charleston Health Department

Jack L. Sturms, Executive Director
Monongalia County Health Department

William B. Turner, Jr., Chairman
Berkeley County Board of Health

Stanley Walls, Program Manager
Mercer and Raleigh County Health Department

Jefferson County Health Department

EARL D. ALLARA, M.D.
HEALTH OFFICER



44-1 WILTSHIRE ROAD
KEARNEYSVILLE, W. VA.
25430

May 22, 1990

John P. White, D.D.S., Chairman
West Virginia Board of Health
Department of Human Services
1900 Kanawha Blvd., East
Capitol Complex, Building 3
Charleston, WV 25305

Re: Fees for permits

Dear Dr. White:

Jefferson County is having a population explosion. People from the Washington, D.C. area are moving to the county to live, but they still work in D.C.. Some 14,000 acres of land has been subdivided and sold but has not been built on, so the people are going to continue to move to Jefferson County.

No state monies have been forthcoming to provide for the needed additional manpower to prevent violations of the public health laws and regulations.

The Jefferson County Commission has provided money for three of the sanitarians positions, however they have reached their limit.

Fees from permits has been used to fund one sanitarians position. Those fees do not represent the cost of work. The proposed fee schedule will address some of these short comings. Other states charge much more for the same service.

The Jefferson County Board of Health recommends you establish the proposed fee schedule. It will act as a maximum and permit counties to vary fees according to their needs.

Sincerely,

A handwritten signature in cursive script that reads "Earl D. Allara, M.D.".

Earl D. Allara, M.D.
Physician/Director

EDA:adw



WEST VIRGINIA PUBLIC HEALTH ASSOCIATION, INC.
AFFILIATED WITH AMERICAN PUBLIC HEALTH ASSOCIATION
CHARLESTON, WEST VIRGINIA 25305

May 22, 1990

John P. White, D.D.S., Chairman
West Virginia Board of Health
West Virginia Division of Health
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Chairman White:

As Chairman of the Local Health Administration Section, of the West Virginia Public Health Association, I am writing in support of the proposed environmental fee scale.

Fees are necessary due to the loss of revenue and severe shortages of funds to adequately provide routine programs that insure the protection of the public health.

The current fee schedule is generally based on 1/3 (one-third) the actual expenses of providing services. The new proposed fee scale is generally based on approximately 1/2 (one-half) the total costs of providing those mandated and necessary services. At no time have county health departments gouged the citizens of this state with inflated fees.

Only 1/2 (one-half) the county health departments presently charge fees and most do not charge religious and charitable organizations!

Charges are made for permits and services and the individual maintains possession of the food handling card to take with them if they change employment.

Public health officials across the state do not agree with the philosophy of charging fees, but have found this to be the only fair method of raising badly need revenues.

The majority of the grievances filed at your last meeting were made by groups who have never paid a fee due to a typographical error in 1983. Although there appears to be some misunderstanding on the issuance of food handling cards by this group, I hope the State Board of Health understands that the requirement to obtaining these cards are determined by each county health officer and can vary from one county to another. Of these groups, only those serving or preparing potentially hazardous foods in their delis, will be required to receive food handling cards.

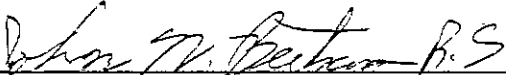
LOCAL HEALTH ADMINISTRATION SECTION

John P. White, D.D.S.
Chairman, West Virginia Board of Health
Page 2
May 22, 1990

In counties offering food handling instruction, expenses are incurred to purchase slides, films and instruction. Through these education classes, we feel West Virginia has been saved the embarrassment of unnecessary food-borne disease outbreaks and food poisonings of individuals and enjoy a superior rating amongst the states in food protection surveys.

Without the State Board of Health's approval of these proposed fees, many county health departments will be forced to reduce programs and staff and not be capable of truly protecting the public health and rights of our citizens who consume and purchase food, drink and accommodations from these public facilities.

We strongly urge you to approve these fees as presented.



John W. Bertram, R.S., Chairman
Local Health Administration Section
West Virginia Public Health Association

JWB/elt

Administrative ...
Comments ...

- 1. ...
- 2. ...
- 3. ...

Robert J. ...

17m 30f



Mid-Ohio Valley Health Department

211 SIXTH STREET, PARKERSBURG, WEST VIRGINIA 26101
Phone 304/485-7374

May 22, 1990

Dr. Thomas Lilly
Chairperson

Judith L. Shannon
Vice-Chairperson

Anthony Minard
Treasurer

David E. Rice, M.A., M.P.H.
Executive Director

John P. White, D.D.S., Chairman
West Virginia Board of Health
Department of Health and Human Resources
1900 Kanawha Blvd., East
Capitol Complex
Building 3
Charleston, West Virginia 25305

Re: Fees For Permits - Series 30

Dear Dr. White:

Please accept this letter as support for Environmental Fees For Permits for local health departments.

Presently, I am informed, approximately one-half of West Virginia's local health departments have found it necessary to charge for Environmental permits to supplement their dwindling resources. Not all departments are charging the full fee allowed for the permits nor are they charging non-profit, religious or charitable type organizations. I can not speak in detail for other agencies, but I can inform you what the supplemental income means to the six counties under the Mid-Ohio Valley Board of Health.

About five years ago we found it necessary to impose the fees for Environmental permits. No one within the agency wanted to charge fees but we were left with no other alternative. Even with the fees the Mid-Ohio Valley Health Department found it necessary to have a reduction in force (RIF) within one year. We lost four (4) professional employees in the RIF.

The funding received has primarily gone to "keeping the doors open" and not for salary adjustments.

Our budget is approximately \$2,400,000. Only about \$800,000 comes from the legislature and local funding sources, the remaining two-thirds of the budget comes from fees, grants, purchase service contracts, etc.

Serving: City of Parkersburg, Calhoun, Pleasants, Ritchie, Roane, Wirt & Wood Counties.

Page 2
Letter - 5-22-90
John P. White, D.D.S.

Four of our six counties collectively receive about \$6,500 from their county commissions. Without the fees and other innovative ways of generating income, any of these four counties could end up as Summers County has. All of our six counties are working at 100% time.

If for any reason, the Board would find it necessary to refuse an increase or implementation of a fee for any portion of the proposal -- please do not sacrifice the total request. I feel it is imperative, for many counties, that you render a favorable ruling.

Thanking you in advance, I remain,

Sincerely,



Earl L. Burgess, Jr., R.S., Director
Environmental Health Program
Past President West Virginia Public Health Association

ELB:js



KROGER FOOD STORES

P.O. Box 14002 Roanoke, Va 24005-4002

May 21, 1990

West Virginia Department of Health
and Human Resources
Building 3, Room 204
State Capitol Complex East
Charleston, WV 25305

Re: Proposed Fees For Permits Rules
Sections 3.5, 3.6, 3.7

The Kroger Company is committed to providing safe food for the public and we support food safety education for employees of food service establishments. We have a food safety awareness program in place for all of our employees in perishable departments. We support the requirements outlined in sections 3.5, (Food Service Establishment) and 3.6, (Food Service Manager).

However, we feel section 3.7, (Food Service Workers) would be extremely burdensome to us economically and would also be very difficult and costly to administer. Turnover among our part-time workers would create a continuing "uncapped" cost and we would be limited in our ability to transfer workers into perishable departments.

Sincerely,

Edward Callis
Assistant Manager,
Store Operation Services

EC:jp

copy: L. LaCroix
J. Bays
A. Robinson
P. McKown



Chico Dairy Company

331 BEECHURST AVENUE
MORGANTOWN, WV 26505
PHONE 304-292-9433

Dairy Foods



May 11, 1990

Mr. David Haines
WV Petroleum Marketers Assn.
and WV Assn. of Convenience Stores
Atlas Building, Suite 712
Charleston, WV 25301

Dear Dave:

Information included in your Bulletin 355 dated April 25, 1990 concerning Food Service fees is really disheartening and these fees would be very prohibitive for any business in West Virginia, especially multiple operators or small operators.

The idea of a new tax (which is what I view these fees to be) is not at all welcome because of numerous controls, fees, and taxes already in effect from all the various agencies. With the extra costs involved in the EPA's new regulations on underground storage tanks, certainly a large percentage of the already existing convenience stores that have been marginal for some time will have to close. In the past they have been supplemented by other income, as in our case this would be multiple operations, but for every added tax, more stores will have to close.

The fee of \$150 for any food establishment would mean this fee has to be paid for every convenience store that handles fast food, and that would mean almost \$5,000 for us. For food service workers, we could have as many as 10 in some stores which would be as much as \$1,650, and if each store had a food service manager at \$50 that would be another \$1,650. This would mean a total of possibly over \$8,000 per year to our company for these fees alone, besides increase in hourly wage rates, EPA regulations, etc.

All of these fees are so repetitive in the way of taxation that whatever the use intended for such fees, it should be furnished by the taxes we already pay, not duplication of taxes from the same services.

I really object to all the taxation that West Virginia businessmen are getting put on them. Our sales are not the greatest with our economic

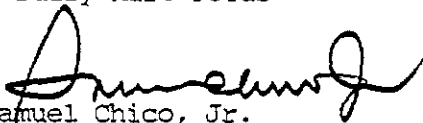
Mr. David Haines
WV Petroleum Marketers Association
and WV Assn. of Convenience Stores

Page 2

environment, and for all these extra taxes, whether it be food tax, environmental mandated costs, etc., it just makes it prohibitive for us to keep up with all of it.

Sincerely,

Chico Dairy Company and
Dairy Mart Foods


Samuel Chico, Jr.
President

SC:dr

West Virginia Petroleum Marketers Association
West Virginia Association of Convenience Stores

DAVID W. HAINES
EXECUTIVE DIRECTOR

712 ATLAS BUILDING
CHARLESTON, WV 25301
AREA CODE 304 343-5885

COMMENTS

BEFORE THE
BOARD OF HEALTH

ON

WEST VIRGINIA LEGISLATIVE RULES

SERIES 30
FEES FOR PERMITS

BY

WEST VIRGINIA ASSOCIATION OF CONVENIENCE STORES

May 22, 1990

Prepared by:
David W. Haines
Executive Director

The West Virginia Association of Convenience Stores represents over 600 of approximately 1,100 small business convenience store operators in West Virginia. They are closely held West Virginia corporations or proprietorships who are, in many cases, struggling to remain in business under stifling economic conditions as they currently exist.

Those outside of our industry, and those who do not have their total resources invested in the family business may view the fee schedule called for in the rule as minimal. The operator of a small business convenience store finding it more and more difficult to carve a profit from his business does not share this view.

The convenience store operator, in the majority retails gasoline. He is already faced with back-breaking costs required by the Federal EPA for underground petroleum storage tank upgrades, insurance for clean-up of a leaking tank, fees to the DNR for underground storage tank response fund and administrative fund to name but a few. And like the proposed fees, these costs do not result in any incremental increase in sales or profits. These costs are not recoverable, and the competitive climate within our industry will not allow passing the cost to the consumer.

Consider also the declining customer base retailers are facing in West Virginia. Taxes, fees or assessments, call them as you like, do not provide the incentive for economic growth and expansion needed to turn our customer base around.

The sponge, as they say, will only hold so much, and it is already dripping profusely. Perhaps the answer for the store owner is to cut back on the number of employees, cut back on employee benefits, or just cut out.

Under the proposed rule, convenience store operators would be subject to the following seven (7) fees as defined: (1) Food Service Establishment; (2) Food Service Manager; (3) Food Service Worker; (4) Individual On-Site Sewage Disposal System; (5) Potentially Hazardous Food; (6) Retail Food Store and (7) Vending Machine.

Using the Fee Tables, a rural store with on-site sewage system could pay \$430 in fees. Most of our members are multi-unit operators with potential fees of over \$21,000.

There is also the question of fees for probationary and part-time employees. They prepare and serve coffee, sell doughnuts, etc.

We urge the rejection of this proposed rule. Thank you.

(Attachment) Typical of member response.

May 19, 1990

Ms. Taunja Willis Miller, Secretary
Dept. of Health & Human Resources
Building #3
Capitol Complex
Charleston, WV 25305

re. Fees for Permits

Dear Ms. Miller:

Thank you for bringing to my attention the public comment opportunity regarding fees for permits.

There is little doubt that there is a need for the generation of funds for the enforcement of the various regulations the Department must enforce. However, as a water well driller I must insist that funds generated by my industry should be applied to the water well industry for the purpose of achieving uniform enforcement of the Regulations and Design Standards set forth by the Department.

Thank you for your time and consideration.

Sincerely yours

Doug Henderson

Doug Henderson
WV Drillers Certification No. 016

RECEIVED

MAY 22 1990

**REGULATORY DEVELOPMENT
SECTION**

May 23, 1990

RECEIVED

Dr. Joseph P. Schock, Director
Office of Environmental Health
1800 Washington Street, East
Charleston, WV 25305

MAY 29 1990

**REGULATORY DEVELOPMENT
SECTION**

re: Permit Fees

Dear Dr. Schock:

Today a hearing was held on an amendment to change the fees for various permits required by the Health Department. I submitted a brief letter of support for such fees as a written comment for this hearing. Although my letter was not written as a representative of the West Virginia Water Well Drillers Association (WVWDA), I can tell you that in general the concerned drillers support such permit fees if the funds were dedicated to an enforcement policy from the State level. As you will recall, we met with Mr. Victor Wilford, Mr. Donald Kuntz and you with a proposal which was drafted by Mr. Floyd Fullen. This proposal was what we (WVWDA) considered to be an initial step in getting such legislation acted upon. Inasmuch as the request for dedicated permit fees was initiated by the WVWDA, there is little doubt that we support this type of legislation. The only reason that the WVWDA supports the proposed fees is that the funds be used to bring some uniformity to the State's water well program.

This letter is not my first protest about the lack of uniformity in the enforcement of the codes set forth by the Health Department. In a letter dated 3/23/87 to Lou Schmidt (a member of the Water Well Advisory Board) I pointed out the problems that many drillers were having as a result of the lack of uniform enforcement of the codes. Later, as a member of the Water Well Advisory Board, I again voiced my frustrations regarding the lack of uniform enforcement of the Design Standards. As Vice-President of the WVWDA I attended several meetings with lawyers with whom our organization discussed approaches for legal methods of forcing the Health Department to uniformly enforce the

codes. Our association's officers met with Dr. Heydinger at Morgantown to express our concerns and let him know of our intention of bringing legal action against the State. The result of this meeting was the formation of another committee which met once and did nothing. The frustrations have mounted and so have the incidents of non-uniform enforcement of the codes. As President of the WVWWDA I still hear the frustrations of our membership regarding the lack of uniform enforcement of the codes.

If you examine the Design Standards and the Regulations which have been written by your Department, you will find that West Virginia has an excellent program for protecting the health of those persons who depend on wells for their water supply. The problem is that while the State has written the regulations, the regulations have been given to the counties to enforce. This is unfortunate. An examination of the water well program as conducted by all the counties in West Virginia would most likely yield the following statistics: 25% of the counties could present a serious attempt at uniform enforcement of the codes, 25% of the counties would be found trying to run some sort of water well program, and 50% of the counties would tell you that they have neither the time nor the man-power to "fool with" water wells. This is not acceptable by the WVWWDA and should be even less acceptable to you. In the geographical locations in which I work the application of the codes vary widely. In one county if I have a signed permit application then I can drill the well, in another I must have a signed permit application and call the sanitarian or his office, in another county the sanitarian must visit the site, in still another county the sanitarian will refuse to act until just before his statutory time limit has expired. Our firm has suffered significant financial losses as a result the lack of uniform enforcement of the regulations. Annual leave time taken by some sanitarians has caused delays in getting work done because we could not get approval of the permit applications. In other instances I have lost work to less than scrupulous drillers because they know they can disobey the law - "who is going to do anything about it?".

The West Virginia Water Well Drillers Association is serious about resolving the disparity in enforcement of the codes. It is a topic of discussion wherever the drillers meet. West Virginia has a very good program for the design and construction of safe water wells. However, you must agree that the very best program is no good if it is not

enforced. If there were no police on the highways how many people do you believe would obey the traffic laws? The same argument is applicable to the water well Design Standards and Regulations - only the "good" drillers obey the laws, often at a financial disadvantage. Therefore, I would urge you to support the dedication of permit fees to a State operated enforcement program for the water well industry. As I have previously stated, a substantial percentage of our membership would support such fees if they were assured that the funds generated would be directed to correcting the lack of uniform enforcement now so prevalent in our state.

Thank you for your time and consideration.

Sincerely yours,



Doug Henderson, President
West Virginia Water Well Drillers Assoc.

Written Comment for Department of Health
Proposed Fees for Permits - Rule: Series 30

Representing both small and large retailers we find the Board of Health Rules - Series 30 Fees for Permits contain several problem areas for retail food stores. With a turnover in employees of some 100+, it would appear to be administratively impossible to administer Section 3.7 (Food Service Worker). By definition we are not certain just who fits this category? Is it the person in produce, meat, seafood, deli? We use a lot of part-time workers, we also use employees from other areas of our store to substitute for illnesses and vacation. We feel this section should be eliminated.

In our opinion we feel the fiscal note is very much underestimated. The food store section alone will produce this much revenue.

I would hope the real intent of these rules are to protect the health of our citizens and not create a unrealistic number of government jobs.

The WVRA is committed to providing safe food for the public and we support food safety education for employees of food service establishments.

Paul W. McKown, President
West Virginia Retailers Association

Harrison-Clarksburg Health Department

CORRECTIONAL CENTER

Clarksburg, West Virginia 26301

May 22, 1990

John P. White, D.D.S., Chairman
West Virginia Board of Health
Department of Health & Human Resources
1900 Kanawha Boulevard East
Capital Complex Building 3
Charleston, WV 25305

Dear Dr. White:

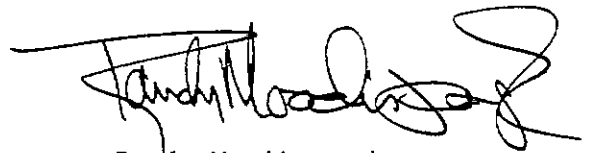
Due to budget cuts, as a result of funding agency shortfalls, Health Departments in the State of West Virginia are in serious fiscal trouble.

An opportunity to provide part of the needed Health Department funding is available through approval of environmental fees for permits issued by local Health Departments.

Although these fees cannot off-set the costs of providing the necessary environmental health services to the people of West Virginia, it will help, and in some instances enable a service to be provided where none are presently available.

I sincerely hope that you will be able to provide the needed support for approval of these fees.

Sincerely,



Randy Moodispaugh

RM/cm

LINCOLN COUNTY HEALTH DEPARTMENT

P.O. BOX 527

HAMLIN, WV 25523

PHONE 824-3330

May 16, 1990

John P. White, D.D.S.
402 Carriage Drive
Beckley, WV 25801

RE: Letter of support for the increase in fees

Dear Dr. White,

As the chairman of the Lincoln County Board of Health, I would like to offer the full support from the Lincoln County Board Of Health for the proposed fee increase that you have before you on May 23, 1990 in your capacity as Chairman of The West Virginia Board Of Health. As one of the counties in the state that has a less than optimal tax base, we unfortunately have to charge fees for the services that we render to the citizens of Lincoln county. The amount of money that these fees generate is a small amount but needed in the Lincoln County Health Department budget. With the proposed increases, the amount of money generated from these services will help us provide better service to the citizens of Lincoln County.

Again, I would state that the Lincoln County Board of Health is totally in support of the proposed fee increases.

Sincerely yours,

Don Ramey
Don Ramey, Chairman
Lincoln County Board of Health

RECEIVED

MAY 22 1990

**REGULATORY DEVELOPMENT
SECTION**



Kanawha-Charleston Health Department

108 Lee Street E.
P.O. Box 927
Charleston, WV 25323



Donald M. Rosenberg, M.D.
Medical Director

May 23, 1990

John P. White, DDS, Chairman
WV Board of Health
Division of Health & Human Resources
1900 Kanawha Boulevard, East - Bldg. 3
Charleston, West Virginia 25305

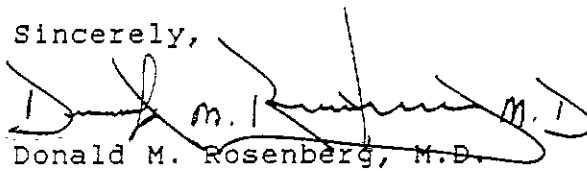
(EMERGENCY)
Title 64
WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Series 30
Fees for Permits

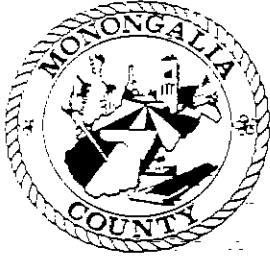
Dear Mr. White:

The Kanawha-Charleston Health Department requests that the State Board of Health approve the new Fees for Permits as submitted. The loss of county and municipal revenues has necessitated a need for environmental fees for permits and services. These fees must be approved in order for local health departments to carry out its mandated environmental programs. Without these fees, local health departments will be forced to cut or eliminate a number of its programs.

Sincerely,


Donald M. Rosenberg, M.D.
Medical Director

DMR:CRS:sd



Monongalia County Health Department

453 Van Voorhis Road, Morgantown, WV 26505
Phone 304/599-0670

May 21, 1990

John White, D.D.S., Chairman
WV Board of Health
Department of Health and Human Resources
1900 Kanawha Boulevard East
Capitol Complex, Bldg. 3
Charleston, WV 25305

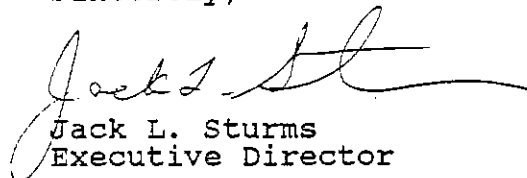
Dear Dr. White:

This letter is in support of the increase in environmental health fees to be effective July 1, 1990. It is also to support the installation of fees-for-service in local health departments as per House Bill 4660 which was passed by the legislature on March 10 of this year. These fees are necessary to ensure the continued viability of local health departments at the county level.

The current environmental health fees were first put into effect in 1985 and have not been upgraded. The fees for medical services were the result of legislative efforts by the West Virginia Public Health Association and the Bureau of Public Health. With the continued funding decrease from local and state government levels for public health, it is imperative that we begin to develop a revenue structure to provide partial self sufficiency. These new fee structures are that beginning.

I urge the Board to adopt the fee structures as proposed.

Sincerely,


Jack L. Sturms
Executive Director

JLS:lds

"COMMUNITY HEALTH IS COMMUNITY WEALTH"



Jo Joe Lock

District 6 - Health Department

Berkeley County Unit
800 S. Queen Street

MARTINSBURG, W. VA. 25401

May 11, 1990

Taunja Willis Miller, Secretary
Dept. of Health & Human Services
State of West Virginia
Building 3, Room 204
1900 Kanawha Boulevard
Chaflleston, West Virginia 25305

RECEIVED

MAY 18 1990

SECRETARY
WV DEPARTMENT
AND HUMAN RESOURCES

Dear Ms. Miller:

This letter is to serve as written comments for the May 23, 1990 public hearing on the revised fee scheduled for Environmental services and permits.

The Berkeley County Health Department wishes to go on record as strongly in favor of an upward revision of this fee system as a means of increasing funding to our environmental health programs. County Health Departments are usually last on the list for receipt of local revenues and we are increasingly dependent on clinical and environmental fees for operational expenses.

Berkeley County is the fastest growing county in West Virginia (projected + 11.5% population difference 1990-2000) and recieves the smallest allocation of state aid per capita (\$2.23) of all West Virginia counties. We also recieve no funding from local municipalities and the Berkeley County Commission, and only \$10,000 from the Board of Education. These figures obviously prevent this department from expanding local services unless other funding methods are found.

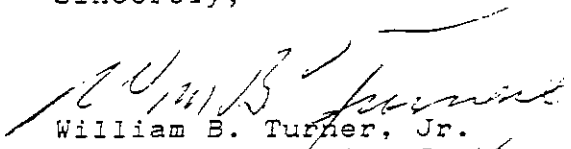
Therefore, we are relying on fees for service to provide and expand health programs to our citizens. The current fee structure is not adequate in scope or amounts charged to meet our goal of adequate environmental health coverage. Program planning indicates at least seven sanitarians needed to accomplish all programs; we currently have two full-time and two part-time sanitarians to address public health environmental needs.

Objections to the revision of the fee schedule based on expense or inability to pay are groundless; the schedule has been and should continue to be listed as the maximum that counties can charge.

If a county feels the fee is too high; then the local Board of Health can set a lower rate or continue to provide free service.

If the State decides not to revise the fee schedule; it is imperative that local funding to County Health Departments be mandated at a published fair rate or that the State Aid Formula to County Health Departments can be restructured to provide adequate funds to operate and expand all public health programs as necessary.

Sincerely,



William B. Turner, Jr.
Chairman, Berkeley County
Board of Health

John P. White, DDS, Chairman
W. Va. Board of Health
Division of Health & Human Resources
1900 Kanawha Boulevard, East - Bldg. 3
Charleston, W. Va. 25305

(Emergency)

Title 64

W. Va. Legislative Rules
Board of Health

Series 30

Fees for Permits

Dear Mr. White:

The Mercer and Raleigh County Health Departments request that the State Board of Health approve the new Fees for Permits as submitted. The loss of county and municipal revenues has necessitated a need for environmental fees for permits and services. These fees must be approved in order for local health departments to carry out its mandated environmental programs. Without these fees, local health departments will be forced to cut or eliminate a number of its programs.

Sincerely,

Stanley Walls, RS
Program Manager
Mercer + Raleigh Co. H. Dep