

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §16-1-21, 29-1H-6 and 29B-1-3

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 51

TITLE OF RULE BEING PROPOSED: Fees for Services

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

FISCAL NOTE FOR PROPOSED RULES
Revised 12/28/90

Rule Title: Fees for Services

Type of Rule: X Legislative Interpretive Procedural

Agency Division of Health Address Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$658,000	\$		\$
Personal Services		\$658,000			
Current Expense					
Repairs and Alterations					
Equipment					
Other					
Estimated State Revenue			\$658,000		\$658,000

2. **Explanation of above estimates:** Estimated revenue is from environmental health (\$356,000), laboratory (\$290,000) and health facility licensure and certification (\$12,000) services provided by the State Division of Health. This revenue will be used mainly for current expenses of these programs, and will replace general revenue funds deleted from the Division's budget.

3. **Objectives of these rules:** 1) To establish fees for certain public health services provided by the State Division of Health: a) environmental health and laboratory service programs to assure safe drinking water; b) other environmental health services related to the construction of sewage systems and projects, public swimming pools, water wells, x-ray equipment safety, asbestos abatement and low-level radio-active waste; and c) programs to assure that health care facilities are built in accordance with applicable standards; and 2) To establish a process whereby local boards of health may, subject to approval by the Director of the Division of Health, charge fees for various services provided by the local boards.

Individuals unable to pay will be provided with health care services at no cost.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Fees at the State level will be used mainly to support current expenses of existing laboratory, environmental health and facility licensure programs, and will replace general revenue funds deleted from the Division's budget.

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

Fees collected by those local boards of health who choose to charge fees will be used primarily to maintain existing programs at the local level; it may be necessary to allocate a small proportion of fees collected to administration.

The appendices to the rule list various types of services for which fees are to be charged and most of the entities which would be charged.

C. Economic Impact on Citizens/Public at Large.

The economic impact on the citizens and public at large will be a shift in some health service funding from tax revenues to fees and increased prices for those service fees which are passed through to consumers.

Date January 4, 1990

Signature of Agency Head or Authorized Representative



Taunja Willis Miller, Secretary
Department of Health and Human Resources

DATE: January 7, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Health

LEGISLATIVE RULE TITLE: Fees for Services

1. Authorizing statute(s) citation W. Va. Code §§16-1-21,
29-1H-6 and 29B-1-3

2. a. Date filed in State Register with Notice of Hearing:

May 23, 1990

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

Notice widely circulated, including county health
departments, water and sewer companies and associations,
public service districts, laboratories, various pro-
fessional associations, various State agencies, affected
industries, advocacy groups and many others potentially
affected by or interested in the proposed rule.

c. Date of hearing(s): June 22, 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)

January 7, 1991

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 DIVISION OF HEALTH
RULE ABSTRACT (REVISED)

Title: Fees for Services

CSR Title and Series: 64 CSR 51

Type: Legislative

Summary: The proposed rule: 1) establishes fees for certain public health services provided by the State Division of Health: a) environmental health and laboratory service programs to assure safe drinking water; b) other environmental health services related to the construction of sewage systems and projects, public swimming pools, water wells, x-ray equipment safety, asbestos abatement and low-level radio-active waste; and c) programs to assure that health care facilities are built in accordance with applicable standards; and 2) establishes a process whereby local boards of health may, subject to approval by the Director of the Division of Health, charge fees for various services provided by the local boards.

Individuals unable to pay will be provided with health care services at no cost.

For further information contact: Regulatory Development Section, telephone 348-3223.

[PROPOSED]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH

FEES FOR SERVICES

SERIES 51

For Filing with the
Legislative Rule-Making Review Committee

[PROPOSED]
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH

FEES FOR SERVICES

64 CSR 51

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

SERIES 51
FEES FOR SERVICES

FILED
1991 JAN -7 PM 2:39
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 64-51-1. General

1.1. **Scope** - This legislative rule establishes reasonable fees for services provided by the division of health and local boards of health. This legislative rule does not supersede other rules which establish fees for services.

1.2. **Authority** - W. Va. Code §§16-1-21, 29-1H-6 and 29B-1-3

1.3. **Filing Date** -

1.4. **Effective Date** -

1.5. **Public Hearing** - June 22, 1990

1.6. **Final Approval** - This rule was approved by the director of the division of health on January 4, 1991.

§64-51-2. Application and Enforcement

2.1. **Application** - This rule applies to persons or entities receiving services from the division of health or from local boards of health as created in W. Va. Code §§16-2-1 et seq. or 16-2A-1 et seq. and also applies to such local boards of health.

2.2. **Enforcement** - This rule is enforced by the director of the West Virginia division of health or his or her lawful designee.

§64-51-3. Definitions

3.1. **Ambulatory Surgical Facility** - A facility which provides surgical treatment to patients not requiring hospitalization. This definition does not include the legally authorized practice of surgery by any one or more persons in the private office of any health care provider.

3.2. **Asbestos** - The asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite, and which material contains more than one (1) percent asbestos by weight.

3.3. **Asbestos Abatement** - Procedures to control fiber release from asbestos-containing materials. These procedures include removal, encapsulation, enclosure, repair, demolition, renovation, and similar activities.

3.4. **Behavioral Health Center** - An organization that pro-

vides behavioral health services, including all of its locations.

3.5. **Behavioral Health Services** - Those services intended to help individuals gain or regain the capacity to function adaptively in their environment, to care for themselves and their families, and to be accepted by society. This includes individuals with emotional or mental disorders, alcohol or drug abuse problems, and mental retardation or other developmental disabilities.

3.6. **Bottled Water** - Any natural or artificial mineral, spring, well, distilled or other water bottled or containerized for use primarily as drinking water.

3.7. **Director** - The director of the West Virginia division of health.

3.8. **Drinking Water** - Water free from biological, chemical, physical and radiological contaminants which cause disease or harmful physiological effects.

3.9. **Generator** - A person whose activity results in the production of low-level radioactive waste requiring long-term storage and disposal.

3.10. **Health Programs** - Community-oriented strategies and activities devised by a local health department to address an identified community health problem, the solution of which will lower a morbidity or mortality statistic.

3.11. **Hospital** - Any institution, place, building or agency in which an accommodation of five (5) or more beds is maintained, furnished or offered for the hospitalization of the sick or injured.

3.12. **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 Sewage Treatment and Collection System Design Standards, 64 CSR 47, as an innovative or alternative system.

3.13. **Local Board of Health** - A county, municipal, or combined board of health created under W. Va. Code §§16-2-1 et seq. or 16-2A-1 et seq.

3.14. **Low-Level Radioactive Waste** - Radioactive waste that:

a. Is neither high-level waste or transuranic waste, nor spent nuclear fuel, nor by-product material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954 (42 U.S.C. §2014(e)) as amended; and

b. Is classified by the federal government as low-level

waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the federal government, as defined in Public Law 96-573 (42 U.S.C. §2021b), or federal research and development activities.

3.15. **Municipal Sewer System** - A system or group of systems as a whole which receives sewage from more than one (1) dwelling or establishment and is operated and maintained by an incorporated municipality, or public service district or sanitary board.

3.16. **Nursing Home** - Any institution, residence or place, or any part or unit thereof, however named, which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four (24) hours, for three (3) or more persons who are ill or otherwise incapacitated and in need of extensive on-going nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.

3.17. **Permit** - As used in this rule, a written document issued by the director giving a designated person permission to:

a. Construct, operate, alter or renovate a specific public water system, or bottled water plant;

b. Construct, install, extend, alter or operate an approved sewer system or method of sewage disposal, or to collect, remove, transport or dispose of sewage; or

c. Construct, alter or renovate a swimming pool or to operate such facility.

3.18. **Person** - An individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or any other entity recognized by law.

3.19. **Personal Care Home** - Any institution, residence or place, or any part or unit thereof, however named, which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and personal assistance, for a period of more than twenty-four (24) hours, to three (3) or more persons who are dependent upon the services of others by reason of physical or mental impairment but who do not require extensive, on-going nursing care.

3.20. **Professional Health Services** - Therapeutic interventions of assessment, counseling, screening, diagnosis or treatment of health problems by physicians, physician's assistants, dentists, registered nurses, dietitians, health educators, master's prepared social workers or other currently licensed health

care professionals in the state of West Virginia who are employed by the local health department.

3.21. Public Sewer System - A sewage collection system or systems with or without treatment facilities and serving more than one (1) dwelling or establishment. Ownership of the system is held by and maintenance performed by a single entity. This definition includes municipal sewer systems.

3.22. Public Water System - Any water system or supply which regularly supplies or offers to supply piped water to the public for human consumption, if serving at least an average of twenty-five (25) individuals per day for at least sixty (60) days per year, or which has at least fifteen (15) service connections, and shall include: (1) any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system shall not include a system which meets all of the following conditions: (1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) which obtains all of its water from, but is not owned or operated by a public water system which otherwise meets the definition; (3) which does not sell water to any person; and (4) which is not a carrier conveying passengers in interstate commerce.

3.23. Residential Board and Care Home - Any institution, residence or place, or any part thereof, however named, which is advertised, offered, maintained or operated by the ownership or management, whether for consideration or not, for the express or implied purpose of providing accommodations and personal assistance, for a period of more than twenty-four (24) hours, to no fewer than three (3) and no more than eight (8) persons who are dependent upon the services of others by reason of physical or mental impairment but who are capable of self-preservation and do not require nursing care.

3.24. Sewage - Any excreta or liquid waste containing animal, vegetable, or mineral matter in suspension or solution including, but not limited to, waste from water closets, urinals, lavatories, bathtubs, laundry tubs, washing machines, drinking fountains, sinks, kitchen equipment and other sanitary fixtures or facilities.

3.25. Sewage Holding Tank - A watertight receptacle designed and constructed to receive and retain untreated or partially treated sewage on a temporary basis. This does not include septic tanks, portable toilets or privies.

3.26. Sliding Fee Scale - A set of varying amounts (percentages of the maximum fee) to be charged for services to individuals receiving varying levels of income.

3.27. **Swimming Pool** - Any artificial basin, chamber, or tank used or intended to be used by the public for swimming, diving or recreational type bathing. The term "swimming pool" does not include baths where the main purpose is cleaning the body, nor individual type therapeutic tubs or tanks. Swimming pools are classified according to the following:

a. **Recirculation Type** - A pool from which the water is withdrawn, treated, and returned to the pool;

b. **Fill and Draw Type** - A pool to which water is added, used for a period, then discarded; and

c. **Flow Through Type** - A pool to which water is added continuously thereby replacing and causing water to overflow to waste.

3.28. **Water Well** - Any excavation or penetration in the ground, whether drilled, bored, cored, driven or jetted that enters or passes through an aquifer for purposes that may include, but are not limited to: a water supply, exploration for water, dewatering or heat pump wells, except that this definition shall not include ground water monitoring activities and all activities for the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources which are regulated under W. Va. Code, Chapters 22, 22A or 22B.

§64-51-4. Fees Generally

4.1. **Authority to Assess and Collect Fees** - The director of the division of health and local boards of health may assess and collect the fees listed in the appendices to this rule for the provision of services. Except as specified in Sections 4.2, 5.2 and 9.2 of this rule, the director and local boards of health may require payment of fees in advance for services.

4.2. **Exemption from Fees Generally** - No individual may be denied health care services because of the inability of the individual to pay for services when services are provided to similarly situated individuals who have the ability to pay for them.

4.3. **Fees for Copies of Public Records** - Copies of public records which may be disclosed may be furnished at a charge of twenty-five cents (25¢) per page on 8½ x 11" or 8½ x 14" paper. Copies of documents produced on larger paper may be furnished at actual cost, which includes but is not limited to materials, operator's time, and transportation and delivery charges. Copying fees may be required to be paid before issuance of the copies.

4.4. **Fee for Record Searches and Compilation of Information** - Requests for information estimated to require more than ten (10) minutes to search records or to compile may be charged at the rate of twenty-five dollars (\$25) per hour, and payment may

be required before issuance of the information.

4.5. **Fee for Address Label Printing** - When the service provided is printing mailing labels of licensees, permit holders, or other persons, the fee shall be at the rate of ten cents (10¢) per label.

§64-51-5. Laboratory Service Fees

5.1. **Laboratory Services for Which a Fee May be Charged** - Except as provided in Section 5.2 of this rule, the director may charge a fee for each test or group of tests listed in Appendix 64-51-1 of this rule for bacteriological and chemical analyses of environmental potable water samples and may charge the fees listed in Appendix 64-51-1 of this rule for the certification of laboratories to conduct drinking water tests.

5.2. **Exemption from Laboratory Fees** - Fees shall not be charged when:

a. Laboratory tests are authorized by the director as part of an epidemiological investigation or the charging of the fee would significantly and adversely affect the public health;

b. Tests on second or additional specimens are required by the director because of the inability to make or complete a test, or because the testing operation or procedure is unsatisfactory for any reason;

c. Specimens are deemed unsatisfactory for testing at the time of submission; or

d. The exemption of fees provision of Section 4.2 of this rule applies.

§64-51-6. Environmental Health Fees

The director may charge a fee for each environmental health service listed in Appendix 64-51-2 of this rule.

§64-51-7. Health Facility Fees

The director may charge a fee for each service provided to health facilities listed in Appendix 64-51-3 of this rule.

§64-51-8. Epidemiology and Health Promotion Fees [Reserved]

§64-51-9. Fees for Services Provided by Local Boards of Health

9.1. **Services for Which a Local Board of Health May Propose Fees** - Except as provided below, a local board of health may propose fees for all its services, including but not limited to professional health services, screenings, injections, assessments, counseling done for health-related issues, classes which

teach healthy habits, lifestyles, or maintenance of health when there is a preexisting disease condition present, case management on behalf of patients whether in the home, clinic or through written and oral communications by letter or phone, and inspections.

9.2. **Exception from Local Board of Health Fees** - The public health mission to provide first for general community safety means that fees for service will not be charged to individuals in the following circumstances:

a. In the case of a community epidemic, natural disaster, civil upheaval, toxic contamination, and other like situations where common good is at issue;

b. In the case of individuals seeking medical evaluation, treatment or epidemiologic follow-up, including administrative costs, associated with sexually transmitted disease and tuberculosis; or

c. In the case where the exemption from fees provision of Section 4.2 of this rule applies.

9.3. **Basis for Fees** - Local board of health maximum fees may be based on the actual cost of service delivery plus administrative overhead. Administrative overhead may include but is not limited to: 1) salaries and wages; 2) other direct costs; and 3) that portion of the general and administrative costs, to include the administrator, secretaries, clerks, depreciation and other overhead expenses, which contributes to the delivery of the service.

9.4. **Fee Proposals By Local Boards of Health** - A local board of health proposing to charge fees under this rule shall approve a budget plan and program document including:

a. Proposed health programs as defined in Section 3.10 of this rule;

b. An accounting of fee collections in the previous fiscal year and in the current fiscal year, and projected fee collections in the remainder of the current fiscal year and during the next fiscal year;

c. A proposed schedule of fees; and

d. A proposed sliding fee scale to be implemented by the local board. The sliding fee scale may be based on annual federal poverty level guidelines as published by the division of health for other programs or on an alternative system proposed by a local board of health for providing services at a reduced fee based on an individual's ability to pay.

9.5. **Posting of Proposed Fees** - After a local board of

health's adoption of a proposed schedule of fees and sliding fee scale, the board shall post, publish or otherwise inform the public living in the area served by the board of such proposal and allow for a thirty (30) day comment period.

9.6. **Submission of Proposal for Approval** - A local board of health proposing to charge fees shall submit to the director of the division of health:

- a. A budget plan and program document including the information required in Section 9.4 of this rule;
- b. A copy of the posted notice of such proposed fees and a description of the public notice process;
- c. A copy of comments received on the proposed fees; and
- d. A response to such comments.

9.7. **Emergency Fees** - Establishment of fees other than in accordance with Section 9.6 of this rule may be accomplished only upon petition by the local board of health to the director in response to an emergency.

9.8. **Approval or Rejection of Fees of Local Boards of Health by the Director of Health** - The director shall approve or reject a local board of health's budget plan and program document and fees proposed. If there is a rejection, the local board of health shall be allowed to propose a revision. Approval by the director of the proposed fees shall be in the form of an order filed with the secretary of state as an appendix to this rule, and the local board of health may charge the approved fees upon such filing. The director shall provide a copy of such order to the local board of health.

9.9. **Notice of Free Care** - Signs shall be prominently displayed in a public health clinic in as many languages as a substantial number of patients speak, as well as signs in pictures for those who do not read, that inform the public that services related to sexually transmitted disease and tuberculosis, and other health care services in the public health clinic may not be denied for inability to pay.

9.10. **Local Board of Health Account** - All local board of health fees collected together with accounting documentation will be deposited with the treasurer of the county or municipality and used only for funding local board of health programs.

9.11. **Annual Audits** - Local boards of health are subject to annual audits by the state tax commissioner under W. Va. Code §6-9-7.

§64-51-10. Administrative Due Process - Those persons adversely affected by the enforcement of this rule 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, 64 CSR 1. In the case of a request for a hearing on a local board of health fee, the director may direct the local board of health to conduct the hearing.

\$64-51-11. Severability - The provisions of this rule are severable. If any provisions of this rule are held invalid, the remaining provisions shall remain in effect.

Appendix 64-51.1. Laboratory Service Fees

1. Fees for Environmental Chemistry Laboratory Service

A. Inorganic Chemicals/Miscellaneous Individual Tests

Arsenic	\$10.00
Barium	10.00
Cadmium	10.00
Chromium	10.00
Lead	10.00
Selenium	10.00
Silver	10.00
Mercury	12.00
Iron	12.00
Manganese	12.00
Copper	12.00
Zinc	12.00
Sodium	12.00
Calcium	12.00
Magnesium	12.00
Surfactants	12.00
Potassium	12.00
Aluminum	12.00
Nitrate	10.00
Fluoride	8.00
Alkalinity Methyl Orange/ Phenolphthalein	4.00
Chlorides	4.00
Hardness	4.00
pH	4.00
Total Dissolved Solids	4.00
Sulfates	12.00
Conductivity	8.00
Chlorine Residual: Free	8.00
Chlorine Residual: Total	8.00
Hydrogen Sulfide	12.00
Turbidity	5.00

B. Tests to meet Environmental Protection Agency
Minimum inorganic compliance requirements for public
water supplies: arsenic, barium, cadmium, chromium,
fluoride, lead, mercury, selenium, silver, and
nitrates

\$100.00

C. Tests to meet West Virginia Secondary contam-
inants compliance requirements for public water
supplies: pH, copper, manganese, sodium, aluminum,
alkalinity, hardness, iron

\$72.00

D. Tests for Organic Chemicals

Pesticides: Endrin, Lindane, Methoxychlor, and Toxaphene	\$175.00

Herbicides: 2,4-Dichlorophenoxyacetic Acid (2,4D) and 2-(2,4,5-Trichlorophenoxy) Propionic Acid (2,4,5-TP/Silvex)	\$175.00

2. Fees for Environmental Microbiology Laboratory Service Water Specimens	\$10.00

3. Fees for Certification of Laboratories to Conduct Drinking Water Tests: Certification to perform laboratory testing on water to meet state and Environmental Protection Agency requirements under the Safe Drinking Water Act.*

A. Chemical Testing	
1. Inorganic Tests	\$500.00
2. Trihalomethanes and Volatile Organic Compounds	500.00
3. All Other Organic Tests	500.00
B. Microbiological Testing	\$500.00

*Laboratories located outside the borders of West Virginia will be assessed the certification fee for the test(s) approved and will be required to pay all reasonable expenses required for an on-site inspection.

Appendix 64-51.2. Environmental Health Services Fees

1. Water Systems, Sewage Systems and Swimming Pools

A. Construction/Installation Permits

Public Water System Project	\$ 300.00
Public Sewer System or Facility Project	300.00
Public Swimming Pool Project	200.00
Sewage Holding Tank Project	1,000.00
On-Site Innovative/Alternative Type Sewage System	150.00

B. Water Well Permits (New Construction)

Public Water System	\$150.00

2. Bottled Drinking Water/Water Vending Machine Permits

A. Producers and Distributors, Annually	\$100.00

B. Vending Machines, Annually	\$100.00
Plus per machine	10.00

3. Diagnostic X-Ray Machine Registration

A. Hospital: First tube/each additional tube	\$225.00/\$20.00

B. Dental: First tube/each additional tube	55.00/20.00

C. Other (e.g., ambulatory healthcare facilities, ambulatory surgical facilities, mobil vans, schools, offices of chiropractors, physicians, podiatrists and veterinarians): First tube/each additional tube	175.00/20.00

4. Asbestos Abatement

A. Training Accreditation

Course Approval	
Per discipline/maximum	\$1000.00/\$3000.00
Review Course Approval	500.00

B. Notification - Inspection of Projects

Class I: 10-100 linear ft. or 50-200 sq. ft.	\$ 50.00
Class II: 101-1000 linear ft. or 201-2000 sq. ft.	200.00
Class III: 1001-3000 linear ft. or 2001-4000 sq. ft.	500.00
Class IV: Annual Industrial Facility	1500.00

5. Annual Low-Level Radioactive Waste Generator
or Storer Fee (Maximum)

\$12,500.00

Appendix 64-51-3. Maximum Health Facility Fees

1. Site Inspections for New Construction or Major Renovation	
A. Hospitals	\$300.00
B. Ambulatory Surgical Centers	250.00
C. Nursing Homes	300.00
D. Personal Care Homes	250.00
E. Residential Board and Care Homes	150.00
F. Behavioral Health Center Locations	150.00
2. Architect's Review of Plans	
A. Hospitals	
New Hospitals and Major Additions	\$500.00
Minor Additions and Renovations	300.00
B. Ambulatory Surgical Centers	\$300.00
C. Nursing Homes	
New Homes and Major Additions	\$350.00
Minor Additions and Renovations	200.00
D. Personal Care Homes	
New Home and Major Additions	\$250.00
Minor Additions and Renovations	150.00
E. Residential Board and Care Homes	\$150.00
F. Behavioral Health Center Group Homes	\$150.00
G. Overtime Review Requested by Facility (Per hour)	\$50.00
3. Inspection of New Projects Prior to Opening	
A. Hospitals	\$300.00
B. Ambulatory Surgical Centers	250.00
C. Nursing Homes	300.00
D. Personal Care Homes	250.00
E. Residential Board and Care Homes	150.00
F. Behavioral Health Center Locations	150.00

Appendix 64-51.4. Epidemiology and Health Promotion
Fees [Reserved]

Appendix 64-51-5. Local Board of Health Fees [Reserved]

Discussion of Public Comment Received
Concerning the Proposed Rule
Fees for Services, 64 CSR 51

A public hearing regarding the proposed rule was held June 22, 1990. The hearing attendance record was signed by approximately 150 people. An attendance record and a transcript of the hearing are attached. One hundred and thirty-two comments were received by mail or hand-delivered. Copies of written comments are attached.

The proposed rule relates to fees to be charged for services provided by the State Division of Health and for services provided by local boards of health. The rule establishes fees for specific services at the State level. At the local level, the rule establishes a process, including a public hearing, whereby a local board of health's proposal of fees for services is to be approved by the Director of the Division of Health.

1. Comment: Many commenters expressed general concerns about the amount and use of funds generated at the State level and the projected use of these funds. One strong general theme was that funds generated by these new fees should be directed toward the support of the programs which generate the fees and that there is no commitment on the part of the Department of Health and Human Resources to use the fees generated in this manner. Even a few commenters who expressed an opinion that the amount of the operating permit fees (water and sewer) may not be unreasonable, stated that the fees do not appear to be related to any service being provided by the Division of Health and are, therefore, not authorized by the law under which this rule is being promulgated. Many commenters believe the charges are excessive and will generate considerably more revenue than stated in the fiscal note. Many stated that these fees are another form of taxation and that no additional services will be provided.

In addition to comments received through the usual route, this proposed rule received an unusual amount of attention from the State Legislature, with Legislators expressing concerns directly to the Secretary of the Department of Health and Human Resources and other staff, and also requesting that the Secretary of State deny a proposed emergency filing of the rule.

Response: The original intent of the proposed rule with respect to State-level fees was to make up the amount by which general revenue funding for the services was reduced in the Department's 1991 budget, which was consistent with the Legislature's understanding. Like several other State programs, however, the Division of Health's water program had recently been criticized by the Environmental Protection Agency(EPA). The Office of Environmental Health within the Division of

Health increased the fees proposed in order to address EPA's concerns. Staff anticipated using the revenues generated by the fees over and above those needed to replace general revenues to improve the water program. Consequently, it is true that the fees would have resulted in monies in excess of the budget decrease. It is also true, however, that the excess monies would have been spent on water programs and not used for other purposes within the Department. Other proposed fees were and are intended for use in the programs from which they are derived.

The Division has, however, deleted a number of the most troublesome fees in the proposed rule, as documented herein, for further study and consideration. Whether the Division will still derive enough revenue from the proposed fees to make up the general revenue funding deleted from the budget is uncertain at this time. In particular, the Director of the Division's Office of Environmental Health has established a work group of persons within and outside the Division to address the need for increased funding, particularly in the water program. Other fees may be reconsidered in the future.

2. Comment: Numerous cities, counties and public service districts and others objected strongly to the public water system operating charge of six cents per one thousand gallon per month per customer and the public sewer system operating charge of four cents per one thousand gallon per month per customer. These commenters stated that the fees would have to be passed on to consumers.

Several of these commenters stated that since getting approval for a rate increase from the Public Service Commission takes up to a year, they would have no way of paying the fees the first year. Others stated that their 1990-91 budgets were already prepared and the increase would create a financial burden, especially for smaller systems. Commenters also noted that there would be additional costs related to the application process, such as advertising and public hearings and that utilities must already pay Public Service Commission fees and new Natural Resources fees. Other negative factors mentioned were that there was no provision for relief of such duplicative charges as might arise in instances where one water system purchases water from another system or in the use of water for fire protection. The West Virginia Association of Realtors stated that it generally opposes the proposed "tax increase", and that it specifically opposes "those fees (taxes) which directly effect the cost of home ownership, or rental housing costs." The Association specifically objects to the water and sewer services fees.

Additionally, a few of the public water and sewer systems objected to miscellaneous lab fees, construction permit fees, and license fees for public water supplies and sewage systems.

Response: All fees and related provisions of the proposed rule related to water and sewer system operational fees, technical services, operator certifications and other miscellaneous related items have been deleted. The Division believes that these deletions, along with the establishment of the work group discussed under Comment #1 have satisfied the majority of the problems in this area. Fees for construction permit services and laboratory fees remain. The Division believes these fees to be reasonable; certainly they were less controversial. Additionally, these fees have already been implemented on an emergency basis and have drawn minimal negative comment.

3. Comment: Representatives of all aspects of the dairy industry and the Department of Agriculture were strongly opposed to all proposed fees related to the industry and cited many specific negative factors.

Response: The Division has withdrawn all proposed fees related to the dairy industry for further study and consideration. For this reason a detailed summary and consideration of comments related to these fees is not presented. See also the response to Comment #1.

4. Comment: A number of dentists opposed the fees for inspection of X-ray equipment as "excessive and not commensurate with the expenses incurred for such inspections". Many stated that the fees "are excessive when compared to other states."

Response: The Division has reconsidered and reduced the amount of the fee for dental x-ray machine initial registration to \$55. The term "inspection" has been changed to "registration" for purposes of consistency with the terminology used in the Radiological Health Regulations, 64 CSR 23.

5. Comment: The Association of Community Mental Health/Mental Retardation Programs of West Virginia, Inc. noted that new fees for site inspections, pre-opening surveys and plan reviews are being imposed at a time when centers are being asked to assist in decreasing the number of patients in State-operated facilities by developing additional community-based sites to accommodate these patients. The Association proposed as one alternative "that behavioral health sites should be exempted from the Fees for Services rule at least until such time that the state achieves its targeted goals of moving large numbers of individuals from facilities to the community." It suggested as another alternative a mechanism whereby Centers could be reimbursed for the cost of initial licensing in start-up monies to be provided by the Division.

Response: The review of construction documents prior to beginning of construction and inspection of building sites are not new activities. These activities have always been con-

ducted in order to ensure that plans and sites meet licensing and certification requirements prior to beginning construction. Such document review and site inspection have occurred regularly with regard to the construction of intermediate care facilities for the mentally retarded, nursing homes and hospitals. While these reviews are not mandated for behavioral health centers, failure to obtain these prior approvals increases the risk that the facility will not meet regulations. If an interim inspection is conducted, the cost is included in the price for inspection of a new project prior to opening. There is no additional charge.

With regard to charging fees to behavioral health centers, we concur that there may be instances where the charging of such fees should be waived. The Division is currently evaluating these fees with regard to non-profit comprehensive community behavioral health center agencies and Department goals and will develop guidelines for such waivers. Language has been added to Appendix 64-51-3 to indicate the potential for waivers.

6. Comment: Calhoun General Hospital stated that "additional fees should not be added to hospitals."

Response: The Division believes that the proposed fees are reasonable and will be used to support activities which are beneficial to hospitals. See also item #5.

7. Comment: The Beckley-Raleigh and Mercer County Boards of Health and the West Virginia Retailers Association commented that the Annual Food Service Establishment cost of \$150.00 appears to be in conflict with Fees for Permits, 64 CSR 30, which establishes costs for food service establishments based on seating capacity.

Response: This fee applied only to state-operated food service operations which are inspected by the State. It has been deleted.

8. Comment: The West Virginia Soft Drink Association requested that the definition of vending machine be amended to clarify that the fee will only apply to water vending machines and not to soft drink product vending machines.

Response: The word "water" has been added to the fee listing in Appendix 64-51-2.

9. Comment: The Resilient Floor Covering Institute opposes the collection of asbestos enforcement, oversight and notification fees from traditional flooring craftsmen in West Virginia who remove resilient floor covering products consistent with industry recommended work practices. The Institute stated that flooring craftsmen who remove resilient flooring properly

should not be subject to asbestos licensing and training requirements, and should not be required to pay the proposed fees for asbestos enforcement, oversight and notification.

Response: The fees in question apply to asbestos abatement projects described in Asbestos Abatement Licensing, 64 CSR 63, which requires notification of asbestos projects according to State and federal law. The standards of the U.S. Environmental Protection Agency (EPA) include resilient floor tile under certain conditions (residential buildings having four or fewer dwellings are exempt). Additionally, training in an EPA-accredited course is required for resilient flooring craftsmen because their training does not meet the requirements of 64 CSR §63.4.1.2 for EPA course accreditation. Therefore, the Division does not agree to a general exemption for resilient floor tile craftsmen. It might be noted that the comments made apply more directly to the applicability of the Asbestos Abatement Licensing rule to the resilient floor covering industry than to the present rule.

10. Comment: The Beckley-Raleigh and Mercer County Boards of Health commented that the \$25.00 and \$50.00 annual fees for sewage system installers appears to be in conflict with the regulation which requires that the installers certification be renewed every five years.

Response: These fees have been deleted.

11. Comment: The Beckley-Raleigh and Mercer County Boards of Health stated that: "The charging of \$10.00 per water specimen to local boards of health would be very costly in carrying out activities required by the State Health Department [Division of Health]."

Response: Water sample fees will be invoiced to the originator of the water samples, not to the local health department. Regulatory check samples from public water supplies will not be invoiced.

12. Comment: The Lincoln County Health Department noted that: "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."
13. Comment: The Beckley-Raleigh and Mercer County Boards of Health commented that it is not clear if local health departments can charge for services under section 6.

Response: Section 6 states that the "director" may charge fees. "Director" is defined in Section 3.7 of the rule as the director of the division of health. Section 6 does not apply

to local health departments.

14. Comment: The Beckley-Raleigh and Mercer County Boards of Health commented that the \$50 fee for a homeowner water well permit in Appendix II appears to duplicate the fee which may be charged by local health departments under Fees for Permits, 64 CSR 30." The Realtors Association also objected to this fee.

Response: This fee has been deleted.

15. Comment: The Beckley-Raleigh and Mercer County Boards of Health commented that an annual cost of \$150 for an Innovative/Alternative type Sewage System would be prohibitive for many homeowners in its area and that if this is intended to be a one time permit fee, it would be another duplicate fee, since local boards of health are permitted to charge \$150.00 for Class II Systems or Home Aeration Units in the Fees for Permits, 64 CSR 30.

Response: There will not be duplicate permit fees for Innovative/Alternative Type Sewage Systems. For the most part, approval procedures for permits for home aeration units are conducted by the State office and not the counties. At the present time, there are only three local health departments processing such permit applications. The State will not charge for services performed by counties.

16. Comment: One commenter stated that Section 9.9 (new number) of the proposed rule places too much authority with the director. "He has already demonstrated that he has no idea of what a reasonable fee should be. To give him authority to set reasonable fees by simply filing with the Secretary of State is unacceptable."

Response: The Division believes that the local public hearing process required by Sections 9.7 and 9.8 of the rule allows ample opportunity for the expression of public opinion to guide the Director's decision. (See also item #18 for a discussion of revisions to the local public hearing process.)

17. Comment: Four local health departments spoke to issues and methods related to charging, waiving or adjusting fees for services at the local level. The Department believes these comments are representative of a general diversity of opinions regarding the charging of fees for public health services and the manner in which the amount of the fees to be charged is determined.

The Kanawha-Charleston Health Department stated its opinion that: "patients who do NOT have a third party payer should not be subjected to any fees when attending Family Planning, STD, EPSDT, Chest (TB), or Immunization clinics for

children. It is NOT in the best interest of achieving Public Health Goals if one sets a financial barrier in front of those persons we are trying to bring to our clinics in the interest of preventive medicine!"

The Beckley-Raleigh and Mercer County Boards of Health stated their opinion that Section 9.3(b), which provides exceptions for fees charged by local health departments "is unnecessary and would defeat the purpose of authority to establish fees for service. Exemptions from fees for those unable to pay is assured under Section 4.2. For those who can pay a significant amount of revenue from fees for services would be lost."

The Mid-Ohio Valley Health Department stated that: "Vaccines and medications are provided through the State of West Virginia's Bureau of Public Health. However, no provision has been made to cover the cost of the professional services required to administer these medications. Persons receiving immunizations are generally more financially able to pay than a majority of our clients. Indeed, many express the desire to compensate the health department for these services. Therefore, MOVHD feels that no fee exception should be mandated for these services."

The Mid-Ohio Valley Health Department noted, however, that it favors the use of fee waivers for financially disadvantaged clients, as opposed to the use of a sliding fee scale as mandated by the proposed rule. It stated that: "To properly calculate a sliding fee scale, a means of income verification is required. The cost of implementing such a verification program would offset any additional funds generated by this sliding fee proposal."

Additionally, the Mid-Ohio Valley Health Department disagrees with the proposal for service fees which vary from county to county. It noted that: "A statewide fee rate would insure consistency and remove the financial advantage of clients seeking health services outside their residential area. However, if counties are permitted to set various fees, then charging a maximum fee for residents of other counties might help alleviate clients seeking services outside their area."

Response: The Division recognizes that permitting local health departments to charge fees for various health care and other services heretofore provided free is a major departure from previous policies. This shift is in response to a number of factors.

One factor is the existence of various forms of third party reimbursement, such as medicaid and health insurance, for some services. Additionally, some persons receiving services offer to pay; without this rule and the authorizing sta-

tute, there is no mechanism in place to permit such payments. Another factor is the dwindling level of support of health services by some county governments. The Division believes that, in view of these factors, it is not unreasonable to expect the public to pay a small portion of the cost of service delivery; the Legislature agreed by passing the authorizing statute.

The Division notes that there are important safeguards to assure that fees will be reasonable and that individuals who are unable to pay will not be denied health care services provided by the local health department. There is a requirement for a public hearing on fees proposed at the local level; the Director of Health will use the results of the public hearing as well as other information provided by the local health department in deciding whether to approve proposed fees. The rule requires the use of a sliding fee scale which will permit fees to be scaled to the ability to pay. The Division does propose that certain key public health services associated with sexually transmitted diseases and tuberculosis remain entirely free; these services are of sufficient importance that the Division believes there should be no potential for discouragement of potential users. The exception for immunization services has been deleted in order to permit the capture of available Medicare and other third party payor reimbursements for these services. Finally, both the rule and the authorizing statute guarantee that no health care service available at the local health department will be denied to any individual because of inability to pay for the service, although language accepting only a statement that an individual is unable to pay has been deleted due to incompatibility with Medicare standards.

18. In addition to modifications made to the proposed rule as a result of comments, the Division has made a number of stylistic changes to the rule. Also, a number of minor revisions have been made for purposes of clarification and simplification. These revisions do not change the purpose of the rule and are as follows:
 - a. Sections 1.5 and 1.6, giving dates of the public hearing and the final approval by the Director of the Division of Health, have been added.
 - b. Language has been added to Section 2.1 to clarify that the rule applies to local boards of health as well as to persons receiving services from such local boards.
 - c. An expanded definition section includes definitions formerly found in Section 9.1 and in Appendix II (now Appendix 64-51-2). The definition of "health programs" has been modified by adding the words "and activities" following the word "strategies." The definition of "profes-

sional health services" has been modified by adding other currently licensed health care professionals and deleting the term "certified" (not applicable to social workers in this State). The definition of "sliding fee scale" has been reworded and part of the former definition is now incorporated as part of Section 9.5.d. Definitions have been added for the following terms: "ambulatory surgical facility," "behavioral health center," "behavioral health services," "hospital," "nursing home," "personal care home," and "residential board and care homes." These definitions are taken from the W. Va. Code and other Department rules and have been added solely for the convenience of the reader. The definition of "generator" has been clarified by adding the phrase "radio-active" to modify waste. Also the phrase "long-term storage" has been added. The term "low level waste" has been changed to "low level radioactive waste." Language has been added to clarify that the term "sewage holding tank" does not include septic tanks, portable toilets or privies.

- d. Section 4.1 has been retitled and the authorization of the Director to file an order to establish specific local board of health fees has been deleted because it duplicates language in Section 9.9.
- e. Section 5.1 has been clarified by adding language to reflect the laboratory certification fee already contained in Appendix 64-51-1.
- f. Former Section 9.3 was deleted because of incompatibility with Medicare standards.
- g. In Section 9.3, the description of the calculation of administrative overhead has been revised to be less specific in examples, but more descriptive in noting that administrative overhead costs for a particular service may include only those overhead expenses which contribute to the delivery of the service. The fifteen percent cap on administrative overhead has therefore been removed as overly restrictive. Additionally, it has been clarified that Section 9.3 relates to the calculation of maximum fees.
- h. In Section 9.5, it has been clarified that it is the public served by the local board that is to be informed of proposed fees and that the thirty-day notice period is for the purpose of allowing public comment.
- i. Section 9.6 has been expanded to require that the local board submit information documenting the public hearing process to the Division.
- j. In Section 9.7, the term "interim fees" has been changed

to "emergency fees" and the word "emergency" has been substituted for "a new and unforeseen program or health opportunity for the citizens and community." The Division believes that the term emergency is more appropriate, less restrictive than the language used originally, and also more reflective of the intent of the provision.

- k. Language requiring the Director to provide a local board of health a copy of the order approving fees to be charged by the local board has been added to Section 9.8.
- l. Section 10 has been modified to permit the Director to direct that hearings on specific health service fee applications be conducted at the local level. This does not preclude the individual's right to a hearing at the State level, but may, in some instances, obviate the need for the full contested case process.
- m. Tables in the Appendices have been reformatted and renumbered subsequent to the deletions documented elsewhere in this discussion.
- n. The asbestos abatement notification-inspection fee schedule has been modified by the addition of a Class IV annual fee of \$1500 for industrial facilities which may have a large quantity asbestos abatement to be done over a one year period. A single notification fee and process will simplify paper work and will support three to five inspections at each such facility during the year.

PUBLIC HEARING

Fee for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
MARK BALOWIEH	26070 70-7th Street	City of Wellsburg	YES - please submit written
Richard Stevens	300 Capital St., Suite 1002 Chas, WV 25301	WV Dental Ass'n.	written only Yes
Thomas Samuel	1500 Chapline ST Wheeling 26003	Ohio County Com	NO
STEVE HARMON	1 Red Bank Rd Buckhannon 26001	W.V. Farm Bureau	NO
Daniel Carden	Water Dept City of Stonecroft		NO
Jim Balow	Chas Garrett		NO
Sen. Charles Ferguson	1500 Sandhill Dr		NO
Diane Miller	33rd Winton		NO
Bob Pack	440 Villa Ave WHITE SULPHUR SPRINGS	THE CITY OF WHITE SULPHUR SPRINGS	YES
Denny Memmick	Rt 11 Box 26024 Keyser, WV 26726	NEW GREEN PUBLIC Sch. DIS.	NO
Tom Sayre	221 Brooks St.	PSC	NO
Barbara M. Brumfield	730 S. 16th	Westerford City of Wellsburg	NO

PUBLIC HEARING

Fee for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME

ADDRESS

James R. Crasley Jr.	P.O. Box 2 mobile	President	Webster P.S.D. Ad	YES
HARVEY ATKINS	311 Markwade Beckley	DIRECTOR	P.W.O.D. - Pres. Webster Dep Assoc.	YES
T. D. Kwoffelt	P.O. Box 3052 Charlotte	2531	Charleston S.C. Bd.	YES
James Carey	P.O. Drawer 252 Webster Springs WV 26288		WEBSTER SPRINGS P.S.D.	YES
J. Bruce	200 Municipal Plaza Winton W.V.		City of Winton	YES
Gregorio Ben Wilson	100 Dream Dr		ELKVIEW W	YES
LUCIAN ATKINS	Box 426 CLAMMANNVILLE		CLAMMANNVILLE SUPPLY WATER & WASTE BR.	YES
ROBERT VAHCE			CHAIRMAN	NO
William E. Egan	Hinton W. Va.		Sanitary Board City of Hinton	NO
Tom Egan	100 W 5th St Williamstown, W.V.		CITY WILLIAMSTOWN W.V.	NO
E. J. Egan	426 Victoria Ave		" "	" "
E. J. Egan	Williamstown		" "	" "
ST. Mary Parish	Rt 1 Box 108		" "	" "

PUBLIC HEARING

Fees for Services
June 22, 1990

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)

William L. Loring	P.O. Box 247	Regional Planning Council	
Lee Sidner	Roane St. Charleston, W.V.	Borden Valley Bell	Yes
DAGLE GREEN	P.O. Box 1270	CITY OF ST. ALBANS	
Julien Tree	ST. ALBANS, WV 25177	Municipal Utility Commission	NO
Paul W. P. Kown	Char. W.V.	WV RPA	NO
ED CLIFFORD	411 N. 3rd St. Philadelphia WV	Ohio County P.S.D.	NO
James Capitanian	36-380 St. Storewood Rd.	HARRISON CO.	NO
Cadwell Tyler	RT 1 Box 9 Lumberport WV	MILK MARKETING HARRISON CO.	NO
NICK CICCARELLA	Box 3186 So. CHS So. CHS WV	West Virginia Chapter NAT'L ASBESTOS COUNCIL	Yes
Steve Chambers	833 Edgewood Dr. Charleston 25302	W.Va - American Water Co.	YES
Les Jones	PO Box 1916 Char. WV 25327	W.Va. American Water Co.	NO
Steve M. Loring	DR Box 111 - Craigsville WV 26035	Craigsville P.S.D.	NO
Stan Maller	RT 2 Box 382, Stimpfield WV	Morgan Co. P.S.D.	NO

PUBLIC HEARING

Feed for Services

June 30, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

James Davis Rt 1 Box 447 St. Marys WV RT 16 2nd Corp

L.W. Smedley Rt. 1 Box 24, Gandeville W.V. Gandeville P.S.D. No

Jaye Randolph P.O. Box 37 Gandeville W.V. Gandeville P.S.D. No

Mr. L. Greene Rt. 3 Ripley WV Southbenton W.V. P.S.D. No

Caroline J. Stephens 101 Baker Ln Nitro WV Nitro Sanitary Board No

J. Jackson Bailey Suite 202 214 Virginia St. E, Charleston 25301 WV Assoc of Realtors No

John P. Bailey 600 Riley Bldg Wheeling, WV 26003 Ohio County P.S.D. Yes

Richard J. Cronin Rt 1 Box 130 W.V. Farm Yes

Paul May Rt. 2, Jamesburg, WV Richmond Farm Inc. (Producers) Yes

FRED STOTTLEMYER P.O. Box 147 South Dept 25500 Smith Pt. W. P.S.D. YES

Amy Swann 201 Breaker Street Charleston, WV WV No

Colleen Year 201 Breaker St. Charleston, W.V. P.S.D. No

PUBLIC HEARING

Fee for Services
June 22, 1990

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
JIM WESTCUMD LAND	114 VA. ST. W. CHARLESTON	BROUGHTON FOODS CO W. VA. DAIRY PRODUCTS ASSO.	YES ✓
Curtis Dickson	211 Sixth St., Parkersburg 26101	Mid-Ohio Valley Health Department	written Yes ✓
Walter J. Vinel SR.	314 Aulaya Chester W Va	THE NEWELL CO. NEWELL W VA	YES ✓
Leonard Day	R.D. #2 Box 328 New Cumberland	Grant Public Ser. Dist	Yes ✓
Nelae Unger	Rt. 1 Box 5400, Berkeley Springs, W. Va.	Morgan Co. Health Dept.	No.
Betty M. Dean	Charleston	West Va. Municipal League	No -
Charles R. Spitzer	101 Le St E. Char	Kan-Char H.D	No
HELVICKENS PRE.	Beckley Water Co	P.O. Box 4, Beckley W 25802	NO
Carl v. Gali	Mariontown W Va		YES ✓
JAMES L. GREEN	125 LAKESIDE DR. Morgantown W Va	Morgantown Utility Board	Yes ✓

PUBLIC HEARING

Fee for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME

ADDRESS

DAIRMEN INC

William L. ARLEDGE 10140 Linn Station Rd, Louisville, KY 40223

YES ✓

Michael J. Turner Rt 12, Box 111 Greenville TN 37743

YES ✓

DAVID RAPP Rt 2 Box 265 Revick W.V. 24966 DAIRMEN INC.

NO

Harry Rabinowitz Rt 1 Box 108 Frankfort WV 24938 DAIRMEN support other

YES ✓

1500 CHAPLINE ST

WHEELING, WV 26003

CITY OF WHEELING

YES ✓

Coyla Ashbaker Mayor PO Box 216 Lost Creek W.Ve

NO

Ken Ashbaker GENERAL MANAGER CLARKSBURG VAREL BOARD C' BORG

NO

Red Berry House of Delegates

NO

A. E. Tietz " " "

Jack Harper 6904 Valley Brook Dr.

Summit PSB

Yes ✓

David H. Smith RDP Patoka, IL 15150

Public Dairy

NO

PUBLIC HEARING

Fees for Services

June 22, 1990

GROUP REPRESENTED
(IF ANY)

DO YOU WISH
TO COMMENT
(YES/NO)

NAME ADDRESS

Rose Rhodes	Cottageville, W.V.	Cottageville P.S. District	No
Jack Cooby	Nutter Fort W.V.	Nayar-Nutter Fort	Yes ✓
Fred Butta	142-Box 159 W.V.	W. Va. Farm Bureau	Yes ✓
Clay McInnis	1415 Beckhamway Pike	Nutter Fort, W.V.	No
Van Housen	Box 426	Una W.V. Milk Marketing Inc.	No
Jim Ramsey	Box 306	Burnsville Public U.t	No
Ludie D. Long	Pt Pleasant	House of Delegates	no
Keith Poyner	Bandersgap	City of Bandersgap	No

Ernest D. Bashon J.B. Winkley - J.B.D.

PUBLIC HEARING

Fee for Services
June 28, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
Anthony Green	City Hall, Buckhannon, WV		no
Bill Surmney	Rt 1 Waverly	WV Union-Williams PSD	yes
Betty Surmney	"	"	no
Lilly Wilson	State Hygienic Lab.		no
Gregory + Wilson	Members of House		no
Gerald Statman	Lewis Co. Comm.		no
J. P. [unclear]	Lewis Co. Comm.		N.
Ken Foreman	Dir of Public Health		No
Tom Hunsby	Town of Alderson		yes
Bruce A. Minor	Town of Franklin		yes

supported Mr. Hunsby

PUBLIC HEARING

Fee for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

George Shurt 221 Beale St.

W.V.

PSC

No

Paul Ramsey Birmasick

NRWA Field Rep

No

Tom Brothom Box 235, Beaver WV

Shady Spring PSD

No

MICHAEL T. ANDERSON 100 E. Washington St.

TERRA ALTA WATER WASTE

No

James L. McElroy 300 Marshall St.

Mannington

No

Bill Bob Gader

FBORG

LUBCK PSD

YES

Barbara McDaniel P.O. Box 1428

Farmont, WV

City of Farmont

Yes

Lance L. Kephaw P.O. Box 647

Fayetteville, WV

J.C. Evans Utilities, Inc.

No

Robert Schaller P.O. Box 251

Keyser, WV 26726

34th District

House of Delegates

No

W. Allan Crumaker P.O. Box 647

FAYETTEVILLE, WV 25840

J.C. Evans Utilities, Inc.

No

Anthony Badger Farmont WV

Little Rock PSD

No

PUBLIC HEARING

Fees for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

CHET FLEMING 1 BUENA VISTA PLACE CHAS. 25302 W. RURAL WATER YES ✓

J. ROBERT MCCARTY- ROUTE 3-BOX 799, CLARKSBURG WV 26301 W. RURAL WATER ASSN NO

G. S. EVANS STAR RT #1 BOX 60 KEYSER WV 26726 NEW CREEK YES ✓

P. L. GARNER, MAYOR, CITY OF LEWISBURG YES ✓

Randall H. Craig, Finance Director, City of Parkersburg

Wesley Skaggs 204 Race St. Ravenswood. NO

Bill Ruffalo 300 Sand St Fawnswood NO

Edward E. Simpson 354 3rd Ave Ripley WV 26271 City of Ripley NO

Delegated Barbara Wagner Bridgeport WV. NO

James Manning Charleston, WV 25311 Div of local health NO

PUBLIC HEARING

Fees for Services

June 28, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

Andy Langmuir	16 Meadow Dr. Wheeling WV	Milk Marketing, Inc.	Yes ✓
Robert A. Williams	State Capitol Guthrie Center	W. Va. Dept. of Agri.	yes ✓
Tim Curries	30 Arlington Dr. Wheeling, WV	City of Wheeling	yes ✓
Charles R. Crow	Salt Rock	Salt Rock	no
Carl Burgess	Parkburg	now Harris Dist.	no
Larry E. Shinn	Togon	Health Dept	no
Linda L. Goddard	Tennelle, W. Va.	Tennelle Statue Dept.	
Gay Ich	11 DA		no
Mary C. Smith	105 Mar. St. Pt. Pleasant, WV 25550	Mason County PSD	no
R. Dan Halloran	CNAS. SAN. BD. Box 1026 Charleston 25324		no
Kim Burgess	Drawer I Pinch, WV 25154	Pinch PSD	yes ✓

PUBLIC HEARING

Fee for Services
June 29, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

L.W. Thompson Box 4 Talcoff W.D. 29881 Big Bend PSD No

R.M. Jones PO Box 1627 PKby WV 26101

Bernie Yankovsky WATER DEV. AUTH No

Bob Dittmar STATE SENATE

Urian Bowman 1 W MAIN ST - GRAFTON City of Grafton No

GREGG VAN PELT PO Box 202 Grafton Taylor County PSD yes ✓

William Wilson 205 26th Charleston S.W. Rd No

Parley Cruse 282 Malcolm Ln, Kenova, WV Lavalette PSD No

Linda Davis PO Box 227 Lavalette Lavalette PSD No

Erniey Jones N 111 1st St Princeton No

PUBLIC HEARING

Fee for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

Mary G. Stanley Box 14 Nimitz Shopping Branch Nimitz P3D

Ronald Washam " "

Lois Bennett " "

Sam Chico Jr -331 Bearhurst on Chew Bay co - Morogoton W Va

Larry McHenry Box 700 Sophia, W VA W.D.O.

John Overington W V House of Delegates - Martinsburg No

Willie McKinley 115 S. Church St. Ripley City of Ripley No

Michael Lewis 720 13th Ave Huntington, Huntington Sanitary Bld. No

Michael D. Hudson P.O. Box 216 City of Dunbar San. Bld. —

Dana J. Foley Rt. 2 Box 72 St. Marys St. State Senate No

PUBLIC HEARING

Fees for Services
June 28, 1990

DO YOU WISH
 TO COMMENT
 (YES/NO)

GROUP REPRESENTED
 (IF ANY)

NAME ADDRESS

Bert L. Curre	105 MAIN STREET, PINE BLUFF, WV 25355	Yes
David M. Fyson	4th Ave. "D" street, So. char. wv Sunday Board	n'o
Edward Smith	730 SIBBATTON ST LOCAP	
James Fite	White Sulphur Spgs WV WV State Fair Commn	Yes
Emory Peters	Chesapeake, wva. city of Chesapeake	
Richard S. Weigand	wvetc Charles T. Repley wv wvetc	NO
John Reiter	wvDoted. WVDE	no
David Dinkall	503 JAKT Kairville WV Kairville Water Dept.	NO
Frank J. Caldwell	Box 700 Sophia, WV Sophia Sunday Bd	NO
Harold J. Anderson	Box 261 Falmouth, Jct. 6. Little Creek, P.S.D.	Yes

WEST VIRGINIA SECRETARY OF STATE
ADMINISTRATIVE LAW DIVISION

PUBLIC HEARING ON A PROPOSED RULE,
"FEES FOR SERVICES"

Transcript of proceedings had on the 22nd
day of June, 1990, at 10:00 a.m., at the Conference Center,
Building 7, Room C, Capitol Complex, Charleston, Kanawha
County, West Virginia.

BEFORE: KAY HOWARD, HEARING OFFICER

JOE SCHOCK, Office of Environmental Health
West Virginia Division of Health

JUDY SMITH
Office of Administration and Oversight

SHEREE COMPTON, Office of Laboratory
Services

JIM MITCHELL, Office of Health Facility
Licensure and Certification

DALE PORTER, Office of Epidemiology and
Health Promotion

JOAN KINNEY, Office of Community Health
Services

PHYLLIS HAYNES EDENS

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O P E N I N G R E M A R K S

(10:00 a.m.)

BY MS. HOWARD:

Good morning. My name is Kay Howard. Today is June 22, 1990. I am your hearing officer. We are here to conduct a public hearing regarding a proposed new rule for the Division of Health entitled, "Fees for Services."

The proposed rule establishes fees for various services provided by the State Division of Health under programs to ensure safe drinking water, sewage disposal, milk products and food, and other services.

The rule provides mechanism for adjusting fees. The rule also establishes a process whereby local boards of health may charge--establish and charge fees for various health services provided.

Services will not be denied to individuals who are unable to pay. Fees charged by the county boards must be approved by the Director of the Division of Health.

This proposed new rule is based on a new law passed by this year's Legislature.

I would like to take just a minute here and very briefly describe to you a little bit about the rule-

making process, so that you will know what happens from this point on.

We will--the Division will review the comments that are made here at this hearing and all of the comments that we have received through the mail, and we have received a number of comments through the mail.

Two routes are possible on this rule. One is the routine process for establishing a rule, and through that process the rule is submitted to the Legislative Rule-making Review Committee who reviews the rule and in turn makes recommendations to the full Legislature, and the Legislature will either grant or deny authority to promulgate this rule. The rule may be changed and modified through that process.

There is also a process whereby an agency may establish a rule on a temporary basis through an emergency filing. The emergency filing does expire in 15 months, and we must--we still have to go through the process of legislative review for our authorization to promulgate the rule on a long-term basis. The Secretary of State does have the authority to disapprove of the emergency filing.

I'll go very briefly through the guidelines that we will use to conduct this hearing. The idea is to

give everyone a chance to speak to the rule in an efficient manner.

The purpose of the hearing is to receive your comments, not to debate or discuss the issues here on the spot. It takes time to review comments and to give them due consideration, especially when we receive as many comments as we have about this rule. All of your comments, whether they are written or oral, are part of the public record. If your comments are written, you do not need to read them in order to have them made a part of the public record of the comments.

We are preparing a transcript of the hearing that will be part of the evidence that is submitted to the Legislature. We also submit all of the comments. We also submit a discussion of the comments and a discussion of any changes that we propose to make in the rule.

In order to give everyone a chance to speak, I am going to limit the amount of time per speaker on a first round of comments. This is, incidentally, laid out in the sheet that I handed out for you to read; but I thought I should probably go over it, because sometimes people don't read things. I am going to ask every speaker to limit

themselves to three minutes for an initial round of comments.

If, after we have given everyone a chance to speak, there are those of you who wish to make additional comments, you may do so. I will--depending on how many persons it looks like we might need to give a second round to--I may limit the time allowed for a second round of comments; but you will have enough time to say everything that you want to say about the rule.

We do ask you to limit your comments to the proposed rule, since that is the purpose of this public hearing. I would like to mention that if your comments are the same as another person's, you may simply indicate that you agree with that person or persons. You don't necessarily need to repeat all of the comments.

I would like to ask, and I will remind you from time to time, to please identify yourself as you come forward to speak, and I will ask you to come forward here to speak. Please identify yourself, and if you are representing an organization, identify the organization which you are representing. It is, of course, not necessary that you be an organization person. Any individual can speak to a rule at one of these public hearings.

Are there any questions about the conduct of this hearing?

(No response.)

MS. HOWARD: I don't see any. What I'm going to do is call on speakers, persons who have indicated on the sign-in sheets that they want to speak. After I have been through these sign-in sheets, I will also ask for persons who have not spoken to indicate if they want to speak to raise their hands. And you are perfectly welcome to change your mind. If you said no here and you decide you want to say something, that's fine.

The first person that I have who has indicated--by the way, I think at this point, I think I've got about 40 people that want to speak, which is why I am limiting the time.

The first person I have has indicated a desire to speak is Mr. John Bailey. Mr. Bailey, come forward.

P R O C E E D I N G S

MS. HOWARD: Please identify yourself and any organization.

MR. BAILEY: My name is John Bailey, and I

appear on behalf of the Ohio County Public Service District, which provides water and sewer service to Brooke, Ohio, and Marshall counties in the northern panhandle.

We are here objecting to the provisions in Appendix II, Section 4.B., relating to fees for technical services in compliance of six cents per thousand gallons of water provided and four cents per thousand gallons of sewer service. It appears, based on a review of new West Virginia Code 16-1-21A, that the Department of Health is allowed to assess and charge reasonable fees for the provision of services.

The Ohio County Public Service District is not aware of any service that is being linked to this fee. There is no indication of what we get for the money, or that the monies collected will be used directly to provide water and sewer service back to us.

It appears that, since the fee is not placed on the users, that it is, in fact, an excise tax based on the doing of business in these counties or in this type of business. And since it is an excise tax, it would be illegal, inasmuch as only the Legislature is empowered to impose an excise tax.

I also wish to point out the problem of the piggy-backing of the tax. The Ohio County Public Service District purchases its water from the City of Wheeling, which has to pay the six cents tax. We will have to pay that as purchasers, then we have to charge it to our customers. So, it's really twelve cents on our customers.

We then collect it from our customers in the sewer system and pay an additional four cents, and then we transmit that sewage back to the City of Wheeling, who then has to pay four cents on it. So, in essence, our customers are being asked to support a twenty-cent fee, which seems to be unrelated to any service or any direct usage that we would make of the Department of Health.

Thank you.

MS. HOWARD: Before I call on the next speaker, let me remedy something. I forgot to introduce the Division staff who are here to listen to your comments. In addition to myself is my colleague, Ms. Judy Smith.

Then we have Sheree Compton from the Office of Laboratory Services, Mr. Joe Schock from the Office of Environmental Health, Mr. Jim Mitchell from the Office of Health Facility Licensure and Certification, Dale Porter from

the Office of Epidemiology and Health Promotion, and Joan Kinney from the Office of Community Health Services.

And I apologize to them for forgetting them in the beginning.

Now, the next speaker is Richard Cronin, I think, from Jane Lew. If I've mangled your name, I apologize.

MR. RICHARD CRONIN: I am Richard Cronin from Jane Lew. I am President of Producer's Dairy Company in Clarksburg, a small milk plant that home-delivers milk in glass bottles. I operate a dairy farm.

I will be hit twice by this thing--on the farm and in the plant. The plant is a small plant. I'm not sure that we could absorb the cost that will be imposed upon this plant to pay for public health, which I feel should be paid for with tax dollars. This is something that protects the people.

I think there are several questions that have not been answered in this. I will not get into them, I'm sure they will be covered today. But the regulations, as I read them, are very, very unclear to me.

As I said before, I strictly oppose the

implication that they--puts user fees on us, which should be paid for with tax dollars. Thank you.

MS. HOWARD: Our next speaker is Mr. Paul Nay, also from Jane Lew.

MR. PAUL NAY: I am Paul Nay. I'm President of Nay's Riverbend Farm, which is a small family corporation. We produce milk; and I'm also Vice President of Producer's Dairy Company that Mr. Cronin just mentioned.

He and I and our families have this very small plant in Clarksburg, selling Golden Guernsey milk and delivering to the homes in the Clarksburg area. And this may be the only home delivery left in West Virginia--at least as far as I know, it is. I don't know of another milk plant that is making home deliveries.

I have already mailed a letter of protest to the Health Department, so I will expand on that just very briefly. I won't stand here and tell you that these proposed fees will put either our farm or our plant out of business, but it certainly will be an additional burden on an industry that does not now produce nearly as much milk as is used in the state of West Virginia.

I think the proposed fees are both

unreasonable and unrealistic. The service of the State Health Department is for the benefit of the public, and it should be paid for with public funds. The fees are unreasonable in comparison to anything that is charged in the surrounding states that are shipping milk into West Virginia.

It is my understanding that, in both Pennsylvania and Maryland, there are no fees charged for either milk producers or processors. And Ohio has only a \$15 maximum license fee for producing milk.

There also seems to be very little reason in the way the fee schedule is set up. Just a couple of examples, \$500 for fee for an in-state processing plant, milk processing plant, and only \$250 for an out-of-state processing plant. Also, I see that the fee for a food processing plant, who has sales up to a million dollars, is only \$100, where for a small milk plant is \$250.

We are very much opposed to these proposed fees. Thank you.

MS. HOWARD: The next speaker is Mr. Fred Stottlemeyer.

MR. FRED STOTTEMEYER: I am Fred Stottlemeyer, General Manager of South Putnam Public Service

District.

I would like to echo the comments of Mr. Bailey. I think they are very appropriate, and some very specific problems. South Putnam Public Service District has been a diligent supporter of safe drinking water and high environmental standards.

We have, over the years, worked closely with the Environmental Engineering Division of the Department of Health; and we were anticipating that certain fees would be imposed for purposes of improving water-related services provided by the Health Department.

While we have not always agreed with Health Department officials over the years, our relationship has been based on mutual trust. In more simple terms, we believe that both our efforts and our duties, though significantly different, were directed toward the assurance of quality water supply for the residents of West Virginia.

I must tell you that these proposed fees and the tactics used by the health officials in proposing and promoting these fees has destroyed this trust. Never in my life have I seen a group of bureaucrats so blatantly show such total blind support for their agency and such total

disregard for the people of the state.

While I recognize that those in power, the Governor, the Legislature and the chief executive of your agency, have placed you in a difficult position by making you the secret tax collector for West Virginia, we can only caution you that by continuing to be the expounders and promoters for these fees, that you may totally destroy your credibility and trustworthiness with the water and waste water systems and their personnel.

The water and waste water systems of West Virginia need a major infusion of funds if they are to meet acceptable standards, and state government should be taking the lead in assisting in this task. Instead, we find a government that is choosing to bleed the water and waste water system of their already inadequate funds, to benefit other functions of government.

And most disturbing, we find the very officials who should best know the severity of this problem, the environmental engineers, going around the state promoting this policy.

Enough for the negative. My mother always told me that there was something positive in everything.

While I hope that this hearing somehow brings the Department of Health to its senses, I imagine the recently announced, "You fund it yourself" pay raise for state government employees will place such pressures on health officials that they will push forward with this ridiculous fee structure on an emergency basis.

What I see as a positive in this horrible situation is the fact that from this excessive, unreasonable tax will grow the seed to remove the fees and the responsibility for water and waste water, once and for all, from the uncaring health officials, and the placement of these functions in a newly created Department of Governmental Affairs, where the water and waste water systems will finally have a department of state government which will be willing to work with the water and waste water systems toward a common end.

Thank you.

MS. HOWARD: The next speaker, Mr. James R. Graley.

MR. JAMES R. GRALEY: My name is James R. Graley, Jr. I am General Manager for Malden Public Service District, and also President of the West Virginia PSD

Association.

As Fred's comments indicated, these fee structures are unreal and unrealistic to the districts in themselves. These fees are going to bankrupt public service districts to the point that we cannot pay our people, have adequate staffing and provide adequate treatment to the facilities, themselves. And we find that this is unrealistic and an unfair practice.

Not only do we have to pay the fees of the Health Department, but there is also other fees--and I support Fred in the aspect that we should have a state government that can and will take care of the water and sewer industry in one house, instead of having to fund nine different houses to do our business.

Thank you.

MS. HOWARD: The next speaker, Mr. T. D. Kauffelt.

MR. T. D. KAUFFELT: I am T. D. Kauffelt. I am a lawyer practicing in Charleston, and I am appearing on behalf of the Charleston Sanitary Board.

I agree totally with the speakers to date, as far as the water and sewer charges are concerned. The

statute gives you the right to charge a reasonable fee for a service. The charge to the water and sewer operators has no relationship to service. It doesn't comply with the statute.

It is an illegal tax. I have a firm feeling about that, that it is improper. It doesn't take into account--as pointed out previously, it doesn't take into account the fact that there will be resale customers who will pay it, so it will be paid several times on the same water.

It is a tax that is illegal, that the Legislature set up and arranged so that the money could be collected without their seeming to impose it on the public. But they have, through this vehicle.

Now, what I have to say has been said by others, but I will say this, the amount that they are asking --they are asking a million, eight. The charge to the water and sewer operators will produce several times that amount, alone. It has no relationship to the amount they are trying to collect.

Now, what the Health Department's position is with regard to the Legislature and the Executive Department, as far as what is to be done, I don't know. But they are seeking to do something that is illegal, and I expect them to

be challenged, seriously, on that.

Thank you very much.

MS. HOWARD: The next speaker, Mr. James Casey, from Webster Springs.

MR. JAMES CASEY: Thank you and good morning. My name is Jim Casey, and I am Manager of the Webster Springs Public Service District, which is a small sewer only PSD in Webster County. And to comment on this, as I see it, we are supposed to limit ourselves to--

We find it very difficult--and I'm speaking for my commissioners--to accept this sitting down. We are small, as I have said, and it seems completely unreasonable that we be forced to pay, in our case, approximately \$2,000 a year. Our gross billings are only \$180,000. Just the actual ability to come up with that size of money, that we have no opportunity, whether we agreed with the amount or not, that we couldn't even work this into our budget for next year, let alone get it into our rates.

You are creating a tremendous hardship by trying to move so quickly, and in our opinion, sneakily; and we are alarmed at that.

And just as I understand this compliance fee,

we are supposed to pay for something we are getting. Well, we've been open for ten years now and--if we are so vital that you guys need \$2,000 a year from us, it took seven months for the first time for a health officer to show up at our plant when we opened. We had a visit last September and the time before that was three-and-a half years between visits.

Now, if we are that vital and you need \$2,000, which is a lot of money to us, it just sounds like there is a lot of misplaced priorities and you are just grubbing for money.

Thank you.

MS. HOWARD: Mr. J. Bruce Fox.

MR. J. BRUCE FOX: My name is Bruce Fox. I manage the City of Weirton's water and sewage buildings.

When I first read this rule and I thought about it, I remembered December 7, 1941. That's what this is. This is the Day of Infamy.

I have just went through two public hearings with the Public Service Commission on rate cases, and I can assure you, Number 1, they don't limit anyone to two-and-a-half to three minutes on their comments. The administrative

law judge and the staff gives them all the time they want. don't think people in this room have been given adequate time to research and plan and make their comments, and I don't think three minutes is enough time.

I think Mr. Stottlemeyer's comments about the trustworthiness of the State Health Department's agencies, the relationship they've had with municipalities is going to be destroyed. I think, as a former employee of the county health department, I always thought they were dedicated to the environment, dedicated to do those things that served our state and communities. The effect of these fees is going to forever, if they continue, to destroy that trust.

I also agree with the comments made about the relationship of fees to services. In the case of the City of Weirton, our fees per year are going to be approximately \$61,000.

I have seen the Public Service Commission in action. They are very vigorous. They charge us around \$2,000 a year; and when they came in, they may not like the results of the study, but they invested some 30 to 60 days doing a study that probably cost them \$40,000. At least we got a reasonable service for the fees we were charged.

The very fact that--I saw Mr. McGraw back there, and I was thinking today, if we get Ms. Davis, with the Financial Analyst Branch of the PSC, to come in and toll these rates for 120 days and amortize them over 10 years--maybe we could make out. I don't know. When we have a rate increase, they always hold them up 120 days, and we'll let you recover your money three to five years.

That isn't going to work with this process. The rules of the Public Service Commission don't lend themselves to municipalities recovering that money very fast. I hope the cities don't pay it. I hope their legal staff and their people oppose and don't pay them at all. If they pay it, amortize it over 10 years, the way the PSC allows you.

Having just gone through a sewer rate case, where a minimum bill is \$11.80 a quarter, and our water bills are \$9.65 a quarter, and 40 percent of our customers are on fixed income, an old lady, 70 years old, walks up and says, "I can't afford to pay the \$9.65," this imposition is about \$1.60 per quarter added onto those fixed-income people.

If the state Legislature should have the guts to pass that tax on to people in the way of direct tax, not impose it on the back of our utilities, on our budget

increases, they ought to have the courage to impose that tax the way it should be done and let it be addressed by the fixed-income residents of the state who have to pay the costs.

Thank you.

MS. HOWARD: We will give Mr. Fox an opportunity to speak more later on in the hearing.

The next speaker is Mr. Wilson from Elkview.

MR. BUD WILSON: Hello. My name is Bud Wilson, Manager of Elk-Pinch Public Service District, and also President of the West Virginia Water Pollution Control Association.

And all comments, so far, we are 100 percent behind; and probably--my comments probably would not be pleasant. So, I will concede, thank you, and make my comments at the end of the meeting.

Thank you.

MS. HOWARD: Do you wish another opportunity to speak?

MR. BUD WILSON: Yes, ma'am.

MS. HOWARD: The next speaker is Mr. Lucian Adkins.

MR. LUCIAN ADKINS: I am Lucian Adkins, the Superintendent of the Town of Chapmanville Water and Waste Water Board.

First of all, I would like to agree with all of the speakers before me. Some of the subjects mentioned, such as the dairies and whatever, I am certainly not familiar with, but as far as the water and/or sewer, I definitely am.

First of all, the impact of this proposed fee on the small water and waste water operations will definitely have to be absorbed by the departments or passed on to the customers. In all probability, it will be passed on to the customers.

The Town of Chapmanville has approximately 50 percent of their population in the low income bracket. I am going to have to be the man that wears the black hat that goes down and tells these people, "Hey, you're going to have to pay money for this or that or whatever." I can't tell them why. They are going to want to know why that I have to raise the bill. I can't tell them, because it's not in this regulation.

So, how are you going to pass this on and explain to a poor old lady, who draws \$200 or \$300 a month,

that she is going to have a higher water bill or higher sewer bill, and you don't know why? You just don't know why.

Another thing I would like to mention is the fact of the operators' certification program. All of a sudden, after some 20 years of people like Harvey Adkins, who has beat and thumped around this state, trying to get professionalism in the operators, and then all of a sudden, you are going to start charging these people to take the certification. You're going to start charging the people to renew the certification.

You're going to set back the professionalism, as far as the operator is concerned, you are going to set it back for 10 years; and people like Harvey and Bruce and some of these people, who have beat and thumped around here and argued with politicians, this is a slap in the face to these people; and as a matter of fact, the whole thing is a slap in the face to all of the operators in the state of West Virginia.

Thank you.

MS. HOWARD: The next speaker, T. Larry Bailey, from Jane Lew.

MR. T. LARRY BAILEY: My name is Larry

Bailey. I have a written comment that I would like to hand in personally at this time.

I am a dairy farmer from Jane Lew, West Virginia, and most of us are conscientious producers who produce milk. We like to see a safe product put on the shelf for people of this state to purchase and use in their home.

We see, in this proposed regulation, a sort of user fee put on us, as a dairy farmer, for a permit to sell milk; yet we do not have the right, as farmers, to pass that user fee along in the cost of our product. We take what we are offered or what the market says. And we even extend a line of credit on that milk for 30 to 60 days before we are paid for it, from the processors.

I think it is a sad situation when the State of West Virginia and the Health Department gets to the place where they come back and try to tax raw agricultural products to pay for consumer safety in West Virginia.

Thank you.

MS. HOWARD: The next speaker, Seidner, Valley Bell.

MR. LES SEIDNER: I'll make this very short. I want to fully support the two speakers from the Producer's

Dairy in Clarksburg. Everything they said applies to us. Even though they are a very small, family-owned dairy, as they indicated, they still supply milk and dairy products to a certain segment of the state.

But we need to keep the integrity of our business as it is. We need to support them as well as large dairies in our state, which are--we urge the Department of Health not to proceed to implement the emergency legislation that is unreasonable to these service fees in our dairy industry.

To our knowledge, there is no other place in the United States that has these kind of inspection fees. We currently spend many tens of thousands of dollars in our laboratory to assure that we conform to state and federal standards. Now, to spend an additional approximately \$50,000 to the state to recheck our products, we feel very unreasonable.

I am Les Seidner, General Manager, Valley Bell Dairy Company, Division of the Borden Company.

MS. HOWARD: The next speaker, Nick Ciccarello. Is Mr. Ciccarello still with us? National Asbestos Council? Well, maybe he'll come back.

Mr. Mark Baldwin.

MR. MARK BALDWIN: I'm Mark Baldwin, City Manager for the City of Wellsburg, West Virginia; and I'd like to just comment that I agree with the past commentators in opposing the proposed fees.

Not to reiterate everything everyone said about the 4 cents, 6 cents and 27-cent fee, we also get into the recertification of license, a fee service for well permits, which I don't see what service is being provided by the Health Department. Our city undertakes those duties themselves, to make sure that our water and sewer system is operating efficiently.

One important thing--this goes a little bit deeper, as far as when the State of West Virginia is trying to become economically independent. As far as an infrastructure, water and sewer systems, there seems to be more fees to be passed on to the citizens.

We feel that if the cities are able to be innovative on our own, as far as coming up with ways for saving monies, rather than pass them on to our citizens, that we as a city should be able to do that ourselves, not with the help of the Division of Health.

Thank you.

MS. HOWARD: Bob Pack.

MR. BOB PACK: I am Bob Pack, Manager of Water and Waste Water for the City of White Sulphur Springs.

The City of White Sulphur Springs wishes to oppose this Health Department tax. We cannot absorb these costs. We estimate that this will cost each individual customer \$20 per year. We have no idea whether the PSC will allow us to pass these costs along. Certainly before these fees are implemented, this is a matter that needs to be addressed.

One of the best things the Health Department does for the citizens of the State of West Virginia is the bacteriological testing of the drinking water. It is mandatory and it is free. With the new proposed fees for laboratory services, the water system operator that has trouble keeping the bacteria out of his water will only have to go down to the neighborhood lab and pay your cheaper fee and get the results that he wants, wrote down on a piece of paper.

I submit that these fees will actually be detrimental to the health of West Virginians.

Thank you.

MS. HOWARD: Jim Westland.

MR. JIM WESTLAND: I am Jim Westland, Vice President of Broughton Foods Company here in Charleston. I am also Vice President of West Virginia Dairy Products Association.

I concur with the people who spoke from the dairy side, Les Seidner, with Valley Bell, and the Producers. We have serious reservations concerning the implementation of these proposed fees. They will adversely affect the dairy farmer, the processor, and the distributor of dairy products, as well as the consumer of the products.

We feel that the fee schedule for testing finished milk products, packages, at \$25 per sample, is unrealistic.

One of the things that hasn't been mentioned by anybody this morning is jobs, and I would like to mention jobs, jobs in West Virginia. Jobs here in West Virginia are important to all of us, and when we start to pick up these fees that they are proposing to charge us, it is very unrealistically in the sense that we have to be competitive with our product.

The plant here in Charleston, West Virginia, operates an ultra-pasteurized product, long shelf life, extended milk products. Ninety-five percent of our products go to twenty other states. If we are not competitive with our product in those other states, it will certainly affect the employment of our business.

We realize that the Department of Health needs to maintain certain standards to protect the consumers. However, we think that a reasonable fee ought to be established.

Thank you.

MS. HOWARD: The next speaker, Curtis Dixon.

MR. CURTIS DIXON: We have no comments. We have written comments in.

MS. HOWARD: Mr. John Vincey.

MR. JOHN VINCI: Good morning. My name is John Vinci. I'm with the Newell Company in Newell, West Virginia. That's the part of the state that you don't know whether it belongs to West Virginia, Ohio, or Pennsylvania.

We are a small water and sewer department that's privately-owned. Needless to say, we just barely get by with maintenance and repairs as it is; and if we have to

absorb something like this, there is no way we could. We'll pass it on to our people. Our people in that area, as you know, are out of work, most of them old, retired. They can't handle it.

So, I think it's very unfair and I oppose it, and I agree wholeheartedly with Mr. Bailey and Mr. Stottlemeyer and Mr. Fox. Their comments were exactly what I would say.

Thank you.

MS. HOWARD: Leonard Six.

MR. LEONARD SIX: I have no comment. The part that I wanted to talk about was already stated.

MS. HOWARD: Thank you.

Carl Cole.

MR. CARL COLE: My name is Carl Cole. I am Mayor of the City of Mannington in Marion County.

I want to go on record as opposing the fee for economic reasons. We have a new sewer system in our town. We have 38 more years to go to pay for it. We are in need of upgrading our antiquated water system. We have applied for loans and grants. We have the loans approved, but we haven't got the grant yet.

We operate at a deficit in the water system at the present time, and we could ill afford any more fees laid upon us by anybody.

Thank you.

MS. HOWARD: Mr. William Arledge.

MR. WILLIAM ARLEDGE: Madam Chair, I am William Arledge, representing Dairymen, Incorporated, serving the member dairy farmers of Dairymen, Incorporated. We are a milk marketing cooperative, serving approximately 4,100 members in 17 southeastern and mid-Atlantic states, which includes members within the state of West Virginia. We are opposed to the fees and services as outlined in the proposed Rule 51.

The duty and responsibility of the Health Department is to see that consumers of the state are protected. Sanitation inspections, microbiological and chemical testing are designed to protect the public health of all the residents, and are paid for and should be paid for by state tax dollars, rather than discriminatory user fees.

Annual milk production of milk within the state of West Virginia has declined for a number of years. The number of processing plants have declined over the years.

Discriminatory user fees will force even more dairy farms and processors out of business. Milk production these days should be encouraged, not discouraged.

Since I do have written comments, I won't go through my entire testimony, but I think the key point here is that all farmers absolutely do not have any way to pass such a cost burden back to the consumer. In other words, this would strictly come out of their pocket. As the President of the Farm Bureau indicated, the dairy farmers always sell at wholesale and have to buy at retail; and this is just an added burden.

One key point here is that a number of states, rather than going to discriminatory user fees, the State of Rhode Island and a number of other states in the United States have already passed legislation, or are working to develop legislation, to provide, in the case of Rhode Island, \$2 to \$4 a hundred-weight additional income to dairy farmers, to encourage them to remain in the milk business, rather than--that's in addition to what their income is now.

And this is tied to quality, as it should be, but they are doing what they can to encourage dairy farmers to remain in business, instead of forcing them out.

These highly discriminatory fees also will encourage an exodus, as I indicated before, of dairy farmers from the state, and dairy processors.

It would appear to us that the state should be doing those things to encourage increase of milk production in the state and processing in the state. Otherwise, we are going to see employment go down and income for the state drop due to these type discriminatory acts.

And Madam Chairman, we also would support those comments that are yet to be presented by the West Virginia Farm Bureau, Milk Marketing, Inc., who has not yet spoken, and also the other dairy cooperatives and processors who have already spoken.

Thank you.

MS. HOWARD: Gary Perkins.

MR. GARY PERKINS: I have no comment, other than to say that I am a dairy farmer, and I support the comments that have been made so far.

MS. HOWARD: Thank you.

Conrad Slanina.

MR. CONRAD SLANINA: My name is Conrad Slanina. I am the acting City Engineer, the City of

Wheeling, and I would like to make comments on behalf of the Water Pollution Control Department.

First, I'd like to comment on the fee assessment for Appendix I, the laboratory service fees. These costs appear to be reasonable and understandable to those who choose to utilize the laboratory data determinations of the State Health Department. I would hasten to add, though, that I don't believe the State Health Department has ever made or will ever make such analytical, quantitative or qualitative waste water determinations for the City of Wheeling's water pollution control plant.

Secondly, I would like to comment on the Item 4, under Appendix II, Section 4.B., for the public sewer system facility fee. The regulatory agency which provides technical services to the waste water treatment industry is the West Virginia Department of Natural Resources, and not the State Health Department, as he mentioned in this section, for the Health Department has absolutely no cost benefit relationship to the waste water treatment industry in general or specifically to the customers of the City of Wheeling, which receive our services.

House Bill 4660 authorizes the State

Department of Health to collect fees for services, but the Health Department does not provide any technical or compliance service to our waste water treatment facility. Therefore, this section should not pertain to the waste water treatment industry, and as such, should be deleted from the proposed bill.

If this bill is enacted as proposed, it would cost our customers approximately \$117,000 per year for services not received.

Thank you.

MS. HOWARD: Jack Harper

MR. JACK HARPER: I'm Jack Harper, Chairman of the Sissonville PSD. I've only been chairman out there for about a year-and-a-half, and I never knew there were so many regulations in water and sewer as I've seen since I've been a commissioner.

First of all, I would like to say that I agree with all the speakers I've heard up here today in opposing this rule; and I would like to say I don't refer to it as a fee, I refer to it as a tax, and that's exactly what it is.

And I want to represent the 1,700 customers

of my district, because they are the ones that are going to pay it, and I think every district in here should send a letter to every customer and let them know what the bureaucrats are doing to you.

It's taxation without representation. Thank you very much.

MS. HOWARD: Jack Gorby.

MR. JACK GORBY: My name is Jack Gorby, I am the Mayor of Nutter Fort, a small city. We have approximately 915 water customers and sewage.

We are here to protest because we fall in the same category as so many of the small cities in West Virginia, and that is, our low and moderate income residents who would find it very difficult to pick up the tab for this.

Our checking account in water is about \$400, and sewage not much more; and we have a bond indebtedness here that we have to pay in both water and sewage. And to pass on another \$8,000 to \$9,000 a year would be very difficult if they are allowed to pass it on.

What upsets a lot of the municipalities, the leaders that have been down here to Charleston to try to get some form of home rule, and are told that we are definitely

not capable of ruling ourselves, but at the same time, we have to come up with the money to fund these things that should be funded by the state and not funded by the private citizens.

We also would say that the Department of Health and Human Services should go to the Legislature and ask them for the funding, rather than pass on to us something that is simply a tax with the name of fees hung onto it.

Also, I would like to commend the Health Department for a microphone that most of us are not able to get our mouth close to, so that we don't get anything from it up here.

MS. HOWARD: We are quite able to hear what you are saying up here.

The next speaker, Mr. Fred Butler.

MR. FRED BUTLER: My name is Fred Butler, President of the West Virginia State Farm Bureau, representing some 12,500 family members in West Virginia. I am a lifelong dairy farmer from Berkeley County, West Virginia, also a member of Dairymen, Incorporated, who spoke a few minutes ago. Thank you for the opportunity to make these comments on the proposed regulations, Number 51, Fees

for Service.

I have a note that just came in from Greenbrier County Farm Bureau, which represents some 600 members:

"To Whom it May Concern: We, the members of Greenbrier County Farm Bureau, would like to voice our opinion in the hearing for the Health Department, June 19 and 20, 1990. We are totally opposed to the charges and the form in which we, as milk producers, are to be charged.

"Respectfully yours, Ed Carter, President, Greenbrier County Farm Bureau."

It's difficult for farmers to come to Charleston for a public hearing, particularly at this time of year. Looking around, I see about 20 farmers that I recognize, but there should be a couple hundred farmers here today, the same as we are; and I would suggest if you have public hearings in the future, that you consider having two or three hearings around the state where you would get more input from those affected.

The West Virginia Farm Bureau strongly opposes the proposed regulations. The services that are provided by the Division of Health protects all citizens of

the state, and we do not feel that a user fee or a hidden tax should be placed on those providing the product, whether it be milk, water, sewage or other products. The service should be provided through general tax dollars.

It also appears to us that you are creating an administrative nightmare for your division. It appears that it will take considerable time and effort to simply keep up with the paper work, while at the same time, not providing any additional service or protection for the people of West Virginia.

Let us look at these issues directly affecting agriculture. Under the scope of these proposed rules, you have indicated that reasonable fees are established. We feel that these fees are unreasonable. As far as dairy farm annual permit fees are concerned, the state of Maryland, Virginia and Pennsylvania do not have such fees. The State of Ohio charges \$15 for similar services.

We also feel that it is not reasonable to charge a farmer who is producing 2,000 pounds of milk a day, charge him \$100; and a farmer who is producing 2,001 pounds, one more pound of milk, will be charged \$200; or one who is producing 4,000 pounds of milk per day \$300. It does not

take any more time to inspect a farm that is milking 200 cows than it does one that is milking 50 cows.

How is production per day determined? Is it on a yearly average, or is it on a given day a producer goes over that amount, he is required to pay the higher fee?

The same theory applies to milk plants. One must ask, does it take twice as long to inspect a plant that processes over 100,000 gallons per month than it does one that processes less than 100,000 gallons? We think not.

It appears that the dairy farmers will not only have to pay the previously mentioned fees, but they will be also required to pay for testing water, septic tank permits and water well permits, and many others.

We also question the fee on out-of-state plants. Does the Division of Health inspect these plants? If so, why not use the same reasoning that you used in the in-state plants, two fees as per size?

The definition of bobtailing also is confusing in the regulations. "Any person engaged in the distribution or selling of private brand labeled milk or another company's milk and milk products." Under this definition, this would include practically every store, large

or small, that sells milk in our state. The extra fee will certainly be added to the cost, which makes it very difficult for the small store owner to compete.

This puts an additional burden on many who are struggling to survive in agriculture today.

The fee for reinstatement of a permit product is completely out of line, particularly for the dairy farmer. If the dairy farmer permit has been suspended, in most cases, he is required to dump that milk. This, in itself, is a substantial fee or penalty. We feel that it should be the duty of the Division of Health to assist those who have had problems, rather than to penalize them.

The fee for the certification of milk laboratories is also completely out of line. It is our understanding that these laboratories are required for the farmer-owned co-ops and milk plants. There is a very small margin of profit in these areas, and again, you are making it very difficult for the dairy industry to survive.

We also question as to what is a raw product package? Who is required to have these tests run? We see no explanation in the proposed rules.

The Governor's Office of Economic Development

has identified food process as a prime area for West Virginia. However, with the fees that are being proposed for this industry, it appears as if the State of West Virginia does not want to encourage this type of industry.

Again, let me say that the West Virginia Farm Bureau is strongly opposed to these proposed rules. West Virginia consumes much more milk than it produces. We have fewer dairy farms than we had 10 years ago, and considerably less than we had 15 years ago. When these fees are imposed, I believe we will have less people in agriculture in West Virginia.

The last question, what assistance to these people who are paying these user fees that the fees will be used by the Division of Health? Will they be put into the general account of the Department of Health and Human Services, or even worse, will they be taken by the Legislature and put into the General Fund?

Thank you for the opportunity to make these statements. And again, I encourage you to reconsider the burden that these proposed rules will put on the dairy farmers of this state.

As I have said many, many times, farming

today is the only statement of our economy that buys it retail and sells it wholesale. If you think that's not a gift, try it sometime. We simply have no way of passing these additional costs on to the consumer.

It appears to me that our government is trying to milk the taxpayers dry. Let's strive to get more people into our state, rather than taxing them out of our state.

Thank you very much.

MS. HOWARD: James L. Green.

MR. JAMES L. GREEN: Thank you. I am James L. Green of the Morgantown Utility Board in Morgantown, West Virginia. I'll make my comments very brief, but try to bring up a couple of additional points.

I don't think the Morgantown Utility Board has a problem for paying for services that are rendered. We feel that our tax--I'm calling it a tax, but our fees in Morgantown will amount to an excess of \$200,000 a year; and we do not see the State Health Department and their people in our county enough to render us giving them \$200,000 a year to manage our utility.

We are a little concerned that perhaps the

state is becoming a profit-making organization.

We have facilities to construct in Morgantown. We have to go to the bond market to borrow the money to build these facilities and we also have to ask for the rates to support the construction and operation of these facilities.

This type of tax from the Health Department, and especially when you look at the sewage treatment industry, where the DNR regulates us more than the Health Department, we think it's totally unfair.

That's all I have to say. Thank you.

MS. HOWARD: Thank you.

Clarence Cox.

MR. CLARENCE COX: I am Clarence Cox, Superintendent, Parkersburg Sanitary Board.

Those of us in the utility business can understand the need of state agencies for additional revenue. We experience that day after day ourselves. In the process of trying to get that additional revenue, we are expected to explain to people where and how the money will be generated and what it will be used for. We think that this proposal should do the same thing, and so far, we haven't found much

explanation as to where and how the money will be spent.

For that matter, I don't know that there is a decent accounting of how much money will actually be collected from the fees and charges proposed here. Large sums of money will be collected from water and sewer utilities through the four and six-cent fees that are proposed to be collected. In Parkersburg, alone, that will amount to approximately \$150,000 a year.

As Mr. Green said, we rarely see Health Department personnel in Parkersburg.

It is a lot of money. We understand that it is slated to go into some sort of general fund. We caution that that money should not, and probably legally cannot be used to subsidize other Health Department efforts, such as health care.

Finally, whatever fee proposal is adopted, and there is need for revenue, and some fee proposal of some kind needs to be adopted if the Legislature is unwilling to generate the revenue itself, whatever it is, utilities should be given the time necessary to adjust their rates so that they can actually collect the money to provide the state to begin with.

Public service districts, in particular, have to go to the Public Service Commission for rate adjustments. That is a time-consuming process. Keep that in mind before you decide to implement whatever fee structure you finally adopt.

Thank you.

MS. HOWARD: I'm sorry, I really can't read this name. It may be Bill Polland from Lubbock or Lubeck.

MR. BILL PACKARD: My name is Bill Packard, and I'm from Lubeck Public Service District.

These people up here would probably like to hear somebody come up and say, "You did real good. This is what you ought to do." That's not me. My dad always told me that if you're going to start a fast project, don't start out with half-fast ideas. And I'm sorry, but you have half-fast ideas here.

Mr. McGraw sits in the back, and I just sat in front of him and talked to him a while ago about a rate increase. And he sent his main man up there to audit our books, and while he was auditing our books, he found out the Water Department had subsidized the Sewer Department to the tune of about \$100,000. We were chastised immediately and

told to repay it to the Water Department.

This revolving fund that this money is to go into for the sewer fees and the water fees and the milk funds and everything else is just going to stir around and come out wherever they need it. Mr. McGraw, answer me. Will you let them do that? I don't think so. He won't even let me subsidize part of my own district.

When we were coming in here this morning--I'm going to quit, because everyone else has said exactly what I feel--this young lady on the recorder, myself and Clarence Cox were walking together, and a very disgruntled young man came out of the Department of Highways building--and he was not from West Virginia, that was very clear--and he was very upset, very.

And the only comment we had was, there is the highway, you can leave. I don't want to leave, but I don't want to be run out, either.

And the fees that are going to be charged are exorbitant. I've got to pass them on to my customers. I think the fee is needed, but that's too much. You're way too out of line.

Thank you.

MS. HOWARD: Next we'll have Bruce McDaniel.

MR. BRUCE McDANIEL: Madam Chairman, ladies and gentlemen, I will make my comments pretty brief this morning. Most of everything I had to say was said.

I thought it was very interesting the comments from the Mayor of Nutter Fort on home rule. That's been a big issue in Fairmont, West Virginia, where I'm from, and we are always looking for ways to be self-sustaining and to try to manage our own house. And the Legislature doesn't think that we are capable of doing it, but for some reason doesn't have any problem passing that on to state agencies. I've got a problem with that.

Most of the things I was going to say have been said. They are contained in a written record that I sent in. One comment I would like to expand upon just for a few minutes is the fact that being a public utility in Fairmont, West Virginia, with water and sewer, we are governed by City Council, as far as the rate structure in the Sanitary Board, for our budget in the Sanitary Board, and City Council for our rates as far as the Water Department. Our budget was set in April of this year. We cannot legally expend monies out of that budget that are not budgeted.

There has been nothing mentioned as to when these fees will go into effect. There has been nothing mentioned about interaction between the Health Department and the Public Service Commission, as far as allowing the rates or these taxes, if you will, to be passed through in a rate structure.

Quite frankly, I don't want to plug it into the amount of money I charge per thousand gallons of water or per thousand gallons of sewage treated. I want it to show up on the bill as a tax, which is what it is, just as we do utility taxes for municipalities.

Thank you very much.

MS. HOWARD: Mr. Bill Sweeney.

MR. BILL SWEENEY: Good morning. I'm Bill Sweeney of the Union-Williams PSD, who serves Wood County and a portion of Pleasants County, some 2,000 customers.

Most--at this point in the session, I think most of the comments have already been said. I enjoyed several of them and I also agree with several of them, and I'd like to go on record as our PSD is opposed to the six-cents-per-thousand rate and four-cents-per-thousand sewage rate. And there again, I think someone said it is a tax.

I guess my comments would be about the same as Mr. Bailey's from Ohio County PSD and Mr. Cox from Parkersburg, with maybe one exception or one other comment, and that is to say, once the door is open, is this the end of it, or will there be additional taxes every year thereafter? Like we have paid--you know we are consumers, too. Then we pay on gasoline tax and every other tax we are paying.

Thank you.

MS. HOWARD: Thank you.

Mr. Jim Halsby--that's probably not quite right--from Alderson.

MR. TOM HOUSBY: My name is Tom Housby, the Mayor of the Town of Alderson in Greenbrier and Monroe counties. The Greenbrier River splits our little community.

My letter is addressed to Ms. Miller, who didn't have the respect to show up for this meeting this morning. I don't know anything more important than this meeting to the citizens of West Virginia, and I will simply read my letter, as addressed to her.

"Dear Madam Secretary: The Town of Alderson respectfully protests the proposed legislative rules, as submitted by the West Virginia Division of Health under the

Code of State Regulation, Title 64, Series 51, under authority of West Virginia Code, Section 16-1-21, and Section 29B-1-3.

"The town feels that the fees proposed by the Division of Health are excessive and are contrary to the best interests of the citizens of West Virginia and the Town of Alderson, as they will have direct economic impact upon all citizens, and in particular, customers of water and waste water treatment systems all over the state.

"It definitely means that the Town of Alderson will immediately have to seek rate increases for both water and sewer service customers, many of whom are elderly individuals on fixed incomes, who can ill afford additional financial burdens.

"It is our feeling that the state government has a duty to be supportive of and provide assistance to local governments and their agencies. The proposed fees that will be assessed on water and waste water systems, based on the gallons of water treated, and the license fees for the operators of the treatment plants are merely a hidden tax that is being assessed by the State of West Virginia and being handed down to the local governments for collection.

"By taking such a position and proposing such fees, the State Division of Health is not being either supportive of or providing assistance to the local water and waste water treatment systems. The State of West Virginia continues to allow fees and other charges to be levied upon local governments by state agencies, without providing any avenue for the local government to increase their fees, tax base or other revenue sources.

"This situation is critical and must be rectified without delay. And in the interim, this fee schedule, as proposed by the Division of Health, and any similar bureaucratic pots of gold must be overruled before the local governments of West Virginia and our citizens are driven into total bankruptcy.

"Very truly yours, Tom Housby."

MS. HOWARD: Bruce Minor.

MR. BRUCE MINOR: My name is Bruce Minor. I'm the Mayor of Franklin, and I can only echo the words of my fellow mayor, who just spoke.

MS. HOWARD: Chet Fleming.

MR. CHET FLEMING: My name is Chet Fleming, and I am employed as the Program Director for the West

Virginia Rural Water Association. And part of my duties also are to represent the Association with the Legislature and the administration of state government. My appearance and comments on these fees is on behalf of the 125 approximate members of our association, and I assume, on behalf of those who are not members.

We earlier expressed a concern in some of our writings to our members about what was going to happen whenever this bill was placed into effect. When it was passed last March 10, we wrote and cautioned you that what is happening was about to happen.

Now, I retired from the Health Department about a year-and-a-half ago, and I experienced almost ten years of their declining revenues and programs that they could not fund. When I read the provisions of this law, I saw the door opening, and these fees are the result of it.

The first part of this law said that, "The Administrator of the Division of Health may assess and charge reasonable fees for the provision of service provided by the Division of Health." That sounds good. And if they provide a service and the state revenues are so tough that they can't pay it, perhaps we could pay for those services we receive.

The part that concerned me was a later section that said, "Any balance, including accrued interest in Special Revolving Fund at the end of any fiscal year, shall not revert to the General Revenue." So, those of you that are concerned about it going to the General Revenue, this law specifically says that it will not, but "...shall remain in the Special Revolving Fund for use by the Administrator of the Division of Health for funding Health Programs in ensuing years."

The only limitations that were placed on the fees to be assessed were, "reasonable for services provided."

Now, water and sewer utilities in this state question what services are being provided for the excessive fees that are being proposed under the compliance and services--I'm looking for the title, "Technical Services and Compliance Provision."

I would like to give you three positions that the Association has taken on this. The first comment is that the fiscal note for the proposed rule dramatically underestimates the amount to be collected from the proposed fees. They say they expect to raise 1.8, I believe it is, \$814,000. With the limited information available to us, we

believe that in excess of \$5 million will be raised. Okay, that's the first comment.

The second comment makes reference to laboratory service fees. Our association, in discussing this, looked at those fees and decided that, well, if they perform those tests, those are probably reasonable fees for a service provided; and we did not, as an association, take a position against the laboratory fees for water and sewer testing.

We also know that we have the option of going to competitive laboratories if the Health Department makes those fees unreasonable.

The last comment is the one to address the services and compliance section. We object to these proposed fees as being unreasonable, and for no service provided by the Division of Health. We believe that the other fees proposed in this appendix more than adequately compensates the Division of Health for the services provided to water and waste water systems.

We are concerned that the proposal for the technical service compliance fee is being used as a device to collect a hidden tax from drinking water and waste water

systems to fund unrelated programs. We plan to address this concern to the Legislature when these rules are presented to it for their approval.

The West Virginia Rural Water Association wants to assure the Division of Health that we will continue our efforts to improve the quality of life for all West Virginians by helping them serve their communities. Our efforts are directed toward the provision of safe drinking water and the sanitary disposal of waste water at a reasonable cost.

Furthermore, we hope that we can continue and expand the cooperation that has existed between the Division and our organization.

Thank you.

MS. HOWARD: I have a question mark here from a C or a G. S. Evans.

MR. G. S. EVANS: I put the question mark there because I wanted to hear what other people had to say before I said anything, in the hope that they would say it all. A couple of little things they forgot to say.

I come from New Creek, West Virginia, in Mineral County, a little community that has a water

association, not a PSD, buys their water strictly from Keyser, West Virginia. Once we buy the water, we pay the tax; when we sell the water, we must pay the tax to double dip.

We have the same thing handed to us in the sewer. We are not part of the Public Service District, which is the sewer. We only hand them the meter readings for it. They pass the bill on to us again. We get it--the point, the six and four will reach approximately 20 cents, a figure approximately \$8,000 to \$10,000 passed on to 700 water users and about 600 sewer users in Dew Creek Valley, which is growing rapidly up Dew Creek, because Keyser has no place else to go. We filled up New Creek.

Now, a couple of little things I want to say. As Mr. Bailey started out, double-dipping, many others have said many things. In our position, I want to say this much, I agree fully with Mr. Stottlemeyer and Chet, for the simple reason I am also a member of the West Virginia Rural Water Association Board of Directors from the day it was organized. From August of '84, I was on the organization, and I am still there.

I want to also say that New Creek was

organized in '68. I was on the board of directors at the organization. I am still there as the treasurer and write the checks. I know how much money goes out and where it goes.

We have all looked over one thing. No one has ever mentioned how do we get the money to pay this raise --not raise--this tax fee they are trying to talk about and put on us. First, we will have to pass it through the Public Service Commission. The Public Service Commission don't pass things through overnight. They will take anywhere from 60 days to whatever they feel like that they are comfortable with. This could become a great problem.

The City of Keyser could pass to us a bill today, which is due when they send it. We send the pass through to the Public Service Commission, which we are covered under the same, being an association in the PSD. When we get it back from the law judge as a law rule for us to use, we can then begin passing it on to the people, with no way of recovery of that we have took out of something which was earmarked for something very important probably.

Possibly the next-door neighbor's water is not there to him yet. This has to be done, so therefore, I

think we need to take a deep look at what Public Service is going to do and how long they are going to hold us up.

And if this thing, known to me as a tax fee, is so just and so clear, I can't understand why it's taken out of the hands of the people that we elect at the polls each time election comes up, where we could get a crack at them and take them out or leave them in. If they are not going to do this, then we are going to appoint someone to make these fees, I don't see why we need legislators.

Somebody is just passing the buck and it's not being right, it's not fair. We should have a chance at the polls and remove the same as we put in.

Therefore, I think I said about what's on my mind, and I thank you each and every one.

MS. HOWARD: P. L. Gainer from Lewisburg.

(Discussion re: Calling speakers.)

MR. P. L. GAINER: I'm Phil Gainer. I'm the Mayor of Lewisburg, and I want to add my voice to the chorus of opposition that has been heard here today.

I'm very irritated about the proposed rate increases or fees. The first point of irritation, whether or not it was a deliberate act of the Legislature, the effect

has been that this is indeed back-door taxation.

The City of Lewisburg and other municipalities are the culprits. The people think while we are raising water rates, we are indeed collecting taxes to support the Health Department.

The second source of irritation, Lewisburg will be forced to pay about \$18,000 a year. Based on testimony that we have heard, I think the proposed fees will generate several times the \$1.8 million. The surplus is proposed to go in a revolving fund. A gentleman mentioned earlier it could not go in the General Fund, but you know, we can't believe that. This administration has a way of tapping surpluses.

So, I think the rates are certainly unfair. That's all I have to say. Thank you.

MS. HOWARD: Thank you. The suggestion about calling speakers is a very good one. I will implement that immediately.

The next speaker is Mr. Andy Langmyor, and the speaker after that will be Robert Williams. There is a chair up here in front where the next speaker can sit.

MR. ANDY LANGMYOR: My name is Andy Langmyor.

I am Division Manager from Milk Marketing, Incorporated. I reside at 16 Meadow Drive, Wheeling, West Virginia.

Milk Marketing, Incorporated, is a regional milk marketing cooperative of dairy farmers. We have approximately 200 members in the state of West Virginia. Speaking on their behalf, I oppose the proposed fees for a number of reasons, Number 1 being that farmers are not the users of the services which the Health Department performs. It's the public which is protected, and therefore, tax dollars should be used for these services.

I concur with the statements made by the previous representatives of the dairy industry. There is no question that the farmers cannot pass on these costs. Dairy farmers in West Virginia have their prices established in a regional market, not in the state market. Their costs are reflective of conditions over a regional area. They are competing with dairy farmers in surrounding states.

We have already heard testimony that surrounding states have no fees. In fact, there are legislative records indicating that a number of states have exempted agriculture from these types of fees. The only surrounding state that does charge a fee is the State of

Ohio, and it has a legislative cap of \$15 a year as a license fee for dairy farmers.

As a regional marketing cooperative, with members not only in West Virginia but in surrounding states, we supply a number of milk plants. You've heard from Valley Bell Dairy in Charleston, we are the principal supplier of that plant. We also supply the Chico Dairy in Morgantown, as well as some plants just across the state line in other states who, in turn, bring milk back into the state of West Virginia.

There are some concerns about the inequity involved. Since West Virginia is a very deficit state in milk production, there is a considerable amount of milk that comes in from out-of-state. So it placed a tremendous amount of inequity, not only with dairy farmers, but also with milk plants themselves.

In the past two years, we have had extremely difficult growing conditions in the entire northeastern part of the country. As a result, there have been a number of states that have taken actions to underwrite some of the cost of producing milk. Mr. Arledge mentioned Rhode Island. There has also been similar action in Vermont, Pennsylvania

and Massachusetts that actually subsidize the dairy industry to keep farmers producing good, wholesome milk for their constituents and the public that's involved.

I would think, certainly, the Health Department should be looking towards those items which provide good nutrition for the citizens of the state; and for that reason, we should be promoting the dairy industry and not working against it.

A number of items about the fees that are of genuine concern, there is some indication in the regulation that the fees are not only possibly charged by the state, but could be implemented by the counties, as well. There is a potential for duplication, that any county in the state of West Virginia that wanted to provide some sort of service, regardless of how much, could provide additional tax on dairy farmers or the milk plants or any other segment of the industry.

We are concerned about the legality of charging different levels of fees for different size farms or different size milk plants. We question the legality of charging out-of-state plants in the dairy industry, who are very fortunate to have an interstate milk-shippers' agreement

between the several states in the United States that enables us to ship milk interstate, without duplicate inspection.

This flies in the face of that entire agreement with other states and does lead to the possibility of other states creating similar taxation on West Virginia, if the State of West Virginia is going to charge out-of-state producers or out-of-state plants for shipping milk into the state.

We are concerned about the laboratory fees. The dairy industry is probably the most regulated industry, food industry, in the country. For the most part, the standards of the milk plants and the cooperatives supplying the milk are much greater than the minimum requirements states have established.

So, we are already using certified laboratories, not only in the state in the case of Valley Bell and some other plants, but also in surrounding states, where the milk is tested, to assure that it is safe and meets our standards, which are much more stringent than the standards required by the state.

Again, I concur with the statements made by the other people in the industry. We are asking that the

whole concept of charging for services in the dairy industry be revisited. We ask that agriculture, especially, be given exemption as it has been in the past in West Virginia, and is in other states, and I hope that this is resolved in such a way that dairy farming will continue to be encouraged by the State of West Virginia.

Thank you.

MS. HOWARD: The next speaker after Mr. Williams will be Jim Curnes.

MR. ROBERT WILLIAMS: Good morning. My name is Robert Williams, I am Director of the Marketing and Development Division of the West Virginia Department of Agriculture.

The Department of Agriculture is very distressed over the efforts of the State Health Department to levy unjustified fees on the facets of the agricultural community, and we feel compelled to bring several points to your attention.

The Department of Agriculture and many other agencies of state government are working hard to encourage and develop the expansion of small and medium sized businesses in West Virginia, while the Health Department

seems bent on driving them out. Government must begin to (a) not to hinder these businesses if they, and as a result the State of West Virginia, are to survive.

First and foremost, the ultimate purpose of tax dollars is the general health and well being of the citizens. Since every person of West Virginia benefits from the services of the Health Department, it is only logical that the costs of such services be borne of tax dollars, not user fees.

Furthermore, the imposition of user fees places an increased financial burden on many of West Virginia's agribusinesses, which will put them in a severe competitive disadvantage.

I will deal specifically with several sections of the proposed regulation, proposed fee to the dairy industry--an industry, by the way, which has dealt with a significant blow by these regulations--appear to be based on a perceived ability to pay, as reflected in the volume of production, rather than the cost of providing inspection service. The reality is that the time required to inspect is virtually the same for each farm, regardless of the number of cows milked.

We calculate the cost to dairy farmers, if these fees are implemented, to be more than \$75,000 for the dairy permits alone. This does not include the fees for sampling water, new wells, septic systems or laboratory certification fees to be imposed on the marketing cooperatives, which are farmer-owned and operated; and the costs of which will be eventually the burden of the farmers.

These labs have traditionally been relied upon by the Health Department as a backup for test results when you fail to get the tests you really need.

You also plan to charge a \$15 fee for raw milk product packaging. If this is the raw milk sample that's taken at the farm, this is an additional fee to the farmers. Moreover, this sample is required a minimum number of times each year, but there is no maximum number.

Is it possible that in a tight budget situation, the Division of Health would sample and charge the farmer once a week or perhaps once a day for the sample? This would surely produce a lot of revenue for your agency at the expense of the farmer.

It is also difficult to understand the logic behind the fee structure for dairy farms and in-state milk

plants. The fee of \$100 to \$300 seems to be excessive, when you consider Ohio currently charges \$15 for this permit.

It appears that our Health Department is encouraging our dairy farmers to seek greener pastures in an economically advantageous atmosphere, and discouraging anyone from pursuing the dairy business as a livelihood.

The fee to in-state milk plants is also steeped in inconsistencies. The volume of milk going through a plant has no bearing whatsoever on the time involved in the inspection and the issuance of the permit. The time involved is directly related to the equipment in the plant, not the volume.

There is almost no cost incurred to the state to issue out-of-state permits to milk plants; and therefore, we can see no justification for a fee that would eventually be returned to West Virginia farmers.

I am tempted to not even comment about the bobtailer provisions of the regulations. The definition, as written, will include everyone selling milk and milk products, and I quote from regulation: "Bobtailer - Any person engaged in the distribution and/or selling of private brand labeled milk or another company's milk and milk

products."

This means that every grocery store, convenience store, restaurant, Dairy Queen, or any other business establishment which sells milk or milk products is a bobtailer and will be required to pay a \$200 fee.

One last comment regarding dairies, before I move on to just a couple of other brief points. The fee for reinstatement of suspended permit is harshly punitive. The dairy producer, whom you are overtaxing for his initial permit, may have some type of quality problem that results in the suspension of his permit.

Not only will he have to dump two days' production of milk down the drain, which is penalty enough, he will be assessed \$100 to resume shipping milk.

It would seem that, instead of helping the producer correct the problem and being part of the solution, the Health Department has decided to become part of the problem.

Other facets of these regulations impact small agribusinesses just as severely as the dairy industry. We have many excellent small mom and pop type food processing plants throughout our state, producing safe, healthful

products. Most of these are operating on narrow profit margins, and an additional fee of \$100 just to allow the Health Department the privilege of inspecting them is outrageous.

We are not talking about Coca Cola here, we are talking about a honey processor or a small cheese plant-- people working hard to make a living from the land, struggling to comply with a myriad of rules and regulations the government puts before them. And now you want to charge them for an inspection they don't want and in most cases don't need.

Well drillers' fees, milk haulers' fees, veterinarian x-ray machine fees--all of these charges add to the cost to the rural community, and I ask you to reconsider them all as unnecessary and harmful.

I would like to make one last point. I see, in reading through the proposed regulations, that you will be assessing public water systems a rate of ten cents per thousand gallons per month per customer for water and sewage.

I assume that means for those of us who live in the country and rely on public service districts, we will be suffering the regulatory might of the Health Department,

as well. I guess it's fair; you get them if they have a well and you get them if they don't.

It appears the Health Department has decided to balance its budget on the back of the citizens, particularly the rural citizens, rather than make the tough decisions required in these times of fiscal shortfall. West Virginia farmers, like all farmers nationwide, are struggling to survive against mounting production and regulatory costs. We hope the State of West Virginia will not add to these burdens.

The West Virginia Department of Agriculture, on behalf of the farmers and rural community in West Virginia, asks that you reconsider all of the fees associated with this rule, with an eye towards eliminating most and bringing the rest to a level which is practical, workable and commensurate with the fees imposed in neighboring states.

Thank you.

MS. HOWARD: The next speaker after Mr. Curnes, Warren Badger.

JIM CURNES: My name is Jim Curnes. I am the City Manager of the City of Wheeling.

We submitted some written comment earlier.

Most of the items in our written comment on water production have already been stated, but I would like to summarize our position a little bit for the people in the audience this morning.

The City of Wheeling, as a public utility in producing water, supports the concept of user fees. We feel, though, under Section 4.B., Technical Services and Compliance, that this is not a user fee. We feel it's discriminatory, and as such, needs to be removed from the rules.

There appears to be no relationship between the amount of water--the amount users will be charged for the water--and the level of service they will receive from the Health Department. There also appears to be multiple collections for the same water through the districts.

The cost to the Wheeling Water Department, under the rules as proposed, just for technical services under 4.B., will be approximately \$131,000 a year. The total amount proposed to be collected from the City of Wheeling, including water pollution control that was spoken to earlier by Conrad, would be about a quarter of a million dollars per year.

The \$1,841,000 that's proposed to be raised by this legislation seems to be inconsistent with the amount of fees people in the room are talking about today. We are told that there are approximately 400,000 water users from public water suppliers in the state. Wheeling, then, would be approximately 1/25 of that total 400,000 users.

When we put our numbers together, we are a little bit more conservative than some of the people that have spoken today, but we see that this rule would raise over \$600,000 for the Health Department.

The assessment of the six cents per thousand gallons of water is not a user's fee for a specific service. The amount of technical services provided by the Health Department appears to be inversely proportional to the size of the utility.

The term, Technical Service/Compliance, is vague under Section 4.B., and does not indicate the actual services which will be provided by such an assessment.

The entire Section B of Appendix II should be eliminated, as I mentioned earlier, until a cost of service study is performed to determine the actual costs incurred to provide technical services to the receiver of such service.

Fees collected for running chemical or bacteriological samples should be used only for operation of those facilities. By putting any excess in the general health fund, fees collected for technical services/compliance may end up being used to provide various types of medical services throughout the state by the Health Department.

We are concerned about the issue. We did not bring our attorneys to the meeting this morning. I don't know that we necessarily, as one entity, need to have attorneys present. I think these rules will be challenged very vigorously.

Thank you.

MS. HOWARD: Before I go on with the next speaker, I would like--according to my list up here, I have about five people who wished to speak for the first time, who have not already spoken, but I'm not sure that everyone has signed up. Could I have a show of hands on how many people I have who have not yet spoken who want to speak?

(Indicating.)

If we stick to the time limits on this first round, that would take us up to about 12:30, at which time I think I will recess and reconvene the hearing; and we'll have

a second round of comments for those of you who wish to make additional comments.

The next speaker after Mr. Badger will be Mr. Clark, Brent Clark. And I think there are probably a couple of you, probably three, I believe, who have not signed up. I'll do that by a show of hands after we finish these lists.

MR. WARREN BADGER: Warren Badger, Fairmont Engineering, Fairmont, West Virginia.

Basically I'm interested in small water and sewer plants. We take care of maintenance operations and small engineering problems on local water systems, most of who have very few customers relative to many systems, say 50 or less.

The consensus is pretty definite. There is no reason why I should object to it, so let me go to a point that I don't think has been made, or else I missed it.

The fee that was planned was done so because the Legislature, being too lazy to figure out how to raise taxes and not wanting to get credit for it, passed a bill that, in effect, gave the Health Department a blank check. And I think you guys who vote these bums in ought to either tell them how they're supposed to work or else vote somebody

else in and let him make a different kind of mistake. I am tired of this same kind of mistake all the time.

So, what would the Health Department do? What would you do if you got a blank check on public funds? You'd go in a nice quiet room, slam the door and split up the pie.

So, I don't think it's a question about whether the fees are necessary or not. Of course, you can't run the Health Department for nothing; and of course, there are a few bums in this business who would send out poison water and turn the service off at ten o'clock every night, whether people need it or not.

So, you need some small amount of regulation and that's going to cost money, but the way to get it isn't to arbitrarily meet in a closed room with a monopoly on the fee and the power to scare the daylights out of the public, because as a Health Department, you can pass anything and collect any amount of money that has to do with public health.

So, it's time we got resistance. Don't pay the fee if you haven't got it. Your bond agreements mostly say you got to pay the bond, then pay the bond. Don't

default on the bond to pay a stupid fee. You are board people, and I know a lot of these people are having trouble paying on their bonds. Make it hard to get.

If the fee comes out and the Health Department wants it and you're delinquent in payment, it might be far cheaper for you to hire a lawyer after a ten-months or a one-year delay in a small court than it would be for you to pay the damn fee for a year.

So, I would go further and suggest that one way to collect the fee is a percentage of revenue; the service districts pay annually to the Service Commission a fee to be regulated. I don't think it's a delightful prospect, but that works.

I see no reason why some of the fees shouldn't be set up, and if the Legislature had done their job, they would have appointed a group of representatives of the people who are about to be affected by the fee, including the Health Department and the Service Commission, who certainly--and the rule charging a surtax on the system. The rule could give permission to run it through your bill without having to spend \$5,000 on a hearing in Charleston to get your tax increased. This is stupid.

The average rate increase costs as much in lawyers' fees as the first six months of the increase.

It's just a total lack of common sense, and now you're sending it to the Legislature.

Now, I'll make one more comment. The worst portion of this fee, someone is going to send us a bill, I'm sure of that. The worst portion of these fees are the fees--since I'm interested in water and sewer and the milk producers have done a good job of outlining their problems--they are the fees relative to operators' licensing permits.

I keep watching, whether it's in the Highway Department, the Downtown Development, or the Planning Commission or the loans for water systems. You've got to have a plan, a development fee, a permit, and if you accumulate these over time, you will find out that there's 10 plans made up to every one that's put in effect. Think of that, a fee for each plan. You've done paid in fees the price of the job by the time you get through.

So, if you're really going to try to pay the guy's cost who approves these projects--and I say I think it should be looked at--the fees should be based after the fact on an as-built situation. You shouldn't have to go--

I'll just give you an example of this improvement fee they want \$300 for--upgrading, they nicely call it. You're going along, and I can't comprehend big things, you're going along in a small system and your pump burns up. Well, for two or three years you have had phone calls and problems, and the pump just isn't big enough and customers are getting you out of bed to complain, "I'm up hunting for my water, you may as well be up listening for the phone."

You say, "Well, here's my chance." So you replace the 5 h.p. pump with a 7-1/2 or 10 h.p. pump. You've got to buy a new pump anyhow. That's an upgrade, according to the fee schedule. I'll bet they'll spend \$300 just for thinking about it.

Well, what are you going to do? Are you going to let the customers go without water or are you going to pay the \$300 for some repairman to patch up the old pump and make it run another six months, and the same thing happens.

To give you another example, a pipeline and a slip. Well, you may have been intending to fix that pipeline for years, probably too small, only leaks twice a month. And

here's a nice convenient slip you can use for an excuse to spend a little bit of money, but you can't wait until the damn people approve the permit. The damn customers will be there with shotguns.

So, what I'm saying is, let's just get sensible about this thing and act like we were serving water customers instead of feeding bureaucrats.

Thank you.

MS. HOWARD: Thank you very much, Mr. Badger.

After Mr. Clark, we will have Mr. Fife, James Fife.

MR. BRENT CLARK: That's a tough act to follow. I'm not going to have the color that you did, but at least I think I can make my comments, and I would like to make a couple observations.

First of all, I would like to concur with the comments of Mr. Bailey and Mr. Stottlemeyer and Mr. Cox and others here.

My name is Brent Clark from the Mason County Public Service District. We go on record as opposing these fees. We serve currently 1,858 water customers, and there are two points that I would like to make. Some have been

alluded to, some have not.

First of all, I have been back in the state now for nine months. I've been away for 19 years, and the agencies that I have dealt with, for some reason, tend to have an attitude of regulation, versus service. So, I'll just make a general observation that it seems that the matters are legalistic, versus service oriented, and I don't know if that's, in fact, the way utilities should operate. In my opinion, it's not.

The second comment is, or the point I would like to make is, in Mason County, we have been basically self-sufficient. We are still in a growth mode, and if you look at the fees imposed currently to our district, that means about \$10,000 to \$12,000 a year, and that basically equates to 15, bottom line, 15 to 20 potential customers that we could serve. Right now, with those imposed fees as levied, we could not provide that service.

And I can emphatically state that we currently have several communities in our office now that are under investigation for projects, and going through feasibility studies by myself, and I know there are communities, I see it daily, where they still carry water.

They still need water.

So, my perspective is one of growth. This fee structure will curtail my growth; and to me, that is the most important thing, because I constantly get comments from the community of people that have water in the rural areas, and it's a necessity. It's one that we take for granted in other communities. So, I want to stress that growth is curtailed by this fee structure, as well, and I think the whole thing needs to be reconsidered.

And the purpose of it, if in fact we are feeding bureaucracy and adding staff positions, then we need to see the result of those staff positions. There has to be an attitude of assistance to come from that, and some of that assistance is to help in areas where we have people that still haul water in milk jugs--and I see it.

And that's about the bottom line of my comment is that, that it curtails growth.

Thank you.

MS. HOWARD: After Mr. Fife, we'll have Kim Burgess.

MR. JAMES FIFE: My name is James Fife, White Sulphur Springs, Chairman of the State Fire Commission.

I am pretty sure that the Health Department is going to put rates into effect of some kind, but I see no provisions in there for an exemption. Several of our fire departments are charged a fee for the water used in fire protection. Many of these departments are on the verge of bankruptcy, not having enough money to operate. This may be the thing that will put them into bankruptcy.

If the fire department closes, what's going to happen to the community? You are not going to be able to buy insurance for your property, the banks will foreclose on your loans, because they can't have them insured. So, we'll be driving our people out of our communities. Thank you.

MS. HOWARD: After Ms. Burgess, the next speaker will be Greg VanPelt.

MS. KIM BURGESS: I'm Kim Burgess. I'm the Office Manager for Pinch Public Service District, and as our commissioners are employed and unable to attend, they asked me to come on their behalf.

My parents moved from West Virginia 20 years ago, and every time something like this creeps up, I tell my dad. My father told me that he has never seen a poorer state find more ways to tax the working people than the bureaucrats

in the State of West Virginia do.

This proposed fee is going to have a devastating effect on the small utilities in this state. Many of us operate in the red or close to it on a regular basis. We do not have sources of revenue that private utilities have. The private companies can pass it on through other sources without putting the tax on the consumers directly.

Many of us small utilities were put in place by the people for the people, with the help of our local county commissions. These small utilities were there to help the people when they were in desperate need of water and the private companies wouldn't help them.

If the fees are approved, the affected utilities will have no alternatives than to pass these fees on to our customers. Once the lengthy process of filing for and receiving new tariff allowances is passed by the Public Service Commission, the burden then becomes the responsibility of our consumers.

It is unfair to impose a fee for water and sewer services at the utility level, simply to keep from asking the Legislature to pass a tax. In the end it is an

additional burden to the taxpayer, regardless of what it's called or how it's imposed. This group of individuals already funds the Health Department through the routine taxes that we pay. It's not fair to tax us again.

And will the PSC even allow these fees to be passed on? If so, how long will it take? I see representatives here from the Public Service Commission, and everyone knows that now everybody is going to be filing for a rate case to pass this on, complicating their already busy and crowded case load and dragging the issue out.

Rate cases are expensive, and as we all know, the Public Service Commission follows what they call the range of reasonableness here. This fee is not within the range of reasonableness, so we probably won't be allowed to pass it fully on to our customers. We can't afford to absorb it.

By law, the Health Department is mandated to fulfill certain obligations. Funding is appropriated to meet these obligations. Why should water and sewer utilities be forced to shoulder this burden? The Health Department is duty bound to fulfill this daily.

If the Health Department needs supplemental

funding for services, these charges should be evaluated on a case by case basis and should be charged back to the utilities requesting these special services. Why should all of us pay for what just a few may choose to use?

If the fee schedule is approved, the fee should be appropriated back specifically to the areas they come from. All water fees should be used to supplement water programs, sewer fees should be used to supplement sewer programs; and then we expect to see increases in the services that are currently provided.

As has been said many times, this is a tax and nothing more. Why not ask the people of West Virginia if the Department of Health and Human Services should get more money from the consumers and everyone involved. Our commissioners feel that this should be put to the public in the form of a referendum, and let the public decide whether or not they need to pay more fees for services yet to be provided. Thank you.

MS. HOWARD: I don't have any more individuals' names, so after Mr. VanPelt finishes, I have a number of people who signed up but didn't indicate whether or not they--

VOICE: I put a Y. I guess that meant yes.

VOICE: I wrote yes on mine.

MS. HOWARD: I'll take you two gentlemen next. We'll get to the three of you.

MR. GREG VANPELT: My name is Greg VanPelt, and I represent Taylor County Public Service District, in Grafton, and also some 15,000 users that we provide water to in Taylor, Barbour and Harrison counties.

We have five wholesale customers. We're rather a unique situation, and on a collective basis, these wholesale customers have approximately a 30 percent unaccounted for water. I assume that we're going to be paying that six cents for that unaccounted for, and if we have to pass that on to the people they serve, it's going to be unbearable for them.

There is an additional cost that I had not heard mentioned yet, that according to EPA, they feel that a \$200 to \$400 a year increase on water bills is affordable to comply with their new regulations. It seems like the state has picked a poor time to implement something like this. And I also wonder if the customers aren't going to seek alternate sources of water, if they can't afford to pay these bills.

I know there is a spring in the City of Grafton that I see many people go to with jugs, and you can generally tell these are people who cannot afford water in excess of the minimum bill, and feel that this is where they have to go. And I wonder if this isn't going to cause more of a problem in that respect.

I agree we should pay a reasonable fee for services rendered, but it seems to me if the state wants to bail out the Department of Human Services, then they should have the courage to impose and identify a tax to do it.

Thank you.

MS. HOWARD: I have indeed found at least two names that I missed, and I will call those two gentlemen now. Steve Chambers and following that, I don't believe we have heard from James L. Green.

VOICE: My name is Sam Chico from Morgantown, and my name is on the list.

MR. STEVE CHAMBERS: My name is Steve Chambers. I am Secretary of the Council of West Virginia/American Water Company, and I'd like to submit a written statement. We filed the original in your Office of Regional Development this morning.

We have heard the vast majority of the comments that have been made here today, concerning most principally the six-cents-per-thousand-gallon-fee on water and appendix to the proposed rule.

Unlike many of the other speakers here, we are not a small water system, we are the largest single water system in the state, serving over 118,000 customers through 13 separate systems.

We do not have any big problem with the lab service fees set out on Appendix I. Those fees appear to be related to services that are or would be provided or could be provided, and they do not appear, on their face, to be unreasonable.

Our problem, of course, as mentioned, is the six-cents-per-thousand-gallon-charge. Based on estimated calendar year 1990 water sales, we would estimate an annual impact in the neighborhood of \$800,000 to the company. I would echo the comments that have been made by many people, that we do not see a relationship between that kind of fee and services by the Division of Health, that simply we don't know what we will get for \$800,000.

It seems like that's enough money to hire a

whole department of chemists and technicians and experts. We don't feel that it is fair to our customers, who we believe will ultimately pick up most if not all that fee, to be charged for the services that they do not receive.

We have laboratories, and I think every plant that's a member of the American Water System, we have the benefit of technical expertise and some of the most advanced and elaborate laboratories in the country to fulfill our requirements to meet the standards set by the federal and state government, with regard to water quality.

We have literally millions of dollars worth of laboratory equipment. So, it is our feeling that if the fees are used for the benefit of the smaller utilities that need services, that while we are not opposed to them receiving assistance in meeting their service obligations, it is unfair for our customers, who are already paying for that, to have to pay for services they are not receiving.

I think one last comment, since most of this is repetitive, is that I am curious--there has been a lot of rumor that the fees are intended to be imposed effective July 1, and because the rule was filed as a legislative rule, as was noted at the outset, the procedure for legislative rules

takes some time to accomplish.

I have been wondering how this was going to happen, and the only scenario I can foresee is a refiling of the same or similar rule under the emergency filing procedure on or after July 1, which is the effective date of the statute authorizing promulgation of the rule. I would simply like to state it is our position that the fact that the Department of Health, Division of Health, did not receive all the funding in this past legislative session, it does not, in our opinion, create an emergency that would justify such a filing.

I suspect, based on the comments that I have heard today, such a filing would, if anything, create an emergency. So, with that, I will stop.

MS. HOWARD: Thank you.

We will have Mr. Green and then we will have Mr. Chico after that, and Mr. Adkins. We will take Mr. Adkins after that. You are, sir?

VOICE: Robert McCarty.

MS. HOWARD: We will have Mr. McCarty after that.

MR. JAMES L. GREEN: You already got me, I'm

Mr. Green.

MS. HOWARD: Then the next speaker will be Mr. Chico.

MR. CHICO: I want to touch on several points, and rather than ad lib, I'd like to just read the letter that I have prepared.

"I am adamantly opposed to this new order, Title 64, Series 51, because it is so unfair that, without a doubt, our company cannot afford it. When I project the fees as what they would be, it would be over--I mean \$20,000, at least, for just the tests that are already being done by the Health Department, for which we are already paying taxes to the state for them to do; and at \$25 a test, I don't understand--there is too much ambiguity to what is in that order, but they do 56 tests a month right now; and that would be \$1,400 a month times 12 is \$16,800, and that is for only the milk samples that are already being tested.

"In each milk sample, there is three different tests. There is a phosphatase test, a standard plate count, and a coliform test, and I don't know whether that \$25 means \$25 for each one of those three or \$75. And if that was only \$25 for the three, it would cost us \$20,000.

If it's \$25 each, it would cost us \$60,000 for just the tests alone.

"On top of that, we use about 600,000 gallons of water a month in our dairy. At six cents a gallon, or a thousand, rather, that is another \$3,000--almost \$40,000 on top of that. We are looking at this as almost--it could be as little as \$20,000 and as much as \$100,000, with no reason or no comparison of what the tests cost is, compared with what they are going to charge.

"We happen to have a dairy operation in Morgantown, right next to the Pennsylvania-West Virginia border. And for Pennsylvania, which we sell a lot of product, we have to have a Pennsylvania approved lab do those same tests. The tests that are listed in this Order 51, or Series 51, minimum \$15, could be as much--minimum of two on another test is \$25 for that same test."

I have enclosed in this letter, tests for the average that they do is \$4.25 a test, \$5.75 for the second test, and \$7 for the third test. So, there is no--this is again attached to this letter.

"Our company also has 40 convenience stores, and one of the other orders, already held May 23 by the

Health Department, they want the authority to tax our company or anybody that has a grocery store \$50 for a manager a year and \$5 a head for every clerk. That can be many more thousands of dollars.

"This proposed legislation is so unfair to we manufacturers, and in-state residents would be the only ones charged, but it would make us uncompetitive when out-of-state dairies would not be charged an equal amount, and when in most cases, we could not pass this on to the public, when other companies we compete with do not have these same expenses. It would be another tax that we would have to eat.

"If these proposed fees for services become law, it also opens the door for local health departments to do as much in taxation as they are along the state level. All it does is open the door, and it's something we really and truly cannot afford.

"I oppose this again because I feel it's double taxation. We are already paying our share of taxes to our State of West Virginia to cover these services.

"If this were a school district and their funds were cut, they would have to cut their expenses to meet that budget, not charge a head tax for each student for whom

they are already receiving taxes to teach.

"If this were a city police agency, they would have to meet their budget by cutting expenses. They would not charge a fee for every car that they direct traffic. Likewise, we should not be charging taxes for services, then selectively double taxing them by charging a second fee for the same service already being charged for.

"In the 1940's, the state of West Virginia had 45 dairies. Ten years ago, there were ten dairies. Today, there are three dairies inside the state of West Virginia border that sells Grade A product, in other words, bottling product.

"Everyone knows our West Virginia economy is bad, but with all the businesses getting hit with additional taxes and fees from federal, state and local governments, it's very difficult for any business to survive. Our convenience stores have been recently hit hard by the new environmental protection laws that cover gasoline installations, and we are just beginning to cope with those large assessments.

"The consumer and every individual in the state of West Virginia are the end users of these services

that you are already proposing to double tax, so these services should be charged fairly and without discrimination to every citizen throughout the state, if in fact, additional taxes are needed. Again, this probably should be done by a sales tax of some kind, certainly not passed on just a select few businesses.

"I adamantly object to this unfair double taxation that you are proposing, and would suggest you go back to the Legislature next January to get funding through whatever other means that are equitable. But the thing about it is, this is duplication of taxes, because the same product, whether it comes from the farm, through the processor, through the store keeper, through every step of the way, is opening the door to double, triple, quadruple taxation for the same services that, again, we're already paying taxes to provide the funds for those departments to do.

"So, with that, I sum up by saying I'm very much opposed to it. It's one of the most devastating and unfair taxes I have ever heard of any single governmental agency or Legislature would allow to be approved."

Thank you very much.

MS. HOWARD: Mr. Adkins.

MR. HARLEY ADKINS: My name is Harley Adkins. I represent all the waste water treatment plant operators in the state under the PWOD, under the Waste Water Operators Association.

Twenty-two years ago, the Operators Association proposed to the Health Department to pay a fee for certification. We were told it's not necessary.

Twenty-two or twenty-three years ago, a man that worked for the Health Department started the certification program. His name was Glenn Fortney. In that 23 years, the Health Department had a school at Morgantown for one week. Now, they have on occasions done other things.

We used to take a state exam, and it took you between eight and nine months to get the results back, even though you were promised a quarter or fifty cents on the hour if you could pass the exam. The Health Department didn't see at that time--you even had to go to court, the Attorney General's Office in order to get someone to grade the papers.

So, along came, about 12, 14, 16 years ago, John Brown was hired to look after the certification program; and to my knowledge, the Health Department does not put forth

any other money in the certification program, except that one man's salary in his office. I would venture to say that any municipality in here of any size is going to pay in the fees three times what John Brown makes a year. So, I can't understand the fee.

So, I'm not going to get on fees for the simple reason that for seven years, I personally took a week's vacation to put on a school at Cedar Lakes for the Class II operators. So, today I would like to put the Health Department on notice, they owe me for that period of time.

Vocational Education, over a period of years, has provided for the operators' training. Do we look forward to a fee from them? The Environmental Protection Agency built a building at Cedar Lakes, so we would have a training center. Do we look forward to another fee from them?

These fees--just like we had a meeting not too long ago, when the Department of Natural Resources invited us to pay a fee. Nobody told us and still don't, where is the money going to come from.

For the manager that does a good job, that provides and saves and looks forward to increasing his facilities, he is penalized now, because if I take--and I go

before the Public Service Commission, I've got \$38 left in the bank. Hell, I can't get a fee increase, I can't get a rate increase--only the guy that goes in under poor management is going to be able to get an increase to pay for the Health Department's--I want to say misuse of funds.

They call it a fee. Hell, it's a tax. There is no other explanation for it, except taxation without representation, as the man said earlier today.

Everybody in the state--if anybody has got any sense about what is going on--if a man comes into the state and wants to build a building or he wants to go into business, and we have it happen every day, the people in sewer and water are the first people that are ever asked, "Can you provide me with the service?"

What if we all said no one time? Then, where would the state get their money from to run these bureaucratic departments that don't know which damn end is up.

Thank you.

MR. ROBERT McCARTY: I am Robert McCarty, President of West Virginia Rural Water Association, and I would like to read to you a copy of a telegram that was

mailed to Governor Caperton last Thursday, June 14.

It's to Governor Gaston Caperton, State Capitol, Charleston, West Virginia: "The West Virginia Rural Water Association, on behalf of its member community water and waste water systems, urges your immediate intervention to halt excessive user fee proposed by the Division of Health on state water and waste customers.

"The proposed fee level is not necessary to properly fund the program, and this proposal by your Department of Health and Human Resources is, in effect, a sales tax on water and waste water, for the purpose of funding other government programs.

"West Virginia Rural Water Association supports adequate funding for Health Division activities related to safe drinking water activities, but absolutely opposes your health administrator using the federal safe drinking water requirements as an excuse to assess a sales tax on water for the purpose of raising funds for non-drinking water programs.

"Even more objectionable is the proposal to assess waste water customers a fee for services not even provided by the Division of Health. Our understanding is

that the Division of Health annual expenditures on waste water programs is approximately \$60,000, yet we estimate the proposed fees on waste water customers will generate over ten-fold that amount.

"The specific action of the West Virginia Rural Water Association recommends to you are issuance of an Executive Order transferring all waste water functions from the Division of Health to the Division of Natural Resources, thus eliminating the need for new fees on waste water customers and, two, to include in your call for a special legislative session health service fees, or by Executive Order, limit service fees on water systems to actual amount necessary to cover the cost of services actually provided by the state water systems."

And this is signed by the Board of Directors for the West Virginia Rural Water Association. Thank you.

MS. HOWARD: Thank you. Is there anyone wishing to speak who has not yet spoken for the first time?

Let me ask another question, please. I need to decide whether to keep on going, or whether to recess this hearing for a brief period of time and let people go and eat. How many of those who have already spoken would like to speak

again?

VOICE: Can we ask questions?

MS. HOWARD: Generally speaking, we use these hearings as a mechanism for receiving comment, and we don't do these as a question and answer session, nor do we have the capability to debate the issues, actually, at these hearings.

VOICE: There is really no debate on this?

MS. HOWARD: Not at this hearing, no.

VOICE: Will there be another chance for us to debate?

MS. HOWARD: I can't really answer that question. The Department, I am sure, is going to consider all the comments that we have gotten here, and also, comments that we received in the mail. As I indicated to you earlier, what the Department decides to do--and we may decide to come back for a public hearing--I simply can't speak to that--another public hearing on the revised rule, I can't speak to that here today.

If we make some revisions to the rule, the rule, again, is reviewed by the Legislative Rule-making Review Committee. Those meetings are open to the public, and those individuals may come and make comment at those

meetings. If the rule is filed on an emergency basis, the Secretary of State makes a decision as to whether there is actually an emergency.

So, yes, there are additional opportunities, through this process, for you to make comments.

I simply can't tell you today whether or not the Department, itself, will conduct another public hearing on this rule.

Yes, sir?

VOICE: These trips to Charleston and expenses related to it are very expensive for any municipality or any milk producer. I think it's very unfair for us to drag this thing out in essentially trying to make people lose their enthusiasm for protest and to fight the case, and it's very unfair for us not to have more comment and more participation.

VOICE: Ms. Howard, is it possible to get a copy of the work papers, reflecting how you arrived that the fees would produce \$1,800,000?

MS. HOWARD: I would presume that it would be. I don't know what form those papers are in. They may simply be a series of notes. If you will come up and speak

with me afterwards, I will endeavor to satisfy your request for that information.

Yes, sir?

VOICE: There's a member of your panel up there that designed the four cents, six cents and twenty-seven cents, and if he could only get up and speak and give us the reasoning of where these numbers come from and how they were calculated, it would probably satisfy a lot of us just in that attempt by the Health Department right there.

Where did these numbers come from? The man that designed it is on your panel. Can he get up and explain this to us?

MR. JOE SCHOCK: Let's take a two or three minute recess and then we'll come back.

MS. HOWARD: I've been requested to take a two or three minute recess here by one of the panel. I will say, up to this point, we are operating as we routinely do on any proposed rule. For those of you who have worked with us on other rules, if you will all just simply stay seated here and give me three minutes.

I still have two people who have not yet spoken that I want to give an opportunity to speak. Let me

give those two people, who have not yet spoken, the opportunity to speak for the first time; and then we can come back to these questions. Will those two people who raised their hands, both of you come forward and we'll let one of you--

VOICE: I don't necessarily need to come forward. I just want the Southern Jackson County PSC to go on record to support Mr. Bailey and Mr. Stottlemeyer and Mr. Fox's comments completely, and this gentleman's comments. We simply can't afford it.

VOICE: I would also like to go on record. We are against the fee as it stands.

MS. HOWARD: We have a speaker here waiting to speak.

MR. GERALD SHICK: My name is Gerald Shick, and I represent Fike's Dairy in Uniontown, Pennsylvania, 25 miles north of Morgantown. We do a lot of business in the state of West Virginia. We also buy milk out of the state of West Virginia. We buy milk from Pennsylvania, Maryland and West Virginia.

In Maryland, each farm is permitted, but there is no charge. In Pennsylvania, there is no permit at

all, other than inspection on each dairy farm. So, I go against charging the dairy farmers who operate in the state of West Virginia.

I also would like to question the \$25 raw product package fee. If this is the case, we distribute milk in eight counties, which have county health departments; and the way I read this law, we could be liable from each county health department for every sample that they pick up. It would be quite expensive to us.

Another thing, you have the State Department of Agriculture, who I think, as far as the farm end of the program, knows that's where it belongs, not with the Department of Health.

And that's all I have to say.

MS. HOWARD: Anyone else who has not had an opportunity to speak. Yes, ma'am?

VOICE: I was just wondering how long it will be before you all ponder over what has been said today and reach a decision, since there are only seven or eight days until the first of the month.

MS. HOWARD: I can't answer that question right now. I am not sure that I will be able to answer it

after lunch. However, I believe we will try to have some technical people back here after lunch, and we will take additional comments from those of you who want to comment.

I am going to recess the hearing until two o'clock, and we will reconvene here at two o'clock.

(WHEREUPON, a luncheon recess was taken at 12:45 p.m., after which the following proceedings were had.)

A F T E R N O O N S E S S I O N

(2:00 p.m.)

MS. HOWARD: I am going to reconvene the hearing on the proposed fees for services rule. I would like to start off by asking if there is anyone who did not comment this morning that wants to make a comment now?

(No response.)

MS. HOWARD: I don't see any takers on that. What we will do, Mr. Schock, who is from the Office of Environmental Health Services, is going to make a statement to you and then I am going to permit comments on that statement.

I will ask you please to come forward. I will recognize you by show of hands, but then I will ask you to come forward and identify yourself. Again, it's very difficult for us to try to produce a transcript, which we do need to do with people speaking from the back of the room; and I assure you I will call on everyone, so please allow me to call on you and come forward and make your statement.

MR. JOE SCHOCK: The purpose of a public hearing is to listen to what you have to say, and that was

accomplished here. My previous involvement with public hearings had to do with the proposed infectious waste incinerator and dispenser in Jane Lew.

And people commenting--there were at least four or five delegates here--indicate that there is a problem associated with our proposed fee schedule.

Last September, the Secretary hired a consultant to help identify and make recommendations on the reorganization of the Department of Health and Human Services; and two of the departments, Laboratory Services and Environmental Services, were identified as, "Please explore the possibility of going into a fee user system, as opposed to using state funds," which many, many other states are doing. And that was the purpose of this proposal that you have commented on.

I think this exercise is a learning process for us all. My goal, from what I heard today--and I am real sensitive to credibility of the Health Department. I have been involved with environmental health for over 35 years. I'm relatively new to West Virginia. I've been here 16 months. Previous to that, I was with the Public Health Service for 34 years--so many activities that are ongoing--I

was very active back in my younger career.

But I am concerned about the Health Department retaining credibility and retaining trust, and my primary goal is to provide environmental health service to help protect the health and well being of our public. It's as simple as that.

Now, the question is, where do the dollars come from? When I went through the records and checked funding over the last ten years, there has been a gradual deterioration of support, where one time there were 110 positions in environmental health, today there are 62. Of those, almost one-half are devoted to the drinking water program.

And now, EPA has come up with amendments to the Safe Drinking Water Act, which is going to impose even more requirements for you, as operators of water supply systems, and my people are trying to help you cope with those requirements.

Every time I turn around, I've got EPA coming out with a new press release or a new set of guidelines, and no additional funds to help upgrade the facilities that you have; and that will be necessary. I know my people have been

out conducting various seminars to identify to you, as water plant operators, what these requirements are.

I am also very much concerned that services rendered--if there is to be a fee, it should be services rendered and not just funds thrown into a pot. I was overwhelmed at some of the astronomical figures that I heard this morning, and it would be inconceivable to me that Wheeling, West Virginia, for example, would have to pay \$118,000, which would probably represent between three to four man years of work load; and in fact, if they were to do that, they could hire their own people and be self-sufficient.

So, one of the things I would like to do is try to get the fee schedule system adjusted to fit services that we provide the individual water supply systems; and my recommendation to Secretary Miller on the fee schedule would be--not that these are absolute values, but these would be up to and then go through on a treatment plant by treatment plant basis--and try to identify what services were needed, what is the condition of the plant, where do you stand as far as EPA regulations.

And also, I would like the opportunity to

work very closely with you and your organizations, ever what they are. I have the asbestos abatement control program and I have a seven-man advisory committee that helps me identify various development of guidelines and protocols to help effect that kind of program. And I would like to do the same thing with the water supply program.

I heard problems with resale of water. I heard problems with the possibility of piggy-backing, difficulty in working out rate schedules, unreasonable fees, unrealistically high. So, what I would really like to do would be to try to develop some kind of a communication, whereby we could work together to come up with a realistic fee schedule.

Now, essentially, those were developed to supplant funds that are being given to me by state funds, and also what we anticipate will be needed in connection with the new EPA regulations.

VOICE: Would you address one thing?

MS. HOWARD: Please identify yourself, and I'd like for you--

VOICE: It was a question--

MS. HOWARD: Identify yourself.

VOICE: Chet Fleming, West Virginia Rural Water Association.

Could you tell us the cost of the program that you're calling services you're providing now, which would be the total cost of the sewer and water programs, and state revenues over and above the state and federal funding you get?

MR. JOE SCHOCK: Let me concentrate on the water, because I'm not so sure there should be fees for sewage disposal in our fees for services.

VOICE: In a letter that you provided our association, you indicated you were overspending \$60,000 a year for sewage. You have identified that, so now would you address the water?

MR. JOE SCHOCK: I think currently we have somewhere around 27 to 28 positions and about \$900,000--half of which is generated from EPA grant and half from the state --and I would anticipate that, within the EPA regulations, we would probably need to increase that by 15 percent.

VOICE: Will EPA increase their funding?

MR. JOE SCHOCK: No. In fact, if you have read the paper, EPA has already cited the Air Pollution

Control Commission because they're not doing enough. You read in the paper that Larry George is ready to throw in the federal pollution control program and give it back to the feds; and they keep warning us, but by God, they don't want it.

And I have just learned that EPA plans to come in and talk with my program people and Secretary Miller about what we are doing and what we are not doing in the drinking water program. And later on, the EPA administrator will be coming and talking to the Governor about that. Now, a lot of the states are in the same kind of a situation.

I have completed my statement. I just want to lay a little groundwork here. I was impressed with the various types of people here, your mayors, commissioners, the delegates.

The Legislative Review Committee made it quite clear, when House Bill 4660 was passed, that they did not want to have the same thing happen in Health that happened in DNR--where all of a sudden, they did have a blank check and established some extremely high fees, especially the \$2,500 fee that came out of the blue, and I think that was reduced to \$250 the last Legislature.

So, I have already been warned by the Legislative Review Committee, which is involved with the process of continuing this particular rule, that they are very much interested in what we are doing in the Health Department, what the DNR is doing, and what PSD is doing. They are concerned about overlap.

VOICE: My name is Bruce Fox, City of Weirton, and I was going to have a prepared statement, but I would like to reiterate that I think this program, as conceived, would have a devastating effect on your credibility and ability to develop good working relationships with the utilities and water producers.

I would also like to state that I was employed and trained by the State Department of Health as a former sanitarian. I think there are a lot of dedicated people working in the Health Department. I think, to that end, you want a program that does meet the needs of the State Health Department that don't create a problem for the people you service.

MR. JOE SCHOCK: I agree with that.

MS. HOWARD: We will have to get people to come forward. I'm sorry, but we simply cannot hear you well

enough up here for the transcript. So, if you have comments please--

MR. JOE SCHOCK: It's too bad we just can't give them a number.

MR. BRUCE FOX: My name is Bruce Fox. I'm with the City of Weirton, a city of approximately 24,000. As I indicated earlier this morning, I think the effect of these rules, as conceived, is going to have--the devastating effect is going to be on the Health Department and your ability to have a trusting working relationship with the people you service.

I've been a sanitarian--I was trained by the State Health Department. I know for a fact you've got a tremendous number of people who are dedicated and want to do a good job. This program, as conceived, is going to hurt your credibility, and I don't want that. We need a Health Department, we need a Public Service Commission, and we need the DNR.

I cannot do my job unless the State Health Department and DNR does theirs and enforce the environmental laws of this state. So, the end result should not necessarily be an adversarial process. Hopefully, our input

will be considered.

I would like to say in the case of the City of Weirton, not only are we involved in selling water in the State of West Virginia, we sell water in the State of Pennsylvania; and we have several customers whose assessment of these fees may place us in a position where we wouldn't be competitive. If we're selling water in Pennsylvania, and West Virginia Water can undercut our prices ten cents a thousand, I've lost eight or ten percent of our revenues.

So, I think these programs really need considerably more research before you implement them, if they are implemented.

I would also think, if the State Health Department has reduced their staff by the amount the gentleman indicates they have, and they need funding, it's the State Legislature's obligation to provide them funds for that.

I'm supportive of the State Health Department. We need the State Health Department, it needs to be funded. Perhaps it will work out well for you after all, if the conception of the Legislature was such they have created an administrative nightmare for you, maybe they'll

understand you need funding and they will give it to you.

These rules, as conceived, place a tremendous burden on local utilities to raise our fees and to raise our minimum cost to fixed service customers. It's a cost we cannot absorb. That's been discussed over and over again today.

We have just finished going through a very costly rate increase process in Weirton, and we have not yet, due to delays and appeals and tolling the rates, we haven't made a bond payment in either utility in over three years; and I can't conceive of the City of Weirton taking the first month's rates that are generated by the end of August and make a payment to the State of West Virginia, when there's no way we are going to make our bond payments and pay for some deferred maintenance we have experienced.

I think the State Legislature really needs to look over the revenue needs of the State Health Department and find a way to fund it.

Thank you.

MS. HOWARD: You had your hand up.

MR. HARLEY ADKINS: Harley Adkins, Operators' Association.

As the gentleman indicated a few minutes ago, ten years ago they had 110 positions. That 110 positions has been reduced down to roughly 84. Ten years ago, the State Health Department controlled all sewage within the state. The Department of Natural Resources hadn't taken over a lot of the programs at that time, and if you take the additional employees the Department of Natural Resources has controlling the waste water industry, then you find that the Health Department still has the same number of employees per program that they started out with.

Ten years ago or eighteen years ago, they had one individual in training. Today, eighteen years later, we still only have one individual in training. An agreement was reached several years ago, when Colonel McCall was head of Health, Ed Henry was head of the Department of Natural Resources, there was an interagency agreement that these agencies would work together to enhance water and sewer.

If DNR and the Health Department are going to control our revenues to where we have to pay them, then it looks to me like they would get in touch with the Public Service Commission to find out how much money could be generated, in order to get these bills paid. We have made

the comment on several occasions.

Some districts have money, some districts don't have any money. Some districts have managers that can manage, and some don't. It's been said that you may have a lot of money and the roof be falling down around you; but then there's a lot of districts that have a lot of money and a good system. That's simply because they look after their own.

If the Health Department would look after their own and cut the fat, and start doing what they promised they would do for years, we wouldn't have the problems we've got now.

MS. HOWARD: Thank you. The gentleman back here, come forward and identify yourself, please.

MR. JACK GORBY: My name is Jack Gorby, Nutter Fort Mayor. I have a couple of questions.

You mentioned the DNR, and their fee increase to Nutter Fort was 2,500 percent--and that is after they shaved it down to where it belonged. Originally it was 7,500 percent, but my question is, you said they didn't want that to get out of control. Now, what sort of control would there be on this? That's the question that's been in my mind all

day. How do you control these fees?

MR. JOE SCHOCK: How do you control the fees? You control the fees by going before the Legislative Review Committee, which is a body that has the responsibility of first evaluating any rule that's going to go from there through to the full Legislature. And this is a body consisting of about 10 or 12 people, and they have a tremendous constituency, and it's a public hearing, it's an open hearing, and they are the ones basically that control what the fees can be.

And believe me, they listen and they tell us.

MR. JACK GORBY: Then the first fee we paid was 750 instead of \$10, \$750. But then when they went back to the Legislature, they cut it down to \$250. Now, if these proposed fees--do they go back to review before they are put into effect, or which comes first?

MR. JOE SCHOCK: I don't pretend to be an expert in the legislative--there's a couple ways to handle this.

MS. HOWARD: Would you like to--there are two processes. One is the process for, I want to call it, long-term promulgation of a rule. There is also the process for

emergency filing. If a rule is filed on an emergency basis, it goes into effect immediately. However, that is only good for a limited time period--15 months is the maximum.

At the same time, we must follow the routine process. The routine process does, in fact, involve submission of a proposal, through the Rule-making Review Committee, following public hearing and the changes we make. And if we have to have initial public hearing, that can be done, too.

That committee reviews the rule and it, in effect, makes recommendation to the full Legislature. And the rule does not go into effect on a long-term basis until, in fact, a bill of authorization is passed by the full Legislature.

So, what you have here is the possibility of two processes, and certainly the Legislature has the long-range control over what these fees are, because the Legislature does review the rules, first through the committee and then during the regular legislative session.

These rules are also referred out to various committees during the regular legislative session, for additional study. So, that process takes a longer period of

time.

There is also the possibility of the emergency filing, and under that process, you would get an immediate effective date of the rule.

MR. JACK GORBY: That answers my question, as far as that goes; but I do want to make a statement, and that is: As far as I'm concerned, I think there has been some negative remarks, some toward the Health Department. I have, personally speaking, no animosity toward them. I am upset with our legislators that started it all in the beginning; and I just don't want you to feel that the credibility of the Health Department has been damaged. I don't think it has, as far as most of us are concerned.

MR. JOE SCHOCK: I have a problem with environmental health. We keep getting programs and we get no revenues out of the state government. We are in the process now of developing an infectious waste program, drinking water, and the question where the dollars come from, either from the state or from the fee system.

Maybe what we should be doing is working together--and let me challenge you to identify what your needs are at the local level for technical assistance, for

training, to have someone come out and take a look at your system, to teach your operators what the new EPA regulations are, because you are in a sell job with your customers, because what I'm reading is there is new chemicals that are going to have to be tested.

A good possibility of some of the existing treatment is going to have to be upgraded, and maybe what you should be doing, or we should be doing, is working together. So, you get to your legislators and suggest that, and maybe they'll pay more attention to what is going into the Department of Health budget on environmental health.

I really think we're kind of in the boat together. Well--okay, I'm trying, I'm trying. You take your position, but I think what we should be doing is channeling our energies together and see how to work this thing out.

If there's a fee system involved, maybe what we should do is pay particular attention to how we develop that, and not just blue sky something, but make it meaningful.

MS. HOWARD: I think I will let people speak who have not spoken before. I think that's a fair process. Mr. Stottlemeyer here had his hand up earlier. We'll get you

in just a minute. If you want to come forward, that will be fine.

MR. FRED STOTTLEMEYER: Fred Stottlemeyer, South Putnam Public Service Commission.

I think we have a serious problem with credibility, a problem of trust; and you may feel we've been hard on you today, but I can assure you we're going to be many times harder when it gets to the Legislature again.

My calculations show that a fee of one cent would have generated all the money that you need and probably create a surplus. When an agency comes out and proposes something six times what is needed, there definitely is a serious problem with credibility.

We have asked to work with your agency. It took five phone calls to get anybody to tell me anything, and then I got a half-baked answer; and then the next day, I read in the newspaper that one of your employees, quoting figures of what we would all do for safe drinking water.

These monies are not needed for safe drinking water alone, and we know that; and when we all admit to that and get on the basis of working with honest figures and an honest approach, maybe we can reach a solution.

Thank you.

MS. HOWARD: Thank you.

MR. CHET FLEMING: Chet Fleming, with the West Virginia Rural Water Association.

Mr. Schock, when this law was passed, I came to your office, or at least talked to Mr. Koontz and suggested that before these fees were proposed that they should sit down and talk with those of us that are going to have to pay them, so that before you propose them and put them in a form we have here, where we have to come in an adversarial manner and contest them, and we will have to continue at a legislative session, that perhaps it would be a good idea if we sat down and talked about these things.

My offer was not taken up, although last summer, Mr. Stottlemeyer and I did meet with Mr. Koontz and offered our cooperation, again, trying to draft legislation, try to support the Environmental Engineering Division and your office to get funding for the programs that you need.

Now, as far as credibility goes, I mentioned in my earlier statement, as soon as I saw the law, that it kind opened up the purses of the water and sewage systems in the state, and put almost no limitation on how much would be

collected. I knew that we were in trouble right then, and that is what has happened.

I am amazed at the \$1.8 million that the Department came up with as an estimate of how much monies these fees would raise. I wonder who came up with that and what they were looking at, because the membership of our association alone--125 small systems will generate, in our estimation, about half-a-million dollars.

The fees that were collected by the laboratories, based on the schedule they did last year, would generate another half-million dollars. We heard the West Virginia Water representative state they would be taxed to the point of \$800,000. We heard somebody from Weirton talk about over \$100,000. Whose calculator were you using?

And if you would have sat down and talked to us about this before we came to this forum where we have to get up and do this in an adversarial manner--you've heard very few people up here today object to paying fees for services performed. What they are objecting to is, it is a subterfuge to collect funds from a supposed service performed in order to raise fees to support other programs; and that's what the objection is about and why you had a room full of

people today.

MS. HOWARD: Thank you. Do we have anyone else? Why don't you come ahead and come forward.

MR. LES SEIDNER: Les Seidner, Valley Bell.

Most of the people here today--I guess they're all water people, it seems like--so you don't feel that the dairy industry is not interested, because there are very few of us left in the dairy industry.

As Chico Dairy this morning said, there are three dairies left, and one of them is this family-owned dairy that was represented here this morning, that must be very small, still handling retail service. But I want you to know that even though I am part of a big company, we represent the largest in the state. We have about 350 employees. That could blow away tomorrow and be gone, and no one really ever misses our industry when it dries up and closes. For some reason, it all just melts away. People do without, they use substitutes or one thing or another.

And with what we are proposing here today, I am not going to say that this would blow us away, but it's another straw on the camel's back; and somewhere along the line, it breaks it.

So, not to go any further with that, I would like, on my behalf, from Borden to ask whether the dairy industry could be excluded from this emergency bill that is proposed.

I would like to take the offer that was made here a little bit ago and sit down and dialogue with the legislators, and see whether we could work out a solution. I think there are some model plans that are in effect around the country that we could look at, and maybe they could be used here, or part of them.

I spent the last eight years in Michigan, and there the efficiency they had in looking at our industry was very efficient. It was totally done by the Department of Agriculture, from the farm processor through the retailer, and it was very efficient. Costs were very minimal, the consumer didn't have to pay for waste. And that's what I would like to look for in West Virginia.

Thank you.

MS. HOWARD: Someone else wanting to speak?
I'll start with you.

JAMES R. GRALEY: My name is Jim Graley, Manager, Malden Public Service District and President of the

West Virginia Public Service Districts Association.

I've sat here today and spoke earlier in regards to how this is going to affect the public service districts. Just so that you understand, from the operator and manager's point of view, my district contains 3,700 customers, all sewer only facility. That facility is one of the technology advanced systems in the state. It's PSA Enox system. I have a budget of a little over a million dollars a year.

I operate this facility, plus our laboratory, do the billing for the customers, and take care of 56 miles of sewer line and 32 pump stations. I have a total of nine people, including myself.

Now, bond payments are somewhere--not somewhere, they are \$50,000 a month. I am billing out on a monthly basis of \$80,000. That leaves me approximately \$30,000 to pay the bills, do the overhead, and pay the power people.

Now, we are in a situation here in this state at the present time, not just your fees, but all the fees within the state structure--the Department of Natural Resources, Public Service Commission--that it's going to hit

this district, my district alone, to the tune of about \$16,000 per year. That's another employee, sir, that I desperately need.

On my desk, setting right there by Mr. Adkins, is the Health Department's regulations, which is 2-1/2 inches thick. The Department of Natural Resources and the Department of--Public Service Commission is additionally this thick. Our problem is today that we cannot abide by these regulations, to tell you the truth, because we are going to have to lie to the other two. And if we tell the other two the truth, we're going to have to lie to you.

It makes no sense to have these fee structures put in place at this present time, or even entertain the idea of it, until somewhere in the state as your department head of the Health Department can say to the Governor and say to the Legislature, "We need to organize all environment issues in one house," and be done with it. Until that is done, sir, I feel that we're going to have to fight this all the way.

Now, I have a copy of the bill that was passed last year. It's two pages. Nowhere mentioned in it--and it makes you believe, if you read this bill, that it

covers the water and sewer industry only, until you get into the regulatory aspects of it do you find where it picks up the water and sewer industry. Most people--and the senators, all the legislators, are common people the same as ourself and do not understand the technical aspects of these jobs.

Granted, to some of us, that has been a benefit; to others, it's been more a headache than we care to talk about.

But, sir, all along in all of the meetings that I have been to in the last five years, one of the main things I have always asked is, why does not the departments ask for our help? We are the experts in the field. We're the ones doing the work, we're the ones that's going to find the money, if it's going to be found.

You know, we feel that we have been treated, pardon the pun, like a step-child, and we don't like it. Ninety percent of the people in this room feel the same way, and this is why--we had no idea of this fee schedule, and I was very active last year in the legislative sessions, trying to keep track of everything that was going on. We had no idea that this was coming out until 14 days ago. That's why we are upset.

That's the end of my comments.

MR. WILLIAM ARLEDGE: I am Bill Arledge, with Dairymen, Incorporated.

I concur completely with what Les Seidner just commented on from Valley Bell. One thing that really concerned me, I have worked with the state regulatory all of my life. One comment that was made here earlier, and I think that was the gentleman from Fike's Dairy over in Pennsylvania, was that he shipped into Pennsylvania a packaged dairy product, into eight different counties; and all eight different counties collected a series of milk samples sent to the state laboratory for analysis. This went out 25, 30 years ago.

An efficient regulatory system, you know, you don't need to have eight sets of samples from eight counties, or in this case 55 counties. I mean, no wonder we are short of milk if we're taking all the samples to be tested on the same product.

And I'm sure proper funding goes from the state to the local health departments. Why can't the state-- I understand that the State Department of Health has got their own inspectors to inspect dairy farms and dairy plants.

Why can't those same inspectors pull the finished product quality samples, and cut the cost? This would reduce the laboratory cost, I am sure.

But if this is the way we are operating, we're 20 years behind the times, and I personally feel that all of the milk program in the state should be under one department, not split between two, because you have to have overlapping duties when this occurs.

Relating to the lab certification and fees of labs, going back over the last 30 or more years, the reason that industry got involved in lab certification--I know as far as my company is concerned--is because I had a requirement from my board of directors to set up a quality program to do testing. I went to my state regulatory people in 16 states and said, "Look, I have got to do this. Will you certify me and allow me to do the routine testing on the membership?"

I know you can't do that on finished product. The state regulatory has to do the finished product testing, and I went to them and said, "Hey, we will be willing to become a certified laboratory. We operate as a certified laboratory anyway, and this will provide maybe by reducing

the workload in the state regulatory laboratory, this will provide you an additional income to get out there on the farm and in the dairy plant and do a more effective job of inspection."

But you know, to lay an additional penalty, and the cost of lab certification is very expensive. We go through split sampling twice a year. This ties up your whole laboratory probably for an average of three days, you go through certification. These things are wonderful. We are willing to do them, but yet I violently oppose any fees associated on top of that.

I would say the dairies represented right here in the room today spend well in excess of a million dollars on quality testing right now; and so, we really oppose that facet of it, also, which I did not speak to this morning.

Thank you.

MS. HOWARD: This gentleman right back here, and then I'll take you next.

MR. G. S. EVANS: I am George Evans, the New Creek Water Association, and I'm on the Board of Directors of West Virginia Rural Water Association. I have a couple of

questions I wish to direct to the gentleman over here, and then I have a statement and then a question to ask quickly.

He mentioned a fee of up to. What would be the bottom of that fee to start off from? Are you talking about a maximum?

MR. JOE SCHOCK: Right now, there is a fee of .06. Conceivably, that could be down to .01.

MR. G. S. EVANS: Per thousand?

MR. JOE SCHOCK: Yes. Instead of--one option we have would be, instead of having these as a cap or having these as a fixed figure, to have it up to that.

MR. G. S. EVANS: You say you're starting off at a .01 per thousand and going up to? You didn't give me what the top would be. I imagine that's still up for later question.

MR. JOE SCHOCK: I think from what we have heard, I think we have to reexamine.

MR. G. S. EVANS: So much for that one. Would a transcript of what went through here be available?

MS. HOWARD: Yes. There will be a copying fee, but yes, all comments. The transcript will be--I'm not sure, it will be a couple of weeks, at least, I believe,

before we have the full transcript. But copies of the transcript, copies of the comments that we have received by mail are available. There will be a copying fee.

MR. G. S. EVANS: Do you have an idea of how much it will be? I'm sure New Creek would like to know what went on down here, more than I can remember to tell them.

MS. HOWARD: Possibly as much as 25 cents a page.

MR. G. S. EVANS: You're getting high.
All right, I asked you a question.

MS. HOWARD: That's our routine fee.

MR. G. S. EVANS: You are going to put out a set of rules and regulations, of course, on this thing, the Health Department will. Can we put our trust and credibility in the fact that you are going to back these rules up as you put them out? And I say that for this--let me make this statement before you answer to that.

I have here, it says "Board of Health Interpretive Rule 16-1, Series 7, Part II, 219, 4." Now, what do those figures mean? This is a copy of laying sewer lines in relation with where water lines are.

New Creek Valley, a few years ago, decided to

put sewer in after water was already in. Well, that's fine, we needed both. The sewer people decided they couldn't use the opposite side of the highway that we used for the water. They wanted the same one. We were on state highway right-of-ways, in most cases, many cases, they decided they wanted state right-of-way highways.

Road shoulders are not that wide to put them in. The rule says there must be 10 horizontal feet between. It goes on to say that there must be 18 inches here between them, and if you cross under the water line, various things must be done, particularly one of them. It says, "No water line shall be laid on disturbed dirt," for the simple reason it will sink and pull apart and give you troubles.

Well, this is exactly what happened. New Creek ended up with \$30,000 of money, money that they didn't have to keep patching after the sewer line went through, where the contractor did anything he felt like it.

I personally called Charleston, and the Health Department referred me to this rule that came out of their book on Page 16 and 17. I asked them what they were going to do about this, and to come and please stop the sewer people from tearing our water lines up. I mean, they were--

we had more people out of water than anybody wants, and we were catching plenty.

All we got was a letter back and said we have approved it. Now, this stuff, if you're not going to back it up, we want to know it before they ever print it. They did not back it up. We ended up with lawyers in the courts. We got \$15,000 back out of \$30,000. They sweated us out and sweated us out until we just had to take what they offered, or else we would end up in the hole completely.

And that's the question I want to know. Are you going to back up, are you going to give us the credibility and trust you gave us at that time?

Now, you've done that, you walked right up there and sat down and said the only answer I got when I brought it to you and showed it to you there, sitting in our office--I won't say it was you, I don't remember who it was --is to keep a record of all the damage they do and sue them. You can sue, be damned and go to hell, pardon my English, but that's what it amounts to. But the Health Department's credibility at that time wasn't worth--

How much can I depend on them? I know there's going to be more sewer lines go up New Creek before

very long. Can we depend on you to back up your rules?

MR. JOE SCHOCK: I'll do the best I can, and that's the best answer I can give you, sir.

MR. G. S. EVANS: Don't give me too much to go back home. If I call you, you come and you look at it. Mr. Morey, you probably know who I'm talking about in Kearneysville, one of your engineers down there. He come up and they had laid a water line against a sewer manhole. He said, "No more."

MR. JOE SCHOCK: You call, and we'll respond.

MR. G. S. EVANS: All right, that's far enough with me. I took my time.

MS. HOWARD: I wanted to remind you what we are here for today is to make comments about specific proposed rules, and we can't get too far afield, but credibility is a good question.

This gentleman back here, and then I see three hands up. I will just come back through the room here, here and there, and then I'll take more. Please remember to identify yourselves.

MR. LUCIAN ADKINS: Lucian Adkins, Town of Chapmanville Water and Waste Water Board.

First of all, I don't know who gives the final word on the implementing this order, whether it be an emergency or a set order, law, or whatever it might be; but to implement this in the condition that it is in, with so many loose ends, it would be a disaster. There is just too many loose ends here to even consider making it a law as of now.

There is probably a hundred different things that came up here today, and there's probably another thousand in the back of people's mind--little things, like, we'll use an example, a minimum bill. We have a minimum bill of 2,000 gallons per month. I have customers that use 200 gallons per month. Do I charge them for the minimum, or do I just charge them for that 200?

So, it's little things like that, just little--hundreds of them, and they need to be sorted out before you can actually even consider making this a law, because if you do and you drop this down on the people like me, then this person who uses just 200 gallons or whatever and comes up to me, and I don't know what to tell them. All of this has to be sorted out.

You have had probably the cream of the crop

of the people in the water and sewer business in this building today. You've got a lot of people knowledgeable about things like this that might come up. Give them a little time, let them sit down and think of things that might possibly pop up and go over it before it becomes a law.

It's a whole lot easier to sort it out before it becomes a law than it is to try to sort it out with some irate customer over six or seven cents. And believe me, it can happen, believe me.

Thank you.

MS. HOWARD: This gentleman here.

JAMES CASEY: Good afternoon. My name is Jim Casey, and this morning I was speaking to you as the Manager of the Webster Springs Public Service District; and this afternoon, I would like to put that aside. I would just like to be Jim Casey for a while, a regular citizen of West Virginia; and I can't help, in looking through, most specifically, the page of fees, since that is the dollars and cents, what is going to make all this fly or sink.

And I see a couple of things that come glaring out to me. It's just inconsistencies--and time and time again, and we hear it through all these people,

especially the man right before me, it just looks like the haste with which all this is going, everybody hasn't had time to properly study and see just how much is needed to be generated.

And then some of the fees, as they have said, they are so broad that I really don't think it is intended-- it can be taken a couple different ways. I'm going to give you an example. Under Section 4, dealing with water, sewage systems, and swimming pools, under Section C, the operating permits, the very last one there, the sewage holding tank, each month of use.

Now, does that mean, as one could take it, that each and every portajohn in this state is going to have to pay \$100 a month for that portajohn to be out there somewhere? Somebody could take it that way; and the same thing would apply up there under Section A, where it talks about the sewage holding tank project.

Does that mean if somebody is going to put out a portajohn, he's got to pay a thousand-dollar permit just to get it out there? You'd put that industry out of business in a week, if that's the way it was taken. It could be from in here, I'm just saying it's not clear in here.

It's ambiguous.

And then as a homeowner, I go down here to Section D, where it talks about water well permits; and it has homeowner per well. Now, does that mean all of a sudden me, as a homeowner, I have to pay \$50 a year? Or just if I get in touch to have it approved, if I'm getting a loan on my home? It's unclear as it is.

And if you think this room has been full of irate people, you wait until you want to go out and bill every well owner in this state \$50 a year, and you'll see what happens.

It's going off half-cocked, and I urge moderation. Thank you.

MS. VIVIAN BOWMAN: My name is Vivian Bowman. I'm City Manager of the City of Grafton in Taylor County.

My concern is that we have a public service district that manufactures our water; and we, as the City of Grafton, transport the water to our customers; plus this public service district is supplied by Taylor County Public Service District. You are piggy-backing a fee there, which could reach in excess of 22 cents per customer.

And that concerns me, because almost 69, I

think 69 percent of our population within the city is considered seniors, living on fixed income or low income. We cannot support that type of fee, and I would hope that you would define, in a system such as ours, where we buy our water and we transport it, that the fee could be split between us and don't piggy-back it, because we can't afford it.

Thank you.

MR. JIM CURNES: My name is Jim Curnes. I am the City Manager of Wheeling.

We are concerned, of course, about this bill, because we have estimated that our cost in both water and sewer would be nearly a quarter-of-a-million dollars a year, as written, and I spoke to that this morning.

But I think we heard an awful lot of comments from the people in the dairy industry here about what impact that would have on them, that's a direct impact to them, because they are involved in the legislation.

As it is written now, an indirect impact would be had by almost every industry in the state that buys water from a public water supply. I think that is something that wasn't mentioned this morning, but that could have a

very direct impact on marginal businesses or even getting new business into the state. And there was some discussion on that earlier this morning also.

I think that is an important issue for the Commission to think about, how these charges passed on through to the customer--not only to the individual customer, but to the commercial accounts--are going to be impacted. And you get those people fired up, and they are going to make a lot of noise.

The other concern I guess I have is, I haven't heard any indication of whether or not there is going to be a push for an emergency declaration in this legislation, and I don't know if you can answer that question or not right now; but given all the controversy and comments that have been made this morning, I guess I would like to ask you, are you intending to try and get an emergency declaration on this at this point?

MR. SCHOCK: I'm the technician.

MS. HOWARD: I'm sorry, that decision, I think, will be made by Secretary Miller, and we simply cannot answer that question for those of you here today. I think we are probably going to indicate some reservations about it,

but we simply cannot answer that question completely for you

MR. JIM CURNES: I would like to request, on behalf of all the people that were here this morning and concerned about this issue, that if that kind of a request is going to be coming down, then that we be notified as quickly as possible, because we'll be at the Legislature.

MS. HOWARD: More hands?

MS. KIM BURGESS: I'm Kim Burgess of the Pinch Public Service District. I would like to reiterate what the gentleman said about implementing it on an emergency basis, because I don't know about everyone's budget, but our fiscal year comes in July 1, and this means a lot of budget revisions for us. I know yours comes in the first of the year, too, and we are hard pressed in eight days to come up with a lot of money that we don't have.

And everyone will be at the Public Service Commission, like I said this morning, so the time frame that would cover our initial outset is a long time down the road. We just need some financial guidance.

Thank you.

MR. GREG VANPELT: Greg VanPelt. I'm the Manager of the Taylor County Public Service District.

In addition to what Vivian Bowman, City Manager of the City of Grafton, said, I would like to get a little clearcut picture here. You know, you define this is a metered service. Of course, we meter the water that we sell, so, I assume we will be paying six cents. We sell it to the City. They, in turn, meter it to their customers, and they are going to pay six cents. So, in this situation, we are talking about 12 cents.

The other PSD's that we serve, the situation is the same. We serve a total of probably 15,000 to 17,000 people in a three-county area, and I would venture to say that the number that Vivian gave, in regard to the number of people on fixed incomes and that border on the poverty level, is probably pretty general. And you know, it's a real hardship.

And the problem I have with this--I have no problem with paying for fees. You would probably not find a bigger supporter of the Health Department than me. The Health Department bailed me out many years ago when I first started in water, when the fellow that was supposed to train me died and they started me out. So, I am a real supporter of the Health Department, and I'm willing to pay a fee for a

service that is rendered.

The problem I have is, when we throw everything together, all these Human Services and everything else, and then you want us to bear the cost of bailing out the Department of Human Services, who is \$43 million in debt, and these things. I think if it were separated and the Health Department were kept out of this, that this whole thing could be funded in a much simpler manner, a much fairer way.

And it seems to me that we are creating a problem by doing this, rather than working toward solving a problem. And I'm just kind of confused in regard to that. I would like that to be addressed. Is that a possibility, or is that something--

MR. JOE SCHOCK: You're talking about piggy-backing. That's been mentioned a number of times.

MR. GREG VANPELT: Really, my question is, is it cut and dried in regard to the super department type thing, where everything is thrown together, and this funding has to be sought in this manner, through the water and sewer utilities?

MR. JOE SCHOCK: I really have strong

feelings as a result of this hearing today. There is going to be some fresh education, too. Maybe that will not necessarily happen. I'm just talking. I have heard you don't mind a fee as long as there is a service that goes with it. I support that.

I think there is going to be a real education and certainly we sitting here at the table, we have a responsibility, and I have a personal--personally would kind of go in that direction when I go back and talk to our Secretary as a result of what happened here today. I feel I've got that obligation.

In a way, I represent West Virginia, and I have very strong feelings about my responsibility in what I am trying to do there, and I've got a department that I contend with, too. And that's where I get my money.

And we've got the legislators, and maybe the best thing to happen today is the interrelationships between your people and your legislators, and the people there today might get them to recognize that there are other options or better options, as far as generating funds to support necessary programs.

And that's where I'm interested. I would

like to see some mechanism whereby the legislators get a better understanding--not through us, not through the Health Department, but through their constituency--about the need for the services.

Traditionally the feds go before OMB and they're hot after programs and dollars. Dollars means budget, it means positions, and things are worthwhile. But I think it's got to come from the people. It's got to come from the other side.

MR. GREG VANPELT: Is there any real possibility of a round-table type discussion, utilizing some of the people in the state who are experts in this field, because they work in it day in and day out, and your staff, your Department and the Legislature? Perhaps some people from each of those could sit down and work together for the betterment of the state and the betterment of the Health Department.

MR. JOE SCHOCK: My bottom line is that anything you can do to establish better communication is good for everybody, and I would welcome that.

MR. GREG VANPELT: Thank you.

MS. HOWARD: I know you want answers, but at

the same time, the purpose here is to try to get your comments.

The gentleman in the back.

MR. ANDY LANGMYOR: Andy Langmyor, Milk Marketing, Incorporated. Just a couple of comments that I want to be sure that we covered.

I would like to plea for the exemption of agriculture. Agriculture fees have been exempted in the state of West Virginia in the past, as all of us from the dairy industry have indicated. That is the case in all surrounding states.

We are concerned about the credibility and the ability of the Health Department and the employees of dairies and of dairy farmers to be able to continue to work together. We think this credibility could be strained considerably with the advent of these fees.

In the past, this organization has worked very close with the state people, having a series not only of meetings with haulers, milk plants, dairy farmers, to explain the various regulations, and sponsoring those meetings and participating in the educational process. But we have also, from time to time, provided the transportation for some state employees to visit dairy farms.

We have participated in the federal surveys, the spot checks that are required under the Interstate Milk Shippers Program; and we have, in times where some of your people may be on vacation or off sick, performed some of the functions for them. And we would hope that we would be able to continue that type of relationship in the future.

Speaking to the question of lab service, the dairy co-ops represented here today, and three or four that were not here, presently do have laboratories that are accredited by other states, and are capable of performing the lab testing that is presently done on raw milk product. I would certainly encourage that that function be absorbed by the industry. And as Mr. Arledge said earlier, relieve the Health Department of those expenses, which would free up some funds to do some of the other work in the dairy business.

When we look at the lab service in some of the surrounding states, the way the law in Ohio is set up, not only are dairy farmers limited to a cap of \$15 fee per year for the inspection and license, but the co-op, itself, in our case, bids for the business of doing the laboratory work. So, the State of Ohio pays some milk plants, some city laboratories, some dairy co-op laboratories to perform that service for them, which is certainly the reverse of what we

are talking about here.

These labs are certified by surrounding states, and I see no reason why that certification needs to be duplicated, since all of them are listed in the Interstate Milk Shippers' Certification of Dairy Laboratories, and it is a publication that is printed by the federal government on a regular basis, and you can see which labs are certified and approved for interstate sampling and testing of dairy products.

Again, I would hope that dairy farmers especially could be exempt from any of these type of fees.

Thank you.

MS. HOWARD: Next, please.

MR. BRENT CLARK: Brent Clark, Mason County Public Service District.

I'll just make a quick, brief statement. I think what I've heard in summary today, I believe the bottom line that I have heard in the majority today is the water rate structure is way too steep and inadequately defined for many of the districts to absorb here today, which would create many cases for restructuring for rate increases.

I believe we've heard that the PSD's and

associations want participation in this process. They want to know how the fees are set and where the money is going. I think that's all the bottom line.

I would think the recommended solution to this whole process would be to form a working committee with representatives from our association, that would be rural water, some of the other districts and municipalities, to go forward, look closely at the options and some of the problems you heard, particularly in piggy-backing and so forth. And then I would have one position.

If you are truly concerned about the credibility, when you go back to the Legislature, speaking a voice representing both water and the Health Department for safe water, because we do have an obligation to provide that service, safe service.

We have an obligation to continue to try to reach the many customers in this state who still do not have running water. And so, that was my concern before, and that type of funds need to be available to do that.

I would ask in the whole process you look at from a PSD perspective, try to put yourself in these peoples' shoes and what they have to manage and do, and then use that

and go together in a total process. I believe that's what I have heard and I believe that's the process that we have to go forward with, if you're going to avoid this confrontation, which is going to come if the grass roots is not involved in this whole process.

Thank you.

MS. HOWARD: Thank you. Anyone else?

I declare this public hearing closed. Thank you for coming.

(WHEREUPON, the proceedings were concluded
at 3:15 p.m.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, the undersigned, Donna Nelson, Certified Court Reporter in and for the State of West Virginia, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had, as set forth in the caption hereof.

Given under my hand this 11th day of July,
1990.

Donna Nelson

Certified Court Reporter



TOWN OF ALDERSON
POST OFFICE BOX 179
CITY BUILDING · 202 SOUTH MONROE STREET
ALDERSON, WEST VIRGINIA 24910
(304) 445-2916

June 22, 1990

The Honorable Taunja Willis Miller
Secretary
West Virginia Department of Health
and Human Resources
Building 3, Capitol Complex
Charleston, West Virginia 25305

Dear Madam Secretary:

The Town of Alderson respectfully protests the Proposed Legislative Rule as submitted by the West Virginia Division of Health under the Code of State Regulations, Title 64, Series 51, under authority of West Virginia Code §16-1-21 and §29B-1-3.

The Town feels that the fees proposed by the Division of Health are excessive and are contrary to the best interests of the Citizens of West Virginia and the Town of Alderson, as they will have direct economic impact upon all citizens, and in particular, customers of water and wastewater treatment systems all over the state. It definitely means that the Town of Alderson will immediately have to seek rate increases for both water and sewer service customers, many of whom are elderly individuals on fixed income who can ill-afford additional financial burden.

It is our feeling that the State Government has a duty to be supportive of and provide assistance to local governments and their agencies. The proposed fees that will be assessed on water and wastewater systems based on the gallons of water treated and the license fees for the operators of the treatment plants are merely a hidden tax that is being assessed by the State of West Virginia and being handed down to the local governments for collection. By taking such a position and proposing such fees, the State Division of Health is not being either supportive of or providing assistance to the local water and wastewater treatment systems.

RECEIVED

JUN 22 1990

REGULATORY DEVELOPMENT
SECTION

"Gem of the Hills"

June 22, 1990

The State of West Virginia continues to allow fees and other charges to be levied upon local governments by state agencies without providing any avenue for the local governments to increase their fees, tax base, or other revenue sources. This situation is critical and must be rectified without delay, and in the interim, this fee schedule as proposed by the Division of Health and any similar bureacratic "pots of gold" must be overruled before the local governments of West Virginia and our citizens are driven into total bankruptcy.

Very truly yours,

Tom E. Housby
Tom E. Housby, Mayor
Town of Alderson

cc: The Honorable Gaston Caperton
Senator J. D. Brackenrich
Senator Robert K. Holliday
Delegate Mary Pearl Compton
Delegate James E. Rowe
Delegate William Wallace

TOWN OF ALDERSON WATER USAGE
March 1988 through March 1990

DATE	CUSTOMER USAGE	F.C.I. USAGE	TOTAL USAGE
March 1990	2,637,100	5,282,700	7,919,800
February 1990	3,148,300	4,511,600	7,659,900
January 1990	3,385,250	5,120,300	8,505,550
December 1989	2,557,800	3,962,500	6,520,300
November 1989	2,498,450	4,048,700	6,547,150
October 1989	2,731,990	4,029,200	6,761,190
September 1989	2,893,900	4,140,800	7,034,700
August 1989	3,136,400	3,914,800	7,051,200
July 1989	3,204,300	4,119,800	7,324,100
June 1989	3,007,590	4,549,800	7,557,390
May 1989	2,763,090	4,129,200	6,892,290
April 1989	2,739,200	4,617,300	7,356,500
March 1989	2,343,220	3,859,500	6,202,720
February 1989	2,478,630	3,814,900	6,293,530
January 1989	2,667,940	4,143,400	6,811,340
December 1988	2,447,090	2,859,300	5,306,390
November 1988	2,724,644	5,529,800	8,254,444
October 1988	2,401,900	4,533,375	6,935,275
September 1988	2,667,000	3,912,400	6,579,400
August 1988	2,944,000	4,198,300	7,142,300
July 1988	3,754,270	4,493,000	8,247,270
June 1988	2,792,370	4,156,100	6,948,470
May 1988	2,580,020	3,948,600	6,528,620
April 1988	2,570,470	3,558,100	6,128,570
March 1988	2,454,600	4,483,100	6,937,700
TOTALS	<u>69,529,524</u>	<u>105,916,575</u>	<u>175,446,099</u>
Percentage	39.63%	60.37%	

**TOWN OF ALDERSON
WASTEWATER TREATMENT PLANT**

INFLUENT FLOW (Monthly)

March, 1988	4,322,925	Gallons
April, 1988	4,370,300	
May, 1988	4,579,150	
June, 1988	3,697,150	
July, 1988	4,752,550	
August, 1988	4,289,225	
September, 1988	4,229,200	
October, 1988	4,389,100	
November, 1988	4,504,225	
December, 1988	4,456,300	
January, 1989	5,187,700	
February, 1989	4,143,000	
March, 1989	5,521,950	
April, 1989	4,524,025	
May, 1989	7,625,950	
June, 1989	5,960,400	
July, 1989	4,337,450	
August, 1989	4,458,100	
September, 1989	5,096,450	
October, 1989	6,813,950	
November, 1989	5,535,750	
December, 1989	5,159,375	
January, 1990	7,558,850	
February, 1990	8,662,400	
March, 1990	6,247,000	
April, 1990	5,376,875	
May, 1990	5,359,450	



County Commission of Berkeley County

100 WEST KING STREET

MARTINSBURG, WEST VIRGINIA 25401

PHONE (304) 267-3000 EXT. 213



THE COMMISSION

DONALD L. SAUER, PRES.
P.O. BOX 601
MARTINSBURG, WEST VIRGINIA 25401

WILLIAM N. SHUGG, KISNER
124 TAVERN ROAD
MARTINSBURG, WEST VIRGINIA 25401

JOHN EVANS WRIGHT
P.O. BOX 740
BLUNTER HILL, WEST VIRGINIA 25413

RECEIVED

JUN 25 1990

NORMAN RISAVI
COUNTY ADMINISTRATOR

DEBORAH A. POWELL
ADMINISTRATIVE SECRETARY

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

June 21, 1990

Ms. Tunja Willis Miller
Secretary Of Human Services
West Virginia Department of
Human Services
1900 Kanawha Boulevard, East
Building # 3, Room 206
Charleston, West Virginia 2530

**SUBJECT: Proposed Utility Fees For Laboratory Services
On Publicly Owned Water & Sewer Utilities**

Dear Secretary Miller:

On behalf of the City of Martinsburg and the Berkeley County Commission, we are writing to protest the proposed six and four cent increase on public water and sewer facilities respectively. The governing bodies believe that these increases would adversely affect the taxpayers who are already paying public utility taxes on water and sewer bills. Additionally, these particular taxes would not be evenly distributed across the state's population, due to the fact that many of the states residents are not served by public water and sewer systems.

Both the City of Martinsburg and the Berkeley County Commission support the strong enforcement of the Safe Drinking Water Act, but strongly encourage a more equitable method of assessing the costs for this program. Therefore, we would respectfully request that you carefully review this proposal and explore other methods for financing this program.

Sincerely,

Anthony P. Senecal
Anthony P. Senecal, City Manager
City of Martinsburg

Norm Risavi

Norm Risavi, County Administrator
Berkeley County, West Virginia

**BERKELEY COUNTY
PUBLIC SERVICE DISTRICT
WATER UTILITY**

Board of Directors
Mrs. Ruby S. Kern, Chairman
Howard W. Collins, Treasurer
Oliver R. Dubé, Secretary

General Manager, Clifford Honsaker, Jr.

June 15, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, W. V. 25305

Re: Public Hearing on Division of Health,
Legislative Rules - "Fees for Services"

Gentlemen:

The District's Board of Directors met in regular session on Thursday, June 14, 1990, at which time they went on record as being strongly opposed to the proposed rules for fees and services by the State and County Health Department.

We feel it is a preposterous plan and not worthy of any consideration.

Yours truly

C.E. Honsaker, Jr.

Clifford Honsaker, Jr.
General Manager

cc: Mr. James R. Graley Jr.
W. V. Association of PSD

Mr. Fred Stottemyer
W. V. Rural Water Assoc.

RECEIVED

JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**



HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL — PHONE (304) 340-3200
CHARLESTON 25305

RECEIVED

JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

RODNEY T. BERRY
1214 8TH STREET
MOUNDSVILLE, WV 26041
PHONE (304) 845-5846

June 18, 1990

Taunja Willis Miller, Esq.
Secretary, Department of Health
& Human Services
State Capitol Building
Charleston, WV 25305

Re: 64 CSR "Fees for Services"

Dear Secretary Miller:

Please be advised the undersigned, Rodney T. Berry and A. E. Tribett, members of The House of Delegates for the Fourth District representing Marshall County, do hereby respectfully object to the above proposed legislative rule which would charge fees to municipalities, public service districts, and dairy farmers for certain mandated inspections.

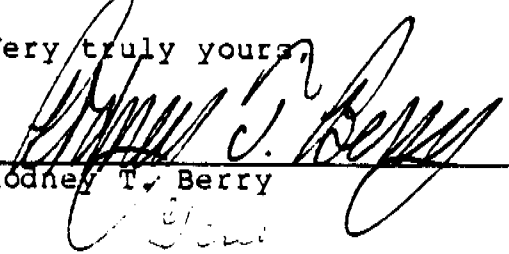
As you know, there are presently local fees charged for these same basic services, and we feel that these mandated inspections would be repetitious and very costly for the political subdivisions and farmers affected by the proposed rule. We do however, take no exceptions to the local fees that are presently being charged.

In these days of very restricted revenue to the municipalities and public service districts, as well as the ever present financial crunch put upon our farmers, we fee that it is oppressive to levy further fees upon them.

We intend to be at the hearing in Charleston at 10:00 a.m. on June 22, and we would like to address this proposed rule further at that time.

Looking forward to seeing you, we remain

Very truly yours,



Rodney T. Berry

A. E. Tribett

CC: Moundsville City Manager
Mayor Anthony Scaffidi
Mayor William Kern
Mayor Jonn Saffel
Mayor Wayne Simmons
Emmit Francis, Secretary, Marshall County Farm Bureau
B. J. Baker
Doug Schafer - Public Service Dist. No. 1
Marilyn Rulong - Public Service District No. 2
James Fred Hammil - Public Service District No. 3
Donna Crawford - Public Service District No. 4
Debbie Fogle - Glen Dale Heights Public Service Dist.

City of
BRIDGEPORT



131 WEST MAIN STREET
BRIDGEPORT, WEST VIRGINIA 26330
(304) 842-6201

Regulatory Development
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

June 21, 1990

The City of Bridgeport received notice on June 15, 1990 of West Virginia Department of Health and Human Services proposed fees on water and wastewater systems. This notice came by way of the West Virginia Rural Water Association and West Virginia Municipal League. I feel it is a shame that legislation which has such an economical effect on the water users of the state could be approved by the legislature and Public Hearing held without notice to the utilities responsible for the payment and collection of these fees.

Bridgeport services 3,167 water customers and 2,970 sewer customers. Based upon the proposed fees our cost would be over \$27,000 a year or \$2,250 a month. If this fee is put into effect next month, how do you propose the various agencies to fund it? If this fee goes into effect most agencies will have to apply for a rate increase and hold public hearings before this fee could be passed on to the customers. We should have at least six months notice before a fee of this magnitude becomes effective.

After reviewing this proposed fee we feel the fees are excessive. It appears that revenues from this fee are going to replace part of the State of West Virginia's share of operating the Department of Health and Human Services.

In the last two years citizens have received the highest increase in taxes in the states history. Now every agency wants to increase fees to cover their individual cost. This week Bridgeport received an invoice from West Virginia Department of Natural Resources for \$2,000 a year for a WVNPDES Permit. This fee was previously only \$50. If this proposed Health and Human Services fee is approved our cost will be raised by nearly \$30,000 a year. How much additional burden can the citizens be expected to support?

In summary the City of Bridgeport is against the proposed fee. We feel it is not justified and is excessive.

City of Bridgeport

Keith L. Boggs
City Treasurer



RECEIVED

JUN 27 1990 TOWN OF CHAPMANVILLE

**SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

**MUNICIPAL BUILDING
P.O. BOX 426
CHAPMANVILLE, WEST VIRGINIA 25508**

(304) 855-4582

**JOY K. VANCE
MAYOR**

June 25, 1990

Taunja Willis Miller, Secretary
Dept. of Health & Human Resources
Regulatory Development
Room 204, Building 3, Capitol Complex
Charleston, West Virginia 25305

RE: RULE 51 (FEES FOR SERVICE)

Dear Ms. Miller:

On behalf of the Town of Chapmanville Water and Wastewater Board, I would like to go on record that I am strongly opposed to the proposed Rule 51 governing new fees and/or permits chargeable to our agency.

We strongly urge that Rule 51 not be allowed even on an emergency basis, for it is our understanding that if this ruling be implement for a period of fifteen months at which time could permanently go into effect.

We feel that such an order would place a tremendous hardship on the Chapmanville Water and Wastewater Board which we could not absorb, and therefore would be passed onto our customers creating an equally financial hardship to a large number of our low to moderate income customers.

After close study of the proposed rule, it becomes apparent that it would be financially impractical to impose all these new fees. As there are many unanswered questions which has not fully explained to our satisfaction.

Please give this proposed Rule 51 more consideration before you pass it on to the consumers.

Yours truly,


Joy K. Vance
Mayor

JKV/ljp



TOWN OF CHAPMANVILLE

MUNICIPAL BUILDING
P.O. BOX 426
CHAPMANVILLE, WEST VIRGINIA 25508

(304) 855-4582

JOY K. VANCE
MAYOR

June 25, 1990

Honorable Ken Heckler
Secretary of State
State Capitol Complex
Charleston, West Virginia 25305

RE: RULE 51 (FEES FOR SERVICE)

Dear Honorable:

On behalf of the Town of Chapmanville Water and Wastewater Board, I would like to go on record that I am strongly opposed to the proposed Rule 51 governing new fees and/or permits chargeable to our agency.

We strongly urge that Rule 51 not be allowed even on an emergency basis, for it is our understanding that if this ruling be implement for a period of fifteen months at which time could permanently go into effect.

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After close study of the proposed rule, it becomes apparent that it would be financially impractical to impose all these new fees. As there are many unanswered questions which has not fully explained to our satisfaction.

Please give this proposed Rule 51 more consideration before you pass it on to the consumers.

Yours truly,

A handwritten signature in dark ink, appearing to read "Joy K. Vance".
Joy K. Vance
Mayor

JKV/ljp

CC: Taunja Willis Miller

**BOWLES RICE
McDAVID GRAFF & LOVE**

ATTORNEYS AT LAW

16TH FLOOR COMMERCE SQUARE
LEE STREET
CHARLESTON, WEST VIRGINIA 25301
304-347-1100
FACSIMILE 304-343-2967

4TH FLOOR UNITED CENTER
500 VIRGINIA STREET EAST
CHARLESTON, WEST VIRGINIA 25301
304-347-1180
FACSIMILE 304-347-1196

WRITER'S DIRECT DIAL NUMBER
(304) 296-2500

208 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-296-2500
FACSIMILE 304-296-2513

June 19, 1990

RECEIVED

JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

105 W. BURKE STREET
POST OFFICE DRAWER 1419
MARTINSBURG, WEST VIRGINIA 25401-1419
304-263-0838
FACSIMILE 304-267-3822

OLD NATIONAL BANK BUILDING
EAST WASHINGTON STREET
POST OFFICE BOX 59
CHARLES TOWN, WEST VIRGINIA 25414
304-725-1535
FACSIMILE 304-725-4417

Ms. Taunja Willis Miller, Secretary
State of West Virginia
Department of Health and
Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

Re: Cheat Neck Public Service District

Dear Ms. Miller:

The Board of Directors of Cheat Neck Public Service District unanimously passed a resolution opposing the implementation of the fee for service intended to be promulgated by the Division of Health under the authority of West Virginia Code §16-1-21 and §29B-1-3. The six cent per thousand gallon fee intended to be charged will go directly onto the customer's bill and is a gross, unfair and regressive tax. In situations where a Public Service District purchases water from another district or municipality, the fee has a pyramiding effect and the ultimate customer's bill is increased not by six cents per thousand gallons, but twelve cents per thousand gallons.

We would hope that you would think carefully of the ultimate customer and taxpayer when contemplating approval of this regulation. Most of the water customers of our district are rural and on fixed incomes and would be hard pressed to pay an additional fee.

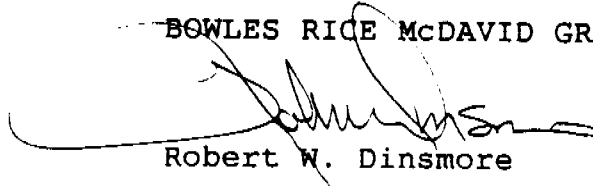
Bowles Rice McDavid Graff & Love

Ms. Taunja Willis Miller, Secretary
June 19, 1990
Page 2

Thank you in advance for your attention to this matter.

Very truly yours,

~~BOWLES RICE McDAVID GRAFF & LOVE~~



Robert W. Dinsmore

RWD/nbm

cc: Mr. Donald R. Riley
Mr. Thomas E. Urquhart
Mr. C. Max Messenger
Mr. Thomas Witt

6350022LTR.90

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JUN 21 1990

Board of Directors
COAL MOUNTAIN PSD
Coal Mountain, WV

REGULATORY DEVELOPMENT
SECTION

24823

To Whom it may concern:

We the Board of Directors of Coal Mountain PSD and customers of said PSD detest the enormous fees that have been considered levying on the people.

We are a PSD with forty-two customers who loyally retired people on a fixed income.

These fees if put into effect will put this PSD and possibly others out of existance.

A flat rate is charged 965 per month while the large companies that net thousands of dollars monthly.

Below is a list of customers against the fees.

Ray Danner
Sue Waller
Robert L. Bail
Sharon Lester
Bill Toler
Veronica Toler
Finley Toler
Hazel Toler
Hazel Toler
Gauss Wallace
Jeresa Wallace
Cameron H. Davis
Dorene Davis
Kathy Puett
Jennifer Puett

Robert A. Morgan
Christine Morgan
Hazel Morgan
Debbie Cox
Doris Cox
Eileen Cook
Dore Cook
Gavin Cook
Daniel C. Addison
Sandra Addison
Nora Ferrell
Eleanor Carter
Annela Carter

Demi Rose
Lammi Rose
W. Wayne Robinson
Veresa Robinson
Bernie Davis
Pauline Davis
Lula Morgan
Patricia Morgan
Liz Lester
Gerald Lester
Budd Ratliff
Eloise Ratliff
Nancy Lester
Rachel Harper
Suzanne Miller
Lillian Miller
Lynne Davis
Gladys Davis
Golden Davis
Larry Davis
Lion Hatfield
Bonnie Hatfield
Rana Hatfield

Shula Steton
Barland Steton Jr.
Jack Burming
Joann Burming
Peter & Lorraine
Anne Housier
Benny Hartman
Cecilia Hartman
Dwight H. Darnell
John L. Darnell
Lavin Kennedy
Dorothy Kennedy
Diana Kennedy
Edna Lester
Geneva Lester
Almya Keene
Pearl Keene
Georgia Keene
Jeffrey Keene
Lewis Blacksmith
Jimmy Davis
Berlene Davis
Johnny Davis
Marylyn Davis
Lessa Hatfield

Janice Morgan

Buddy Morgan

U.S. Post Office Janice Morgan Postmaster

Cottageville Public Service District

P.O. Box 180
Cottageville, West Virginia 25239
(304) 372-4317

June 13, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Re: Proposed Rule # 51

Dear Sirs:

The massive fees proposed by the Department of Health and Human Services seem to us just another way to create additional jobs for this agency and at the same time to raise taxes for state government.

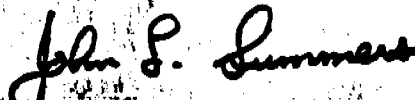
Our public service district was created to provide water service to our community, not to collect taxes for either state or federal government. How could we possibly justify a rate increase to our users for this purpose?

If these proposed fees are to assure safe drinking water to the consumer, we already have the Department of Natural Resources and the United States Environmental Protection Agency in charge of this particular program.

If, on the other hand, these funds are going to be used to fund programs for the Department of Human Services, at least in part, our users should not be picking up the tab.

We strongly oppose this proposed rule. We feel it is unfair to us as well as our water users. We intend to fight its passage if it occurs.

Very truly yours,



John L. Summers
Chairman

JLS:rr

xc: WV Association of PSDs
Ginny Starcher, Delegate
Bob Dittmar, State Senator

RECEIVED

JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**

Craigsville Public Service District

P. O. Drawer 368

Craigsville, West Virginia 26205

JUNE 12, 1990

REGULATORY DEVELOPMENT
ROOM 204, BUILDING 3
CAPITOL COMPLEX
CHARLESTON, W.V. 25305

RE: DIVISION OF HEALTH
LEGISLATIVE RULE
"FEES AND SERVICES"

BEING UNABLE TO ATTEND WE WOULD LIKE TO SUBMIT OUR
WRITTEN COMMENT ON THE PROPOSED FEES BY THE DEPARTMENT
OF HEALTH. WE DO NOT AGREE WITH THE PROPOSAL AND
WANT TO SEE IT VOTED DOWN.

CRAIGSVILLE PUBLIC SERVICE
DISTRICT BOARD

RECEIVED

JUN 14 1990

**REGULATORY DEVELOPMENT
SECTION**

DANVILLE PUBLIC SERVICE DISTRICT

P.O. Box 287
Danville, West Virginia 25053

June 14, 1990

RECEIVED

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

The Danville Public Service District does not feel that the expensive proposal for fees on the wastesater systems is justified. These fees will be several times higher than the wastewater discharge fees recently established by the legislature for DNR's wastewater program.

In addition, the Department has also proposed fees for testing and certifying operators \$300.00 construction permits for construction of new or upgrading of existing water and wastewater systems \$100.00/200.00 operation permits. What will we receive in the way of services for these funds? No plans seem to be presented on how this will assist us in meeting safe drinking water standards. It seems to us that the water and wastewater systems of West virginia will be taxed to pay the state government's share of enforcing the Federal Safe Drinking Water Act to pay in part for laboratory services that are currently funded with Federal Funds.

The transfer of funds has worked so very well that it appears that plans have been made to expand this technique. The Department of Health and Human resources has now proposed massive new fees to be paid by local water and sewage utilities. The EPA grants the State of West Virginia approximately \$500,000 per year to enforce the National Safe Drinking Water Act. Our state has been administering a similar amount. (No plans, or apparently not.)

(1) Should local agencies who do not have taxing authority be required to charge their citizens ever increasing amounts for safe drinking water and sewage service so that officials elected to run state government can avoid raising taxes to fund the programs they initiate?

(2) Should water and wastewater systems be required to pay for testing and other services mandated by the state?

(3) Are our local state legislators aware of the economic impact that their activities are having on these systems? (water and sewage)

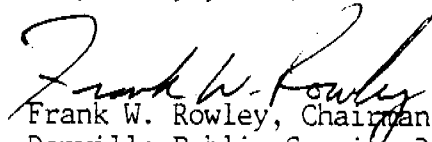
(4) Are our elected officials aware that our efforts are directed toward providing our citizenry with vital services?

Danville PSD
Page two

June 14, 1990

(4) More and more the role of State Governemnt appears to make a difficult job even more difficult. Are you aware that we provide this service at the lowest possible cost?

Very truly yours,


Frank W. Rowley, Chairman
Danville Public Service District

RECEIVED

JUN 22 1990

REGULATORY DEVELOPMENT
SECTION

June 18, 1990
[Redacted] Assoc. Inc

P.O. Box 146
Tunnelton, TN 36444-0146

Regulatory Development
Room 204 Building 3
Capital Complex
Charleston, SC 29305

Re: Hearing on Div. of Health Legislation Rules
Fees for Service

Let it be known that Denver
Water Assoc. opposes any fee for water
used by water systems for each month,
and for routine test or bacteriological
water test. Small water associations
operate on a shoestring budget as it
is. Why should we pay for test
that are required by the state?
It is our understanding that the
federal government provides funds
for this.

If these fees pass it would really
be a financial hardship to small
associations like Denver

Sincerely,
Carolyn S. Lantz Sec



CITY OF FAIRMONT

CITY/COUNTY COMPLEX
200 Jackson Street
Fairmont, West Virginia 26554
(304) 366-6211

June 11, 1990

Regulatory Development
Room 204 - Building 3
Capitol Complex
Charleston, WV 25305

Re: Comments on (Proposed) Title 64, West Virginia Legislative
Rules, Division of Health, Fees for Services, Series 51, 1990

Dear Sir or Madam:

Please find enclosed comments from the City of Fairmont
Water Department and the Fairmont Sanitary Sewer Board on the above
referenced proposed rules.

Please enter these comments into the written record for
the public hearing to be held on June 22, 1990 at 10:00 a.m. in
Conference Room B, Conference Center - Building 7, Capitol Complex
Charleston, W. Va. 25305.

I also wish to submit oral comments on the proposed rules
during the public hearing.

Sincerely,

Bruce McDaniel
Utility Manager

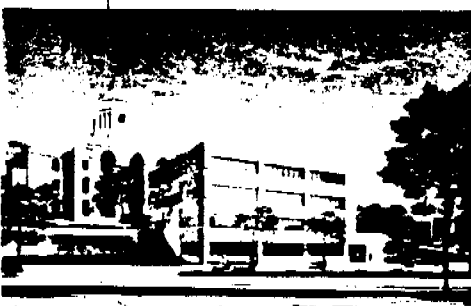
M/s

cc - Ed Thorne, City Manager

RECEIVED

JUN 12 1990

**REGULATORY DEVELOPMENT
SECTION**



CITY OF FAIRMONT

COMMENTS ON TITLE 64 WEST VIRGINIA LEGISLATIVE RULES DIVISION OF HEALTH FEES FOR SERVICES (Proposed)

The proposed fees for providing the services of the State Department of Health authorized by H.B. 4660 are unreasonable and arbitrary. The bulk of the costs appear to be allocated against water and sewer utilities. No justification for the method in which the fees were designed is given.

Utility rates are based on "cost of service" according to the West Virginia Public Service Commission. Was the cost of providing the various "services" the Department of Health lists in their fee schedule determined and the fees set accordingly, or were the fees simply arrived at by determining the department's budgetary requirement and the fees set in such a way to generate these dollars?

It is not apparent when reviewing these rules as to the method that utilities will use in determining their annual liability. Our water system sells approximately 1,400,000,000 gallons per year to our customers. Of this, 1,000,000,000 gallons are sold directly to customers while 400,000,000 gallons are sold to other water utilities for resale to their customers. The same applies to our sanitary sewer system since our Sanitary Sewer Board provides treatment services to four (4) satellite PSD systems along with direct services to our own customers. Are the fees based on total sales or are they charged for direct customer sales only?

Budget preparation and adoption has been completed with final approval in March 1990 by our governing bodies. No money has been budgeted for these fees for Fiscal Year 1991--which begins July 1, 1990. Where does the Department of Health propose this money come from?

It would seem only logical that public water and sewer utilities must pass these costs on to their customers. In the case of municipal systems, this must be accomplished through ordinances passed by the governing body with a 45 day waiting period after passage before the new rates would become effective. Public protest could send these rate cases to the Public Service Commission for their review and action. In the case of Public Service Districts and investor owned utilities, the Public Service Commission will automatically be involved in tariff approval.

Has the Department of Health worked with the Public Service Commission on the proposed fee schedule? Will the PSC expedite the "pass through" rate increases necessary to fund the payment of these fees to the Department of Health?

Comments - Title 64
Division of Health Fees for Services
June 11, 1990
Page 2

Who will pay the administrative costs for public utilities implementing the necessary rates and collecting, administrating and sending these fees to the Department of Health?

Will the PSC allow public utilities to pass this cost on to customers in a direct charge separate from the traditional charges contained with their tariffs?

Fees are listed for NOT ONLY Technical Service/Compliance based on water usage and sewage production, but ALSO for laboratory services, operating permits, construction permits, and even operator certification. What do the fees for water usage and sewage production cover if it is necessary to charge additional fees for all services?

From my interpretation of the proposed fee schedule, the potential annual cost to the City of Fairmont and ultimately our utility customers is as follows:

Water	-	\$60,156	-	\$ 83,240
Sewer	-	\$28,371	-	\$ 44,511
Total	-	\$88,527	-	\$127,751

While we understand the need for revenue in this period of tight budgets, we must be given the necessary tools to collect this revenue in order to pass it along to the Department of Health. Accountability also must be present in the manner in which the fees are arrived at and in how the funds generated by these fees are expended. Also, the redundancy of programs and services provided by regulatory agencies (Dept. of Health, Public Service Commission and Dept. of Natural Resources), along with their conflicting interests and regulations should be addressed before implementing what is little more than a cleverly disguised tax increase.

Ferwick Mountain Public Service District
P. O. Box 4
Ferwick, WV 26202

June 20, 1990

Regulatory Development
Room 204, Bldg. 3
Capitol Complex
Charleston, WV 25305

Dear Sir or Madam:

This is to register a protest with you concerning intent to implement a services and compliance fee to be assessed on water & sewage systems.

As Chairman for the Ferwick Mountain Public Service District with a customer base of 190, this fee would cost us approximately \$54.00 a month. We are currently spending more than we are taking in and have applied to the PSC for a rate increase.

We cannot afford this tax nor can our customers. Surely there is something else that could be done other than continuing to place additional tax burdens on our people.

Very truly yours,



Marion B. Myers
C.E.O.

MBM:peg

cc: Hon. C. Farrell Johnson
Hon. Walt Helmick

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

FRIENDLY PUBLIC SERVICE DISTRICT

P.O. BOX 138 • FRIENDLY • WV 26146
(304) 652-1401

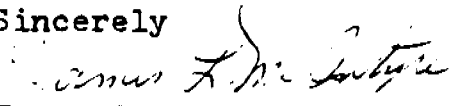
June 19, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston WV 25305

To Whom it May Concern:

We take strong exception to the proposal of the Department of Health and Human Services to levy fees upon local water and sewer systems. We believe the proposal unwarranted and an unjustified attack upon local units of government and public service districts. We also believe such a proposal will place an exceptional financial drain on small systems who are having a difficult time keeping solvent at the present time.

Sincerely


James L. McIntyre, Chairman

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

June 22, 1990

Public Hearing Division of Health,
To whom it may Concern:

We the ~~Government of the State of~~ oppose this
Proposed Taxation because we are a small community, just
in the process of getting a Water System finalized for our
area:

We have hundreds of people out of employment, because of
a factory closing down, and the Spencer State Hospital Closing
also: we have 80% of our potential water users that are
low income families. Our project cost is so that our
water bill will be approx. \$21.00 per mo using 3,000 gals
of water.

The Budget for our Project is so tight, We will have
no excess money to pay any additional taxes or any
thing - right now we are having auctions, bake sales + ect
to raise monies to pay for postage + legal ads + ect.
So when we get into operation - There will still
be no excess. and our Customers cannot stand any
additional charges on the \$21.00 for water.

We want to go on record as being opposed to
this proposal.

I. W. Smolyshev Chairman.
Jaye Randolph, Sec

RECEIVED

JUN 22 1990

REGULATORY DEVELOPMENT
SECTION

PSC faces flood of rate requests

By Jim Balow
STAFF WRITER

The state Public Service Commission could soon be swamped with applications for rate increases from water and sewer utilities if the Division of Health imposes new fees as planned July 1.

The Division of Health, using a little-noticed bill passed by the Legislature March 10, plans to start charging fees next month for a wide range of health services it has previously offered free. Water companies, for example, would have to pay 6 cents for each 1,000 gallons of water they sell to customers and would have to pay for chemical tests performed at the division's lab in South Charleston.

Sewer companies likewise would pay fees, as would dairy farms, milk plants, hospitals, nursing homes, and a variety of other businesses that are regulated by the Division of Health.

Most observers expect the water and sewer companies, which include about 250 public service districts and several hundred public, private and municipal utilities, will try to pass the fees along to their customers through higher rates. That could cause problems at the PSC, which is not prepared to cope with a flood of rate requests.

"We've looked at that on two different days," said PSC Chairman Boyce Griffith. "We haven't come to any conclusions yet."

Griffith said the PSC will

send observers to a public hearing this morning at which PSD and utility officials are expected to lodge protests with the Division of Health.

"These PSDs have already been here complaining. They had a meeting here last Friday," Griffith said. "We told them once we see what the Division of Health does, we'll attempt to react within the framework we have."

"We've got some ideas on how we can do it," he said, but added, "There is no vehicle in place that would take care of this situation."

Normally, the PSC can take up to nine months to approve rate increase applications. Rate analysts and engineers first study the application, then the legal division reviews the case and an administrative law judge makes the final decision. Public hearings are sometimes needed as well.

In some situations, PSDs can file for expedited rate increases that move through the system in a month. Griffith said the PSC is considering such a process for dealing with the proposed fees.

Griffith said the commission will examine each case separately. "With the PSDs, you may have some that will be able to absorb the cost without raising rates. Any place we can get them to absorb it, we'll try to do that."

"Or we may find the PSDs are not able to absorb it. We'll have to work out some sort of procedure for them to pass that along to their customers."

RECEIVED

REGULATORY DEPARTMENT
JUL 10 1972

City Manager
PHONE: (304) 265-1412
FAX: (304) 265-0119

City Clerk
PHONE: (304) 265-4177

City of Grafton

CITY BUILDING
1 W. MAIN ST.
GRAFTON, WV 26354

June 22, 1990

The City of Grafton would not be able to
pay any fees based upon our approved 1990-91
budget.

The cost to the City as proposed would be more
than \$2,014.⁰⁰ per month. At present the general
fund is assisting our water department

Please consider this as our motion for
water & sewerage fees to be exempted until
a rational, reasonable study has been
done.

Warren L. Bowman
City Manager

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



ORIGINAL MOTHER CHURCH OF MOTHERS DAY
FIRST MOTHER'S DAY SERVICE
MAY 10, 1908
FOUNDER—MISS ANNA JARVIS



GRANT COUNTY PUBLIC SERVICE DISTRICT

P.O. Box 816
Petersburg, West Virginia 26847
304-257-2377

RECEIVED

JUN 19 1990

Members:

Ollie Arnold

Patricia Kitzmiller

Juanita Lloyd

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

June 18, 1990

COMMENTS ON PROPOSED RULE 51 (Hearing Date: 6/22/90)

TO: Regulatory Development, Rm 204, Bldg 3, Capitol Complex, Charleston, WV 25305

FROM: Ollie Arnold, Chairman of Grant County Public Service District on behalf
of DORCAS PUBLIC SERVICE DISTRICT BOARD MEMBERS: Jack Yokum, Frances Phares
and Denver Riggleman AND GRANT COUNTY PUBLIC SERVICE DISTRICT BOARD MEMBERS:
Patricia Kitzmiller and Juanita Lloyd

PURPOSE: To protest Proposed Rule 51 (NOTE: None of us can attend the hearing
because of previous commitments)

We wish to protest proposed Rule 51.

1. We contend that The Division of Health did not furnish our districts (Grant County Public Service District and Dorcas Public Service District) with any notice concerning the effects of the ruling upon our customers. We contend that any consumer group is entitled to adequate and specific notice so that said group may determine if a rule is non-discriminatory in its effect or in its costs. We contend that in our case, it is both.

2. Since our Public Service Districts sell already-treated water, which is purchased from the City of Petersburg, the proposed charge is far in excess of any "Fees for Service" as explained by the West Virginia Board of Health Rule Abstract 1990 for CSR Title and Series: 64 CSR 51. This service would cost our districts approx. \$4,380 annually.

Our Health Department services are limited to testing of water samples (approximately 5 per month) and some educational services.

This protest was unanimously endorsed by the Board of Directors of both Public Service Districts at their regular monthly meeting of June 12, 1990, and Carol Beck, Bookkeeper, was directed to send in this protest.

Sincerely,

GRANT COUNTY PUBLIC SERVICE DISTRICT
DORCAS PUBLIC SERVICE DISTRICT

[Signature] Ollie Arnold

Ollie Arnold
Chairman of the Board of Directors

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JUN 19 1990

**REGULATORY DEVELOPMENT
SECTION**

June 20, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

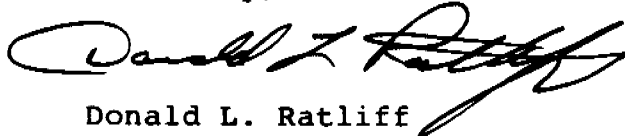
Gentlemen,

As Chairman of Greenbrier County's Public Service District #2, I have a responsibility to the customers in this area to keep the costs of this operation at a minimum. In keeping with this objective, I sincerely request that you reconsider the proposed service fees for Public Water & Sewer.

An increase in our costs of this amount would certainly have to be passed on to our customers. As it is now, our District must continually strive to keep costs at a minimum so that payment for these services will not over burden customers in an already depressed area. Therefore, let me reiterate the need to reconsider the proposed service fees.

Thank you for your consideration in this matter. I know that you will do what is best for the people of this area.

Sincerely,



Donald L. Ratliff
Chairman PSD #2

Box 134

Rupert, WV 25984

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Written Comments of W. Allan Schomaker
President and General Manager
J. C. Evans Utilities, Inc.
in the Matter of "Fees For Services" Series # 51
Proposed by the WV Department of Health and Human Services
as Authorized by House Bill 4660
and by Authority #16-1-21 and #29B-1-3

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

My name is W. Allan Schomaker and I am President and General Manager of J. C. Evans Utilities, Inc. J. C. Evans is a small investor owned Water Utility located in Logan County, West Virginia. Evans serves 2985 accounts surrounding the City of Logan; in the communities of Mitchell Heights, Monitor, Monaville, Stollings, Switzer, Justice Addition, Henlawson, McConnell, Guyan Terrace, Hidden Valley, Phico, Godby Heights, Whitman Creek, North Mitchell Heights and Pecks Mill. Our 2985 accounts represent a population served of approximately 9600. We are primarily a sale for resale company. With the exception of our Whitman Creek System we purchase the water we serve our customers. The 6¢ fee per thousand gallons of water sold is excessive to begin with, but in our case will be 12¢ or 18¢ per thousand to many of our customers. The reason being that our suppliers will pay a 6¢ per thousand gallon fee and pass it on to Evans, who will in turn add it's 6¢ fee per thousand gallons, making the fee paid by our rate payers 12¢ per thousand. We have one division that purchases water from another sale for resale water company, which adds another 6¢ per thousand gallon fee to the 6¢ fee their supplier passes through, making the fee passed through to Evans 12¢ per thousand. Evans will add its additional 6¢ per thousand fee and pass through a fee of 18¢ per thousand gallons to it's customers.

Evans believes that the 6¢ fee per thousand gallons of water is not only extreme, but is discriminatory to our customers, who will be the ultimate payers of these fees.

Evans has no objection to fees for services provided: i.e. lab fees, construction permit fees, up-grade of facilities fees. We believe that the 6¢ fee per thousand gallons is little more than an unfairly imposed tax to fuel programs more appropriately funded by General Tax Revenues.

Evans believes that the implementation of the 6¢ per thousand fee will cost our customers about \$30,000 per year. This is the on-going cost. The one time cost to the company for rate filings with the Public Service Commission of West Virginia and possible rate deficiency will be approximately \$23,000. This cost will be paid for, until rate relief is obtained, by monies that would normally buy new plant, piping, pumps, etc. With this in mind, it is easy to see that the first year cost of this 6¢ per thousand fee could be as high as \$55,900.

The first year cost breaks down as follows:

6¢ per thousand gallon passed through by suppliers	\$17,500
6¢ per thousand gallon fee for sales by Evans	12,700 *
New lab fees and Permit fees	2,700
Rate Relief Proceedings and Rate Deficiency	<u>23,000</u>
Total	<u>\$55,900</u>

* Numbers based on actual 1989 sales of water

The on-going cost to Evans and its rate payers for the new permit and lab fees, and the 6¢ per thousand gallon fee, will be around \$33,000 per year or about 4.5% of revenues billed in 1989. As part of our projected Surplus Funds available for construction these fees represent about 60% of projected available funds.

After PSC approval the cost of these proposed fees would be covered. However, until rate relief is granted these fees, would be paid from our surplus, thereby reducing our ability to build new plant or make improvements.

In summary, we believe that the proposed 6¢ per thousand gallons of water sold fee is an unfair, unjust means of funding public health programs more appropriately funded by tax revenues.

We have no objections to paying reasonable fees for services provided.

W. Allan Schomaker
President and General Manager
J. C. Evans Utilities, Inc.
P.O. Box 647
Fayetteville, WV 25840
(304) 574-3897

City Of Keyser

P.O. Box 70
Keyser, W.V. 26726
304-788-1511

The Friendliest City in the USA

June 21, 1990

Regulator Development
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

RECEIVED

JUN 27 1990

**REGULATORY DEVELOPMENT
SECTION**

Re: Division of Health
Legislative Rules
"Fees for Services"

Gentlemen:

By unanimous resolution of the Mayor and City Council, they want to go on record as being opposed to the Technical Service/Compliance Fees proposed on water and sewer use.

The proposed fees for Keyser (using 1989 usage) are:

Water (06/1000 gal.)	\$18,000
Sewer (.04/1000 gal.)	12,000
Total	\$30,000

This is equal to \$12.00 per customer.

Additional fees are also being proposed for certifying operators, construction permits, water tests, etc.

These fees, particularly the usage fee, are in affect an indirect tax being levied on the citizens of the city. One has to question the need for the usage fee. Will the fees go to provide upgraded water and sewer service or will this be used to bail out other programs within the Division?

The Council believe any fees collected for water and sewer should remain within that department and not be used elsewhere.

Very truly yours,



Glen A. Ryan, Mayor
City of Keyser

cc - Governor Caperton
Robert Schadler
Phyllis Cole
Bud Harman

KINGWOOD WATER WORKS

125 East High Street
KINGWOOD, WEST VIRGINIA 26537

June 19, 1990

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Re: Proposed Fees for Drinking Water and Sewerage Treatment Plants.

Dear Sir:

The Kingwood Water Board is opposed to any proposed fees for drinking water systems as now outlined. Our system serves a majority of people on fixed income. To ask our customers with limited resources to pay more is appalling. This is especially true when there is no plan showing how the proposed additional funds would be used.

Recently, two mining firms have laid off personnel. The impact of this situation in terms of Preston County economics is the loss of \$150,000.00 per month in wages and benefits. Yet, DHS is proposing additional fees in a state with the highest unemployment, and the lowest prospect of new industrialization.

Finally, the proposed charges for routine testing will also increase the fees charged for drinking water. All water authorities will not have a choice, but rather, will have to file rate increases to fund these proposed fees.

The Kingwood Water Works remains committed to providing quality water service. However, we are as equally committed to getting a dollars worth of value for every dollar spent. The DHS proposal should be resoundingly defeated.

Sincerely,



R. F. Kelly, Chairman
Kingwood Water Board

RFK:far

cc: Mr. Chet Fleming
WV Rural Water Association



LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA

23 VALLEY VIEW CIRCLE • VIENNA, WV 26105 • TELEPHONE 304-295-8215

June 20, 1990

To: Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Re: Public Hearing on WV Board of Health "Fees for Services", 54
CSR 51

The League of Women Voters of WV is concerned that the enforcement of safe drinking water laws has not been adequately funded. Funding from both state and federal government has decreased at the same time that there have been more demands on monitoring drinking water and improving its quality.

The League supports a fee structure for funding drinking water programs if the fees are adequate for implementation of the programs. We do not believe that the state should allow the decrease in personnel and operations of drinking water programs in the hopes of saving money. Although safe drinking water is a basic component of public health, some of West Virginia's water systems are not safe. By funding the state's Environmental Engineering Section at an adequate level, the state can help water systems all over the state improve their operations. In the long run this will save the state a considerable amount of money because the improvement of drinking water will also improve our people's health. Preventive health services must be at the forefront of West Virginia's policies for providing health services to its people.

Furthermore we urge the Health Department not to divert any of the funds collected from water systems away from drinking water programs.


Nancy Novak, President
League of Women Voters
of WV
23 Valley View Circle
Vienna, WV 26105


Helen Gibbins, Chair
Water Quality
League of Women Voters
of WV
6128 Gideon Rd.
Huntington, WV 25705

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

LITTLE CREEK PUBLIC SERVICE DISTRICT

P. O. Box 1006
Fairmont, WV. 26554
June 21, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV. 25300

These comments relate to fees proposed by the Department of Health and Human Services, and should be considered as testimony AGAINST the fees as they are presently proposed. Please include these comments with other testimony that results from the Public Hearing on June 22 in Charleston.

What do the water customers get in return for these fees? Past experience has indicated that the fees will either be transferred to general uses, which makes them a tax on water and sewer users, or they will be used to develop more rules and regulations for use in harassing small water and sewer operators who are already overburdened by paperwork and regulatory delays. We don't have money and office employees to waste. The Health people appear to judge our systems by their own indifference to value received for money spent.

Has provision been made to collect these fees? They are sufficient to cause rate increases. As Engineer for several local systems, I am aware of the cost for rate increases, both clerical, and from lost revenue during the months or years awaiting approval. It will be my recommendation to clients that they pay no fees that cannot be added directly and immediately to user's bills, like the state sales tax.

The idea of a fee of \$300.00 for upgrading a system is ludicrous. If I replace a 20 gpm pump with a \$300.00 30 gpm pump this is upgrading. The fee cost equals the pump cost. Result; I will fix the old pump to save the fee. After all, customer pressure will be low only on peak. It won't cost much to tell customers to schedule water use.

In particular, the proposed fees will retard the installation of small sewage systems. I predict that if such charges are levied, many small operators will simply let the sewage go where it chooses without treatment.

This is a scheme to centralize all control in Charleston. Seventy years ago the Russians did this, only the center was Moscow. The trick did not work in Russia and it will not work in West Virginia. It is an excellent way to give West Virginians the worst water and sewer service in the US at the highest cost.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Warren Badger
Warren Badger
Engineer 2315

LUBECK PUBLIC SERVICE DISTRICT

Post Office Box 700
Washington, West Virginia 26181
Phone 863-3341



COMMISSIONERS

James E. Smith, CHAIRMAN
Charles H. Huffman
Lee "Ox" Johnson

June 14, 1990

State of West Virginia
Division of Health
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

RE: FEES FOR SERVICE

Dear Sirs:

We have reviewed your proposed "FEES" and the "LAW" which provides for the same. We have a few comments concerning the matter.

First: The law provides that the fees be used for Health Department programs. Since the Lubeck PSD is controlled by the West Virginia Public Service Commission, We cannot use any of the revenue generated by the sale of water for anything that is not directly related to the sale of that water. Your fees would, by definition of law, be used for other Health Department programs which would not directly benefit our customers. If the fees were in the form of a "TAX" that everyone paid, then the proceeds could be used for what ever program you deemed necessary. Therefore, it is our opinion that the money generated by these fees should be earmarked for water and sewer business only, and not placed in a fund that could be drawn from for other programs.

Second: If up to this point you have been able to do business without these fees, why all of a sudden do you need \$1,800,000 more? We don't feel that the water utilities should finance an expansion of your programs that will not benefit our system directly. Does the EPA fund any of the programs you now have? Is that money not going to be there in the future? We repeat, why all of a sudden do you need so much money?

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Page 2
June 14, 1990

Third: The amount of money your asking for is far and away to much to be absorbed by this PSD. If these fees are imposed, a rate increase will be needed by everyone you bill. The chaos that will be caused by the move to the PSC will hit about 20 on the Richter Scale. The West Virginia Public Service Commission will take almost a year to decide on the rate increases. How are we to pay the fees in the meantime? If we cannot pay for the first year will we be required to make up the back payments from money we don't have?

Forth: The bacterial samples we are required to have done each month will cost Lubeck in excess of \$90.00 if we use your lab. Should other labs have competitive prices, we will take our business to them and further damage your program. If your prices for lab tests were more reasonable, and the lab operated as efficiently as it does now, the districts would use your program and help fill your coffers.

Finally, we feel that some fees are necessary. However, we do not feel that we should finance all other programs for the Health Department. Make the fees reasonable and assure us that they will properly spent and we will support your programs.

Sincerely,

Bill Packard, Manager

June 19, 1990

Regulatory Development
Charleston, W.V.

Dear Sirs,

I am very much opposed to massive fees for water and wastewater systems, which has been proposed by Department of Health and Human Services. Our local sanitary board have asked for a rate increase, which is pending now. Water rates have to be increased soon. Unemployment is high in this area, economy is poor. The elderly and retired people can hardly meet their obligations now. How can you burden them any more?

I am against this ridiculous proposal.

Sincerely,

Mary E. McLain



MASON COUNTY PUBLIC SERVICE DISTRICT

105 MAIN STREET

TELEPHONE 675-6399

POINT PLEASANT, WEST VIRGINIA 25550

June 21, 1990

W. Va. Dept. of Health & Human Services
Regulatory Development
Capitol Complex
Building 3, Room 204
Charleston, W. Va. 25305

Subject: Effect of Proposed Water Fees on Mason
County PSD

Gentlemen:

Your proposed health service fees are of great concern to this District. The level of these fees will slow our annual capital expenditures for expansion by 20% to 30% and accelerate the need for system rate increases.

A great portion of our District has been built by a small extension at a time, within the limits of our operations budget. We continue to receive inquiries for small extensions from areas where water is still purchased, transported and/or carried for household use.

I estimate that your proposed fee structure would tax our system \$10,000 to \$12,000 a year, which bottom line means the forfeiture of two or three small extension projects which translates to 15 to 20 potential customers losing water service for that year.

Furthermore, at an accelerated pace, rate increases will have to be passed on to the customers as well. The customer ultimately suffers. Is this the result you want - curtail growth and increase rates? I think not. I urge you to reconsider the magnitude of your fees and propose something more workable.

Very truly yours,

MASON COUNTY PUBLIC SERVICE
DISTRICT

Brent L. Clark

Brent L. Clark
Manager

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

MASON COUNTY PUBLIC SERVICE DISTRICT

Current Annual Usage, June, 1989/May, 1990 = 124.3M gallons or
124,300K gallons/year

Usage Fees

124,300K gallons x \$0.06 = \$7,458/year Users Fee

10% usage increase due to growth

*136,730K gallons x \$0.06 = \$8,204/year Users Fee

Bacteriological Tests

12 x \$10 = \$120	-	Letart
6 x 10 = 60	-	Crab Creek
6 x 10 = 60	-	Lakin
\$240	-	Total/year

Routine Tests

3 x 4 = 12 tests x \$10 = \$120 total/year

Construction Fees

8 projects/year x \$300 = \$2,400/year

Operation Permits

\$100/year

Possible Total Impact: \$11,064 = 2 to 3 small extension projects
or 12 to 20 customers, potentially

6/21/90

MOVRC

MID-OHIO VALLEY REGIONAL PLANNING AND DEVELOPMENT COUNCIL

Affiliated With The

Mid-Ohio Valley Area Development Corporation

P.O. Box 247, Parkersburg, WV 26101

(304) 295-9312

June 18, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

To Whom It May Concern:

We take strong exception to the proposal of the Department of Health and Human Services to levy fees upon local water systems. We believe the proposal to be frivolous and manipulative in its intent, exorbitant in its structure and an unwarranted and unjustified attack upon local units of government and public service districts.

The abuse of authority exhibits a callous disregard for the pragmatic financial issue of local water service provision and a blatant attempt to disguise a tax with funds to be directed to the general fund pool as a service fee, the value of which will be returned to local beneficiaries.

We trust that fairness will dictate an end to this pernicious device and direct the Department of Health & Human Services to the Legislature for its funding. It is not the intent of our federal system of government for localities to assume responsibility for funding State administrative units.

Thank you for this opportunity.

Sincerely,

Terry Tamburini
Terry Tamburini
Executive Director

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JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**
TT:pg

MOVADC

June 18, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

Re: Division of Health Proposed Rule
"Fees for Service" Public Hearing

Dear Sirs:

The fees under the proposed rule "Fees for Service" are much too high, are clearly discriminatory and are probably illegal.

We operate both a water and sewer system in Monongalia County and will be subject to both the \$0.08 per thousand gallons of water sales and the \$0.04 per thousand gallons of sewer sales.

Our fees to the West Virginia Public Service Commission amount to \$12,325 per year. Our fees to the Department of Natural Resources amount to \$2,500 per year. Our fees to the Health Department under the proposed rule will be in excess of \$200,000 per year.

We support a fee to administer the drinking water regulations and would support a fee structure where our customers would pay the full cost of administering the regulations in Monongalia County. But, there is no way that this cost would approach \$200,000 per year. The Health Department will spend more time administering the regulations in the small systems than in large systems like ours. The cost of administering the water and sewer systems by the Health Department is clearly not proportional to the amount of water sold and the fees should be structured in a manner where the fee equals the Health Department's cost of administration. The proposed fee structure clearly discriminates against customers in the large systems and is therefore, discriminatory and probably illegal. The urban customers will be subsidizing the customers living the good life out in the uncongested rural areas.

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

Because the fees will go into a general fund and be used for services provided by the Health Department, other than administering water and sewer systems, we feel that the fee structure is unfair and possibly illegal. Water and sewer customers have no representation when the fees are used for flu shots or prenatal programs. We think that the courts will determine that you cannot collect a fee from a water or sewer customer and spend it on another program.

We have been unable to get a clarification from the Health Department, but it appears that customers on our water and sewer satellites will face the fee twice. We will pay a fee on what we sell wholesale to the satellite company, and the satellite company will pay a fee on their sales to their customers. The fee will trickle down to that customer two times. This is discriminating against the customer whose water supply is purchased wholesale from another water company and is probably illegal.

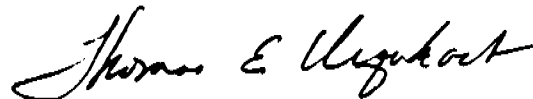
Article 64-51-4 of the proposed rule places too much authority with the director. He has already demonstrated that he has no idea of what a reasonable fee should be. To give him the authority to set reasonable fees by simply filing with the Secretary of State is unacceptable.

We think that the estimate of annual collection of fees given by the Division of Health under it's fiscal note for proposed rules is low. Using our \$200,000 per year, based on known sales quantities, we have estimated charges to the other municipalities in the state. Just using the eight largest municipalities in the state, we estimate fees from the \$0.06 on water and \$0.04 on sewer for these would equal \$1,800,000. that does not include any of the smaller municipalities or any of the Public Service Districts in the state.

This rule appears to have been quickly put together without proper information or adequate consideration of it's consequences. The entire process should be re-thought with input from the water and sewer systems in the state.

Yours very truly,

MORGANTOWN UTILITY BOARD



Thomas E. Urquhart
General Manager

TEU/kpg

MT. ZION PUBLIC SERVICE DISTRICT
P.O. Box 622
Millstone, West Virginia 25261

June 20, 1990

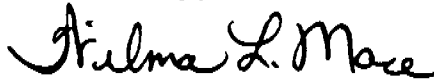
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

To Whom It May Concern:

We are opposed to the proposal of the Department of Health and Human Services to levy fees upon local water systems.

Please direct the Department of Health & Human Services to the Legislature for its funding. This would be too large a burden on the small public service districts.

Sincerely,



Wilma L. Mace
Secretary

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



NITRO SANITARY BOARD

COMMENTS ON TITLE 64 WEST VIRGINIA LEGISLATIVE RULES DIVISION OF HEALTH FEES FOR SERVICES (Proposed)

Fees as being proposed for providing the services of the State Department of Health authorized by House Bill 4660 are, in our opinion, unreasonable and arbitrary. In reviewing the proposal it would appear that the bulk of the costs to be allocated by the State Department of Health are primarily against water and sewer utilities. There seems to be no justification for the method in which the fees were designed.

As we are aware, utility rates are based on "cost of service" according to the West Virginia Public Service Commission. How did the Department of Health reach the dollar figure they have stated they need; was the cost of providing the various "services" the department lists in their fee schedule determined by a "cost of service" study, or were the fees simply arrived at by determining the department's budgetary requirement and the fees set in such a way to generate the dollars they state they require?

Nitro does not provide water service to customers, we operate and maintain a waste water system only; our customer billing is derived from figures provided to us by the West Virginia American Water Company, our annual readings from the water company are approximately (FY 88/89) 187,111,200 gallons of consumption. We also treat waste water from a satellite PSD. Are the fees based on total sales or are they charged for direct customer sales only?

You will find that Budget preparation and adoption has been completed with final approval in March, 1990 by our governing bodies. NO money has been budgeted for these fees for the Fiscal Year 1990/1991--which begins July 1, 1990. Where are we suppose to get the money needed should this proposal be approved?

It would seem only logical that public water and waste water utilities must pass these costs on to their customers. In the case of a municipal system, this must be accomplished through ordinances passed by the governing body with a forty-five (45) day waiting period after passage; this after two reading of the proposed ordinance, and a public hearing; before the new rates would become effective. Public protest could send these rate cases to the Public Service Commission for their review and action. Should this occur, then a municipal waste water system would be faced with further delay, with advertising, another public hearing, and a case hearing with the Public Service Commission. All of this would place the enactment of a rate increase far into the future, supposing that the governing body would pass the rate increase request in the first place. You have the original forty-five (45) days, and a minimum of an additional one hundred, twenty (120) days through the various Public Service Commission mandate period.

Has the Department of Health worked with the Public Service Commission on the proposed fee schedule? Also, will the Public Service Commission expedite the "pass through" rate increase necessary to fund the payment of these fees to the Department of Health?

Who is to pay the administrative costs for the utilities implementing the necessary rates and collecting, administrating and sending these fees to the Department of Health? I think you will find most systems, more especially your small systems, are operating with the bare minimum of office staff as it is, and their time is already allocated to the limit.

Will State Law and the Public Service Commission allow public utilities to pass this cost on to the customers in their boundaries as a direct charge separate from the traditional charges contained with their tariffs?

The Department of Health proposed fees list NOT ONLY Technical Service/Compliance based on water usage and sewage production, but ALSO for laboratory services, operating permits, construction permits, and even operator certification. If the Department of Health proposes to charge .04 per 1,000 gallons of consumption, then what do the fees for waste water production cover?

Based on my interpretation of the proposed fee schedule, the potential annual cost to the Nitro Sanitary Board...this does not include any charges that will deal with the satellite PSD...and ultimately our utility customers is as follows:

Waste Water - \$ 8,214.12

This figure does not reflect any charges over and above that which deals only with consumption. The various permit fees, construction permits, etc., are not a part of the above figure.

The Nitro Sanitary Board customer base is 2,600 active residential customers, almost 30% of that number are SENIOR CITIZENS, many on poverty level incomes, others on moderate level fixed incomes. Nitro, at this time is also struggling with many of its citizenry being out of work or on minimum wage jobs.

I would also like to point out that during the last Fiscal Year, the Department of Natural Resources was also granted the ability to assess charges on the waste water utility, this to the tune of \$2,500 annually, with additional charges for various other services they provide, such as permit renewal. In addition to the \$2,500 we were assessed this Fiscal Year, we were also charged \$2,125 for our NPDES permit renewal. This was also an item that was not budgeted for during the current Fiscal Year.

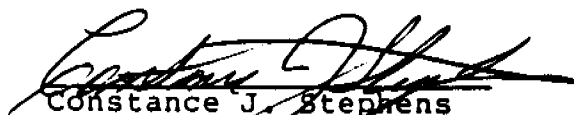
Another point that gives me great concern with this fee is the fact that our system as a point of reference, has very little contact with the Department of Health. It has been years since anyone from that department has even made a trip to our system, for any purpose. Our only contact on a routine basis is through the Licensing of our operators. Any fees charged for the various services provided, such as: (1) laboratory services, (2) construction permits, (3) operator certification, would seem a reasonable request as we do receive this service and it does benefit the waste water industry. Beyond that I see no justification for charges, nor do I see any benefits from the Department of Health to our system.

While we understand the need for revenue in this period of tight budgets, we must be given the necessary tools to collect this revenue in order to pass it along to the Department of Health. Also a redundancy of programs and services provided by regulatory agencies (Department of Health, Public Service Commission, and Department of Natural Resources), along with their conflicting interests and regulations should be addressed before implementing what is little more than a cleverly disguised tax increase.

In my opinion, we are "fee charged" and "governed" by three (3) or four (4) agencies too many as it is. Let us answer to one "utility" governing body, deal with one "utility" governing body, pay one "utility" governing body for services rendered, when and if they are utilized. Not pay some arbitrary dollar amount for something we do not even use, charge the systems for services we are given, and charge at a reasonable and equitable rate, fair for all.



Don Karnes
Mayor-Chairman
City of Nitro
Nitro Sanitary Board



Constance J. Stephens
General Manager
Nitro Sanitary Board

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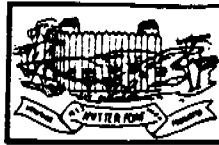
JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Mayor:
Jack Gorby

Recorder:
Don "Duck" Webster

Treasurer:
Tammy Gwinn



CITY OF NUTTER FORT

1415 Buckhannon Pike
Nutter Fort, West Virginia 26301
Phone 624-4005

Council Members:
Larry Robey
Kenneth Haslebar
Tino Medina
Richard D. Morrison
Lewis "Chip" Peters

June 21, 1990

The City of Nutter Fort wishes to protest the proposed fee assessment by the Division of Health at the public hearing entitled Fees for Services, Series 51.

We protest because we simply can't afford to pay additional fees from our water and sewage departments. We have transferred funds from other departments to meet our obligations in our water fund, an action that the state tax department does not condone. However, because of our very tight budget in the water department, we have no choice.

Our water checking account as of June 21, 1990 held \$217.25. Our sewer account held \$4,000.00. The only way we can take on more expense and still survive, is to pass it onto the customers. We have been designated a low and moderate income city, with many senior citizens who have a difficult time paying current rates.

We, the municipalities, have been hit several times with fees and new laws that strain our budget to the limit. HB 4061 that relieved the landlord of unpaid water bills will cost us. The DNR water pollution control permit was increased by 2,500 percent. A bill was approved to pay cost of living increases to pensioners. All of these have an effect on water rates, since a percentage of increases must be paid from each account.

It is simply a matter of having municipal governments fund the departments that the State government can't or won't.

We cannot continue to absorb these fees, without charging the people back home for them. And they can't afford to pay them.

We ask the Department of Health and Human Services to give the cities a break and go back to State Government for their funding. That's where it should be done.

Sincerely,

Jack C. Gorby
Jack C. Gorby
Mayor

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

46223

PINCH PUBLIC SERVICE DISTRICT
DRAWER I
PINCH, WV 25156
(304) 965-3071

June 18, 1990

Honorable Gaston Caperton
Governor of the State of West Virginia
Governor's Office
State Capitol Complex
Charleston, WV 25305

Dear Governor Caperton:

The Pinch Public Service District would like inform you of a matter that concerns our District and many other districts. This being the new fees the Department of Health and Human Services is attempting to impose upon water and sewer utilities. In addition to any state funding the department receives, the federal EPA also provides funds for the administration of the safe drinking water act. If the new fees are approved, funding over and above present levels will be achieved with no commitments or plans to expand the current program or service level.

Implementation of the proposed fees could have a devastating effect on small water and sewer utilities. I am referring to PSD's, municipalities and water/sewer associations. Many of these small utilities operate in the red or close to the red on a regular basis. Unlike private utilities, these smaller, public utilities have no source of generated revenue other than fees for water or sewer services provided. Private companies have other methods of generating revenues to help offset the burden these fees will place on the utilities.

Many of these small utilities were put in place by the people, for the people with the help of local county commissions. These small utilities were there to help people in desperate need of services when private companies were not interested or willing to help.

If the fees are approved, affected utilities will have no alternative than to pass these fees onto the customers. Once the lengthy process of filing for and receiving new tariff allowances is passed by the Public Service Commission, the burden will be passed onto the customers, the taxpayers of West Virginia. It is unfair to impose a "fee" for water and sewer services at the utility level simply to keep from asking the legislature to pass a "tax". In the end, it is an additional burden to the taxpayer, regardless of what it is called or how it is enforced. This group of individuals already funds the Health Department through routine taxes that are paid. It is not fair to place an additional burden on these individuals. The proposed fees are not even specifically appropriated, at this time they will simply serve as supplemental funding.

By law, the Health Department is mandated to fulfill certain obligations. Funding is appropriated to meet these obligations. Why should water and sewer utilities be forced to shoulder the cost of

20

B.A. 41

what the Health Department is duty bound to fulfill through the daily course of business. If the Health Department needs supplemental funding for special services provided, these charges should be evaluated on a case by case basis and should be charged to utilities requesting the special service. Why should all utilities and customers shoulder the burden for just a few?

If the fee schedule is approved, the fees should be appropriated back specifically to the areas from where they were collected. All water fees should be used to supplement water services and projects only. The same should be applicable to fees collected from sewer systems.

A public hearing is scheduled for Friday, June 22 At 10:00 a.m. We have been informed that these fees may be put in place on an emergency basis immediately following the hearing. It is our intention to send a representative to the hearing. Any assistance your office can provide with regard to halting the implementation of these fees would be greatly appreciated.

Sincerely,

Whit Myers/kab

Whit Myers
Commissioner

WM:kab

cc: Senator J. D. Brackenrich
Senator Thomas J. Hawse, III
Senator Robert K. Holliday
Senator Charlotte Jean Pritt
Delegate Barbara Burruss Hatfield
Delegate Sam Love
Delegate Jim Reid
Delegate Patricia Holmes White

Rt. 13, Box 402
Morgantown, W. Va. 26505

June 20, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, W. Va. 25305

Gentlemen:

The Morgantown Utility Board sent us a copy of the fees you are proposing effective July 1, 1990.

As a small public service district that buys its water from Morgantown Utility Board, we feel that the fees you propose to levy against the water systems are very harsh. Especially, the 6 cents per thousand gallons of water sold which Morgantown proposes to pass on to us as customer. It becomes 12 cents per thousand if we have to pay another 6 cents to you. This means that our customers will be getting another water rate increase as we will have to pass on the cost to meet the expense. This fee alone would mean as much as \$6,000 to \$12,000 additional operating cost per year when we are already searching for ways to reduce costs.

You show a listing of substantial fees for the service you provide that we sometimes use; but, what services are you offering for this additional \$6,000 to \$12,000 fee? How are we to justify this new cost to our customers?

We are not in the business of making money. Our objective was and is to bring a much needed resource--water-- to the people of this rural area of Monongalia County at a minimum cost. We receive no state, county, municipal, nor any other operating funds; and, yet somehow we must find funds to enlarge our system because of area growth. Since 1984, we have been operating at an annual deficit of \$9,000 to \$15,000. We have managed to survive without a rate increase because we had some reserve funds. Now that these reserve funds are nearly depleted, we have had to apply for a rate increase; this is currently pending before the PSC.

We must object to this method of increasing your revenue; we simply cannot afford to subsidize the State Department of Health in this way.

And, finally, a "user fee" on such a necessity--water--is an injustice. The actual cost of providing good, clean water is already too high; and, we are surprised that the State Health Department would propose to add to the cost by imposing a user fee.

Sincerely yours,

PLEASANT VALLEY PUBLIC SERVICE DISTRICT

Stella S. Long
Stella S. Long, Secretary
Willis Raber, President
Michael Bukrim, Treasurer

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

The City of Point Pleasant

400 VIAND STREET
POINT PLEASANT, WEST VIRGINIA 25550
304-675-2360

June 19, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Gentlemen:

We are writing to protest the West Virginia Department of Health and Human Services proposed fees for water and waste-water systems.

The City of Point Pleasant has worked very hard to keep water and sewer rates as low as possible; however, we have already been forced to construct a new sewer treatment plant and sewer rates have more than doubled since 1988. This fee represents yet another increase and will create undo hardship for too many of our residents.

The City provides these vital services at the lowest possible cost and we believe state and federal government should bear the cost of enforcing new rules and regulations they place on our local systems.

We are asking you to give careful consideration to the citizens of Point Pleasant and West Virginia before placing this additional burden on them.

Sincerely,

Russell V. Holland

Russell V. Holland
Mayor

Etta M. Gheen

Etta M. Gheen
City Clerk

Dan Rodgers

Dan Rodgers
Public Works Director

RECEIVED

JUN 23 1990

**REGULATORY DEVELOPMENT
SECTION**

RUSSELL V. HOLLAND, Mayor

ETTA M. GHEEN, City Clerk

CITY OF RICHWOOD

"Gateway to the Monongahela National Forest"
RICHWOOD, WEST VIRGINIA 26261

Bob Johnson, Mayor
846-2596

John Kessler, Recorder
846-2597

June 15, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 26261

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

Dear Sir,

I am writing in objection to the proposed fees for Water and Wastewater Systems. These systems have been starving from lack of funding to operate properly for a long time.

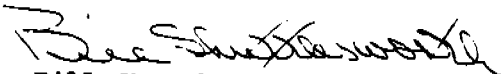
Tremendous mortgage payments, uncalled for DNR Fees, Public Service Fees, Etc., are putting a heavy burden on these utility systems. In order to pay additional fees, we would be forced to ask for a rate increase in our services. Why put such a burden on the customers whom are already struggling to meet their monthly bills.

Our small town has been forced to lower the amount of paid holidays, curtail all sick days, place a freeze on wages, have a hiring freeze, and most of these cuts were due to a rise in insurance cost, which the state has permitted to happen.

You state that part of the revenue would go to "allow funds to be collected to provide necessary Public Health Services including the operation of programs to help assure safe drinking water. Is it not true that Federal and State Funding are available for these programs?

Plesse do not let these fees be placed on our systems.

Sincerely,


Bill Shuttlesworth: Water Commissioner


Patsy Bailey: Office Manager

c.c Ferrell Johnson: Delegate
c.c Walt Helmick: Senator

CITY OF RICHWOOD

"Gateway to the Monongahela National Forest"
RICHWOOD, WEST VIRGINIA 26261

Bob Johnson, Mayor
846-2596

John Kessler, Recorder
846-2597

June 15, 1990

Mr. Ferrell Johnson
P.O. Box 61
Summersville, West Virginia 26651

Dear Delegate Johnson,

I am writing in regards to the proposed Fees which the Department of Health hopes to place onto the Water & Wastewater Systems of our state.

We are totally objected to these fees. Our System, and most systems in the state cannot handle the burden being placed on them.

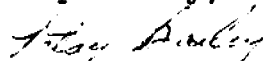
As you will see from the enclosures, we have made every cut available in our town to exist. The state should follow suit, cut their spending, instead of placing the burden on John Doe Public.

The Department of Health & Human Services is a good program, but they would save millions of dollars per year if they were to employee people to investigate the fraud that goes on in their department. Many a people are falsing obtaining goods through their department and then we are ask to pay the price for this abuse. No Mr. Johnson, I cannot see a burden being placed on these systems

We in the City of Richwood, hope that you will work on our behalf come June 22 when you return to Charleston.

Thank you.

Respectfully,



Patsy Bailey: Office Manager
Phone: 846-2571

Bill Shuttlesworth: Water Commissioner

City of Ripley

113 SOUTH CHURCH STREET
RIPLEY, WV 25271
Phone: (304) 372-3482

June 22, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25504

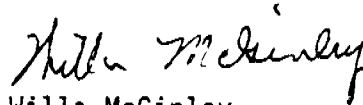
To Whom It May Concern:

We wish to register an emphatic protest to the proposal of the Department of Health and Human Services to levy fees on local water systems.

It is not the function of cities to rescue departments of state government from the decisions of the legislature.

Our water system is already sufficiently monitored. This new fee will not go in any way to any fund that will benefit city water systems but will only hamper our efforts to provide safe, clean, affordable water to our customers.

Sincerely,



Willa McGinley
MAYOR

WMc/isb

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Rt. 2, Box 16
Morgantown, WV 26505
June 8, 1990

Judy Smith
Division of Health
Building 3, Capitol Complex
Charleston, WV 25305

Re: Fees for Services
CSR Title & Series 64 CRS 51

Dear Ms. Smith,

We would like to register a formal complaint on Fees for Services 51.

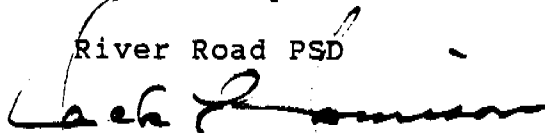
We feel that these monies should not be used for all services for the Health Department and go into the general fund.

We are opposed.

This is like a tax. Taxing water company people for the Health Department is not right. We don't think that our water customers should have to absorb the extra money for the general public.

Yours truly,

River Road PSD



Jack P. Jamison
Chairman

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JUN 11 1990

**REGULATORY DEVELOPMENT
SECTION**

DIAL H. ROLLINS
RT.2.BOX 339
FAYETTEVILLE. W.V. 25840
JUNE 14, 1990

STATE HEALTH DEPARTMENT
CAPITOL COMPLEX
CHARLESTON, W.V. 25305

' ATTENTION: RAYMONA KENNEBURG: ETAL.

EVERY TIME YOU PICK UP A NEWS PAPER YOU SEE WHERE SOME STATE "GIZZARD" HAS BEEN GRANTED A PAY RAISE OR A NEW LAW IS NOW IN AFFECT GRABBING MORE MONEY FROM WHAT FEW PEOPLE WHO ARE LEFT IN THIS STATE, WHERE AN ESTIMATE FORTY SIX THOUSAND HAVE HIT THE SUNSHINE TRAIL SOUTH IN ORDER TO LIVE.

THEY CRY INFLATION AS THE CAUSE AND REALY IT IS SIMPLY GREED WITH EVERY BODY WANTING TO BE A MILLIONAIR AT THE OTHER FELLOW'S EXPENSE. OUR LEGISLATURE AND PREVIOUS ADMINISTRATION ALONG WITH THE PRESENT GOVERNOR ARE JUST A COSTLY JOKE AND A BIG ONE AT THAT. OUR TAX MONEY IS WASTED AND THE TAX PAYER IS ASKED TO MAKE UP FOR IT. THEY MAKE THE PROBLEMS AND THEN THROW MONEY AT IT. OUR STATE GOVERNMENT HAS NOT ONLY GONE SOUR IT IS **ROTTEN TO THE CORE.**

WHILE COMMUNIST ~~NATIONS~~ ARE COMING OUT FROM UNDER THE YOKE, OUR STATE IS BECOMING MORE COMMUNISTIC ALL OF THE TIME WITH MORE GOVERNMENTAL REGULATIONS AND MORE TAXES TO SUPPORT THEM.

THE IMPOSITION OF THE STATE HEALTH'S WATER RATE AND SEWAGE IS A BACK DOOR APPROACH AND AN EXAMPLE. JUST HOW LONG DO YOU THINK THIS TYPE OF ROBBERY CAN CONTINUE UNTIL THE CAP FLIES OFF?

THERE ARE NOW SO MANY WIDOWS ON SOCIAL SECURITY AND FIXED INCOMES THAT ARE BARELY EXISTING NOW. SO WHY ADD MORE TO THEIR BURDEN. YES OUR STATE GOVERNMENT IS SO ROTTEN THAT IT IS READY TO TOPPLE UNDER ITS OWN WEIGHT. IT IS FINANCIALLY OPERATING ON A CREDIT CARD AND NOW WANTS TO BANKRUPT THOSE OF US WHO MAKE ITS MEANS OF EXISTENCE. SO WHY SHOULD THE STATE HEALTH DEPARTMENT ADD MORE TO SEWAGE AND WATER RATES AND HELP EXTERMINAGE SO MANY PEOPLE WHO ARE BARELY MAKING IT NOW?

ANSWER ME,

Dial H. Rollins

P.S. PASS THIS LETTER ON TO OTHER WHEELS. WE HAVE HAD IT UP TO OUR NECKS.

WAITING FOR YOUR ANSWER

Water and sewage increases coming to customers statewide

By Jim Balow
STAFF WRITER

West Virginians should prepare to pay more for the water they buy and for the sewage they must treat.

Starting next month, the Division of Health plans to impose a series of fees for various services they have been providing for free, including the water and sewer companies they regulate. The utilities, in turn, plan to pass those costs on to their customers.

As outlined in its proposed Rule 51, the Division of Health would charge all public and private water companies 6 cents for each 1,000 gallons of water they sell to customers. Unmetered customers would be charged 27 cents a month. Sewer companies would pay 4 cents per 1,000 gallons.

The division would also charge

for water tests performed at its South Charleston lab, and would charge fees for permits to build water and sewer facilities, operate water and sewer systems, and run dairy farms and milk plants. Other fees would be charged for inspecting medical X-ray machines, reviewing plans for and inspecting new hospitals and nursing homes, and enforcing asbestos abatement programs.

News of the proposed fees caught some utility managers by surprise, though the Legislature paved the way for the fees March 10 when it passed House Bill 4660, which allows the Division of Health to charge user fees for services it provides.

The division published its proposed fee schedule May 23 and will hold a public hearing June 22 to receive comments.

Officials in the division expect

a heavy turnout and some lively comments at next week's hearing. Already, several people have submitted written comments and, not surprisingly, none favored the fees.

Dan Halloran, manager of the Charleston Sanitary Board, had not heard about the proposed fees until a reporter called him this week.

"Good Lord," Halloran said when he learned sewage plants would be charged 6 cents for each 1,000 gallons of waste water they treat. Halloran estimated the fee would cost the city about \$68,000 a year.

"That's a nice rate to drop on the citizens of Charleston when they ought to be cutting the size of state government," he said.

"How come we didn't hear

(Please turn to Page 2A, col. 3)

HOLD YOUR NOSE RAYMONA. THE BULL
HAS JUST PASSED BY

Water and sewage increases are coming

about this earlier?" Halloran asked. "It's just more taxation to support a government that this state just can't afford to support."

Halloran said legislators don't have the courage to raise taxes, so they instead raise fees.

Halloran said the Sanitary Board would pass the fees along to its customers. "We'll just go to City Council and get a rate increase."

Raymona Kinneburg, deputy secretary of Health and Human Resources, said the Legislature cut the Division of Health budget this year by \$560,000 with the understanding the division would recoup that loss through the new fees. She estimates in succeeding years the fees will bring in about \$1.8 million each year.

As proposed, the fees will go into a revolving fund to be used only for public health programs, Kinneburg said. However, the fees not to go back directly to the program for which they are charged, she said.

"It may be true that, say, the milk fees would not go toward paying the salary of the person who runs the milk program," she said. "Basically, there will be public health fees dedicated primarily for environmental health services and laboratory services."

Some utility officials are worried that the fees won't directly support the regulating programs.

"We don't have any problem with a reasonable fee for any service provided by the Division of Health," said Steve Chambers,

in-house lawyer for West Virginia American Water Co., the state's largest water company.

"Where we have a little problem is we're not clear what service the Division is providing for the 6-cents-per-1,000-gallon fee."

Though that fee would cost a typical family only about \$3 a year, Chambers estimates the total fee West Virginia/American would have to pay could reach \$800,000 a year. "As a whole, it's a significant amount," he said.

Chambers said the company would ask the Public Service Commission for a rate hike. "We can't eat \$800,000 or more in expense."

"We don't know where the Public Service Commission stands on

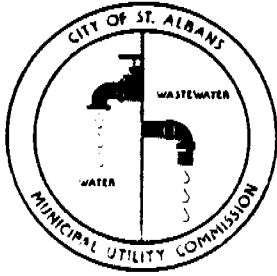
it. If this gets put in on an emergency basis in less than a month, we may have trouble catching up."

Chambers also questions the division's revenue estimate. "When you look at their fiscal rate of \$1.8 million and we provide \$600,000, we think they grossly underestimate what their fees will bring in."

Vic Wilford, assistant director of the Environmental Engineering Division, said the water fees are needed to meet the ever-rising cost of meeting federal Clean Drinking Water Act standards.

"The question is, do you want to pay slightly over \$3 a year to assure safe drinking water? Of course, no one wants to pay money," Wilford said.

Ashland employees to fight more in



City of St. Albans
Municipal Utility Commission
1499 MacCorkle Avenue • P.O. Box 1270
St. Albans, West Virginia 25177

June 21, 1990

MAYOR AND CHAIRMAN
A. EDDIE BASSITT
(304) 727-2971

COORDINATOR
GROVER C. MOORE, JR.
(304) 722-3355

OFFICE MANAGER
MS. DARLENE GREEN
(304) 722-3355

CITY OF ST. ALBANS
MUNICIPAL UTILITY COMMISSION

SUBJECT: COMMENTS ON TITLE 64 WEST VIRGINIA LEGISLATIVE
RULES DIVISION OF HEALTH FEES FOR SERVICES (PROPOSED)

Due to the lack of justification for the method in which the fees were designed, it is our feeling that the proposed fees for providing the services of the State Dept. of Health authorized by H. B. 4660 are extreme and arbitrary. The bulk of the costs appear to be allocated against water and sewer utilities.

The WV Public Service Commission approves utility rates based on "cost of service. HOW WAS THE FEE SCHEDULE DETERMINED FOR THE DEPT. OF HEALTH?"

We are uncertain as to the method to use in calculating our anticipated customer expense. ARE THE FEES BASED ON TOTAL SALES OR ARE THEY CHARGED ON TOTAL GALLONS TREATED? WHAT ABOUT WATER SOLD TO OTHER UTILITIES FOR SALE?

Our new fiscal year begins July 1, 1990 and projections do not include Dept. of Health fees. Our initial interpretation of this proposed fee schedule indicates the potential annual cost to our customers would be appx. \$45,000.00. WHERE DOES THE DEPT. OF HEALTH PROPOSE THIS MONEY TO COME FROM?

Our governing body could pass ordinances but with a 45 day waiting period after passage before the new rates would be effective or with public protest, rate cases would go to the Public Service Commission for review and action - it could take several months to implement a new rate structure. HOW WOULD THIS FEE SCHEDULE BE ENFORCED? IF THERE ARE DELAYS, ARE UTILITIES REQUIRED TO GO BACK RETROACTIVELY TO COLLECT FROM CUSTOMERS?

WHO WILL PAY THE ADMINISTRATIVE COSTS OF PUBLIC UTILITIES TO IMPLEMENT, COLLECT AND ADMINISTER REMITTANCE TO THE DEPT. OF HEALTH?

WHAT DO THE FEES FOR WATER USAGE AND SEWAGE PRODUCTION COVER IF IT IS NECESSARY TO CHARGE ADDITIONAL FEES FOR ALL SERVICES?

While we realize the need for revenues during this period of poor economic conditions, the method of ACCOUNTABILITY must be uniform when fees are derived and expended. It is our opinion that our structure contains redundancy, conflicts of interest and regulation within programs and service provided by regulatory agencies (DEPT. OF HEALTH, PUBLIC SERVICE COMMISSION, DEPT. OF NATURAL RESOURCES).

continued.....

PAGE 2
JUNE 21, 1990
COMMENTS ON TITLE 64 WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH FEES FOR SERVICES (PROPOSED),
CITY OF ST. ALBANS, MUNICIPAL UTILITY COMMISSION

PERHAPS IT WOULD BE IN THE BEST INTEREST OF THE CITIZENS OF
WEST VIRGINIA FOR US TO WORK TOGETHER TO ESTABLISH A MORE ECO-
NOMICALLY FEASIBLE SERVICE AND FEE STRUCTURE.

RESPECTFULLY SUBMITTED BY:

A. Eddie Bassitt

A. EDDIE BASSITT, MAYOR-CHAIRMAN
CITY OF ST. ALBANS
MUNICIPAL UTILITY COMMISSION

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL — PHONE (304) 340-3200
CHARLESTON 25305

JANE PRICE SHARP
810 SECOND AVENUE
MARLINTON, WV 24954
PHONE (304) 799-4973

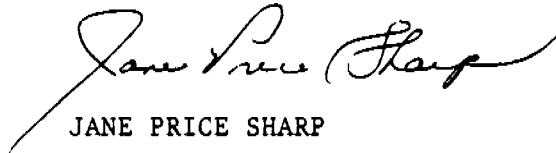
Committees:
Education
Political Subdivisions

June 22, 1990

Regulatory Development
Health Department

I would like to protest the recently proposed water and sewage fees as being excessive for small municipalities.

A town in my District, my home town, Marlinton, recently approved an increase to satisfy FHA requirements and these fees will take that increase.


JANE PRICE SHARP

RECEIVED

JUN 27 1990

**REGULATORY DEVELOPMENT
SECTION**

SILVERTON PUBLIC SERVICE DISTRICT

ROUTE 1, BOX 176
RAVENSWOOD, WEST VIRGINIA 26164

June 13, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

To Whom It May Concern

Re: Proposed rule # 51

The Silvertown PSD would like to go on record at you hearing of June 22, 1990 as being totally against this proposed Rule #51. The impact it would have on this District would be absolutely unbelievable as is the proposed fee.

The District would have to ask for an emergency rate increase of twice the fee because we purchase our water. When our supplier gets this increase they will pass it on to us and we will pay their increase on the water they sell the District plus the cost of the same fee to the Health Department. So, to systems that purchase water it would be a twelve cent per thousand increase. In Jackson County along three of the four Districts purchase water.

We now have programs of the DNR and EPA plus the Health Dept. to assist in the Safe Drinking Water Act and even if the Health Dept. needs additional funds this is just too much. We believe there is a lot of deception in these fees. The water systems of the state need to know where this money will go and not just for "health and human service programs" as we have heard.

The amount of this fee is totally unjustified. This District has tried to keep our cost to the customer as low as possible and still maintain a safe supply of drinking water. Last year we were \$54.00 in the red at the end of the year. If this fee becomes law it will make an already difficult job next to impossible.

Sincerely,
Donna Fish
Donna Fish
Chair-person

RECEIVED

JUN 14 1990

REGULATORY DEVELOPMENT
SECTION

bjf

COMMENTS ON PROPOSED HEALTH SERVICE FEES
Delivered by Fred Stottlemeyer
on behalf of South Putnam PSD
June 22, 1990

South Putnam Public Service District is a diligent supporter of Safe Drinking Water and high environmental standards. We have over the years worked closely with the Environmental Engineering Division of the Department of Health and we were anticipating that certain fees would be imposed for purposes of improving water related services provided by the Health Department.

While we have not always agreed with the Health Department officials over the years, our relationship has been based on mutual trust. In more simple terms we believe that both our efforts, while our duties were significantly different, were directed toward the assurance of a quality water supply for the residents of West Virginia.

I must tell you that these proposed fees and the tactics used by the Health officials in proposing and promoting these fees has destroyed this trust. Never in my life have I seen a group of bureaucrats so blatantly show such total blind support for their agency and such total disregard for the people of the state. While I recognize that those in power ~~from~~ the Governor, the legislature and the chief executives of your agency have placed you in a difficult position by making you the secret tax collectors for West Virginia, we can only caution you that ~~by being the~~ ^{by ~~not~~ continuing to be the} expounders and promoters for ~~their pack of lies~~ ^{These Fees} that you may totally destroy your credibility and trustworthiness with the water and wastewater systems and their personnel.

The water and wastewater systems of West Virginia need a major infusion of funds if they are to meet acceptable standards and state government should be taking a lead in assisting in this task.

Instead we find a government that is choosing to bleed the water and wastewater system of their already inadequate funds to benefit other functions of government. And most disturbingly we find the very officials who should best know the severity of this problem, the Environmental Engineers, going around the state promoting this policy. Enough for the negative. My mother always told me that there was something positive in everything. While I hope that this hearing somehow brings the Health Department to its senses, I imagine the recently announced "you fund it yourself" pay raise for state

government employees will place such pressure on the Health officials that they will push forward with this ridiculous fee structure. *on an emergency basis.*

What I see as the positive in this horrible situation is the fact that from this excessive unreasonable tax will grow the seed to remove the fees and the responsibility for water and wastewater once and for all from the uncaring health officials and the placement *those* of ~~the~~ functions in a newly created Department of Environmental Affairs where the water and wastewater system will finally have a department of state government which will be willing to work with the water and wastewater system toward a common end.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

MAYOR

James K. Terango

RECORDER - CITY CLERK

Teresa Whiteman

STREET SUPERVISOR

Daniel Carder

CHIEF OF POLICE

Thomas Bokey

FIRE CHIEF

James M. Carvelli

City of Stonewood

Incorporated In 1947

112 Southern Avenue

Stonewood, West Virginia 26301

Phone: (304) 623-2919

"Working Together For A Better Community"

June 21, 1990

COUNCILMEN

Bertyle E. Bohn

Joseph Hyman

James E. Nutter

Pina Price

Frank Fazio

I would like to address the issue "Fees For Services" which was passed during our last Legislative Session allowing the Executive Branch to set and collect a variety of "Fees" that in reality would best be defined as "Taxes". It appears that these fees are to be collected to fund the Operation of State Government, at the expense of Local Governments and individual Citizens. It is quite obvious that this method of "Passing the Buck" is the standard operating procedure of our State Government by looking at other State Agencies which were given the authority to assess fees to fund their agencies. Some examples are solid waste, increased court costs, increased permit fees for water and now the WV Department of Health & Human Services which has proposed massive fees for water and wastewater systems. Fees by any other name would be called taxes.

Apparently not much thought was given to ^{the} impact of these fees on Local Governments water and wastewater systems as well as the individual citizens because these systems are heavily burdened by absorbing rising costs to barely maintain its status quo.

Therefore, we urge our state government to adopt the philosophy of President Harry S. Truman, "The Buck Stops Here".

I am opposed to the fees for services, as proposed by the WV Department of Health & Human Services.

CITY OF STONEWOOD

Teresa Whiteman
Teresa Whiteman
Recorder

RECEIVED

JUN 22 1990

REGULATORY DEVELOPMENT
SECTION

Union District Public Service Company

P.O. BOX 783 • MORGANTOWN, WEST VIRGINIA 26505

June 14, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Gentlemen:

The proposed Title 64, Division of Health,
Fees for Services, has come to our attention.

The Board Members of the Union District Public
Service Company wish to advocate our opposition to
this proposed increase. Our district water customers
could be adversely affected by having to pay twice
the amount of the increase inasmuch as we purchase
water from the Morgantown Utility Board.

It is our request that consideration be given
to our concerns. Thank you for your attention to
this matter.

Sincerely,



Barbara Barnes
Member/Secretary

RECEIVED

JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**

UNION WILLIAMS PUBLIC SERVICE DISTRICT
P. O. Box 243, Waverly, West Virginia 26184-0243
Telephone 304-464-5121
June 14, 1990

RECEIVED

JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

RE: Proposed Fees by the Department of
Health and Human Resources.

Gentlemen:

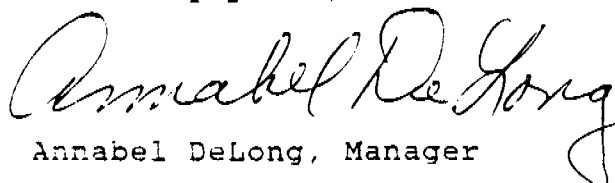
The fees proposed for water and wastewater per 1000 gallon of water is unreasonable. The timing for implementing the fees is not feasible. Budgeting and applications for rate increases to cover the cost of the fees was not taken into consideration when projecting that the fees take effect this year.

Most small systems are experiencing financial problems with the cost of complying with the SDWA which have already been implemented and face even more in the coming year without the added burden of fees from various agencies to fund their operations.

The \$.06 per 1000 gallon of water will cost Union Williams P.S.D. approximately \$9360.00 per year based on gallons of water sold last year. The fees proposed to be charged for the sewer system which is in the planning stage now will mean an unreasonable expense which was not projected when the system was planned.

Reasonable fees for some services received would be acceptable but the fees proposed are not reasonable and are not all necessary. Unreasonable fees will place an unnecessary burden on the utilities as well as the customers. Since the cost will need to be passed on to the customers, it must be feasible and affordable.

Sincerely yours,


Annabel DeLong, Manager

Walton Public Service District

P.O. Box 118
Walton, WV 25286

June 20, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

To Whom It May Concern:

The Walton Public Service District vehemently oppose the proposal of the Department of Health and Human Services to levy fees upon local water systems. We believe the proposal to be a blatant attempt by the Governor and the Legislature to disguise a tax in an election year as a fee. Like the tax on food this fee or tax will fall on those who can least afford it.

We also take exception to the fact that the funds generated through this tax will be deposited in the general pool of funds of the Department; therefore the agencies footing the bill will receive little or no benefit from this tax.

We believe that a tax to support any State Agency should be levied upon all of the citizens of the State not just a selected few.

Sincerely,



Lloyd B. Naylor,
Chairman

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



CITY OF WEIRTON WATER DEPARTMENT

200 MUNICIPAL PLAZA - WEIRTON, WEST VIRGINIA 26062

TO: West Virginia Department of Health
Conference Center - Building 7 Room B
Charleston, West Virginia

FROM: City of Weirton *JBF*

RE: Proposed Cost of Legislative Rules
16-1-21 and 29B-1-3

DATE: June 12, 1990

RECEIVED

JUN 19 1990

**REGULATORY DEVELOPMENT
SECTION**

Gentlemen:

The City of Weirton has reviewed your proposed revenue enhancing bill, we believe this change will be counterproductive, and costly to the cities of West Virginia because;

- (a) The additional costs imposed must be ultimately passed on to the utility customer for existing services that they are paying for as taxpayers now.
- (b) The costs per year of the proposed rules to Weirton would be \$18,334.80 for sanitary sewer and \$42,768.00 for water related services for a total cost of \$61,102.80 being added to our rate cases annually.
- (c) These proposed rules would also discourage operator certification, training and testing. The operator is an important component part of the battle to protect the environment and provide quality water service to the customer. It is not in the State's interest to discourage training programs for water personnel related to certification programs.

In summary, we believe the proposed rules would (a) place an additional burden on the local taxpayer, (b) increase the cost of service again, and (c) have a negative impact on training programs for water operations personnel.

JBF/kg
Attachment



CITY OF WEIRTON WATER DEPARTMENT

200 MUNICIPAL PLAZA - WEIRTON, WEST VIRGINIA 26062

To: J. Bruce Fox, Utilities Director
From: Jeffrey Pearce, General Supervisor
Re: Proposed State Fees for Services
Date: June 8, 1990

Listed below are the services and proposed costs that the Water Department can expect to pay if these "Fees for Services" are passed by the legislature.

<u>Item</u>	
<u>Lab Certification</u>	\$500 Every 3 Yrs.
<u>Operator Certification Renewal</u> (Ten Certificates @ 10.00 per)	\$100 Every 2 Yrs.
<u>Technical Services/Compliance</u> (Based on Metered Sales of 699,478,000 gal. for 1989)	\$41,968 Annual
<u>Operating Permits</u>	\$200 Every 3 Yrs.

Total Fees

Other fees that will occur from time to time, will range as follows:

Operator Certification Testing

Class I	- \$10
Class II	- \$25
Class III & IV	- \$50

Page Two
Proposed State Fees for Services

Public Water System Project - \$300

<u>Cost</u>		<u>Bi-Annual</u>	<u>Tri-Annual</u>
Lab Certification	\$ 500		X
Technical Services	41,968 (Annual)		
Operator Certification - Renewal	100	X	
Operating Permits	200		X
<u>Operator Certification Testing \$10 Class I/\$25 Class II/\$50 Class III&IV</u>			
TOTALS	\$ 42,768	\$ 42,068	\$ 42,668

Lastly, fees that at this time, do not have a dollar amount may be assessed by the local health departments. These fees would be approved by the director of the division of health.

Thank you.



CITY OF WEIRTON WATER DEPARTMENT

200 MUNICIPAL PLAZA — WEIRTON, WEST VIRGINIA 26062

To: J. Bruce Fox, Utilities Director
From: C.E. Smearman, General Supervisor
Re: Estimated Cost Proposed Legislative Rules
16-1-21 and 29B-1-3
Date: June 11, 1990

Staff has reviewed the proposed rule and we submit the following cost estimate for your use:

Items

(a) Operating Permit Bi-Yearly \$ 200.00
(b) Technical Services on 446,120,180 gal.
1,000

Equals 446,120.18 (.04) 17,844.80

(c) Certifications

Class 1 Estimate Yearly	\$ 40.00	
Class 2 Estimate Yearly	50.00	
Class 3 Estimate Yearly	100.00	
Class 4 Estimate Yearly	<u>100.00</u>	<u>290.00</u>

Total

Estimated Cost of Rules \$ 18,334.80

CITY OF WELLSBURG

CITY HALL
WELLSBURG, WV 26070
(304) 737-2104

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

June 21, 1990

Taunja Willis Miller, Secretary
Bureau of Public Health
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, W.Va. 25305

RE: Written Comments in regards to the
Fees For Services Legislation-
Division of Health. Public Hearing
June 22, 1990 10:00 A.M. Conference
Center-Capitol Complex, Charleston,
WV.

Dear Ms. Miller:

On behalf of the City of Wellsburg's Combined Water and Sewer Board and City Council please submit the enclosed written comments in regard to the above mentioned:

- Comment #1 - The City of Wellsburg understands the reasoning for a fee charge if your agency is providing sampling for our Water and Sewer departments;
- Comment #2 - The City of Wellsburg objects to the proposed fee of charging public water facilities 6 cents for each 1000 gallons used per month per customer metered service;
- Comment #3 - The City of Wellsburg objects to the proposed fee of 27 cents per month per customer for unmetered service;
- Comment #4 - The City of Wellsburg objects to the proposed fee of 4 cents per 1000 gallons per month per customer sewer charge;

In reference to comments 2,3 and 4 the City of Wellsburg, population 3,900, is approximately 60% low to moderate income. The City has recently increased sewer rates while water rates will be reviewed in the near future.

If the proposed legislation is passed the City would not only have to increase water/sewer rates to present costs but also increase the rate an additional 10 cents to fulfill your agency's proposed fee requirements.

(2)

Also, as stated in the proposed legislation, the fee charges for water and sewer will not necessarily be retained for water and sewer activities.

The City feels we will not realize any benefits from this fee. As far as the fees being retained for your agency's consulting engineering services the City presently retains an engineer for water/sewer services.

Comment #5 - The City of Wellsburg objects to the certification/renewal license fee for sewer and water plant operators.

Presently the City pays for State testing and licensing in order to become certified as operators.

Comment #6 - The City of Wellsburg objects to water well permits. The City maintains any well in service for its water system. Testing of water is conducted at the plant as water is being produced from these wells. The City feels the wells are our responsibility and doesn't realize what service will be provided by your agency for well fees.

Comment #7 - The City of Wellsburg objects to the proposed legislation enabling the local health departments to assess the same fees to our City as your agency may assess.

The City of Wellsburg appreciates the opportunity to submit our comments regarding the proposed amendments to the Division of Health.

Sincerely,



Mark S. Baldwin
City Manager

CC/Senator John Chernenko
Roy Givens, Del.
Bernard Kelly, Del.

WEST VIRGINIA-AMERICAN WATER COMPANY

AN AMERICAN WATER WORKS SYSTEM COMPANY

1325 Virginia Street, East
Box 593
Charleston, West Virginia 25322

RECEIVED

Telephone
(304) 347-0975

JUN 22 1990

June 22, 1990

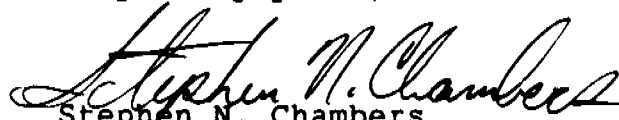
SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Ms. Taunja Willis Miller, Secretary
Department of Health and
Human Resources
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

Dear Secretary Miller:

Please find enclosed a Statement of Position of West Virginia-American Water Company concerning fees for services provided by the Division of Health as proposed in West Virginia Legislative Rule 64 CSR 51. Please give the enclosed comments due consideration and, if possible, make them a part of the record pertaining to the proposed rule.

Very truly yours,


Stephen N. Chambers
Secretary

SNC:rn

Enclosure

c: D. L. Edgemon
T. Jones, Jr.
M. A. Albert

**STATEMENT OF POSITION OF WEST VIRGINIA-AMERICAN
WATER COMPANY CONCERNING FEES FOR SERVICES
PROVIDED BY THE DIVISION OF HEALTH
AS PROPOSED IN WEST VIRGINIA
LEGISLATIVE RULE 64 CSR 51**

West Virginia-American Water Company (WV-American) is a West Virginia corporation owned by American Water Works Company, Inc. WV-American is engaged in the business of treating and selling potable water and serves over 118,000 customers in 55 communities in the State of West Virginia. It operates 13 separate water systems and employs 323 people. As the largest single supplier of drinking water in West Virginia, WV-American is vitally interested in the fees proposed by the Division of Health and their impact on our operations and our customers.

The following sets forth the position of WV-American with regard to certain of the fees to be assessed by the Division of Health for various services it provides, as set forth in its proposed Legislative Rule 64 CSR 51:

I. Laboratory Service Fees (§64-51-5; Appendix I)

WV-American does not object to the proposed fees for laboratory services set forth in Appendix I to the proposed Legislative Rule because such fees appear to be related to services provided by the Division of Health and because they do not appear to be unreasonable.

**II. Environmental Health Service Fees
(§64-51-6; Appendix II)**

WV-American does object to certain of the proposed "Environmental Health Service Fees" set forth in Appendix II to the proposed Legislative Rule. The proposed fees found most objectionable by WV-American are the fees based on monthly usage of potable water which fees are set forth in item 4.B

(Technical Services/Compliance) of Appendix II. These proposed fees (\$0.06 per 1,000 gallons used per month per customer for metered service, and \$0.27 per month per customer for unmetered service) (hereinafter "Water Usage Fees") are opposed for the following reasons:

1. The Water Usage Fees exceed the authority of the Administrator (or Director) of the Division of Health.

WV-American submits that the proposed Water Usage Fees exceed the authority granted by the Legislature to the Administrator of the Division of Health to assess fees for services provided by the Division of Health. The authority to assess and charge the proposed fees is found in Section 21, Article 1, Chapter 16 of the Code of West Virginia (§16-1-21) which said Section 21 was enacted by the Legislature of West Virginia on March 10, 1990 with the passage of Committee Substitute for House Bill 4660, a copy of which is attached hereto as Exhibit A, and becomes effective July 1, 1990 (hereinafter "H.B. 4660").

H.B. 4660 authorizes the Administrator to ". . . *assess and charge reasonable fees for the provision of services provided by the division of health . . .*". The fees to be charged are to be set forth in a rule promulgated by the Administrator in accordance with article three, chapter twenty-nine-a of the Code of West Virginia. The fees, when assessed and collected, are to be deposited into a special revolving fund in the state treasury. At the end of any fiscal year any unspent funds shall not revert to the general revenue fund but shall remain in the special revolving fund for use by the Administrator for funding health programs in ensuing fiscal years. H.B. 4660 also empowers the Administrator to authorize reasonable fees for the provision of services by county or municipal boards of health.

a. The Water Usage Fees are not reasonable.

It is clear from the language of H.B. 4660 that any fee assessed by the Administrator must meet two criteria. First, the fee must be "reasonable". Although the term "reasonable" is not defined in either H.B. 4660 or 64 CSR 51 and is subjective in nature, it is a term widely used both in the law and in the every day affairs of lay people. Webster's Ninth New Collegiate Dictionary defines the term as follows:

" . . . agreeable to reason; not extreme or excessive; moderate; fair; inexpensive; having the faculty of reason; possessing sound judgment . . . "

The most persuasive indicator of how the term "reasonable" should be interpreted, however, can be found in the proposed rule in §64-51-9.5 which provides as follows:

"Basis for Fees - Local board of health fees may be based on cost plus a maximum of fifteen percent for administrative overhead which may include but is not limited to personnel wages and salaries, ordering and storage of supplies, transportation, paper work processing and storage, and facility overhead such as janitorial and utility costs."

It is submitted that if the Administrator, in exercising the authority to authorize "reasonable" fees for services provided by county or municipal boards of health, has determined that such fees should not exceed fifteen percent over the actual cost of the services, then a similar standard of reasonableness should be applied to the fees now proposed by the Administrator. In other words, if any of the fees set forth in the proposed rule exceed by more than fifteen percent the cost of the services to which they relate, such fees should be deemed excessive and, therefor, not "reasonable" within the meaning of that term as it is used in H.B. 4660.

Although the actual cost of any given service provided by the Division of Health may not be known, the fiscal note for the proposed rule provides a clue in the statement contained therein

that the collection of the proposed fees will ". . . provide a means to restore the amount of funding by which the Division of Health budget was reduced in the 1990-91 budget and allow for the maintenance or improvement of public health services at both the State and local health department levels". If the proposed fees are intended to cover the cost of services that would not otherwise be provided because of a budget cut, then the proposed fees should generate only enough funds to equal the amount by which the budget was cut. Ramona Kinneburg, Deputy Secretary of the Department of Health and Human Resources, was quoted in the June 14, 1990 Charleston Daily Main as stating that the budget cuts made by the Legislature totaled \$560,000. The fiscal note, however, estimates annual collects from the proposed fees to be \$1,841,575. If the intended impact of the proposed fees on state government is truly to restore legislative funding cuts of \$560,000, why is it necessary to assess fees calculated to raise over three times as much?

WV-American also takes issue with the accuracy of the \$1,841,575 estimate of annual collections from the proposed fees as set forth in the fiscal note. Based upon projected 1990 water sales, WV-American estimates that it will be required to pay approximately \$800,000 in Water Usage Fees annually. When other applicable proposed fees are added, the total estimated annual cost to WV-American could be nearly \$900,000. If WV-American, alone, will pay nearly half of the estimated annual revenues to be collected from all of the proposed fees from everyone to which they apply, it appears that the estimated annual revenues are grossly understated. It is quite evident from the foregoing that the intent of the proposed Water Usage Fees is not to merely restore funding for services jeopardized by a budget cut, but to raise large sums of money for the general operation and expansion of the Division of Health.

- b. The Water Usage Fees are not related to services provided by the Division of Health

The second criteria that H.B. 4660 requires the fees to meet is that they be ". . .for the provision of services provided by the division of health. . .". In other words, the proposed fees must not only be "reasonable", they must be in consideration or exchange for a service or services provided by the Division of Health. It is quite clear from H.B. 4660 that there must be a direct connection between the services provided and the fees that are to be charged. Any other interpretation of H.B. 4660 would not be reasonable.

A review of the proposed fees verifies that the Administrator recognizes, in most cases, the legislative mandate to link the fee to be charged with the service to be rendered. For example, the Laboratory Service Fees (Appendix I) clearly link a given fee to the test for a given chemical or group of chemicals (e.g. Arsenic-\$10; Lead-\$10, etc.). This concept of linking fees to corresponding services is also carried over, in part, to the Environmental Health Service Fees (Appendix II). An example of this are the fees ranging from \$10 to \$50 for the corresponding services of administering public water supply and waste water plant operators' certification tests in each of several classes.

The Administrator deviates, however, from this principal of fees-for-services with regard to several proposed fees, most notably the Water Usage Fees. It is submitted that the Division of Health provides no identifiable services to WV-American which relate directly or indirectly to the proposed Water Usage Fees. Separate fees have been proposed for virtually all identifiable services that the Division of Health currently provides to WV-American. The question that must be asked is: "What services are WV-American and its customers receiving for \$800,000 per year? This amount of money would fund numerous full-time positions within the Division of Health to serve no one other than WV-American. Certainly not even one full-time employee will be, or needs to be, dedicated solely to serving WV-American nor to monitoring its compliance with state and federal regulations.

2. Use of revenues generated from Water Usage Fees will not benefit customers of WV-American.

The fiscal note for the proposed rules states the objective of the rule as follows:

"To establish fees for services provided by the Division of Health and local health departments in order to allow sufficient funds to be collected to provide necessary programs to help assure safe drinking water, milk, and food, to help assure that facilities are built in accordance with standards, that health equipment is operating properly, that local public health services are available, and that other services are maintained, except individuals unable to pay for health care services will not be charged."

WV-American does not question the need for the many services currently provided by the state and local health departments. It is concerned, however, that, to the extent the Water Usage Fees may be intended to fund the future expansion of the Division of Health to permit it to provide technical assistance to small water systems to assist them in complying with state and federal drinking water regulations, WV-American and its customers will be paying for services provided to others. WV-American does not object to needy water systems receiving technical assistance from state or local governments but it does not feel that its customers, who are already paying for the cost of compliance by WV-American with all drinking water standards, should be required to subsidize compliance by water systems from which they receive no benefit. Due to its size and its affiliation with the American Water System (which serves approximately 1.5 million customers in 571 communities in 20 states and has assets of \$1.9 billion) WV-American has the technical and financial capability to meet all current and foreseeable future water quality regulations. WV-American does not object to monitoring by the Department of Health of its compliance with such regulations, nor the payment of a

reasonable fee for such monitoring, but it does not believe appropriate monitoring will cost anywhere near what the proposed Water Usage Fees will generate.

3. Operating Permit Fees.

WV-American also objects to the operating permit fees set forth in item 4.C of Appendix II of the proposed rule. While the amount of the proposed permit fees may not be unreasonable, they do not appear to be related to any service being provided by the Division of Health and, therefore, are not authorized by H.B. 4660.

4. Construction Permit Fees.

WV-American also questions what services are being provided by the Division of Health to support the proposed construction permit fees. Nevertheless, WV-American can accept such fees so long as they are not interpreted to apply to minor, routine maintenance and repair activity.

5. Sales For Re-Sale.

It is not clear from the proposed rule whether WV-American is to be obligated to pay the Water Usage Fees on sales of water to other utilities for re-sale to the ultimate user. It is the position of WV-American that it would be unfair to collect fees from the initial sale by WV-American and to collect a second fee when the same water is sold to the ultimate consumer.

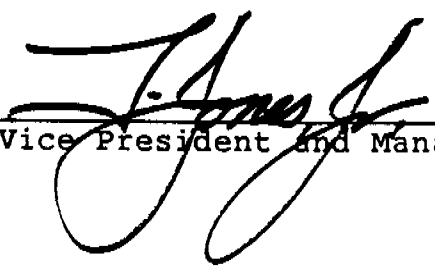
In summary, WV-American urges the Administrator and the Secretary of the Department of Health and Human Resources to reconsider the proposed Water Usage Fees and either delete the

same from the proposed rule or reduce them to a reasonable amount related to services provided by the Division of Health.

Respectfully submitted,

WEST VIRGINIA-AMERICAN WATER COMPANY

By:


Vice President and Manager

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645
14AM

WESTERN
UNION MAILGRAM



4-0141319165002 06/14/90 ICS IPMNC2 CSP CWHC
1 3047578668 MGM TDRN HURRICANE WV 06-14 1251P EST

RECEIVED JUN 18 1990

WEST VIRGINIA RURAL WATER ASSOCIATION, 80
PO BOX 225
TEAYS WV 25569

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

3047578668 FRB TDRN HURRICANE WV 356 06-14 1251P EST
PMS GOVERNOR GASTON CAPERTON RPT DLY MGM, DLR
STATE CAPITOL
CHARLESTON WV 25305

THE WEST VIRGINIA RURAL WATER ASSOCIATION, ON BEHALF OF IT'S MEMBER COMMUNITY WATER AND WASTE WATER SYSTEMS, URGES YOUR IMMEDIATE INTERVENTION TO HALT EXCESSIVE USER FEES PROPOSED BY THE DIVISION OF HEALTH ON STATES WATER AND WASTE CUSTOMERS. PROPOSED FEE LEVEL IS NOT NECESSARY TO PROPERLY FUND PROGRAM AND THIS PROPOSAL BY YOUR DEPARTMENT OF HEALTH AND HUMAN RESOURCES IS IN EFFECT A "SALES TAX" ON WATER AND WASTE WATER FOR THE PURPOSE OF FUNDING OTHER GOVERNMENTAL PROGRAMS.

WEST VIRGINIA RURAL WATER ASSOCIATION SUPPORTS ADEQUATE FUNDING FOR HEALTH DIVISION ACTIVITIES RELATED TO SAFE DRINKING WATER ACTIVITIES, BUT ABSOLUTELY OPPOSES YOUR HEALTH ADMINISTRATOR USING THE FEDERAL SAFE DRINKING WATER REQUIREMENT AS AN EXCUSE TO ASSESS A "SALES TAX" ON WATER FOR THE PURPOSE OF RAISING FUNDS FOR NONDRINKING WATER HEALTH PROGRAMS.

EVEN MORE OBJECTIONABLE IS THE PURPOSAL TO ASSESS WASTE WATER CUSTOMERS A FEE FOR SERVICES NOT EVEN PROVIDED BY THE DIVISION OF HEALTH. OUR UNDERSTANDING IS THAT THE DIVISION OF HEALTH ANNUAL EXPENDITURES ON WASTE WATER PROGRAMS IS APPROXIMATELY \$60,000, YET WE ESTIMATE THE PROPOSED FEES ON WASTE WATER CUSTOMERS WILL GENERATE OVER TEN-FOLD THAT AMOUNT.

THE SPECIFIC ACTIONS THE WVRWA RECOMMENDS TO YOU ARE:

1) ISSUANCE OF AN EXECUTIVE ORDER TRANSFERRING ALL WASTE WATER FUNCTIONS FROM THE DIVISION OF HEALTH TO DIVISION OF NATURAL RESOURCES, THUS ELIMINATING NEED FOR NEW FEES ON WASTE WATER CUSTOMERS.

2) INCLUDE IN YOUR CALL FOR SPECIAL LEGISLATIVE SESSION, HEALTH SERVICE FEES OR BY EXECUTIVE ORDER LIMIT SERVICE FEES ON WATER SYSTEMS TO ACTUAL AMOUNT NECESSARY TO COVER COST OF SERVICES ACTUALLY PROVIDED TO STATE WATER SYSTEMS. SINCERELY,

J ROBERT MCCARTY, PRESIDENT SUN VALLEY PSD
JUNE ANN CARR, VICE PRESIDENT HAMRICK PSD

To reply by Mailgram Message, see reverse side for Western Union's toll-free numbers.

FRED STOTTEMYER, SECRETARY SOUTH PUTNAM PSD
JOE BLAIR, GLENDALE MUNICIPAL
TIM CARROLL, WINFIELD WATER WORKS
GEORGE S EVANS, NEW CREEK WATER ASSOCIATION
LOWELL HARDMAN, SPENCER WATER DEPARTMENT
GEORGE KALLAI, CITY OF SUMMERSVILLE
LARRY RADER, OPEQUON PSD
MARY SMITH, MASON COUNTY PSD
BILL YUNKER, RALEIGH COUNTY PSD
WEST VIRGINIA RURAL WATER ASSOCIATION
BOARD OF DIRECTORS
PO BOX 225
TEAYS WV 25569

RECEIVED

JUN 22 1990

REGULATORY DEVELOPMENT
SECTION

WEST VIRGINIA RURAL WATER ASSOCIATION

June 22, 1990

RECEIVED

JUN 23 1990

REGULATORY DEVELOPMENT
SECTION

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

My name is Chester E. Fleming. I reside at 1 Buena Vista Place, Charleston, Kanawha County, WV 25302. I am currently employed by the West Virginia Rural Water Association as Program Director. My employment includes serving as the Association's registered lobbyist for both legislative and administrative matters. On December 31, 1988 I retired from West Virginia state government service where I served for over eight years as Training Officer in the Environmental Engineering Division of the Department of Health.

My appearance and comments on the proposed "Fees for Service" are made on behalf of the approximately 125 voting members of the West Virginia Rural Water Association. Each of these voting members is a publicly owned, not-for-profit, community water or wastewater system.

We understand and accept that the West Virginia State Code has been amended effective July 1, 1990 authorizing the Administrator of the Division of Health to "assess and charge reasonable fees for the provision of services provided by the Division of Health...Payment of fees shall be deposited into a special revolving fund in the state treasury."

We earlier expressed a concern that the provision that any balance at the end of a year could be used for funding health programs in the ensuing fiscal years might be subject to abuse. The proposed fee schedule suggests that our concerns were justified.

1. Our first comment is that the "Fiscal Note for Proposed Rules" dramatically underestimates the amount to be collected from the proposed fees. With the limited information available to us, we believe that more than \$5,000,000.00 would be collected from the proposed fees.

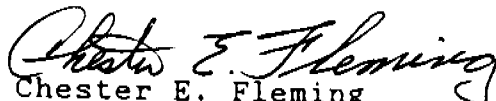
2. Our second comment is in reference to the "Laboratory Service Fees" listed in Appendix I. The West Virginia Rural Water Association does not object to these proposed fees because they appear to be reasonable and are for services provided by the Division of Health.

3. Our final comments address the "Environmental Health Services Fees" listed in Appendix II. Under "B. Technical Services/Compliance." We object to these proposed fees as being unreasonable and for no service provided by the Division of Health. We believe that the other fees proposed in this Appendix more than adequately compensates the Division of Health for services provided to water and wastewater systems.

We are concerned that the proposal for a "Technical Services/Compliance" fee is being used as a device to collect a hidden tax from drinking water and wastewater systems to fund unrelated programs. We plan to address this concern to the legislature when these rules are presented to it for their approval.

The West Virginia Rural Water Association wants to assure the Division of Health that we will continue our efforts to improve the quality of life for all West Virginians by helping them serve their communities. Our efforts are directed toward the provision of safe drinking water and the sanitary disposal of wastewater at a reasonable cost. Furthermore, we hope that we can continue and expand the cooperation that has existed between the Division and our organization.

Sincerely,


Chester E. Fleming
Program Director

CEF:bg

CITY OF WHEELING



WATER DEPARTMENT

9 ARMORY DRIVE

WHEELING, WEST VIRGINIA 26003

CERTIFIED MAIL

June 15, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

RECEIVED

JUN 21 1990

Re: Legislative Rule 64 CSR 51 titled Fees for services

To Whom It May Concern:

Please place the following comments into the record.

**REGULATORY DEVELOPMENT
SECTION**

We agree with the concept of user fees so that the costs of providing a service can be recovered from the one who benefits from that service. The fees for chemistry laboratory service shown in Appendix I are an example of this concept. The fees listed in Appendix II are a different story. There appears to be no relationship between the amount users will be charged and the level of service they will receive. Under Section B, Technical Services/Compliance the proposed fee of six cents per thousand gallons is unreasonable and discriminatory. There also appears to be multiple collections for the same water. Wheeling Water Dept. sells approximately 25 per cent of our water to resale customers. According to the proposed fee, not only will we be assessed the six cents per thousand but those resale customers will also have to pay six cents per thousand on the same water.

The cost to the Wheeling Water Department just for technical services will be \$131,000 per year. To receive this amount of benefit from the Health Dept. would require at least three engineers at our plant on a full time basis. I'm sure the Health Dept has no intent of providing that type of service. The total amount proposed to be collected from the City of Wheeling, including resale customers and sewer services will be about a quarter of a million dollars. The estimated annual collections reported to the Secretary of State is \$1,841,575. We were told by a Health Department official that this number was based on 400,000 services in the state using public water supplies. Since Wheeling has less than 1/25th of that number of services, it appears that the amount collected will be over \$6,000,000. It is obvious that the estimated collections have been seriously understated and as such should be reduced or eliminated.

The assessment of six cents per thousand is not a user fee for a specific service. H.B.4660 provides for the establishment of reasonable fees for the provision of a service. The amount of technical services provided by the Health Dept. is inversely proportional to the size of the utility. The proposed assessment is directly proportional to the total gallons sold. It is very unusual for a large water utility to have a need for technical services from the Health Department because the larger utilities have qualified personnel on staff. This is a clear case of discrimination.

Most of the fees proposed are self-explanatory as to what service utilities will receive for each particular fee. The term Technical Services/Compliance is vague and does not indicate the actual service which will be provided by such an assessment. The entire section B in appendix II should be eliminated until a cost of service study is performed to determine the actual costs incurred to provide technical services to the receiver of such service and then a new strategy should be developed to provide an equitable way to fund those actual costs.

Section 9 provides an elaborate mechanism for fees to be established by local Health Boards. It includes an accounting of fee collections, a limit on administrative overhead, and a description of the program the proposed fee will finance. There is no similar mechanism identified in this regulation at the state level. The director may establish or change fees by filing them with the Secretary of State. It is our understanding that current state law requires that a public hearing be held to solicit comments on the proposed fees. There is no mention of a requirement that the utilities, hospitals, etc. who would be impacted by such fees are to be notified of the public hearing. This protection built in for local fees must also be required at the state level. The program to be funded must be thoroughly described and the actual costs must be determined. From this information a fee would then be established based on the benefit received by the party paying the fee.

In the same section of the proposed regulation (4.1), it states that the Director may require payment of these fees in advance. This may seem proper in some cases but it is in opposition to the current policy of the Public Service Commission which regulates our utility. We are only permitted to charge customers for services after they receive them. Undoubtedly the cost per thousand gallons will be passed on to our customers by an equivalent rate increase. If this would go to a hearing before the P.S.C. we would not be allowed to recover these costs until we had actually paid them. The financial condition of our utility is such that we would not be able to pay this fee until we collected it.

H.B.4660 requires that the balance of any monies in the Health Department revolving fund shall remain in that fund for the use by the Director in funding health programs in the ensuing fiscal years. The proposed regulation should include a section to further pigeon-hole the fees collected to provide funding for the particular service for which they were collected. Fees collected for running chemical or bacteriological samples should be used only for operation of those facilities. By putting any excess in the general Health Fund, fees collected for "Technical Services/ Compliance" may end up being used to provide various types of medical services throughout the state.

In summation, we do support user fees but we believe that Section B - Technical Services/Compliance is not such a fee. We feel it is discriminatory and as such should be removed from the proposed regulation.

xc: Jimmy E. Curnes
City Manager

Respectfully submitted,

William F. Huggins

William F. Huggins
Water Superintendent

Conrad E. Slanina

Conrad E. Slanina
Acting Director of Public Works

CITY OF WHEELING



26th & MAIN STREETS
P. O. BOX 6348
WHEELING, WEST VIRGINIA 260

Water Pollution Control Division
(304) 234-3874

June 21, 1990

RECEIVED

JUN 22 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

**REGULATORY DEVELOPMENT
SECTION**

Re: Legislative Rule 64 CSR 51 titled Fees for services

To Whom It May Concern:

For your consideration, please review the following comments on legislative rule 64 CSR 51, as related to reasonable fees for services as they might pertain to the city's wastewater treatment facility.

The fee assessment concept as per Appendix I - Laboratory Service Fee, Environmental Chemistry Laboratory Service section and the cost per analytical test contained within appears to be reasonable and understandable to those that choose to utilize the laboratory data determinations of the State Health Department. We would hasten to add though, that we do not believe the Health Department has ever made or will ever make such analytical quantitative or qualitative wastewater determinations for the City of Wheelings, Water Pollution Control Plant.

Appendix II - Environmental Health Services Fees, page 11 - Fees:

- Item 1 - the charges seem reasonable for certification testing.
- Item 2 - cross connection device installers and testers test seems reasonable.
- Item 3 - certification/licensure renewals seems reasonable.
- Item 4 - Water, Sewage Systems, Swimming Pools:
 - Section A - Construction permits as related to public sewer system or facility project fee seems to be reasonable.
 - Section B - Technical Services/Compliance Public Sewer System Facility fee:

The regulatory agency which provides technical services to the wastewater treatment industry is the West Virginia Department of Natural Resources not the State Health Department.

The fee mentioned in this section for the Health Department has absolutely no cost benefit relationship to the wastewater treatment industry in general or specifically to the customers of the City of Wheeling which do receive our services.

House Bill 4660, authorizes the State Department of Health to collect fees for services, but the Health Department does not provide any technical or compliance service to our wastewater treatment facility. Therefore, this section

Water Pollution Control Division

June 21, 1990

Legislative Rule 64 CSR 51

Page 2-

should not pertain to the wastewater treatment industry and as such should be removed from the proposed bill.

If this bill is enacted as proposed, it would cost our customers an additional \$117,000 per year for services not received.

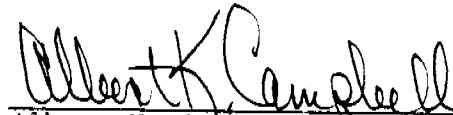
Section C - Operating Permits - If the State Health Department begins to provide an operating permit for public sewer systems or facilities, the fee maybe reasonable.

Item 7 - Annual on-site sewage disposal permit fees maybe reasonable, if the service is provided.

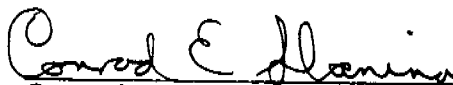
Appendix III - No comment.

Please consider the aforementioned comments for the public record.

Respectfully submitted



Albert K. Campbell, Superintendent
Water Pollution Control Division



Conrad E. Slanina
Acting Director of Public Works

copy: Jimmy E. Curnes, City Manager



June 12, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

To Whom It May Concern:

I do not support user fees or permit fees to cover services that benefit all consumers. This is a public health program that should be funded by tax dollars not fees on us dairy farmers.

Sincerely,

Charles F. Adams
P.O. Box 100
Rippon, WY 25441

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

June 12, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

To Whom It May Concern:

I recently received word that the Division of Health intends to charge milk producers a fee for conducting public health related services that directly benefit the consumers by protecting the health and safety of dairy products.

As an active dairy farmer, I am strongly opposed to service or permit fees that would be used to offset the cost of providing a public health service for all consumers. Since the dairy farm inspection program benefits all consumers, it should be funded from tax dollars instead of user fees.

Sincerely,

Franklin W. Adams
Box 99
Rippon, WV 26441

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

May 7, 1990

The Honorable Tonya Willis Miller
Secretary of Department of Health and Human Services
State Capitol
Charleston, West Virginia 25305

Dear Secretary Miller:

I understand that Department of Health and Human Services staff are preparing regulations for your consideration which may result in the imposition of fees upon various elements of the dairy industry. I write today because I further understand that these fees may be imposed upon the adoption of "emergency regulations." Since I have not had the opportunity to review these new regulations, my comments may not be pertinent in every instance. However, should you choose to adopt regulations imposing fees on an emergency basis, I will be denied opportunity for comment until presented with a fait accompli.

First, no emergency exists, at least not in any generally accepted use of the word. Budgetary constraints and agency cash flows can hardly be considered emergencies.

These regulations will be such a radical departure from accustomed practice and of such significant impact upon the industry that I urge you, please, to allow a normal period for comment before implementation.

The proposed fees would appear to be based on a perceived ability to pay, or on volume, rather than upon the cost of providing inspection service. The reality is that the time required to inspect is virtually the same for each farm regardless of the number of cows milked. The equipment required is the same. Differences may arise due to location and travel time. In this case, the smaller farms are likely to be the least accessible, thereby requiring the most travel time and expense. As for Handlers, the fees simply put them at a competitive disadvantage with neighboring states. Imposition of fees will encourage the closing of facilities in West Virginia. This will mean more unemployment and longer hauls for dairymen to get their milk to market. Haulers will simply pass their fees on to the farmer.

The proposed fees will, by our calculation, generate \$75,000 per year from West Virginia farmers directly and another \$3,000 from Haulers and Handlers. It is an unsupportable burden for the industry.

May 7, 1990

There is an acceptable, practical alternative to inspection provided by HMS personnel. The U.S. Public Health Service Pasteurized Milk Ordinance provides for supervised inspection by the industry. This has been the practice in Pennsylvania for some years. It is well accepted. It has protected Pennsylvania's health while it has eased their tax burden. We can do the same in West Virginia for far less than an additional \$78,000.

I hope that you will re-visit this entire issue. Remember the service can be provided by the industry at a greatly reduced cost to the taxpayer. West Virginia farmers struggle against mounting production, regulatory costs and inclement weather. We hope that the State of West Virginia will not add to these burdens.

Sincerely,



Robert L. Williams
Director
Marketing and Development Division

RLW/cjc

June 12, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

To Whom It May Concern:

I am opposed to the proposed dairy farm permit fees proposed for West Virginia. This program protects all consumers and should be funded from tax dollars and not user fees.

Sincerely,

William B. Aikens III

Rebecca A. Aikens

Wm. B. Aikens, III
803 Elm Tree Drive
Martinsburg, WV 25401

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JUN 27 1990
REGULATORY DEVELOPMENT
SECTION

June 12, 1990

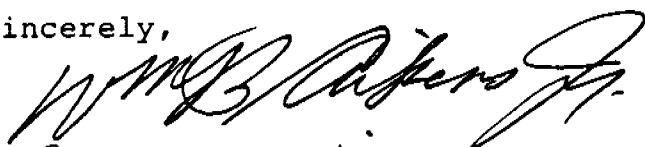
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

To Whom It May Concern:

I recently received word that the Division of Health intends to charge milk producers a fee for conducting public health related services that directly benefit the consumers by protecting the health and safety of dairy products.

As an active dairy farmer, I am strongly opposed to service or permit fees that would be used to offset the cost of providing a public health service for all consumers. Since the dairy farm inspection program benefits all consumers, it should be funded from tax dollars instead of user fees.

Sincerely,


Emily J. Aikens

Wm. B. Aikens, Jr.
Rt. 1, Box 195
Hedgesville, WV 25427

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JUN 27 1990

**REGULATORY DEVELOPMENT
SECTION**

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JUN 22 1990

REGULATORY DEVELOPMENT

SECTION

Regulatory Development

Room 2041 Building 3

Capitol Complex

Charleston W Va 25305

June 18 1990

Dear Sirs

I object to the several
different users fee you
are planning to charge
us farmers

we have hard enough
time to make ends meet
the way it is.

we are already taxed to
the top.

other states don't do this
and I don't think we
should either.

your truly

Proposed Rule 51

Fees for Services

Box 86

Eglen, WV 26716

Vote NO.

Mallon F. Ankers
Rt. 3, Box 145-B
Martinsburg, W. Va.
25401
June 18, 1990

Regulatory Development
Room 204 Building 3
Capital Complex
Charleston, West Virginia
25305

To Whom It May Concern

I am opposed to any fee
connected to doing farm permits
~~one~~ Health Dept. inspections. The
purpose of Health Dept. inspection
of dairy farms is to protect
consumers. I cannot pass on
to consumers any increased
cost of producing milk to the
customers who buy my milk.

Sincerely,
Mallon F. Ankers

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

**M. F. ANKERS
ROUTE #3, BOX 145B
MARTINSBURG, W. VA. 25401**

Rt #3, Box 145B.

Martinsburg, W.V.

25401

June 15, 1980

Regulatory Development
Room 204 Building 3
Capitol Complex
Charleston, W. Va. 25305

To Whom It may concern:

I recently received word that the Division of Health intends to charge milk producers for conducting public health related services such as inspection that directly benefit the consumer in protecting the health & safety of dairy products.

As an active dairy farmer's wife, I am strongly opposed to services or permit fees that would be used to offset the cost of providing a public health service for all

consumers. Since the dairy farm inspection program benefits all consumers, it should be funded from tax dollars. We can not recover this added expense

yours truly.

(Bonnie Ankens) Mrs. Bonnie Ankens



**ATLANTIC
DAIRY
COOPERATIVE**

1225 Industrial Highway
P.O. Box 127
Southampton, Pennsylvania 18966-0127
(215) 322-0200

June 18, 1990

RECEIVED

JUN 21 1990

Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Ms. Miller:

This letter is written on behalf of Atlantic Dairy Cooperative (ADC), Southampton, Pennsylvania. ADC markets the milk of approximately 3,600 dairy farm families residing in the states of West Virginia, Pennsylvania, New Jersey, Maryland, Delaware, New York and Virginia. In the aggregate, the members of ADC produce 3.3 billion pounds of milk annually.

ADC and its members would like to register their strenuous opposition to proposals by your Department to establish fees for dairy services. We strongly protest this attempt to shift the cost of maintaining public health standards for dairy from the State of West Virginia to the dairy industry, particularly to West Virginia dairy farmers.

We believe that the responsibility of assuring that the West Virginia public has a pure and wholesome milk supply rests with the State. In providing this assurance, the public interest is being served.

To tax West Virginia dairy farmers with this obligation is unfair. West Virginia dairy farmers are doing their part to produce high quality dairy products. The fees proposed by your Department would impose costs on the State's dairy farmers which farmers cannot recover from the marketplace.

The proposed fees will result in a reduction in the margin available to State dairy farmers for family living and debt retirement. These margin reductions would be especially harmful coming at a time when milk supplies have been lagging due to farmers exiting from the business.

We strongly urge you to withdraw your Department's proposed fees

for dairy services and to develop alternative funding sources which recognize that the provision of such services is the responsibility of the State of West Virginia as a whole.

Very truly yours,

Atlantic Dairy Cooperative



James S. Fraher
Economist

JSF/nmf

To: Tanya Willis Miller, secretary

Re: Proposed rule 51 - Fees & services

I am opposed to permit fees
to be charged to farmers.

The inspection of dairy farms is
not required by farmers, but is
a consumer safety standard that
should be paid by tax payers.

Dairy Farm permit who determines
production?

These fees would be an
additional tax on a few people
not a fair & across the board tax
on the consumer, for which the
service is provided.

T. Larry Bailey

Dairy Farmer

Rt. 1, Box 108

Jane Lew. W.V. 26378
269-5609

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JUN 22 1980

REGULATORY DEVELOPMENT
SECTION

RECEIVED

JUN 18 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

RECEIVED

JUN 19 1990

REGULATORY DEVELOPMENT
SECTION

June 15, 1990

To Whom it May Concern

Reference Proposed Rule 51- Fee for Services

I strongly feel it is the duty of the health department to see that the consumers of this state of WV are protected. This cost should be born equally by tax dollars not a so-called user fee.

People making these proposals need to visit the real life community to see the horrendous already imposed regulations put on the farmer. Do you realize there is less milk produced in WV now than is consumed. This will only add to this situation. Farmers in our area are just going out of business. Would you put up with more and more? Farmers feed our nation and yet they are just plain "dumped" on. Would you get up at 3:45 am to milk cows to get surplus milk for people with no appreciation. Would you stay up all night with a sick animal to prevent losing thousands in assets. Would you work in extremely hot or cold weather conditions to plant and harvest crops to feed cattle?

Please consider the ramifications of this action.

Robert L. Brady
R.1. Box 664
SHEPHERDSTOWN WV 25443

Robert L. Brady

June 13, 1990

Dear Sir.

I don't think we had to
paid for the Proposal Fee Schedule
Because we don't make too much
from our milk and we have
too much now taking out of
our check. We are making a little
living off the farm. We have
too many things.

Thomas Bengard
R.D.#1 Box 123
Glen Easton, Ill
61039

RECEIVED

JUN 15 1990

**REGULATORY DEVELOPMENT
SECTION**

HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL — PHONE (304) 340-3200
CHARLESTON 25305

RECEIVED

JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

RODNEY T. BERRY
1214 8TH STREET
MOUNDSVILLE, WV 26041
PHONE (304) 845-5846

June 18, 1990

Taunja Willis Miller, Esq.
Secretary, Department of Health
& Human Services
State Capitol Building
Charleston, WV 25305

Re: 64 CSR "Fees for Services"

Dear Secretary Miller:

Please be advised the undersigned, Rodney T. Berry and A. E. Tribett, members of The House of Delegates for the Fourth District representing Marshall County, do hereby respectfully object to the above proposed legislative rule which would charge fees to municipalities, public service districts, and dairy farmers for certain mandated inspections.

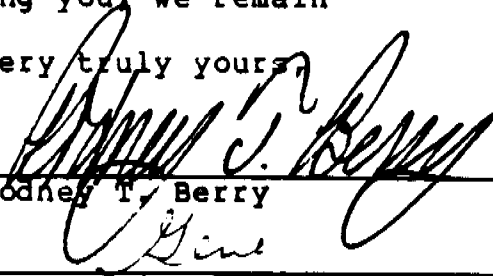
As you know, there are presently local fees charged for these same basic services, and we feel that these mandated inspections would be repetitious and very costly for the political subdivisions and farmers affected by the proposed rule. We do however, take no exceptions to the local fees that are presently being charged.

In these days of very restricted revenue to the municipalities and public service districts, as well as the ever present financial crunch put upon our farmers, we fee that it is oppressive to levy further fees upon them.

We intend to be at the hearing in Charleston at 10:00 a.m. on June 22, and we would like to address this proposed rule further at that time.

Looking forward to seeing you, we remain

Very truly yours,



Rodney T. Berry



A. E. Tribett

CC: Moundsville City Manager
Mayor Anthony Scaffidi
Mayor William Kern
Mayor John Saffel
Mayor Wayne Simmons
Emmit Francis, Secretary, Marshall County Farm Bureau
B. J. Baker
Doug Schafer - Public Service Dist. No. 1
Marilyn Rulong - Public Service District No. 2
James Fred Hammil - Public Service District No. 3
Donna Crawford - Public Service District No. 4
Debbie Fogle - Glen Dale Heights Public Service Dist.



June 20, 1990

Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, West Virginia 25305

We have received a copy of a special news letter to dairy farmers which outlines the West Virginia Department of Health Proposed Rule 51 — Fees for Service.

We are a major distributor and processor of dairy products in West Virginia. However, we have not received any information from your Department concerning these rule changes.

If the proposed schedule of fees as outlined in the special news letter is correct, we have serious reservations concerning the implementation of these fees. They will adversely affect the dairy farmer, the processor, and the distributor of dairy products as well as the consumer of these products. We have processing plants in Ohio and West Virginia, and we are paying fees to Ohio for farm inspection, plant inspection, laboratory fees, etc. If your new schedule goes into effect, we will be paying double fees on the products from Ohio sold in West Virginia. This would seem to be contrary to the long-standing reciprocity agreements between the Ohio and West Virginia Departments of Health. The fee schedule for testing finished milk product packages at \$25 per sample is unrealistic. West Virginia is currently testing over 110 samples of our product each month. There should be some cap on the number and frequency of samples as well as a more reasonable fee for testing each sample.

Our Charleston, West Virginia plant ultra-pasteurizes and packages milk and cream which is first processed at our Marietta, Ohio plant and a per CWT fee is paid to the Ohio Department of Health on this product. We should not be charged again in West Virginia for the same product. The Charleston, West Virginia plant processes these long-shelf life products and delivers over 95% of the products to customers in 20 other states. This additional cost will make the products produced in West Virginia uncompetitive and will stifle the growth of jobs for those persons who work in our Charleston, West Virginia plant.

We realize that the West Virginia Department of Health needs funds to carry out their important task of protecting the consumer in West Virginia; however, these funds should be raised in a more equitable manner and a certain segment of the population should not be expected to shoulder the whole burden.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



Sincerely,

BROUGHTON FOODS COMPANY

Samuel R. Cook
Chairman of the Board
and Chief Executive Officer

June 11, 1990

RD#2 Box 230
Moundsville
WV 26041

RECEIVED

JUN 13 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Sirs:

This is a letter concerning Proposed Rule 51 - Fees for service.

We don't need the State inspection because we have Federal inspections. Therefore, I do not feel farmers should be charged by the Health Department for inspection to sell milk. If anyone should pay, the consumer should pay. Also, it seems you want to drive the handlers out of business in the State and the bottlers to. We need all the people selling our product, not just a few big ones. I do not feel anyone used common sense when they proposed this bill. Please give this some thought.

Thank You

(dairy farmer)

Sincerely,
Mark Chaplin



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



June 21, 1990

Ms. Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

Dear Ms. Miller:

Re: Proposed Fees for Services
Title 64, Series 51

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

I have received the information from Secretary of State Ken Hechler's office pertaining to the new legislation that you would like to put through which is Title 64, Series 51, Fees for Services, and if I understand this proposal correctly, I am adamantly opposed to it because it is so unfair to our business that we cannot afford it.

When I project what the fees would be, as I understand it would cost our company, the dairy division only, in the neighborhood of \$20,000 per year because of the number of tests that you do right now and for which we are already paying state taxes for you to administer, would cost us a minimum of \$1,400 to \$1,500 per month. You are now doing an average of 56 tests on our dairy products per month. That alone would be \$16,800 if I understand this proposed legislation correctly. If by chance you are saying \$25 per test, when you are now doing three tests on each product (standard plate count, coliform and phosphatase), I don't understand whether that would mean three different tests at a cost of \$75 (\$25 each) or if those three test would total \$25, but I am giving you the benefit of the doubt in saying those three tests would cost \$25. If your intent is \$75 for the three tests, our cost would be three times as much or \$60,000 per year. Either amount is prohibitive.

Enclosed with this letter is an invoice from Dairy Research Associates which is an approved lab with the Pennsylvania Health Department, and as you can see, these same tests cost \$4.25, \$5.75 and \$7.00 as compared with your suggestion of \$15 and \$25 each. These samples are picked up each month by their employees, same as your WV Health Department personnel do for these same tests.

Our company also has 40 convenience stores, of which 31 are in the state of West Virginia, and if there is another fee added by your Department under Title 64, Series 30, as I understand it from the meeting you held on May 23rd for grocers which I was not able to attend, of \$50 per year for every store manager we have and \$5 for every clerk we have in the stores, that would be an additional many thousand dollars per year since it is inherent that we turn

over part-time clerks as do other industries such as fast food restaurants. Again, it is not clear to me what all the fees would be, and I would like to clarify this at the Friday, June 22nd meeting in Charleston at 10:00 a.m. in building 7 of the Capitol Complex.

Not only is this proposed legislation unfair that we manufacturers and state residents would be charged, but it would make us uncompetitive when out-of-state dairies would not be charged an equal amount, and in most cases we could not pass it on to the public when other companies we compete with do not have the same expenses, and it would be another tax we would have to "eat."

If these Proposed Fees for Services become law it also opens the door for local Health Departments to levy another "local" tax, same as you are proposing for State Health Department services rendered.

I oppose this because I feel it is double taxation. We are already paying our share of taxes to the state of West Virginia to cover all these services. If this were to be a school district and their funds were cut they would cut their expenses to meet their budget, not charge a head tax for each student for whom they are already receiving taxes to teach. If this were a city police agency, they would meet their budget by cutting expenses, they would not charge a fee for every car for which they direct traffic. Likewise, we should not be charged taxes for services and then selectively double taxed by charging a fee for these same services.

In the 1940s there were 45 dairies in West Virginia. In 1980 there were 10 dairies. Today only 3 dairies are left in West Virginia. With this type of legislation and taxation there could be NONE.

Everyone knows the economy in West Virginia is very bad, and with all businesses getting hit with additional taxes and fees from federal, state and local governments, it is very difficult for any business to survive. Our convenience store business has been hit especially hard by the new Environmental Protection laws covering our gasoline installations, and we are just beginning to cope with these large assessments.

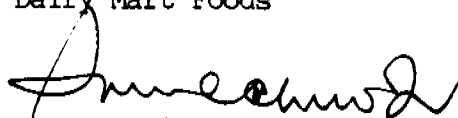
The consumer and every individual in the state of West Virginia are the end users of these services you are proposing to double tax, so these services should be charged fairly and without discrimination to every citizen of the state through a sales tax, rather than just targeting a few select food processors or farmers or store operators. In most cases we cannot pass on these costs.

For the above reasons I adamantly object to this unfair double taxation that you are proposing, and would suggest that you go back to the Legislature next January to get funded through a sales tax of some kind that would spread

the expenses you say you need among the whole citizenry rather than putting a few companies out of competition with their out-of-state competitors with this method of taxation. Again, this is very unfair.

Sincerely,

Chico Dairy Company and
Dairy Mart Foods

A handwritten signature in dark ink, appearing to read "Samuel Chico, Jr.", with a stylized, cursive script.

Samuel Chico, Jr.
President

SC:dr

Enclosure

INVOICE

No 1270

DAIRY RESEARCH ASSOCIATES, INC.

FOOD CONSULTANTS

P.O. BOX 111293 • PITTSBURGH, PA 15238

(412) 963-0656 • FAX (412) 963-1272

DATE: 3/21/90

Chico Dairy
331 Beechurst Ave.
Morgantown, WV 26505

*Lab Testing
milk products
Jama*

Billing for samples picked up 3/12/90

Report #900721

3 tests on same product → {	SPC Bacteria ✓	11 @ 4.25 ea.	46.75
	Coliform ✓	12 @ 5.75 ea.	69.00
	Phosphatase ✓	7 @ 7.00 ea.	49.00
	Mojonnier Fat	10 @ 6.50 ea.	65.00
	Mojonnier Total Solids	4 @ 6.50 ea.	26.00

TOTAL \$255.75

**TESTIMONY CONCERNING PROPOSED RULE 51
FEES FOR SERVICES**

presented to

**Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, WV 25305**

and presented by

**William L. Arledge, Director - Quality Assurance
Dairymen, Inc.
10140 Linn Station Road
Louisville, KY 4022**

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

TESTIMONY CONCERNING PROPOSED RULE 51

FEES FOR SERVICES

Dairymen, Inc., a milk marketing cooperative serving more than 4,100 members in seventeen southeastern and middle atlantic states -- which includes members in the State of West Virginia -- opposes the **Fees for Services** as outlined in the proposed Rule 51 by the Division of Health.

It is the duty of the Health Department to see that the consumers of this State are protected. Sanitation inspections and microbiological and chemical testing are designed to protect the public health of all residents and are paid for by State tax dollars rather than a discriminatory user fee. Annual milk production within the State of West Virginia is less than what is needed for the consumption in the State. Discriminatory user fees will force even more dairy farmers and dairy plants out of business. Milk production in a deficit state should be encouraged - not discouraged!

Laboratory testing, whether in a state health laboratory or a certified industry laboratory, is designed to protect the public health by providing microbiological and chemical testing, assuring the safety of raw and finished products. Fees in certified laboratories are not assessed in any other state, and such fees will cause or encourage voluntary certified industry laboratories to become decertified, forcing the responsibility of testing back on the State Health Department.

Certified industry laboratories do more testing on a routine daily basis, rather than only four samples over six months as required in the Pasteurized Milk Ordinance, thus assuring the quality and safety of raw and finished products. The same comments apply to water specimens and well permits. This testing and approval is clearly designed to

protect the public health and is paid for by State tax dollars.

The fees proposed to be collected to inspect dairy farms are also very discriminatory to the small family farm. We are not convinced it costs the State more to inspect a large dairy as a small one. Again, inspection is designed to monitor via farm surveys and to prevent anything that would affect public health. Clearly the responsibility of the State is to protect the consumer and is paid for by tax dollars. Also, farmers have absolutely no way to pass along this cost burden to consumers.

States such as Rhode Island and others are developing legislation to pay dairy farmers from \$2-4 per hundredweight (based on quality) above the prevailing federal order pricing to encourage dairymen to stay in business through income incentives rather than forcing them out of business!

Highly discriminatory fees adding additional cost burdens can do nothing but encourage an exodus of dairying from the State of West Virginia. Such an exodus will create further unemployment at the farm and dairy plant levels, creating additional burdens on the State. The State should be doing those things to encourage employment and income to the State, not discriminate against it.

RECEIVED

JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

June 20, 1990

T. William Miller

Depo. of Health & Human Resources

Building 3, Capital Complex

Charleston, W. Va. 26365

Dear Sir,

A few days ago I recieved a Newsletter to dairy farmers pertaining to "Free for service" (Proposed Rule 51)

Needless to say, I am very disappointed that our W. Va. Division of Health is even proposing such rules & regulations.

I personally feel that the issue of sanitation inspection should be paid by state dollars, rather than a "user fee".

I realize our state is in a financial bind, (thanks to some of our former elected officials who are now recieving nice big retirement pensions & benefits) but I'm very much against adding
(OVER)

more burden on the honest, hard
working dairy farmers of the state.

We farmers have been buying at
retail and selling at wholesale for years
& years. It aint no easy row to
hoe.

I strongly urge your department
to reconsider these proposals and
continue operating for you have in
the past.

Sincerely, C. P. Dayton

Calvin P. Dayton

R. R. 2, Box 646

Ridgeley, WV 26753

RECEIVED

JUN 14 1990

REGULATORY DEVELOPMENT
SECTION

Does the West Virginia Department of Health have the right to bankrupt West Virginia dairy farms? By passing the proposed Rule 51, that is what they will be doing. Should the dairy farmers of this state pay a "user" fee for the product they produce? The Rule 51 fees cover tests that do not protect the dairy farmer. These tests protect the consumer therefore tax dollars should continue to cover the expense of these services.

As a farm family, we are already having to convince our children that family farming will not pay in the future. Now the state department of health is trying to propose fees to put us out of business now. The dairy industry has suffered as the bottom dropped out from under our raw milk price and as the cost of feed sky rocketed. The consumer pays more for dairy products at the super market and the dairy farmer receives less for his product at home. We have no control of the price we receive for our milk therefore we cannot pass these fees on to the consumer.

Pennsylvania and Maryland, two large dairy producing states, charge the farmer nothing for these services. Ohio, ~~the~~ ranked third in the nation for dairy production, has a \$15 maximum license fee for dairy farms. West Virginia is not a self-sufficient dairy state. Most of our dairy products come from Pennsylvania, Maryland, Virginia, and Kentucky. The proposed Rule 51 fees would force the people of West Virginia to depend more on out-of-state milk than ever. It would force dairy farms out of business. It

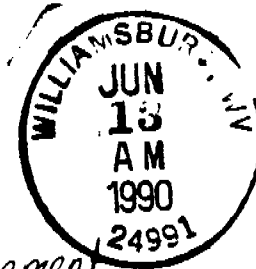
RECEIVED

1990 JUN 13 AM 10 11

Would cost the jobs of West Virginians.
Does West Virginia not Respect their farmers?

Sandy J. West

HCR68
Box 107
Trout, WV 24982



Regulatory Development
Room 204, Building 3
Capital Complex
Charleston, WV
25305





Florence Milk Farm

"FARM FRESH MILK"

RT. 1, BOX 80

MINERAL WELLS, WV 26150

304-489-1230

June 15, 1990

RECEIVED

JUN 21 1990

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

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Taunja Willis Miller

We own a dairy in wood County located at Mineral Wells, West Virginia. My Father started producing and selling milk on a retail level sixty Five years ago. At that time we were inspected by the Wood County Health department, later by the Parkersburg/Wood County Health Department, more recently we are tested and inspected by the Mid Ohio valley Health department. With no fee involved except 10.00 dollars state permit.

In reference to proposed rule 51, fees for service. We feel these regulations, testing fees, and permits and all other costs will put more dairymen out of business. West Virginia lost 200 milk producers in the last fiscal year. The administration talks of economic development, this certainly does Nothing for the economy.

In the early 1940's Wood County alone had 73 milk producers today we have 5. The procedures of your pricing formula is no more than a privilege to be in the dairy business. Total costs of all health departments should come from the general fund, because its for the health and welfare of the general public.

Therefore we are opposed to any changes, let the public pay for threr own protection costper citizen will be very minimal.

Sincerely,

Paul C. Florence
Florence Milk Farm

Gbr. Co. Farm Bureau
Lewisburg, WV 24901
June 18, 1990

To Whom It May Concern:

We the members of Greenbrier County Farm Bureau would like to voice our opinion in the hearing for the Health Dept. for June 19th or 20th, 1990.

We are totally opposed to the charges and the form in which we as milk producers are to be charged.

Respectively Yours,

Ed Carter
President
Gbr. Co. Farm Bureau

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Gbr. Co. Farm Bureau
Lewisburg, WV 24901
June 18, 1990

To Whom It May Concern:

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We are totally opposed to the charges and the form in which we as milk producers are to be charged.

Respectively Yours,

Ed Carter
President
Gbr. Co. Farm Bureau

Edner Hedrick Jr
Williamburg,
W. Va. 24799/

RECEIVED
JUN 21 1990
REGULATORY DEVELOPMENT
SECTION

June 19, 1990
Rt 1 Box 111
Moorefield, WV 26836

RECEIVED

JUN 22 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

Dear Ms. Miller,

I am writing you in reference to Proposed Rule 51--Fees for Service.

Some of the reasons I object to these regulations include:

- 1) We already have three (3) inspections ----Plant, PA State, Federal
This is sufficient.....
- 2) Inspections are now preformed by qualified inspectors who know the in's and out's of dairy farms.
- 3) Profits from dairy is very marginal as is.
- 4) Milk is one of the pureist food and drink that we consume-
Why inspect just dairy? Why not hogs, beef, poultry and others?

As you are aware, I hope, there is less milk produced in West Virginia than is consumed. I feel that these regulations will add to the situation and up goes the prices for consumers.

This is an extremely busy time for us farmers and I guess this is why this hearing has been schedule for this time of year.

I do not need any more inspections on my dairy farm. I do not need the additional cost which would come with more inspections.
I OPPOSE THESE REGULATIONS.

Sincerely,


Sam L Harper, III

cc: Representatives
Senator Tom Hawse
Delegate Harold Michael
Delegate Phyllis Cole

June 20, 1990

RECEIVED

Taunja Willis Miller
Building 3, Capitol Complex
Charleston, WV 25305

JUN 21 1990

SEC. OF HEALTH OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Ms. Miller:

In reference to Proposed Rule 51 concerning fees for service.

We are strongly opposed to the regulations being considered by the Department of Health and Human Resources. We feel this would put undue hardship on the working class of West Virginia.

As Dairy Farmers we know that this proposal is unfair. The farmers of West Virginia are already over-worked and under-paid with the average day being not 8 hrs. but an astonishing 16 hrs!!

Please reconsider this matter that will involve and concern so many hard-working taxpayers, farmers, and West Virginia citizens.

Thanking you in advance.

Sincerely,

June Hodges
Randy Hodges

June Hodges
Randy Hodges
Hodges Farm
Route 1, Box 120
Ballard, WV 24918

June 20, 1990

Jaunya Willis Miller, Sec.
Dept of Health And Human Resources
Building 3 Capital Complex
Charleston, WV 25305
Dear Secretary

RECEIVED

JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

I wish to express my strongest apposition to any thought to further tax the WV dairy farmer. The dairy farmers of West Virginia are one of the very few businesses that are forced to operate by paying retail prices for what they put in their business. Their end product, "Milk", has to be sold at the wholesale prices, which are set by a federal order pool. The individual dairyman has no say as to what he receives for his milk.

Since the general public enjoys the cheap food policy that we have in the United States and West Virginia, this added tax should be the consumers responsibility. The dairy farmer has been subsidizing the general public for years. There is no nation in the world who spend so little of their income for food, including dairy products.

Sincerely

J.W. Larow

J.W. LAROW
Box 33 HANS Creek
Greenville, WV 24945



Mr. & Mrs. Russell T. Linger, Jr.
(304) 335-4434

LINGER FARMS INC.

P. O. Box 14
Huttonsville, WV 26273

June 9, 1990

RECEIVED

Taunja Willis Miller, Secretary
Department of Health & Human Resources JUN 12 1990
Building 3, Capitol Complex
Charleston, West Virginia 25305

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Ms. Miller:

It is my understanding the State of West Virginia Division of Health has entertained the idea of "User Fees" for dairy farms in the state. I believe it is the duty of the health department to see that the consumers of this state are protected, however, the issue of sanitation should be treated as consumer protection and paid by state tax dollars, rather than a "user fee".

I understand you hope to generate a large amount of revenue through the use of this fee. I believe you should stop and consider the business climate in the state of West Virginia. It is totally understandable that many small businesses are not willing to come into a state where the total burden of so many unnecessary items are handed to them. This fee will just continue to inforce this.

Being in the dairy business all of my life, I have wished many times some of the people who make rules regulating the business would take the time to at least become familiar with it in a small degree. I truly appreciate the health department in so far as our inspections as I believe that are very important to the industry, however, so many times laws are purposed by those who have no knowledge of the industry and that is what the "user fee" idea seems to be. I hope you will consider taking the time to talk to people with knowledge of the industry from the standpoint of the farmer and at that point I am sure this will be given further consideration and the idea will at that point not be considered a good one. I would like to see you put energy into trying to attract some of these people who are looking for a place to start a dairy business. There are people who need to purchase land, farms, etc. to get started in the business and West Virginia has lots to offer them - lacking only in the business climate area. Why can't we get together and make an attractive package to get agriculture involvement more prevalent in a state where all the resources are there.

It has often been said that "Farmers buy at retail and sell at wholesale". This holds lots of food for thought and I believe the future of this state and country greatly depends on that one small segement, THE FARMER. I feel it is time we give him a chance to make a living - he does not ask for a forty hour work-week, more insurance benefits, etc. just a chance to help feed America and gain the satisfaction he deserves from the job well done.

Sincerely,

Russell T. Linger, Jr.
Russell T. Linger, Jr.

RECEIVED

JUN 14 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

R.D. #3, Box 212
Wheeling, WV 26003
June 12, 1990

Taunja Willis Miller, Secretary
Department of Health & Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

Dear Secretary Miller:

I am writing to express my feelings about Proposed Rule 51 - Fees for Service.

I have been a dairyman in West Virginia for over forty years and do not believe during those years that I have ever seen anything as discouraging as these proposed fees. West Virginia has been a milk deficient state. I believe that fees such as proposed will discourage milk production even more.

I believe it is the duty of the Health Department to protect the consumers. I also believe the Health Department has done a good job in this respect. Because of this, fees such as this should not be placed on producers. These costs should come from tax dollars. These fees are a tax on certain parts of our population.

Following are some additional concerns I have.

1. How is production perday on farms going to be determined. The proposed rule is not clear on this.
2. I don't believe it takes a sanitarian much longer, if any, to inspect a large producer than it does a smaller producer.
3. Why is an out-of-state plant only charged \$250.00 regardless of the gallons processed.
4. There is nothing in the proposed rule to prevent these fees from becoming even higher.

In closing again let me express my concern about the future of the dairy business in West Virginia. We as dairymen have never

shared in the economic growth in this country as many others have. Fees such as these proposed could further add to this problem. In spite of the recent increase in milk prices, the costs dairymen have to pay for machinery, supplies, utilities etc. continue to raise at a faster pace than the milk prices.

Yours truly,

Ivan McCombs
Ivan McCombs

RECEIVED

JUN 19 1990

**REGULATORY DEVELOPMENT
SECTION**

MCCULLOCH FARMS
2404 Mt. Vernon Avenue
Pt. Pleasant, WV 25550

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Ladies or Gentlemen:

I would like some clarification of Proposed Rule 51, Fees for services as it pertains to dairy farms.

1. Why there is a different cost of inspecting different size producers?
2. How the production per day is determined?
3. Why is there a \$100 charge for a reinstatement of a permit?
4. Why is an out of state plant charged a different fee? What about the reciprocity that currently exists between state?

Thank you.

Sincerely yours,

Charles E. McCulloch, III

Charles E. McCulloch, III

ROBERT P. McGARRY, JR.
Shenandoah Junction, W. Va. 25442
Route 1 Box 143R

June 17, 1990

Regulatory Development
Room 204 Building 3
Capitol Complex
Charleston, W. Va. 25305

To Whom It May Concern:

I am strongly opposed to service or permit fees as proposed for state dairy inspection to dairy farmers in the state. This should be funded by the state as a service to the public and not paid for by the individual dairymen. This service benefits all consumers, and should be paid for by our tax dollars.

Respectfully,

Robert P. McGarry Jr.
Robert P. McGarry Jr.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Monzell D. Marple
Route 1, Box 165
Buckhannon WV
26201

June 19, 1990

RECEIVED
JUN 21 1990
REGULATORY DEVELOPMENT
SECTION

Regulatory Development
Room 204, Building 3
Capital Complex
Charleston, WV 25305

Gentlemen:

As one of three dairymen left in Upsher County, I strongly protest your Proposed Rule 51, Fees for Services. I think all dairy farmers should be treated the same if you should charge fees. If you charge us services fee, I think you should give us a permit to buy wholesale, after all we do have a business certificate.

Thank You
Monzell D. Marple

MARYLAND & VIRGINIA
MILK PRODUCERS COOPERATIVE
ASSOCIATION, INC.

1888 ISAAC NEWTON SQUARE - SOUTH
RESTON, VIRGINIA 22080

(703) 748-9800

RUSSELL S. WACHTER, PRESIDENT
ROBERT E. VAUGHN, SEC-TREAS-SECT. MGR



MARYA MAID DAIRY
NEWPORT NEWS, VIRGINIA
SOUTHSIDE DIVISION
BLACKSTONE, VIRGINIA
MANUFACTURING DIVISION
LAUREL, MARYLAND
EQUIPMENT DIVISION
FREDERICK, MARYLAND

June 12, 1990

RECEIVED

JUN 18 1990

Department of Health and Human Resources
Building 3 Capital Complex
Charleston, WV 25305
Attn: Taunja Willis Miller, Secretary

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Madam Secretary:

We are writing to you regarding Proposal 51 (Fees for Service). We are opposed to this schedule of proposed fees. The enforcement of regulations regarding the production and selling of milk is an act for the protection of the health. As such, it does seem discriminatory to single out one segment of the population to bear the cost involved.

The dairy industry is contributing significantly to the cost of enforcement in West Virginia. In order to comply with the requirements of the state and pasteurized milk ordinance, certified industry laboratories are furnishing to the Department of Health, monthly results for all of the milk produced and marketed from West Virginia Farms. We encourage the Department to rethink the imposition of an additional burden to the dairy industry of West Virginia.

Sincerely,

James H. Reeder
Director, Member Relations

JHR/epp

PRODUCERS OF THE WORLD'S HIGHEST QUALITY MILK



Pittsburgh Division

100 First Financial Plaza
150 W. Beau Street
Washington, Pa. 15301
412/228-5350

June 13, 1990

The Honorable Tonya Willis Miller
Secretary of Department of Health and Human Resources
State Capitol Complex, Bldg. 3
Charleston, West Virginia 25305

RECEIVED

JUN 18 1990

Reference: Proposed Rule 51, Fees for Services

**REGULATORY DEVELOPMENT
SECTION**

Dear Secretary Miller:

Milk Marketing, Inc. is a regional marketing co-operative of dairy farmers with approximately 200 farmer members residing in West Virginia. We view with great alarm the proposed fees for services as they relate to the Dairy Industry in West Virginia. The proposal presents a radical departure from present practice and will place an significant added expense on dairy farmers and milk plants in the state. In the long range, the added burden will discourage dairy farmers from producing in West Virginia and therefore, have a very negative effect on the state's economy.

In behalf of MMI members, I oppose the proposed fees for the following reasons:

1. Farmers are not the "users". It's the public which is protected, therefore, tax dollars should pay for the service.
2. Farmers can't pass on these costs.
3. It's significantly out of line with other states! Pennsylvania and Maryland charge nothing. Ohio has a \$15.00 maximum license fee for milk producers.
4. It's an additional burden on the industry in West Virginia which is already a milk deficit state. (The proposed license fees and sample fees are an estimated \$150,000 for milk producers alone) This puts West Virginia farmers at an economic disadvantage compared to those in surrounding sales, who provide much of the dairy products consumed in West Virginia.

5. Farmers have had two hard years, they are already financially burdened and can't afford this additional tax.

We have reviewed the proposed fee schedule and need clarification of several items.

1. Why is there a different fee for different size producers? The cost of inspecting is the same regardless of the amount of milk shipped.
2. How is production per farm per day determined?
3. Why is there a \$100.00 charge for the reinstatement of a permit?
4. What is the charge to a producer not presently licensed in West Virginia?
5. Why is an out of state plant charged a fee? What service will be rendered?
6. What about the reciprocity that presently exists between states under the Interstate Milk Shippers Agreement? Will other states respond with fees on West Virginia plants?
7. Will Lab Certification by other states under the IMS agreement be recognized and accepted without an additional fee?

Along with other representatives of MMI, I will be attending the public hearing in Charleston on June 22, 1990. We hope to receive clarification on these and other items at that time.

As a resident of West Virginia, I hope this issue can be resolved in a way that dairy farming will continue to be encouraged by the state.

Sincerely,

Andy Langmyer

Andy Langmyer
Manager, Pittsburgh Division

cc: Regulatory Development

AL/nje

RECEIVED

JUN 19 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Tawnja Willis Miller, Secretary
Department of Health & Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

June 15 1990
Charles W Moss
Rt. 1 Box 208-A
Lindside WV 2478

I am writing in concern of Proposed Rule 51- Fees for Service. I am a dairy farmer of eight years, it was hard enough to get started at nineteen years of age with all of the rules and red-tape that there will be no young farmers left in the state to produce any of that consumed milk. If you have to buy a farm permit there will be fewer of us left. It will also cost us more to produce the milk which should lead to higher milk prices in the store. Are we not paying for this service when we ship are milk? Is the sanitarian wanting more money (a raise)? If you start with the dairy business how far will you go? You will have to have a permit for every-thing you go to do in the state. It seems that the people in the state want to stay poor and the people we elect is getting richer by coming up with such rules. Rules in this case should and ought to be broken. The average number of dairy cows in West Virginia 31,000 head. The total milk produced was 301 million pounds. The milk used on farm totaled 9 million pounds. There were 292 million pounds marketed. Cash receipts from the milk marketed totaled \$37.0 million. The gross value of all milk produced, including home consumption, totaled \$38.2 million. Are we ready to loose are Agriculture in West Virginia? More people will be moving out of the state to farm else where. Can you blame them?
Charles W Moss

June 12, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

To Whom It May Concern:

I recently received word that the Division of Health intends to charge milk producers a fee for conducting public health related services that directly benefit the consumers by protecting the health and safety of dairy products.

As an active dairy farmer, I am strongly opposed to service or permit fees that would be used to offset the cost of providing a public health service for all consumers. Since the dairy farm inspection program benefits all consumers, it should be funded from tax dollars instead of user fees.

Sincerely,

*Mount Rock Farm
Roy B. Harris, Dairy Farmer
Rt. 1, Box 246
Martinsburg, WV 25401*

RECEIVED

JUN 15 1990

**REGULATORY DEVELOPMENT
SECTION**

Delmer Weatherly
Rt 2 Box 87
Letart, W.V. 25253
Letart W.V. June 18, 1990

Regulatory Development
Room 204 Building 3
Capital Complex
Charleston W.V. 25305

We are concerned about
the high costs to sell milk
Proposed Rule 51 Fees for
Services Milk is so
burshable and we don't
had any more burdens
placed. So many high
costs to produce milk
and so many farmers are
so hard hit now of course
we

RECEIVED
JUL 21 1990
REGULATORY DEVELOPMENT
SECTION

Sincerely
Delmer Weatherly
Palmer Weatherly
David Weatherly

DALE F. RIGGS
P.O. BOX 502
BUCKHANNON, WV 26201
PHONE 472-5711 or 472-6200

HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL — PHONE (304) 340-3200
CHARLESTON 25305

Committees:
Banking & Insurance
Agriculture & Natural Resources
Government Organization

June 11, 1990

Regulatory Delevopment
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

Gentlemen:

I am writing to strongly protest your Proposed Rule 51, Fees For Services. Our dairy farmers are have a hard time staying in business now and the additional fees could cause them to go out of business.

You should know that Pennsylvania and Maryland charge nothing. Ohio has a \$15.00 maximum license fee for milk producers. Our farmers have to compete with farmers in other states.

Yours,

Dale F. Riggs

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JUN 12 1990

**REGULATORY DEVELOPMENT
SECTION**

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JUN 15 1990

**REGULATORY DEVELOPMENT
SECTION**

June 12, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

To Whom It May Concern:

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As an active dairy farmer, I am strongly opposed to service or permit fees that would be used to offset the cost of providing a public health service for all consumers. Since the dairy farm inspection program benefits all consumers, it should be funded from tax dollars instead of user fees.

Sincerely,

C. Archie Rives
350 Mouth of Opquon Rd
Martinsburg, W. V. 25401



Riverbend Farm

Registered Guernseys

PAUL & DONALD NAY

Jane Lew, West Virginia 26378

June 14, 1990

RECEIVED

Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, WV 26305

JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Gentlemen:

I am writing regarding Proposed Rule 51--Fees for Service in the Health Department.

My son and I have a dairy operation in Harrison county, milking approximately 80 cows. The proposed fees will cost us \$300.00 for a Dairy Farm Permit, presumably to cover costs of farm inspection, \$50.00 for a water well permit plus fees imposed on milk plants and for laboratory services which I am sure will be passed on the the producer in one way or another.

Health Department services are for the protection of the public; farmers are not the "users" of the service and it should be paid for with tax dollars.

If approved, this will be an added burden on the dairy industry in West Virginia which is already a milk deficit state and on the dairy farmers who have absolutely no control over the price we receive for milk as it is regulated by a Federal Milk Marketing Order.

These proposed fees are "totally out of line". Of the states surrounding West Virginia, Pennsylvania and Maryland have no fees and Ohio charges a maximum of \$15.00 for a producer license fee.

This is a blatant attempt to finance a part of the state government by putting a tax on a very small segment of citizens to pay for a service for all citizens of the state.

I object very much to the fees proposed to be placed on the dairy industry in Proposed Rule 51 and am contacting my Delegates and Senators and soliciting their help in prevent these fees from being imposed.

Very truly yours.

Paul Nay
Paul Nay

cc: Senators Sharpe and Wolfe and Delegates Ashcraft, Minard, Queen and Warner

HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL — PHONE (304) 340-3200
CHARLESTON 25305

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JUN 21 1990

REGULATORY DEVELOPMENT
SECTION

JAMES J. ROWE
203 WEST RANDOLPH STREET
LEWISBURG, WV 24901-1099
PHONE (304) 645-1858

June 19, 1990

Division of Health
West Virginia Department of Health
and Human Resources
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

Re: Proposed Rule 51, Fees for Services

Gentlemen:

I am writing to protest and urge revision of your proposed fee schedule as it relates to West Virginia dairy farmers.

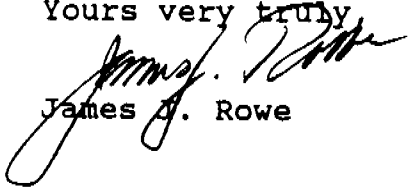
Although I understand that the department now has the authority and the need to look for additional sources of funding to run its programs, the proposed rule is not mindful of the difficulties faced by West Virginia's dairy producers. At a time when West Virginia should be recognizing and assisting our farmers and promoting our agriculture industries, the proposed fee schedule appears to be an unnecessary burden on an already struggling industry.

It is no secret that our farmers are struggling with the high costs of doing business. The fee schedule is insensitive to their plight.

I urge you to listen carefully to the comments from West Virginia's farmers concerning this proposed rule, examine the licensing fees for our sister states and amend the schedule so that it is not out of line with the responsibility of protecting our dairy industry in West Virginia.

Thank you for your consideration.

Yours very truly


James D. Rowe

JJR/pks



Valley Bell

DAIRY COMPANY

Roane St. at Delaware Ave. • Charleston, WV 25302 • Phone (304) 351-511

June 20, 1990

Taunja Willis Miller, Secretary
Department of Health and
Human Resources
State of West Virginia
Building 3, Capital Complex
Charleston, West Virginia 25305

Re: Proposed "Fees for Services" Rule

Dear Secretary Miller:

We are writing in reference to the proposed legislative rule Title 64 CSR 51 styled "Fees for Services". We appreciate your willingness to work with industry and your openness to comments on the initial language.

Valley Bell Dairy processes, manufactures, and distributes fluid milk, cultured and frozen dessert products throughout the State of West Virginia and its contiguous states. Our interest in this matter is insuring that if the imposition of Laboratory Service Fees and Environmental Health Service Fees must proceed, that the fees be rationally based and not unfairly burdensome thereby disadvantaging West Virginia dairy processors.

During recent years, many dairy processors have had an exceedingly difficult time in light of low margins, rising costs and competition from other segments of the beverage industry, such as soft drink bottlers. Such entities may not be able to absorb a further increase in costs.

Specifically, our concerns and questions center on the following areas:

1. Fees

a. Laboratory Service Fees. The fees charged by the Laboratory director will have the greatest impact on a dairy processor. Presently, 150 samples of our product are taken a month for "finished milk product package" testing. At \$25.00 per sample, we will pay \$45,000.00 annually. Given the open-endedness of the number of samples that will be taken, processors could face devastatingly large monthly fees.

b. Laboratory Certification. There is a \$500.00 fee for laboratory certification. What is the basis for this fee?

c. Environmental Health Service Fees. Is the \$250.00 - 500.00 dollar fee reasonably related to the inspection costs incurred annually by the Department of Health?

Frankly, we are concerned that Section 16-1-21 of the West Virginia Code does not designate which Department of Health program surpluses shall be used to fund. We believe that the regulations should provide that revenues from dairy processors will be used only for the programs which affect them, since it would be patently inequitable to ask one industry to help support unrelated Department of Health services.

2. Emergency Legislative Rule Promulgation. The haste in which this regulation is being promulgated and made effective precludes full debate in the legislature. The authority to charge reasonable fees was granted to the Department of Health when Chapter 16 of the West Virginia Code was amended in January of this year. As far as we know, no studies have been conducted to determine what it would cost to finance the dairy portion of the Department of Health's budget. Our concern is that the Department of Health is proceeding too rapidly without first considering the impact of its measures and looking to see how other states fund their milk testing programs. We emphatically urge the Department of Health not to proceed with emergency promulgation of this rule.

3. Industry Input. Input from industry members on an annual basis regarding the amount of fees charged is desirable, yet no such provision has been made in the current proposal. For example, the Ohio Revised Code, Section 3707.376 established the Milk Sanitation Board which meets annually to approve fees to fund the Grade A milk testing program in Ohio and to advise the Ohio director of health. The members represent the milk haulers, milk producers, milk processors, the Ohio Department of Health, the Ohio Department of Agriculture, the public health council and the local health districts. Section 3707.373 provides that funds generated by inspection fees be used exclusively for administration of the dairy program in the Ohio Department of Health.

The proposed rule shifts the focus of the Department of Health's mandate from that of preserving the public peace, health, safety and welfare to that of generating revenue, with dire consequences for the dairy industry, and ultimately, the consumer who will pay a higher cost for milk.

Please let us know if we can provide further information.

Sincerely,



Les Seidner
General Manager, Valley Bell Dairy

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

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JUN 22 1990

HOUSE OF DELEGATES

WEST VIRGINIA LEGISLATURE
STATE CAPITOL — PHONE (304) 340-3200
CHARLESTON 25305

REGULATORY DEVELOPMENT
SECTION

BILL WALLACE
U. S. ROUTE 60, BOX 31
CLINTONVILLE, WV 24928-8822
PHONE (304) 392-6213

June 22, 1990

Committees:
Constitutional Revision
Government Organization
Roads & Transportation

Regulatory Development
Rm. 204, Bldg. 3
Capitol Complex
Charleston, WV 25305

RE: Title 64, Series 51--Division of Health,
Fees for Services

Gentlemen/Ladies:

My intent in voting for Com. Sub. for H. B. 4660 was to help provide supplemental revenues for county health departments to keep their doors open. My intent was not to force a particular class of agri-businessmen out of business.

The proposed rule places an undue burden upon small dairy farmers. The dairy business is extremely price competitive. Additional costs of production cannot be passed on to consumers as predicted in your fiscal note, subparagraph (4)(C), Economic Impact on Citizens/Public at Large.

Furthermore, when voting for the new §16-1-21, I anticipated fees of \$5, \$10, maybe \$25. Instead, I see in your proposed rule fees of \$100, \$250, \$500!

I request that the proposed rule be submitted to the Legislative Rule-Making Committee without being placed on emergency status in the interim. The exorbitant fees and questionable terminology, such as "raw milk products package" and "lbs/day" (monthly average? yearly average?), warrant that these rules be placed on hold until the legislative committee decides their validity.

Sincerely,

Bill Wallace
Bill Wallace

cc: Mr. Speaker, Hon. R. C. Chambers
Secretary Taunja Willis-Miller

West Virginia Farm Bureau

Member of American Farm Bureau Federation

1 Red Rock Road, Buckhannon, WV 26201

304/472-2080



STATEMENT OF THE WEST VIRGINIA FARM BUREAU

ON PROPOSED RULE NO. 51

FEEES FOR SERVICE

MY NAME IS FRED G. BUTLER, PRESIDENT OF THE WEST VIRGINIA FARM BUREAU, REPRESENTING SOME 12,500 FAMILY MEMBERS IN WEST VIRGINIA. I AM ALSO A DAIRY FARMER FROM BERKELEY COUNTY.

THANK YOU FOR THE OPPORTUNITY TO MAKE THESE COMMENTS ON THE PROPOSED REGULATIONS NO. 51, FEEES FOR SERVICE.

IT IS VERY DIFFICULT FOR FARMERS TO COME TO CHARLESTON FOR THIS PUBLIC HEARING, PARTICULARLY AT THIS TIME OF YEAR. I WOULD SUGGEST THAT IF YOU HAVE PUBLIC HEARINGS IN THE FUTURE THAT YOU CONSIDER HAVING TWO OR THREE HEARINGS OUT IN THE STATE WHERE YOU CAN GET MORE INPUT FROM THOSE AFFECTED.

THE WEST VIRGINIA FARM BUREAU STRONGLY OPPOSES THESE PROPOSED RULES. THE SERVICES THAT ARE PROVIDED BY THE DIVISION OF HEALTH PROTECTS ALL CITIZENS OF THE STATE, AND WE DO NOT FEEL THAT A "USERS FEE" OR A HIDDEN TAX SHOULD BE PLACED ON THOSE PROVIDING THE PRODUCT WHETHER IT BE MILK, WATER, SEWAGE, OR OTHER PRODUCTS, BUT THIS SERVICE SHOULD BE PROVIDED THROUGH GENERAL TAX DOLLARS.

IT ALSO APPEARS TO US THAT YOU ARE CREATING AN "ADMINISTRATIVE NIGHTMARE" FOR THE DIVISION. IT APPEARS THAT IT WILL TAKE CONSIDERABLE TIME AND EFFORT TO SIMPLY KEEP UP WITH THE PAPER

WORK, WHILE AT THE SAME TIME NOT PROVIDING ANY ADDITIONAL SERVICE OR PROTECTION TO THE PEOPLE OF THIS STATE.

NOW LET US LOOK AT THOSE ISSUES DIRECTLY EFFECTING AGRICULTURE.

UNDER THE SCOPE OF THESE PROPOSED RULES, YOU INDICATE THAT REASONABLE FEES ARE ESTABLISHED. WE FEEL THAT THESE FEES ARE UNREASONABLE. AS FAR AS DAIRY FARM ANNUAL PERMIT FEES ARE CONCERNED, THE STATES OF MARYLAND, VIRGINIA, AND PENNSYLVANIA DO NOT CHARGE FEES. THE STATE OF OHIO CHARGES \$15 FOR SIMILAR SERVICES.

WE ALSO FEEL THAT IT IS NOT REASONABLE TO CHARGE A FARMER WHO IS PRODUCING 2,000 POUNDS OF MILK A DAY \$100, AND A FARMER WHO IS PRODUCING 2,001 POUNDS OF MILK PER DAY \$200, OR ONE WHO IS PRODUCING 4,000 POUNDS OF MILK PER DAY \$300. IT DOES NOT TAKE ANY MORE TIME TO INSPECT A FARM THAT IS MILKING 200 COWS THAN IT DOES ONE THAT IS MILKING 50 COWS. HOW IS THE PRODUCTION PER DAY DETERMINED? IS IT ON A YEARLY AVERAGE, OR IF ANY GIVEN DAY A PRODUCER GOES OVER THE AMOUNT, IS HE REQUIRED TO PAY THE HIGHER FEE?

THE SAME THEORY APPLIES TO MILK PLANTS. ONE MUST ASK, "DOES IT TAKE TWICE AS LONG TO INSPECT A PLANT THAT PROCESSES ABOVE 100,000 GALLONS PER MONTH THAN IT DOES ONE THAT PROCESSES LESS THAN 100,000 GALLONS?" WE THINK NOT.

IT APPEARS THE DAIRY FARMERS WILL NOT ONLY HAVE TO PAY THE PREVIOUSLY MENTIONED FEES, BUT WILL ALSO BE REQUIRED TO PAY FOR TESTING WATER, SEPTIC TANK PERMITS, AND WATER WELL PERMITS.

WE ALSO QUESTION THE FEE ON OUT-OF-STATE PLANTS. DOES THE DIVISION OF HEALTH INSPECT THESE PLANTS? IF SO, WHY NOT USE THE SAME REASONING THAT YOU USED IN THE IN-STATE PLANTS - TWO FEES AS PER SIZE.

THE DEFINITION OF BOBTAILER IS CONFUSING. "ANY PERSON ENGAGED IN THE DISTRIBUTION AND/OR SELLING OF PRIVATE BRAND LABELED MILK OR ANOTHER COMPANY'S MILK AND MILK PRODUCTS". UNDER THIS DEFINITION, THIS WOULD INCLUDE PRACTICALLY EVERY STORE, LARGE OR SMALL, THAT SELLS MILK.

THIS EXTRA FEE WILL CERTAINLY BE ADDED TO THE COST, WHICH MAKES IT VERY DIFFICULT FOR THE SMALL STORE OWNER TO COMPETE. THIS SIMPLY PUTS AN ADDITIONAL BURDEN ON MANY WHO ARE STRUGGLING TO SURVIVE.

THE FEE FOR REINSTATEMENT OF A PERMIT/PRODUCT IS COMPLETELY OUT OF LINE, PARTICULARLY FOR THE DAIRY FARMER. IF A DAIRY FARMER PERMIT HAS BEEN SUSPENDED, IN MOST CASES, HE IS REQUIRED TO DUMP THE MILK. THIS, IN ITSELF, IS A SUBSTANTIAL FINE.

WE FEEL IT SHOULD BE THE DUTY OF THE DIVISION OF HEALTH TO ASSIST THOSE WHO HAVE HAD PROBLEMS, RATHER THAN PENALIZE.

THE FEE FOR THE CERTIFICATION OF MILK LABORATORIES IS ALSO COMPLETELY OUT-OF-LINE. IT IS OUR UNDERSTANDING THAT THESE LABORATORIES ARE REQUIRED FOR THE FARMER OWNED CO-OPS AND MILK PLANTS. THERE IS A VERY SMALL MARGIN OF PROFIT IN THESE AREAS, AND AGAIN YOU ARE MAKING IT VERY DIFFICULT FOR THE DAIRY INDUSTRY TO SURVIVE.

WE ALSO QUESTION AS TO WHAT IS A RAW PRODUCT PACKAGE. WHO IS REQUIRED TO HAVE THESE TESTS RUN? WE SEE NO EXPLANATION IN THE PROPOSED RULES.

THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT HAS IDENTIFIED FOOD PROCESS AS A PRIME AREA FOR WEST VIRGINIA. HOWEVER, WITH THE FEES THAT ARE PROPOSED FOR THIS INDUSTRY, IT APPEARS AS IF THE STATE OF WEST VIRGINIA DOES NOT WANT TO ENCOURAGE THIS TYPE OF INDUSTRY.

AGAIN, LET ME SAY THAT THE WEST VIRGINIA FARM BUREAU IS STRONGLY OPPOSED TO THESE PROPOSED RULES. WEST VIRGINIA CONSUMES MUCH MORE MILK THAN IT PRODUCES. WE HAVE FEWER DAIRY FARMS THAN WE HAD 5 YEARS AGO, AND CONSIDERABLY LESS THAN WE DID 10 YEARS AGO. IF THESE FEES ARE IMPOSED, I BELIEVE WE WILL HAVE MORE PEOPLE GOING OUT OF BUSINESS.

ONE LAST QUESTION. WHAT ASSURANCE DO THOSE PEOPLE HAVE WHO ARE PAYING THESE "USER FEES" THAT THE FEES WILL BE USED BY THE DIVISION OF HEALTH? WILL THEY BE PUT INTO THE GENERAL ACCOUNT OF THE

DEPARTMENT OF HEALTH AND HUMAN SERVICES, OR EVEN WORSE, WILL THEY BE TAKEN BY THE LEGISLATURE AND PUT IN THE GENERAL FUND?

THANK YOU FOR THE OPPORTUNITY TO MAKE THESE STATEMENTS. AGAIN, I ENCOURAGE YOU TO RECONSIDER THE BURDEN THAT THESE PROPOSED RULES WILL PUT ON THE DAIRY FARMERS OF THIS STATE. AS I HAVE SAID MANY TIMES, FARMERS BUY AT RETAIL AND SELL AT WHOLESALE. WE SIMPLY HAVE NO WAY OF PASSING THIS ADDITIONAL COST ON TO THE CONSUMER.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



Division of Animal and Veterinary Sciences

West Virginia University

College of Agriculture and Forestry □ Agricultural and Forestry Experiment Station

RECEIVED

JUN 21 1990

June 18, 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Ms. Tanjua Willis Miller
Department of Health &
Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

Dear Ms. Miller:

As dairy scientists committed to teaching, research and service to the general public and the dairy industry in West Virginia, we wish to express our opposition to the following proposed legislation: Title 64, West Virginia Legislative Rules, Division of Health, Fees for Services, Series 5 1990. We are filing this written objection to these proposed fees, in lieu of being able to attend the public hearing scheduled for June 22, 1990, at 10:00 A.M. in Charleston, WV.

Our major reasons for opposing the fees are as follows:

1. The permit fees for producers are exorbitant. Some neighboring states do not have any permit fees for producers. Others, Ohio, for example, has a nominal fee of \$15.00 per year.
2. The permit fee for processors is exorbitant and discriminatory. (A large out of state processor supplying West Virginia Customers could conceivably pay a lower permit fee than a smaller West Virginia firm.)
3. The permit for bobtailers might discourage business from selling dairy products. It is also not quite clear as to who is considered to be a bobtailer.
4. All of the proposed fees for samples, producers and processors alike, are exorbitant and discriminatory. Producers would be paying in excess of two hundred dollars per year for routine testing. Individual processors could be paying from \$1,000 to \$20,000 per year, depending on size, number of products and number of counties in which products are distributed.

An Equal Opportunity / Affirmative Action Institution

Employment, programs, and services are provided without regard to race, color, sex, religion, handicap, age, or national origin and assistance is provided only to groups or individuals with similar policies.

P.O. Box 6108 □ Morgantown, WV 26506-6108

Ms. Miller
June 18, 1990
Page 2

5. West Virginia is already a dairy deficient state, with regard to milk supply in relation to demand. We feel that if these fees are imposed it will cause even more producers to ship out of state and cause our plants to buy more out of state milk, causing even more erosion of the economic situation.

In addition to objecting to the proposed fees, we object to the manner in which this proposal has been handled. We have not received, nor have we been able to locate one producer or processor who has received an official notice of the public hearing concerning these fee proposals. All of our information, and that of other concerned individuals or groups, has been obtained by subtle means. We feel that this is unfair and is counter to all democratic processes.

We understand the concerns of the State Department of Health with respect to its being underfunded in the state budget, and we recognize the legal responsibility of the Health Department to provide the respective services to the people and industries in West Virginia, but we feel strongly that the imposition of user fees as a means of making up for budget deficits is not in the best interest of the dairy industry or the taxpayers in general.

Although we oppose these fees, we do support the work which you do and are always available to be of any assistance to you in any way of which we are capable. We trust that you will be successful in finding alternate ways of funding your programs.

Sincerely,

Paul M. Smith

Paul M. Smith, Asst. Professor

W. H. Hoover

W.H. Hoover, Professor

Robert A. Dailey

R.A. Dailey, Professor

Ellen R. Jordan

E.R. Jordan, Assoc. Professor

Dairy Science Committee Members



DALE E. BRUM, D.D.S.

930 AVERY STREET
PARKERSBURG, WEST VIRGINIA 26101
TELEPHONE (304) 428-1151

June 19, 1990

Dear Ms. Howard:

This is in response to proposed rule number 51, "Fee for Services." The fee proposed is excessive for the service performed. I would suggest that there must be a more reasonable way or perhaps it could be done more reasonably in the private sector.

Personally, I am trying to comply with OSHA office health requirements as well as hazardous waste disposal and I am being forced to put more time and money into things that don't really help my patients. X-ray tube inspections are important for the safety of my patients as well as my employees but do you really have to charge so much?

Sincerely,

Dale E. Brum DDS

Dale E. Brum DDS

Secretary/Treasurer
Blennerhassett Dental Society

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**



June 18, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

RECEIVED

JUN 19 1990

**REGULATORY DEVELOPMENT
SECTION**

Dear Ms. Howard:

This letter is in response to proposal Rule No. 51 concerning the proposed fee to be charged for inspection of dental x-ray equipment. This contemplated fee of \$150.00 for the first tube and \$20.00 for each additional tube is exorbitant, and completely out of line with what surrounding states are charging for the same service.

Radiation hygiene is a very important and complex issue. All dentists are interested in maintaining safe and effective radiology standards, but this inspection fee is difficult to comprehend. Especially, since this service has been provided without fee.

I realize budget restraints have caused various state agencies to look elsewhere for operational income. But, there becomes a limit to what this profession as well as the public can bear. Initiating this fee will trigger additional overhead expense on the dentist which he will ultimately be forced to pass on to the consumer, thus continuing the upward spiral of health cost.

I strongly urge your organization to re-consider this proposal.

Sincerely,

Richard E. McClung, D.D.S., M.S.
President of the Greenbrier Valley Dental
Association

REM/mrc

JOHN W. FRYE, D.D.S.
1206 LOCUST AVENUE
FAIRMONT, WEST VIRGINIA 26554
TELEPHONE 366-2182

June 19, 1990

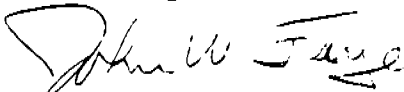
Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston WV 25305

Dear Ms Howard

I am adamantly opposed to the proposed Rule No. 51 "Fee for Services". Your proposed fee of \$150.00 for dental x-ray equipment is excessive and far beyond what neighboring states in the region charge for similar services.

Please do what you can to discourage implementation of this unreasonable fee.

Sincerely



John W. Frye, D.D.S.

JB

Enclosure

RECEIVED

JUN 25 1990

**REGULATORY DEVELOPMENT
SECTION**

C. Richard Gerber, III, D.D.S.

314 BARKWELL STREET

ST. MARYS, WEST VIRGINIA 26170

TELEPHONE (304) 684-2204

June 19, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, W.VA. 25305

Dear Ms. Howard:

This is in response to proposed Rule No. 51 "Fee for Services" wherein the West Virginia Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. Your proposed fee is \$150 for the first tube and \$20 for each additional tube. I understand the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

I personally oppose the fees proposed for inspection of x-ray equipment in dental offices on the basis that the fees of \$150 and \$20 are excessive.

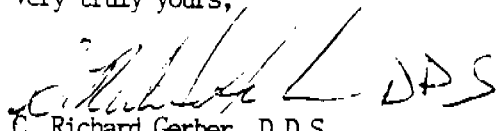
The West Virginia Dental Association survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. South Carolina charges \$20 per tube per year;
3. North Carolina charges \$70 for the first tube and \$12.50 for each additional tube for inspections every three years.
4. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when conducted by state personnel of \$35 per tube when conducted by a private firm who in turn certifies the safety of the equipment with the state;
5. Pennsylvania charges each dentist \$55 per year, which includes their annual license and inspection of x-ray equipment at least once every four years; and
6. Ohio charges \$25 for the first tube and \$12.50 per additional tube for inspections every five years.

I don't understand the need for fees for services being charged by the Division of Health. However, the fees should be commensurate with expenses incurred for such inspections. Recent inquiries of dentists finds the time involved inspecting 4 to 6 tubes is between 15 and 30 minutes. This would result in fees between \$210 and \$250 per dental office having 4 to 6 tubes with less than 30 minutes of time involved in the inspection program.

Therefore, I find the proposed fees to be excessive and strongly urge the Division of Health to propose lower fees for inspection, or eliminate the fee entirely.

Very truly yours,

A handwritten signature in dark ink, appearing to read "C. Richard Gerber, D.D.S.", with a stylized flourish at the end.

C. Richard Gerber, D.D.S.

Delegate to the West Virginia Dental Association

CRG/cr

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

C. Keith Hieronimus, D.D.S., Inc.

50 WAYNESBURG AVENUE
CAMERON, WEST VIRGINIA 26033
TELEPHONE (304) 686-3388

June 20, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard,

This is in response to proposed Rule No. 51, "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. Your proposed fee is \$150 for the first tube and \$20 for each additional tube. I understand the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

I oppose the fees proposed for inspection of x-ray equipment in dental offices on the basis that the fees of \$150 and \$20 are excessive.

My survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. South Carolina charges \$20 per tube per year;
3. North Carolina charges \$70 for the first tube and \$12.50 for each additional tube for inspections every three years.
4. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when conducted by state personnel or \$35 per tube when conducted by a private firm who in turn certifies the safety of the equipment with the state;

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JUN 22 1990

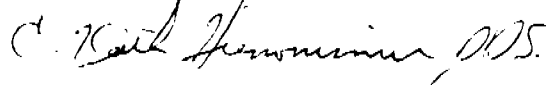
**REGULATORY DEVELOPMENT
SECTION**

5. Pennsylvania charges each dentist \$55 per year, which includes their annual license and inspection of x-ray equipment at least once every four years; and
6. Ohio charges \$25 for the first tube and \$12.50 per additional tube for inspections every five years.

I understand the need for fees for services being charged by the Division of Health. However, the fees should be commensurate with the expenses incurred for such inspections. Recent inquiries of dentists finds the time involved inspecting 4 to 6 tubes is between 15 and 30 minutes. This would result in fees between \$210 and \$250 per dental office having 4 to 6 tubes with less than 30 minutes of time involved in the inspection process.

Therefore, I find the proposed fees to be excessive and strongly urge the Division of Health to propose lower fees for inspection.

Very truly yours,



C. Keith Hieronimus, D.D.S.
President, Marshall-Wetzel-Tyler
County Dental Society

CKH/kdp



L. K. Hildebrand, D.D.S., M.S.

30 sixth avenue, west, suite 104
huntington, wv 25701
(304) 529-2880

June 19, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Bldg 3
Capitol Complex
Charleston, WV 25305

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

Dear Ms. Howard:

This is in response to proposed Rule No. 51, "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. Your proposed fee is \$150 for the first tube and \$20 for each additional tube. I understand the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

I oppose the fees proposed for inspection of x-ray equipment in dental offices on the basis that the fees of \$150 and \$20 are excessive.

Our survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when conducted by state personnel or \$35 per tube when conducted by a private firm who in turn certifies the safety of the equipment with the state;
3. Ohio charges \$25 for the first tube and \$12.50 per additional tube for inspections every five years.

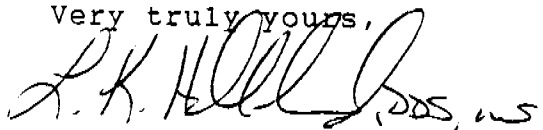


American Association of Endodontists
Specialist Members

I understand the need for fees for services being charged by the Division of Health. However, the fees should be commensurate with the expenses incurred for such inspections. Recent inquiries of dentists finds the time involved inspecting 4 to 6 tubes is between \$210 and \$250 per dental office having 4 to 6 tubes with less than 30 minutes of time involved in the inspection process.

Therefore, I find the proposed fees to be excessive and strongly urge the Division of Health to propose lower fees for inspection.

Very truly yours,

A handwritten signature in dark ink, appearing to read "L.K. Hildbrand", with a stylized flourish at the end.

L.K. Hildbrand, D.D.S., M.S.
Executive Council Delegate

THOMAS W. LESLIE, D.D.S.
1110 CONCORD AVENUE
BERKELEY SPRINGS, WEST VIRGINIA 25411
304-258-2291

June 18, 1990

RECEIVED

JUN 19 1990

**REGULATORY DEVELOPMENT
SECTION**

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204, Building 3
Charleston, WV 25305

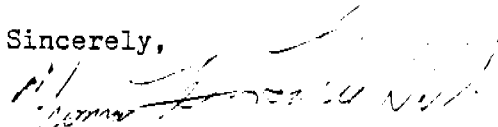
Dear Ms. Howard,

This is in response to proposed Rule No. 51, "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. As I understand it, your proposed fee is \$150.00 for the first x-ray tube and \$20.00 for each additional tube. It is my understanding that the proposed fee will be imposed every two years upon inspection of said dental offices.

I oppose the fees proposed for inspection of x-ray equipment because I feel the proposed fees of \$150.00 and \$20.00 for each additional tube are excessive. In my own particular office this would amount to \$210.00 every two years. I do not oppose the idea of fee for service, but would rather see fees proposed for West Virginia to either be less on an annual basis or make the inspection period less frequent, say every three years. It has been my experience over the years that the inspection of the x-ray equipment in my office takes less than 30 minutes and the proposed fee would result in a fee of \$210.00, which for 30 minutes of work I feel is excessive.

I appreciate your attention to this matter.

Sincerely,



Thomas W. Leslie, D.D.S.

TWL/lb

Marshall - Wetzel - Tyler Dental Society

35 East Benjamin Drive
New Martinsville, West Virginia 26155

June 22, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard:

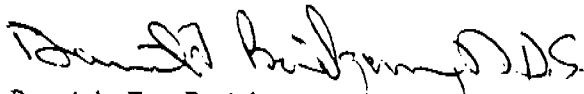
This letter is in response to proposed Rule No. 51, "Fee for Services" which relates to inspection of x-ray equipment in a dental office. I am writing on behalf of the Marshall-Wetzel-Tyler Dental Society, a group of approximately 20 dentists located in these counties. We are a component of the West Virginia Dental Association.

Our society opposes the proposed inspection fees on the grounds that they are excessive and not comensurate with the amount of time necessary to complete these inspections. A poll of our membership indicates that the average inspection time in their offices is less than 30 minutes, each practitioner having from 3 to 6 tubes. I believe my colleagues comments are reliabe as inspection in my office in the past has always been under 30 minutes. I have 5 tubes.

We are not opposed to paying a fee for this service, in fact most of us are happy to see your people when they arrive and are relieved to find that our machines are operating safely. We feel however, that fees for inspection should be more in line with time and expense involved.

Marshall-Wetzel-Tyler Dental Society strongly urges your reconsideration of this ruling.

Sincerely,


David F. Bridgeman, DDS
Executive Council Delegate
M-W-T Dental Society

RECEIVED

JUN 25 1990

REGULATORY DEVELOPMENT



**Marshall-Wetzel-Tyler
Dental Society**
701 N. Main Street
New Martinsville, W. Va. 26155

E. Thomas Nagem, D.D.S., Inc.

1703 COMMERCE STREET
WELLSBURG, WEST VIRGINIA 26070
TELEPHONE (304) 737-3050

June 19, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3, Capitol Complex
Charleston, WV 25305

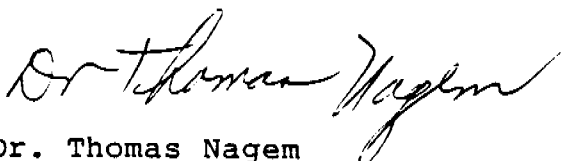
Dear Ms. Howard

In regard to rule no.51:

Your proposed fee for x-ray equipment in dental offices is excessive. Surrounding states have fees which are far lower than yours. North Carolina and Virginia have one of the highest fees ranging from \$65.00 to \$75.00. Your proposed fee of \$150.00 is at least twice that amount.

It would be a sign of good faith to the few professionals who are trying to remain in this state, if you would reconsider your fee structure. I realize the state is in a financial struggle, but gouging those people who are willing to remain and help the state of West Virginia will not be beneficial. It will only chase away the very people the state so desperately needs.

Sincerely


Dr. Thomas Nagem

RECEIVED
JUN 21 1990
REGULATORY DEVELOPMENT
SECTION



DR. DOUGLAS W. O'DELL

Temporomandibular Joint Disorders and Craniofacial Pain

1210 Virginia Street East
Charleston, West Virginia 25301
(304) 345-1210

June 18, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard,

I would strongly urge you to consider covering the proposed fee for inspection of x-ray equipment in dental offices. This society feels that the \$150.00 fee is excessive considering the amount of time required for the inspection.

Thank you for your consideration in this matter.

Sincerely,

Dr. Douglas W. O'Dell
President,
Kanawha Valley Dental Society

DWO/ss

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JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**



J. A. PALMER, D.D.S., M.S.

HAWLEY BLDG. MAIN STREET SUITE 930 • WHEELING, WV 26003 • (304) 232-6666

June 20, 1990

Dear Ms. Howard,

In response to proposed Rule No. 51, "Fee for Services" I must state that I find the fees to be charged for the inspection of dental X-ray equipment to be excessive, and not in line with other states.

In behalf of the Wheeling District Dental Society I must express my opposition. Please re-evaluate this proposed rule and consider lower fees.

Sincerely,

J.A. Palmer, D.D.S., M.S.
Secretary, WDDS

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

EARL C. PRICE, D.D.S.

1717 Jefferson Street
Bluefield, WV 24701

Office (304) 327-2471

Home (703) 322-5607

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, W.Va. 25305

Dear Ms. Howard:

This is in response to proposed Rule No. 51, "Fee for Services", wherein the WV Division of Health proposed fee is \$150 for the first tube and \$20 for each additional tube. I understand the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

As president of the Mercer-McDowell Dental Society, I oppose the fees proposed for inspection of x-ray equipment in dental offices on the basis that the fees of \$150 and \$20 are excessive.

Our survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. South Carolina charges \$20 per tube per year;
3. North Carolina charges \$70 for the first tube and \$12.50 for each additional tube for inspections every three years.
4. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when conducted by a private firm who in turn certifies the safety of the equipment with the state;
5. Pennsylvania charges each dentist \$55 per year, which includes their annual license and inspection of x-ray equipment at least once every four years; and
6. Ohio charges \$25 for the first tube and \$12.50 per additional tube for inspections every five years.

EARL C. PRICE, D.D.S.

1717 Jefferson Street
Bluefield, WV 24701

Office (304) 327-2471

Home (703) 322-5607

I understand the need for fees for services being charged by the Division of Health. However, the fees should be commensurate with the expenses incurred for such inspections. Recent inquiries of dentists finds the time involved inspecting 4 to 6 tubes is between 15 and 30 minutes. This would result in fees between \$210 and \$250 per dental office having 4 to 6 tubes with less than 30 minutes of time involved in the inspection process.

Therefore, I find the proposed fees to be excessive and strongly urge the Division of Health to propose lower fees for inspection.

Very truly yours,



Earl C. Price, D.D.S.
President, Mercer-McDowell Dental Society

ECP/nlg

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

THOMAS L. TYREE, D.D.S.
1702 OAK STREET
KENOVA, WEST VIRGINIA 25530
TELEPHONE 453-6765
June 18, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard,

This is in response to proposed Rule Number 51, "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. Your proposed fee is \$150.00 for the first tube and \$20.00 for each additional tube. These proposed fees will be imposed every two years.

The Huntington Dental Society strongly opposes this rule. We believe that the proposed fees are excessive and not commensurate with the expenses incurred for such inspections.

Inspections of dental x-rays is a necessary and worthwhile task, but the fees imposed must be fair. A West Virginia Dental Association survey of surrounding states for this service has demonstrated that the proposed West Virginia fee is too high. I have had my x-ray equipment inspected and have found that it took no longer than 15 to 20 minutes for this task. Charging \$150.00 for this service would be unfair.

The Huntington Dental Society urges you to carefully evaluate this proposed fee and lower it to a more equitable rate.

Sincerely,



Thomas L. Tyree, DDS
President, Huntington Dental Society

TLT/clt

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

James W. Vargo D.D.S.

PROFESSIONAL ARTS BLDG.
201 JONES AVE.
OAK HILL, WV 25901
(304) 465-5361

June 19, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard,

This letter is in response to proposed Rule #51 "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. As president of the New River Dental Society, I know I speak for the membership when saying that your proposed fees for this service are excessive.

I don't remember being charged for this service in the past, but I can understand the need for some fee to help with ever rising operating expenses. However, I have 4 tubes in my office and a 30 minute inspection would cost me \$210. But if my office were located in the state of Ohio, this same 4 tube inspection would cost me \$62.50.

I think this is easily seen as an excessive proposed fee and urge you to present this as such to the Division of Health, and come up with a more reasonable fee.

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

Sincerely,

James W. Vargo D.D.S.
James W. Vargo D.D.S.

Lambert & Bowling, Inc.

BOX 390

PINEVILLE, WEST VIRGINIA 24874

TELEPHONE 732-7567

J. S. LAMBERT, JR., D.M.D.

June 18, 1990

EVERETT W. BOWLING, D.D.S.

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard,

I am responding in opposition to proposed Rule # 51, " Fees for Services ", in which the West Virginia Division of Health proposes to charge dental offices an inspection fee on x-ray equipment.

I understand that there is a need to charge for services being provided by the Division of Health. However, the proposed fees are much higher than other states offering similar services. Also, the proposed fees are quite excessive considering the short time involved in providing an inspection.

Therefore, I urge the Division of Health to reconsider the proposal and recommend a more reasonable fee schedule.

Very truly yours,

Everett W. Bowling, D.D.S.

Everett W. Bowling, D.D.S.

Secretary

West Virginia Dental Association

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

WEST VIRGINIA DENTAL ASSOCIATION

A. E. Skidmore, D.D.S.
President
WVU School of Dentistry
Morgantown, W. Va. 26506

Sami Ghareeb, D.D.S.
President Elect
P.O. Box 566
Poca, W. Va. 25159

Jay Henry Dyer, D.D.S.
Vice President
701 Hawley Building
Wheeling, W. Va. 26003

Mr. Richard D. Stevens
Executive Director
1002 Kanawha Valley Building
300 Capitol Street
Charleston, W. Va. 25301
Telephone (304) 344-5246



Everett W. Bowling, D.D.S.
Secretary
P.O. Box 879
Pineville, W. Va. 24874

Mark C. Kilcollin, D.D.S.
Treasurer
P.O. Box 618
Union, W. Va. 24983

Richard D. Smith, D.D.S.
Editor
West Virginia Dental Journal
1501 7th Avenue
Charleston, W. Va. 25312

June 18, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol complex
Charleston, WV 25305

Dear Ms. Howard

The West Virginia Dental Association opposes the fees proposed for the inspection of x-ray equipment in the dental offices throughout West Virginia. We feel that the fees are excessive and should be more reasonable and in line with fees charged by other states.

Thank you in advance for giving this matter a favorable review.

Respectfully

Sami M. Ghareeb, D.D.S.

SG:ls

RECEIVED

JUN 21 1990

REGULATORY DEVELOPMENT
SECTION

CONSTITUENT OF THE AMERICAN DENTAL ASSOCIATION

WEST VIRGINIA DENTAL ASSOCIATION

A. E. Skidmore, D.D.S.
President
WVU School of Dentistry
Morgantown, W. Va. 26506

Sami Gharaeb, D.D.S.
President Elect
P.O. Box 566
Poca, W. Va. 25159

Jay Henry Dyer, D.D.S.
Vice President
701 Hawley Building
Wheeling, W. Va. 26003

Mr. Richard D. Stevens
Executive Director
1002 Kanawha Valley Building
300 Capitol Street
Charleston, W. Va. 25301
Telephone (304) 344-5246



Everett W. Bowling, D.D.S.
Secretary
P.O. Box 879
Pineville, W. Va. 24874

Mark C. Kilcollin, D.D.S.
Treasurer
P.O. Box 618
Union, W. Va. 24983

Richard D. Smith, D.D.S.
Editor
West Virginia Dental Journal
1501 7th Avenue
Charleston, W. Va. 25312

June 15, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard:

This is in response to proposed Rule No. 51, "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. Your proposed fee is \$150 for the first tube and \$20 for each additional tube. This Association understands the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

This Association opposes the fees proposed for inspection of x-ray equipment in dental offices on the basis that the fees of \$150 and \$20 are excessive.

Our survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. South Carolina charges \$20 per tube per year;
3. North Carolina charges \$70 for the first tube and \$12.50 for each additional tube for inspections every three years.
4. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when conducted by state personnel or \$35 per tube when conducted by a private firm who in turn certifies the safety of the equipment with the state;

**West Virginia Dental Association
Testimony Opposing Fees Proposed For
Inspection Of Dental X-Ray Equipment
By WV Division of Health
Public Hearing, June 22, 1990**

My name is Richard Stevens. I am Executive Director of the West Virginia Dental Association, a professional organization of licensed dentists.

I appear before this hearing to express this Association's opposition to the fees proposed in Rule 51, titled "Fees for Services," wherein the West Virginia Division of Health proposes to charge an inspection fee of \$150 for the first x-ray tube and \$20 for each additional x-ray tube in dental offices. This Association understands the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

This Association opposes the proposed fees on the basis that they are excessive and are not commensurate with the expenses incurred for such inspections.

A survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. South Carolina charges \$20 per tube per year;
3. North Carolina charges \$70 for the first tube and \$12.50 for each additional tube for inspections every three years;
4. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when

conducted by state personnel or \$35 per tube when conducted by a private inspector who in turn certifies the safety of the x-ray equipment to the state;

5. Pennsylvania charges each dentist \$55 per year, which includes their annual license and inspection of x-ray equipment at least once every four years; and
6. Ohio charges \$25 for the first tube and \$12.50 per additional tube for inspections every five years.

The dental profession understands and supports the need for inspection of dental x-ray equipment and the State's responsibility in assuring the public that such equipment operates properly. Such a service is of value to dentists and dental officer personnel.

However, the fees proposed are excessive when compared to other states and are not reflective of the time and expense incurred by the State in conducting the inspections. Interviews with dentists around the State indicate the time involved in inspecting four to six tubes in a dental office is between 15 and 30 minutes. This would result in total fees between \$210 and \$250 with less than 30 minutes of time involved in the inspection process.

This Association estimates 800 dental offices in West Virginia. The average number of x-ray tubes in each office is estimated to be two. This would result in the Division of Health collecting \$136,000 every two years in inspection fees for dental x-ray equipment.

In finding the proposed fees to be excessive, this Association

respectfully requests the Division of Health to propose lower fees
for inspection of dental x-ray equipment.

Thank you for allowing me to time to address this issue.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

WEST VIRGINIA DENTAL ASSOCIATION

A. E. Skidmore, D.D.S.
President
WVU School of Dentistry
Morgantown, W. Va. 26506

Sami Ghareeb, D.D.S.
President Elect
P.O. Box 566
Poca, W. Va. 25159

Jay Henry Dyer, D.D.S.
Vice President
701 Hawley Building
Wheeling, W. Va. 26003

Mr. Richard D. Stevens
Executive Director
1002 Kanawha Valley Building
300 Capitol Street
Charleston, W. Va. 25301
Telephone (304) 344-5246



Everett W. Bowling, D.D.S.
Secretary
P.O. Box 879
Pineville, W. Va. 24874

Mark C. Kilcollin, D.D.S.
Treasurer
P.O. Box 618
Union, W. Va. 24983

Richard D. Smith, D.D.S.
Editor
West Virginia Dental Journal
1501 7th Avenue
Charleston, W. Va. 25312

June 19, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard:

As President of the West Virginia Dental Association, I urge the Division of Health to lower their inspection fees for X-ray equipment as stated in proposed Rule No. 51, "Fee for Services."

Mr. Richard Stevens, our Executive Director, has conducted a survey of surrounding states' fees for this service. As you are now aware, your proposed fees of \$150 for the first tube and \$20 for each additional tube are in excess of any of our surrounding states.

Please reconsider your proposed fees and make them commensurate with others and the services rendered.

Yours truly,


A. E. Skidmore, President
WVDA

cc: Mr. Richard Stevens

clj

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

THOMAS S. WILKERSON, D.D.S.
DENTISTRY FOR CHILDREN
1218 VIRGINIA STREET, EAST
CHARLESTON, WEST VIRGINIA 25301

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JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

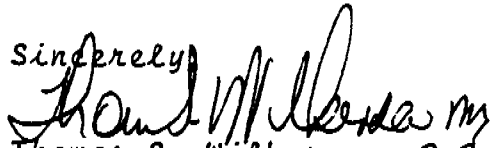
June 19, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard:

I am writing about the proposed fees for x-ray equipment under Rule No. 51. The proposed fees are outrageous when compared to our neighboring states. My payment for treating patients covered by the state sponsored medicaid program is less than our surrounding states, yet the State wants to charge me more for their services. I am squeezed from all sides.

The testing of x-ray equipment is meant to protect the public, not to raise revenue. Please keep the service fee reasonable.

Sincerely,

Thomas S. Wilkerson, D.D.S.
Executive Council WV
Dental Association

TSW:dd

File (1)

ASSOCIATION
of Community Mental Health/Mental Retardation
Programs of West Virginia, Inc.

June 15, 1990

Board of Health
%Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

On behalf of the members of the Association, I wish to voice my concerns as regards the Fees for Services proposal.

Site inspections and Pre-opening surveys would require \$300 in fees for each new project. Review of plans for group homes will require an additional \$150. This at a time when Centers are being asked to participate in the effort to "downsize" and/or close existing state facilities by developing additional sites in the community to accommodate those individuals.

Although I agree the Department should realize a reasonable reimbursement for the cost of conducting reviews, I propose that behavioral health sites should be exempted from the Fees for Services rule at least until such time that the state achieves its targeted goals of moving large numbers of individuals from facilities to the community. If not this option, then perhaps consideration of a mechanism whereby Centers are reimbursed the cost of initial licensing in "start up" monies to be provided by the Department.

Sincerely,

John A. Russell

John A. Russell
Executive Director

cc: Don Wood, Association President

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JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**

1602 HARPER RD.



BECKLEY, WEST VIRGINIA 25801

HEALTH OFFICER, N. ALLEN DYER, M.D., M.P.H.

TELEPHONE 252-8531

JOHN C. BAILES, O.D. — Chairman
CHARLES W. MERRITT, M.D. — Member
PAUL H. LOFLIN, O.D.S. — Member
LARRY E. HATFIELD, M.A., Member
LEONARD GAULDIN, Member

M E M O R A N D U M

TO: Larry Arnold
Bureau of Administration and Finance

DATE: June 19, 1990

FROM: N. Allen Dyer, M.D., M.P.H., Health Officer
Beckley-Raleigh County Health Department *AND*

RE: PROPOSED RULE (64 CSR 51) FOR FEES FOR SERVICES

The Beckley-Raleigh County Board of Health an entity as defined under Section 3.2 of these proposed rules would like to take this opportunity to express concern per the following Sections:

Section: 64-51-9.3-(b)

This paragraph (b) is unnecessary and would defeat the purpose of authority to establish fees for service. Exemptions from fees for those unable to pay is assured under Section 4.2. For those who can pay a significant amount of revenue from fees for services would be lost.

Section: 64-51-6

This section states that fees can be charged from environmental health services as listed in Appendix II. It is not clear if local health departments can charge for services under this section.

Appendix I - Laboratory Service Fees

The section, fees for Environmental Microbiology Laboratory Service (1) lists a cost of \$10.00 per water specimen. No explanation is given on how this would be charged. The charging of \$10.00 per water specimen to local boards of health would be very costly in carrying out activities required by the State Health Department.

Appendix II - Environmental Health Services Fees

Section 4.D Water Well Permits, Homeowner (per well) lists a cost of \$50.00 per permit. This appears to be a duplicate fee since local health departments will be charging a \$50.00 permit fee under Title 64 West Virginia Legislative Rules Board of Health Series 30 Fees for Permits.

Appendix II - Environmental Health Services Fees

Section 7 Annual On-Site Sewage Disposal Permits (A) Innovative/Alternative type Sewage System lists a cost of \$150.00 per year. This would be cost prohibitive for many homeowners in our area and if this is intended to be a one time permit fee, it would be another duplicate fee since local boards of health can charge \$150.00 for Class II Systems or Home Aeration Units.

Appendix II - Environmental Health Services Fees

Section 7 Annual On-Site Sewage Disposal Permits (B and C) Class I and Class II Individual Sewage System Installers are to be charged a \$25.00 and \$50.00 annual fee. This appears to be in conflict with the regulations which requires that the installers certification be renewed every five years.

Appendix II - Environmental Health Services Fees

Section 8 Annual Food Permits (A) Food Service Establishment lists an annual cost of \$150.00. This appears to be in conflict with Title 64 West Virginia Legislative Rules Board of Health Series 30 Fees for for Permits which establishes costs for food service establishments based on seating capacity.

NAD/kf

cc: Joan Kenney, Director
Division of Local Health

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



JAMES P. BAILEY, D.V.M.
CHAIRMAN

MRS. LAURENCE E. TIERNEY
VICE CHAIRMAN

N. ALLEN DYER, M.D., M.P.H.
HEALTH OFFICER

MEMORANDUM

TO: Larry Arnold
Bureau of Administration and Finance

DATE: June 19, 1990

FROM: N. Allen Dyer, M.D., M.P.H., Health Officer *AND*
Mercer County Health Department

RE: PROPOSED RULE (64 CSR 51) FOR FEES FOR SERVICES

The Beckley-Raleigh County Board of Health an entity as defined under Section 3.2 of these proposed rules would like to take this opportunity to express concern per the following Sections:

Section: 64-51-9.3-(b)

This paragraph (b) is unnecessary and would defeat the purpose of authority to establish fees for service. Exemptions from fees for those unable to pay is assured under Section 4.2. For those who can pay a significant amount of revenue from fees for services would be lost.

Section: 64-51-6

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MEMBERS

MARK WILLS • FRED P. BURTON • W. GRADY CARPER • PAUL McMANAWAY • MISS MARGARET PACE • RUDOLPH JENNINGS • MRS. BEA PAME

ROUTE 2 • BOX 382 • BLUEFIELD, WEST VIRGINIA 24701 • 325-3821 (BLUEFIELD) • 435-8511 (PRINCETON)

Appendix II - Environmental Health Services Fees

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NAD/kf

cc: Joan Kenney, Director
Division of Local Health

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



Calhoun General Hospital

June 21, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

Dear Sir:

We have received the proposed West Virginia Legislative Rules, Division of Health Fees for Services 64 CSR 51. We are making the following comments.

We agree that there is a need for more funds to provide necessary public health services. The responsibility to provide funding for public health belongs to all citizens of West Virginia. Most hospitals in West Virginia, including Calhoun General Hospital, are facing increasing financial problems. Additional fees should not be added to hospitals, especially while the reimbursement continues to be inadequate for services provided.

The public health will suffer to a greater degree if these proposed rules are adopted. The Hospital will have less money to operate and provide services. The responsibility for funding this short-fall should not fall upon one segment of society, the hospital, but shared by all. The Legislature should provide funding and would provide additional funding if they felt it was necessary and resources were available.

Calhoun General doesn't have additional sources of income to pay these additional fees.

We are opposed to any increase in fees.

Sincerely,

Alvin (Al) R. Lawson
Administrator

ARL/lke

cc: Senator Donna J. Boleyr
Senator Keith Burdette
Senator Bob Dittmar
Senator Oshel Craigo
Delegate Randy Schoonover
Delegate Marjorie H. Burke

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JUN 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

*For
June 22nd
Meeting*

June 12, 1990

Ms. Joan Kenney
Division of Local Health Services
West Virginia State Bureau of Public Health
1411 Virginia Street, E.
Charleston, West Virginia 25301

Dear Ms. Kenney:

This letter is being written to state the position of the Kanawha Charleston Health Department with respect to fees for clinic services offered at Health Departments. I DO believe that uniform fees should be determined based upon actual cost for the delivery of ALL services provided by local Health Department clinics. These fees should be used to bill possible third party payers such as PEIA, Medicaid, or Commercial insurers if the patient has such coverage. All services where no third party payer exists should be tallied and submitted to Medicaid as the basis for requesting MATCHING DOLLARS for in-kind services.

I DO NOT believe that patients who do NOT have a third party payer should be subjected to any fees when attending Family Planning, STD, EPSDT, Chest (TB), or Immunization clinics for children. It is NOT in the best interest of achieving Public Health Goals if one sets a financial barrier in front of those persons we are trying to bring to our clinics in the interest of preventive medicine! One can make an argument for soliciting a fee for ADMINISTERING an adult immunization e.g. Influenza or pneumococcal vaccines, etc... or for vaccines administered for the purpose of foreign travel for pleasure. Other charges may simply turn people away from obtaining the services being offered, and that would be tragic, and would adversely impact our Public Health Program Goals in the 1990s.

Sincerely,

Donald M. Rosenberg M.D.

Donald M. Rosenberg, M.D., F.A.C.Pr.M.
Kanawha County Health Officer

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

LINCOLN COUNTY HEALTH DEPARTMENT

P.O. BOX 527

HAMLIN, WV 25523

PHONE 824-3330

May 16, 1990

West Virginia Board Of Health
Charleston, WV 25305

RE: Letter of support for the increase in fees

Dear Mr. Chairman,

As the part time physician director of the Lincoln County Health Department I would like to offer my full support for the proposed fee increase that you have before you on May 23, 1990. 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 I am totally in support of the proposed fee increases.

Sincerely yours,


J. Loren Smith, D.O.

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

MARSHALL COUNTY FARM BUREAU

EMMITT FRANCIS, Secretary

RT No. 3, BOX 467

MOUNDSVILLE, WEST VIRGINIA 26041

RECEIVED

JUN 11 1990

June 7, 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

John A. Willis Miller, Secretary
Dept. of Health and Human Resources
Building 3 Capitol Complex
Charleston, W.V. 25305

Dear Secretary Miller:

This letter is being written in reference to Proposed Rule 51-Fee for service.

The Marshall County Farm Bureau is opposed to these fees for the following reasons:

1. We feel the Health Department has been doing a good job of providing consumers protection in the areas of quality food and health services. To add fees that are proposed here would, we feel, cause an unnecessary burden on the ones providing the food and services. Also such costs would probably be passed on to consumers.
2. The Health Department is charged with the duty to see that consumers are protected and for this reason state tax dollars should be used instead of fees imposed on those providing the services.
3. These fees are in effect another tax on certain portions of our population.
4. While Farm Bureau is primarily concerned with fees that are imposed on agriculture, we are also very much concerned that other people such as hospitals, dentists, water and sewage plants and veterinarians and others will have to pay these fees. These fees will undoubtedly be passed on to all of us receiving their services.
5. We are also concerned as to who determines how those fees are to be assessed. Two examples might be who determines production per day on farms? Will this be a yearly average or will it be taken at a certain time of the year? We are also concerned that milk haulers will have to pay an annual fee for their hauling license.
6. Another concern we have is that the proposed rules say nothing about a limit to these fees. We are concerned that these fees could be raised in the future.

Yours truly,

Emmitt Francis

Emmitt Francis, Secretary



HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL - PHONE (304) 340-3200
CHARLESTON 25305

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JUN 25 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

DAVID B. McKINLEY, P.E.
33 WALNUT AVENUE
WHEELING, WV 26003
PHONE (304) 233-4443

June 21, 1990

Committees:
Banking & Insurance
Finance
Industry & Labor

Taunja Willis Miller, Secretary
Department of Health and
Human Resources
State of West Virginia
Building 3, Capitol Complex
Charleston, WV 25305

Dear Secretary ^{Taunja} Miller,

Recently, I have been receiving numbers of complaints and comments regarding the proposed fees that would be charged by the Division of Health as authorized by HB4660. The concern seems to be centered on the issue of these rates being nothing more than another form of taxation.

I don't believe the Legislature was anticipating that the number of individual business and communities affected would be so broad. According to your proposed regulations, you apparently anticipate raising nearly two million dollars in collections. Recognizing now the magnitude of this issue and its impact on your budget, I think it would have been more appropriate to have had this amount of money raised through general revenue rather than fees.

I am similarly concerned that these enhanced fees will also result in increased prices to the consumers; and in time when we are asking others to tighten their belt, it seems appropriate that maybe the Division should reconsider some of its own expenditures.

Best wishes as you attempt to address these concerns and continue providing the services demanded by the public at large.

Sincerely,


David B. McKinley, P.E.

cc: Fred Hazlett

Town of Middlebourne

Stephen D. Seago
Mayor

P. O. Box 167
Main Street
Middlebourne, West Virginia
26149
(304) 758-4771

David M. Smith
Recorder/Treasurer

June 14, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Dear Sir or Madam:

The Town of Middlebourne vigorously objects to the proposed WV Department of Health and Human Services fees (TAX) based on water and wastewater sales, testing and certifying operators, construction permit fees, operation permit fees, and laboratory fees.

In this time of depressed economy our residents are constantly faced with having to bear the burden of all rising costs.

The WV Department of Health and Human Services provides much needed services as all are well aware, but the thought behind running a successful department is cutting costs not raising fees in this manner.

We, the Town Officials, are struggling with meeting the increased needs of our community to the best of our ability.

We have just had to implement a 15% water and sewer rate increase and this is just barely enough to stay operational.

If the aforementioned proposal by the Department of Health and Human Services is placed into forced compliance, we would again have to raise rates to our customers.

We are a small community and the costs would be staggering.

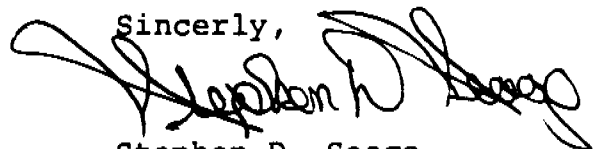
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JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**

SDS/lrs

Sincerely,



Stephen D. Seago
Mayor



Mid-Ohio Valley Health Department

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

Dr. Thomas Lilly
Chairman

Judith L. Shannon
Vice-Chairperson

Anthony Minard
Treasurer

Curtis W. Dickson
Executive Director

June 18, 1990

State of West Virginia
Regulatory Department
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

RE: Bill #4660
Fee for Service

Dear Sirs:

Mid-Ohio Valley Health Department (MOVHD) has the following concerns regarding the proposed bill for initiation of fees for Public Health Services.

1. The proposed bill has allowed a fee exception for persons seeking medical evaluation, treatment, and /or epidemiologic follow-up with sexually transmitted diseases, tuberculosis, and immunization services.

Vaccines and medications for these services are provided through the State of West Virginia's Bureau of Public Health. However, no provision has been made to cover the cost of the professional services required to administer these medications.

Persons receiving immunizations are generally more financially able to pay than a majority of our clients. Indeed, many express the desire to compensate the health department for these services. Therefore, MOVHD feels that no fee exception should be mandated for these services.

2. MOVHD disagrees with the proposal for service fees which vary from county to county. A statewide fee rate would insure consistency and remove the financial advantage of clients seeking health services outside their residential area. However, if counties are permitted to set various fees, then charging a maximum fee for residents of other counties might help alleviate clients seeking services outside their area.
3. MOVHD is a proponent of fee waivers for financially disadvantaged clients, as opposed to use of a sliding fee scale. To properly calculate a sliding fee scale, a means of income verification is

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

State of WV, Regulatory Department

Page 2

June 18, 1990

required. The cost of implementing such a verification program would offset any additional funds generated by this sliding fee proposal.

MOVHD, as the health representative for the counties of Calhoun, Pleasants, Ritchie, Roane, Wirt, and Wood, in general agrees with and applauds the proposals set forth in Bill #4660. However, we feel strongly that our proposed changes would strengthen the impact of this bill for all the affected West Virginia agencies.

Sincerely,



Curtis W. Dickson
Executive Director

CWD/ss

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JUN 21 1990
REGULATORY DEVELOPMENT
SECTION

Rt. 1, Box 42-A
Green Bank, WV 24944
June 14, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Re: Proposed Rule for Fees for Services

To whom it may concern:

This is to inform you that on June 5, 1990, the local Board of Health met and discussed two major topics: Regionalization and Fees for Services. A motion was passed to reject regionalization. No legislative intent was found after the last session, but the move continues. A discussion followed on the Fees for Services proposal. We do not understand how this fee will be charged, billed to the insurance companies, or collected. The services mentioned have been provided the citizens of our county by the staff of the Health Department free of charge. Some of the services are mandated by state law and not completely accepted by the citizens of the county. However, a good working relationship has been reached with the health and welfare of the citizens as our main goal. Now, these services, which were forced on them reluctantly at no cost, must now be paid for by them. We see many problems, administratively, in collecting any fees for services, mandated by the state, which have finally been accepted.

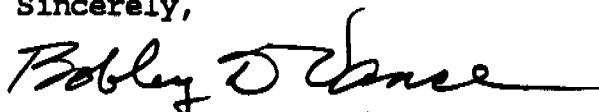
Another point was raised about milk samples collected for testing. A delivery truck to our county may also travel to at least four other counties on the same trip on the same day. If each county collects a milk sample from the truck, will the company pay the set fee to each department for duplicate services and would they be liable?

Billing insurance companies (i.e., PEIA) is complicated and payment could take forever. Another person will probably be necessary to complete the billing/collection process.

The people using many of these services are financially unable to pay and we fear that the citizens needing health services the most will stop using the health department for much needed services because of the fees being proposed.

We urge you to reconsider the charging of fees for services and reach as many people as possible with preventive health care now paid for with their tax monies already.

Sincerely,



BOBBY D. VANCE, Chairman
Pocahontas County Health Dept.

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JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

RESILIENT FLOOR COVERING INSTITUTE

966 Hungerford Drive • Suite 12-B
Rockville, MD 20850

301 340 8580

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

June 21, 1990

VIA FEDERAL EXPRESS

Regulatory Development
Room 204, Building 3
Capital Complex
Charleston, West Virginia 25305

Dear Sir or Madam:

The Resilient Floor Covering Institute ("RFCI") understands that a public hearing will be held Friday, June 22, 1990 regarding the proposed West Virginia Division of Health (the "Division") Fees for Services rules (the "proposed rules"), 64 - C.S.R. 51. RFCI respectfully requests that these comments be included in the hearing record of the proposed rules.

RFCI is a trade association of resilient floor covering producers in the United States who are currently engaged in the manufacture of floor tile and sheet vinyl products for residential and commercial installation. A list of RFCI member companies is attached as Appendix A.

RFCI strongly opposes the collection of asbestos enforcement, oversight and notification fees, pursuant to Appendix II §§ 9 of the proposed rules, from traditional flooring craftsmen in West Virginia who remove resilient floor covering products consistent with industry recommended work practices. As explained in the attached comments previously submitted to the Division (Attachment B), RFCI believes that asbestos licensing and training requirements should not apply to the removal of resilient flooring products (e.g. sheet vinyl flooring, resilient tile, and associated adhesives) when the industry recommended work practices are followed. Indeed, the U.S. Environmental Protection Agency ("EPA") and other government agencies have recognized that resilient flooring is nonfriable, see Attachment C, and EPA does not require the use of accredited asbestos abatement contractors when nonfriable ACM is removed from schools in a manner where the ACM remains nonfriable (e.g. removing resilient flooring in accordance with the recommended work practices). Because flooring craftsmen who remove resilient flooring properly should not be subject to asbestos licensing and

training requirements, they should not be required to pay the proposed fees for asbestos enforcement, oversight and notification.

Importantly, since RFCI's comments were submitted to the Division, several significant developments have occurred at the federal level which reaffirm RFCI's view that activities involving resilient floor covering materials should not be subject to the full panoply of asbestos abatement and training requirements.

First, the Occupational Safety and Health Administration ("OSHA") has reviewed a recent study showing that the action level and short term excursion limit under the OSHA asbestos standard will not be exceeded when floor tiles are removed consistent with the recommended work practices. Based on this review, OSHA has determined that the study can be considered "historical data" and used as the basis for an exemption from initial monitoring requirements under OSHA's asbestos standard for removals of floor tile conducted in accordance with the Recommended Work Practices. See Appendix D.

Secondly, in a NESHAP guidance memorandum dated February 23, 1990, EPA reaffirmed that resilient floor tile is nonfriable ACM and does "not release significant amounts of fiber when disturbed." See Appendix E. EPA clarified at the same time that nonfriable floor tile does not need to be removed prior to demolition or renovation unless it is subjected to sanding, grinding, or abrading -- activities that are prohibited by the recommended work practices.

In light of these new federal developments, RFCI respectfully requests that the Division limit the imposition of asbestos enforcement and notification fees to activities involving only friable ACM and that it exclude proper removals of resilient flooring from its asbestos abatement licensing and training requirements.

Sincerely,

Walter D. Anderson

Walter D. Anderson
Managing Director

Enclosures: 5
cc: Joseph Schock
Kay Howard

APPENDIX A

RESILIENT FLOOR COVERING INSTITUTE

300 Hungerford Drive • Suite 12 B
Rockville, MD 20850

301 340 8580

January 1, 1988

RESILIENT FLOOR COVERING INSTITUTE

MEMBERSHIP LIST

REGULAR MEMBERS

American Biltrite, Inc., Lawrenceville, NJ 08648
Azrock Industries Inc., San Antonio, TX 78265
Congoleum Corporation, Lawrenceville, NJ 08648
Kentile Floors, Inc., Brooklyn, NY 11215
Mannington Mills, Inc., Salem, NJ 08079
National Floor Products Co., Florence, AL 35630
Tarkett Inc., Parsippany, NJ 07054

Successor To
Resilient Tile Institute

APPENDIX B



RESILIENT FLOOR COVERING INSTITUTE

966 Hungerford Drive • Suite 12-B
Rockville, MD 20850
301 340 8580

September 30, 1989

Regulatory Development Section
Attn: Ms. Kay Howard
Division of Health
Department of Health and Human Services
Capitol Complex-Bldg. 3, Room 507
Charleston, West Virginia 25305

Dear Ms. Howard:

The Resilient Floor Covering Institute ("RFCI") appreciates the opportunity to submit these comments on the proposed West Virginia, Department of Health and Human Services, Asbestos Abatement Licensing Rules, 64 C.S.R. 63 (the "Proposed Rule"), which, when promulgated in final form, would supplant the Emergency Asbestos Abatement Licensing Rule, 64 C.S.R. 63 (1989) ("Emergency Rule"). We have been informed by the Department of Health and Human Services ("Department") that comments on the Proposed Rule would be accepted through October 2, 1989.

RFCI is a trade association of resilient floor covering producers in the United States who are currently engaged in the manufacture of tile and sheet vinyl products for residential and commercial installation. A list of RFCI member companies is attached as Appendix A.

The Emergency Rule currently in effect requires that any asbestos-containing material ("ACM"), whether friable or nonfriable, be removed by asbestos contractors and workers licensed by the state. The Proposed Rule would impose similar requirements on contractors and workers engaged in activities involving both friable and nonfriable ACM. Thus, the Emergency and Proposed Rule prohibit traditional flooring craftsmen from removing and repairing resilient flooring unless they obtain an asbestos Contractor or worker license and take a four-day training course in asbestos abatement procedures.

We believe that the Emergency Rule and Proposed Rule are unnecessarily overbroad and need to be revised and clarified as they apply to nonfriable ACM, such as resilient floor covering (floor tile and sheet vinyl flooring). RFCI believes that the Emergency and Proposed Rules should not impose the full panoply of asbestos licensing, regulation, and training requirements on traditional flooring craftsmen who remove or repair non-friable

Successor To
Resilient Tile Institute

resilient flooring consistent with the industry recommended work practices. In order to comport with the intent of the statute pursuant to which it is promulgated, W.Va. Code § 16-32-1 et. seq., and the physical properties of nonfriable ACM, we believe that the final Rule should recognize the distinction between friable and nonfriable ACM. Resilient floor tile and sheet vinyl flooring are nonfriable products and remain nonfriable when removed consistent with industry work practices. Thus, licensed asbestos abatement contractors and workers trained in asbestos abatement procedures are not needed to remove resilient flooring. Instead, traditional flooring craftsmen can remove such flooring in both a health protective and cost-effective manner.

Resilient floor tile and sheet vinyl flooring are "nonfriable" because the physical properties of these products defy their being crumbled, pulverized or reduced to powder by hand pressure.^{1/} The nonfriable characteristics of these products result from their manufacturing process. These products were manufactured so that any asbestos fibers were firmly encapsulated by a thermoplastic binder in the product. Furthermore, the mere chipping or breakage of a product, for example, does not cause the product to become friable because the broken pieces also cannot be reduced to powder by hand pressure.

Federal agencies and advisory committees also have consistently and properly taken the position that asbestos-containing resilient flooring products are nonfriable. For example, EPA described resilient tile and sheet vinyl flooring as not being friable in its final ACM in school regulation which became effective on December 14, 1987.^{2/} Similarly, OSHA, in an appendix to its asbestos standard, states that "[m]aterials such as vinyl-asbestos floor tile . . . are considered nonfriable and generally do not emit airborne fibers unless subjected to sanding" 51 Fed. Reg. 22612, 22754 (June 20, 1986). Likewise, the General Service Administration ("GSA") in October, 1986, wrote that "[a]sbestos is still used in its nonfriable form (which means

^{1/} EPA, in its National Emission Standard for Asbestos, has defined "friable" to mean any "material containing more than 1 percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry." 40 C.F.R. § 61.141.

^{2/} The EPA preamble to this rule describes "nonfriable ACM" to include floor tile, 52 Fed. Reg. 41826, 41845 (Oct. 30, 1987), and describes "miscellaneous ACM" to include vinyl flooring. Id. at 41830. A recent EPA Guidance Document states that "most ACM in this [other miscellaneous] category (e.g., wall board, ceiling tile, floor tile) is hard and nonfriable." EPA, "Guidance for Controlling Asbestos-Containing Materials in Buildings" (June 1985) at 2-8.

it doesn't crumble easily) in building products and materials ranging from floor tiles to roofing shingles." GSA Answers Your Asbestos Concerns (Oct. 1986).^{3/} Thus, there is a clear consensus among federal governmental bodies that resilient flooring products in normal condition are nonfriable.

By applying to nonfriable ACM, the Emergency Rule and Proposed Rule also are significantly broader than EPA's asbestos in school program where accredited personnel are required to conduct a "response action" which is limited to removals only involving friable ACM. See 40 C.F.R. §§ 763.83, .90(g). Similarly, the EPA National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos applies only to renovations and demolitions of friable asbestos materials. 40 C.F.R. § 61.145. Likewise, many states, including Arkansas, California, Colorado, Louisiana, and Ohio, limit their asbestos licensing programs to abatement projects involving friable ACM and/or specifically exempt resilient flooring removals. In essence, the "friable only" approaches continue to reflect EPA's judgment in 1974 that nonfriable activities "will not release asbestos in a manner which is dangerous to human health." EPA 450/2-74-009a, at 16 (October, 1974).

Importantly, the resilient flooring industry has developed a defined set of work practices for the removal of resilient flooring, which prohibit sanding, whereby the flooring remains nonfriable during removal. A copy of these work practices is enclosed herewith as Appendix B. These work practices have been expressly recognized by OSHA as minimizing asbestos exposure and satisfying OSHA asbestos exposure limits. For example, during the development of the OSHA asbestos standard, the Agency reviewed studies involving the removal of floor tile and sheet vinyl flooring using the recommended work practices. Based on these

^{3/} Statements by other government agencies and advisory committees include:

" . . . Nonfriable materials, including asbestos-cement (A-C) pipe A-C sheets, Resilient Floor Coverings, and Roofing Felts . . . " HQ USAF Bolling AFB DC Jul 81 Policy on the Use of Building Materials Containing Asbestos.

"The majority . . . of asbestos used in construction materials is considered nonfriable -- immobilized in strong binding materials, such as cement or tiles, which do not readily release asbestos fibers to the air." J.H. Paull, Division of Environmental Health Engineering, School of Hygiene and Public Health, the Johns Hopkins Univ. "GAO Asbestos Control Management Document," January 15, 1985.

studies, the Agency cited these recommended work practices as the basis upon which "OSHA determined that it is feasible to comply with the 0.2 f/cc PEL during the removal and installation of vinyl-asbestos flooring." 51 Fed. Reg. 22612, 22663 (June 20, 1986). OSHA recently reaffirmed its review of these studies in the preamble to the OSHA standard amendment establishing a short-term excursion limit of 1 f/cc average over 30 minutes. The Agency stated that "there appears to be virtually no possibility that the excursion limit [during removals] would be exceeded if the recommendations of the Resilient Floor Covering Institute were followed." 53 Fed. Reg. 35610, 35614 (Sep. 14, 1988).

In view of the above, there is no necessity for applying the full panoply of asbestos abatement registration, licensing, and training requirements upon traditional flooring craftsmen working with nonfriable ACM.

Moreover, the additional costs of such an overbroad regulatory program are significant and inappropriate, especially considering there is not a need for full asbestos abatement procedures for resilient flooring removals performed consistent with the recommended work practices. For instance, the great number of homeowners, commercial building owners, and public housing owners, including the State of West Virginia, are incurring and will incur significantly greater costs because the Proposed Rule would require the exclusive use of more expensive, licensed asbestos abatement contractors to remove resilient flooring, while excluding traditional flooring craftsmen from this activity. Other economic costs for the replacement of resilient floor covering will also increase significantly. The flooring craftsmen of West Virginia would be unfairly prevented from practicing their trade because the costs of obtaining an asbestos abatement license and more costly asbestos abatement insurance (if even available) may be prohibitive. Indeed, the licensing provisions and the significant cost of complying therewith are particularly unnecessary and inappropriate because the EPA-approved four day training course required for the license principally focuses on full asbestos abatement procedures involving friable ACM (e.g., decontamination units, negative pressure enclosures, isolated showers, and other specialized procedures). However, none of those asbestos abatement procedures are intended to apply to activities where the OSHA asbestos exposure standard is not expected to be exceeded (e.g., where resilient flooring is removed consistent with industry work practices). As explained above, OSHA has recognized that the use of the recommended work procedures will not result in asbestos exposure exceeding the permissible exposure limit and excursion limit under the current asbestos standard.

RFCI further believes that it is inappropriate for the Department to generate revenues for operating the West Virginia

asbestos program by imposing substantial fees on persons who remove or repair resilient flooring consistent with the recommended work procedures. These craftsmen and their customers should not have to bear the burden of paying for the state's asbestos program.

In addition to the great deal of money the traditional flooring craftsmen would have to spend in order to qualify as asbestos abatement contractors in order to continue their craft in West Virginia, unless the Proposed Rule is revised, the licensing requirement also will exacerbate the shortage of accredited asbestos removal contractors in the United States by requiring them in situations where full abatement procedures are not needed, see EPA Study of Asbestos-Containing Materials in Public Buildings (February 1988), while at the same time unfairly preventing the traditional floor craftsmen from practicing their trade.

Overall, RFCI strongly believes that the best interests of housing and building owners and occupants, workers, and the public will be served if flooring contractors and workers who repair and remove resilient flooring consistent with the recommended work practices are not subject to asbestos licensing and training requirements. Flooring craftsmen would still be subject to the requirements of the OSHA asbestos standard and the NESHAP asbestos standard. Thus, RFCI requests that the Emergency Rule and the Proposed Rule be revised to apply only to abatement projects involving friable ACM. Alternatively, we recommend that the Emergency and Proposed Rule specifically except contractors and workers who remove resilient flooring using procedures that do not render the flooring friable.

Consistent with these comments, we recommend that the definition of "asbestos abatement" in § 64-63-3.2 be revised to apply only to friable ACM. In the alternative, a new definition of "asbestos containing material" could be added which would include only material containing friable asbestos. A third alternative would be to revise the definition of "repair" and include a new definition of "removal" so that both terms apply only to friable ACM.

The terms "asbestos abatement", "repair", and "removal", are not defined in the West Virginia Asbestos Licensing Statute. However, the statute defines "enclosure" only to apply to friable ACM. W.Va. Code § 16-32-2(m). Our proposed alternative definitions would be consistent with the legislature's and Department's limitation of the term "enclosure" to friable ACM. Moreover, by the statute not defining "asbestos abatement", "repair", and "removal", the Legislature did not prohibit the Department from limiting those terms to friable ACM and, indeed, have strongly indicated through the definition of "enclosure" that those terms should be so limited. By limiting the asbestos

licensing requirements to friable ACM projects, the West Virginia regulations would be consistent with the EPA asbestos-in-school accreditation requirements and the licensing requirements of many other states which adequately protect human health.

A clarifying revision should also be made to the definition of "friable" asbestos to make it consistent with the EPA definition. EPA defines "friable asbestos material" as "any material containing more than 1 percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry." 40 C.F.R. § 61.141. We recommend, in order to avoid conflicts between West Virginia and the traditional federal definition, that the EPA definition be used in the final Rule. Moreover, even under the proposed "friable" definition, resilient floor tile and sheet vinyl flooring are not "friable" because these products, do not emit fibers "under normal use and maintenance." W. Va. Code § 16-32-2(n). Accordingly, to make it explicitly clear, the definition of "friable" should identify resilient floor tile and sheet vinyl flooring as nonfriable.

RFCI also requests that certain additional clarifications be made to the Proposed Rule. First, Section 64-63-7.2 of the Rule should be revised to clarify that when a flooring dealer or contractor, who is subject to federal OSHA standards, removes a resilient flooring covering structure (floor tile or sheet vinyl) which contains asbestos, in compliance with the Occupational Exposure to Asbestos Standard (29 C.F.R. § 1926.58), that activity is exempt from the notification and license provisions of the Rule. The underlying statute makes clear that the statutory exemption (Section 16-32-11) applies to both the notification and licensing requirements of the regulation and is not limited to the facility owner or its employee since it explicitly requires that the facility, which presumably means the workers working with the ACM, presently operate under the Federal OSHA Standard. However, the Proposed Rule is more narrowly stated. It should therefore be revised to make the exemption in the Rule consistent with the statute and exempt a flooring dealer or contractor who is subject to federal OSHA standards and in compliance with the Occupational Exposure Asbestos Standard.

Second, the Department of Health should clarify in the regulation, preamble, or policy guidance that a flooring craftsmen or contractor who installs a new floor covering over the top of an existing resilient floor covering structure (e.g., floor tile or sheet vinyl) which contains asbestos is not subject to the Rule. Thus, a craftsman or contractor who "goes over the top" should not be required to obtain an asbestos contractor or worker license where: (1) a new floor covering is installed over existing asbestos-containing floor covering; (2) carpeting is installed over the existing floor covering; or (3) embossing or other leveling compound or wood substitute is applied to the existing

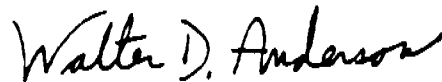
floor covering, and then the new resilient floor covering is installed.

Finally, these comments, while explicitly directed for the most part at the Proposed Rule, apply equally to the Emergency Rule. Thus, to the extent that the current Emergency Rule, or any provision thereof, is not supplanted or rescinded, or otherwise continues in effect, we recommend that the Emergency Rule be revised consistent with these comments on the Proposed Rule.

RFCI believes that our concerns explained above would enable the traditional flooring craftsmen to continue their business of removing resilient flooring in a health protective and cost effective manner without the need for an unnecessary asbestos license or permit. These changes would provide a significant cost savings to owners, including the State of West Virginia, residents, and the general public by allowing an appropriate alternative to more expensive asbestos abatement contractors.

If you have any questions about our comments, please do not hesitate to contact me or our legal counsel, William N. Hall (202) 466-1118. We also would like to meet with you and your staff to discuss our comments at your earliest convenience

Sincerely,



Walter D. Anderson
Managing Director

Enclosure

January 1, 1988

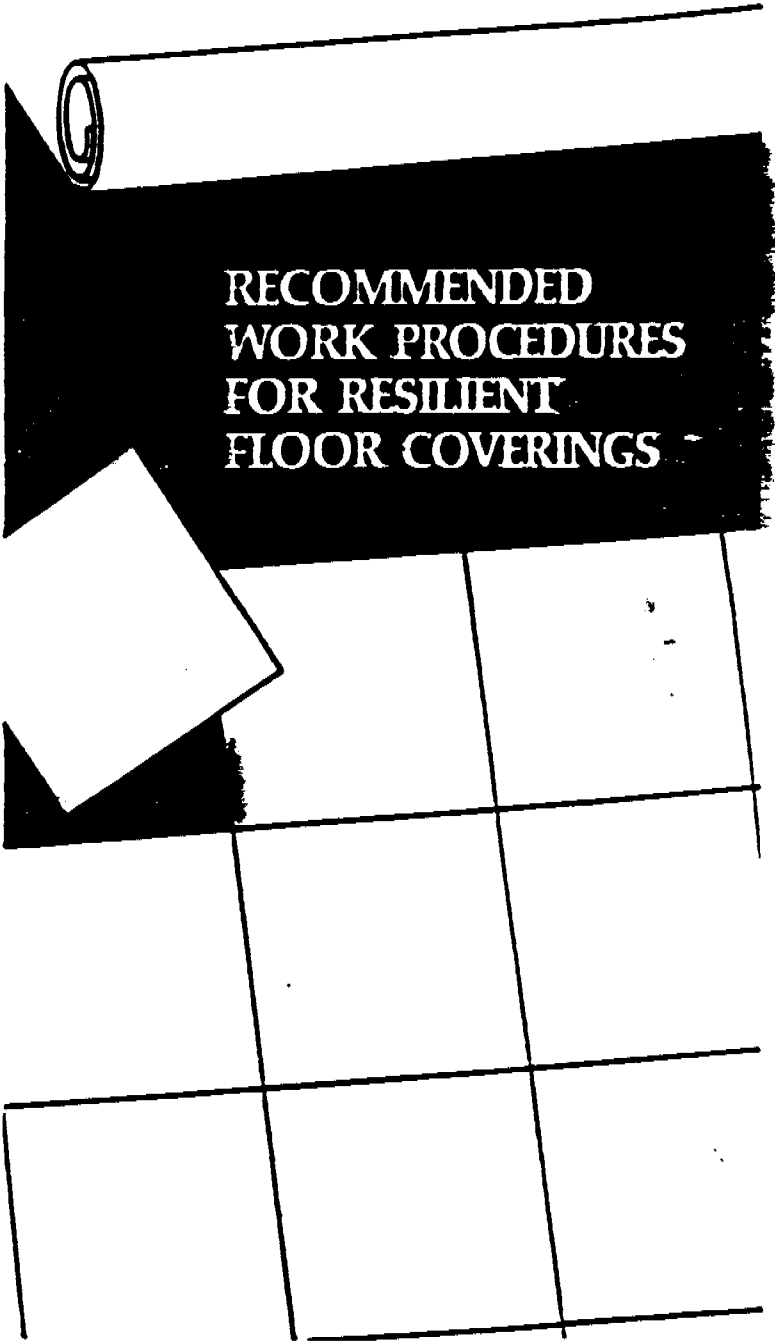
RESILIENT FLOOR COVERING INSTITUTE

MEMBERSHIP LIST

REGULAR MEMBERS

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Azrock Industries Inc., San Antonio, TX 78265
Congoleum Corporation, Lawrenceville, NJ 08648
Kentile Floors, Inc., Brooklyn, NY 11215
Mannington Mills, Inc., Salem, NJ 08079
National Floor Products Co., Florence, AL 35630
Tarkett Inc., Parsippany, NJ 07054

APPENDIX B



RECOMMENDED WORK PROCEDURES FOR RESILIENT FLOOR COVERINGS

Issued by
Resilient Floor Covering Institute
966 Hungerford Dr., Suite 12-B
Rockville, MD 20850

RFCI-WP-1988
Revised 1987

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RECOMMENDED WORK PROCEDURES FOR RESILIENT FLOOR COVERINGS



WARNING

Do Not Sand Existing Resilient Flooring, Backing, Or Lining Felt. These Products May Contain Asbestos Fibers That Are Not Readily Identifiable. Sanding Of Asbestos Containing Material Can Place Fine Particles Of Asbestos In The Air. These Asbestos Particles If Inhaled May Cause Serious Bodily Harm. Smoking Greatly Increases The Risk Of Serious Bodily Harm.

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966 Hungerford Dr., Suite 12-B
Rockville, MD 20850

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IMPORTANT INFORMATION FOR INSTALLERS OF RESILIENT FLOOR COVERINGS

Introduction

The member companies of the Resilient Floor Covering Institute are manufacturers of the following forms of Resilient Floor Coverings:

1. Sheet Vinyl.
2. Vinyl Floor Tile.

While today these products do not contain asbestos, it is possible that in the past some of these products, including asphalt tile, may have contained asbestos fibers which were firmly encapsulated in the products to provide durability and adaptability.

The Resilient Floor Covering Institute is providing this booklet of recommended work practices for installing or removing resilient floors so that you may proceed with this work in the safest possible way.

There are several general rules to follow:

1. Unless absolutely positive beyond any doubt that the floor is a non-asbestos product, assume it contains asbestos and treat it in the manner prescribed in this pamphlet for a floor containing asbestos.
2. It is preferred to install a new floor over a floor which contains asbestos rather than to remove that floor. This can be done by several methods—new underlayment, use of leveling compounds, following installation procedures recommended by the floor covering manufacturer.
3. Never sand any resilient floor or its backing to remove them from the floor.
4. All sweeping must be done wet.
5. All scraping must be done wet.
6. Material removed must be placed in heavy-duty polyethylene bags at least 6 mils thick, properly labeled, and disposed of in an authorized land fill.

WHAT ABOUT ASBESTOS?

In the past decade much attention has been focused on the relationship between exposure to asbestos fibers and respiratory ailments. It has been determined that inhalation of free airborne asbestos fibers may be injurious to health. However, the asbestos fibers contained in the above types of resilient floor coverings are *not free*, but firmly encapsulated or *locked* in the product during the manufacturing process. Asbestos contained therein will not become airborne during the lifetime of the product when these products are used and maintained as recommended by the manufacturer.*

Recommended Work Procedures

PREPARATION OF FLOORS WITH EXISTING RESILIENT FLOOR COVERINGS TO RECEIVE NEW RESILIENT FLOOR COVERINGS

Follow the installation instructions published by the manufacturer of the new floor covering when a new resilient sheet or tile floor covering is to be installed on a surface presently covered with a resilient floor covering. These instructions will tell you what must be done to the existing surface before the new resilient floor covering can be installed.

Of the four general procedures listed below, Items 1 and 2 are covered by manufacturers' instructions; Items 3 and 4 are covered specifically in this Work Procedures Manual**:

Resilient Floor Covering Installed Over....

1. *The Existing Surface.* Follow the manufacturer's instructions for removing wax, filling in low spots, etc. *Use wet scrubbing. Never sand an existing resilient floor covering.*
2. *New Underlayment.* Install panels on top of the existing surface (wood subfloors only) and apply new floor covering directly over this. Follow the manufacturer's instructions.
3. *Partially Removed Existing Adhered Sheet Vinyl Floor Covering.* See instructions below under heading "Partial

*See "Measuring for Airborne Asbestos Floor Vinyl Asbestos Floor Tile" and "Measuring for Airborne Asbestos Floor Sheet Vinyl Floor Covering," reports prepared by SRI International, 1976-79. Available on request from the Resilient Floor Covering Institute, 900 Montgomery Dr., Suite 12-B, Knoxville, Md 20543.

**In case of newer versions, the manufacturer's instructions should be followed.

Removal of Existing Adhered Sheet Vinyl Floor Covering," page 8.

4. *Completely Removed Existing Resilient Floor Covering*
 - (a) *Sheet Vinyl*—See instructions below:
 1. "Complete Removal of an Unadhered (Loose Lay) or Peripherally Adhered Sheet Vinyl Floor Covering," page 6.
 2. "Complete Removal of an Existing Adhered Sheet Vinyl Floor Covering," page 11.
 - (b) *Tile*—See instructions under heading "Complete Removal of an Existing Resilient Tile Floor Covering," page 14.

SHEET VINYL FLOOR COVERING

Preparation of Floors With Existing Sheet Vinyl Floor Covering to Receive a New Resilient Floor Covering

Sheet vinyl floor covering is installed in several ways:

1. Unadhered or Loose-Lay.
2. Adhered or Cemented.
3. Peripherally adhered.

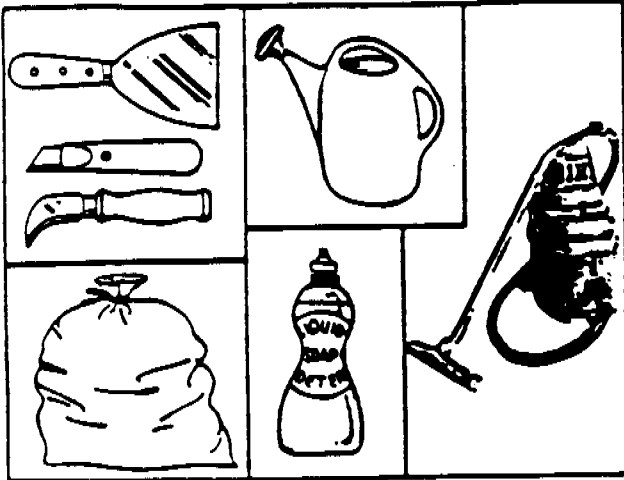
Some resilient floor covering can be installed over existing resilient sheet vinyl floor covering under certain conditions. Be sure to follow the floor covering manufacturer's instructions, regarding the conditions and floor preparation required.

If partial or complete removal of the existing sheet vinyl floor covering is required, the following instructions to be followed:

Supplies and Tools (refer Sketch 1.)

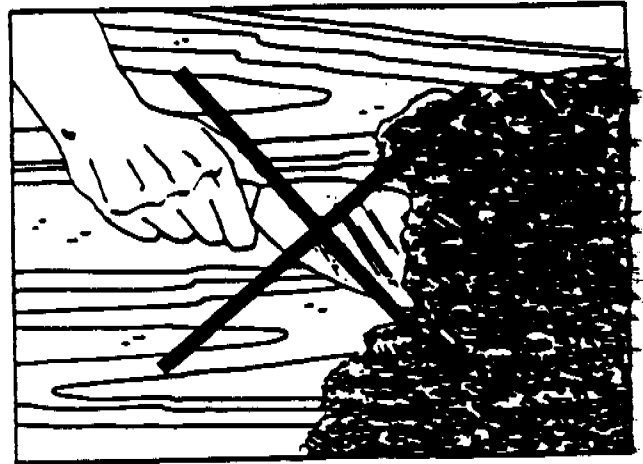
1. Broad, stiff-bladed wall scraper, or floor scraper.
2. Utility or hook knife.
3. Tank type HEPA (High Efficiency Particulate Air) filter vacuum cleaner with disposable dust bag.
4. Large size heavy-duty impermeable trash bags (or closed impermeable containers) with ties, tapes, or string to tie shut, and tags for labeling.
5. Hand sprayer or sprinkling can.
6. Liquid dishwashing detergent or liquid wallpaper remover mixed with water to make a dilute solution (1 oz. liquid in one gallon of water).

Special Precautions (Continued)



WARNING

Sketch 1. Tools and supplies for sheet removal.



WARNING

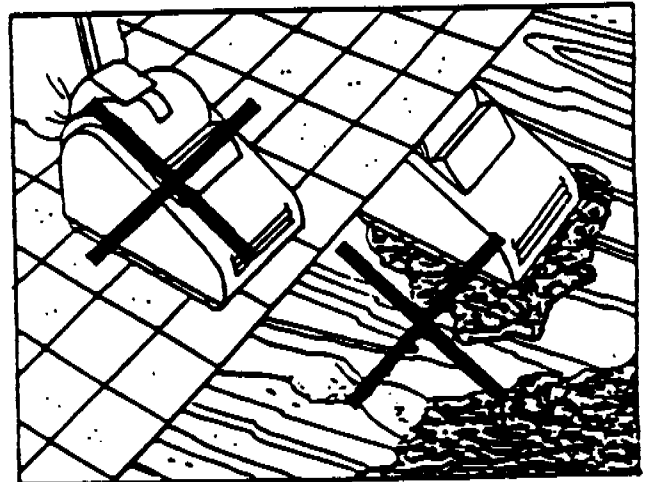
Sketch 2. Never dry scrape colored areas of floor covering.

Special Precautions



WARNING

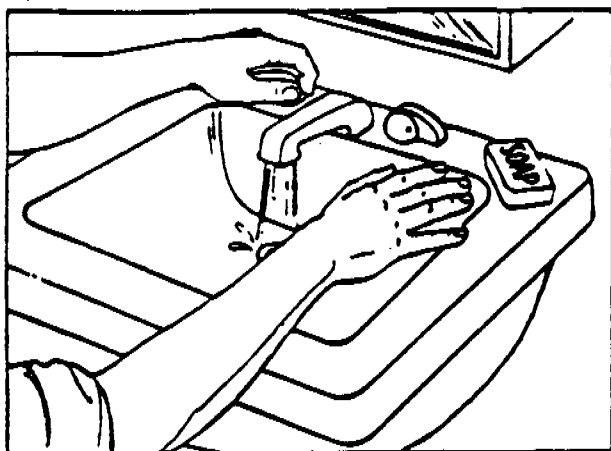
Sketch 3. Never dry sweep. If necessary, use water or other suppressants.



WARNING

Sketch 4. Never sand an existing floor covering; nor sand or dry sweep residual till.

Special Precautions (Continued)

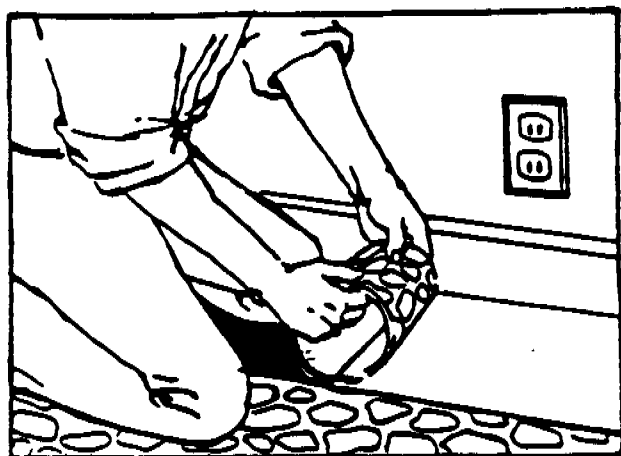


WARNING

Sketch 5. Wash hands before eating and at the end of the work day.

Complete Removal of an Unadhered (Loose-Lay) or Peripherally Adhered Sheet Vinyl Floor Covering

- a. Remove any binding strips or other restrictive moldings from doorways, walls, etc.
- b. Cut a strip the length of the floor and about 18" wide along one wall. Remove this strip, gently turn it over and roll face out into a tight roll (see Sketch 6).
- c. Tie or tape securely so it will not unroll. Place

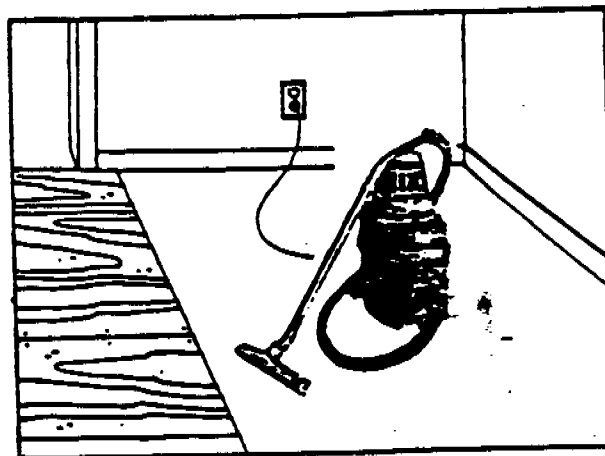


Sketch 6. When removing cut strips, roll face out into a tight roll.

6

it in a heavy-duty impermeable trash bag, or closed impermeable container big enough to accommodate several rolls, for disposal.

- c. Clean the exposed floor with a vacuum cleaner positioned so that exhaust air does not blow over the unclean area (see Sketch 7). **DO NOT DRY SWEEP. IF UNAVOIDABLE USE WATER OR OTHER DUST SUPPRESSANTS.**
- d. Repeat the above, cutting, removing, rolling, disposing of one strip at a time and cleaning the newly exposed area immediately until the whole floor covering has been removed and the whole floor vacuumed clean.

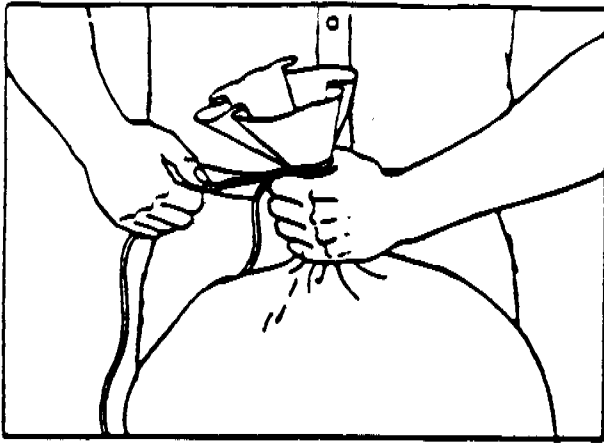


WARNING

Sketch 7. Position vacuum so that exhaust air does not blow over unclean area. Do not create dust.

- e. If seams or door openings have been adhered with double faced tape, remove the tape and place in the heavy-duty impermeable trash bag or closed impermeable container.
- f. If any floor covering areas have been adhered with adhesive and remain stuck to the floor, they should be removed by the wet scraping method explained in page 10. **DO NOT DRY SCRAPE OR SAND.**
- g. Carefully remove the dust bag from the cleaner and place it in the trash bag.
- h. Close and seal the trash bags tightly for disposal (see Sketch 8). Identify contents with a label stating, "Caution—Contains Asbestos—Dispose in an approved land fill only."

7



Sketch 8. Seal trash bags securely for disposal.

- i. Install the new resilient floor covering according to the manufacturer's instructions.

Partial Removal of Existing Adhered Sheet Vinyl Floor Covering

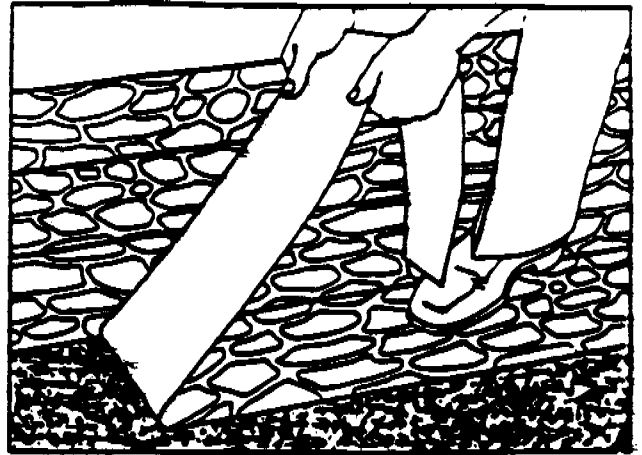
Most felt backed sheet floor coverings can be separated in the backing or felt layer. The felt left on the floor presents a smooth surface on which some new sheet floor coverings can be installed directly. Be sure to follow the manufacturer's instructions. Use the following procedure to partially remove the existing adhered floor covering.



WARNING

Never Sand an Existing Floor Covering

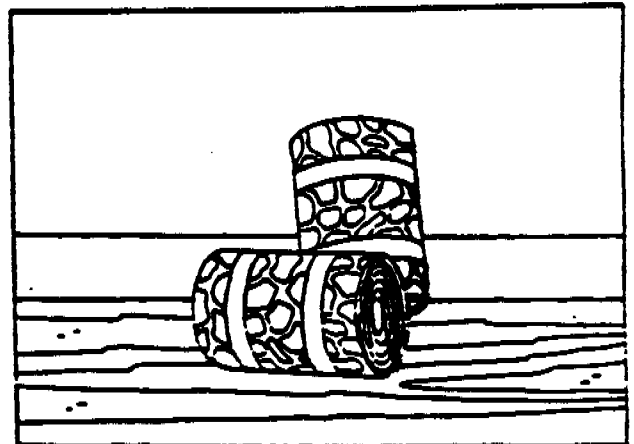
- a. Remove any binding strips or other restrictive moldings from doorways, walls, etc.
- b. Make a series of parallel cuts 4 to 8 inches apart through the top layers and about halfway through the backing, parallel to the wall.
- c. Start at the end of the room farthest from the entrance door and pry up the corner of a strip, separating the backing layer. Pull the top layer back upon itself slowly and evenly at the angle that permits the best separation, and half the backing and the top layers will pull free (see Sketch 9). After



Sketch 9. Separating top layer from backing.

it is removed, roll up the strip face out into a tight roll. Tie or tape securely (see Sketch 10) and place in the heavy-duty impermeable trash bag or closed impermeable container for disposal.

- d. Each succeeding strip should be removed in the above manner. Avoid walking on the exposed felt as much as possible. Roll up each strip as it is removed and place it in the trash bag or closed container. Close full bags tightly and seal securely for disposal.



Sketch 10. Rolled up strips must be tied or taped securely.

disposal. Identify with a label stating, "Caution—contains asbestos. Dispose in an approved land fill only."

- e. Occasionally, parts of the top layers will stick to the backing. This can often be eliminated by peeling from the opposite direction. The stiff-bladed scraper will help in stubborn areas.
- f. Any high spots of felt on the floor can be levelled by wet scraping.

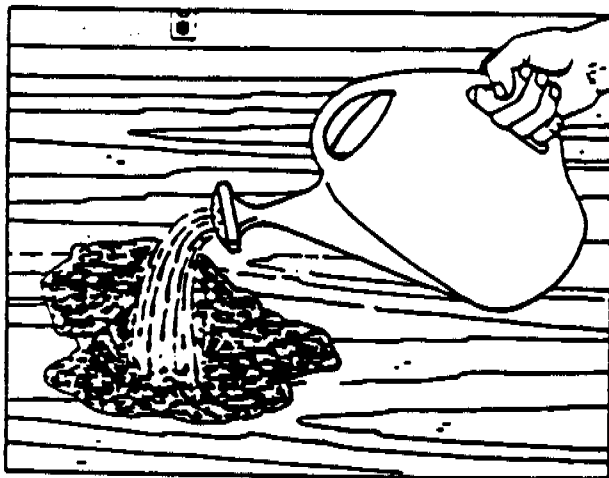


WARNING

Never Sand or Dry Scrape Residual Felt

Wet scraping is done as follows:

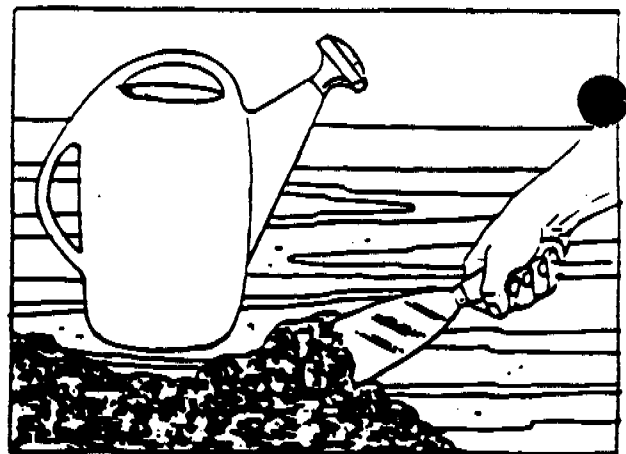
1. Pour the detergent solution into the sprayer or sprinkling can.
2. Thoroughly wet the high felt spot with this solution. Wait a few minutes to allow the solution to soak into the felt (see Sketch 11 below).



WARNING

Sketch 11. Do not dry scrape. Thoroughly wet dry felt before removal.

3. Use the stiff-bladed scraper to remove the excess felt (see Sketch 12). If felt dries out, or dry felt is exposed during scraping, re-wet with more solution.
4. Pick up the larger pieces by hand and place in the trash bag immediately.
- g. Non-adhered felt left on the floor can be cut open and re-adhered to the floor with adhesive.



Sketch 12. After wetting felt, use stiff-bladed scraper to remove.

- h. If small areas of backing pull free from the floor, the depression should be filled with latex patching compound, as recommended by the floor covering manufacturer. Patching compound *must* be troweled to finished smoothness since the area cannot be sanded later.
- i. Clean the floor with the vacuum cleaner using the metal floor tool. **DO NOT DRY SWEEP WITH A BROOM.** Position the vacuum cleaner so that discharge air does not blow on the felt. Carefully remove the dust bag from the cleaner immediately and place in a heavy-duty impermeable trash bag or closed impermeable container.
- j. Close and seal trash bags tightly for disposal. Identify contents with a label: "Caution—contains asbestos. Dispose in an approved land fill only."
- k. Do not walk over the felt unnecessarily, as this might scuff the felt and raise dust.
- l. Install the new resilient floor covering immediately, following the manufacturer's instructions.

Complete Removal of an Existing Adhered Sheet Vinyl Floor Covering

If complete removal is required, follow these instructions:

**WARNING****Never Sand an Existing Floor Covering**

- a. Remove any binding strips or other restrictive moldings from doorways, walls, etc.
- b. Make a series of parallel cuts 4 to 8 inches apart, parallel to a wall.
- c. Start at the end of the room farthest from the entrance door, pry up the corner of the first strip, separating the backing layer. Pull the top layer back upon itself slowly and evenly at an angle that permits the best separation, and most of the backing and top layers will pull free (see Sketch 9). Remove this strip, gently turn it over and roll face out into a tight roll. Tie or tape securely (see Sketch 10) and place in a heavy-duty impermeable trash bag or closed impermeable container for disposal.
- d. Repeat the above on the next two strips but do not remove anymore than a total of three strips at this time.
- e. Remove the felt remaining on the floor in the stripped area by *wet scraping*.

**WARNING****Never Sand or Dry Scrape Residual Felt**

Wet scraping is done as follows:

1. Pour the detergent solution into the sprayer or sprinkling can.
2. Thoroughly wet the residual felt with this solution. Wait a few minutes to allow the solution to soak into the felt (see Sketch 11).
3. Stand on the remaining floor covering (not the felt) and use the stiff-bladed scraper to scrape up the wet felt (see Sketch 13 below).

**WARNING****Do Not Scrape Dry Felt**

Re-wet the felt if it dries out or if dry felt is exposed during scraping. Pick up the scrapings as they are removed from the floor and place in a heavy-duty impermeable trash bag or closed impermeable container. Scrape *all* felt from this floor area before proceeding further.



Sketch 13. Stand on the remaining floor covering, not the felt, during felt removal.

4. Repeat the above on the next series of strips. Do only *one* three-strip area at a time. Stand on the remaining floor covering or clean floor (do not stand on the felt) to scrape up the felt.
5. Repeat this operation until the felt has been removed from the whole floor. Close full bags tightly, and seal securely for disposal. Identify with a label stating, "Caution—Contains Asbestos. Dispose in an approved land fill only."
- f. When the whole floor has been cleaned free of felt, let it dry and vacuum up any dirt using the vacuum cleaner with the metal floor tool. Stand only in vacuumed areas as you proceed across the floor.

**WARNING****Do Not Dry Sweep**

- Position the vacuum cleaner so that the discharge air does not blow on the floor being cleaned.
- g. Carefully remove the dust bag from the cleaner and place in a heavy-duty impermeable trash bag or closed impermeable container for later disposal.
- h. When the floor is dry, it is ready to have a new resilient floor covering installed. Follow the floor covering manufacturer's instructions.

RESILIENT TILE FLOOR COVERING

Preparation of Floors With Existing Resilient Tiles to Receive New Resilient Floor Covering

Some resilient floor coverings can be installed over existing resilient tile installations. Follow the installation instructions published by the manufacturer of the new floor covering when a new resilient floor covering is to be installed on a surface presently covered with a resilient floor covering. These instructions will tell you what must be done to the existing surface before the new resilient floor covering can be installed.



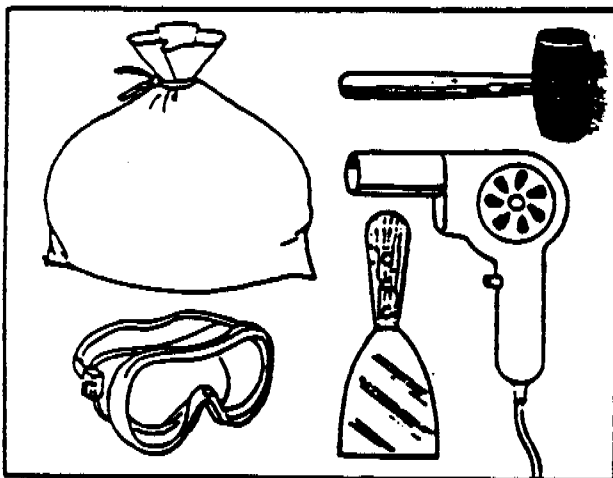
WARNING

Never Sand an Existing Tile Installation
(see Sketch 4)

Complete Removal of Existing Resilient Tile Floor Covering

Supplies and Tools (refer Sketch 14)

1. Heavy-duty wall scraper with approximately 4" blade and 6" to 8" handle.
2. Hammer.
3. Commercial type hand-held hot air blower.
4. Heavy-duty polyethylene bags at least 6 mils thick (or closed impermeable containers), ties, and labels.

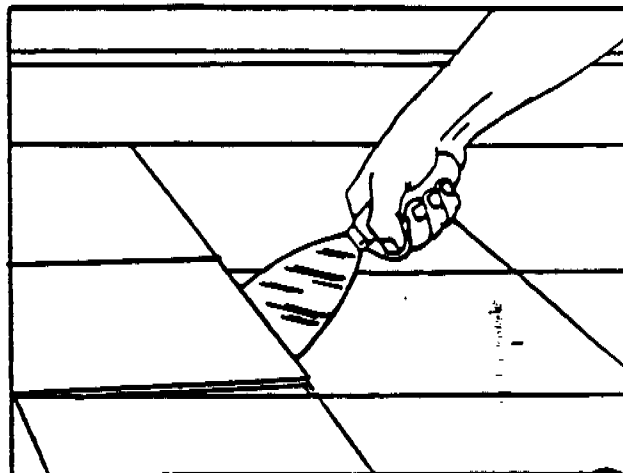


Sketch 14. Tools and supplies for tile removal.

14

Removal Procedure

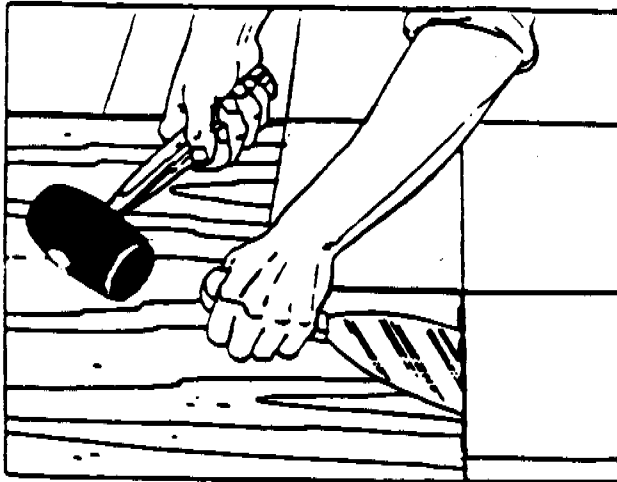
- a. Those areas normally exposed to heavy traffic patterns usually have tiles adhered the tightest. As a matter of good practice in starting the tile removal, those sections which receive least traffic should be the locations selected for starting the removal of the tile. Since tiles are normally in a 9" x 9" or 12" x 12" dimension, it should be the goal to remove individual tiles as a complete unit.



Sketch 15. Wedge the scraper in the seam of two adjoining tiles and gradually force tile upward.

- b. Start the removal by carefully wedging the wall scraper in the seam of two adjoining tiles and gradually forcing the edge of one of the tiles up and away from the floor (see Sketch 15). Do not break off pieces of the tile but continue to force the balance of the tile up by working the scraper beneath the tile and exerting both a forward pressure and a twisting action on the blade to promote release of the tile from the adhesive and the floor.
- c. When the first tile is removed place it, without breaking it into smaller pieces, in the heavy-duty impermeable trash bag or closed impermeable container which will be used for disposal.

15



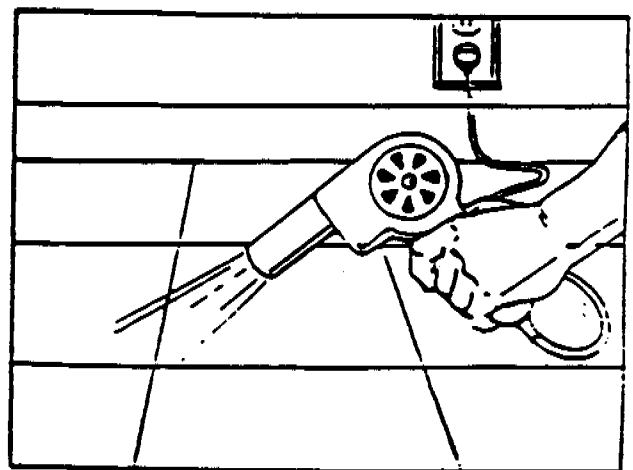
Sketch 16. Difficult tile removal can often be accomplished by striking the scraper handle with a hammer or mallet as shown.

- d. With the removal of the first tile accessibility of the other tiles is improved. Force the wall scraper under the exposed edge of another tile and continue to exert a prying twisting force to the scraper as it is moved under the tile until the tile releases from the floor. Again, dispose of the tile, and succeeding tiles, by placing in the heavy-duty bag or closed container without additional breaking.
- e. Some tiles will release quite easily while others require varying degrees of force. Where the adhesive is spread heavily or is quite hard, it may prove easier to force the scraper through the tightly adhered areas by striking the scraper handle with a hammer using blows of moderate force while maintaining the scraper at a 25° to 30° angle to the floor (see Sketch 16). Caution: Use safety goggles.
- f. If some areas are encountered where even the technique detailed in the previous paragraph proves to be inadequate, the removal procedure can be simplified by thoroughly heating the tile(s) with a hot air blower until the heat penetrates through the tile and softens the adhesive.

NOTE 1: Handle the hot air blower, tiles, and adhesive carefully to avoid personal burns (see Sketch 17 below).

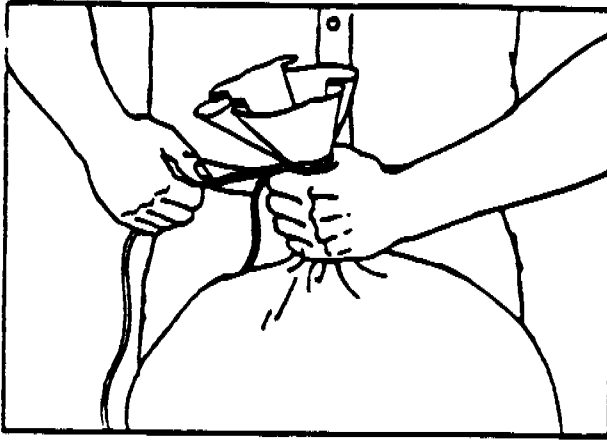
NOTE 2: Do not handle the heated tiles and adhesive without suitable glove protection for the hands.

- g. As small areas of subfloor are cleared of tile, the adhesive remaining on the floor must be scraped up with the 4" hand scraper until only a thin, smooth film remains. In those areas where deposits are heavy or difficult to scrape, the removal can be expedited by heating with the hot air blower prior to scraping. Deposit scrapings in a heavy-duty impermeable trash bag or closed impermeable container.
- h. As indicated in previous paragraphs, tiles should be placed immediately in a heavy-duty impermeable trash bag or closed impermeable container. Do not attempt to break tiles after they are in the bag.



Sketch 17. In very difficult areas, using a hot air blower can simplify tile removal.

1. When all tiles have been removed from the floor and placed in heavy-duty polyethylene bags at least 6 mils thick or closed containers, seal the bags securely for disposal (see Sketch 18 below) and mark: "Caution—Contains Asbestos—Dispose in an approved land fill only."



Sketch 18. Seal trash bags securely for disposal.



WARNING

Do Not Sand Existing Resilient Flooring, Backing, Or Lining Felt. These Products May Contain Asbestos Fibers That Are Not Easily Readily Identifiable. Sanding Of Asbestos Containing Material Can Place Fine Particles Of Asbestos In The Air. These Asbestos Particles If Inhaled May Cause Serious Bodily Harm. Smoking Greatly Increases The Risk Of Serious Bodily Harm.

APPENDIX C

**FEDERAL AGENCY STATEMENTS ABOUT THE
NON-FRIABLE NATURE OF RESILIENT FLOORING**

Environmental Protection Agency

" . . . ACM such as floor tile, roofing material, packings and gaskets...are not friable..." EPA Memorandum, "Clarification of EPA NESHAP Policy - Nonfriable ACM" (Feb. 23, 1990) (emphasis added).

"Some nonfriable asbestos-containing materials, such as packings, gaskets, asphalt roofing, and vinyl flooring, that normally do not emit asbestos fibers are not subject to the removal and disposal provisions of the [asbestos NESHAP] standard." 54 Fed. Reg. 912, 916 (Jan. 10, 1988) (emphasis added).

" . . . some amount of nonfriable ACM such as floor tile, transite board, and fire doors." 52 Fed. Reg. 41826, 41845 (Oct. 30, 1987) (emphasis added).

"Most ACM in this [other miscellaneous] category (e.g., wall board, ceiling tile, floor tile) is hard and nonfriable." EPA, Guidance for Controlling Asbestos-Containing Materials in Buildings, at 2-8 (June, 1985) (emphasis added).

"The use of the word "friable" is intended to distinguish between such materials as vinyl-asbestos floor tile, in which the asbestos fibers are well bound, and such materials as common types of molded asbestos pipe insulation, from which the asbestos fibers can be readily released. The intent of the asbestos standard is not to control handling of vinyl-asbestos floor tile, asbestos felt roofing, or similar materials, since it is the Administrator's judgement that such activities will not release asbestos in a manner which is dangerous to human health. EPA, Background Information on National Emission Standards for Hazardous Air Pollutants - Proposed Amendments to Standards for Asbestos and Mercury, EPA - 450/2-74-009a, at 16 (October, 1974) (emphasis added).

Occupational Safety and Health Administration

"Materials such as vinyl-asbestos floor tile or roofing felts are considered nonfriable and generally do not emit airborne fibers unless subjected to sanding or sawing operations." 51 Fed. Reg. 22612, 22754 (June 20, 1986) (emphasis added).

General Services Administration

"Asbestos is still used in its nonfriable form (which means it doesn't crumble easily) in building products and materials ranging from floor tiles to roofing shingles." GSA Answers Your Asbestos Concerns (October 1986) (emphasis added).

APPENDIX D

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:



February 6, 1990

Mr. Walter D. Anderson
Managing Director
Resilient Floor Covering Institute
966 Hungerford Drive, Suite 12-B
Rockville, Maryland 20850

Dear Mr. Anderson:

This is in response to your letter of January 26, regarding your request for exemption from the initial monitoring provision of the Occupational Safety and Health Administration's (OSHA) asbestos standard, 29 CFR 1926.58(f)(2)(i).

Along with your letter, you submitted a summary of a study by ENVIRON for OSHA's consideration and confirmation that this study constitutes historical data for the determination of employee exposure to asbestos when removing resilient floor tile, in accordance with the industry's recommended work practices that were the basis for the study.

As communicated to you during our previous meetings, your data can be considered as historical data, when they are representative of your prevailing work conditions and work practices. OSHA is not in a position to validate your data or attest to the effectiveness of your recommended work practices. The local OSHA Area Office would evaluate the claim of exemption from initial monitoring on a case by case basis, when the compliance officer determines that the ENVIRON sampling results represent the actual work conditions and that the recommended work practices are strictly followed.

We appreciate your efforts in gathering the data and would suggest that you provide your employees or contractors these data along with your recommended work practices for use as historical data to claim exemption from the initial monitoring requirement. However, if data from other sources including OSHA's field data show that these results are not reproducible, OSHA reserves the right to notify the Resilient Floor Covering Institute and other relevant parties that an exemption based on ENVIRON study would not be possible.

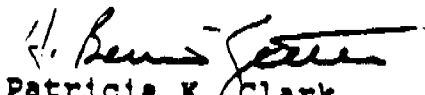
2

Your data covered the period of asbestos tile removal and floor clean-up but did not extend to initial preparations, installation of new resilient floor covering not containing asbestos or other work activities subsequent to the removal itself. Therefore, the contractors may still be responsible for initial monitoring during activities subsequent to the removal that may subject employees to asbestos exposure.

Please note that the asbestos standard is subject to change and that future changes of the standard may affect the provision for exemption from initial air monitoring.

If we can be of further assistance, please do not hesitate to contact us again.

Sincerely,



for Patricia K. Clark
Director Designate
Directorate of Compliance Programs

APPENDIX E



FEB 23 1990

***** TRANSMITTAL *****
TO: Bill Hall
DEPT: Branch A-107 FAX #: _____
FROM: Wally PHONE: _____
CO: RFC-1 FAX #: _____
Post-Net Brand Fax Transmittal memo 7871

MEMORANDUM

SUBJECT: Clarification of EPA NESHAP Policy - Nonfriable ACM

FROM: Jack R. Farmer, Director
Emission Standards Division *Jack R. Farmer*

John S. Seitz, Director
Stationary Source Compliance Division (EN-341) *John S. Seitz*

Michael S. Alushin *M. Alushin*
Associate Enforcement Counsel for Air Enforcement (LE-134A)

TO: See Below

This memorandum clarifies the requirements of the Asbestos NESHAP regarding nonfriable asbestos containing material (ACM), such as floor tile, roofing material, packing, and gaskets.

BACKGROUND

The issue of friability and the intent of the original standards for demolition and renovation activities have been the source of many questions and comments. In recent months, we have spent considerable time discussing this issue and reviewing subsequent interpretations of the standards. The rulemaking proposed on January 10, 1989 only addresses administrative changes or clarifications to the original standards. Thus, the final rulemaking can not result in a change that would affect the stringency of the original standards.

In the original rule, published in 1973, a distinction was made between building materials that would release a significant amount of asbestos fibers and materials that would not. Floor tile, roofing material, packings, and gaskets were identified as materials that would not release significant amounts of fiber when disturbed. The term "friable" was used to make this distinction. In December 1985, we issued a determination which stated that if nonfriable ACM could be damaged to the extent that it would be crumbled, pulverized, or reduced to powder, it should be removed prior to demolition. The 1985 determination was intended to affect only practices and ACM that could result in the release of significant quantities of asbestos. While it was unclear whether this determination was intended to affect ACM such as floor tile, roofing material, packings and gaskets that are not friable, some delegated enforcement agencies were inferring this material must be removed prior to demolition to ensure compliance with the NESHAP.

Although no research has been conducted on the conditions which will cause nonfriable materials to become friable, it is considered probable that some conditions (e.g. severe weathering, prolonged exposure to harsh chemicals) will cause this effect. Furthermore, certain practices such as burning, sanding, or grinding could crumble, pulverize, or reduce to powder nonfriable ACM.

POLICY

Therefore, we recommend the following approach:

- Floor tile, roofing material, packing, and gaskets (normally nonfriable ACM) must be inspected before demolition to determine if the ACM is in poor condition, indicated by peeling, cracking, or crumbling of the material. If normally nonfriable ACM is in poor condition, then the material must be tested for friability. If the ACM is friable, it must be handled in accordance with the NESHAP. The above four nonfriable ACM should be removed before demolition only if they are in poor condition and are friable.

- If the nonfriable ACM is subjected to sanding, grinding, or abrading as part of demolition or renovation, then the nonfriable ACM must be handled in accordance with the NESHAP. If a building is demolished by burning, all ACM must be removed prior to the demolition.

We believe that this approach is consistent with the original rule and the 1985 interpretation.

PLANNED FUTURE ACTION

After passage of Title III of the new Clean Air Act amendments we intend to review the asbestos NESHAP. This will allow us to further consider appropriate changes to this NESHAP.

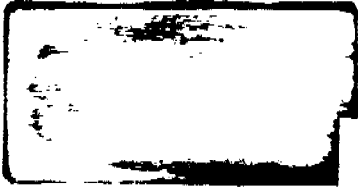
ADDRESSEES:

Kent Anderson, OSW (WH-565E)
Mike Beard, ORD (MD-77)
Jim Crowder, ESD (MD-13)
Fred Dimmick, ESD (MD-13)
Stan Durkee, ORD (EN-340F)
Pat Embry OGC, (LE-132A)
Robert Fegley, OPPE (PM-221)
Charlie Garlow, OECM (LE-134A)
Charles Gregg, OW (WH-556)
Bob Jordan OTS (TS-788A)
Asbestos NESHAP Coordinator, Regions I-X

Kathy Kaufman, OPAR (ANR-443)
Bob Kellam, ESD (MD-13)
Dennis Kotchmar, ECAO (MD-52)
Gary McAlister, ESD (MD-19)
Bruce Moore, ESD (MD-13)
Brenda Riddle, ESD (MD-13)
Sims Roy, ESD (MD-13)
Ron Shafer, SSCD (EN-341)
Al Vervaert, ESD (MD-13)
Dave Wagner, OTS (TS-794)
Roger Wilmoth, AEERL, Cincinnati
Gil Wood, EMB (MD-14)

cc: Bob Ajax (MD-13)
Robert Bronstrup, EPA-01G - Chicago
Regional Councils, Regions I - X

Ron Campbell (MD-10)
Regional Council Air Branch Chiefs

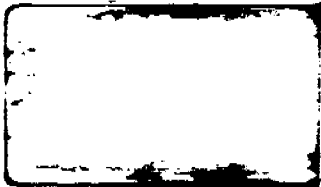


Brenda Walker
Union WV

Opposed to entire rule.

Telephone

6/19/96





REALTOR®

West Virginia Association of REALTORS®

814 Virginia Street, E.
Suite 202
Charleston, West Virginia 25301
(304) 342-7600

THE VOICE FOR REAL ESTATE IN WEST VIRGINIA

June 22, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

RE: Fees for Service
Proposed Legislative Rule

Gentlemen:

On behalf of over 2,500 members of this Association, we oppose the imposition of fees as proposed by the West Virginia Board of Health.

It has been, and continues to be, the direction of the Executive and Legislative Branches of our State Government to reduce the size and expense of Government. That direction was clearly stated in legislation which established a budget reducing requested appropriations by various agencies. We, the Association, and the public in general, applaud this legislative action.

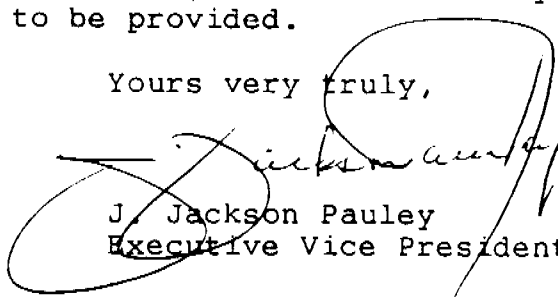
The fiscal note to the proposed rule states the justification for the fees: to restore funding to the Agency which the legislature; the constitutionally authorized taxing and appropriation body of the State; reduced. The fees proposed; which are not directly related to services being provided, or to be provided; are an affront to the legislative process. The proposed fees are nothing more than an excise tax being enacted outside the legislative process.

We generally oppose the proposed tax increase, and we specifically oppose those fees (taxes) which directly effect the cost of home ownership, or rental housing costs. The cost of water and sewer services will increase due to taxes which must be passed to the consumers. Private water well permits are an immediate added cost to many consumers. For other than a standard on-site septic tank sewage system, a \$150.00 annual fee will burden many citizens.

Regulatory Development
Page 2
June 22, 1990

The proposed regulation should be withdrawn as an ill advised and possibly illegal excise tax, since no directly related services are proposed to be provided.

Yours very truly,



J. Jackson Pauley
Executive Vice President

JJP/dak

RECEIVED

JUN 25 1990

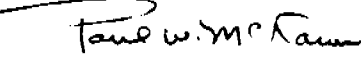
**REGULATORY DEVELOPMENT
SECTION**

STATEMENT OF WEST VIRGINIA RETAILERS ASSOCIATION

Re: Title 61, Series 51 Rules

With the recent passage of Fees for Permits by the Board of Health, for Food Service Establishments of \$25.00 to \$150.00. By imposing Series 51, an additional fee of \$150.00 will be placed on Food Service Establishments.

This appears to be a double fee on our grocery stores. We feel this is unfair to our small grocery retailers in the state and ask that this fee be dropped from the regulation.


Paul W. McKown, President
West Virginia Retailers Association

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Charlie Davis, President
Beckley, WV

Don Turnbull, Ranking Vice-President
Mt. Pleasant, PA

West Virginia Soft Drink Association
184 Summers St., Suite 202 • Charleston, WV 25301
(304) 346-9883

Larry Caramela, Vice-President
Richmond, VA

Larry Swann
Executive Director

June 22, 1990

Mr. Don Kuntz, Director
Environmental Engineering
Bureau of Public Health

Board Members

William Elmore
Charleston, WV

Wendy Cameron
Washington, PA

Mike Tucker
Charleston, WV

John Wilt
Morgantown, WV

Randall Roberts
Parkersburg, WV

Jim Ovies
Moundsville, WV

Gib Harry
Princeton, WV

Sherwood Edens
Huntington, WV

Lauren Steele
Charlotte, NC

1900 Kanawha Boulevard East
Charleston, West Virginia 25305

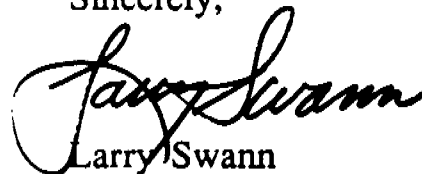
Dear Don:

This is in reference to our telephone conversation of June 21. I appreciate your willingness to amend the definition of vending machines under the proposed Health Department regulations to clarify that the new fees proposed will only apply to water vending machines and do not apply to soft drink products.

Although a close review of the regulations and the fees appear to only apply to water, further clarification should alleviate any questions.

I very much appreciate your helpful and cooperative attitude.

Sincerely,


Larry Swann

cc: All Board Members

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**





June 12, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

To Whom It May Concern:

I do not support user fees or permit fees to cover services that benefit all consumers. This is a public health program that should be funded by tax dollars not fees on us dairy farmers.

Sincerely,

Charles F Adams
P.O. Box 100
Rippon WY 25441

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

June 12, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

To Whom It May Concern:

I recently received word that the Division of Health intends to charge milk producers a fee for conducting public health related services that directly benefit the consumers by protecting the health and safety of dairy products.

As an active dairy farmer, I am strongly opposed to service or permit fees that would be used to offset the cost of providing a public health service for all consumers. Since the dairy farm inspection program benefits all consumers, it should be funded from tax dollars instead of user fees.

Sincerely,

Franklin W. Adams
Box 99
Rippon, WV 26441

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

1

2

3



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

May 7, 1990

The Honorable Tonya Willis Miller
Secretary of Department of Health and Human Services
State Capitol
Charleston, West Virginia 25305

Dear Secretary Miller:

I understand that Department of Health and Human Services staff are preparing regulations for your consideration which may result in the imposition of fees upon various elements of the dairy industry. I write today because I further understand that these fees may be imposed upon the adoption of "emergency regulations." Since I have not had the opportunity to review these new regulations, my comments may not be pertinent in every instance. However, should you choose to adopt regulations imposing fees on an emergency basis, I will be denied opportunity for comment until presented with a fait accompli.

First, no emergency exists, at least not in any generally accepted use of the word. Budgetary constraints and agency cash flows can hardly be considered emergencies.

These regulations will be such a radical departure from accustomed practice and of such significant impact upon the industry that I urge you, please, to allow a normal period for comment before implementation.

The proposed fees would appear to be based on a perceived ability to pay, or on volume, rather than upon the cost of providing inspection service. The reality is that the time required to inspect is virtually the same for each farm regardless of the number of cows milked. The equipment required is the same. Differences may arise due to location and travel time. In this case, the smaller farms are likely to be the least accessible, thereby requiring the most travel time and expense. As for Handlers, the fees simply put them at a competitive disadvantage with neighboring states. Imposition of fees will encourage the closing of facilities in West Virginia. This will mean more unemployment and longer hauls for dairymen to get their milk to market. Haulers will simply pass their fees on to the farmer.

The proposed fees will, by our calculation, generate \$75,000 per year from West Virginia farmers directly and another \$3,000 from Haulers and Handlers. It is an unsupportable burden for the industry.

May 7, 1990

There is an acceptable, practical alternative to inspection provided by HHS personnel. The U.S. Public Health Service Pasteurized Milk Ordinance provides for supervised inspection by the industry. This has been the practice in Pennsylvania for some years. It is well accepted. It has protected Pennsylvania's health while it has eased their tax burden. We can do the same in West Virginia for far less than an additional \$78,000.

I hope that you will re-visit this entire issue. Remember the service can be provided by the industry at a greatly reduced cost to the taxpayer. West Virginia farmers struggle against mounting production, regulatory costs and inclement weather. We hope that the State of West Virginia will not add to these burdens.

Sincerely,



Robert L. Williams
Director

Marketing and Development Division

RLW/cjc

June 12, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

To Whom It May Concern:

I am opposed to the proposed dairy farm permit fees proposed for West Virginia. This program protects all consumers and should be funded from tax dollars and not user fees.

Sincerely,

William B. Aikens III

Rebecca A. Aikens

Wm. B. Aikens, III
803 Elm Tree Drive
Martinsburg, WV 25401

RECEIVED

JUN 27 1990

**REGULATORY DEVELOPMENT
SECTION**

June 12, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

To Whom It May Concern:

I recently received word that the Division of Health intends to charge milk producers a fee for conducting public health related services that directly benefit the consumers by protecting the health and safety of dairy products.

As an active dairy farmer, I am strongly opposed to service or permit fees that would be used to offset the cost of providing a public health service for all consumers. Since the dairy farm inspection program benefits all consumers, it should be funded from tax dollars instead of user fees.

Sincerely,


Emily J. Aikers

Wm. B. Aikers, Jr.
Rt. 1, Box 195
Hedgesville, WV 25427

RECEIVED

JUN 27 1990

**REGULATORY DEVELOPMENT
SECTION**

RECEIVED

JUN 22 1990

REGULATORY DEVELOPMENT

SECTION

June 18 1990
Regulatory Development
Room 2041 Building 3
Capitol Complex
Charleston W Va 25305

Dear Sirs

I object to the several
different users fee you
are planning to charge
us farmers. I
we have hard enough
time to make ends meet
the way it is.

We are already taxed to
the top.

Other states don't do this
and I don't think we
should either.

Yours Truly

Proposed Rule 51
Fees for Services

John Allman
Box 86

Eglen, WV 26716

Vote NO.

Mullan F. Ankers
Rt. 3, Box 145-B
Martinsburg, W. Va.
25401
June 18, 1990

Regulatory Development
Room 204 Building 3
Capital Complex
Charleston, West Virginia
25305

To Whom It May Concern

I am opposed to any fee
connected to doing farm permits
~~one~~ Health Dept. inspections, the
purpose of Health Dept. inspection
of dairy farms is to protect
consumers. I cannot pass on
to consumers any increased
cost of producing milk to the
customers who buy my milk.

Sincerely,
Mullan F. Ankers

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

M. F. ANKERS
ROUTE #3, BOX 145B
MARTINSBURG, W. VA. 25401

Rt #3, Box 145B.

Martinsburg, W. V.

25401

June 15, 1980

Regulatory Development
Room 204 Building 3
Capitol Complex
Charleston, W. Va. 25305

To Whom It may concern:

I recently received word that the Division of Health intends to charge milk processors for conducting public health related services such as inspection that directly benefits the consumer by protecting the health & safety of dairy products.

As an active dairy farmer's wife, I am strongly opposed to services or permit fees that would be used to offset the cost of providing a public health service for all

consumers. Since the dairy farm inspection program benefits all consumers, it should be funded from tax dollars. We can not recover this added expense.

yours truly,
(Bonnie Ankers) Mrs. Bonnie Ankers



**ATLANTIC
DAIRY
COOPERATIVE**

1225 Industrial Highway
P.O. Box 127
Southampton, Pennsylvania 18966-0127
(215) 322-0200

June 18, 1990

RECEIVED

JUN 21 1990

Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Ms. Miller:

This letter is written on behalf of Atlantic Dairy Cooperative (ADC), Southampton, Pennsylvania. ADC markets the milk of approximately 3,600 dairy farm families residing in the states of West Virginia, Pennsylvania, New Jersey, Maryland, Delaware, New York and Virginia. In the aggregate, the members of ADC produce 3.3 billion pounds of milk annually.

ADC and its members would like to register their strenuous opposition to proposals by your Department to establish fees for dairy services. We strongly protest this attempt to shift the cost of maintaining public health standards for dairy from the State of West Virginia to the dairy industry, particularly to West Virginia dairy farmers.

We believe that the responsibility of assuring that the West Virginia public has a pure and wholesome milk supply rests with the State. In providing this assurance, the public interest is being served.

To tax West Virginia dairy farmers with this obligation is unfair. West Virginia dairy farmers are doing their part to produce high quality dairy products. The fees proposed by your Department would impose costs on the State's dairy farmers which farmers cannot recover from the marketplace.

The proposed fees will result in a reduction in the margin available to State dairy farmers for family living and debt retirement. These margin reductions would be especially harmful coming at a time when milk supplies have been lagging due to farmers exiting from the business.

We strongly urge you to withdraw your Department's proposed fees

for dairy services and to develop alternative funding sources which recognize that the provision of such services is the responsibility of the State of West Virginia as a whole.

Very truly yours,

Atlantic Dairy Cooperative

A handwritten signature in cursive script, appearing to read "James S. Fraher".

James S. Fraher
Economist

JSF/nmf

To: Tanya Willis Miller, secretary

Re: Proposed rule 51 - Fees & services

I am opposed to permit fees
to be charged to farmers.

The inspection of dairy farms is
not required by farmers, but is
a consumer safety standard that
should be paid by taxpayers.

Dairy Farm permit who determines
production?

These fees would be an
additional tax on a few people,
not a fair & across the board tax
on the consumer, for which the
service is provided.

T. Larry Bailey
Dairy Farmer

Rt. 1, Box 108

Jane Lew, W.Va 26378
269-5609

RECEIVED

JUN 22 1990

REGULATORY DEVELOPMENT
SECTION

RECEIVED

JUN 18 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

June 15, 1990

RECEIVED

JUN 19 1990

REGULATORY DEVELOPMENT
SECTION

To Whom it May Concern

Reference Proposed Rule 51- Fee for Service

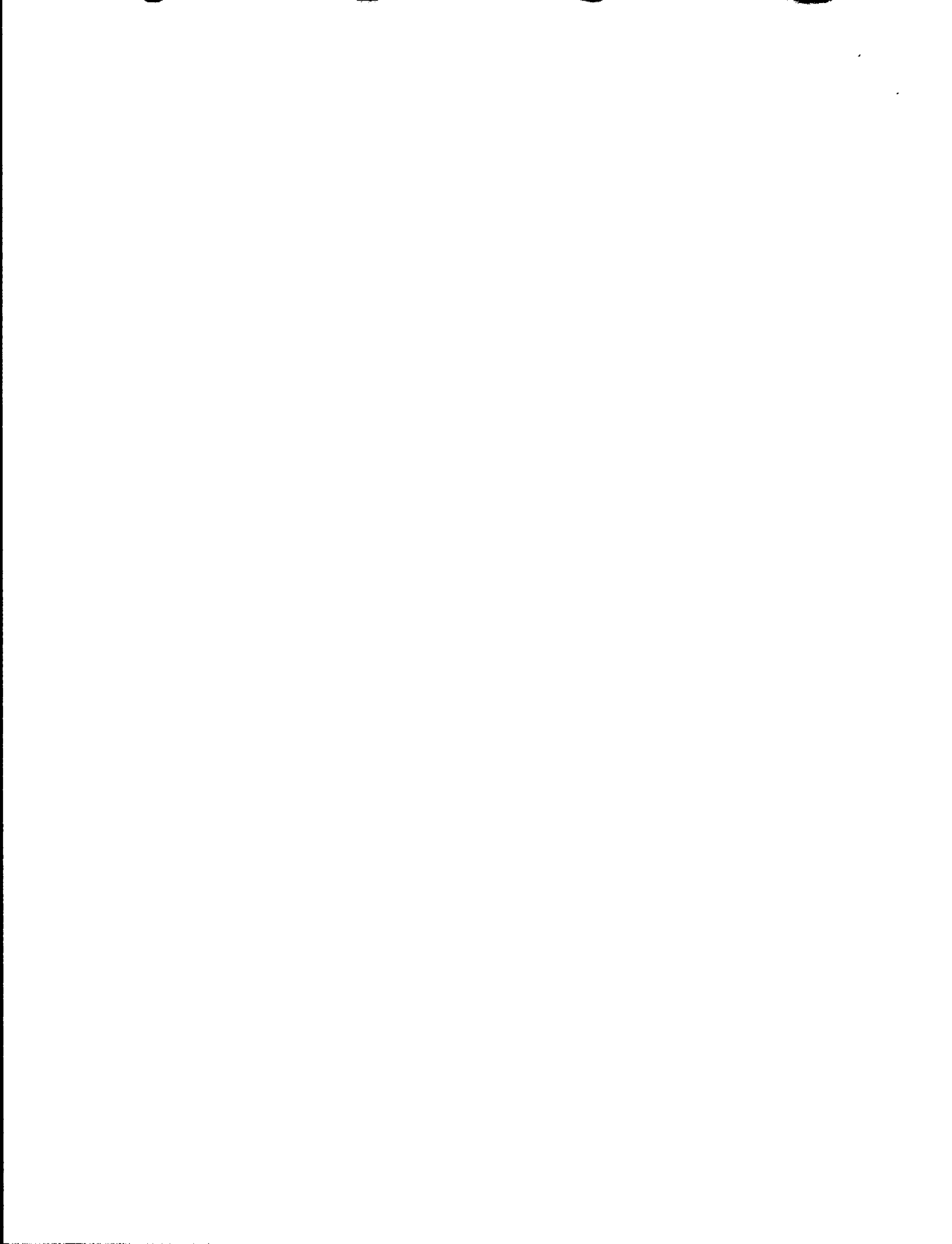
I strongly feel it is the duty of the health department to see that the consumers of this state of WV are protected. This cost should be born equally by tax dollars not a so-called user fee.

People making these proposals need to visit the real life community to see the horrendous already imposed regulations put on the farmer. Do you realize there is less milk produced in WV now than is consumed. This will only add to this situation. Farmers in our area are just going out of business. Would you put up with more and more? Farmers feed our nation and yet they are just plain "dumped" on. Would you get up at 3:45 am to milk cows to supply milk for people with no appreciation. Would you stay up all night with a sick animal to prevent losing thousands in assets. Would you work in extremely hot or cold weather conditions to plant and harvest crops to feed cattle?

Please consider the ramifications of this action.

Robert L. Brady
R.I. Box 664
SHEPHERDSTOWN WV 25443

Robert L. Brady





June 13, 1990

Dear Sir.

I don't think we had to
paid for the Proposal Fee Schedule
Because we don't make too much
from our milk and we have
to much now taking out of
our check. The are making a little
living off the farm. The have
to many thing.

Thomas Beengard
R.D.#1 Box 123
Glen Easton, N.Y.
16039

RECEIVED

JUN 15 1990

**REGULATORY DEVELOPMENT
SECTION**

HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL - PHONE (304) 340-3200
CHARLESTON 25305

RECEIVED

JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

RODNEY T. BERRY
1214 8TH STREET
MOUNDSVILLE, WV 26041
PHONE (304) 845-5846

June 18, 1990

Taunja Willis Miller, Esq.
Secretary, Department of Health
& Human Services
State Capitol Building
Charleston, WV 25305

Re: 64 CSR "Fees for Services"

Dear Secretary Miller:

Please be advised the undersigned, Rodney T. Berry and A. E. Tribett, members of The House of Delegates for the Fourth District representing Marshall County, do hereby respectfully object to the above proposed legislative rule which would charge fees to municipalities, public service districts, and dairy farmers for certain mandated inspections.

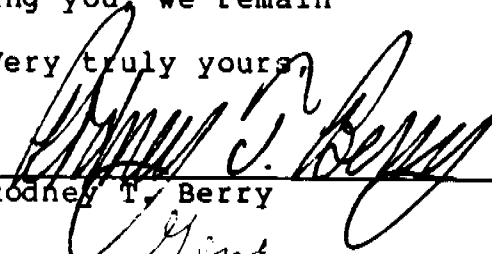
As you know, there are presently local fees charged for these same basic services, and we feel that these mandated inspections would be repetitious and very costly for the political subdivisions and farmers affected by the proposed rule. We do however, take no exceptions to the local fees that are presently being charged.

In these days of very restricted revenue to the municipalities and public service districts, as well as the ever present financial crunch put upon our farmers, we feel that it is oppressive to levy further fees upon them.

We intend to be at the hearing in Charleston at 10:00 a.m. on June 22, and we would like to address this proposed rule further at that time.

Looking forward to seeing you, we remain

Very truly yours,



Rodney T. Berry

A. E. Tribett

CC: Moundsville City Manager
Mayor Anthony Scaffidi
Mayor William Kern
Mayor John Saffel
Mayor Wayne Simmons
Emmit Francis, Secretary, Marshall County Farm Bureau
B. J. Baker
Doug Schafer - Public Service Dist. No. 1
Marilyn Rulong - Public Service District No. 2
James Fred Hammil - Public Service District No. 3
Donna Crawford - Public Service District No. 4
Debbie Fogle - Glen Dale Heights Public Service Dist.



June 20, 1990

Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, West Virginia 25305

We have received a copy of a special news letter to dairy farmers which outlines the West Virginia Department of Health Proposed Rule 51 — Fees for Service.

We are a major distributor and processor of dairy products in West Virginia. However, we have not received any information from your Department concerning these rule changes.

If the proposed schedule of fees as outlined in the special news letter is correct, we have serious reservations concerning the implementation of these fees. They will adversely affect the dairy farmer, the processor, and the distributor of dairy products as well as the consumer of these products. We have processing plants in Ohio and West Virginia, and we are paying fees to Ohio for farm inspection, plant inspection, laboratory fees, etc. If your new schedule goes into effect, we will be paying double fees on the products from Ohio sold in West Virginia. This would seem to be contrary to the long-standing reciprocity agreements between the Ohio and West Virginia Departments of Health. The fee schedule for testing finished milk product packages at \$25 per sample is unrealistic. West Virginia is currently testing over 110 samples of our product each month. There should be some cap on the number and frequency of samples as well as a more reasonable fee for testing each sample.

Our Charleston, West Virginia plant ultra-pasteurizes and packages milk and cream which is first processed at our Marietta, Ohio plant and a per CWT fee is paid to the Ohio Department of Health on this product. We should not be charged again in West Virginia for the same product. The Charleston, West Virginia plant processes these long-shelf life products and delivers over 95% of the products to customers in 20 other states. This additional cost will make the products produced in West Virginia uncompetitive and will stifle the growth of jobs for those persons who work in our Charleston, West Virginia plant.

We realize that the West Virginia Department of Health needs funds to carry out their important task of protecting the consumer in West Virginia; however, these funds should be raised in a more equitable manner and a certain segment of the population should not be expected to shoulder the whole burden.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



Sincerely,

BROUGHTON FOODS COMPANY

Samuel R. Cook
Chairman of the Board
and Chief Executive Officer

June 11, 1990

RD#2 Box 230
Moundsville
WV 26041

RECEIVED

JUN 13 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Sirs:

This is a letter concerning Proposed Rule 51 - Fees for service.

We don't need the state inspection because we have Federal inspections. Therefore, I do not feel farmers should be charged by the Health Department for inspection to sell milk. If anyone should pay, the consumer should pay. Also, it seems you want to drive the handlers out of business in the state and the bottlers to. We need all the people selling our product, not just a few big ones. I do not feel anyone used common sense when they proposed this bill. Please give this some thought.

Thank You

(dairy farmer)

Sincerely,
Merk Chaplin



June 21, 1990

Ms. Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

Dear Ms. Miller:

Re: Proposed Fees for Services
Title 64, Series 51

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

I have received the information from Secretary of State Ken Hechler's office pertaining to the new legislation that you would like to put through which is Title 64, Series 51, Fees for Services, and if I understand this proposal correctly, I am adamantly opposed to it because it is so unfair to our business that we cannot afford it.

When I project what the fees would be, as I understand it would cost our company, the dairy division only, in the neighborhood of \$20,000 per year because of the number of tests that you do right now and for which we are already paying state taxes for you to administer, would cost us a minimum of \$1,400 to \$1,500 per month. You are now doing an average of 56 tests on our dairy products per month. That alone would be \$16,800 if I understand this proposed legislation correctly. If by chance you are saying \$25 per test, when you are now doing three tests on each product (standard plate count, coliform and phosphatase), I don't understand whether that would mean three different tests at a cost of \$75 (\$25 each) or if those three test would total \$25, but I am giving you the benefit of the doubt in saying those three tests would cost \$25. If your intent is \$75 for the three tests, our cost would be three times as much or \$60,000 per year. Either amount is prohibitive.

Enclosed with this letter is an invoice from Dairy Research Associates which is an approved lab with the Pennsylvania Health Department, and as you can see, these same tests cost \$4.25, \$5.75 and \$7.00 as compared with your suggestion of \$15 and \$25 each. These samples are picked up each month by their employees, same as your WV Health Department personnel do for these same tests.

Our company also has 40 convenience stores, of which 31 are in the state of West Virginia, and if there is another fee added by your Department under Title 64, Series 30, as I understand it from the meeting you held on May 23rd for grocers which I was not able to attend, of \$50 per year for every store manager we have and \$5 for every clerk we have in the stores, that would be an additional many thousand dollars per year since it is inherent that we turn

over part-time clerks as do other industries such as fast food restaurants. Again, it is not clear to me what all the fees would be, and I would like to clarify this at the Friday, June 22nd meeting in Charleston at 10:00 a.m. in building 7 of the Capitol Complex.

Not only is this proposed legislation unfair that we manufacturers and state residents would be charged, but it would make us uncompetitive when out-of-state dairies would not be charged an equal amount, and in most cases we could not pass it on to the public when other companies we compete with do not have the same expenses, and it would be another tax we would have to "eat."

If these Proposed Fees for Services become law it also opens the door for local Health Departments to levy another "local" tax, same as you are proposing for State Health Department services rendered.

I oppose this because I feel it is double taxation. We are already paying our share of taxes to the state of West Virginia to cover all these services. If this were to be a school district and their funds were cut they would cut their expenses to meet their budget, not charge a head tax for each student for whom they are already receiving taxes to teach. If this were a city police agency, they would meet their budget by cutting expenses, they would not charge a fee for every car for which they direct traffic. Likewise, we should not be charged taxes for services and then selectively double taxed by charging a fee for these same services.

In the 1940s there were 45 dairies in West Virginia. In 1980 there were 10 dairies. Today only 3 dairies are left in West Virginia. With this type of legislation and taxation there could be NONE.

Everyone knows the economy in West Virginia is very bad, and with all businesses getting hit with additional taxes and fees from federal, state and local governments, it is very difficult for any business to survive. Our convenience store business has been hit especially hard by the new Environmental Protection laws covering our gasoline installations, and we are just beginning to cope with these large assessments.

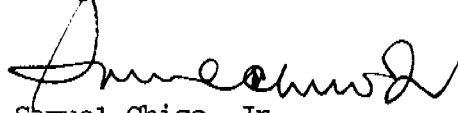
The consumer and every individual in the state of West Virginia are the end users of these services you are proposing to double tax, so these services should be charged fairly and without discrimination to every citizen of the state through a sales tax, rather than just targeting a few select food processors or farmers or store operators. In most cases we cannot pass on these costs.

For the above reasons I adamantly object to this unfair double taxation that you are proposing, and would suggest that you go back to the Legislature next January to get funded through a sales tax of some kind that would spread

the expenses you say you need among the whole citizenry rather than putting a few companies out of competition with their out-of-state competitors with this method of taxation. Again, this is very unfair.

Sincerely,

Chico Dairy Company and
Dairy Mart Foods

A handwritten signature in dark ink, appearing to read "Samuel Chico, Jr.", written in a cursive style.

Samuel Chico, Jr.
President

SC:dr

Enclosure

INVOICE

No 1270

DAIRY RESEARCH ASSOCIATES, INC.

FOOD CONSULTANTS

P.O. BOX 111293 • PITTSBURGH, PA 15238

(412) 963-0656 • FAX (412) 963-1272

DATE: 3/21/90

Chico Dairy
331 Beechurst Ave.
Morgantown, WV 26505

Lab Testing
milk products
J. J. J.

Billing for samples picked up 3/12/90

Report #900721

3 tests on some product →	SPC Bacteria ✓	11 @ 4.25 ea.	46.75
	Coliform ✓	12 @ 5.75 ea.	69.00
	Phosphatase ✓	7 @ 7.00 ea.	49.00
	Mojonnier Fat	10 @ 6.50 ea.	65.00
	Mojonnier Total Solids	4 @ 6.50 ea.	26.00
		TOTAL	\$255.75

**TESTIMONY CONCERNING PROPOSED RULE 51
FEES FOR SERVICES**

presented to

**Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, WV 25305**

and presented by

**William L. Arledge, Director - Quality Assurance
Dairymen, Inc.
10140 Linn Station Road
Louisville, KY 4022**

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

TESTIMONY CONCERNING PROPOSED RULE 51

FEES FOR SERVICES

Dairymen, Inc., a milk marketing cooperative serving more than 4,100 members in seventeen southeastern and middle atlantic states -- which includes members in the State of West Virginia -- opposes the **Fees for Services** as outlined in the proposed Rule 51 by the Division of Health.

It is the duty of the Health Department to see that the consumers of this State are protected. Sanitation inspections and microbiological and chemical testing are designed to protect the public health of all residents and are paid for by State tax dollars rather than a discriminatory user fee. Annual milk production within the State of West Virginia is less than what is needed for the consumption in the State. Discriminatory user fees will force even more dairy farmers and dairy plants out of business. Milk production in a deficit state should be encouraged - not discouraged!

Laboratory testing, whether in a state health laboratory or a certified industry laboratory, is designed to protect the public health by providing microbiological and chemical testing, assuring the safety of raw and finished products. Fees in certified laboratories are not assessed in any other state, and such fees will cause or encourage voluntary certified industry laboratories to become decertified, forcing the responsibility of testing back on the State Health Department.

Certified industry laboratories do more testing on a routine daily basis, rather than only four samples over six months as required in the Pasteurized Milk Ordinance, thus assuring the quality and safety of raw and finished products. The same comments apply to water specimens and well permits. This testing and approval is clearly designed to

protect the public health and is paid for by State tax dollars.

The fees proposed to be collected to inspect dairy farms are also very discriminatory to the small family farm. We are not convinced it costs the State more to inspect a large dairy as a small one. Again, inspection is designed to monitor via farm surveys and to prevent anything that would affect public health. Clearly the responsibility of the State is to protect the consumer and is paid for by tax dollars. Also, farmers have absolutely no way to pass along this cost burden to consumers.

States such as Rhode Island and others are developing legislation to pay dairy farmers from \$2-4 per hundredweight (based on quality) above the prevailing federal order pricing to encourage dairymen to stay in business through income incentives rather than forcing them out of business!

Highly discriminatory fees adding additional cost burdens can do nothing but encourage an exodus of dairying from the State of West Virginia. Such an exodus will create further unemployment at the farm and dairy plant levels, creating additional burdens on the State. The State should be doing those things to encourage employment and income to the State, not discriminate against it.

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JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

June 20, 1990

T. Willie Miller

Dep't. of Health & Human Resources
Building 3, Capitol Complex
Charleston, W. Va. 26305

Dear Sir,

A few days ago I recieved a
Newsletter to dairy farmers pertaining to
"Fees for service" (Proposed Rule 51)

Needless to say, I am very disappointed
that our W. Va. Division of Health is even
proposing such rules & regulations.

I personally feel that the issue of
sanitation inspection should be
paid by state dollars, rather than
a "user fee".

I realize our state is in a financial
bind, (thanks to some of our former
elected officials who are now receiving
nice big retirement pensions & benefits,
but I'm very much against adding
(OVER)

more burden on the honest, hard
working dairy farmers of the state.

We farmers have been buying at
retail and selling at wholesale for years
& years. It aint no easy row to
hoe.

I strongly urge your department
to reconsider these proposals and
continue operating as you have in
the past.

Sincerely, C.P. Dayton

Calvin P. Dayton

R.R. 2, Box 646

Ridgeley, WV 26753

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JUN 14 1990

REGULATORY DEVELOPMENT
SECTION

Does the West Virginia Department of Health have the right to bankrupt West Virginia dairy farms? By passing the proposed Rule 51, that is what they will be doing. Should the dairy farmers of this state pay a "user" fee for the product they produce? The Rule 51 fees cover tests that do not protect the dairy farmer. These tests protect the consumer therefore tax dollars should continue to cover the expense of these services.

As a farm family, we are already having to convince our children that family farming will not pay in the future. Now the state department of health is trying to propose fees to put us out of business now. The dairy industry has suffered as the bottom dropped out from under our raw milk price and as the cost of feed sky rocketed. The consumer pays more for dairy products at the super market and the dairy farmer receives less for his product at home. We have no control of the price we receive for our milk therefore we cannot pass these fees on to the consumer.

Pennsylvania and Maryland, two large dairy producing states, charge the farmer nothing for these services. Ohio, ~~the~~ ranked third in the nation for dairy production, has a \$15 maximum license fee for dairy farms. West Virginia is not a self-sufficient dairy state. Most of our dairy products come from Pennsylvania, Maryland, Virginia, and Kentucky. The proposed Rule 51 fees would force the people of West Virginia to depend more on out-of-state milk than ever. It would force dairy farms out of business. It

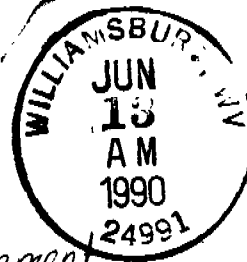
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would cost the jobs of West Virginians.
Does West Virginia not Respect their farmers?

Sandy L. West

HCR68
Box 107
Trout, WV 24982



Regulatory Development
Room 204, Building 3
Capital Complex
Charleston, WV
25305



Florence Milk Farm

"FARM FRESH MILK"
RT. 1, BOX 80
MINERAL WELLS, WV 26150
304-489-1230

June 15, 1990

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JUN 21 1990

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

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Taunja Willis Miller

We own a dairy in wood County located at Mineral Wells, West Virginia. My Father started producing and selling milk on a retail level sixty Five years ago. At that time we were inspected by the Wood County Health department, later by the Parkersburg/Wood County Health Department, more recently we are tested and inspected by the Mid Ohio valley Health department. With no fee involved except 10.00 dollars state permit.

In reference to proposed rule 51, fees for service. We feel these regulations, testing fees, and permits and all other costs will put more dairymen out of business. West Virginia lost 200 milk producers in the last fiscal year. The administration talks of economic development, this certainly does Nothing for the economy.

In the early 1940's Wood County alone had 73 milk producers today we have 5. The procedures of your pricing formula is no more than a privilege to be in the dairy business. Total costs of all health departments should come from the general fund, because its for the health and welfare of the general public.

Therefore we are opposed to any changes, let the public pay for threr own protection costper citizen will be very minimal.

Sincerely,

Paul C. Florence

Paul C. Florence
Florence Milk Farm

Gbr. Co. Farm Bureau
Lewisburg, WV 24901
June 18, 1990

To Whom It May Concern:

We the members of Greenbrier County Farm Bureau would like to voice our opinion in the hearing for the Health Dept. for June 19th or 20th, 1990.

We are totally opposed to the charges and the form in which we as milk producers are to be charged.

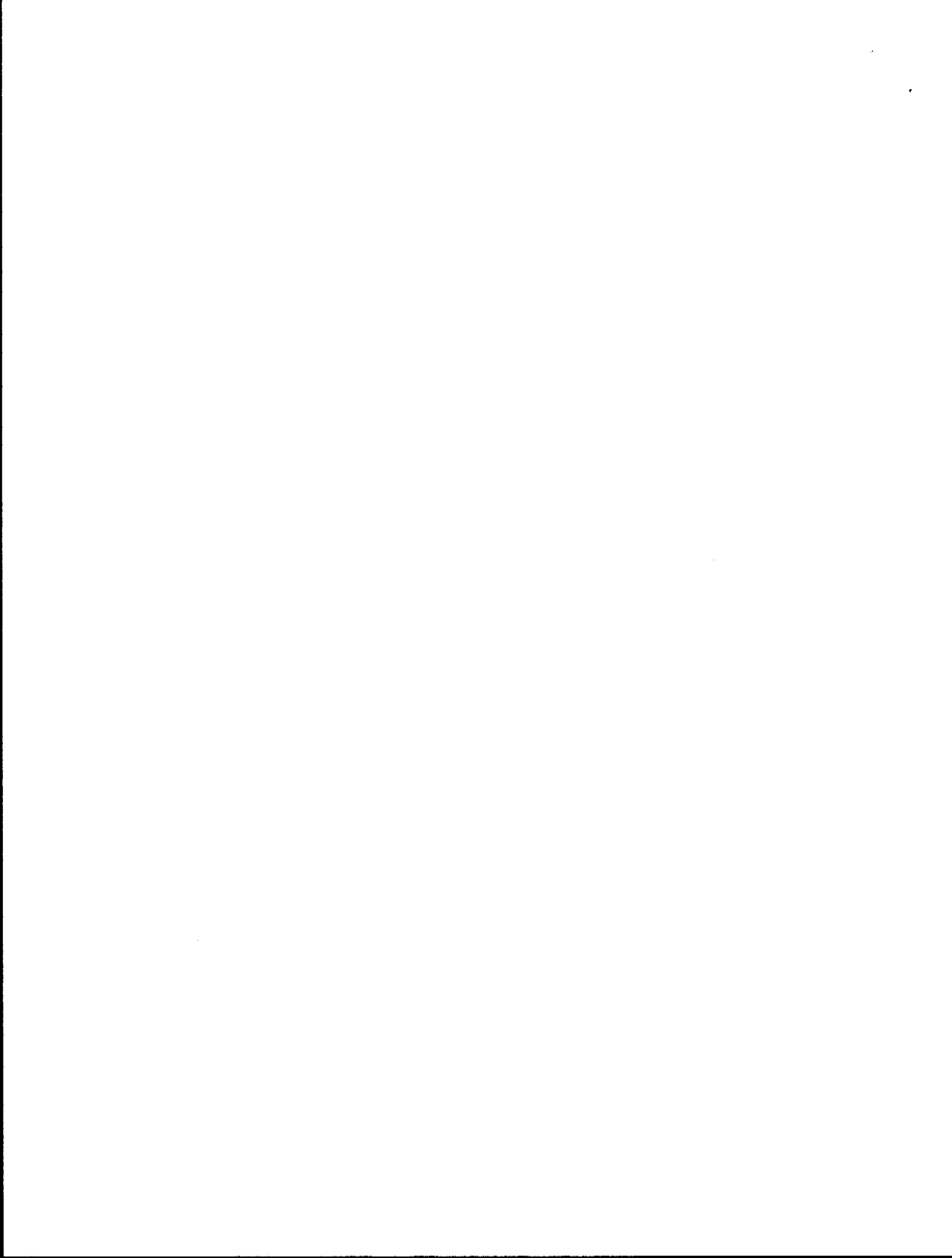
Respectively Yours,

Ed Carter
President
Gbr. Co. Farm Bureau

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



Gbr. Co. Farm Bureau
Lewisburg, WV 24901
June 18, 1990

To Whom It May Concern:

We the members of Greenbrier County Farm Bureau would like to voice our opinion in the hearing for the Health Dept. for June 19th or 20th, 1990.

We are totally opposed to the charges and the form in which we as milk producers are to be charged.

Respectively Yours,

Ed Carter
President
Gbr. Co. Farm Bureau

Edner Hedrick Jr
Williamsville
W. Va. 24991

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JUN 21 1990
REGULATORY DEVELOPMENT
SECTION

June 19, 1990
Rt 1 Box 111
Moorefield, WV 26836

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JUN 22 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

Dear Ms. Miller,

I am writing you in reference to Proposed Rule 51--Fees for Service.

Some of the reasons I object to these regulations include:

- 1) We already have three (3) inspections ----Plant, PA State, Federal
This is sufficient.....
- 2) Inspections are now preformed by qualified inspectors who know the in's and out's of dairy farms.
- 3) Profits from dairy is very marginal as is.
- 4) Milk is one of the pureist food and drink that we consume-
Why inspect just dairy? Why not hogs, beef, poultry and others?

As you are aware, I hope, there is less milk produced in West Virginia than is consumed. I feel that these regulations will add to the situation and up goes the prices for consumers.

This is an extremely busy time for us farmers and I guess this is why this hearing has been schedule for this time of year.

I do not need any more inspections on my dairy farm. I do not need the additional cost which would come with more inspections.
I OPPOSE THESE REGULATIONS.

Sincerely,


Sam L Harper, III

cc: Representatives
Senator Tom Hawse
Delegate Harold Michael
Delegate Phyllis Cole

June 20, 1990

RECEIVED

Taunja Willis Miller
Building 3, Capitol Complex
Charleston, WV 25305

JUN 21 1990

REC'D OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Ms. Miller:

In reference to Proposed Rule 51 concerning fees for service.

We are strongly opposed to the regulations being considered by the Department of Health and Human Resources. We feel this would put undue hardship on the working class of West Virginia.

As Dairy Farmers we know that this proposal is unfair . The farmers of West Virginia are already over-worked and under-paid with the average day being not 8 hrs. but an astonishing 16 hrs!!

Please reconsider this matter that will involve and concern so many hard-working taxpayers, farmers, and West Virginia citizens.

Thanking you in advance.

Sincerely,

June Hodges
Randy Hodges

June Hodges
Randy Hodges
Hodges Farm
Route 1, Box 120
Ballard, WV 24918

June 20, 1990

Jaunya Willis Miller, Sec.
Dept of Health and Human Resources
Building 3 Capital Complex
Charleston, WV 25305
Dear Secretary

RECEIVED

JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

I wish to express my strongest apperition to any thought to further tax the WV dairy farmer. The dairy farmers of west Virginia are one of the very few businesses that are forced to operate by paying retail prices for what they put in their business. The end product, "Milk", has to be sold at the wholesale prices, which are set by a federal order pool. The individual dairyman has no say as to what he receives for his milk.

Since the general public enjoys the cheap food policy that we have in the United States and West Virginia, this added tax should be the Consumers responsibility. The dairy farmer has been subsidizing the general public for years. There is no nation in the world who spend so little of their income for food, including dairy products.

Sincerely

J.W. Larow

J.W. LAROW

Box 33 Hans Creek

Greenville, WV 24945



Mr. & Mrs. Russell T. Linger, Jr.
(304) 335-4434

LINGER FARMS INC.

P. O. Box 14
Huttonsville, WV 26273

June 9, 1990

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Taunja Willis Miller, Secretary
Department of Health & Human Resources JUN 12 1990
Building 3, Capitol Complex
Charleston, West Virginia 25305

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Ms. Miller:

It is my understanding the State of West Virginia Division of Health has entertained the idea of "User Fees" for dairy farms in the state. I believe it is the duty of the health department to see that the consumers of this state are protected, however, the issue of sanitation should be treated as consumer protection and paid by state tax dollars, rather than a "user fee".

I understand you hope to generate a large amount of revenue through the use of this fee. I believe you should stop and consider the business climate in the state of West Virginia. It is totally understandable that many small businesses are not willing to come into a state where the total burden of so many unnecessary items are handed to them. This fee will just continue to inforce this.

Being in the dairy business all of my life, I have wished many times some of the people who make rules regulating the business would take the time to at least become familiar with it in a small degree. I truly appreciate the health department in so far as our inspections as I believe that are very important to the industry, however, so many times laws are purposed by those who have no knowledge of the industry and that is what the "user fee" idea seems to be. I hope you will consider taking the time to talk to people with knowledge of the industry from the standpoint of the farmer and at that point I am sure this will be given further consideration and the idea will at that point not be considered a good one. I would like to see you put energy into trying to attract some of these people who are looking for a place to start a dairy business. There are people who need to purchase land, farms, etc. to get started in the business and West Virginia has lots to offer them - lacking only in the business climate area. Why can't we get together and make an attractive package to get agriculture involvement more prevalent in a state where all the resources are there.

It has often been said that "Farmers buy at retail and sell at wholesale". This holds lots of food for thought and I believe the future of this state and country greatly depends on that one small segement, THE FARMER. I feel it is time we give him a chance to make a living - he does not ask for a forty hour work-week, more insurance benefits, etc. just a chance to help feed America and gain the satisfaction he deserves from the job well done.

Sincerely,

Russell T Linger, Jr.
Russell T. Linger, Jr.

RECEIVED

JUN 14 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

R.D. #3, Box 212
Wheeling, WV 26003
June 12, 1990

Taunja Willis Miller, Secretary
Department of Health & Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

Dear Secretary Miller:

I am writing to express my feelings about Proposed Rule 51 - Fees for Service.

I have been a dairyman in West Virginia for over forty years and do not believe during those years that I have ever seen anything as discouraging as these proposed fees. West Virginia has been a milk deficient state. I believe that fees such as proposed will discourage milk production even more.

I believe it is the duty of the Health Department to protect the consumers. I also believe the Health Department has done a good job in this respect. Because of this, fees such as this should not be placed on producers. These costs should come from tax dollars. These fees are a tax on certain parts of our population.

Following are some additional concerns I have.

1. How is production perday on farms going to be determined. The proposed rule is not clear on this.
2. I don't believe it takes a sanitarian much longer, if any, to inspect a large producer than it does a smaller producer.
3. Why is an out-of-state plant only charged \$250.00 regardless of the gallons processed.
4. There is nothing in the proposed rule to prevent these fees from becoming even higher.

In closing again let me express my concern about the future of the dairy business in West Virginia. We as dairymen have never

shared in the economic growth in this country as many others have. Fees such as these proposed could further add to this problem. In spite of the recent increase in milk prices, the costs dairymen have to pay for machinery, supplies, utilities etc. continue to raise at a faster pace than the milk prices.

Yours truly,

Ivan McCombs
Ivan McCombs

RECEIVED

JUN 19 1990

**REGULATORY DEVELOPMENT
SECTION**

MCCULLOCH FARMS

2404 Mt. Vernon Avenue
Pt. Pleasant, WV 25550

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Ladies or Gentlemen:

I would like some clarification of Proposed Rule 51, Fees for services as it pertains to dairy farms.

1. Why there is a different cost of inspecting different size producers?
2. How the production per day is determined?
3. Why is there a \$100 charge for a reinstatement of a permit?
4. Why is an out of state plant charged a different fee? What about the reciprocity that currently exists between state?

Thank you.

Sincerely yours,

Charles E. McCulloch, III

Charles E. McCulloch, III

ROBERT P. McGARRY, JR.
Shenandoah Junction, W. Va. 25442

Route 1 Box 143R

June 17, 1990

Regulatory Development
Room 204 Building 3
Capitol Complex
Charleston, W. Va. 25305

To Whom It May Concern:

I am strongly opposed to service or permit fees as proposed for state dairy inspection to dairy farmers in the state. This should be funded by the state as a service to the public and not paid for by the individual dairymen. This service benefits all consumers, and should be paid for by our tax dollars.

Respectfully,

Robert P. McGarry Jr.
Robert P. McGarry Jr.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Monzell D. Marple
Route 1, Box 165
Buckhannon WV
26201

June 19, 1990

RECEIVED
JUN 21 1990
REGULATORY DEVELOPMENT
SECTION

Regulatory Development
Room 204, Building 3
Capital Complex
Charleston, WV 25305

Gentlemen:

As one of three dairymen left in Upshur County, I strongly protest your Proposed Rule 51, Fees for Services. I think all dairy farmers should be treated the same if you should charge fees. If you charge us services fee, I think you should give us a permit to buy wholesale, after all we do have a business certificate.

Thank You
Monzell D. Marple

MARYLAND & VIRGINIA
MILK PRODUCERS COOPERATIVE
ASSOCIATION, INC.

1985 ISAAC NEWTON SQUARE - SOUTH
RESTON, VIRGINIA 22090
(703) 742-6800
RUSSELL S. WACHTER, PRESIDENT
ROBERT E. VAUGHN, SEC-TREAS-GEN'L MGR



MARYA MAID DAIRY
NEWPORT NEWS, VIRGINIA
SOUTHSIDE DIVISION
BLACKSTONE, VIRGINIA
MANUFACTURING DIVISION
LAUREL, MARYLAND
EQUIPMENT DIVISION
FREDERICK, MARYLAND

June 12, 1990

RECEIVED

JUN 18 1990

Department of Health and Human Resources
Building 3 Capital Complex
Charleston, WV 25305
Attn: Taunja Willis Miller, Secretary

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Dear Madam Secretary:

We are writing to you regarding Proposal 51 (Fees for Service). We are opposed to this schedule of proposed fees. The enforcement of regulations regarding the production and selling of milk is an act for the protection of the health. As such, it does seem discriminatory to single out one segment of the population to bear the cost involved.

The dairy industry is contributing significantly to the cost of enforcement in West Virginia. In order to comply with the requirements of the state and pasteurized milk ordinance, certified industry laboratories are furnishing to the Department of Health, monthly results for all of the milk produced and marketed from West Virginia Farms. We encourage the Department to rethink the imposition of an additional burden to the dairy industry of West Virginia.

Sincerely,

James H. Reeder
Director, Member Relations

JHR/epp

PRODUCERS OF THE WORLD'S HIGHEST QUALITY MILK



Pittsburgh Division

100 First Financial Plaza
150 W. Beau Street
Washington, Pa. 15301
412/228-5350

June 13, 1990

The Honorable Tonya Willis Miller
Secretary of Department of Health and Human Resources
State Capitol Complex, Bldg. 3
Charleston, West Virginia 25305

RECEIVED

JUN 18 1990

Reference: Proposed Rule 51, Fees for Services

**REGULATORY DEVELOPMENT
SECTION**

Dear Secretary Miller:

Milk Marketing, Inc. is a regional marketing co-operative of dairy farmers with approximately 200 farmer members residing in West Virginia. We view with great alarm the proposed fees for services as they relate to the Dairy Industry in West Virginia. The proposal presents a radical departure from present practice and will place an significant added expense on dairy farmers and milk plants in the state. In the long range, the added burden will discourage dairy farmers from producing in West Virginia and therefore, have a very negative effect on the state's economy.

In behalf of MMI members, I oppose the proposed fees for the following reasons:

1. Farmers are not the "users". It's the public which is protected, therefore, tax dollars should pay for the service.
2. Farmers can't pass on these costs.
3. It's significantly out of line with other states! Pennsylvania and Maryland charge nothing. Ohio has a \$15.00 maximum license fee for milk producers.
4. It's an additional burden on the industry in West Virginia which is already a milk deficit state. (The proposed license fees and sample fees are an estimated \$150,000 for milk producers alone) This puts West Virginia farmers at an economic disadvantage compared to those in surrounding sales, who provide much of the dairy products consumed in West Virginia.

5. Farmers have had two hard years, they are already financially burdened and can't afford this additional tax.

We have reviewed the proposed fee schedule and need clarification of several items.

1. Why is there a different fee for different size producers? The cost of inspecting is the same regardless of the amount of milk shipped.
2. How is production per farm per day determined?
3. Why is there a \$100.00 charge for the reinstatement of a permit?
4. What is the charge to a producer not presently licensed in West Virginia?
5. Why is an out of state plant charged a fee? What service will be rendered?
6. What about the reciprocity that presently exists between states under the Interstate Milk Shippers Agreement? Will other states respond with fees on West Virginia plants?
7. Will Lab Certification by other states under the IMS agreement be recognized and accepted without an additional fee?

Along with other representatives of MMI, I will be attending the public hearing in Charleston on June 22, 1990. We hope to receive clarification on these and other items at that time.

As a resident of West Virginia, I hope this issue can be resolved in a way that dairy farming will continue to be encouraged by the state.

Sincerely,

Andy Langmyer

Andy Langmyer
Manager, Pittsburgh Division

cc: Regulatory Development

AL/nje

RECEIVED

JUN 19 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Tawnja Willis Miller, Secretary
Department of Health & Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

June 15 1990
Charles W Moss
Rt. 1 Box 208-A
Lindside WV 249

I am writing in concern of Proposed Rule 51- Fees for Service. I am a dairy farmer of eight years, it was hard enough to get started at nineteen years of age with all of the rules and red-tape that there will be no young farmers left in the state to produce any of that consumed milk. If you have to buy a farm permit there will be fewer of us left. It will also cost us more to produce the milk which should lead to higher milk prices in the store. Are we not paying for this service when we ship our milk? Is the sanitarian wanting more money (a raise)? If you start with the dairy business how far will you go? You will have to have a permit for everything you go to do in the state. It seems that the people in the state want to stay poor and the people we elect is getting richer by coming up with such rules. Rules in this case should and ought to be broken. The average number of dairy cows in West Virginia 31,000 head. The total milk produced was 301 million pounds. The milk used on farm totaled 9 million pounds. There were 292 million pounds marketed. Cash receipts from the milk marketed totaled \$37.0 million. The gross value of all milk produced, including home consumption, totaled \$38.2 million. Are we ready to loose our Agriculture in West Virginia? More people will be moving out of the state to farm elsewhere. Can you blame them?
Charles W Moss

June 12, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

To Whom It May Concern:

I recently received word that the Division of Health intends to charge milk producers a fee for conducting public health related services that directly benefit the consumers by protecting the health and safety of dairy products.

As an active dairy farmer, I am strongly opposed to service or permit fees that would be used to offset the cost of providing a public health service for all consumers. Since the dairy farm inspection program benefits all consumers, it should be funded from tax dollars instead of user fees.

Sincerely,

*Mount Rock Farm
Roy B. Harris, Dairy Farmer
Rt. 1, Box 246
Martinsburg, WV 25401*

RECEIVED

JUN 15 1990

**REGULATORY DEVELOPMENT
SECTION**

Delmer Newberry
Rt 2 Box 87
Letart, WJ 25253

Letart WJ
June 18, 1990

Regulatory Development
Room 204 Building 3
Capital Complex
Charleston WJ 25305

We are concerned about
the high costs to sell milk
Proposed Rule 51 Fees for
Services Milk is so
perishable and we don't
have any more breeders
placed. So many high
costs to produce milk
and so many farmers are
so hard hit now if you
way

RECEIVED
JUN 21 1990
REGULATORY DEVELOPMENT
SECTION

Sincerely
Delmer Newberry
Palmer Newberry
David Newberry



**HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE**

STATE CAPITOL — PHONE (304) 340-3200
CHARLESTON 25305

DALE F. RIGGS
P.O. BOX 502
BUCKHANNON, WV 26201
PHONE 472-5711 or 472-6200

Committees:
Banking & Insurance
Agriculture & Natural Resources
Government Organization

June 11, 1990

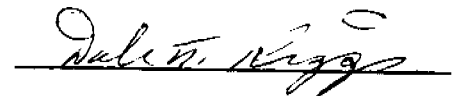
Regulatory Delevopment
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

Gentlemen:

I am writing to strongly protest your Proposed Rule 51, Fees For Services. Our dairy farmers are have a hard time staying in business now and the additional fees could cause them to go out of business.

You should know that Pennsylvania and Maryland charge nothing. Ohio has a \$15.00 maximum license fee for milk producers. Our farmers have to compete with farmers in other states.

Yours,



RECEIVED

JUN 12 1990

**REGULATORY DEVELOPMENT
SECTION**

RECEIVED

JUN 15 1990

**REGULATORY DEVELOPMENT
SECTION**

June 12, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

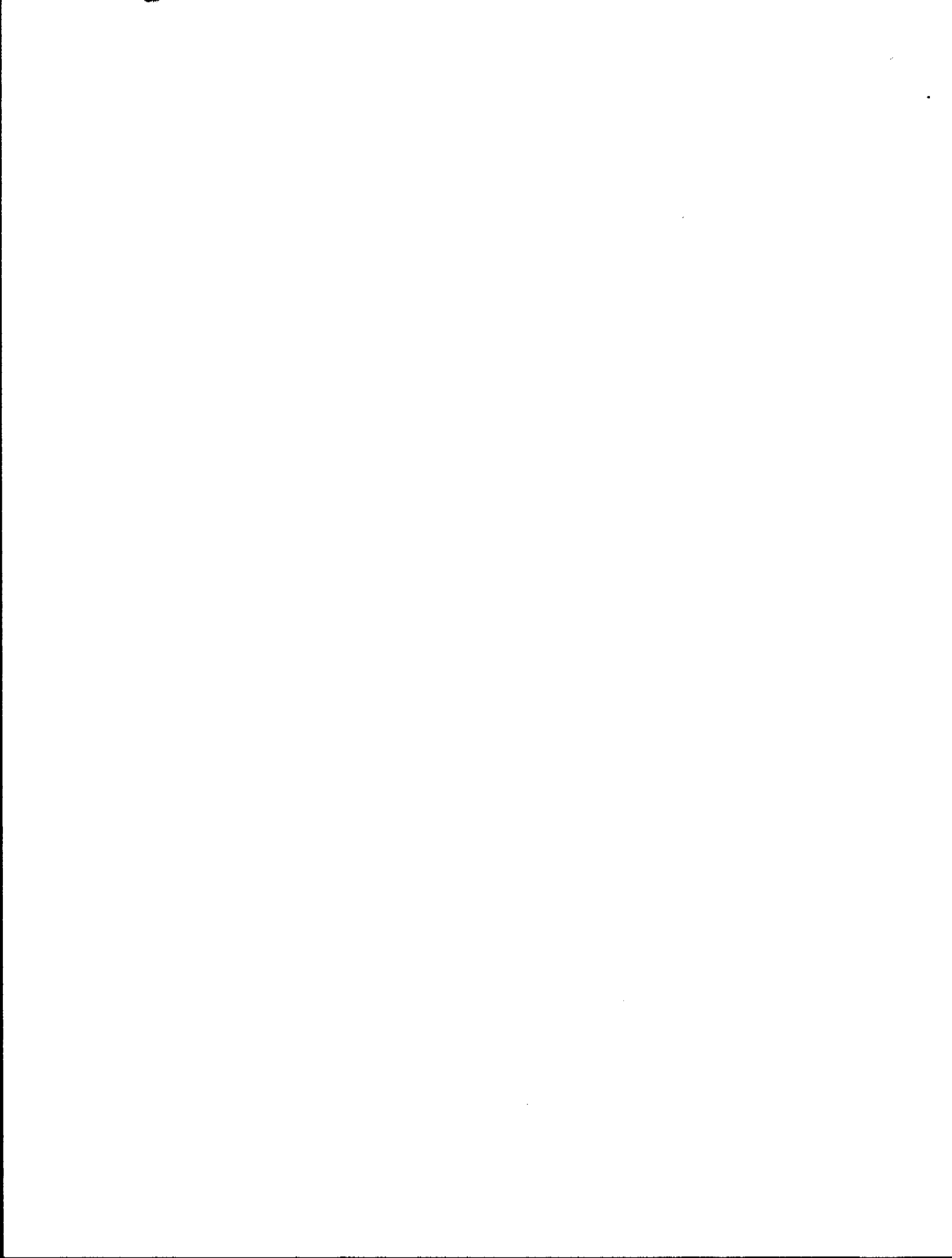
To Whom It May Concern:

I recently received word that the Division of Health intends to charge milk producers a fee for conducting public health related services that directly benefit the consumers by protecting the health and safety of dairy products.

As an active dairy farmer, I am strongly opposed to service or permit fees that would be used to offset the cost of providing a public health service for all consumers. Since the dairy farm inspection program benefits all consumers, it should be funded from tax dollars instead of user fees.

Sincerely,

C. Archie Rives
350 Mouth of Opequon Rd
Martinsburg, W. V. 25401





Riverbend Farm

Registered Guernseys

PAUL & DONALD NAY

Jane Lew, West Virginia 26378

June 14, 1990

RECEIVED

Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, WV 26305

JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Gentlemen:

I am writing regarding Proposed Rule 51--Fees for Service in the Health Department.

My son and I have a dairy operation in Harrison county, milking approximately 80 cows. The proposed fees will cost us \$300.00 for a Dairy Farm Permit, presumably to cover costs of farm inspection, \$50.00 for a water well permit plus fees imposed on milk plants and for laboratory services which I am sure will be passed on the the producer in one way or another.

Health Department services are for the protection of the public; farmers are not the "users" of the service and it should be paid for with tax dollars.

If approved, this will be an added burden on the dairy industry in West Virginia which is already a milk deficit state and on the dairy farmers who have absolutely no control over the price we receive for milk as it is regulated by a Federal Milk Marketing Order.

These proposed fees are "totally out of line". Of the states surrounding West Virginia, Pennsylvania and Maryland have no fees and Ohio charges a maximum of \$15.00 for a producer license fee.

This is a blatant attempt to finance a part of the state government by putting a tax on a very small segment of citizens to pay for a service for all citizens of the state.

I object very much to the fees proposed to be placed on the dairy industry in Proposed Rule 51 and am contacting my Delegates and Senators and soliciting their help in prevent these fees from being imposed.

Very truly yours.

Paul Nay
Paul Nay

cc: Senators Sharpe and Wolfe and Delegates Ashcraft, Minard, Queen and Warner

HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL — PHONE (304) 340-3200
CHARLESTON 25305

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

JAMES J. ROWE
203 WEST RANDOLPH STREET
LEWISBURG, WV 24901-1099
PHONE (304) 645-1858

June 19, 1990

Division of Health
West Virginia Department of Health
and Human Resources
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

Re: Proposed Rule 51, Fees for Services

Gentlemen:

I am writing to protest and urge revision of your proposed fee schedule as it relates to West Virginia dairy farmers.

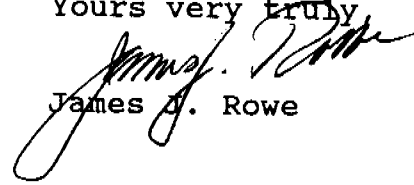
Although I understand that the department now has the authority and the need to look for additional sources of funding to run its programs, the proposed rule is not mindful of the difficulties faced by West Virginia's dairy producers. At a time when West Virginia should be recognizing and assisting our farmers and promoting our agriculture industries, the proposed fee schedule appears to be an unnecessary burden on an already struggling industry.

It is no secret that our farmers are struggling with the high costs of doing business. The fee schedule is insensitive to their plight.

I urge you to listen carefully to the comments from West Virginia's farmers concerning this proposed rule, examine the licensing fees for our sister states and amend the schedule so that it is not out of line with the responsibility of protecting our dairy industry in West Virginia.

Thank you for your consideration.

Yours very truly

A handwritten signature in dark ink, appearing to read "James J. Rowe", written over the typed name.

James J. Rowe

JJR/pks



Valley Bell

DAIRY COMPANY

Roane St. at Delaware Ave. • Charleston, WV 25302 • Phone (304) 344-2511

June 20, 1990

Taunja Willis Miller, Secretary
Department of Health and
Human Resources
State of West Virginia
Building 3, Capital Complex
Charleston, West Virginia 25305

Re: Proposed "Fees for Services" Rule

Dear Secretary Miller:

We are writing in reference to the proposed legislative rule Title 64 CSR 51 styled "Fees for Services". We appreciate your willingness to work with industry and your openness to comments on the initial language.

Valley Bell Dairy processes, manufactures, and distributes fluid milk, cultured and frozen dessert products throughout the State of West Virginia and its contiguous states. Our interest in this matter is insuring that if the imposition of Laboratory Service Fees and Environmental Health Service Fees must proceed, that the fees be rationally based and not unfairly burdensome thereby disadvantaging West Virginia dairy processors.

During recent years, many dairy processors have had an exceedingly difficult time in light of low margins, rising costs and competition from other segments of the beverage industry, such as soft drink bottlers. Such entities may not be able to absorb a further increase in costs.

Specifically, our concerns and questions center on the following areas:

1. Fees

a. Laboratory Service Fees. The fees charged by the Laboratory director will have the greatest impact on a dairy processor. Presently, 150 samples of our product are taken a month for "finished milk product package" testing. At \$25.00 per sample, we will pay \$45,000.00 annually. Given the open-endedness of the number of samples that will be taken, processors could face devastatingly large monthly fees.

b. Laboratory Certification. There is a \$500.00 fee for laboratory certification. What is the basis for this fee?

c. Environmental Health Service Fees. Is the \$250.00 - 500.00 dollar fee reasonably related to the inspection costs incurred annually by the Department of Health?

Frankly, we are concerned that Section 16-1-21 of the West Virginia Code does not designate which Department of Health program surpluses shall be used to fund. We believe that the regulations should provide that revenues from dairy processors will be used only for the programs which affect them, since it would be patently inequitable to ask one industry to help support unrelated Department of Health services.

2. Emergency Legislative Rule Promulgation. The haste in which this regulation is being promulgated and made effective precludes full debate in the legislature. The authority to charge reasonable fees was granted to the Department of Health when Chapter 16 of the West Virginia Code was amended in January of this year. As far as we know, no studies have been conducted to determine what it would cost to finance the dairy portion of the Department of Health's budget. Our concern is that the Department of Health is proceeding too rapidly without first considering the impact of its measures and looking to see how other states fund their milk testing programs. We emphatically urge the Department of Health not to proceed with emergency promulgation of this rule.

3. Industry Input. Input from industry members on an annual basis regarding the amount of fees charged is desirable, yet no such provision has been made in the current proposal. For example, the Ohio Revised Code, Section 3707.376 established the Milk Sanitation Board which meets annually to approve fees to fund the Grade A milk testing program in Ohio and to advise the Ohio director of health. The members represent the milk haulers, milk producers, milk processors, the Ohio Department of Health, the Ohio Department of Agriculture, the public health council and the local health districts. Section 3707.373 provides that funds generated by inspection fees be used exclusively for administration of the dairy program in the Ohio Department of Health.

The proposed rule shifts the focus of the Department of Health's mandate from that of preserving the public peace, health, safety and welfare to that of generating revenue, with dire consequences for the dairy industry, and ultimately, the consumer who will pay a higher cost for milk.

Please let us know if we can provide further information.

Sincerely,



Les Seidner
General Manager, Valley Bell Dairy

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

RECEIVED

JUN 22 1990

HOUSE OF DELEGATES

WEST VIRGINIA LEGISLATURE
STATE CAPITOL — PHONE (304) 340-3200
CHARLESTON 25305

REGULATORY DEVELOPMENT
SECTION

BILL WALLACE
U. S. ROUTE 60, BOX 31
CLINTONVILLE, WV 24928-8822
PHONE (304) 392-6213

June 22, 1990

Committees:
Constitutional Revision
Government Organization
Roads & Transportation

Regulatory Development
Rm. 204, Bldg. 3
Capitol Complex
Charleston, WV 25305

RE: Title 64, Series 51--Division of Health,
Fees for Services

Gentlemen/Ladies:

My intent in voting for Com. Sub. for H. B. 4660 was to help provide supplemental revenues for county health departments to keep their doors open. My intent was not to force a particular class of agri-businessmen out of business.

The proposed rule places an undue burden upon small dairy farmers. The dairy business is extremely price competitive. Additional costs of production cannot be passed on to consumers as predicted in your fiscal note, subparagraph (4)(C), Economic Impact on Citizens/Public at Large.

Furthermore, when voting for the new §16-1-21, I anticipated fees of \$5, \$10, maybe \$25. Instead, I see in your proposed rule fees of \$100, \$250, \$500!

I request that the proposed rule be submitted to the Legislative Rule-Making Committee without being placed on emergency status in the interim. The exorbitant fees and questionable terminology, such as "raw milk products package" and "lbs/day" (monthly average? yearly average?), warrant that these rules be placed on hold until the legislative committee decides their validity.

Sincerely,

Bill Wallace
Bill Wallace

cc: Mr. Speaker, Hon. R. C. Chambers
Secretary Taunja Willis-Miller

West Virginia Farm Bureau

Member of American Farm Bureau Federation

1 Red Rock Road, Buckhannon, WV 26201

304/472-2080

STATEMENT OF THE WEST VIRGINIA FARM BUREAU

ON PROPOSED RULE NO. 51

FEEES FOR SERVICE



MY NAME IS FRED G. BUTLER, PRESIDENT OF THE WEST VIRGINIA FARM BUREAU, REPRESENTING SOME 12,500 FAMILY MEMBERS IN WEST VIRGINIA. I AM ALSO A DAIRY FARMER FROM BERKELEY COUNTY.

THANK YOU FOR THE OPPORTUNITY TO MAKE THESE COMMENTS ON THE PROPOSED REGULATIONS NO. 51, FEES FOR SERVICE.

IT IS VERY DIFFICULT FOR FARMERS TO COME TO CHARLESTON FOR THIS PUBLIC HEARING, PARTICULARLY AT THIS TIME OF YEAR. I WOULD SUGGEST THAT IF YOU HAVE PUBLIC HEARINGS IN THE FUTURE THAT YOU CONSIDER HAVING TWO OR THREE HEARINGS OUT IN THE STATE WHERE YOU CAN GET MORE INPUT FROM THOSE AFFECTED.

THE WEST VIRGINIA FARM BUREAU STRONGLY OPPOSES THESE PROPOSED RULES. THE SERVICES THAT ARE PROVIDED BY THE DIVISION OF HEALTH PROTECTS ALL CITIZENS OF THE STATE, AND WE DO NOT FEEL THAT A "USERS FEE" OR A HIDDEN TAX SHOULD BE PLACED ON THOSE PROVIDING THE PRODUCT WHETHER IT BE MILK, WATER, SEWAGE, OR OTHER PRODUCTS, BUT THIS SERVICE SHOULD BE PROVIDED THROUGH GENERAL TAX DOLLARS.

IT ALSO APPEARS TO US THAT YOU ARE CREATING AN "ADMINISTRATIVE NIGHTMARE" FOR THE DIVISION. IT APPEARS THAT IT WILL TAKE CONSIDERABLE TIME AND EFFORT TO SIMPLY KEEP UP WITH THE PAPER

WORK, WHILE AT THE SAME TIME NOT PROVIDING ANY ADDITIONAL SERVICE OR PROTECTION TO THE PEOPLE OF THIS STATE.

NOW LET US LOOK AT THOSE ISSUES DIRECTLY EFFECTING AGRICULTURE.

UNDER THE SCOPE OF THESE PROPOSED RULES, YOU INDICATE THAT REASONABLE FEES ARE ESTABLISHED. WE FEEL THAT THESE FEES ARE UNREASONABLE. AS FAR AS DAIRY FARM ANNUAL PERMIT FEES ARE CONCERNED, THE STATES OF MARYLAND, VIRGINIA, AND PENNSYLVANIA DO NOT CHARGE FEES. THE STATE OF OHIO CHARGES \$15 FOR SIMILAR SERVICES.

WE ALSO FEEL THAT IT IS NOT REASONABLE TO CHARGE A FARMER WHO IS PRODUCING 2,000 POUNDS OF MILK A DAY \$100, AND A FARMER WHO IS PRODUCING 2,001 POUNDS OF MILK PER DAY \$200, OR ONE WHO IS PRODUCING 4,000 POUNDS OF MILK PER DAY \$300. IT DOES NOT TAKE ANY MORE TIME TO INSPECT A FARM THAT IS MILKING 200 COWS THAN IT DOES ONE THAT IS MILKING 50 COWS. HOW IS THE PRODUCTION PER DAY DETERMINED? IS IT ON A YEARLY AVERAGE, OR IF ANY GIVEN DAY A PRODUCER GOES OVER THE AMOUNT, IS HE REQUIRED TO PAY THE HIGHER FEE?

THE SAME THEORY APPLIES TO MILK PLANTS. ONE MUST ASK, "DOES IT TAKE TWICE AS LONG TO INSPECT A PLANT THAT PROCESSES ABOVE 100,000 GALLONS PER MONTH THAN IT DOES ONE THAT PROCESSES LESS THAN 100,000 GALLONS?" WE THINK NOT.

IT APPEARS THE DAIRY FARMERS WILL NOT ONLY HAVE TO PAY THE PREVIOUSLY MENTIONED FEES, BUT WILL ALSO BE REQUIRED TO PAY FOR TESTING WATER, SEPTIC TANK PERMITS, AND WATER WELL PERMITS.

WE ALSO QUESTION THE FEE ON OUT-OF-STATE PLANTS. DOES THE DIVISION OF HEALTH INSPECT THESE PLANTS? IF SO, WHY NOT USE THE SAME REASONING THAT YOU USED IN THE IN-STATE PLANTS - TWO FEES AS PER SIZE.

THE DEFINITION OF BOBTAILER IS CONFUSING. "ANY PERSON ENGAGED IN THE DISTRIBUTION AND/OR SELLING OF PRIVATE BRAND LABELED MILK OR ANOTHER COMPANY'S MILK AND MILK PRODUCTS". UNDER THIS DEFINITION, THIS WOULD INCLUDE PRACTICALLY EVERY STORE, LARGE OR SMALL, THAT SELLS MILK.

THIS EXTRA FEE WILL CERTAINLY BE ADDED TO THE COST, WHICH MAKES IT VERY DIFFICULT FOR THE SMALL STORE OWNER TO COMPETE. THIS SIMPLY PUTS AN ADDITIONAL BURDEN ON MANY WHO ARE STRUGGLING TO SURVIVE.

THE FEE FOR REINSTATEMENT OF A PERMIT/PRODUCT IS COMPLETELY OUT OF LINE, PARTICULARLY FOR THE DAIRY FARMER. IF A DAIRY FARMER PERMIT HAS BEEN SUSPENDED, IN MOST CASES, HE IS REQUIRED TO DUMP THE MILK. THIS, IN ITSELF, IS A SUBSTANTIAL FINE.

WE FEEL IT SHOULD BE THE DUTY OF THE DIVISION OF HEALTH TO ASSIST THOSE WHO HAVE HAD PROBLEMS, RATHER THAN PENALIZE.

THE FEE FOR THE CERTIFICATION OF MILK LABORATORIES IS ALSO COMPLETELY OUT-OF-LINE. IT IS OUR UNDERSTANDING THAT THESE LABORATORIES ARE REQUIRED FOR THE FARMER OWNED CO-OPS AND MILK PLANTS. THERE IS A VERY SMALL MARGIN OF PROFIT IN THESE AREAS, AND AGAIN YOU ARE MAKING IT VERY DIFFICULT FOR THE DAIRY INDUSTRY TO SURVIVE.

WE ALSO QUESTION AS TO WHAT IS A RAW PRODUCT PACKAGE. WHO IS REQUIRED TO HAVE THESE TESTS RUN? WE SEE NO EXPLANATION IN THE PROPOSED RULES.

THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT HAS IDENTIFIED FOOD PROCESS AS A PRIME AREA FOR WEST VIRGINIA. HOWEVER, WITH THE FEES THAT ARE PROPOSED FOR THIS INDUSTRY, IT APPEARS AS IF THE STATE OF WEST VIRGINIA DOES NOT WANT TO ENCOURAGE THIS TYPE OF INDUSTRY.

AGAIN, LET ME SAY THAT THE WEST VIRGINIA FARM BUREAU IS STRONGLY OPPOSED TO THESE PROPOSED RULES. WEST VIRGINIA CONSUMES MUCH MORE MILK THAN IT PRODUCES. WE HAVE FEWER DAIRY FARMS THAN WE HAD 5 YEARS AGO, AND CONSIDERABLY LESS THAN WE DID 10 YEARS AGO. IF THESE FEES ARE IMPOSED, I BELIEVE WE WILL HAVE MORE PEOPLE GOING OUT OF BUSINESS.

ONE LAST QUESTION. WHAT ASSURANCE DO THOSE PEOPLE HAVE WHO ARE PAYING THESE "USER FEES" THAT THE FEES WILL BE USED BY THE DIVISION OF HEALTH? WILL THEY BE PUT INTO THE GENERAL ACCOUNT OF THE

DEPARTMENT OF HEALTH AND HUMAN SERVICES, OR EVEN WORSE, WILL THEY BE TAKEN BY THE LEGISLATURE AND PUT IN THE GENERAL FUND?

THANK YOU FOR THE OPPORTUNITY TO MAKE THESE STATEMENTS. AGAIN, I ENCOURAGE YOU TO RECONSIDER THE BURDEN THAT THESE PROPOSED RULES WILL PUT ON THE DAIRY FARMERS OF THIS STATE. AS I HAVE SAID MANY TIMES, FARMERS BUY AT RETAIL AND SELL AT WHOLESALE. WE SIMPLY HAVE NO WAY OF PASSING THIS ADDITIONAL COST ON TO THE CONSUMER.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



Division of Animal and Veterinary Sciences

West Virginia University

College of Agriculture and Forestry □ Agricultural and Forestry Experiment Station

RECEIVED

JUN 21 1990

June 18, 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Ms. Tanjua Willis Miller
Department of Health &
Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

Dear Ms. Miller:

As dairy scientists committed to teaching, research and service to the general public and the dairy industry in West Virginia, we wish to express our opposition to the following proposed legislation: Title 64, West Virginia Legislative Rules, Division of Health, Fees for Services, Series 5 1990. We are filing this written objection to these proposed fees, in lieu of being able to attend the public hearing scheduled for June 22, 1990, at 10:00 A.M. in Charleston, WV.

Our major reasons for opposing the fees are as follows:

1. The permit fees for producers are exorbitant. Some neighboring states do not have any permit fees for producers. Others, Ohio, for example, has a nominal fee of \$15.00 per year.
2. The permit fee for processors is exorbitant and discriminatory. (A large out of state processor supplying West Virginia Customers could conceivably pay a lower permit fee than a smaller West Virginia firm.)
3. The permit for bobtailers might discourage business from selling dairy products. It is also not quite clear as to who is considered to be a bobtailer.
4. All of the proposed fees for samples, producers and processors alike, are exorbitant and discriminatory. Producers would be paying in excess of two hundred dollars per year for routine testing. Individual processors could be paying from \$1,000 to \$20,000 per year, depending on size, number of products and number of counties in which products are distributed.

An Equal Opportunity / Affirmative Action Institution

Employment, programs, and services are provided without regard to race, color, sex, religion, handicap, age, or national origin and assistance is provided only to groups or individuals with similar policies.

P.O. Box 6108 □ Morgantown, WV 26506-6108

Ms. Miller
June 18, 1990
Page 2

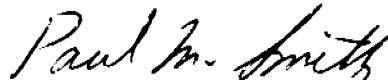
5. West Virginia is already a dairy deficient state, with regard to milk supply in relation to demand. We feel that if these fees are imposed it will cause even more producers to ship out of state and cause our plants to buy more out of state milk, causing even more erosion of the economic situation.

In addition to objecting to the proposed fees, we object to the manner in which this proposal has been handled. We have not received, nor have we been able to locate one producer or processor who has received an official notice of the public hearing concerning these fee proposals. All of our information, and that of other concerned individuals or groups, has been obtained by subtle means. We feel that this is unfair and is counter to all democratic processes.

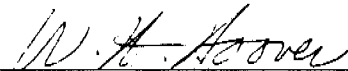
We understand the concerns of the State Department of Health with respect to its being underfunded in the state budget, and we recognize the legal responsibility of the Health Department to provide the respective services to the people and industries in West Virginia, but we feel strongly that the imposition of user fees as a means of making up for budget deficits is not in the best interest of the dairy industry or the taxpayers in general.

Although we oppose these fees, we do support the work which you do and are always available to be of any assistance to you in any way of which we are capable. We trust that you will be successful in finding alternate ways of funding your programs.

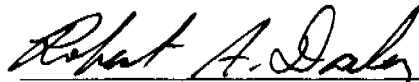
Sincerely,



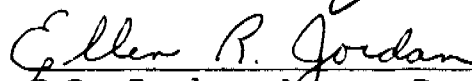
Paul M. Smith, Asst. Professor



W.H. Hoover, Professor

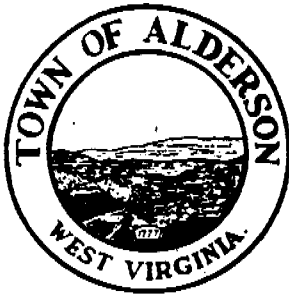


R.A. Dailey, Professor



E.R. Jordan, Assoc. Professor

Dairy Science Committee Members



TOWN OF ALDERSON
POST OFFICE BOX 179
CITY BUILDING - 202 SOUTH MONROE STREET
ALDERSON, WEST VIRGINIA 24910
(304) 445-2916

June 22, 1990

The Honorable Taunja Willis Miller
Secretary
West Virginia Department of Health
and Human Resources
Building 3, Capitol Complex
Charleston, West Virginia 25305

Dear Madam Secretary:

The Town of Alderson respectfully protests the Proposed Legislative Rule as submitted by the West Virginia Division of Health under the Code of State Regulations, Title 64, Series 51, under authority of West Virginia Code §16-1-21 and §29B-1-3.

The Town feels that the fees proposed by the Division of Health are excessive and are contrary to the best interests of the Citizens of West Virginia and the Town of Alderson, as they will have direct economic impact upon all citizens, and in particular, customers of water and wastewater treatment systems all over the state. It definitely means that the Town of Alderson will immediately have to seek rate increases for both water and sewer service customers, many of whom are elderly individuals on fixed income who can ill-afford additional financial burden.

It is our feeling that the State Government has a duty to be supportive of and provide assistance to local governments and their agencies. The proposed fees that will be assessed on water and wastewater systems based on the gallons of water treated and the license fees for the operators of the treatment plants are merely a hidden tax that is being assessed by the State of West Virginia and being handed down to the local governments for collection. By taking such a position and proposing such fees, the State Division of Health is not being either supportive of or providing assistance to the local water and wastewater treatment systems.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

"Gem of the Hills"

June 22, 1990

The State of West Virginia continues to allow fees and other charges to be levied upon local governments by state agencies without providing any avenue for the local governments to increase their fees, tax base, or other revenue sources. This situation is critical and must be rectified without delay, and in the interim, this fee schedule as proposed by the Division of Health and any similar bureacratic "pots of gold" must be overruled before the local governments of West Virginia and our citizens are driven into total bankruptcy.

Very truly yours,

Tom E. Housby
Tom E. Housby, Mayor
Town of Alderson

cc: The Honorable Gaston Caperton
Senator J. D. Brackenrich
Senator Robert K. Holliday
Delegate Mary Pearl Compton
Delegate James E. Rowe
Delegate William Wallace

TOWN OF ALDERSON WATER USAGE
March 1988 through March 1990

DATE	CUSTOMER USAGE	F.C.I. USAGE	TOTAL USAGE
March 1990	2,637,100	5,282,700	7,919,800
February 1990	3,148,300	4,511,600	7,659,900
January 1990	3,385,250	5,120,300	8,505,550
December 1989	2,557,800	3,962,500	6,520,300
November 1989	2,498,450	4,048,700	6,547,150
October 1989	2,731,990	4,029,200	6,761,190
September 1989	2,893,900	4,140,800	7,034,700
August 1989	3,136,400	3,914,800	7,051,200
July 1989	3,204,300	4,119,800	7,324,100
June 1989	3,007,590	4,549,800	7,557,390
May 1989	2,763,090	4,129,200	6,892,290
April 1989	2,739,200	4,617,300	7,356,500
March 1989	2,343,220	3,859,500	6,202,720
February 1989	2,478,630	3,814,900	6,293,530
January 1989	2,667,940	4,143,400	6,811,340
December 1988	2,447,090	2,859,300	5,306,390
November 1988	2,724,644	5,529,800	8,254,444
October 1988	2,401,900	4,533,375	6,935,275
September 1988	2,667,000	3,912,400	6,579,400
August 1988	2,944,000	4,198,300	7,142,300
July 1988	3,754,270	4,493,000	8,247,270
June 1988	2,792,370	4,156,100	6,948,470
May 1988	2,580,020	3,948,600	6,528,620
April 1988	2,570,470	3,558,100	6,128,570
March 1988	2,454,600	4,483,100	6,937,700
TOTALS	<u>69,529,524</u>	<u>105,916,575</u>	<u>175,446,099</u>
Percentage	39.63%	60.37%	

TOWN OF ALDERSON
WASTEWATER TREATMENT PLANT
INFLUENT FLOW (Monthly)

March, 1988	4,322,925	Gallons
April, 1988	4,370,300	
May, 1988	4,579,150	
June, 1988	3,697,150	
July, 1988	4,752,550	
August, 1988	4,289,225	
September, 1988	4,229,200	
October, 1988	4,389,100	
November, 1988	4,504,225	
December, 1988	4,456,300	
January, 1989	5,187,700	
February, 1989	4,143,000	
March, 1989	5,521,950	
April, 1989	4,524,025	
May, 1989	7,625,950	
June, 1989	5,960,400	
July, 1989	4,337,450	
August, 1989	4,458,100	
September, 1989	5,096,450	
October, 1989	6,813,950	
November, 1989	5,535,750	
December, 1989	5,159,375	
January, 1990	7,558,850	
February, 1990	8,662,400	
March, 1990	6,247,000	
April, 1990	5,376,875	
May, 1990	5,359,450	



County Commission of Berkeley County

100 WEST KING STREET

MARTINSBURG, WEST VIRGINIA 25401

PHONE (304) 267-3000 EXT. 213



THE COMMISSION

DONALD L. BAYER, PRES.
P.O. BOX 601
MARTINSBURG, WEST VIRGINIA 25401

WILLIAM N. SHUGG, KISNER
124 TAVERN ROAD
MARTINSBURG, WEST VIRGINIA 25401

JOHN EVANS WRIGHT
P.O. BOX 740
BUNKER HILL, WEST VIRGINIA 25413

RECEIVED

JUN 25 1990

NORMAN RISAVI
COUNTY ADMINISTRATOR

DEBORAH A. POWELL
ADMINISTRATIVE SECRETARY

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

June 21, 1990

Ms. Tunja Willis Miller
Secretary Of Human Services
West Virginia Department of
Human Services
1900 Kanawha Boulevard, East
Building # 3, Room 206
Charleston, West Virginia 2530

**SUBJECT: Proposed Utility Fees For Laboratory Services
On Publicly Owned Water & Sewer Utilities**

Dear Secretary Miller:

On behalf of the City of Martinsburg and the Berkeley County Commission, we are writing to protest the proposed six and four cent increase on public water and sewer facilities respectively. The governing bodies believe that these increases would adversely affect the taxpayers who are already paying public utility taxes on water and sewer bills. Additionally, these particular taxes would not be evenly distributed across the state's population, due to the fact that many of the states residents are not served by public water and sewer systems.

Both the City of Martinsburg and the Berkeley County Commission support the strong enforcement of the Safe Drinking Water Act, but strongly encourage a more equitable method of assessing the costs for this program. Therefore, we would respectfully request that you carefully review this proposal and explore other methods for financing this program.

Sincerely,

Anthony Peta Senecal
Anthony P. Senecal, City Manager
City of Martinsburg

Norm Risavi
Norm Risavi, County Administrator
Berkeley County, West Virginia

BERKELEY COUNTY
PUBLIC SERVICE DISTRICT
WATER UTILITY

Board of Directors
Mrs. Ruby S. Kern, Chairman
Howard W. Collins, Treasurer
Oliver R. Dubé, Secretary

General Manager, Clifford Honsaker, Jr.

June 15, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, W. V. 25305

Re: Public Hearing on Division of Health,
Legislative Rules - "Fees for Services"

Gentlemen:

The District's Board of Directors met in regular session on Thursday, June 14, 1990, at which time they went on record as being strongly opposed to the proposed rules for fees and services by the State and County Health Department.

We feel it is a preposterous plan and not worthy of any consideration.

Yours truly

C.E. Honsaker, Jr.

Clifford Honsaker, Jr.
General Manager

cc: Mr. James R. Graley Jr.
W. V. Association of PSD

Mr. Fred Stottemyer
W. V. Rural Water Assoc.

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JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**



HOUSE OF DELEGATES

WEST VIRGINIA LEGISLATURE

STATE CAPITOL - PHONE (304) 340-3200

CHARLESTON 25305

RECEIVED

JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

RODNEY T. BERRY
1214 8TH STREET
MOUNDSVILLE, WV 26041
PHONE (304) 845-5846

June 18, 1990

Taunja Willis Miller, Esq.
Secretary, Department of Health
& Human Services
State Capitol Building
Charleston, WV 25305

Re: 64 CSR "Fees for Services"

Dear Secretary Miller:

Please be advised the undersigned, Rodney T. Berry and A. E. Tribett, members of The House of Delegates for the Fourth District representing Marshall County, do hereby respectfully object to the above proposed legislative rule which would charge fees to municipalities, public service districts, and dairy farmers for certain mandated inspections.

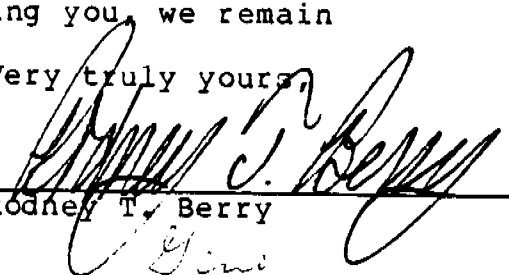
As you know, there are presently local fees charged for these same basic services, and we feel that these mandated inspections would be repetitious and very costly for the political subdivisions and farmers affected by the proposed rule. We do however, take no exceptions to the local fees that are presently being charged.

In these days of very restricted revenue to the municipalities and public service districts, as well as the ever present financial crunch put upon our farmers, we fee that it is oppressive to levy further fees upon them.

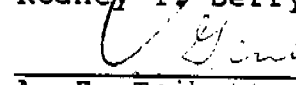
We intend to be at the hearing in Charleston at 10:00 a.m. on June 22, and we would like to address this proposed rule further at that time.

Looking forward to seeing you, we remain

Very truly yours,



Rodney T. Berry



A. E. Tribett

CC: Moundsville City Manager
Mayor Anthony Scaffidi
Mayor William Kern
Mayor John Saffel
Mayor Wayne Simmons
Emmit Francis, Secretary, Marshall County Farm Bureau
B. J. Baker
Doug Schafer - Public Service Dist. No. 1
Marilyn Rulong - Public Service District No. 2
James Fred Hammil - Public Service District No. 3
Donna Crawford - Public Service District No. 4
Debbie Fogle - Glen Dale Heights Public Service Dist.

City of
BRIDGEPORT



131 WEST MAIN STREET
BRIDGEPORT, WEST VIRGINIA 26330
(304) 842-6201

Regulatory Development
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

June 21, 1990

The City of Bridgeport received notice on June 15, 1990 of West Virginia Department of Health and Human Services proposed fees on water and wastewater systems. This notice came by way of the West Virginia Rural Water Association and West Virginia Municipal League. I feel it is a shame that legislation which has such an economical effect on the water users of the state could be approved by the legislature and Public Hearing held without notice to the utilities responsible for the payment and collection of these fees.

Bridgeport services 3,167 water customers and 2,970 sewer customers. Based upon the proposed fees our cost would be over \$27,000 a year or \$2,250 a month. If this fee is put into effect next month, how do you propose the various agencies to fund it? If this fee goes into effect most agencies will have to apply for a rate increase and hold public hearings before this fee could be passed on to the customers. We should have at least six months notice before a fee of this magnitude becomes effective.

After reviewing this proposed fee we feel the fees are excessive. It appears that revenues from this fee are going to replace part of the State of West Virginia's share of operating the Department of Health and Human Services.

In the last two years citizens have received the highest increase in taxes in the states history. Now every agency wants to increase fees to cover their individual cost. This week Bridgeport received an invoice from West Virginia Department of Natural Resources for \$2,000 a year for a WVNPDES Permit. This fee was previously only \$50. If this proposed Health and Human Services fee is approved our cost will be raised by nearly \$30,000 a year. How much additional burden can the citizens be expected to support?

In summary the City of Bridgeport is against the proposed fee. We feel it is not justified and is excessive.

City of Bridgeport

Keith L. Boggs
City Treasurer



RECEIVED

JUN 27 1990 TOWN OF CHAPMANVILLE

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

MUNICIPAL BUILDING
P.O. BOX 426
CHAPMANVILLE, WEST VIRGINIA 25508

(304) 855-4582

JOY K. VANCE
MAYOR

June 25, 1990

Taunja Willis Miller, Secretary
Dept. of Health & Human Resources
Regulatory Development
Room 204, Building 3, Capitol Complex
Charleston, West Virginia 25305

RE: RULE 51 (FEES FOR SERVICE)

Dear Ms. Miller:

On behalf of the Town of Chapmanville Water and Wastewater Board, I would like to go on record that I am strongly opposed to the proposed Rule 51 governing new fees and/or permits chargeable to our agency.

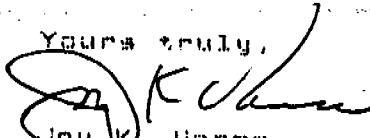
We strongly urge that Rule 51 not be allowed even on an emergency basis, for it is our understanding that if this ruling be implement for a period of fifteen months at which time could permanently go into effect.

We feel that such an order would place a tremendous hardship on the Chapmanville Water and Wastewater Board which we could not absorb, and therefore would be passed onto our customers creating an equally financial hardship to a large number of our low to moderate income customers.

After close study of the proposed rule, it becomes apparent that it would be financially impractical to impose all these new fees. As there are many unanswered questions which has not fully explained to our satisfaction.

Please give this proposed Rule 51 more consideration before you pass it on to the consumers.

Yours truly,


Joy K. Vance
Mayor

JKV/ljp



TOWN OF CHAPMANVILLE

MUNICIPAL BUILDING
P.O. BOX 426
CHAPMANVILLE, WEST VIRGINIA 25508

(304) 855-4582

JOY K. VANCE
MAYOR

June 25, 1990

Honorable Ken Heckler
Secretary of State
State Capitol Complex
Charleston, West Virginia 25305

RE: RULE 51 (FEES FOR SERVICE)

Dear Honorable:

On behalf of the Town of Chapmanville Water and Wastewater Board, I would like to go on record that I am strongly opposed to the proposed Rule 51 governing new fees and/or permits chargeable to our agency.

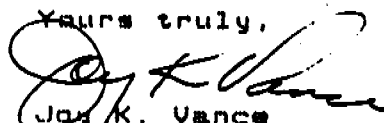
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After close study of the proposed rule, it becomes apparent that it would be financially impractical to impose all these new fees. As there are many unanswered questions which has not fully explained to our satisfaction.

Please give this proposed Rule 51 more consideration before you pass it on to the consumers.

Yours truly,


Joy K. Vance
Mayor

JKV/ljp

CC: Taunja Willis Miller

BOWLES RICE
McDAVID GRAFF & LOVE

ATTORNEYS AT LAW

206 SPRUCE STREET

MORGANTOWN, WEST VIRGINIA 26505

TELEPHONE 304-296-2500

FACSIMILE 304-296-2513

16TH FLOOR COMMERCE SQUARE
LEE STREET
CHARLESTON, WEST VIRGINIA 25301
304-347-1100
FACSIMILE 304-343-2867

4TH FLOOR UNITED CENTER
500 VIRGINIA STREET EAST
CHARLESTON, WEST VIRGINIA 25301
304-347-1180
FACSIMILE 304-347-1196

WRITER'S DIRECT DIAL NUMBER

(304) 296-2500

June 19, 1990

RECEIVED

JUN 21 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

105 W. BURKE STREET
POST OFFICE DRAWER 1419
MARTINSBURG, WEST VIRGINIA 25401-1419
304-263-0836
FACSIMILE 304-267-3822
OLD NATIONAL BANK BUILDING
EAST WASHINGTON STREET
POST OFFICE BOX 59
CHARLES TOWN, WEST VIRGINIA 25414
304-725-1535
FACSIMILE 304-725-4417

Ms. Taunja Willis Miller, Secretary
State of West Virginia
Department of Health and
Human Resources
Building 3, Capitol Complex
Charleston, WV 25305

Re: ~~Cheat Neck~~ Public Service District

Dear Ms. Miller:

The Board of Directors of Cheat Neck Public Service District unanimously passed a resolution opposing the implementation of the fee for service intended to be promulgated by the Division of Health under the authority of West Virginia Code §16-1-21 and §29B-1-3. The six cent per thousand gallon fee intended to be charged will go directly onto the customer's bill and is a gross, unfair and regressive tax. In situations where a Public Service District purchases water from another district or municipality, the fee has a pyramiding effect and the ultimate customer's bill is increased not by six cents per thousand gallons, but twelve cents per thousand gallons.

We would hope that you would think carefully of the ultimate customer and taxpayer when contemplating approval of this regulation. Most of the water customers of our district are rural and on fixed incomes and would be hard pressed to pay an additional fee.

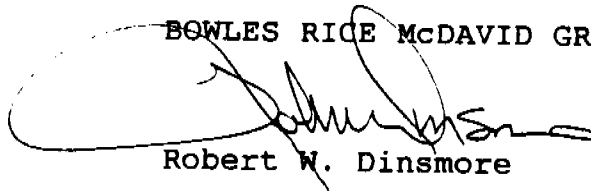
Bowles Rice McDavid Graff & Love

Ms. Taunja Willis Miller, Secretary
June 19, 1990
Page 2

Thank you in advance for your attention to this matter.

Very truly yours,

BOWLES RICE MCDAVID GRAFF & LOVE

A handwritten signature in dark ink, appearing to read 'Robert W. Dinsmore', is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

Robert W. Dinsmore

RWD/nbm

cc: Mr. Donald R. Riley
Mr. Thomas E. Urquhart
Mr. C. Max Messenger
Mr. Thomas Witt

6350022LTR.90

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JUN 21 1990

Board of Directors
COAL MOUNTAIN PSD
Coal Mountain, WV

REGULATORY DEVELOPMENT
SECTION

To Whom it may concern:

24823

We the Board of Directors of Coal Mountain PSD and customers of said PSD detest the enormous fees that have been considered levying on the people.

We are a PSD with forty-two customers who loyaly retired people on a fixed income.

These fees if put into effect will put this PSD and possibly others out of existance.

A flat rate is charged 965 per month while the large companies that net thousands of dollars monthly.

Below is a list of customers against the fees.

Ray Danner	Robert D. Morgan
She Waller	Christine Morgan
Robert L. Baul	Hazel Morgan
Sharon Lester	Debbie Cox
Bill Toler	Darryl Cox
Veronica Toler	Elmer Cook
Finley Toler	Drene Cook
Hazel Toler	Garvin Cook
Hazel Toler	Daniel C. Addison
Mary Wallace	Sandra Addison
Teressa Wallace	Nora Ferrell
Cameron L. Davis	Norman Carter
Opene Davis	Angela Carter
Kathy Puett	
Jennifer Puett	

Dennie Fox
Lammi Fox
W. Wayne Johnson
Veresa Robinson
Bernie Davis
Pauline Davis
Lula Morgan
Patricia Morgan
Liz Lester
Gerald Lester
Paul Ratliff
Eloise Ratliff
Nancy Lester
Rachel Harper
Suzanne Miller
Blondine Miller
Eugene Davis
Ernie Davis
Golden Davis
Larry Davis
Lion Hatfield
Donna Hatfield
Rana Hatfield

Shula Steton
Barland Steton Jr.
Jack Burming
Joann Burming
Peter & Patricia
Anne Housley
Benny Hartney
Jessica Hartney
Denny H. Darnell
Mila L. Darnell
Laurie Kennedy
Dorcas Kennedy
Diana Kennedy
Ede Lester
Geneva Lester
Lampy Keene
Pearl Keene
Georgia Keene
Jeffrey Keene
Lewis Blackmiship
Jimmy Davis
Carlene Davis
Johnny Davis
Marylyn Davis
Lessa Hatfield

Janice Mayan

Buddy Mayan

U.S. Post Office Janice Mayan Postmaster

Cottageville Public Service District

P.O. Box 180
Cottageville, West Virginia 25239
(304) 372-4317

June 13, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Re: Proposed Rule # 51

Dear Sirs:

The massive fees proposed by the Department of Health and Human Services seem to us just another way to create additional jobs for this agency and at the same time to raise taxes for state government.

Our public service district was created to provide water service to our community, not to collect taxes for either state or federal government. How could we possibly justify a rate increase to our users for this purpose?

If these proposed fees are to assure safe drinking water to the consumer, we already have the Department of Natural Resources and the United States Environmental Protection Agency in charge of this particular program.

If, on the other hand, these funds are going to be used to fund programs for the Department of Human Services, at least in part, our users should not be picking up the tab.

We strongly oppose this proposed rule. We feel it is unfair to us as well as our water users. We intend to fight its passage if it occurs.

Very truly yours,

John L. Summers
John L. Summers
Chairman

JLS:rr

cc: WV Association of PSDs
Ginny Starcher, Delegate
Bob Dittmar, State Senator

RECEIVED

JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**

Craigsville Public Service District

P. O. Drawer 368

Craigsville, West Virginia 26205

JUNE 12, 1990

REGULATORY DEVELOPMENT
ROOM 204, BUILDING 3
CAPITOL COMPLEX
CHARLESTON, W.V. 25305

RE: DIVISION OF HEALTH
LEGISLATIVE RULE
"FEES AND SERVICES"

BEING UNABLE TO ATTEND WE WOULD LIKE TO SUBMIT OUR
WRITTEN COMMENT ON THE PROPOSED FEES BY THE DEPARTMENT
OF HEALTH. WE DO NOT AGREE WITH THE PROPOSAL AND
WANT TO SEE IT VOTED DOWN.

CRAIGSVILLE PUBLIC SERVICE
DISTRICT BOARD

RECEIVED

JUN 14 1990

**REGULATORY DEVELOPMENT
SECTION**

DANVILLE PUBLIC SERVICE DISTRICT

P.O. Box 287
Danville, West Virginia 25053

June 14, 1990

RECEIVED

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

The Danville Public Service District does not feel that the expensive proposal for fees on the wastewater systems is justified. These fees will be several times higher than the wastewater discharge fees recently established by the legislature for DNR's wastewater program.

In addition, the Department has also proposed fees for testing and certifying operators \$300.00 construction permits for construction of new or upgrading of existing water and wastewater systems \$100.00/200.00 operation permits. What will we receive in the way of services for these funds? No plans seem to be presented on how this will assist us in meeting safe drinking water standards. It seems to us that the water and wastewater systems of West Virginia will be taxed to pay the state government's share of enforcing the Federal Safe Drinking Water Act to pay in part for laboratory services that are currently funded with Federal Funds.

The transfer of funds has worked so very well that it appears that plans have been made to expand this technique. The Department of Health and Human resources has now proposed massive new fees to be paid by local water and sewage utilities. The EPA grants the State of West Virginia approximately \$500,000 per year to enforce the National Safe Drinking Water Act. Our state has been administering a similar amount. (No plans, or apparently not.)

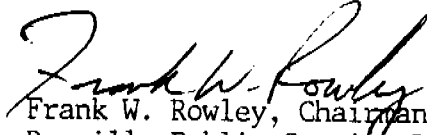
- (1) Should local agencies who do not have taxing authority be required to charge their citizens ever increasing amounts for safe drinking water and sewage service so that officials elected to run state government can avoid raising taxes to fund the programs they initiate?
- (2) Should water and wastewater systems be required to pay for testing and other services mandated by the state?
- (3) Are our local state legislators aware of the economic impact that their activities are having on these systems? (water and sewage)
- (4) Are our elected officials aware that our efforts are directed toward providing our citizenry with vital services?

Danville PSD
Page two

June 14, 1990

(4) More and more the role of State Governemnt appears to make a difficult job even more difficult. Are you aware that we provide this service at the lowest possible cost?

Very truly yours,


Frank W. Rowley, Chairman
Danville Public Service District

RECEIVED

JUN 22 1990

REGULATORY DEVELOPMENT
SECTION

June 18, 1990
[redacted] Assoc. Inc.
P.O. Box 146
Tunnelton, TN 36444-0146

Regulatory Development
Room 304 Building 3
Capital Complex
Charleston, TN 37025305

Re: Hearing on Div. of Health Legislation Rules
Fees for Service

Let it be known that Denver
Water Assoc. opposes any fee for water
used by water systems for each month,
and for routine test or bacteriological
water test. Small water associations
operate on a shoestring budget as it
is. Why should we pay for test
that are required by the state?
It is our understanding that the
federal government provides funds
for this.

If these fees pass it would really
be a financial hardship to small
associations like Denver.

Sincerely,
Carolyn A. Lantz, Sec



CITY OF FAIRMONT

CITY/COUNTY COMPLEX
200 Jackson Street
Fairmont, West Virginia 26554
(304) 366-6211

June 11, 1990

Regulatory Development
Room 204 - Building 3
Capitol Complex
Charleston, WV 25305

Re: Comments on (Proposed) Title 64, West Virginia Legislative
Rules, Division of Health, Fees for Services, Series 51, 1990

Dear Sir or Madam:

Please find enclosed comments from the City of Fairmont
Water Department and the Fairmont Sanitary Sewer Board on the above
referenced proposed rules.

Please enter these comments into the written record for
the public hearing to be held on June 22, 1990 at 10:00 a.m. in
Conference Room B, Conference Center - Building 7, Capitol Complex,
Charleston, W. Va. 25305.

I also wish to submit oral comments on the proposed rules
during the public hearing.

Sincerely,

Bruce McDaniel
Utility Manager

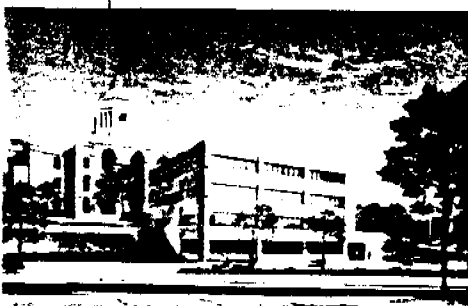
M/s

cc - Ed Thorne, City Manager

RECEIVED

JUN 12 1990

**REGULATORY DEVELOPMENT
SECTION**



CITY OF FAIRMONT

COMMENTS ON TITLE 64 WEST VIRGINIA LEGISLATIVE RULES DIVISION OF HEALTH FEES FOR SERVICES (Proposed)

The proposed fees for providing the services of the State Department of Health authorized by H.B. 4660 are unreasonable and arbitrary. The bulk of the costs appear to be allocated against water and sewer utilities. No justification for the method in which the fees were designed is given.

Utility rates are based on "cost of service" according to the West Virginia Public Service Commission. Was the cost of providing the various "services" the Department of Health lists in their fee schedule determined and the fees set accordingly, or were the fees simply arrived at by determining the department's budgetary requirement and the fees set in such a way to generate these dollars?

It is not apparent when reviewing these rules as to the method that utilities will use in determining their annual liability. Our water system sells approximately 1,400,000,000 gallons per year to our customers. Of this, 1,000,000,000 gallons are sold directly to customers while 400,000,000 gallons are sold to other water utilities for resale to their customers. The same applies to our sanitary sewer system since our Sanitary Sewer Board provides treatment services to four (4) satellite PSD systems along with direct services to our own customers. Are the fees based on total sales or are they charged for direct customer sales only?

Budget preparation and adoption has been completed with final approval in March 1990 by our governing bodies. No money has been budgeted for these fees for Fiscal Year 1991--which begins July 1, 1990. Where does the Department of Health propose this money come from?

It would seem only logical that public water and sewer utilities must pass these costs on to their customers. In the case of municipal systems, this must be accomplished through ordinances passed by the governing body with a 45 day waiting period after passage before the new rates would become effective. Public protest could send these rate cases to the Public Service Commission for their review and action. In the case of Public Service Districts and investor owned utilities, the Public Service Commission will automatically be involved in tariff approval.

Has the Department of Health worked with the Public Service Commission on the proposed fee schedule? Will the PSC expedite the "pass through" rate increases necessary to fund the payment of these fees to the Department of Health?

Comments - Title 64
Division of Health Fees for Services
June 11, 1990
Page 2

Who will pay the administrative costs for public utilities implementing the necessary rates and collecting, administering and sending these fees to the Department of Health?

Will the PSC allow public utilities to pass this cost on to customers in a direct charge separate from the traditional charges contained with their tariffs?

Fees are listed for NOT ONLY Technical Service/Compliance based on water usage and sewage production, but ALSO for laboratory services, operating permits, construction permits, and even operator certification. What do the fees for water usage and sewage production cover if it is necessary to charge additional fees for all services?

From my interpretation of the proposed fee schedule, the potential annual cost to the City of Fairmont and ultimately our utility customers is as follows:

Water	-	\$60,156	-	\$ 83,240
Sewer	-	\$28,371	-	\$ 44,511
Total	-	\$88,527	-	\$127,751

While we understand the need for revenue in this period of tight budgets, we must be given the necessary tools to collect this revenue in order to pass it along to the Department of Health. Accountability also must be present in the manner in which the fees are arrived at and in how the funds generated by these fees are expended. Also, the redundancy of programs and services provided by regulatory agencies (Dept. of Health, Public Service Commission and Dept. of Natural Resources), along with their conflicting interests and regulations should be addressed before implementing what is little more than a cleverly disguised tax increase.

Ferwick Mountain Public Service District
P. O. Box 4
Ferwick, WV 26202

June 20, 1990

Regulatory Development
Room 204, Bldg. 3
Capitol Complex
Charleston, WV 25305

Dear Sir or Madam:

This is to register a protest with you concerning intent to implement a services and compliance fee to be assessed on water & sewage systems.

As Chairman for the Ferwick Mountain Public Service District with a customer base of 190, this fee would cost us approximately \$54.00 a month. We are currently spending more than we are taking in and have applied to the PSC for a rate increase.

We cannot afford this tax nor can our customers. Surely there is something else that could be done other than continuing to place additional tax burdens on our people.

Very truly yours,


Marion B. Myers
C.E.O.

MBM:peg

cc: Hon. C. Farrell Johnson
Hon. Walt Helmick

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

FRIENDLY PUBLIC SERVICE DISTRICT

P.O. BOX 138 • FRIENDLY • WV 26146
(304) 652-1401

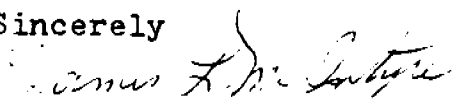
June 19, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston WV 25305

To Whom it May Concern:

We take strong exception to the proposal of the Department of Health and Human Services to levy fees upon local water and sewer systems. We believe the proposal unwarranted and an unjustified attack upon local units of government and public service districts. We also believe such a proposal will place an exceptional financial drain on small systems who are having a difficult time keeping solvent at the present time.

Sincerely


James L. McIntyre, Chairman

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

June 22, 1990

Public Hearing Division of Health,
To Whom It May Concern:

We the ~~Gambrell~~ oppose this
Proposed Taxation because we are a small community, just
in the process of getting a Water System finalized for our
area:

We have hundreds of people out of employment, because of
a factory closing down, and the Spencer State Hospital Closing
also: we have 80% of our potential water users that are
low income families. Our project cost is so that our
water bill will be approx. \$21.00 per mo using 3,000 gals
of water.

The Budget for our Project is so tight, We will have
no excess money to pay any additional taxes or any
thing - right now we are having auctions, bake sales + ect
to raise monies to pay for postage + legal ads + ect.
So when we get into operation - There will still
be no excess. and our Customers can't stand any
additional charges on the \$21.00 for water.

We want to go on record as being opposed to
this proposal.

I. W. Smokyrow Chairman
Jaye Randolph, Sec

RECEIVED

JUN 22 1990

REGULATORY DEVELOPMENT
SECTION



PSC faces flood of rate requests

By Jim Balow
STAFF WRITER

The state Public Service Commission could soon be swamped with applications for rate increases from water and sewer utilities if the Division of Health imposes new fees as planned July 1.

The Division of Health, using a little-noticed bill passed by the Legislature March 10, plans to start charging fees next month for a wide range of health services it has previously offered free. Water companies, for example, would have to pay 6 cents for each 1,000 gallons of water they sell to customers and would have to pay for chemical tests performed at the division's lab in South Charleston.

Sewer companies likewise would pay fees, as would dairy farms, milk plants, hospitals, nursing homes, and a variety of other businesses that are regulated by the Division of Health.

Most observers expect the water and sewer companies, which include about 250 public service districts and several hundred public, private and municipal utilities, will try to pass the fees along to their customers through higher rates. That could cause problems at the PSC, which is not prepared to cope with a flood of rate requests.

"We've looked at that on two different days," said PSC Chairman Boyce Griffith. "We haven't come to any conclusions yet."

Griffith said the PSC will

send observers to a public hearing this morning at which PSD and utility officials are expected to lodge protests with the Division of Health.

"These PSDs have already been here complaining. They had a meeting here last Friday," Griffith said. "We told them once we see what the Division of Health does, we'll attempt to react within the framework we have."

"We've got some ideas on how we can do it," he said, but added, "There is no vehicle in place that would take care of this situation."

Normally, the PSC can take up to nine months to approve rate increase applications. Rate analysts and engineers first study the application, then the legal division reviews the case and an administrative law judge makes the final decision. Public hearings are sometimes needed as well.

In some situations, PSDs can file for expedited rate increases that move through the system in a month. Griffith said the PSC is considering such a process for dealing with the proposed fees.

Griffith said the commission will examine each case separately. "With the PSDs, you may have some that will be able to absorb the cost without raising rates. Any place we can get them to absorb it, we'll try to do that."

"Or we may find the PSDs are not able to absorb it. We'll have to work out some sort of procedure for them to pass that along to their customers."

RECEIVED

REGULATORY DEPARTMENT
SECTION 4

City Manager
PHONE: (304) 265-1412
FAX: (304) 265-0119

City Clerk
PHONE: (304) 265-4177

City of Grafton

CITY BUILDING
1 W. MAIN ST.
GRAFTON, WV 26354

June 22, 1990

The City of Grafton would not be able to pay any fees based upon our approved 1990-91 budget.

The cost to the City as proposed would be more than \$2,014.00 per month. At present the general fund is assisting our water department

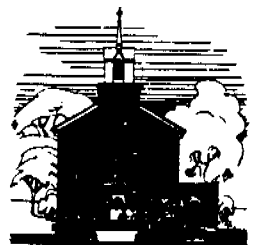
Please consider this as our motion for water & sewerage fees to be exempted until a rational, reasonable study has been done.

Warren L. Bowman
City Manager

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



ORIGINAL MOTHER CHURCH OF MOTHERS DAY
FIRST MOTHER'S DAY SERVICE
MAY 10, 1908
FOUNDER—MISS ANNA JARVIS



GRANT COUNTY PUBLIC SERVICE DISTRICT

P.O. Box 816

Petersburg, West Virginia 26847

304-257-2377

RECEIVED

JUN 19 1990

Members:

Ollie Arnold

Patricia Kitzmiller

Juanita Lloyd

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

June 18, 1990

COMMENTS ON PROPOSED RULE 51 (Hearing Date: 6/22/90)

TO: Regulatory Development, Rm 204, Bldg 3, Capitol Complex, Charleston, WV 25305

FROM: Ollie Arnold, Chairman of Grant County Public Service District on behalf
of DORCAS PUBLIC SERVICE DISTRICT BOARD MEMBERS: Jack Yokum, Frances Phares
and Denver Riggleman AND GRANT COUNTY PUBLIC SERVICE DISTRICT BOARD MEMBERS:
Patricia Kitzmiller and Juanita Lloyd

PURPOSE: To protest Proposed Rule 51 (NOTE: None of us can attend the hearing
because of previous commitments)

We wish to protest proposed Rule 51.

1. We contend that The Division of Health did not furnish our districts (Grant County Public Service District and Dorcas Public Service District) with any notice concerning the effects of the ruling upon our customers. We contend that any consumer group is entitled to adequate and specific notice so that said group may determine if a rule is non-discriminatory in its effect or in its costs. We contend that in our case, it is both.

2. Since our Public Service Districts sell already-treated water, which is purchased from the City of Petersburg, the proposed charge is far in excess of any "Fees for Service" as explained by the West Virginia Board of Health Rule Abstract 1990 for CSR Title and Series: 64 CSR 51. This service would cost our districts approx. \$4,380 annually.

Our Health Department services are limited to testing of water samples (approximately 5 per month) and some educational services.

This protest was unanimously endorsed by the Board of Directors of both Public Service Districts at their regular monthly meeting of June 12, 1990, and Carol Beck, Bookkeeper, was directed to send in this protest.

Sincerely,

GRANT COUNTY PUBLIC SERVICE DISTRICT
DORCAS PUBLIC SERVICE DISTRICT

Ollie Arnold

Ollie Arnold
Chairman of the Board of Directors

RECEIVED

JUN 19 1990

**REGULATORY DEVELOPMENT
SECTION**

June 20, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

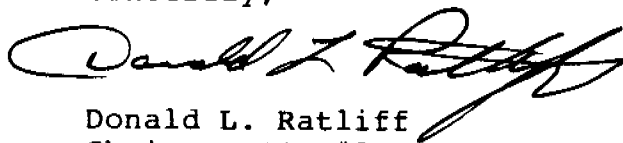
Gentlemen,

As Chairman of Greenbrier County Public Service District #2, I have a responsibility to the customers in this area to keep the costs of this operation at a minimum. In keeping with this objective, I sincerely request that you reconsider the proposed service fees for Public Water & Sewer.

An increase in our costs of this amount would certainly have to be passed on to our customers. As it is now, our District must continually strive to keep costs at a minimum so that payment for these services will not over burden customers in an already depressed area. Therefore, let me reiterate the need to reconsider the proposed service fees.

Thank you for your consideration in this matter. I know that you will do what is best for the people of this area.

Sincerely,



Donald L. Ratliff
Chairman PSD #2

Box 134

Rupert, WV 25984

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Written Comments of W. Allan Schomaker
President and General Manager
J. C. Evans Utilities, Inc.
in the Matter of "Fees For Services" Series # 51
Proposed by the WV Department of Health and Human Services
as Authorized by House Bill 4660
and by Authority #16-1-21 and #29B-1-3

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

My name is W. Allan Schomaker and I am President and General Manager of J. C. Evans Utilities, Inc. J. C. Evans is a small investor owned Water Utility located in Logan County, West Virginia. Evans serves 2985 accounts surrounding the City of Logan; in the communities of Mitchell Heights, Monitor, Monaville, Stollings, Switzer, Justice Addition, Henlawson, McConnell, Guyan Terrace, Hidden Valley, Phico, Godby Heights, Whitman Creek, North Mitchell Heights and Pecks Mill. Our 2985 accounts represent a population served of approximately 9600. We are primarily a sale for resale company. With the exception of our Whitman Creek System we purchase the water we serve our customers. The 6¢ fee per thousand gallons of water sold is excessive to begin with, but in our case will be 12¢ or 18¢ per thousand to many of our customers. The reason being that our suppliers will pay a 6¢ per thousand gallon fee and pass it on to Evans, who will in turn add it's 6¢ fee per thousand gallons, making the fee paid by our rate payers 12¢ per thousand. We have one division that purchases water from another sale for resale water company, which adds another 6¢ per thousand gallon fee to the 6¢ fee their supplier passes through, making the fee passed through to Evans 12¢ per thousand. Evans will add its additional 6¢ per thousand fee and pass through a fee of 18¢ per thousand gallons to it's customers.

Evans believes that the 6¢ fee per thousand gallons of water is not only extreme, but is discriminatory to our customers, who will be the ultimate payers of these fees.

Evans has no objection to fees for services provided: i.e. lab fees, construction permit fees, up-grade of facilities fees. We believe that the 6¢ fee per thousand gallons is little more than an unfairly imposed tax to fuel programs more appropriately funded by General Tax Revenues.

Evans believes that the implementation of the 6¢ per thousand fee will cost our customers about \$30,000 per year. This is the on-going cost. The one time cost to the company for rate filings with the Public Service Commission of West Virginia and possible rate deficiency will be approximately \$23,000. This cost will be paid for, until rate relief is obtained, by monies that would normally buy new plant, piping, pumps, etc. With this in mind, it is easy to see that the first year cost of this 6¢ per thousand fee could be as high as \$55,900.

The first year cost breaks down as follows:

6¢ per thousand gallon passed through by suppliers	\$17,500
6¢ per thousand gallon fee for sales by Evans	12,700 *
New lab fees and Permit fees	2,700
Rate Relief Proceedings and Rate Deficiency	23,000
Total	<u>\$55,900</u>

* Numbers based on actual 1989 sales of water

The on-going cost to Evans and its rate payers for the new permit and lab fees, and the 6¢ per thousand gallon fee, will be around \$33,000 per year or about 4.5% of revenues billed in 1989. As part of our projected Surplus Funds available for construction these fees represent about 60% of projected available funds.

After PSC approval the cost of these proposed fees would be covered. However, until rate relief is granted these fees, would be paid from our surplus, thereby reducing our ability to build new plant or make improvements.

In summary, we believe that the proposed 6¢ per thousand gallons of water sold fee is an unfair, unjust means of funding public health programs more appropriately funded by tax revenues.

We have no objections to paying reasonable fees for services provided.

W. Allan Schomaker
President and General Manager
J. C. Evans Utilities, Inc.
P.O. Box 647
Fayetteville, WV 25840
(304) 574-3897

City Of Keyser

P.O. Box 70
Keyser, W.V. 26726
304-788-1511

The Friendliest City in the USA

June 21, 1990

Regulator Development
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

RECEIVED

JUN 27 1990

**REGULATORY DEVELOPMENT
SECTION**

Re: Division of Health
Legislative Rules
"Fees for Services"

Gentlemen:

By unanimous resolution of the Mayor and City Council, they want to go on record as being opposed to the Technical Service/Compliance Fees proposed on water and sewer use.

The proposed fees for Keyser (using 1989 usage) are:

Water (06/1000 gal.)	\$18,000
Sewer (.04/1000 gal.)	12,000
Total	\$30,000

This is equal to \$12.00 per customer.

Additional fees are also being proposed for certifying operators, construction permits, water tests, etc.

These fees, particularly the usage fee, are in affect an indirect tax being levied on the citizens of the city. One has to question the need for the usage fee. Will the fees go to provide upgraded water and sewer service or will this be used to bail out other programs within the Division?

The Council believe any fees collected for water and sewer should remain within that department and not be used elsewhere.

Very truly yours,


Glen A. Ryan, Mayor
City of Keyser

cc - Governor Caperton
Robert Schadler
Phyllis Cole
Bud Harman

KINGWOOD WATER WORKS

125 East High Street
KINGWOOD, WEST VIRGINIA 26537

June 19, 1990

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Re: Proposed Fees for Drinking Water and Sewerage Treatment Plants.

Dear Sir:

The Kingwood Water Board is opposed to any proposed fees for drinking water systems as now outlined. Our system serves a majority of people on fixed income. To ask our customers with limited resources to pay more is appalling. This is especially true when there is no plan showing how the proposed additional funds would be used.

Recently, two mining firms have laid off personnel. The impact of this situation in terms of Preston County economics is the loss of \$150,000.00 per month in wages and benefits. Yet, DHS is proposing additional fees in a state with the highest unemployment, and the lowest prospect of new industrialization.

Finally, the proposed charges for routine testing will also increase the fees charged for drinking water. All water authorities will not have a choice, but rather, will have to file rate increases to fund these proposed fees.

The Kingwood Water Works remains committed to providing quality water service. However, we are as equally committed to getting a dollars worth of value for every dollar spent. The DHS proposal should be resoundingly defeated.

Sincerely,



R. F. Kelly, Chairman
Kingwood Water Board

RFK:far

cc: Mr. Chet Fleming
WV Rural Water Association



LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA

23 VALLEY VIEW CIRCLE • VIENNA, WV 26105 • TELEPHONE 304-295-8215

June 20, 1990

To: Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Re: Public Hearing on WV Board of Health "Fees for Services", 64
CSR 51

The League of Women Voters of WV is concerned that the enforcement of safe drinking water laws has not been adequately funded. Funding from both state and federal government has decreased at the same time that there have been more demands on monitoring drinking water and improving its quality.

The League supports a fee structure for funding drinking water programs if the fees are adequate for implementation of the programs. We do not believe that the state should allow the decrease in personnel and operations of drinking water programs in the hopes of saving money. Although safe drinking water is a basic component of public health, some of West Virginia's water systems are not safe. By funding the state's Environmental Engineering Section at an adequate level, the state can help water systems all over the state improve their operations. In the long run this will save the state a considerable amount of money because the improvement of drinking water will also improve our people's health. Preventive health services must be at the forefront of West Virginia's policies for providing health services to its people.

Furthermore we urge the Health Department not to divert any of the funds collected from water systems away from drinking water programs.

Nancy Novak, President
League of Women Voters
of WV
23 Valley View Circle
Vienna, WV 26105

Helen Gibbins, Chair
Water Quality
League of Women Voters
of WV
6128 Gideon Rd.
Huntington, WV 25705

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JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

LITTLE CREEK PUBLIC SERVICE DISTRICT

P. O. Box 1006
Fairmont, WV. 26554
June 21, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV. 25300

These comments relate to fees proposed by the Department of Health and Human Services, and should be considered as testimony AGAINST the fees as they are presently proposed. Please include these comments with other testimony that results from the Public Hearing on June 22 in Charleston.

What do the water customers get in return for these fees? Past experience has indicated that the fees will either be transferred to general uses, which makes them a tax on water and sewer users, or they will be used to develop more rules and regulations for use in harassing small water and sewer operators who are already overburdened by paperwork and regulatory delays. We don't have money and office employees to waste. The Health people appear to judge our systems by their own indifference to value received for money spent.

Has provision been made to collect these fees? They are sufficient to cause rate increases. As Engineer for several local systems, I am aware of the cost for rate increases, both clerical, and from lost revenue during the months or years awaiting approval. It will be my recommendation to clients that they pay no fees that cannot be added directly and immediately to user's bills, like the state sales tax.

The idea of a fee of \$300.00 for upgrading a system is ludicrous. If I replace a 20 gpm pump with a \$300.00 30 gpm pump this is upgrading. The fee cost equals the pump cost. Result; I will fix the old pump to save the fee. After all, customer pressure will be low only on peak. It won't cost much to tell customers to schedule water use.

In particular, the proposed fees will retard the installation of small sewage systems. I predict that if such charges are levied, many small operators will simply let the sewage go where it chooses without treatment.

This is a scheme to centralize all control in Charleston. Seventy years ago the Russians did this, only the center was Moscow. The trick did not work in Russia and it will not work in West Virginia. It is an excellent way to give West Virginians the worst water and sewer service in the US at the highest cost.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Warren Badger
Warren Badger
Engineer 2315

LUBECK PUBLIC SERVICE DISTRICT

Post Office Box 700
Washington, West Virginia 26181
Phone 863-3341



June 14, 1990

COMMISSIONERS

*James E. Smith, CHAIRMAN
Charles H. Huffman
Lee "Ox" Johnson*

State of West Virginia
Division of Health
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

RE: FEES FOR SERVICE

Dear Sirs:

We have reviewed your proposed "FEES" and the "LAW" which provides for the same. We have a few comments concerning the matter.

First: The law provides that the fees be used for Health Department programs. Since the Lubeck PSD is controlled by the West Virginia Public Service Commission, We cannot use any of the revenue generated by the sale of water for anything that is not directly related to the sale of that water. Your fees would, by definition of law, be used for other Health Department programs which would not directly benefit our customers. If the fees were in the form of a "TAX" that everyone paid, then the proceeds could be used for what ever program you deemed necessary. Therefore, it is our opinion that the money generated by these fees should be earmarked for water and sewer business only, and not placed in a fund that could be drawn from for other programs.

Second: If up to this point you have been able to do business without these fees, why all of a sudden do you need \$1,800,000 more? We don't feel that the water utilities should finance an expansion of your programs that will not benefit our system directly. Does the EPA fund any of the programs you now have? Is that money not going to be there in the future? We repeat, why all of a sudden do you need so much money?

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Page 2
June 14, 1990

Third: The amount of money your asking for is far and away to much to be absorbed by this PSD. If these fees are imposed, a rate increase will be needed by everyone you bill. The chaos that will be caused by the move to the PSC will hit about 20 on the Richter Scale. The West Virginia Public Service Commission will take almost a year to decide on the rate increases. How are we to pay the fees in the meantime? If we cannot pay for the first year will we be required to make up the back payments from money we don't have?

Forth: The bacterial samples we are required to have done each month will cost Lubeck in excess of \$90.00 if we use your lab. Should other labs have competitive prices, we will take our business to them and further damage your program. If your prices for lab tests were more reasonable, and the lab operated as efficiently as it does now, the districts would use your program and help fill your coffers.

Finally, we feel that some fees are necessary. However, we do not feel that we should finance all other programs for the Health Department. Make the fees reasonable and assure us that they will properly spent and we will support your programs.

Sincerely,

Bill Packard, Manager

June 19, 1990

Regulatory Development
Charleston, S.C.

Dear Sirs,

I am very much opposed to massive fees for water and wastewater systems, which has been proposed by Department of Health and Human Services. Our local sanitary board have asked for a rate increase, which is pending now. Water rates have to be increased soon. Unemployment is high in this area, economy is poor. The elderly and retired people can hardly meet their obligations now. How can you burden them any more?

I am against this ridiculous proposal.

Sincerely,

Mary E. McLain

MASON COUNTY PUBLIC SERVICE DISTRICT

105 MAIN STREET

TELEPHONE 675-6399

POINT PLEASANT, WEST VIRGINIA 25550

June 21, 1990

W. Va. Dept. of Health & Human Services
Regulatory Development
Capitol Complex
Building 3, Room 204
Charleston, W. Va. 25305

Subject: Effect of Proposed Water Fees on Mason
County PSD

Gentlemen:

Your proposed health service fees are of great concern to this District. The level of these fees will slow our annual capital expenditures for expansion by 20% to 30% and accelerate the need for system rate increases.

A great portion of our District has been built by a small extension at a time, within the limits of our operations budget. We continue to receive inquiries for small extensions from areas where water is still purchased, transported and/or carried for household use.

I estimate that your proposed fee structure would tax our system \$10,000 to \$12,000 a year, which bottom line means the forfeiture of two or three small extension projects which translates to 15 to 20 potential customers losing water service for that year.

Furthermore, at an accelerated pace, rate increases will have to be passed on to the customers as well. The customer ultimately suffers. Is this the result you want - curtail growth and increase rates? I think not. I urge you to reconsider the magnitude of your fees and propose something more workable.

Very truly yours,

MASON COUNTY PUBLIC SERVICE
DISTRICT

Brent L. Clark

Brent L. Clark
Manager

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

MASON COUNTY PUBLIC SERVICE DISTRICT

Current Annual Usage, June, 1989/May, 1990 = 124.3M gallons or
124,300K gallons/year

Usage Fees

124,300K gallons x \$0.06 = \$7,458/year Users Fee

10% usage increase due to growth

*136,730K gallons x \$0.06 = \$8,204/year Users Fee

Bacteriological Tests

12 x \$10 = \$120	-	Letart
6 x 10 = 60	-	Crab Creek
6 x 10 = 60	-	Lakin
\$240	-	Total/year

Routine Tests

3 x 4 = 12 tests x \$10 = \$120 total/year

Construction Fees

8 projects/year x \$300 = \$2,400/year

Operation Permits

\$100/year

Possible Total Impact: \$11,064 = 2 to 3 small extension projects
or 12 to 20 customers, potentially

6/21/90

MID-OHIO VALLEY REGIONAL PLANNING AND DEVELOPMENT COUNCIL

Affiliated With The

Mid-Ohio Valley Area Development Corporation

P.O. Box 247, Parkersburg, WV 26101
(304) 295-9312

June 18, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

To Whom It May Concern:

We take strong exception to the proposal of the Department of Health and Human Services to levy fees upon local water systems. We believe the proposal to be frivolous and manipulative in its intent, exorbitant in its structure and an unwarranted and unjustified attack upon local units of government and public service districts.

The abuse of authority exhibits a callous disregard for the pragmatic financial issue of local water service provision and a blatant attempt to disguise a tax with funds to be directed to the general fund pool as a service fee, the value of which will be returned to local beneficiaries.

We trust that fairness will dictate an end to this pernicious device and direct the Department of Health & Human Services to the Legislature for its funding. It is not the intent of our federal system of government for localities to assume responsibility for funding State administrative units.

Thank you for this opportunity.

Sincerely,

Terry Tamburini
Terry Tamburini
Executive Director

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JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

TT:pg

June 18, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

Re: Division of Health Proposed Rule
"Fees for Service" Public Hearing

Dear Sirs:

The fees under the proposed rule "Fees for Service" are much too high, are clearly discriminatory and are probably illegal.

We operate both a water and sewer system in Monongalia County and will be subject to both the \$0.06 per thousand gallons of water sales and the \$0.04 per thousand gallons of sewer sales.

Our fees to the West Virginia Public Service Commission amount to \$12,325 per year. Our fees to the Department of Natural Resources amount to \$2,500 per year. Our fees to the Health Department under the proposed rule will be in excess of \$200,000 per year.

We support a fee to administer the drinking water regulations and would support a fee structure where our customers would pay the full cost of administering the regulations in Monongalia County. But, there is no way that this cost would approach \$200,000 per year. The Health Department will spend more time administering the regulations in the small systems than in large systems like ours. The cost of administering the water and sewer systems by the Health Department is clearly not proportional to the amount of water sold and the fees should be structured in a manner where the fee equals the Health Department's cost of administration. The proposed fee structure clearly discriminates against customers in the large systems and is therefore, discriminatory and probably illegal. The urban customers will be subsidizing the customers living the good life out in the uncongested rural areas.

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

Because the fees will go into a general fund and be used for services provided by the Health Department, other than administering water and sewer systems, we feel that the fee structure is unfair and possibly illegal. Water and sewer customers have no representation when the fees are used for flu shots or prenatal programs. We think that the courts will determine that you cannot collect a fee from a water or sewer customer and spend it on another program.

We have been unable to get a clarification from the Health Department, but it appears that customers on our water and sewer satellites will face the fee twice. We will pay a fee on what we sell wholesale to the satellite company, and the satellite company will pay a fee on their sales to their customers. The fee will trickle down to that customer two times. This is discriminating against the customer whose water supply is purchased wholesale from another water company and is probably illegal.

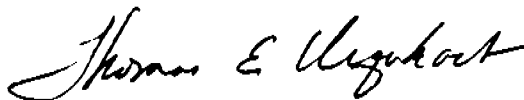
Article 64-51-4 of the proposed rule places too much authority with the director. He has already demonstrated that he has no idea of what a reasonable fee should be. To give him the authority to set reasonable fees by simply filing with the Secretary of State is unacceptable.

We think that the estimate of annual collection of fees given by the Division of Health under it's fiscal note for proposed rules is low. Using our \$200,000 per year, based on known sales quantities, we have estimated charges to the other municipalities in the state. Just using the eight largest municipalities in the state, we estimate fees from the \$0.06 on water and \$0.04 on sewer for these would equal \$1,800,000. that does not include any of the smaller municipalities or any of the Public Service Districts in the state.

This rule appears to have been quickly put together without proper information or adequate consideration of it's consequences. The entire process should be re-thought with input from the water and sewer systems in the state.

Yours very truly,

MORGANTOWN UTILITY BOARD



Thomas E. Urquhart
General Manager

TEU/kpg

MT. ZION PUBLIC SERVICE DISTRICT
P.O. Box 622
Millstone, West Virginia 25261

June 20, 1990

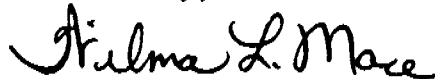
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

To Whom It May Concern:

We are opposed to the proposal of the Department of Health and Human Services to levy fees upon local water systems.

Please direct the Department of Health & Human Services to the Legislature for its funding. This would be too large a burden on the small public service districts.

Sincerely,



Wilma L. Mace
Secretary

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

NITRO SANITARY BOARD

COMMENTS ON TITLE 64 WEST VIRGINIA LEGISLATIVE RULES DIVISION OF HEALTH FEES FOR SERVICES (Proposed)

Fees as being proposed for providing the services of the State Department of Health authorized by House Bill 4660 are, in our opinion, unreasonable and arbitrary. In reviewing the proposal it would appear that the bulk of the costs to be allocated by the State Department of Health are primarily against water and sewer utilities. There seems to be no justification for the method in which the fees were designed.

As we are aware, utility rates are based on "cost of service" according to the West Virginia Public Service Commission. How did the Department of Health reach the dollar figure they have stated they need; was the cost of providing the various "services" the department lists in their fee schedule determined by a "cost of service" study, or were the fees simply arrived at by determining the department's budgetary requirement and the fees set in such a way to generate the dollars they state they require?

Nitro does not provide water service to customers, we operate and maintain a waste water system only; our customer billing is derived from figures provided to us by the West Virginia American Water Company, our annual readings from the water company are approximately (FY 88/89) 187,111,200 gallons of consumption. We also treat waste water from a satellite PSD. Are the fees based on total sales or are they charged for direct customer sales only?

You will find that Budget preparation and adoption has been completed with final approval in March, 1990 by our governing bodies. NO money has been budgeted for these fees for the Fiscal Year 1990/1991--which begins July 1, 1990. Where are we suppose to get the money needed should this proposal be approved?

It would seem only logical that public water and waste water utilities must pass these costs on to their customers. In the case of a municipal system, this must be accomplished through ordinances passed by the governing body with a forty-five (45) day waiting period after passage; this after two reading of the proposed ordinance, and a public hearing; before the new rates would become effective. Public protest could send these rate cases to the Public Service Commission for their review and action. Should this occur, then a municipal waste water system would be faced with further delay, with advertising, another public hearing, and a case hearing with the Public Service Commission. All of this would place the enactment of a rate increase far into the future, supposing that the governing body would pass the rate increase request in the first place. You have the original forty-five (45) days, and a minimum of an additional one hundred, twenty (120) days through the various Public Service Commission mandate period.

Has the Department of Health worked with the Public Service Commission on the proposed fee schedule? Also, will the Public Service Commission expedite the "pass through" rate increase necessary to fund the payment of these fees to the Department of Health?

Who is to pay the administrative costs for the utilities implementing the necessary rates and collecting, administrating and sending these fees to the Department of Health? I think you will find most systems, more especially your small systems, are operating with the bare minimum of office staff as it is, and their time is already allocated to the limit.

Will State Law and the Public Service Commission allow public utilities to pass this cost on to the customers in their boundaries as a direct charge separate from the traditional charges contained with their tariffs?

The Department of Health proposed fees list NOT ONLY Technical Service/Compliance based on water usage and sewage production, but ALSO for laboratory services, operating permits, construction permits, and even operator certification. If the Department of Health proposes to charge .04 per 1,000 gallons of consumption, then what do the fees for waste water production cover?

Based on my interpretation of the proposed fee schedule, the potential annual cost to the Nitro Sanitary Board...this does not include any charges that will deal with the satellite PSD...and ultimately our utility customers is as follows:

Waste Water - \$ 8,214.12

This figure does not reflect any charges over and above that which deals only with consumption. The various permit fees, construction permits, etc., are not a part of the above figure.

The Nitro Sanitary Board customer base is 2,600 active residential customers, almost 30% of that number are SENIOR CITIZENS, many on poverty level incomes, others on moderate level fixed incomes. Nitro, at this time is also struggling with many of its citizenry being out of work or on minimum wage jobs.

I would also like to point out that during the last Fiscal Year, the Department of Natural Resources was also granted the ability to assess charges on the waste water utility, this to the tune of \$2,500 annually, with additional charges for various other services they provide, such as permit renewal. In addition to the \$2,500 we were assessed this Fiscal Year, we were also charged \$2,125 for our NPDES permit renewal. This was also an item that was not budgeted for during the current Fiscal Year.

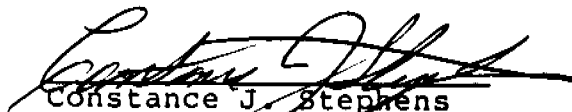
Another point that gives me great concern with this fee is the fact that our system as a point of reference, has very little contact with the Department of Health. It has been years since anyone from that department has even made a trip to our system, for any purpose. Our only contact on a routine basis is through the Licensing of our operators. Any fees charged for the various services provided, such as: (1) laboratory services, (2) construction permits, (3) operator certification, would seem a reasonable request as we do receive this service and it does benefit the waste water industry. Beyond that I see no justification for charges, nor do I see any benefits from the Department of Health to our system.

While we understand the need for revenue in this period of tight budgets, we must be given the necessary tools to collect this revenue in order to pass it along to the Department of Health. Also a redundancy of programs and services provided by regulatory agencies (Department of Health, Public Service Commission, and Department of Natural Resources), along with their conflicting interests and regulations should be addressed before implementing what is little more than a cleverly disguised tax increase.

In my opinion, we are "fee charged" and "governed" by three (3) or four (4) agencies too many as it is. Let us answer to one "utility" governing body, deal with one "utility" governing body, pay one "utility" governing body for services rendered, when and if they are utilized. Not pay some arbitrary dollar amount for something we do not even use, charge the systems for services we are given, and charge at a reasonable and equitable rate, fair for all.



Don Karnes
Mayor-Chairman
City of Nitro
Nitro Sanitary Board

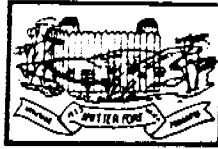


Constance J. Stephens
General Manager
Nitro Sanitary Board

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



Mayor:
Jack Gorby

Recorder:
Don "Duck" Webster

Treasurer:
Tammy Gwinn

CITY OF NUTTER FORT

1415 Buckhannon Pike
Nutter Fort, West Virginia 26301
Phone 624-4005

Council Members:
Larry Robey
Kenneth Haslebacher
Tino Medina
Richard D. Morrison
Lewis "Chip" Peters

June 21, 1990

The City of Nutter Fort wishes to protest the proposed fee assessment by the Division of Health at the public hearing entitled Fees for Services, Series 51.

We protest because we simply can't afford to pay additional fees from our water and sewage departments. We have transferred funds from other departments to meet our obligations in our water fund, an action that the state tax department does not condone. However, because of our very tight budget in the water department, we have no choice.

Our water checking account as of June 21, 1990 held \$217.25. Our sewer account held \$4,000.00. The only way we can take on more expense and still survive, is to pass it onto the customers. We have been designated a low and moderate income city, with many senior citizens who have a difficult time paying current rates.

We, the municipalities, have been hit several times with fees and new laws that strain our budget to the limit. HB 4061 that relieved the landlord of unpaid water bills will cost us. The DNR water pollution control permit was increased by 2,500 percent. A bill was approved to pay cost of living increases to pensioners. All of these have an effect on water rates, since a percentage of increases must be paid from each account.

It is simply a matter of having municipal governments fund the departments that the State government can't or won't.

We cannot continue to absorb these fees, without charging the people back home for them. And they can't afford to pay them.

We ask the Department of Health and Human Services to give the cities a break and go back to State Government for their funding. That's where it should be done.

Sincerely,

Jack C. Gorby
Jack C. Gorby
Mayor

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

46223

PINCH PUBLIC SERVICE DISTRICT
DRAWER I
PINCH, WV 25156
(304) 965-3071

June 13, 1990

Honorable Gaston Caperton
Governor of the State of West Virginia
Governor's Office
State Capitol Complex
Charleston, WV 25305

Dear Governor Caperton:

The Pinch Public Service District would like inform you of a matter that concerns our District and many other districts. This being the new fees the Department of Health and Human Services is attempting to impose upon water and sewer utilities. In addition to any state funding the department receives, the federal EPA also provides funds for the administration of the safe drinking water act. If the new fees are approved, funding over and above present levels will be achieved with no commitments or plans to expand the current program or service level.

Implementation of the proposed fees could have a devastating effect on small water and sewer utilities. I am referring to PSD's, municipalities and water/sewer associations. Many of these small utilities operate in the red or close to the red on a regular basis. Unlike private utilities, these smaller, public utilities have no source of generated revenue other than fees for water or sewer services provided. Private companies have other methods of generating revenues to help offset the burden these fees will place on the utilities.

Many of these small utilities were put in place by the people, for the people with the help of local county commissions. These small utilities were there to help people in desperate need of services when private companies were not interested or willing to help.

If the fees are approved, affected utilities will have no alternative than to pass these fees onto the customers. Once the lengthy process of filing for and receiving new tariff allowances is passed by the Public Service Commission, the burden will be passed onto the customers, the taxpayers of West Virginia. It is unfair to impose a "fee" for water and sewer services at the utility level simply to keep from asking the legislature to pass a "tax". In the end, it is an additional burden to the taxpayer, regardless of what it is called or how it is enforced. This group of individuals already funds the Health Department through routine taxes that are paid. It is not fair to place an additional burden on these individuals. The proposed fees are not even specifically appropriated, at this time they will simply serve as supplemental funding.

By law, the Health Department is mandated to fulfill certain obligations. Funding is appropriated to meet these obligations. Why should water and sewer utilities be forced to shoulder the cost of

(20)

B.A. 41

what the Health Department is duty bound to fulfill through the daily course of business. If the Health Department needs supplemental funding for special services provided, these charges should be evaluated on a case by case basis and should be charged to utilities requesting the special service. Why should all utilities and customers shoulder the burden for just a few?

If the fee schedule is approved, the fees should be appropriated back specifically to the areas from where they were collected. All water fees should be used to supplement water services and projects only. The same should be applicable to fees collected from sewer systems.

A public hearing is scheduled for Friday, June 22 at 10:00 a.m. We have been informed that these fees may be put in place on an emergency basis immediately following the hearing. It is our intention to send a representative to the hearing. Any assistance your office can provide with regard to halting the implementation of these fees would be greatly appreciated.

Sincerely,

Whit Myers/kab

Whit Myers
Commissioner

WM:kab

cc: Senator J. D. Brackenrich
Senator Thomas J. Hawse, III
Senator Robert K. Holliday
Senator Charlotte Jean Pritt
Delegate Barbara Burruss Hatfield
Delegate Sam Love
Delegate Jim Reid
Delegate Patricia Holmes White

Rt. 13, Box 402
Morgantown, W. Va. 26505

June 20, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, W. Va. 25305

Gentlemen:

The Morgantown Utility Board sent us a copy of the fees you are proposing effective July 1, 1990.

As a small public service district that buys its water from Morgantown Utility Board, we feel that the fees you propose to levy against the water systems are very harsh. Especially, the 6 cents per thousand gallons of water sold which Morgantown proposes to pass on to us as customer. It becomes 12 cents per thousand if we have to pay another 6 cents to you. This means that our customers will be getting another water rate increase as we will have to pass on the cost to meet the expense. This fee alone would mean as much as \$6,000 to \$12,000 additional operating cost per year when we are already searching for ways to reduce costs.

You show a listing of substantial fees for the service you provide that we sometimes use; but, what services are you offering for this additional \$6,000 to \$12,000 fee? How are we to justify this new cost to our customers?

We are not in the business of making money. Our objective was and is to bring a much needed resource--water-- to the people of this rural area of Monongalia County at a minimum cost. We receive no state, county, municipal, nor any other operating funds; and, yet somehow we must find funds to enlarge our system because of area growth. Since 1984, we have been operating at an annual deficit of \$9,000 to \$15,000. We have managed to survive without a rate increase because we had some reserve funds. Now that these reserve funds are nearly depleted, we have had to apply for a rate increase; this is currently pending before the PSC.

We must object to this method of increasing your revenue; we simply cannot afford to subsidize the State Department of Health in this way.

And, finally, a "user fee" on such a necessity--water--is an injustice. The actual cost of providing good, clean water is already too high; and, we are surprised that the State Health Department would propose to add to the cost by imposing a user fee.

Sincerely yours,

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

PLEASANT VALLEY PUBLIC SERVICE DISTRICT

Stella S. Long
Stella S. Long, Secretary
Willis Raber, President
Michael Bukrim, Treasurer

The City of Point Pleasant

400 VIAND STREET
POINT PLEASANT, WEST VIRGINIA 25550
304-675-2360

June 19, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Gentlemen:

We are writing to protest the West Virginia Department of Health and Human Services proposed fees for water and waste-water systems.

The City of Point Pleasant has worked very hard to keep water and sewer rates as low as possible; however, we have already been forced to construct a new sewer treatment plant and sewer rates have more than doubled since 1988. This fee represents yet another increase and will create undo hardship for too many of our residents.

The City provides these vital services at the lowest possible cost and we believe state and federal government should bear the cost of enforcing new rules and regulations they place on our local systems.

We are asking you to give careful consideration to the citizens of Point Pleasant and West Virginia before placing this additional burden on them.

Sincerely,

Russell V. Holland

Russell V. Holland
Mayor

Etta M. Gheen

Etta M. Gheen
City Clerk

Dan Rodgers

Dan Rodgers
Public Works Director

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

RUSSELL V. HOLLAND, Mayor

ETTA M. GHEEN, City Clerk

CITY OF RICHWOOD

"Gateway to the Monongahela National Forest"
RICHWOOD, WEST VIRGINIA 26261

Bob Johnson, Mayor
846-2596

John Kessler, Recorder
846-2597

June 15, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 26261

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

Dear Sir,

I am writing in objection to the proposed fees for Water and Wastewater Systems. These systems have been starving from lack of funding to operate properly for a long time.

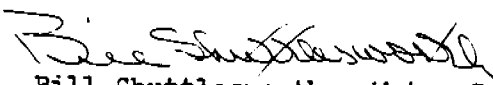
Tremendous mortgage payments, uncalled for DNR Fees, Public Service Fees, Etc., are putting a heavy burden on these utility systems. In order to pay additional fees, we would be forced to ask for a rate increase in our services. Why put such a burden on the customers whom are already struggling to meet their monthly bills.

Our small town has been forced to lower the amount of paid holidays, curtail all sick days, place a freeze on wages, have a hiring freeze, and most of these cuts were due to a rise in insurance cost, which the state has permitted to happen.

You state that part of the revenue would go to "allow funds to be collected to provide necessary Public Health Services including the operation of programs to help assure safe drinking water. Is it not true that Federal and State Funding are available for these programs?

Please do not let these fees be placed on our systems.

Sincerely,


Bill Shuttlesworth: Water Commissioner


Patsy Bailey: Office Manager

c.c Ferrell Johnson: Delegate
c.c Walt Helmick: Senator

CITY OF RICHWOOD

"Gateway to the Monongahela National Forest"
RICHWOOD, WEST VIRGINIA 26261

Bob Johnson, Mayor
846-2596

John Kessler, Recorder
846-2597

June 15, 1990

Mr. Ferrell Johnson
P.O. Box 61
Summersville, West Virginia 26651

Dear Delegate Johnson,

I am writing in regards to the proposed Fees which the Department of Health hopes to place onto the Water & Wastewater Systems of our state.

We are totally objected to these fees. Our System, and most systems in the state cannot handle the burden being placed on them.

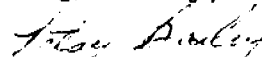
As you will see from the enclosures, we have made every cut available in our town to exist. The state should follow suit, cut their spending, instead of placing the burden on John Doe Public.

The Department of Health & Human Services is a good program, but they would save millions of dollars per year if they were to employee people to investigate the fraud that goes on in their department. Many a people are falsing obtaining goods through their department and then we are ask to pay the price for this abuse. No Mr. Johnson, I cannot see a burden being placed on these systems

We in the City of Richwood, hope that you will work on our behalf come June 22 when you return to Charleston.

Thank you.

Respectfully,



Patsy Bailey: Office Manager
Phone: 846-2571

Bill Shuttlesworth: Water Commissioner

City of Ripley

113 SOUTH CHURCH STREET
RIPLEY, WV 25271
Phone: (304) 372-3482

June 22, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25504

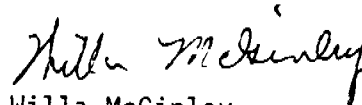
To Whom It May Concern:

We wish to register an emphatic protest to the proposal of the Department of Health and Human Services to levy fees on local water systems.

It is not the function of cities to rescue departmnets of state government from the decisions of the legislature.

Our water system is already sufficiently monitored. This new fee will not go in any way to any fund that will benefit city water systems but will only hamper our efforts to provide safe, clean, affordable water to our customers.

Sincerely,



Willa McGinley
MAYOR

WMc/isb

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Rt. 2, Box 16
Morgantown, WV 26505
June 8, 1990

Judy Smith
Division of Health
Building 3, Capitol Complex
Charleston, WV 25305

Re: Fees for Services
CSR Title & Series 64 CRS 51

Dear Ms. Smith,

We would like to register a formal complaint on Fees for Services 51.

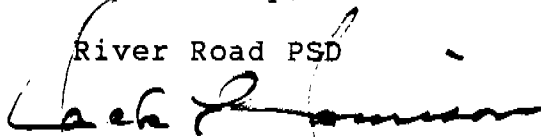
We feel that these monies should not be used for all services for the Health Department and go into the general fund.

We are opposed.

This is like a tax. Taxing water company people for the Health Department is not right. We don't think that our water customers should have to absorb the extra money for the general public.

Yours truly,

River Road PSD



Jack F. Jamison
Chairman

RECEIVED

JUN 11 1990

**REGULATORY DEVELOPMENT
SECTION**

DIAL H. ROLLINS

RT.2.BOX 339

FAYETTEVILLE. W.V. 25840

JUNE 14, 1990

STATE HEALTH DEPARTMENT
CAPITOL COMPLEX
CHARLESTON, W.V. 25305

' ATTENTION: RAYMONA KENNEBURG: ETAL.

EVERY TIME YOU PICK UP A NEWS PAPER YOU SEE WHERE SOME STATE "GIZZARD" HAS BEEN GRANTED A PAY RAISE OR A NEW LAW IS NOW IN AFFECT GRABBING MORE MONEY FROM WHAT FEW PEOPLE WHO ARE LEFT IN THIS STATE, WHERE AN ESTIMATE FORTY SIX THOUSAND HAVE HIT THE SUNSHINE TRAIL SOUTH IN ORDER TO LIVE.

THEY CRY INFLATION AS THE CAUSE AND REALY IT IS SIMPLY GREED WITH EVERY BODY WANTING TO BE A MILLIONAIR AT THE OTHER FELLOW'S EXPENSE.OUR LEGISLATURE AND PREVIOUS ADMINISTRATION ALONG WITH THE PRESENT GOVERNOR ARE JUST A COSTLY JOKE AND A BIG ONE AT THAT. OUR TAX MONEY IS WASTED AND THE TAX PAYER IS ASKED TO MAKE UP FOR IT. THEY MAKE THE PROBLEMS AND THEN THROW MONEY AT IT. OUR STATE GOVERNMENT HAS NOT ONLY GONE SOUR IT IS **ROTTEN TO THE CORE.**

WHILE COMMUNIST ~~NATIONS ARE~~ COMING OUT FROM UNDER THE YOKE, OUR STATE IS BECOMING MORE COMMUNISTIC ALL OF THE TIME WITH MORE GOVERNMENTAL REGULATIONS AND MORE TAXES TO SUPPORT THEM.

THE IMPOSITION OF THE STATE HEALTH'S WATER RATE AND SEWAGE IS A BACK DOOR APPROACH AND AN EXAMPLE.JUST HOW LONG DO YOU THINK THIS TYPE OF ROBBERY CAN CONTINUE UNTIL THE CAP FLIES OFF?

THERE ARE NOW SO MANY WIDOWS ON SOCIAL SECURITY AND FIXED INCOMES THAT ARE BARELY EXISTING NOW. SO WHY ADD MORE TO THEIR BURDEN. YES OUR STATE GOVERNMENT IS SO ROTTEN THAT IT IS READY TO TOPPLE UNDER ITS OWN WEIGHT. IT IS FINANCIALLY OPOPERATING ON A CREDIT CARD AND NOW WANTS TO BANKRUPT THOSE OF US WHO MAKE ITS MEANS OF EXISTENCE.SO WHY SHOULD THE STATE HEALTH DEPARTMENT ADD MORE TO SEWAGE AND WATER RATES AND HELP EXTERMINAGE SO MANY PEOPLE WHO ARE BARELY MAKING IT NOW?

ANSWER ME,

Dial H. Rollins

P.S. PASS THIS LETTER ON TO OTHER WHEELS. WE HAVE HAD IT UP TO OUR NECKS.

WAITING FOR YOUR ANSWER

Water and sewage increases coming to customers statewide

By Jim Balow
STAFF WRITER

West Virginians should prepare to pay more for the water they buy and for the sewage they must treat.

Starting next month, the Division of Health plans to impose a series of fees for various services, they have been providing for free, including the water and sewer companies they regulate. The utilities, in turn, plan to pass those costs on to their customers.

As outlined in its proposed Rule 51, the Division of Health would charge all public and private water companies 6 cents for each 1,000 gallons of water they sell to customers. Unmetered customers would be charged 27 cents a month. Sewer companies would pay 4 cents per 1,000 gallons.

The division would also charge

for water tests performed at its South Charleston lab, and would charge fees for permits to build water and sewer facilities, operate water and sewer systems, and run dairy farms and milk plants. Other fees would be charged for inspecting medical X-ray machines, reviewing plans for and inspecting new hospitals and nursing homes, and enforcing asbestos abatement programs.

News of the proposed fees caught some utility managers by surprise, though the Legislature paved the way for the fees March 10 when it passed House Bill 4660, which allows the Division of Health to charge user fees for services it provides.

The division published its proposed fee schedule May 23 and will hold a public hearing June 22 to receive comments.

Officials in the division expect

a heavy turnout and some lively comments at next week's hearing. Already, several people have submitted written comments and, not surprisingly, none favored the fees.

Dan Halloran, manager of the Charleston Sanitary Board, had not heard about the proposed fees until a reporter called him this week.

"Good Lord," Halloran said when he learned sewage plants would be charged 6 cents for each 1,000 gallons of waste water they treat. Halloran estimated the fee would cost the city about \$88,000 a year.

"That's a nice rate to drop on the citizens of Charleston when they ought to be cutting the size of state government," he said.

"How come we didn't hear

(Please turn to Page 2A, col. 3)

from page one

HOLD YOUR NOSE RAYMONA. THE BILL HAS JUST PASSED BY

The Charleston Gazette, Thursday, June 14, 1990

Water and sewage increases are coming

about this earlier?" Halloran asked. "It's just more taxation to support a government that this state just can't afford to support."

Halloran said legislators don't have the courage to raise taxes, so they instead raise fees.

Halloran said the Sanitary Board would pass the fees along to its customers. "We'll just go to City Council and get a rate increase."

Raymona Klineburg, deputy secretary of Health and Human Resources, said the Legislature cut the Division of Health budget this year by \$560,000 with the understanding the division would recoup that loss through the new fees. She estimates in succeeding years the fees will bring in about \$1.8 million each year.

As proposed, the fees will go into a revolving fund to be used only for public health programs, Klineburg said. However, the fees not to go back directly to the program for which they are charged, she said.

"It may be true that, say, the milk fees would not go toward paying the salary of the person who runs the milk program," she said. "Basically, there will be public health fees dedicated primarily for environmental health services and laboratory services."

Some utility officials are worried that the fees won't directly support the regulating programs.

"We don't have any problem with a reasonable fee for any service provided by the Division of Health," said Steve Chambers,

in-house lawyer for West Virginia American Water Co., the state's largest water company.

"Where we have a little problem is we're not clear what service the Division is providing for the 6-cents-per-1,000-gallon fee."

Though that fee would cost a typical family only about \$3 a year, Chambers estimates the total fee West Virginia/American would have to pay could reach \$800,000 a year. "As a whole, it's a significant amount," he said.

Chambers said the company would ask the Public Service Commission for a rate hike. "We can't eat \$800,000 or more in expense."

"We don't know where the Public Service Commission stands on

it. If this gets put in on an emergency basis in less than a month, we may have trouble catching up."

Chambers also questions the division's revenue estimate. "When you look at their fiscal rate of \$1.8 million and we provide \$800,000, we think they grossly underestimate what their fees will bring in."

Vic Wilford, assistant director of the Environmental Engineering Division, said the water fees are needed to meet the ever-rising cost of meeting federal Clean Drinking Water Act standards.

"The question is, do you want to pay slightly over \$3 a year to assure safe drinking water? Of course, no one wants to pay money," Wilford said.

Ashland employees to fight now



City of St. Albans
Municipal Utility Commission
1499 MacCorkle Avenue • P.O. Box 1270
St. Albans, West Virginia 25177

June 21, 1990

MAYOR AND CHAIRMAN
A. EDDIE BASSITT
(304) 727-2971

COORDINATOR
GROVER C. MOORE, JR.
(304) 722-3355

OFFICE MANAGER
MS. DARLENE GREEN
(304) 722-3355

CITY OF ST. ALBANS
MUNICIPAL UTILITY COMMISSION

SUBJECT: COMMENTS ON TITLE 64 WEST VIRGINIA LEGISLATIVE
RULES DIVISION OF HEALTH FEES FOR SERVICES (PROPOSED)

Due to the lack of justification for the method in which the fees were designed, it is our feeling that the proposed fees for providing the services of the State Dept. of Health authorized by H. B. 4660 are extreme and arbitrary. The bulk of the costs appear to be allocated against water and sewer utilities.

The WV Public Service Commission approves utility rates based on "cost of service. HOW WAS THE FEE SCHEDULE DETERMINED FOR THE DEPT. OF HEALTH?

We are uncertain as to the method to use in calculating our anticipated customer expense. ARE THE FEES BASED ON TOTAL SALES OR ARE THEY CHARGED ON TOTAL GALLONS TREATED? WHAT ABOUT WATER SOLD TO OTHER UTILITIES FOR RE-SALE?

Our new fiscal year begins July 1, 1990 and projections do not include Dept. of Health fees. Our initial interpretation of this proposed fee schedule indicates the potential annual cost to our customers would be appx. \$45,000.00. WHERE DOES THE DEPT. OF HEALTH PROPOSE THIS MONEY TO COME FROM?

Our governing body could pass ordinances but with a 45 day waiting period after passage before the new rates would be effective or with public protest, rate cases would go to the Public Service Commission for review and action - it could take several months to implement a new rate structure. HOW WOULD THIS FEE SCHEDULE BE ENFORCED? IF THERE ARE DELAYS, ARE UTILITIES REQUIRED TO GO BACK RETROACTIVELY TO COLLECT FROM CUSTOMERS?

WHO WILL PAY THE ADMINISTRATIVE COSTS OF PUBLIC UTILITIES TO IMPLEMENT, COLLECT AND ADMINISTER REMITTANCE TO THE DEPT. OF HEALTH?

WHAT DO THE FEES FOR WATER USAGE AND SEWAGE PRODUCTION COVER IF IT IS NECESSARY TO CHARGE ADDITIONAL FEES FOR ALL SERVICES?

While we realize the need for revenues during this period of poor economic conditions, the method of ACCOUNTABILITY must be uniform when fees are derived and expended. It is our opinion that our structure contains redundancy, conflicts of interest and regulation within programs and services provided by regulatory agencies (DEPT. OF HEALTH, PUBLIC SERVICE COMMISSION, DEPT. OF NATURAL RESOURCES).

continued.....

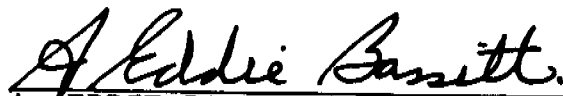
PAGE 2

JUNE 21, 1990

COMMENTS ON TITLE 64 WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH FEES FOR SERVICES (PROPOSED),
CITY OF ST. ALBANS, MUNICIPAL UTILITY COMMISSION

PERHAPS IT WOULD BE IN THE BEST INTEREST OF THE CITIZENS OF
WEST VIRGINIA FOR US TO WORK TOGETHER TO ESTABLISH A MORE ECO-
NOMICALLY FEASIBLE SERVICE AND FEE STRUCTURE.

RESPECTFULLY SUBMITTED BY:



A. EDDIE BASSITT, MAYOR-CHAIRMAN
CITY OF ST. ALBANS
MUNICIPAL UTILITY COMMISSION

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL — PHONE (304) 340-3200
CHARLESTON 25305

JANE PRICE SHARP
810 SECOND AVENUE
MARLINTON, WV 24954
PHONE (304) 799-4973

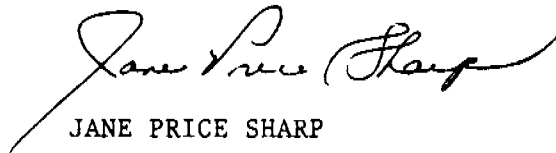
Committees:
Education
Political Subdivisions

June 22, 1990

Regulatory Development
Health Department

I would like to protest the recently proposed water and sewage fees as being excessive for small municipalities.

A town in my District, my home town, Marlinton, recently approved an increase to satisfy FHA requirements and these fees will take that increase.



JANE PRICE SHARP

RECEIVED

JUN 27 1990

REGULATORY DEVELOPMENT
SECTION

SILVERTON PUBLIC SERVICE DISTRICT

ROUTE 1, BOX 176
RAVENSWOOD, WEST VIRGINIA 26164

June 13, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

To Whom It May Concern

Re: Proposed rule # 51

The Silvertown PSD would like to go on record at you hearing of June 22, 1990 as being totally against this proposed Rule #51. The impact it would have on this District would be absolutely unbelievable as is the proposed fee.

The District would have to ask for an emergency rate increase of twice the fee because we purchase our water. When our supplier gets this increase they will pass it on to us and we will pay their increase on the water they sell the District plus the cost of the same fee to the Health Department. So, to systems that purchase water it would be a twelve cent per thousand increase. In Jackson County along three of the four Districts purchase water.

We now have programs of the DNR and EPA plus the Health Dept. to assist in the Safe Drinking Water Act and even if the Health Dept. needs additional funds this is just too much. We believe there is a lot of deception in these fees. The water systems of the state need to know where this money will go and not just for "health and human service programs" as we have heard.

The amount of this fee is totally unjustified. This District has tried to keep our cost to the customer as low as possible and still maintain a safe supply of drinking water. Last year we were \$54.00 in the red at the end of the year. If this fee becomes law it will make an already difficult job next to impossible.

Sincerely,
Donna Fish
Donna Fish
Chair-person

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JUN 14 1990

bjf

**REGULATORY DEVELOPMENT
SECTION**

COMMENTS ON PROPOSED HEALTH SERVICE FEES
Delivered by Fred Stottlemeyer
on behalf of South Putnam PSD
June 22, 1990

South Putnam Public Service District is a diligent supporter of Safe Drinking Water and high environmental standards. We have over the years worked closely with the Environmental Engineering Division of the Department of Health and we were anticipating that certain fees would be imposed for purposes of improving water related services provided by the Health Department.

While we have not always agreed with the Health Department officials over the years, our relationship has been based on mutual trust. In more simple terms we believe that both our efforts, while our duties were significantly different, were directed toward the assurance of a quality water supply for the residents of West Virginia.

I must tell you that these proposed fees and the tactics used by the Health officials in proposing and promoting these fees has destroyed this trust. Never in my life have I seen a group of bureaucrats so blatantly show such total blind support for their agency and such total disregard for the people of the state. While I recognize that those in power ~~from~~ the Governor, the legislature and the chief executives of your agency have placed you in a difficult position by making you the secret tax collectors for West Virginia, we can only caution you that ^{by ~~not~~ continuing to be the} ~~by being the~~ expounders and promoters for ^{these fees} ~~their pack of lies~~ that you may totally destroy your credibility and trustworthiness with the water and wastewater systems and their personnel.

The water and wastewater systems of West Virginia need a major infusion of funds if they are to meet acceptable standards and state government should be taking a lead in assisting in this task. Instead we find a government that is choosing to bleed the water and wastewater system of their already inadequate funds to benefit other functions of government. And most disturbingly we find the very officials who should best know the severity of this problem, the Environmental Engineers, going around the state promoting this policy. Enough for the negative. My mother always told me that there was something positive in everything. While I hope that this hearing somehow brings the Health Department to its senses, I imagine the recently announced "you fund it yourself" pay raise for state government employees will place such pressure on the Health officials that they will push forward with this ridiculous fee structure. *on an emergency basis.*

What I see as the positive in this horrible situation is the fact that from this excessive unreasonable tax will grow the seed to remove the fees and the responsibility for water and wastewater once and for all from the uncaring health officials and the placement of *those* ~~the~~ functions in a newly created Department of Environmental Affairs where the water and wastewater system will finally have a department of state government which will be willing to work with the water and wastewater system toward a common end.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

City of Stonewood

MAYOR

James K. Terango

RECORDER - CITY CLERK

Teresa Whiteman

STREET SUPERVISOR

Daniel Carder

CHIEF OF POLICE

Thomas Bokey

FIRE CHIEF

James M. Carvelli

Incorporated In 1947

112 Southern Avenue

Stonewood, West Virginia 26301

Phone: (304) 623-2919

"Working Together For A Better Community"

June 21, 1990

COUNCILMEN

Bertayle E. Bohn

Joseph Hyman

James E. Nutter

Pina Price

Frank Fasio

I would like to address the issue "Fees For Services" which was passed during our last Legislative Session allowing the Executive Branch to set and collect a variety of "Fees" that in reality would best be defined as "Taxes". It appears that these fees are to be collected to fund the Operation of State Government, at the expense of Local Governments and individual Citizens. It is quite obvious that this method of "Passing the Buck" is the standard operating procedure of our State Government by looking at other State Agencies which were given the authority to assess fees to fund their agencies. Some examples are solid waste, increased court costs, increased permit fees for water and now the WV Department of Health & Human Services which has proposed massive fees for water and wastewater systems. Fees by any other name would be called taxes.

Apparently not much thought was given to ^{the} impact of these fees on Local Governments water and wastewater systems as well as the individual citizens because these systems are heavily burdened by absorbing rising costs to barely maintain its status quo.

Therefore, we urge our state government to adopt the philosophy of President Harry S. Truman, "The Buck Stops Here".

I am opposed to the fees for services, as proposed by the WV Department of Health & Human Services.

CITY OF STONEWOOD

Teresa Whiteman
Recs. Recorder

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Union District Public Service Company

P.O. BOX 783 • MORGANTOWN, WEST VIRGINIA 26505

June 14, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

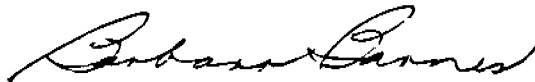
Gentlemen:

The proposed Title 64, Division of Health,
Fees for Services, has come to our attention.

The Board Members of the Union District Public
Service Company wish to advocate our opposition to
this proposed increase. Our district water customers
could be adversely affected by having to pay twice
the amount of the increase inasmuch as we purchase
water from the Morgantown Utility Board.

It is our request that consideration be given
to our concerns. Thank you for your attention to
this matter.

Sincerely,



Barbara Barnes
Member/Secretary

RECEIVED

JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**

UNION WILLIAMS PUBLIC SERVICE DISTRICT
P. O. Box 243, Waverly, West Virginia 26184-0243
Telephone 304-464-5121
June 14, 1990

RECEIVED

JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

RE: Proposed Fees by the Department of
Health and Human Resources.

Gentlemen:

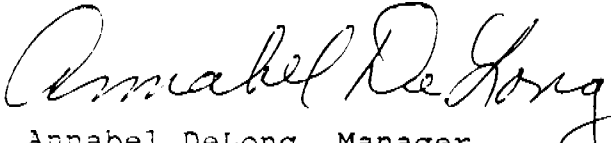
The fees proposed for water and wastewater per 1000 gallon of water is unreasonable. The timing for implementing the fees is not feasible. Budgeting and applications for rate increases to cover the cost of the fees was not taken into consideration when projecting that the fees take effect this year.

Most small systems are experiencing financial problems with the cost of complying with the SDWA which have already been implemented and face even more in the coming year without the added burden of fees from various agencies to fund their operations.

The \$.06 per 1000 gallon of water will cost Union Williams P.S.D. approximately \$9360.00 per year based on gallons of water sold last year. The fees proposed to be charged for the sewer system which is in the planning stage now will mean an unreasonable expense which was not projected when the system was planned.

Reasonable fees for some services received would be acceptable but the fees proposed are not reasonable and are not all necessary. Unreasonable fees will place an unnecessary burden on the utilities as well as the customers. Since the cost will need to be passed on to the customers, it must be feasible and affordable.

Sincerely yours,


Annabel DeLong, Manager

Walton Public Service District

P.O. Box 118
Walton, WV 25286

June 20, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

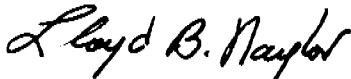
To Whom It May Concern:

The Walton Public Service District vehemently oppose the proposal of the Department of Health and Human Services to levy fees upon local water systems. We believe the proposal to be a blatant attempt by the Governor and the Legislature to disguise a tax in an election year as a fee. Like the tax on food this fee or tax will fall on those who can least afford it.

We also take exception to the fact that the funds generated through this tax will be deposited in the general pool of funds of the Department; therefore the agencies footing the bill will receive little or no benefit from this tax.

We believe that a tax to support any State Agency should be levied upon all of the citizens of the State not just a selected few.

Sincerely,



Lloyd B. Naylor,
Chairman

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



CITY OF WEIRTON WATER DEPARTMENT

200 MUNICIPAL PLAZA — WEIRTON, WEST VIRGINIA 26062

TO: West Virginia Department of Health
Conference Center - Building 7 Room B
Charleston, West Virginia

FROM: City of Weirton *JBF*

RE: Proposed Cost of Legislative Rules
16-1-21 and 29B-1-3

DATE: June 12, 1990

RECEIVED

JUN 19 1990

**REGULATORY DEVELOPMENT
SECTION**

Gentlemen:

The City of Weirton has reviewed your proposed revenue enhancing bill, we believe this change will be counterproductive, and costly to the cities of West Virginia because;

- (a) The additional costs imposed must be ultimately passed on to the utility customer for existing services that they are paying for as taxpayers now.
- (b) The costs per year of the proposed rules to Weirton would be \$18,334.80 for sanitary sewer and \$42,768.00 for water related services for a total cost of \$61,102.80 being added to our rate cases annually.
- (c) These proposed rules would also discourage operator certification, training and testing. The operator is an important component part of the battle to protect the environment and provide quality water service to the customer. It is not in the State's interest to discourage training programs for water personnel related to certification programs.

In summary, we believe the proposed rules would (a) place an additional burden on the local taxpayer, (b) increase the cost of service again, and (c) have a negative impact on training programs for water operations personnel.

JBF/kg
Attachment



CITY OF WEIRTON WATER DEPARTMENT

200 MUNICIPAL PLAZA — WEIRTON, WEST VIRGINIA 26062

To: J. Bruce Fox, Utilities Director
From: Jeffrey Pearce, General Supervisor
Re: Proposed State Fees for Services
Date: June 8, 1990

Listed below are the services and proposed costs that the Water Department can expect to pay if these "Fees for Services" are passed by the legislature.

Item

<u>Lab Certification</u>	\$500 Every 3 Yrs.
<u>Operator Certification Renewal</u> (Ten Certificates @ 10.00 per)	\$100 Every 2 Yrs.
<u>Technical Services/Compliance</u> (Based on Metered Sales of 699,478,000 gal. for 1989)	\$41,968 Annual
<u>Operating Permits</u>	\$200 Every 3 Yrs.

Total Fees

Other fees that will occur from time to time, will range as follows:

Operator Certification Testing

Class I	-	\$10
Class II	-	\$25
Class III & IV	-	\$50

Page Two
Proposed State Fees for Services

Public Water System Project - \$300

<u>Cost</u>		<u>Bi-Annual</u>	<u>Tri-Annual</u>
Lab Certification	\$ 500		X
Technical Services	41,968 (Annual)		
Operator Certification - Renewal	100	X	
Operating Permits	200		X
<u>Operator Certification Testing \$10 Class I/\$25 Class II/\$50 Class III&IV</u>			
TOTALS	\$ 42,768	\$ 42,068	\$ 42,668

Lastly, fees that at this time, do not have a dollar amount may be assessed by the local health departments. These fees would be approved by the director of the division of health.

Thank you.



CITY OF WEIRTON WATER DEPARTMENT

200 MUNICIPAL PLAZA — WEIRTON, WEST VIRGINIA 26062

To: J. Bruce Fox, Utilities Director
From: C.E. Smearman, General Supervisor
Re: Estimated Cost Proposed Legislative Rules
16-1-21 and 29B-1-3
Date: June 11, 1990

Staff has reviewed the proposed rule and we submit the following cost estimate for your use:

Items

(a) Operating Permit Bi-Yearly \$ 200.00

(b) Technical Services on 446,120,180 gal.
1,000

Equals 446,120.18 (.04) 17,844.80

(c) Certifications

Class 1 Estimate Yearly	\$ 40.00	
Class 2 Estimate Yearly	50.00	
Class 3 Estimate Yearly	100.00	
Class 4 Estimate Yearly	<u>100.00</u>	<u>290.00</u>

Total

Estimated Cost of Rules \$ 18,334.80

CITY OF WELLSBURG

CITY HALL
WELLSBURG, WV 26070
(304) 737-2104

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

June 21, 1990

Taunja Willis Miller, Secretary
Bureau of Public Health
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, W.Va. 25305

RE: Written Comments in regards to the
Fees For Services Legislation-
Division of Health. Public Hearing
June 22, 1990 10:00 A.M. Conference
Center-Capitol Complex, Charleston,
WV.

Dear Ms. Miller:

On behalf of the City of Wellsburg's Combined Water and Sewer Board and City Council please submit the enclosed written comments in regard to the above mentioned:

- Comment #1 - The City of Wellsburg understands the reasoning for a fee charge if your agency is providing sampling for our Water and Sewer departments;
- Comment #2 - The City of Wellsburg objects to the proposed fee of charging public water facilities 6 cents for each 1000 gallons used per month per customer metered service;
- Comment #3 - The City of Wellsburg objects to the proposed fee of 27 cents per month per customer for unmetered service;
- Comment #4 - The City of Wellsburg objects to the proposed fee of 4 cents per 1000 gallons per month per customer sewer charge;

In reference to comments 2,3 and 4 the City of Wellsburg, population 3,900, is approximately 60% low to moderate income. The City has recently increased sewer rates while water rates will be reviewed in the near future.

If the proposed legislation is passed the City would not only have to increase water/sewer rates to present costs but also increase the rate an additional 10 cents to fulfill your agency's proposed fee requirements.

(2)

Also, as stated in the proposed legislation, the fee charges for water and sewer will not necessarily be retained for water and sewer activities.

The City feels we will not realize any benefits from this fee. As far as the fees being retained for your agency's consulting engineering services the City presently retains an engineer for water/sewer services.

Comment #5 - The City of Wellsburg objects to the certification/renewal license fee for sewer and water plant operators.

Presently the City pays for State testing and licensing in order to become certified as operators.

Comment #6 - The City of Wellsburg objects to water well permits. The City maintains any well in service for its water system. Testing of water is conducted at the plant as water is being produced from these wells. The City feels the wells are our responsibility and doesn't realize what service will be provided by your agency for well fees.

Comment #7 - The City of Wellsburg objects to the proposed legislation enabling the local health departments to assess the same fees to our City as your agency may assess.

The City of Wellsburg appreciates the opportunity to submit our comments regarding the proposed amendments to the Division of Health.

Sincerely,



Mark S. Baldwin
City Manager

CC/Senator John Chernenko
Roy Givens, Del.
Bernard Kelly, Del.

WEST VIRGINIA-AMERICAN WATER COMPANY

AN AMERICAN WATER WORKS SYSTEM COMPANY

1325 Virginia Street, East
Box 593

Charleston, West Virginia 25322

RECEIVED

Telephone
(304) 347-0975

JUN 23 1990

June 22, 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Ms. Taunja Willis Miller, Secretary
Department of Health and
Human Resources
Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

Dear Secretary Miller:

Please find enclosed a Statement of Position of West Virginia-American Water Company concerning fees for services provided by the Division of Health as proposed in West Virginia Legislative Rule 64 CSR 51. Please give the enclosed comments due consideration and, if possible, make them a part of the record pertaining to the proposed rule.

Very truly yours,


Stephen N. Chambers
Secretary

SNC:rn

Enclosure

c: D. L. Edgemon
T. Jones, Jr.
M. A. Albert

STATEMENT OF POSITION OF WEST VIRGINIA-AMERICAN
WATER COMPANY CONCERNING FEES FOR SERVICES
PROVIDED BY THE DIVISION OF HEALTH
AS PROPOSED IN WEST VIRGINIA
LEGISLATIVE RULE 64 CSR 51

West Virginia-American Water Company (WV-American) is a West Virginia corporation owned by American Water Works Company, Inc. WV-American is engaged in the business of treating and selling potable water and serves over 118,000 customers in 55 communities in the State of West Virginia. It operates 13 separate water systems and employs 323 people. As the largest single supplier of drinking water in West Virginia, WV-American is vitally interested in the fees proposed by the Division of Health and their impact on our operations and our customers.

The following sets forth the position of WV-American with regard to certain of the fees to be assessed by the Division of Health for various services it provides, as set forth in its proposed Legislative Rule 64 CSR 51:

I. Laboratory Service Fees (§64-51-5; Appendix I)

WV-American does not object to the proposed fees for laboratory services set forth in Appendix I to the proposed Legislative Rule because such fees appear to be related to services provided by the Division of Health and because they do not appear to be unreasonable.

**II. Environmental Health Service Fees
(§64-51-6; Appendix II)**

WV-American does object to certain of the proposed "Environmental Health Service Fees" set forth in Appendix II to the proposed Legislative Rule. The proposed fees found most objectionable by WV-American are the fees based on monthly usage of potable water which fees are set forth in item 4.B

(Technical Services/Compliance) of Appendix II. These proposed fees (\$0.06 per 1,000 gallons used per month per customer for metered service, and \$0.27 per month per customer for unmetered service) (hereinafter "Water Usage Fees") are opposed for the following reasons:

1. The Water Usage Fees exceed the authority of the Administrator (or Director) of the Division of Health.

WV-American submits that the proposed Water Usage Fees exceed the authority granted by the Legislature to the Administrator of the Division of Health to assess fees for services provided by the Division of Health. The authority to assess and charge the proposed fees is found in Section 21, Article 1, Chapter 16 of the Code of West Virginia (§16-1-21) which said Section 21 was enacted by the Legislature of West Virginia on March 10, 1990 with the passage of Committee Substitute for House Bill 4660, a copy of which is attached hereto as Exhibit A, and becomes effective July 1, 1990 (hereinafter "H.B. 4660").

H.B. 4660 authorizes the Administrator to *" . . . assess and charge reasonable fees for the provision of services provided by the division of health . . . "*. The fees to be charged are to be set forth in a rule promulgated by the Administrator in accordance with article three, chapter twenty-nine-a of the Code of West Virginia. The fees, when assessed and collected, are to be deposited into a special revolving fund in the state treasury. At the end of any fiscal year any unspent funds shall not revert to the general revenue fund but shall remain in the special revolving fund for use by the Administrator for funding health programs in ensuing fiscal years. H.B. 4660 also empowers the Administrator to authorize reasonable fees for the provision of services by county or municipal boards of health.

a. The Water Usage Fees are not reasonable.

It is clear from the language of H.B. 4660 that any fee assessed by the Administrator must meet two criteria. First, the fee must be "reasonable". Although the term "reasonable" is not defined in either H.B. 4660 or 64 CSR 51 and is subjective in nature, it is a term widely used both in the law and in the every day affairs of lay people. Webster's Ninth New Collegiate Dictionary defines the term as follows:

" . . . agreeable to reason; not extreme or excessive; moderate; fair; inexpensive; having the faculty of reason; possessing sound judgment . . ."

The most persuasive indicator of how the term "reasonable" should be interpreted, however, can be found in the proposed rule in §64-51-9.5 which provides as follows:

"Basis for Fees - Local board of health fees may be based on cost plus a maximum of fifteen percent for administrative overhead which may include but is not limited to personnel wages and salaries, ordering and storage of supplies, transportation, paper work processing and storage, and facility overhead such as janitorial and utility costs."

It is submitted that if the Administrator, in exercising the authority to authorize "reasonable" fees for services provided by county or municipal boards of health, has determined that such fees should not exceed fifteen percent over the actual cost of the services, then a similar standard of reasonableness should be applied to the fees now proposed by the Administrator. In other words, if any of the fees set forth in the proposed rule exceed by more than fifteen percent the cost of the services to which they relate, such fees should be deemed excessive and, therefor, not "reasonable" within the meaning of that term as it is used in H.B. 4660.

Although the actual cost of any given service provided by the Division of Health may not be known, the fiscal note for the proposed rule provides a clue in the statement contained therein

that the collection of the proposed fees will ". . . provide a means to restore the amount of funding by which the Division of Health budget was reduced in the 1990-91 budget and allow for the maintenance or improvement of public health services at both the State and local health department levels". If the proposed fees are intended to cover the cost of services that would not otherwise be provided because of a budget cut, then the proposed fees should generate only enough funds to equal the amount by which the budget was cut. Ramona Kinneburg, Deputy Secretary of the Department of Health and Human Resources, was quoted in the June 14, 1990 Charleston Daily Main as stating that the budget cuts made by the Legislature totaled \$560,000. The fiscal note, however, estimates annual collects from the proposed fees to be \$1,841,575. If the intended impact of the proposed fees on state government is truly to restore legislative funding cuts of \$560,000, why is it necessary to assess fees calculated to raise over three times as much?

WV-American also takes issue with the accuracy of the \$1,841,575 estimate of annual collections from the proposed fees as set forth in the fiscal note. Based upon projected 1990 water sales, WV-American estimates that it will be required to pay approximately \$800,000 in Water Usage Fees annually. When other applicable proposed fees are added, the total estimated annual cost to WV-American could be nearly \$900,000. If WV-American, alone, will pay nearly half of the estimated annual revenues to be collected from all of the proposed fees from everyone to which they apply, it appears that the estimated annual revenues are grossly understated. It is quite evident from the foregoing that the intent of the proposed Water Usage Fees is not to merely restore funding for services jeopardized by a budget cut, but to raise large sums of money for the general operation and expansion of the Division of Health.

- b. The Water Usage Fees are not related to services provided by the Division of Health

The second criteria that H.B. 4660 requires the fees to meet is that they be ". . .for the provision of services provided by the division of health. . .". In other words, the proposed fees must not only be "reasonable", they must be in consideration or exchange for a service or services provided by the Division of Health. It is quite clear from H.B. 4660 that there must be a direct connection between the services provided and the fees that are to be charged. Any other interpretation of H.B. 4660 would not be reasonable.

A review of the proposed fees verifies that the Administrator recognizes, in most cases, the legislative mandate to link the fee to be charged with the service to be rendered. For example, the Laboratory Service Fees (Appendix I) clearly link a given fee to the test for a given chemical or group of chemicals (e.g. Arsenic-\$10; Lead-\$10, etc.). This concept of linking fees to corresponding services is also carried over, in part, to the Environmental Health Service Fees (Appendix II). An example of this are the fees ranging from \$10 to \$50 for the corresponding services of administering public water supply and waste water plant operators' certification tests in each of several classes.

The Administrator deviates, however, from this principal of fees-for-services with regard to several proposed fees, most notably the Water Usage Fees. It is submitted that the Division of Health provides no identifiable services to WV-American which relate directly or indirectly to the proposed Water Usage Fees. Separate fees have been proposed for virtually all identifiable services that the Division of Health currently provides to WV-American. The question that must be asked is: "What services are WV-American and its customers receiving for \$800,000 per year? This amount of money would fund numerous full-time positions within the Division of Health to serve no one other than WV-American. Certainly not even one full-time employee will be, or needs to be, dedicated solely to serving WV-American nor to monitoring its compliance with state and federal regulations.

2. Use of revenues generated from Water Usage Fees will not benefit customers of WV-American.

The fiscal note for the proposed rules states the objective of the rule as follows:

"To establish fees for services provided by the Division of Health and local health departments in order to allow sufficient funds to be collected to provide necessary programs to help assure safe drinking water, milk, and food, to help assure that facilities are built in accordance with standards, that health equipment is operating properly, that local public health services are available, and that other services are maintained, except individuals unable to pay for health care services will not be charged."

WV-American does not question the need for the many services currently provided by the state and local health departments. It is concerned, however, that, to the extent the Water Usage Fees may be intended to fund the future expansion of the Division of Health to permit it to provide technical assistance to small water systems to assist them in complying with state and federal drinking water regulations, WV-American and its customers will be paying for services provided to others. WV-American does not object to needy water systems receiving technical assistance from state or local governments but it does not feel that its customers, who are already paying for the cost of compliance by WV-American with all drinking water standards, should be required to subsidize compliance by water systems from which they receive no benefit. Due to its size and its affiliation with the American Water System (which serves approximately 1.5 million customers in 571 communities in 20 states and has assets of \$1.9 billion) WV-American has the technical and financial capability to meet all current and foreseeable future water quality regulations. WV-American does not object to monitoring by the Department of Health of its compliance with such regulations, nor the payment of a

reasonable fee for such monitoring, but it does not believe appropriate monitoring will cost anywhere near what the proposed Water Usage Fees will generate.

3. Operating Permit Fees.

WV-American also objects to the operating permit fees set forth in item 4.C of Appendix II of the proposed rule. While the amount of the proposed permit fees may not be unreasonable, they do not appear to be related to any service being provided by the Division of Health and, therefore, are not authorized by H.B. 4660.

4. Construction Permit Fees.

WV-American also questions what services are being provided by the Division of Health to support the proposed construction permit fees. Nevertheless, WV-American can accept such fees so long as they are not interpreted to apply to minor, routine maintenance and repair activity.

5. Sales For Re-Sale.

It is not clear from the proposed rule whether WV-American is to be obligated to pay the Water Usage Fees on sales of water to other utilities for re-sale to the ultimate user. It is the position of WV-American that it would be unfair to collect fees from the initial sale by WV-American and to collect a second fee when the same water is sold to the ultimate consumer.

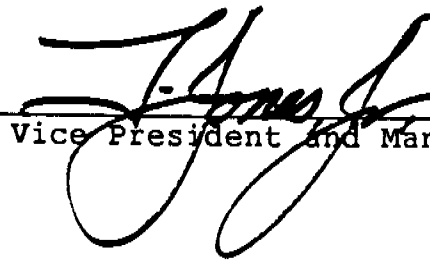
In summary, WV-American urges the Administrator and the Secretary of the Department of Health and Human Resources to reconsider the proposed Water Usage Fees and either delete the

same from the proposed rule or reduce them to a reasonable amount related to services provided by the Division of Health.

Respectfully submitted,

WEST VIRGINIA-AMERICAN WATER COMPANY

By:


Vice President and Manager

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645
14AM

WESTERN
UNION MAILGRAM



4-0141315165002 06/14/90 ICS IPMRNCZ CSP CWHC
1 3047578668 MGM TDRN HURRICANE WV 06-14 1251P EST

RECEIVED JUN 18 1990

WEST VIRGINIA RURAL WATER ASSOCIATION, BG
PO BOX 225
TEAYS WV 25569

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

3047578668 FRB TDRN HURRICANE WV 356 06-14 1251P EST
PMS GOVERNOR GASTON CAPERTON RPT DLY MGM, DLR
STATE CAPITOL
CHARLESTON WV 25305

THE WEST VIRGINIA RURAL WATER ASSOCIATION, ON BEHALF OF IT'S MEMBER
COMMUNITY WATER AND WASTE WATER SYSTEMS, URGES YOUR IMMEDIATE
INTERVENTION TO HALT EXCESSIVE USER FEES PROPOSED BY THE DIVISION OF
HEALTH ON STATES WATER AND WASTE CUSTOMERS. PROPOSED FEE LEVEL IS NOT
NECESSARY TO PROPERLY FUND PROGRAM AND THIS PROPOSAL BY YOUR
DEPARTMENT OF HEALTH AND HUMAN RESOURCES IS IN EFFECT A "SALES TAX"
ON WATER AND WASTE WATER FOR THE PURPOSE OF FUNDING OTHER
GOVERNMENTAL PROGRAMS.

WEST VIRGINIA RURAL WATER ASSOCIATION SUPPORTS ADEQUATE FUNDING FOR
HEALTH DIVISION ACTIVITIES RELATED TO SAFE DRINKING WATER ACTIVITIES,
BUT ABSOLUTELY OPPOSES YOUR HEALTH ADMINISTRATOR USING THE FEDERAL
SAFE DRINKING WATER REQUIREMENT AS AN EXCUSE TO ASSESS A "SALES TAX"
ON WATER FOR THE PURPOSE OF RAISING FUNDS FOR NONDRINKING WATER
HEALTH PROGRAMS.

EVEN MORE OBJECTIONABLE IS THE PURPOSAL TO ASSESS WASTE WATER
CUSTOMERS A FEE FOR SERVICES NOT EVEN PROVIDED BY THE DIVISION OF
HEALTH. OUR UNDERSTANDING IS THAT THE DIVISION OF HEALTH ANNUAL
EXPENDITURES ON WASTE WATER PROGRAMS IS APPROXIMATELY \$60,000. YET WE
ESTIMATE THE PROPOSED FEES ON WASTE WATER CUSTOMERS WILL GENERATE
OVER TEN-FOLD THAT AMOUNT.

THE SPECIFIC ACTIONS THE WVRWA RECOMMENDS TO YOU ARE:

1) ISSUANCE OF AN EXECUTIVE ORDER TRANSFERRING ALL WASTE WATER
FUNCTIONS FROM THE DIVISION OF HEALTH TO DIVISION OF NATURAL
RESOURCES. THUS ELIMINATING NEED FOR NEW FEES ON WASTE WATER
CUSTOMERS.

2) INCLUDE IN YOUR CALL FOR SPECIAL LEGISLATIVE SESSION, HEALTH
SERVICE FEES OR BY EXECUTIVE ORDER LIMIT SERVICE FEES ON WATER

SYSTEMS TO ACTUAL AMOUNT NECESSARY TO COVER COST OF SERVICES ACTUALLY
PROVIDED TO STATE WATER SYSTEMS. SINCERELY,

J ROBERT MCCARTY, PRESIDENT SUN VALLEY PSD
JUNE ANN CARR, VICE PRESIDENT HAMRICK PSD

To reply by Mailgram Message, see reverse side for Western Union's toll-free numbers.

FRED STOTTLEMYER, SECRETARY SOUTH PUTNAM PSD
JOE BLAIR, GLENDALE MUNICIPAL
TIM CARROLL, WINFIELD WATER WORKS
GEORGE S EVANS, NEW CREEK WATER ASSOCIATION
LOWELL HARDMAN, SPENCER WATER DEPARTMENT
GEORGE KALLAI, CITY OF SUMMERSVILLE
LARRY RADER, OPEQUON PSD
MARY SMITH, MASON COUNTY PSD
BILL YUNKER, RALEIGH COUNTY PSD
WEST VIRGINIA RURAL WATER ASSOCIATION
BOARD OF DIRECTORS
PO BOX 225
TEAYS WV 25569

RECEIVED

JUN 22 1990

REGULATORY DEVELOPMENT
SECTION

WEST VIRGINIA RURAL WATER ASSOCIATION

June 22, 1990

RECEIVED

JUN 23 1990

REGULATORY DEVELOPMENT
SECTION

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

My name is Chester E. Fleming. I reside at 1 Buena Vista Place, Charleston, Kanawha County, WV 25302. I am currently employed by the West Virginia Rural Water Association as Program Director. My employment includes serving as the Association's registered lobbyist for both legislative and administrative matters. On December 31, 1988 I retired from West Virginia state government service where I served for over eight years as Training Officer in the Environmental Engineering Division of the Department of Health.

My appearance and comments on the proposed "Fees for Service" are made on behalf of the approximately 125 voting members of the West Virginia Rural Water Association. Each of these voting members is a publicly owned, not-for-profit, community water or wastewater system.

We understand and accept that the West Virginia State Code has been amended effective July 1, 1990 authorizing the Administrator of the Division of Health to "assess and charge reasonable fees for the provision of services provided by the Division of Health...Payment of fees shall be deposited into a special revolving fund in the state treasury."

We earlier expressed a concern that the provision that any balance at the end of a year could be used for funding health programs in the ensuing fiscal years might be subject to abuse. The proposed fee schedule suggests that our concerns were justified.

1. Our first comment is that the "Fiscal Note for Proposed Rules" dramatically underestimates the amount to be collected from the proposed fees. With the limited information available to us, we believe that more than \$5,000,000.00 would be collected from the proposed fees.



2. Our second comment is in reference to the "Laboratory Service Fees" listed in Appendix I. The West Virginia Rural Water Association does not object to these proposed fees because they appear to be reasonable and are for services provided by the Division of Health.

3. Our final comments address the "Environmental Health Services Fees" listed in Appendix II. Under "B. Technical Services/Compliance." We object to these proposed fees as being unreasonable and for no service provided by the Division of Health. We believe that the other fees proposed in this Appendix more than adequately compensates the Division of Health for services provided to water and wastewater systems.

We are concerned that the proposal for a "Technical Services/Compliance" fee is being used as a device to collect a hidden tax from drinking water and wastewater systems to fund unrelated programs. We plan to address this concern to the legislature when these rules are presented to it for their approval.

The West Virginia Rural Water Association wants to assure the Division of Health that we will continue our efforts to improve the quality of life for all West Virginians by helping them serve their communities. Our efforts are directed toward the provision of safe drinking water and the sanitary disposal of wastewater at a reasonable cost. Furthermore, we hope that we can continue and expand the cooperation that has existed between the Division and our organization.

Sincerely,


Chester E. Fleming
Program Director

CEF:bg

CITY OF WHEELING



WATER DEPARTMENT

9 ARMORY DRIVE

WHEELING, WEST VIRGINIA 26003

CERTIFIED MAIL

June 15, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

RECEIVED

JUN 21 1990

Re: Legislative Rule 64 CSR 51 titled Fees for services

**REGULATORY DEVELOPMENT
SECTION**

To Whom It May Concern:

Please place the following comments into the record.

We agree with the concept of user fees so that the costs of providing a service can be recovered from the one who benefits from that service. The fees for chemistry laboratory service shown in Appendix I are an example of this concept. The fees listed in Appendix II are a different story. There appears to be no relationship between the amount users will be charged and the level of service they will receive. Under Section B, Technical Services/Compliance the proposed fee of six cents per thousand gallons is unreasonable and discriminatory. There also appears to be multiple collections for the same water. Wheeling Water Dept. sells approximately 25 per cent of our water to resale customers. According to the proposed fee, not only will we be assessed the six cents per thousand but those resale customers will also have to pay six cents per thousand on the same water.

The cost to the Wheeling Water Department just for technical services will be \$131,000 per year. To receive this amount of benefit from the Health Dept. would require at least three engineers at our plant on a full time basis. I'm sure the Health Dept has no intent of providing that type of service. The total amount proposed to be collected from the City of Wheeling, including resale customers and sewer services will be about a quarter of a million dollars. The estimated annual collections reported to the Secretary of State is \$1,841,575. We were told by a Health Department official that this number was based on 400,000 services in the state using public water supplies. Since Wheeling has less than 1/25th of that number of services, it appears that the amount collected will be over \$6,000,000. It is obvious that the estimated collections have been seriously understated and as such should be reduced or eliminated.

The assessment of six cents per thousand is not a user fee for a specific service. H.B.4660 provides for the establishment of reasonable fees for the provision of a service. The amount of technical services provided by the Health Dept. is inversely proportional to the size of the utility. The proposed assessment is directly proportional to the total gallons sold. It is very unusual for a large water utility to have a need for technical services from the Health Department because the larger utilities have qualified personnel on staff. This is a clear case of discrimination.

Most of the fees proposed are self-explanatory as to what service utilities will receive for each particular fee. The term Technical Services/Compliance is vague and does not indicate the actual service which will be provided by such an assessment. The entire section B in appendix II should be eliminated until a cost of service study is performed to determine the actual costs incurred to provide technical services to the receiver of such service and then a new strategy should be developed to provide an equitable way to fund those actual costs.

Section 9 provides an elaborate mechanism for fees to be established by local Health Boards. It includes an accounting of fee collections, a limit on administrative overhead, and a description of the program the proposed fee will finance. There is no similar mechanism identified in this regulation at the state level. The director may establish or change fees by filing them with the Secretary of State. It is our understanding that current state law requires that a public hearing be held to solicit comments on the proposed fees. There is no mention of a requirement that the utilities, hospitals, etc. who would be impacted by such fees are to be notified of the public hearing. This protection built in for local fees must also be required at the state level. The program to be funded must be thoroughly described and the actual costs must be determined. From this information a fee would then be established based on the benefit received by the party paying the fee.

In the same section of the proposed regulation (4.1), it states that the Director may require payment of these fees in advance. This may seem proper in some cases but it is in opposition to the current policy of the Public Service Commission which regulates our utility. We are only permitted to charge customers for services after they receive them. Undoubtedly the cost per thousand gallons will be passed on to our customers by an equivalent rate increase. If this would go to a hearing before the P.S.C. we would not be allowed to recover these costs until we had actually paid them. The financial condition of our utility is such that we would not be able to pay this fee until we collected it.

H.B.4660 requires that the balance of any monies in the Health Department revolving fund shall remain in that fund for the use by the Director in funding health programs in the ensuing fiscal years. The proposed regulation should include a section to further pigeon-hole the fees collected to provide funding for the particular service for which they were collected. Fees collected for running chemical or bacteriological samples should be used only for operation of those facilities. By putting any excess in the general Health Fund, fees collected for "Technical Services/ Compliance" may end up being used to provide various types of medical services throughout the state.

In summation, we do support user fees but we believe that Section B - Technical Services/Compliance is not such a fee. We feel it is discriminatory and as such should be removed from the proposed regulation.

xc: Jimmy E. Curnes
City Manager

Respectfully submitted,

William F. Huggins

William F. Huggins
Water Superintendent

Conrad E. Slanina

Conrad E. Slanina
Acting Director of Public Works

CITY OF WHEELING



26th & MAIN STREETS
P. O. BOX 6348
WHEELING, WEST VIRGINIA 26003

Water Pollution Control Division
(304) 234-3874

June 21, 1990

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Re: Legislative Rule 64 CSR 51 titled Fees for services
To Whom It May Concern:

For your consideration, please review the following comments on legislative rule 64 CSR 51, as related to reasonable fees for services as they might pertain to the city's wastewater treatment facility.

The fee assessment concept as per Appendix I - Laboratory Service Fee, Environmental Chemistry Laboratory Service section and the cost per analytical test contained within appears to be reasonable and understandable to those that choose to utilize the laboratory data determinations of the State Health Department. We would hasten to add though, that we do not believe the Health Department has ever made or will ever make such analytical quantitative or qualitative wastewater determinations for the City of Wheeling's, Water Pollution Control Plant.

Appendix II - Environmental Health Services Fees, page 11 - Fees:

- Item 1 - the charges seem reasonable for certification testing.
- Item 2 - cross connection device installers and testers test seems reasonable.
- Item 3 - certification/licensure renewals seems reasonable.
- Item 4 - Water, Sewage Systems, Swimming Pools:

Section A - Construction permits as related to public sewer system or facility project fee seems to be reasonable.

Section B - Technical Services/Compliance Public Sewer System Facility fee:

The regulatory agency which provides technical services to the wastewater treatment industry is the West Virginia Department of Natural Resources not the State Health Department.

The fee mentioned in this section for the Health Department has absolutely no cost benefit relationship to the wastewater treatment industry in general or specifically to the customers of the City of Wheeling which do receive our services.

House Bill 4660, authorizes the State Department of Health to collect fees for services, but the Health Department does not provide any technical or compliance service to our wastewater treatment facility. Therefore, this section

June 21, 1990

should not pertain to the wastewater treatment industry and as such should be removed from the proposed bill.

If this bill is enacted as proposed, it would cost our customers an additional \$117,000 per year for services not received.

Section C - Operating Permits - If the State Health Department begins to provide an operating permit for public sewer systems or facilities, the fee maybe reasonable.

Item 7 - Annual on-site sewage disposal permit fees maybe reasonable, if the service is provided.

Appendix III - No comment.

Please consider the aforementioned comments for the public record.

Respectfully submitted



Albert K. Campbell, Superintendent
Water Pollution Control Division



Conrad E. Slanina
Acting Director of Public Works

copy: Jimmy E. Curnes, City Manager

DRAFT

Comments Received
Concerning Fees for Services
June, 1990

Dairy

Charles F. Adams
Rippon, WV

WV Department of Agriculture
Charleston, WV

Franklin W. Adams
Rippon, WV

William B. Aikers, III
Martinsburg, WV

William B. Aikers, Jr. (and Emily J.)
Hedgesville, WV

John Allman
Egdon, WV

M. F. Ankers
Martinsburg, WV

Bonnie Ankers
Martinsburg, WV

Atlantic Dairy Cooperative
Southampton, PA

T. Larry Bailey
Jane Lew, WV

Robert L. Brady
Shepherdstown, WV

Thomas Bumgard
Glen Easton, WV

Delegate Rodney T. Berry and
A. E. Tribett
Moundsville, WV

Broughton Foods Company
Marietta, Ohio

Merle Chaplin
Moundsville, WV

Chico Dairy Company
Morgantown, WV

Dairymen, Inc.
Louisville, KY

Calvin P. Dayton
Ridgeley, WV

Sandy G. DePriest
Trout, WV

Florence Milk Farm
Mineral Wells, WV

Greenbrier County Farm Bureau
Lewisburg, WV

Sam L. Harper, III
Moorefield, WV

Hodges Farm
Ballard, WV

J. W. Larew
Greenville, WV

Linger Farms Inc.
Huttonsville, WV

Ivan McCombs
Wheeling, WV

McCulloch Farms
Pt. Pleasant, WV

Robert P. McGarry, Jr.
Shenandoah Junction, WV

Monzell D. Marple
Buckhannon, WV

Maryland & Virginia Milk Producers
Cooperative Association, Inc.
Reston, Virginia

Milk Marketing, Inc.
Washington, PA

Charles W. Mossor
Lindside, WV

Mount Rock Farm
Martinsburg, WV

Delmer, Delmer and Daniel Newberry
Letart, WV

Delegate Dale F. Riggs
Buckhannon, WV

C. Archie Rines
Martinsburg, WV

Riverbend Farm
Jane Lew, WV

Delegate James J. Rowe
Lewisburg, WV

Valley Bell Dairy Company
Charleston, WV

Delegate Bill Wallace
Clintonville, WV

West Virginia Farm Bureau
Buckhannon, WV

West Virginia University
Dairy Science Committee Members
Morgantown, WV

Water/Sewage Permits and Lab Fees

Town of Alderson
Alderson, WV

County Commission of Berkeley County
Martinsburg, WV

Berkeley County Public Service District
Bunker Hill, WV

Delegate Rodney T. Berry
representing Marshall County

Delegate A. E. Tribett
representing Marshall County

City of Bridgeport
Bridgeport, WV

Mayor, Town of Chapmanville
Chapmanville, WV

Cheat Neck Public Service District
Morgantown, WV

Coal Mountain PSD
Coal Mountain, WV

Cottageville Public Service District
Cottageville, WV

Craigsville Public Service District
Craigsville, WV

Danville Public Service District
Danville, WV

Denver Water Assoc., Inc.
Tunnelton, WV

City of Fairmont
Fairmont, WV

Fenwick Mountain Public Service District
Fenwick, WV

Friendly Public Service District
Friendly, WV

Gandeeville Public Service District
Gandeeville, WV

City of Grafton
Grafton, WV

Grant County Public Service District
Petersburg, WV

Greenbrier County Public Service District
Rupert, WV

J. C. Evans Utilities, Inc.
Fayetteville, WV

City of Keyser
Keyser, WV

Kingwood Water Works
Kingwood, WV

League of Women Voters of West Virginia
Vienna, WV

Little Creek Public Service District
Fairmont, WV

Lubeck Public Service District
Washington, WV

Mary E. McLain
Mannington, WV

Mason County Public Service District
Point Pleasant, WV

Mid-Ohio Valley Regional Planning and Development Council
Parkersburg, WV

Morgantown Utility Board
Morgantown, WV

Mt. Zion Public Service District
Millstone, WV

Nitro Sanitary Board
Nitro, WV

City of Nutter Fort
Nutter Fort, WV

Pinch Public Service District
Pinch, WV

Pleasant Valley Public Service District
Morgantown, WV

The City of Point Pleasant
Point Pleasant, WV

City of Richwood
Richwood, WV

City of Ripley
Ripley, WV

River Road PSD
Morgantown, WV

Dial H. Rollins
Fayetteville, WV

City of St. Albans Municipal Utility Commission
St. Albans, WV

Delegate Jane Price Sharp
Marlinton, WV

Silverton Public Service District
Ravenswood, WV

Fred Stottlemeyer
South Putnam PSD

City of Stonewood
Stonewood, WV

Union District Public Service Company
Morgantown, WV

Union Williams Public Service District
Waverly, WV

Walton Public Service District
Walton, WV

City of Weirton Water Department
Weirton, WV

City of Wellsburg
Wellsburg, WV

West Virginia-American Water Company
Charleston, WV

West Virginia Rural Water Association, BG
Teays, WV

City of Wheeling Water Department
Wheeling, WV

City of Wheeling Water Pollution Control Division
Wheeling, WV

Dental X-Ray Fees

Blennerhassett Dental Society
Parkersburg, WV

John W. Frye, D.D.S.
Fairmont, WV

C. Richard Gerber, III, D.D.S.
St. Marys, WV

C. Keith Hieronimus, D.D.S., Inc.
Cameron, WV

L.K. Hildebrand, D.D.S., M.S.
Huntington, WV

Thomas W. Leslie, D.D.S.
Berkeley Springs, WV

Marshall-Wetzel-Tyler Dental Society
New Martinsville, WV

E. Thomas Nagem, D.D.S., Inc.
Wellsburg, WV

Dr. Douglas W. O'Dell
Charleston, WV

J. A. Palmer, D.D.S., M.S.
Wheeling, WV

Earl C. Price, D.D.S.
Bluefield, WV

Thomas L. Tyree, D.D.S.
Kenova, WV

James W. Vargo, D.D.S.
Oak Hill, WV

Everette W. Bowling, D.D.S.
West Virginia Dental Association
Pineville, WV

Sami M. Ghareeb, D.D.S.
West Virginia Dental Association
Poca, WV

Richard D. Stevens, Exec. Director
West Virginia Dental Association
Charleston, WV

Greenbrier Valley Dental Association
Lewisburg, WV

A. E. Skidmore, President
West Virginia Dental Association
Morgantown, WV

Thomas S. Wilkerson, D.D.S., Executive Council
West Virginia Dental Association
Charleston, WV

MISCELLANEOUS

Association of Community Mental Health/Mental
Retardation Programs of West Virginia, Inc.
Charleston, WV

Beckley-Raleigh Board of Health
Beckley, WV

Calhoun General Hospital
Grantsville, WV

Kanawha-Charleston Health Department
Charleston, WV

Lincoln County Health Department
Hamlin, WV

Marshall County Farm Bureau
Moundsville, WV

Mercer Board of Health
Bluefield, WV

Town of Middlebourne
Middlebourne, WV

Mid-Ohio Valley Health Department
Parkersburg, WV

Pocahontas County Health Department
Green Bank, WV

Resilient Floor Covering Institute
Rockville, MD

Division of Local Health
Charleston, WV

Brenda Walker
Union, WV

West Virginia Association of Realtors
Charleston, WV

West Virginia Retailers Association
Charleston, WV

West Virginia Soft Drink Association
Charleston, WV

(A)

PUBLIC HEARING

Fee for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

James Davis Rt 1 Box 447 St. Marys WV	RT 16 2nd Corp	
L.W. Smockgram Rt. 1 Box 24, Gandeville W.V.	Gandeville P.S.D.	No
Jaye Randolph P.O. Box 27 Gandeville W.V.	Gandeville P.S.D	No
Mr. L. L. Greene Rt. 3 Ripley WV	South Gandeville P.S.D	No
Christine J. Stashere 111 Barber Lb Nites WV	Nites Sanitary Board	No
J. Jackson Bailey Suite 202 814 Virginia St E, Charleston 25301	WV Assn of Realtors	No
John P. Bailey 600 Riley Bldg Wheeling, WV	26003 Ohio County P.S.D.	Yes
Richard J. Cronin Rt 1 Box 130 W.V.	Farm	
Richard J. Cronin Jane Lew 26378	8 Prox. roadway	Yes
Paul May Rt. 2, Janesville, WV	Parish Farm Inc. (Parish)	Yes
FRED STOTTLEMYER P.O. Box 147	South Dept 25560 South Putnam PSD	YES
Amy Luwana 201 Breaker Street Charleston, WV	WV PSC	No
Charles M. Gann 201 Breaker St. Char. W.Va.	PSC	No

PUBLIC HEARING

Fee for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

James - R. Gaskette	P.O. Box 2 mable	President	Webster P.S.D. Ad.	Yes
HARVEY ATKINS	311 MARKWIDE BECKLEY	DIRECTOR	P.W.O.D. - Pres. WEBSTER OPER ASSOC.	YES
T.D. Kautt	P.O. Box 3082 Charlotte		Charleston Soc. Bd.	Yes
James Casey	P.O. Drawer 232 Webster Springs WV 26288		WEBSTER SPRINGS P.S.D.	YES
J. Sue	200 Municipal Plaza Winton W.Va		City of Winton	Yes
Carol Ann DeWitt	100 Dream Dr		ELKVIEW W	Yes
LUCIAN ADKINS	Box 426 CLAMANVILLE		CLAMANVILLE SUPT. WATER & WASTE WD.	YES
ROBERT VANCE			CHAIRMAN	no
William E. Bane	Winton W.Va.		Sanitary Board City of Winton	no
Tommy E. Sherr	108 W 5th St Williamstown, W.V.		CITY WILLIAMSTOWN W.V.	NO
Ed. G. G. G.	426 Victoria Ave Williamstown			no
OT. Larry Bailey	RT 1 Box 108 Tanglewood W.Va			yes

PUBLIC HEARING

Fees for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

William Living	P.O. Box 247 Parkersburg, WV 26101	Regional Planning Council	
Lee Sidner	Roane St. Charleston, W.V.	Borden Valley Bay	Yes
DALENE GREEN	P.O. Box 1270	CITY OF ST. ALBANS	
Julie Green	ST. ALBANS, WV 25177	Municipal Utility Commission	NO
Paul W. McKown	Char. W.V.	WVRA	NO
ED CLIFFORD	P.O. Box 216 411 N. 4th St. Philadelphia W.V.	OHIO COUNTY P.S.O.	NO
Henry Kubitman	506-300 St. Steeplewood Dr.	HARRISON CO.	NO
Cadwell Taylor	RT 1 Box 49	MILK MARKETING HARRISON CO.	NO.
NICK CICCARELLO	Box 3186 30 CHS	West Virginia Chapter NAT'L ASBESTOS COUNCIL	Yes
Steve Chambers	833 Edgewood Dr., Charleston 25302	W.Va - American Water Co.	YES
Ted Jones	P.O. Box 1916 Char. WV 25327	W.Va. American Water Co.	NO
Therese M. Cutlip	DR Box 111 Charginville WV 26205	Organized Labor S. No	
Stan Maller	RT 2 Box 382, Benfield WV	Mercer Co. H.D. Peach Co. H.D.	NO

PUBLIC HEARING

Fees for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
MARK BALOWIN	26070 70-7th Street	City of Wellsburg	YES - plus submit written
Richard Stevens	300 Capitol St., Suite 1002 Chas, WV 25301	WV Denta/Ass'n.	written only Yes
Thomas Samuel	1500 Chapline ST Wheeling 26003	Ohio County Com	NO
STEVE HAWORTH	1 Red Bank Rd Buckhannon 26000	WV. FARM BUREAU	NO
Daniel Carder	Water Dept - City of Stonecroft		NO
Jim Balow	Chas Garrett		NO
Sen. Charles Ferguson	15 th Senate Dist		NO
Dave Miller	33rd District		NO
Bob Pack	440 Villa Ave WHITE SULPHUR SPRINGS	THE CITY OF WHITE SULPHUR SPRINGS	YES
Denny Fleming	Rt. 4 Box 267-A KEYSON, W.V. 26726	NEW CREEK PUBLIC SEN. DIS.	NO

PUBLIC HEARING

Fee for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

JIM WESTWOOD	LAND 114 VA. ST. W. CHARLESTON	BROUGHTON FOODS CO W.VA. DAIRY PRODUCTS ASSO.	YES
Curtis Dickson	211 SIXTH ST., PARKESBURG 26101	MID-Ohio Valley HEALTH Department	YES
JOHN J. VINCI SR.	314 ALLEY A CHESTER W.VA	THE NEWELL CO. NEWELL W.VA.	YES
Leonard Lix	R.D.#2 BOX 329 New Cumberland	Grant Public Ser. Dist	YES
Debra Unger	Rt. 1, Box 5400, Berkeley Springs, W.Va.	Morgan Co. Health Dept.	No.
Betty M. Dean	Charleston	West Va. Municipal League	No.
Charles R. Spitzer	108 Lee St E. Chris	Kan-Chas H.D	No
Jack Vickers	Pre. Beckley Water Co	P.O. Box 41 Beckley W.V. 25802	No
Carl W. Cole	Mennington W.Va		YES

PUBLIC HEARING

Fees for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

DAIRMEN INC

William L. ARLEDGE 10140 LIND STATION RD. LOUISVILLE, KY 40223

YES

Michael J. Turner Rt 12 Box III Greendeville TN 37743

Yes

S. DAVID RAPP Rt 2 Box 265 Revick W.V. 24966 Dairymen Inc.

NO

Harry Perkins Rt 1 Box 108 Frankford WV 24938 Dairymen

support others
yes

1500 CHAPLINE ST

CONRAD SLANINA WHEELING, WV 26003 CITY OF WHEELING

YES

Gayle Ashbaker Mayor PO Box 216 Lost Creek W.Ve

No

RON ASHBAKER GENERAL MANAGER CHARLESTON WATER BOARD C' BURG

No

Red Berry House of Delegates

No

R. E. Trickett " " " "

Jack Harper 6904 Valley Brook Dr. Sossomville Pa 25312

Yes

Gerald Shink R.R. 2 Latrobe, Pa 15150 Fick's Dairy

No

PUBLIC HEARING

Fees for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

Rose Rhodes	Cottageville, W.V.	Cottageville P.S. District	No
Jack Goby	Nutter Fort WV	Mayor - Nutter Fort	Yes ✓
Fred Butta	142-Box 159 W.V.	W.Va. Farm Bureau	yes ✓
Clara McIntosh	1415 Beckhamrow Pike	Nutter Fort, W.V.	No
Van Gandy	Box 426	Una W. Milk Marketing Inc.	No
Jim Ramey	Box 306	Burnsville Public U.t	No
Ludie D. Long	Pt Pleasant	House of Delegates	no
Ken Roney	Bridgeport	City of Bridgeport	No

PUBLIC HEARING

Fees for Services

June 22, 1990

Chico

4²

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

James L. Green 125 Lakeside Dr. Morgantown WV Morgantown Utility Board yes ✓

Clarence Cox 125 19th Street Parkersburg WV Parkersburg Sanitary Board yes ✓

PUBLIC HEARING

(I) (2)

Fee for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

Garage Shop	201 Brooks St.	W.V.		No
Paul Ramsey	Birmingham	NRWA Field Rep		No
Tom Graham	Box 235, Beaver WV	Shady Spring PSD		No
MICHAEL T. ANDERSON	100 E. Washington St.	TERRA ALTA WATER/WASTE		No
James L. McElroy	300 Marshall St.	Mannington		No
Bill Baker	Fairmont	LUBACK PSD		YES ✓
Barbara McDaniel	P.O. Box 1428 Fairmont, WV	City of Fairmont		YES ✓
James L. Kelpen	P.O. Box 647 Fayetteville, WV	J.C. Evans Utilities, Inc.		No
Robert Schodler	P.O. Box 251 Keyser, WV 26726	34th District House of Delegates		No
W. Allan Schomaker	P.O. Box 647 FAYETTEVILLE, WV 25840	J.C. Evans Utilities, Inc.		No
Anthony Badger	Fairmont WV	Little Creek PSD		No

PUBLIC HEARING

Fee for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
Anthony Giam	City Hall, Buckhannon, WV		no
Bill Surveney	Rt 1 Waverly	Wm-Williams PSD	yes
Patty Surveney	" "	" "	no
Lilly Wilson	State Hygienic Lab. So. Ches. WV		no
Caryn + Wilson	Member of House		no
Gerald Strickland	Lewis Co. Comm		no
J. P. Wilkey	Lewis Co. Comm.		N.
Ken Foren	Dir of Public Health		No
Tom Housby	Town of Alderson		yes
Tom E. Housby	Town of Alderson		yes
Bruce A. Minner	Town of Franklin		yes
	support Mr. Housby		

PUBLIC HEARING

Fee for Services

June 22, 1990

(X) (2)

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

CHET FLEMING 1 Buena Vista Place CHAS. 25302 W. RURAL WATER YES ✓

J. ROBERT MCCARTY - ROUTE 3-BOX 799, CLARKSBURG WV 26301 W. RURAL WATER ASSN NO

G. S. EVANS STAR RT #1 BOX 60 KAYSER WV 26126 NEW CREEK YES ✓

P. L. GAINER, MAYOR, CITY OF LEWISBURG YES ✓

Randall H. Craig, Finance Director, City of Parkersburg

Wilma Skaggs 204 Race St. Ravenswood. NO

Bill R. Fisher 300 Sand St Ravenswood NO

PUBLIC HEARING

(1) (3)

Fees for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

Andy Langmuir	16 Meadow Dr. Wheeling, WV	Milk Marketing Inc.	Yes ✓
Robert G. Williams	State Capitol Guthrie Center	W. Va. Dept. of Agri.	yes ✓
Jim Curnes	80 Arlington Dr. Wheeling, WV	City of Wheeling	Yes ✓
Charles R Crow	Salt Rock	Salt Rock	NO
Paul Burgess	Parkburg	now Harris Dept.	NO
Carrie E. Hester	Logan	Health Dept	NO
Linda Goddard	Tarrence, 2446	Samuel's Dept.	
Way Old	WDA		NO

PUBLIC HEARING

(M)

Fees for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

Mary G. Stanley	Box 14 Nimitz	Jumping Branch Nimitz (PA)	
Donald Ashman	"	"	
Lottie Bennett	"	"	
Sam Chico Jr	-331 Beekmant	on Ches Bay co - Morogantow W.Va.	
Larry McHenry	Box 700 Sophia, W. VA	R.D. 0.	
John Overington	WV House of Delegates	- Martinsburg	N/C

PUBLIC HEARING

(N) ①

Fee for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

Phil Jones 1800 Karamazov Blvd

W Va Health

Yes

David Randall 503 TRAT Rainelle WV

Rainelle Water Dept.

No

Linda Nettield Box 700 Sophia WV

Sophia Sanitary Bd

No

Warren Braeger 878 Box 261 Fairmont, W.Va. Little Rock PSD

Yes

PUBLIC HEARING

Fee for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

Danell Bashon

JB Nix 731

~~JB Nix 731~~

PUBLIC HEARING

(P)

Fee. for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

Bert L. Cress	105 MAIN STREET, POINT PLEASANT, WV 25550	South charlton	Yes
David M. Fyson	4th Ave, "D" street, So. char. WV	Sending Board	n/o
Ellen Smith	730 SIBBATTON ST	LOCAP	
James Fite	White Sulphur Spgs WV	WV State Fair Commission	Yes
Emory Peters	Chesapeake, W.Va.	City of Chesapeake	
Richard G. Weigand	WVETC	Charles R. Ryley WV WVETC	NO
John B. Biddle	WV DOT Ed.	WVDE	No

PUBLIC HEARING

(2)

Fee for Services
June 28, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

105 Main St.

Mary C. Smith

Pt. Pleasant, WV 25550

Mason County PSD

No

R. Dan Halloran CHAS. SAN. BD.

Box 1026
Charleston 25324

NO

Kim Burgess

Drawer I Finchwl

25156

Pinch PSD

Yes

PUBLIC HEARING

Fee for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME ADDRESS

L.W. Thompson Box 4 Talcott Wd. 29881 Big Bend PSD NO

R.M. Jones PO Box 1627 Pkbg WV 26101

BERNIE YONKOSKY WATER DEV. AUTH NO

BOB DITTNER STATE SENATE

VIVIAN BOWMAN 110 MAIN ST - GRAFTON City of Grafton NO

GREGG VAN PELT PO Box 202 Grafton Taylor County PSD YES /

PUBLIC HEARING

Fee. for Services

DO YOU WISH
TO COMMENT
(YES/NO)

**GROUP REPRESENTED
(IF ANY)**

ADDRESS

NAME

NAME	ADDRESS	CITY	STATE	ZIP	NO
Tom Sayre	2201 Brooks St.		PSC		
Charles N. Bumpfield	730 Stoughton St.	Logan	W. VA	26037	NO

No.

PUBLIC HEARING

Fees for Services
June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME

ADDRESS

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
William Lawson	208 26th	Charleston Sav. Fed	No
Patricia Cruise	282 Malcolm Ln, Kenova, W	Lavalette PSD	No
Linda Davis	Po Box 227 Lavalette	Lavalette PSD	No
Emily Jones	Rt#1 Box 229 Proctor	Sevier Sept	No

PUBLIC HEARING

Fees for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

NAME

ADDRESS

Edward E. Angus 354 3rd Ave. Ripley W.V. 26271 City of Ripley NO

Delegate Barbara Brenner Bridgeport W.Va. NO

2106 Kan. Bldg. DC HHS -

John Manning Charleston, WV 25311 Div of local health NO

PUBLIC HEARING

Fee for Services

June 22, 1990

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
Willie McElroy	115 S. Church St. Ripley	City of Ripley	No
Michael Lewis	720 13 th Ave Huntington	Huntington Sanitary Bnd.	No
Michael D. Hudson	P.O. Box 216	City of Dunbar San. Bd.	—
Dorcas J. Beley	Rt. 2 Box 72 St. Marys	St. State Senate	No

DALE E. BRUM, D.D.S.

930 AVERY STREET
PARKERSBURG, WEST VIRGINIA 26101
TELEPHONE (304) 428-1151

June 19, 1990

Dear Ms. Howard:

This is in response to proposed rule number 51, "Fee for Services." The fee proposed is excessive for the service performed. I would suggest that there must be a more reasonable way or perhaps it could be done more reasonably in the private sector.

Personally, I am trying to comply with OSHA office health requirements as well as hazardous waste disposal and I am being forced to put more time and money into things that don't really help my patients. X-ray tube inspections are important for the safety of my patients as well as my employees but do you really have to charge so much?

Sincerely,

Dale E. Brum DDS

Dale E. Brum DDS

Secretary/Treasurer
Blennerhassett Dental Society

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

Member
American Association of
Orthodontists



RICHARD E. MCCLUNG, D.D.S., M.S.

Practice Limited to Orthodontics

200 EAST RANDOLPH STREET
LEWISBURG, WEST VIRGINIA 24901
TELEPHONE 645-2088

June 18, 1990

RECEIVED

JUN 19 1990

**REGULATORY DEVELOPMENT
SECTION**

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard:

This letter is in response to proposal Rule No. 51 concerning the proposed fee to be charged for inspection of dental x-ray equipment. This contemplated fee of \$150.00 for the first tube and \$20.00 for each additional tube is exorbitant, and completely out of line with what surrounding states are charging for the same service.

Radiation hygiene is a very important and complex issue. All dentists are interested in maintaining safe and effective radiology standards, but this inspection fee is difficult to comprehend. Especially, since this service has been provided without fee.

I realize budget restraints have caused various state agencies to look elsewhere for operational income. But, there becomes a limit to what this profession as well as the public can bear. Initiating this fee will trigger additional overhead expense on the dentist which he will ultimately be forced to pass on to the consumer, thus continuing the upward spiral of health cost.

I strongly urge your organization to re-consider this proposal.

Sincerely,

Richard E. McClung, D.D.S., M.S.
President of the Greenbrier Valley Dental
Association

REM/mrc

JOHN W. FRYE, D.D.S.
1206 LOCUST AVENUE
FAIRMONT, WEST VIRGINIA 26334
TELEPHONE 366-2182

June 19, 1990

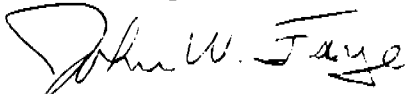
Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston WV 25305

Dear Ms Howard

I am adamantly opposed to the proposed Rule No. 51 "Fee for Services". Your proposed fee of \$150.00 for dental x-ray equipment is excessive and far beyond what neighboring states in the region charge for similar services.

Please do what you can to discourage implementation of this unreasonable fee.

Sincerely



John W. Frye, D.D.S.

JB

Enclosure

RECEIVED

JUN 25 1990

**REGULATORY DEVELOPMENT
SECTION**

C. Richard Gerber, III, D.D.S.

314 BARKWELL STREET

ST. MARYS, WEST VIRGINIA 26170

TELEPHONE (304) 684-2204

June 19, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, W.VA. 25305

Dear Ms. Howard:

This is in response to proposed Rule No. 51 "Fee for Services" wherein the West Virginia Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. Your proposed fee is \$150 for the first tube and \$20 for each additional tube. I understand the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

I personally oppose the fees proposed for inspection of x-ray equipment in dental offices on the basis that the fees of \$150 and \$20 are excessive.

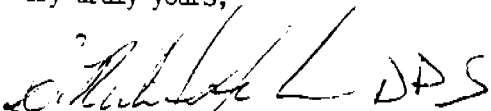
The West Virginia Dental Association survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. South Carolina charges \$20 per tube per year;
3. North Carolina charges \$70 for the first tube and \$12.50 for each additional tube for inspections every three years.
4. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when conducted by state personnel of \$35 per tube when conducted by a private firm who in turn certifies the safety of the equipment with the state;
5. Pennsylvania charges each dentist \$55 per year, which includes their annual license and inspection of x-ray equipment at least once every four years; and
6. Ohio charges \$25 for the first tube and \$12.50 per additional tube for inspections every five years.

I don't understand the need for fees for services being charged by the Division of Health. However, the fees should be commensurate with expenses incurred for such inspections. Recent inquiries of dentists finds the time involved inspecting 4 to 6 tubes is between 15 and 30 minutes. This would result in fees between \$210 and \$250 per dental office having 4 to 6 tubes with less than 30 minutes of time involved in the inspection program.

Therefore, I find the proposed fees to be excessive and strongly urge the Division of Health to propose lower fees for inspection, or eliminate the fee entirely.

Very truly yours,

A handwritten signature in dark ink, appearing to read "C. Richard Gerber, D.D.S." with a stylized flourish at the end.

C. Richard Gerber, D.D.S.
Delegate to the West Virginia Dental Association

CRG/cr

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

C. Keith Hieronimus, D.D.S., Inc.

50 WAYNESBURG AVENUE
CAMERON, WEST VIRGINIA 26033
TELEPHONE (304) 686-3388

June 20, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard,

This is in response to proposed Rule No. 51, "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. Your proposed fee is \$150 for the first tube and \$20 for each additional tube. I understand the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

I oppose the fees proposed for inspection of x-ray equipment in dental offices on the basis that the fees of \$150 and \$20 are excessive.

My survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. South Carolina charges \$20 per tube per year;
3. North Carolina charges \$70 for the first tube and \$12.50 for each additional tube for inspections every three years.
4. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when conducted by state personnel or \$35 per tube when conducted by a private firm who in turn certifies the safety of the equipment with the state;

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

5. Pennsylvania charges each dentist \$55 per year, which includes their annual license and inspection of x-ray equipment at least once every four years; and
6. Ohio charges \$25 for the first tube and \$12.50 per additional tube for inspections every five years.

I understand the need for fees for services being charged by the Division of Health. However, the fees should be commensurate with the expenses incurred for such inspections. Recent inquiries of dentists finds the time involved inspecting 4 to 6 tubes is between 15 and 30 minutes. This would result in fees between \$210 and \$250 per dental office having 4 to 6 tubes with less than 30 minutes of time involved in the inspection process.

Therefore, I find the proposed fees to be excessive and strongly urge the Division of Health to propose lower fees for inspection.

Very truly yours,

C. Keith Hieronimus D.D.S.

C. Keith Hieronimus, D.D.S.
President, Marshall-Wetzel-Tyler
County Dental Society

CKH/kdp



L. K. Hildebrand, D.D.S., M.S.

30 sixth avenue, west, suite 104
huntington, wv 25701
(304) 529-2880

June 19, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Bldg 3
Capitol Complex
Charleston, WV 25305

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

Dear Ms. Howard:

This is in response to proposed Rule No. 51, "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. Your proposed fee is \$150 for the first tube and \$20 for each additional tube. I understand the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

I oppose the fees proposed for inspection of x-ray equipment in dental offices on the basis that the fees of \$150 and \$20 are excessive.

Our survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when conducted by state personnel or \$35 per tube when conducted by a private firm who in turn certifies the safety of the equipment with the state;
3. Ohio charges \$25 for the first tube and \$12.50 per additional tube for inspections every five years.

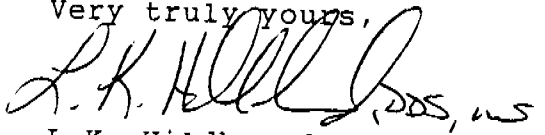


American Association of Endodontists
Specialist Members

I understand the need for fees for services being charged by the Division of Health. However, the fees should be commensurate with the expenses incurred for such inspections. Recent inquiries of dentists finds the time involved inspecting 4 to 6 tubes is between \$210 and \$250 per dental office having 4 to 6 tubes with less than 30 minutes of time involved in the inspection process.

Therefore, I find the proposed fees to be excessive and strongly urge the Division of Health to propose lower fees for inspection.

Very truly yours,


L.K. Hildbrand, D.D.S., M.S.
Executive Council Delegate

THOMAS W. LESLIE, D.D.S.
1110 CONCORD AVENUE
BERKELEY SPRINGS, WEST VIRGINIA 25411
304-258-2291

June 18, 1990

RECEIVED

JUN 19 1990

**REGULATORY DEVELOPMENT
SECTION**

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204, Building 3
Charleston, WV 25305

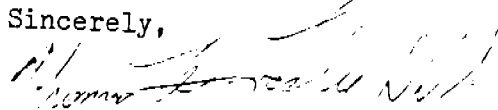
Dear Ms. Howard,

This is in response to proposed Rule No. 51, "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. As I understand it, your proposed fee is \$150.00 for the first x-ray tube and \$20.00 for each additional tube. It is my understanding that the proposed fee will be imposed every two years upon inspection of said dental offices.

I oppose the fees proposed for inspection of x-ray equipment because I feel the proposed fees of \$150.00 and \$20.00 for each additional tube are excessive. In my own particular office this would amount to \$210.00 every two years. I do not oppose the idea of fee for service, but would rather see fees proposed for West Virginia to either be less on an annual basis or make the inspection period less frequent, say every three years. It has been my experience over the years that the inspection of the x-ray equipment in my office takes less than 30 minutes and the proposed fee would result in a fee of \$210.00, which for 30 minutes of work I feel is excessive.

I appreciate your attention to this matter.

Sincerely,



Thomas W. Leslie, D.D.S.

TWL/lb

Marshall - Wetzel - Tyler Dental Society

35 East Benjamin Drive
New Martinsville, West Virginia 26155

June 22, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard:

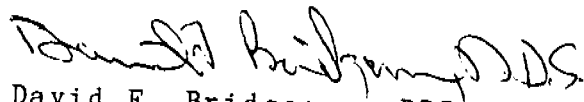
This letter is in response to proposed Rule No. 51, "Fee for Services" which relates to inspection of x-ray equipment in a dental office. I am writing on behalf of the Marshall-Wetzel-Tyler Dental Society, a group of approximately 20 dentists located in these counties. We are a component of the West Virginia Dental Association.

Our society opposes the proposed inspection fees on the grounds that they are excessive and not commensurate with the amount of time necessary to complete these inspections. A poll of our membership indicates that the average inspection time in their offices is less than 30 minutes, each practitioner having from 3 to 6 tubes. I believe my colleagues comments are reliable as inspection in my office in the past has always been under 30 minutes. I have 5 tubes.

We are not opposed to paying a fee for this service, in fact most of us are happy to see your people when they arrive and are relieved to find that our machines are operating safely. We feel however, that fees for inspection should be more in line with time and expense involved.

Marshall-Wetzel-Tyler Dental Society strongly urges your reconsideration of this ruling.

Sincerely,



David F. Bridgeman, DDS
Executive Council Delegate
M-W-T Dental Society

RECEIVED

JUN 25 1990

REGULATORY DEVELOPMENT



**Marshall-Wetzel-Tyler
Dental Society**
701 N. Main Street
New Martinsville, W. Va. 26155

E. Thomas Nagem, D.D.S., Inc.

1703 COMMERCE STREET
WELLSBURG, WEST VIRGINIA 26070
TELEPHONE (304) 737-3050

June 19, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3, Capitol Complex
Charleston, WV 25305

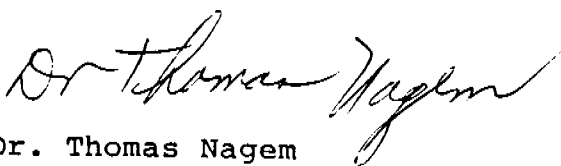
Dear Ms. Howard

In regard to rule no.51:

Your proposed fee for x-ray equipment in dental offices is excessive. Surrounding states have fees which are far lower than yours. North Carolina and Virginia have one of the highest fees ranging from \$65.00 to \$75.00. Your proposed fee of \$150.00 is at least twice that amount.

It would be a sign of good faith to the few professionals who are trying to remain in this state, if you would reconsider your fee structure. I realize the state is in a financial struggle, but gouging those people who are willing to remain and help the state of West Virginia will not be beneficial. It will only chase away the very people the state so desperately needs.

Sincerely


Dr. Thomas Nagem

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JUN 21 1990
REGULATORY DEVELOPMENT
SECTION



DR. DOUGLAS W. O'DELL

Temporomandibular Joint Disorders and Craniofacial Pain

1210 Virginia Street East
Charleston, West Virginia 25301
(304) 345-1210

June 18, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard,

I would strongly urge you to consider covering the proposed fee for inspection of x-ray equipment in dental offices. This society feels that the \$150.00 fee is excessive considering the amount of time required for the inspection.

Thank you for your consideration in this matter.

Sincerely,

Dr. Douglas W. O'Dell
President,
Kanawha Valley Dental Society

DWO/ss

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**



J. A. PALMER, D.D.S., M.S.

HAWLEY BLDG. MAIN STREET SUITE 930 • WHEELING, WV 26003 • (304) 232-6666

June 20, 1990

Dear Ms. Howard,

In response to proposed Rule No. 51, "Fee for Services" I must state that I find the fees to be charged for the inspection of dental X-ray equipment to be excessive, and not in line with other states.

In behalf of the Wheeling District Dental Society I must express my opposition. Please re-evaluate this proposed rule and consider lower fees.

Sincerely,

J.A. Palmer, D.D.S., M.S.
Secretary, WDDS

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JUN 21 1990
REGULATORY DEVELOPMENT
SECTION

EARL C. PRICE, D.D.S.

1717 Jefferson Street
Bluefield, WV 24701

Office (304) 327-2471

Home (703) 322-5607

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, W.Va. 25305

Dear Ms. Howard:

This is in response to proposed Rule No. 51, "Fee for Services", wherein the WV Division of Health proposed fee is \$150 for the first tube and \$20 for each additional tube. I understand the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

As president of the Mercer-McDowell Dental Society, I oppose the fees proposed for inspection of x-ray equipment in dental offices on the basis that the fees of \$150 and \$20 are excessive.

Our survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. South Carolina charges \$20 per tube per year;
3. North Carolina charges \$70 for the first tube and \$12.50 for each additional tube for inspections every three years.
4. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when conducted by a private firm who in turn certifies the safety of the equipment with the state;
5. Pennsylvania charges each dentist \$55 per year, which includes their annual license and inspection of x-ray equipment at least once every four years; and
6. Ohio charges \$25 for the first tube and \$12.50 per additional tube for inspections every five years.

EARL C. PRICE, D.D.S.

1717 Jefferson Street
Bluefield, WV 24701

Office (304) 327-2471

Home (703) 322-5607

I understand the need for fees for services being charged by the Division of Health. However, the fees should be commensurate with the expenses incurred for such inspections. Recent inquiries of dentists finds the time involved inspecting 4 to 6 tubes is between 15 and 30 minutes. This would result in fees between \$210 and \$250 per dental office having 4 to 6 tubes with less than 30 minutes of time involved in the inspection process.

Therefore, I find the proposed fees to be excessive and strongly urge the Division of Health to propose lower fees for inspection.

Very truly yours,



Earl C. Price, D.D.S.
President, Mercer-McDowell Dental Society

ECP/nlg

RECEIVED

JUN 21 1960

**REGULATORY DEVELOPMENT
SECTION**

THOMAS L. TYREE, D.D.S.
1702 OAK STREET
KENOVA, WEST VIRGINIA 25530
TELEPHONE 453-6765
June 18, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard,

This is in response to proposed Rule Number 51, "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. Your proposed fee is \$150.00 for the first tube and \$20.00 for each additional tube. These proposed fees will be imposed every two years.

The Huntington Dental Society strongly opposes this rule. We believe that the proposed fees are excessive and not commensurate with the expenses incurred for such inspections.

Inspections of dental x-rays is a necessary and worthwhile task, but the fees imposed must be fair. A West Virginia Dental Association survey of surrounding states for this service has demonstrated that the proposed West Virginia fee is too high. I have had my x-ray equipment inspected and have found that it took no longer than 15 to 20 minutes for this task. Charging \$150.00 for this service would be unfair.

The Huntington Dental Society urges you to carefully evaluate this proposed fee and lower it to a more equitable rate.

Sincerely,



Thomas L. Tyree, DDS
President, Huntington Dental Society

TLT/clt

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

James W. Vargo D.D.S.



PROFESSIONAL ARTS BLDG.
201 JONES AVE.
OAK HILL, WV 25901
(304) 465-5361

June 19, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard,

This letter is in response to proposed Rule #51 "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. As president of the New River Dental Society, I know I speak for the membership when saying that your proposed fees for this service are excessive.

I don't remember being charged for this service in the past, but I can understand the need for some fee to help with ever rising operating expenses. However, I have 4 tubes in my office and a 30 minute inspection would cost me \$210. But if my office were located in the state of Ohio, this same 4 tube inspection would cost me \$62.50.

I think this is easily seen as an excessive proposed fee and urge you to present this as such to the Division of Health, and come up with a more reasonable fee.

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

Sincerely,

James W. Vargo D.D.S.
James W. Vargo D.D.S.

Lambert & Bowling, Inc.

BOX 390
PINEVILLE, WEST VIRGINIA 24874
TELEPHONE 732-7567

J. S. LAMBERT, JR., D.M.D.

June 18, 1990

EVERETT W. BOWLING, D.D.S.

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard,

I am responding in opposition to proposed Rule # 51, " Fees for Services ", in which the West Virginia Division of Health proposes to charge dental offices an inspection fee on x-ray equipment.

I understand that there is a need to charge for services being provided by the Division of Health. However, the proposed fees are much higher than other states offering similar services. Also, the proposed fees are quite excessive considering the short time involved in providing an inspection.

Therefore, I urge the Division of Health to reconsider the proposal and recommend a more reasonable fee schedule.

Very truly yours,

Everett W. Bowling, D.D.S.

Everett W. Bowling, D.D.S.
Secretary
West Virginia Dental Association

RECEIVED
JUN 21 1990
REGULATORY DEVELOPMENT
SECTION

WEST VIRGINIA DENTAL ASSOCIATION

A. E. Skidmore, D.D.S.
President
WVU School of Dentistry
Morgantown, W. Va. 26506

Sami Ghareeb, D.D.S.
President Elect
P.O. Box 566
Poca, W. Va. 25159

Jay Henry Dyer, D.D.S.
Vice President
701 Hawley Building
Wheeling, W. Va. 26003

Mr. Richard D. Stevens
Executive Director
1002 Kanawha Valley Building
300 Capitol Street
Charleston, W. Va. 25301
Telephone (304) 344-5246



Everett W. Bowling, D.D.S.
Secretary
P.O. Box 879
Pineville, W. Va. 24874

Mark C. Kilcollin, D.D.S.
Treasurer
P.O. Box 618
Union, W. Va. 24983

Richard D. Smith, D.D.S.
Editor
West Virginia Dental Journal
1501 7th Avenue
Charleston, W. Va. 25312

June 18, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol complex
Charleston, WV 25305

Dear Ms. Howard

The West Virginia Dental Association opposes the fees proposed for the inspection of x-ray equipment in the dental offices throughout West Virginia. We feel that the fees are excessive and should be more reasonable and in line with fees charged by other states.

Thank you in advance for giving this matter a favorable review.

Respectfully

Sami M. Ghareeb, D.D.S.

SG:ls

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JUN 21 1990

REGULATORY DEVELOPMENT
SECTION

CONSTITUENT OF THE AMERICAN DENTAL ASSOCIATION

WEST VIRGINIA DENTAL ASSOCIATION

A. E. Skidmore, D.D.S.
President
WVU School of Dentistry
Morgantown, W. Va. 26506

Sami Ghareeb, D.D.S.
President Elect
P.O. Box 566
Poca, W. Va. 25159

Jay Henry Dyer, D.D.S.
Vice President
701 Hawley Building
Wheeling, W. Va. 26003

Mr. Richard D. Stevens
Executive Director
1002 Kanawha Valley Building
300 Capitol Street
Charleston, W. Va. 25301
Telephone (304) 344-5248



Everett W. Bowling, D.D.S.
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Pineville, W. Va. 24874

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Treasurer
P.O. Box 618
Union, W. Va. 24983

Richard D. Smith, D.D.S.
Editor
West Virginia Dental Journal
1501 7th Avenue
Charleston, W. Va. 25312

June 15, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard:

This is in response to proposed Rule No. 51, "Fee for Services", wherein the WV Division of Health proposes to charge an inspection fee for x-ray equipment in dental offices. Your proposed fee is \$150 for the first tube and \$20 for each additional tube. This Association understands the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

This Association opposes the fees proposed for inspection of x-ray equipment in dental offices on the basis that the fees of \$150 and \$20 are excessive.

Our survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. South Carolina charges \$20 per tube per year;
3. North Carolina charges \$70 for the first tube and \$12.50 for each additional tube for inspections every three years.
4. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when conducted by state personnel or \$35 per tube when conducted by a private firm who in turn certifies the safety of the equipment with the state;

**West Virginia Dental Association
Testimony Opposing Fees Proposed For
Inspection Of Dental X-Ray Equipment
By WV Division of Health
Public Hearing, June 22, 1990**

My name is Richard Stevens. I am Executive Director of the West Virginia Dental Association, a professional organization of licensed dentists.

I appear before this hearing to express this Association's opposition to the fees proposed in Rule 51, titled "Fees for Services," wherein the West Virginia Division of Health proposes to charge an inspection fee of \$150 for the first x-ray tube and \$20 for each additional x-ray tube in dental offices. This Association understands the proposed fees will be imposed every two years upon inspection of x-ray equipment in a dental office.

This Association opposes the proposed fees on the basis that they are excessive and are not commensurate with the expenses incurred for such inspections.

A survey of surrounding states' fees for this service finds the following:

1. Kentucky charges \$15 per tube for annual inspections;
2. South Carolina charges \$20 per tube per year;
3. North Carolina charges \$70 for the first tube and \$12.50 for each additional tube for inspections every three years;
4. Virginia charges a registration fee of \$15 per tube every three years, with an inspection fee of \$65 per tube when

conducted by state personnel or \$35 per tube when conducted by a private inspector who in turn certifies the safety of the x-ray equipment to the state;

5. Pennsylvania charges each dentist \$55 per year, which includes their annual license and inspection of x-ray equipment at least once every four years; and
6. Ohio charges \$25 for the first tube and \$12.50 per additional tube for inspections every five years.

The dental profession understands and supports the need for inspection of dental x-ray equipment and the State's responsibility in assuring the public that such equipment operates properly. Such a service is of value to dentists and dental officer personnel.

However, the fees proposed are excessive when compared to other states and are not reflective of the time and expense incurred by the State in conducting the inspections. Interviews with dentists around the State indicate the time involved in inspecting four to six tubes in a dental office is between 15 and 30 minutes. This would result in total fees between \$210 and \$250 with less than 30 minutes of time involved in the inspection process.

This Association estimates 800 dental offices in West Virginia. The average number of x-ray tubes in each office is estimated to be two. This would result in the Division of Health collecting \$136,000 every two years in inspection fees for dental x-ray equipment.

In finding the proposed fees to be excessive, this Association

respectfully requests the Division of Health to propose lower fees for inspection of dental x-ray equipment.

Thank you for allowing me to time to address this issue.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

WEST VIRGINIA DENTAL ASSOCIATION

A. E. Skidmore, D.D.S.
President
WVU School of Dentistry
Morgantown, W. Va. 26506

Sami Gharaeb, D.D.S.
President Elect
P.O. Box 588
Poca, W. Va. 25159

Jay Henry Dyer, D.D.S.
Vice President
701 Hawley Building
Wheeling, W. Va. 26003

Mr. Richard D. Stevens
Executive Director
1002 Kanawha Valley Building
300 Capitol Street
Charleston, W. Va. 25301
Telephone (304) 344-5246



Everett W. Bowling, D.D.S.
Secretary
P.O. Box 879
Pineville, W. Va. 24874

Mark C. Kilcollin, D.D.S.
Treasurer
P.O. Box 618
Union, W. Va. 24983

Richard D. Smith, D.D.S.
Editor
West Virginia Dental Journal
1501 7th Avenue
Charleston, W. Va. 25312

June 19, 1990

Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

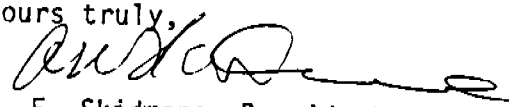
Dear Ms. Howard:

As President of the West Virginia Dental Association, I urge the Division of Health to lower their inspection fees for X-ray equipment as stated in proposed Rule No. 51, "Fee for Services."

Mr. Richard Stevens, our Executive Director, has conducted a survey of surrounding states' fees for this service. As you are now aware, your proposed fees of \$150 for the first tube and \$20 for each additional tube are in excess of any of our surrounding states.

Please reconsider your proposed fees and make them commensurate with others and the services rendered.

Yours truly,


A. E. Skidmore, President
WVDA

cc: Mr. Richard Stevens

clj

RECEIVED

JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

THOMAS S. WILKERSON, D.D.S.
DENTISTRY FOR CHILDREN
1218 VIRGINIA STREET, EAST
CHARLESTON, WEST VIRGINIA 25301

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JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

June 19, 1990

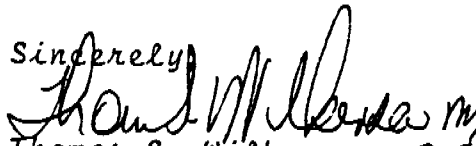
Kay Howard, Director
Regulatory Development Section
WV Division of Health
Room 204 Building 3
Capitol Complex
Charleston, WV 25305

Dear Ms. Howard:

I am writing about the proposed fees for x-ray equipment under Rule No. 51. The proposed fees are outrageous when compared to our neighboring states. My payment for treating patients covered by the state sponsored medicaid program is less than our surrounding states, yet the State wants to charge me more for their services. I am squeezed from all sides.

The testing of x-ray equipment is meant to protect the public, not to raise revenue. Please keep the service fee reasonable.

Sincerely,


Thomas S. Wilkerson, D.D.S.
Executive Council WV
Dental Association

TSW:dd

File (1)



The Senate of West Virginia
Charleston

July 9, 1990

J. D. BRACKENRICH
P. O. Box 767
LEWISBURG 24901

COMMITTEES:
NATURAL RESOURCES
(VICE CHAIRMAN)
BANKING AND INSURANCE
EDUCATION
ENERGY, INDUSTRY AND MINING
FINANCE
GOVERNMENT ORGANIZATION
JOINT COMMITTEE ON
GOVERNMENT OPERATIONS

Ms. Taunja Willis Miller, Secretary
Department of Health and Human Resources
1900 Kanawha Boulevard, East
Building 3, Room 206
Charleston, West Virginia 25305

Dear Secretary Miller:

After a review of your proposal for fee considerations and/or increases projected and submitted to the Secretary of State under the Code of 29 A-Emergency Rules and Regulations, I certainly am concerned with this submission.

As of this date I realize the Health Department has withdrawn this request for several of the fees. Parts of their fees would have been well warranted to keep our local Health Departments on an operating budget. I would suggest meeting with several legislators in an effort to provide an equitable fee for both the consumer and the Health Department.

A reply to these comments is requested.

Sincerely,

J. D. Brackenrich
Senator, Eleventh District

JDB/nh
cc: Ken Hechler

The Senate of West Virginia
Charleston
J.D. Brackenrich
P.O. Box 767
Lewisburg, WV 24901

ASSOCIATION
of Community Mental Health/Mental Retardation
Programs of West Virginia, Inc.

June 15, 1990

Board of Health
%Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

On behalf of the members of the Association, I wish to voice my concerns as regards the Fees for Services proposal.

Site inspections and Pre-opening surveys would require \$300 in fees for each new project. Review of plans for group homes will require an additional \$150. This at a time when Centers are being asked to participate in the effort to "downsize" and/or close existing state facilities by developing additional sites in the community to accommodate those individuals.

Although I agree the Department should realize a reasonable reimbursement for the cost of conducting reviews, I propose that behavioral health sites should be exempted from the Fees for Services rule at least until such time that the state achieves its targeted goals of moving large numbers of individuals from facilities to the community. If not this option, then perhaps consideration of a mechanism whereby Centers are reimbursed the cost of initial licensing in "start up" monies to be provided by the Department.

Sincerely,

John A. Russell

John A. Russell
Executive Director

cc: Don Wood, Association President

RECEIVED

JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**

1602 HARPER RD.

JOHN C. BAILES, O.D., — Chairman
CHARLES W. MERRITT, M.D., — Member
PAUL H. LOFLIN, D.D.S., — Member
LARRY E. HATFIELD, M.A., Member
LEONARD GAULDIN, Member



BECKLEY, WEST VIRGINIA 25801

HEALTH OFFICER, N. ALLEN DYER, M.D., M.P.H.

TELEPHONE 252-8531

MEMORANDUM

TO: Larry Arnold
Bureau of Administration and Finance

DATE: June 19, 1990

FROM: N. Allen Dyer, M.D., M.P.H., Health Officer
Beckley-Raleigh County Health Department

RE: PROPOSED RULE (64 CSR 51) FOR FEES FOR SERVICES

The Beckley-Raleigh County Board of Health an entity as defined under Section 3.2 of these proposed rules would like to take this opportunity to express concern per the following Sections:

Section: 64-51-9.3-(b)

This paragraph (b) is unnecessary and would defeat the purpose of authority to establish fees for service. Exemptions from fees for those unable to pay is assured under Section 4.2. For those who can pay a significant amount of revenue from fees for services would be lost.

Section: 64-51-6

This section states that fees can be charged from environmental health services as listed in Appendix II. It is not clear if local health departments can charge for services under this section.

Appendix I - Laboratory Service Fees

The section, fees for Environmental Microbiology Laboratory Service (1) lists a cost of \$10.00 per water specimen. No explanation is given on how this would be charged. The charging of \$10.00 per water specimen to local boards of health would be very costly in carrying out activities required by the State Health Department.

Appendix II - Environmental Health Services Fees

Section 4.D Water Well Permits, Homeowner (per well) lists a cost of \$50.00 per permit. This appears to be a duplicate fee since local health departments will be charging a \$50.00 permit fee under Title 64 West Virginia Legislative Rules Board of Health Series 30 Fees for Permits.

Appendix II - Environmental Health Services Fees

Section 7 Annual On-Site Sewage Disposal Permits (A) Innovative/Alternative type Sewage System lists a cost of \$150.00 per year. This would be cost prohibitive for many homeowners in our area and if this is intended to be a one time permit fee, it would be another duplicate fee since local boards of health can charge \$150.00 for Class II Systems or Home Aeration Units.

Appendix II - Environmental Health Services Fees

Section 7 Annual On-Site Sewage Disposal Permits (B and C) Class I and Class II Individual Sewage System Installers are to be charged a \$25.00 and \$50.00 annual fee. This appears to be in conflict with the regulations which requires that the installers certification be renewed every five years.

Appendix II - Environmental Health Services Fees

Section 8 Annual Food Permits (A) Food Service Establishment lists an annual cost of \$150.00. This appears to be in conflict with Title 64 West Virginia Legislative Rules Board of Health Series 30 Fees for Permits which establishes costs for food service establishments based on seating capacity.

NAD/kf

cc: Joan Kenney, Director
Division of Local Health

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



Calhoun General Hospital

June 21, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, West Virginia 25305

Dear Sir:

We have received the proposed West Virginia Legislative Rules, Division of Health Fees for Services 64 CSR 51. We are making the following comments.

We agree that there is a need for more funds to provide necessary public health services. The responsibility to provide funding for public health belongs to all citizens of West Virginia. Most hospitals in West Virginia, including Calhoun General Hospital, are facing increasing financial problems. Additional fees should not be added to hospitals, especially while the reimbursement continues to be inadequate for services provided.

The public health will suffer to a greater degree if these proposed rules are adopted. The Hospital will have less money to operate and provide services. The responsibility for funding this short-fall should not fall upon one segment of society, the hospital, but shared by all. The Legislature should provide funding and would provide additional funding if they felt it was necessary and resources were available.

Calhoun General doesn't have additional sources of income to pay these additional fees.

We are opposed to any increase in fees.

Sincerely,


Alvin (Al) R. Lawson
Administrator

ARL/lke

cc: Senator Donna J. Boleyr
Senator Keith Burdette
Senator Bob Dittmar
Senator Oshel Craigo
Delegate Randy Schoonover
Delegate Marjorie H. Burke

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

P.O. Box 490 / Grantsville, West Virginia 26147 / Telephone (304) 354-6121



Kanawha-Charleston Health Department

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



Donald M. Rosenberg, M.D.
Medical Director

For June 22nd Meeting

June 12, 1990

Ms. Joan Kenney
Division of Local Health Services
West Virginia State Bureau of Public Health
1411 Virginia Street, E.
Charleston, West Virginia 25301

Dear Ms. Kenney:

This letter is being written to state the position of the Kanawha Charleston Health Department with respect to fees for clinic services offered at Health Departments. I DO believe that uniform fees should be determined based upon actual cost for the delivery of ALL services provided by local Health Department clinics. These fees should be used to bill possible third party payers such as PEIA, Medicaid, or Commercial insurers if the patient has such coverage. All services where no third party payer exists should be tallied and submitted to Medicaid as the basis for requesting MATCHING DOLLARS for in-kind services.

I DO NOT believe that patients who do NOT have a third party payer should be subjected to any fees when attending Family Planning, STD, EPSDT, Chest (TB), or Immunization clinics for children. It is NOT in the best interest of achieving Public Health Goals if one sets a financial barrier in front of those persons we are trying to bring to our clinics in the interest of preventive medicine! One can make an argument for soliciting a fee for ADMINISTERING an adult immunization e.g. Influenza or pneumococcal vaccines, etc... or for vaccines administered for the purpose of foreign travel for pleasure. Other charges may simply turn people away from obtaining the services being offered, and that would be tragic, and would adversely impact our Public Health Program Goals in the 1990s.

Sincerely,

Donald M. Rosenberg M.D.

Donald M. Rosenberg, M.D., F.A.C.Pr.M.
Kanawha County Health Officer

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

ADMINISTRATION
348-6821

CLINIC SERVICES
348-8788

HOME HEALTH SERVICES
348-8188

ENVIRONMENTAL SERVICES
348-8088

LINCOLN COUNTY HEALTH DEPARTMENT

P.O. BOX 527

HAMLIN, WV 25523

PHONE 824-3330

May 16, 1990

West Virginia Board Of Health
Charleston, WV 25305

RE: Letter of support for the increase in fees

Dear Mr. Chairman,

As the part time physician director of the Lincoln County Health Department I would like to offer my full support for the proposed fee increase that you have before you on May 23, 1990. 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 I am totally in support of the proposed fee increases.

Sincerely yours,



J. Loren Smith, D.O.

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

MARSHALL COUNTY FARM BUREAU

EMMITT FRANCIS, Secretary

RT No. 3, BOX 467

MOUNDSVILLE, WEST VIRGINIA 26041

RECEIVED

JUN 11 1990

June 7, 1990

SECRETARY'S OFFICE
WV DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

Thelma Willis Miller, Secretary
Dept. of Health and Human Resources
Building 3 Capitol Complex
Charleston, W.V. 25305

Dear Secretary Miller:

This letter is being written in reference to Proposed Rule 51-
Fee for service.

The Marshall County Farm Bureau is opposed to these fees
for the following reasons:

1. We feel the Health Department has been doing a good job
of providing consumers protection in the areas of quality food and
health services. To add fees that are proposed here would, we feel,
cause an unnecessary burden on the ones providing the food and ser-
vices. Also such costs would probably be passed on to consumers.
2. The Health Department is charged with the duty to see that
consumers are protected and for this reason state tax dollars should
be used instead of fees imposed on those providing the services.
3. These fees are in effect another tax on certain portions
of our population.
4. While Farm Bureau is primarily concerned with fees that are
imposed on agriculture, we are also very much concerned that other
people such as hospitals, dentists, water and sewage plants and
veterinarians and others will have to pay these fees. These fees
will undoubtedly be passed on to all of us receiving their services.
5. We are also concerned as to who determines how those fees
are to be assessed. Two examples might be who determines produ-
tion per day on farms? Will this be a yearly average or will it
be taken at a certain time of the year? We are also concerned that
milk haulers will have to pay an annual fee for their hauling license.
6. Another concern we have is that the proposed rules say
nothing about a limit to these fees. We are concerned that these
fees could be raised in the future.

Yours truly,

Emmitt Francis

Emmitt Francis, Secretary



JAMES P. BAILEY, D.V.M.
CHAIRMAN

MRS. LAURENCE E. TIERNEY
VICE CHAIRMAN

N. ALLEN DYER, M.D., M.P.H.
HEALTH OFFICER

M E M O R A N D U M

TO: Larry Arnold
Bureau of Administration and Finance

DATE: June 19, 1990

FROM: N. Allen Dyer, M.D., M.P.H., Health Officer *MD*
Mercer County Health Department

RE: PROPOSED RULE (64 CSR 51) FOR FEES FOR SERVICES

The Beckley-Raleigh County Board of Health an entity as defined under Section 3.2 of these proposed rules would like to take this opportunity to express concern per the following Sections:

Section: 64-51-9.3-(b)

This paragraph (b) is unnecessary and would defeat the purpose of authority to establish fees for service. Exemptions from fees for those unable to pay is assured under Section 4.2. For those who can pay a significant amount of revenue from fees for services would be lost.

Section: 64-51-6

This section states that fees can be charged from environmental health services as listed in Appendix II. It is not clear if local health departments can charge for services under this section.

Appendix I - Laboratory Service Fees

The section, fees for Environmental Microbiology Laboratory Service (1) lists a cost of \$10.00 per water specimen. No explanation is given on how this would be charged. The charging of \$10.00 per water specimen to local boards of health would be very costly in carrying out activities required by the State Health Department.

Appendix II - Environmental Health Services Fees

Section 4.D Water Well Permits, Homeowner (per well) lists a cost of \$50.00 per permit. This appears to be a duplicate fee since local health departments will be charging a \$50.00 permit fee under Title 64 West Virginia Legislative Rules Board of Health Series 30 Fees for Permits.

MEMBERS

MARK WILLS • FRED P. BURTON • W. GRADY CARPER • PAUL McMANAWAY • MISS MARGARET PAGE • RUDOLPH JENNINGS • MRS. BEA PAME

ROUTE 2 • BOX 382 • BLUEFIELD, WEST VIRGINIA 24701 • 325-3821 (BLUEFIELD) • 426-6511 (PRINCETON)

Appendix II - Environmental Health Services Fees

Section 7 Annual On-Site Sewage Disposal Permits (A) Innovative/Alternative type Sewage System lists a cost of \$150.00 per year. This would be cost prohibitive for many homeowners in our area and if this is intended to be a one time permit fee, it would be another duplicate fee since local boards of health can charge \$150.00 for Class II Systems or Home Aeration Units.

Appendix II - Environmental Health Services Fees

Section 7 Annual On-Site Sewage Disposal Permits (B and C) Class I and Class II Individual Sewage System Installers are to be charged a \$25.00 and \$50.00 annual fee. This appears to be in conflict with the regulations which requires that the installers certification be renewed every five years.

Appendix II - Environmental Health Services Fees

Section 8 Annual Food Permits (A) Food Service Establishment lists an annual cost of \$150.00. This appears to be in conflict with Title 64 West Virginia Legislative Rules Board of Health Series 30 Fees for for Permits which establishes costs for food service establishments based on seating capacity.

NAD/kf

cc: Joan Kenney, Director
Division of Local Health

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JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Town of Middlebourne

Stephen D. Seago
Mayor

P. O. Box 167
Main Street
Middlebourne, West Virginia
26149
(304) 758-4771

David M. Smith
Recorder/Treasurer

June 14, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Dear Sir or Madam:

The Town of Middlebourne vigorously objects to the proposed WV Department of Health and Human Services fees (TAX) based on water and wastewater sales, testing and certifying operators, construction permit fees, operation permit fees, and laboratory fees.

In this time of depressed economy our residents are constantly faced with having to bear the burden of all rising costs.

The WV Department of Health and Human Services provides much needed services as all are well aware, but the thought behind running a successful department is cutting costs not raising fees in this manner.

We, the Town Officials, are struggling with meeting the increased needs of our community to the best of our ability.

We have just had to implement a 15% water and sewer rate increase and this is just barely enough to stay operational.

If the aforementioned proposal by the Department of Health and Human Services is placed into forced compliance, we would again have to raise rates to our customers.

We are a small community and the costs would be staggering.

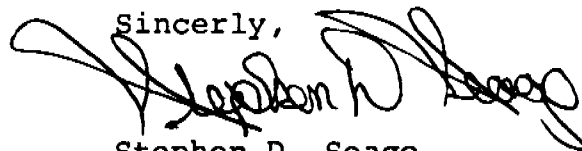
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JUN 18 1990

**REGULATORY DEVELOPMENT
SECTION**

SDS/lis

Sincerely,



Stephen D. Seago
Mayor



Mid-Ohio Valley Health Department

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

Dr. Thomas Lilly
Chairperson

Judith L. Shannon
Vice-Chairperson

Anthony Minard
Treasurer

Curtis W. Dickson
Executive Director

June 18, 1990

State of West Virginia
Regulatory Department
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

RE: Bill #4660
Fee for Service

Dear Sirs:

Mid-Ohio Valley Health Department (MOVHD) has the following concerns regarding the proposed bill for initiation of fees for Public Health Services.

1. The proposed bill has allowed a fee exception for persons seeking medical evaluation, treatment, and /or epidemiologic follow-up with sexually transmitted diseases, tuberculosis, and immunization services.

Vaccines and medications for these services are provided through the State of West Virginia's Bureau of Public Health. However, no provision has been made to cover the cost of the professional services required to administer these medications.

Persons receiving immunizations are generally more financially able to pay than a majority of our clients. Indeed, many express the desire to compensate the health department for these services. Therefore, MOVHD feels that no fee exception should be mandated for these services.

2. MOVHD disagrees with the proposal for service fees which vary from county to county. A statewide fee rate would insure consistency and remove the financial advantage of clients seeking health services outside their residential area. However, if counties are permitted to set various fees, then charging a maximum fee for residents of other counties might help alleviate clients seeking services outside their area.
3. MOVHD is a proponent of fee waivers for financially disadvantaged clients, as opposed to use of a sliding fee scale. To properly calculate a sliding fee scale, a means of income verification is

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

State of WV, Regulatory Department
Page 2
June 18, 1990

required. The cost of implementing such a verification program would offset any additional funds generated by this sliding fee proposal.

MOVHD, as the health representative for the counties of Calhoun, Pleasants, Ritchie, Roane, Wirt, and Wood, in general agrees with and applauds the proposals set forth in Bill #4660. However, we feel strongly that our proposed changes would strengthen the impact of this bill for all the affected West Virginia agencies.

Sincerely,



Curtis W. Dickson
Executive Director

CWD/ss

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JUN 21 1990
REGULATORY DEVELOPMENT
SECTION

Rt. 1, Box 42-A
Green Bank, WV 24944
June 14, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

Re: Proposed Rule for Fees for Services

To whom it may concern:

This is to inform you that on June 5, 1990, the local Board of Health met and discussed two major topics: Regionalization and Fees for Services. A motion was passed to reject regionalization. No legislative intent was found after the last session, but the move continues. A discussion followed on the Fees for Services proposal. We do not understand how this fee will be charged, billed to the insurance companies, or collected. The services mentioned have been provided the citizens of our county by the staff of the Health Department free of charge. Some of the services are mandated by state law and not completely accepted by the citizens of the county. However, a good working relationship has been reached with the health and welfare of the citizens as our main goal. Now, these services, which were forced on them reluctantly at no cost, must now be paid for by them. We see many problems, administratively, in collecting any fees for services, mandated by the state, which have finally been accepted.

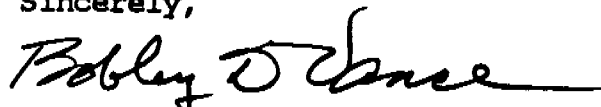
Another point was raised about milk samples collected for testing. A delivery truck to our county may also travel to at least four other counties on the same trip on the same day. If each county collects a milk sample from the truck, will the company pay the set fee to each department for duplicate services and would they be liable?

Billing insurance companies (i.e., PEIA) is complicated and payment could take forever. Another person will probably be necessary to complete the billing/collection process.

The people using many of these services are financially unable to pay and we fear that the citizens needing health services the most will stop using the health department for much needed services because of the fees being proposed.

We urge you to reconsider the charging of fees for services and reach as many people as possible with preventive health care now paid for with their tax monies already.

Sincerely,



BOBBY D. VANCE, Chairman
Pocahontas County Health Dept.

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JUN 21 1990

**REGULATORY DEVELOPMENT
SECTION**

RESILIENT FLOOR COVERING INSTITUTE

966 Hungerford Drive • Suite 12-B
Rockville, MD 20850
301 340 8580

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

June 21, 1990

VIA FEDERAL EXPRESS

Regulatory Development
Room 204, Building 3
Capital Complex
Charleston, West Virginia 25305

Dear Sir or Madam:

The Resilient Floor Covering Institute ("RFCI") understands that a public hearing will be held Friday, June 22, 1990 regarding the proposed West Virginia Division of Health (the "Division") Fees for Services rules (the "proposed rules"), 64 C.S.R. 51. RFCI respectfully requests that these comments be included in the hearing record of the proposed rules.

RFCI is a trade association of resilient floor covering producers in the United States who are currently engaged in the manufacture of floor tile and sheet vinyl products for residential and commercial installation. A list of RFCI member companies is attached as Appendix A.

RFCI strongly opposes the collection of asbestos enforcement, oversight and notification fees, pursuant to Appendix II §§ 9 of the proposed rules, from traditional flooring craftsmen in West Virginia who remove resilient floor covering products consistent with industry recommended work practices. As explained in the attached comments previously submitted to the Division (Attachment B), RFCI believes that asbestos licensing and training requirements should not apply to the removal of resilient flooring products (e.g. sheet vinyl flooring, resilient tile, and associated adhesives) when the industry recommended work practices are followed. Indeed, the U.S. Environmental Protection Agency ("EPA") and other government agencies have recognized that resilient flooring is nonfriable, see Attachment C, and EPA does not require the use of accredited asbestos abatement contractors when nonfriable ACM is removed from schools in a manner where the ACM remains nonfriable (e.g. removing resilient flooring in accordance with the recommended work practices). Because flooring craftsmen who remove resilient flooring properly should not be subject to asbestos licensing and

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Resilient Tile Institute

training requirements, they should not be required to pay the proposed fees for asbestos enforcement, oversight and notification.

Importantly, since RFCI's comments were submitted to the Division, several significant developments have occurred at the federal level which reaffirm RFCI's view that activities involving resilient floor covering materials should not be subject to the full panoply of asbestos abatement and training requirements.

First, the Occupational Safety and Health Administration ("OSHA") has reviewed a recent study showing that the action level and short term excursion limit under the OSHA asbestos standard will not be exceeded when floor tiles are removed consistent with the recommended work practices. Based on this review, OSHA has determined that the study can be considered "historical data" and used as the basis for an exemption from initial monitoring requirements under OSHA's asbestos standard for removals of floor tile conducted in accordance with the Recommended Work Practices. See Appendix D.

Secondly, in a NESHAP guidance memorandum dated February 23, 1990, EPA reaffirmed that resilient floor tile is nonfriable ACM and does "not release significant amounts of fiber when disturbed." See Appendix E. EPA clarified at the same time that nonfriable floor tile does not need to be removed prior to demolition or renovation unless it is subjected to sanding, grinding, or abrading -- activities that are prohibited by the recommended work practices.

In light of these new federal developments, RFCI respectfully requests that the Division limit the imposition of asbestos enforcement and notification fees to activities involving only friable ACM and that it exclude proper removals of resilient flooring from its asbestos abatement licensing and training requirements.

Sincerely,

Walter D. Anderson *WDA*

Walter D. Anderson
Managing Director

Enclosures: 5
cc: Joseph Schock
Kay Howard

APPENDIX A

**RESILIENT
FLOOR
COVERING
INSTITUTE**

1000 Longview Drive • Suite 12 B
Rockville, MO 20850
301 340 8580

January 1, 1988

RESILIENT FLOOR COVERING INSTITUTE

MEMBERSHIP LIST

REGULAR MEMBERS

American Biltrite, Inc., Lawrenceville, NJ 08648
Azrock Industries Inc., San Antonio, TX 78265
Congoleum Corporation, Lawrenceville, NJ 08648
Kentile Floors, Inc., Brooklyn, NY 11215
Mannington Mills, Inc., Salem, NJ 08079
National Floor Products Co., Florence, AL 35630
Tarkett Inc., Parsippany, NJ 07054

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RESILIENT FLOOR COVERING INSTITUTE

966 Hungerford Drive • Suite 12-B
Rockville, MD 20850
301 340 8580

September 30, 1989

Regulatory Development Section
Attn: Ms. Kay Howard
Division of Health
Department of Health and Human Services
Capitol Complex-Bldg. 3, Room 507
Charleston, West Virginia 25305

Dear Ms. Howard:

The Resilient Floor Covering Institute ("RFCI") appreciates the opportunity to submit these comments on the proposed West Virginia, Department of Health and Human Services, Asbestos Abatement Licensing Rules, 64 C.S.R. 63 (the "Proposed Rule"), which, when promulgated in final form, would supplant the Emergency Asbestos Abatement Licensing Rule, 64 C.S.R. 63 (1989) ("Emergency Rule"). We have been informed by the Department of Health and Human Services ("Department") that comments on the Proposed Rule would be accepted through October 2, 1989.

RFCI is a trade association of resilient floor covering producers in the United States who are currently engaged in the manufacture of tile and sheet vinyl products for residential and commercial installation. A list of RFCI member companies is attached as Appendix A.

The Emergency Rule currently in effect requires that any asbestos-containing material ("ACM"), whether friable or nonfriable, be removed by asbestos contractors and workers licensed by the state. The Proposed Rule would impose similar requirements on contractors and workers engaged in activities involving both friable and nonfriable ACM. Thus, the Emergency and Proposed Rule prohibit traditional flooring craftsmen from removing and repairing resilient flooring unless they obtain an asbestos Contractor or worker license and take a four-day training course in asbestos abatement procedures.

We believe that the Emergency Rule and Proposed Rule are unnecessarily overbroad and need to be revised and clarified as they apply to nonfriable ACM, such as resilient floor covering (floor tile and sheet vinyl flooring). RFCI believes that the Emergency and Proposed Rules should not impose the full panoply of asbestos licensing, regulation, and training requirements on traditional flooring craftsmen who remove or repair non-friable

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Resilient Tile Institute

resilient flooring consistent with the industry recommended work practices. In order to comport with the intent of the statute pursuant to which it is promulgated, W.Va. Code § 16-32-1 et. seq., and the physical properties of nonfriable ACM, we believe that the final Rule should recognize the distinction between friable and nonfriable ACM. Resilient floor tile and sheet vinyl flooring are nonfriable products and remain nonfriable when removed consistent with industry work practices. Thus, licensed asbestos abatement contractors and workers trained in asbestos abatement procedures are not needed to remove resilient flooring. Instead, traditional flooring craftsmen can remove such flooring in both a health protective and cost-effective manner.

Resilient floor tile and sheet vinyl flooring are "nonfriable" because the physical properties of these products defy their being crumbled, pulverized or reduced to powder by hand pressure. The nonfriable characteristics of these products result from their manufacturing process. These products were manufactured so that any asbestos fibers were firmly encapsulated by a thermoplastic binder in the product. Furthermore, the mere chipping or breakage of a product, for example, does not cause the product to become friable because the broken pieces also cannot be reduced to powder by hand pressure.

Federal agencies and advisory committees also have consistently and properly taken the position that asbestos-containing resilient flooring products are nonfriable. For example, EPA described resilient tile and sheet vinyl flooring as not being friable in its final ACM in school regulation which became effective on December 14, 1987. Similarly, OSHA, in an appendix to its asbestos standard, states that "[m]aterials such as vinyl-asbestos floor tile . . . are considered nonfriable and generally do not emit airborne fibers unless subjected to sanding" 51 Fed. Reg. 22612, 22754 (June 20, 1986). Likewise, the General Service Administration ("GSA") in October, 1986, wrote that "[a]sbestos is still used in its nonfriable form (which means

1/ EPA, in its National Emission Standard for Asbestos, has defined "friable" to mean any "material containing more than 1 percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry." 40 C.F.R. § 61.141.

2/ The EPA preamble to this rule describes "nonfriable ACM" to include floor tile, 52 Fed. Reg. 41826, 41845 (Oct. 30, 1987), and describes "miscellaneous ACM" to include vinyl flooring. *Id.* at 41830. A recent EPA Guidance Document states that "most ACM in this [other miscellaneous] category (e.g., wall board, ceiling tile, floor tile) is hard and nonfriable." EPA, "Guidance for Controlling Asbestos-Containing Materials in Buildings" (June 1985) at 2-8.

it doesn't crumble easily) in building products and materials ranging from floor tiles to roofing shingles." GSA Answers Your Asbestos Concerns (Oct. 1986).^{3/} Thus, there is a clear consensus among federal governmental bodies that resilient flooring products in normal condition are nonfriable.

By applying to nonfriable ACM, the Emergency Rule and Proposed Rule also are significantly broader than EPA's asbestos in school program where accredited personnel are required to conduct a "response action" which is limited to removals only involving friable ACM. See 40 C.F.R. §§ 763.83, .90(g). Similarly, the EPA National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos applies only to renovations and demolitions of friable asbestos materials. 40 C.F.R. § 61.145. Likewise, many states, including Arkansas, California, Colorado, Louisiana, and Ohio, limit their asbestos licensing programs to abatement projects involving friable ACM and/or specifically exempt resilient flooring removals. In essence, the "friable only" approaches continue to reflect EPA's judgment in 1974 that nonfriable activities "will not release asbestos in a manner which is dangerous to human health." EPA 450/2-74-009a, at 16 (October, 1974).

Importantly, the resilient flooring industry has developed a defined set of work practices for the removal of resilient flooring, which prohibit sanding, whereby the flooring remains nonfriable during removal. A copy of these work practices is enclosed herewith as Appendix B. These work practices have been expressly recognized by OSHA as minimizing asbestos exposure and satisfying OSHA asbestos exposure limits. For example, during the development of the OSHA asbestos standard, the Agency reviewed studies involving the removal of floor tile and sheet vinyl flooring using the recommended work practices. Based on these

3/ Statements by other government agencies and advisory committees include:

" . . . Nonfriable materials, including asbestos-cement (A-C) pipe A-C sheets, Resilient Floor Coverings, and Roofing Felts . . ." HQ USAF Bolling AFB DC Jul 81 Policy on the Use of Building Materials Containing Asbestos.

"The majority . . . of asbestos used in construction materials is considered nonfriable -- immobilized in strong binding materials, such as cement or tiles, which do not readily release asbestos fibers to the air." J.H. Paull, Division of Environmental Health Engineering, School of Hygiene and Public Health, the Johns Hopkins Univ. "GAO Asbestos Control Management Document," January 15, 1985.

studies, the Agency cited these recommended work practices as the basis upon which "OSHA determined that it is feasible to comply with the 0.2 f/cc PEL during the removal and installation of vinyl-asbestos flooring." 51 Fed. Reg. 22612, 22663 (June 20, 1986). OSHA recently reaffirmed its review of these studies in the preamble to the OSHA standard amendment establishing a short-term excursion limit of 1 f/cc average over 30 minutes. The Agency stated that "there appears to be virtually no possibility that the excursion limit [during removals] would be exceeded if the recommendations of the Resilient Floor Covering Institute were followed." 53 Fed. Reg. 35610, 35614 (Sep. 14, 1988).

In view of the above, there is no necessity for applying the full panoply of asbestos abatement registration, licensing, and training requirements upon traditional flooring craftsmen working with nonfriable ACM.

Moreover, the additional costs of such an overbroad regulatory program are significant and inappropriate, especially considering there is not a need for full asbestos abatement procedures for resilient flooring removals performed consistent with the recommended work practices. For instance, the great number of homeowners, commercial building owners, and public housing owners, including the State of West Virginia, are incurring and will incur significantly greater costs because the Proposed Rule would require the exclusive use of more expensive, licensed asbestos abatement contractors to remove resilient flooring, while excluding traditional flooring craftsmen from this activity. Other economic costs for the replacement of resilient floor covering will also increase significantly. The flooring craftsmen of West Virginia would be unfairly prevented from practicing their trade because the costs of obtaining an asbestos abatement license and more costly asbestos abatement insurance (if even available) may be prohibitive. Indeed, the licensing provisions and the significant cost of complying therewith are particularly unnecessary and inappropriate because the EPA-approved four day training course required for the license principally focuses on full asbestos abatement procedures involving friable ACM (e.g., decontamination units, negative pressure enclosures, isolated showers, and other specialized procedures). However, none of those asbestos abatement procedures are intended to apply to activities where the OSHA asbestos exposure standard is not expected to be exceeded (e.g., where resilient flooring is removed consistent with industry work practices). As explained above, OSHA has recognized that the use of the recommended work procedures will not result in asbestos exposure exceeding the permissible exposure limit and excursion limit under the current asbestos standard.

RFCI further believes that it is inappropriate for the Department to generate revenues for operating the West Virginia

asbestos program by imposing substantial fees on persons who remove or repair resilient flooring consistent with the recommended work procedures. These craftsmen and their customers should not have to bear the burden of paying for the state's asbestos program.

In addition to the great deal of money the traditional flooring craftsmen would have to spend in order to qualify as asbestos abatement contractors in order to continue their craft in West Virginia, unless the Proposed Rule is revised, the licensing requirement also will exacerbate the shortage of accredited asbestos removal contractors in the United States by requiring them in situations where full abatement procedures are not needed, see EPA Study of Asbestos-Containing Materials in Public Buildings (February 1988), while at the same time unfairly preventing the traditional floor craftsmen from practicing their trade.

Overall, RFCI strongly believes that the best interests of housing and building owners and occupants, workers, and the public will be served if flooring contractors and workers who repair and remove resilient flooring consistent with the recommended work practices are not subject to asbestos licensing and training requirements. Flooring craftsmen would still be subject to the requirements of the OSHA asbestos standard and the NESHAP asbestos standard. Thus, RFCI requests that the Emergency Rule and the Proposed Rule be revised to apply only to abatement projects involving friable ACM. Alternatively, we recommend that the Emergency and Proposed Rule specifically except contractors and workers who remove resilient flooring using procedures that do not render the flooring friable.

Consistent with these comments, we recommend that the definition of "asbestos abatement" in § 64-63-3.2 be revised to apply only to friable ACM. In the alternative, a new definition of "asbestos containing material" could be added which would include only material containing friable asbestos. A third alternative would be to revise the definition of "repair" and include a new definition of "removal" so that both terms apply only to friable ACM.

The terms "asbestos abatement", "repair", and "removal", are not defined in the West Virginia Asbestos Licensing Statute. However, the statute defines "enclosure" only to apply to friable ACM. W.Va. Code § 16-32-2(m). Our proposed alternative definitions would be consistent with the legislature's and Department's limitation of the term "enclosure" to friable ACM. Moreover, by the statute not defining "asbestos abatement", "repair", and "removal", the Legislature did not prohibit the Department from limiting those terms to friable ACM and, indeed, have strongly indicated through the definition of "enclosure" that those terms should be so limited. By limiting the asbestos

licensing requirements to friable ACM projects, the West Virginia regulations would be consistent with the EPA asbestos-in-school accreditation requirements and the licensing requirements of many other states which adequately protect human health.

A clarifying revision should also be made to the definition of "friable" asbestos to make it consistent with the EPA definition. EPA defines "friable asbestos material" as "any material containing more than 1 percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry." 40 C.F.R. § 61.141. We recommend, in order to avoid conflicts between West Virginia and the traditional federal definition, that the EPA definition be used in the final Rule. Moreover, even under the proposed "friable" definition, resilient floor tile and sheet vinyl flooring are not "friable" because these products, do not emit fibers "under normal use and maintenance." W. Va. Code § 16-32-2(n). Accordingly, to make it explicitly clear, the definition of "friable" should identify resilient floor tile and sheet vinyl flooring as nonfriable.

RFCI also requests that certain additional clarifications be made to the Proposed Rule. First, Section 64-63-7.2 of the Rule should be revised to clarify that when a flooring dealer or contractor, who is subject to federal OSHA standards, removes a resilient flooring covering structure (floor tile or sheet vinyl) which contains asbestos, in compliance with the Occupational Exposure to Asbestos Standard (29 C.F.R. § 1926.58), that activity is exempt from the notification and license provisions of the Rule. The underlying statute makes clear that the statutory exemption (Section 16-32-11) applies to both the notification and licensing requirements of the regulation and is not limited to the facility owner or its employee since it explicitly requires that the facility, which presumably means the workers working with the ACM, presently operate under the Federal OSHA Standard. However, the Proposed Rule is more narrowly stated. It should therefore be revised to make the exemption in the Rule consistent with the statute and exempt a flooring dealer or contractor who is subject to federal OSHA standards and in compliance with the Occupational Exposure Asbestos Standard.

Second, the Department of Health should clarify in the regulation, preamble, or policy guidance that a flooring craftsmen or contractor who installs a new floor covering over the top of an existing resilient floor covering structure (e.g., floor tile or sheet vinyl) which contains asbestos is not subject to the Rule. Thus, a craftsman or contractor who "goes over the top" should not be required to obtain an asbestos contractor or worker license where: (1) a new floor covering is installed over existing asbestos-containing floor covering; (2) carpeting is installed over the existing floor covering; or (3) embossing or other leveling compound or wood substitute is applied to the existing

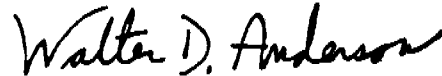
floor covering, and then the new resilient floor covering is installed.

Finally, these comments, while explicitly directed for the most part at the Proposed Rule, apply equally to the Emergency Rule. Thus, to the extent that the current Emergency Rule, or any provision thereof, is not supplanted or rescinded, or otherwise continues in effect, we recommend that the Emergency Rule be revised consistent with these comments on the Proposed Rule.

RFCI believes that our concerns explained above would enable the traditional flooring craftsmen to continue their business of removing resilient flooring in a health protective and cost effective manner without the need for an unnecessary asbestos license or permit. These changes would provide a significant cost savings to owners, including the State of West Virginia, residents, and the general public by allowing an appropriate alternative to more expensive asbestos abatement contractors.

If you have any questions about our comments, please do not hesitate to contact me or our legal counsel, William N. Hall (202) 466-1118. We also would like to meet with you and your staff to discuss our comments at your earliest convenience.

Sincerely,



Walter D. Anderson
Managing Director

Enclosure

January 1, 1988

RESILIENT FLOOR COVERING INSTITUTE

MEMBERSHIP LIST

REGULAR MEMBERS

American Biltrite, Inc., Lawrenceville, NJ 08648
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National Floor Products Co., Florence, AL 35630
Tarkett Inc., Parsippany, NJ 07054

APPENDIX B

**RECOMMENDED
WORK PROCEDURES
FOR RESILIENT
FLOOR COVERINGS**

Issued by
Resilient Floor Covering Institute
966 Hungerford Dr., Suite 12-B
Rockville, MD 20850

EFCI-WF-1989
Revised 1987

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RECOMMENDED WORK PROCEDURES FOR RESILIENT FLOOR COVERINGS



WARNING

Do Not Sand Existing Resilient Flooring, Backing, Or Lining Felt. These Products May Contain Asbestos Fibers That Are Not Readily Identifiable. Sanding Of Asbestos Containing Material Can Place Fine Particles Of Asbestos In The Air. These Asbestos Particles If Inhaled May Cause Serious Bodily Harm. Smoking Greatly Increases The Risk Of Serious Bodily Harm.

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IMPORTANT INFORMATION FOR INSTALLERS OF RESILIENT FLOOR COVERINGS

Introduction

The member companies of the Resilient Floor Covering Institute are manufacturers of the following forms of Resilient Floor Coverings:

1. Sheet Vinyl.
2. Vinyl Floor Tile.

While today these products do not contain asbestos, it is possible that in the past some of these products, including asphalt tile, may have contained asbestos fibers which were firmly encapsulated in the products to provide durability and adaptability.

The Resilient Floor Covering Institute is providing this booklet of recommended work practices for installing or removing resilient floors so that you may proceed with this work in the safest possible way.

There are several general rules to follow:

1. Unless absolutely positive beyond any doubt that the floor is a non-asbestos product, assume it contains asbestos and treat it in the manner prescribed in this pamphlet for a floor containing asbestos.
2. It is preferred to install a new floor over a floor which contains asbestos rather than to remove that floor. This can be done by several methods—new underlayment, use of leveling compounds, following installation procedures recommended by the floor covering manufacturer.
3. Never sand any resilient floor or its backing to remove them from the floor.
4. All sweeping must be done wet.
5. All scraping must be done wet.
6. Material removed must be placed in heavy-duty polyethylene bags at least 6 mils thick, properly labeled, and disposed of in an authorized land fill.

WHAT ABOUT ASBESTOS?

In the past decade much attention has been focused on the relationship between exposure to asbestos fibers and respiratory ailments. It has been determined that inhalation of free airborne asbestos fibers may be injurious to health. However, the asbestos fibers contained in the above types of resilient floor coverings are *not free*, but firmly encapsulated or *locked in* the product during the manufacturing process. Asbestos contained therein will not become airborne during the lifetime of the product when these products are used and maintained as recommended by the manufacturer.*

Recommended Work Procedures

PREPARATION OF FLOORS WITH EXISTING RESILIENT FLOOR COVERINGS TO RECEIVE NEW RESILIENT FLOOR COVERINGS

Follow the installation instructions published by the manufacturer of the new floor covering when a new resilient sheet or tile floor covering is to be installed on a surface presently covered with a resilient floor covering. These instructions will tell you what must be done to the existing surface before the new resilient floor covering can be installed.

Of the four general procedures listed below, Items 1 and 2 are covered by manufacturers' instructions; Items 3 and 4 are covered specifically in this Work Procedures Manual**:

Resilient Floor Covering Installed Over....

1. *The Existing Surface.* Follow the manufacturer's instructions for removing wax, filling in low spots, etc. Use wet scrubbing. *Never sand an existing resilient floor covering.*
2. *New Underlayment.* Install panels on top of the existing surface (wood subfloors only) and apply new floor covering directly over this. Follow the manufacturer's instructions.
3. *Partially Removed Existing Adhered Sheet Vinyl Floor Covering.* See instructions below under heading "Partial

*See "Monitoring for Airborne Asbestos Fibers Vinyl Asbestos Floor Tile" and "Monitoring for Airborne Asbestos Fibers Sheet Vinyl Floor Covering," reports prepared by SRI International, 1979-79. (Available on request from the Resilient Floor Covering Institute, 940 Montgomery Ct., Suite 12-B, Rockville, Md 20850.)

**In case of newer variations, the manufacturer's instructions should be followed.

Removal of Existing Adhered Sheet Vinyl Floor Covering," page 8.

4. *Completely Removed Existing Resilient Floor Covering*
 - (a) *Sheet Vinyl*—See instructions below:
 1. "Complete Removal of an Unadhered (Loose-Lay) or Peripherally Adhered Sheet Vinyl Floor Covering," page 6.
 2. "Complete Removal of an Existing Adhered Sheet Vinyl Floor Covering," page 11.
 - (b) *Tile*—See instructions under heading "Complete Removal of an Existing Resilient Tile Floor Covering," page 14.

SHEET VINYL FLOOR COVERING

Preparation of Floors With Existing Sheet Vinyl Floor Covering to Receive a New Resilient Floor Covering

Sheet vinyl floor covering is installed in several ways:

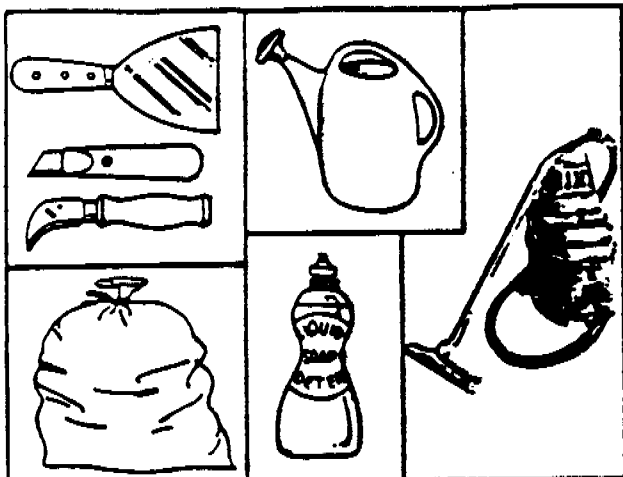
1. Unadhered or Loose-Lay.
2. Adhered or Cemented.
3. Peripherally adhered.

Some resilient floor covering can be installed over existing resilient sheet vinyl floor covering under certain conditions. Be sure to follow the floor covering manufacturer's instructions, regarding the conditions and floor preparation required.

If partial or complete removal of the existing sheet vinyl floor covering is required, the following instructions are to be followed:

Supplies and Tools (refer Sketch 1.)

1. Broad, stiff-bladed wall scraper, or floor scraper.
2. Utility or hook knife.
3. Tank type HEPA (High Efficiency Particulate Air) filter vacuum cleaner with disposable dust bag.
4. Large size heavy-duty impermeable trash bags (or closed impermeable containers) with ties, tapes, or string to tie shut, and tags for labeling.
5. Hand sprayer or sprinkling can.
6. Liquid dishwashing detergent or liquid wallpaper remover mixed with water to make a dilute solution (1 oz. liquid in one gallon of water).



WARNING

Sketch 1. Tools and supplies for sheet removal.

Special Precautions

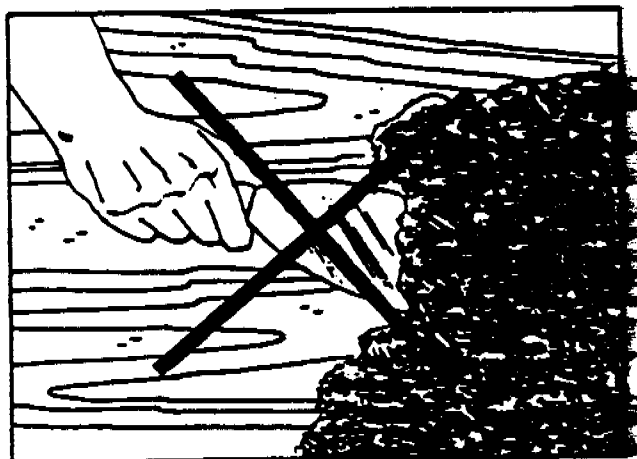


WARNING

Sketch 2. Never dry sweep. If unavoidable, use water or other suppressants.

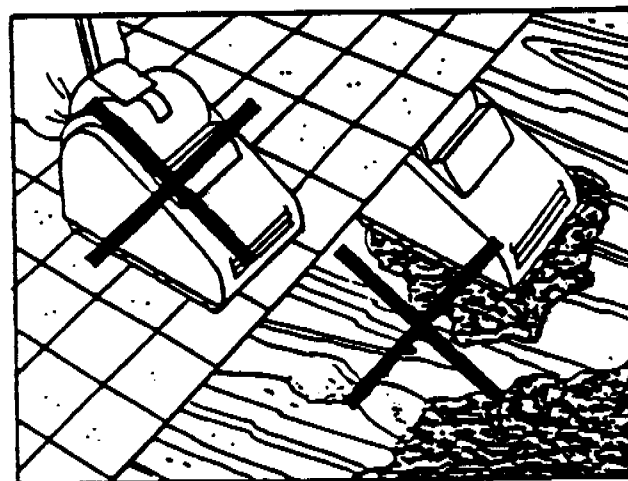
4

Special Precautions (Continued)



WARNING

Sketch 3. Never dry scrape cultural areas of floor coverings.

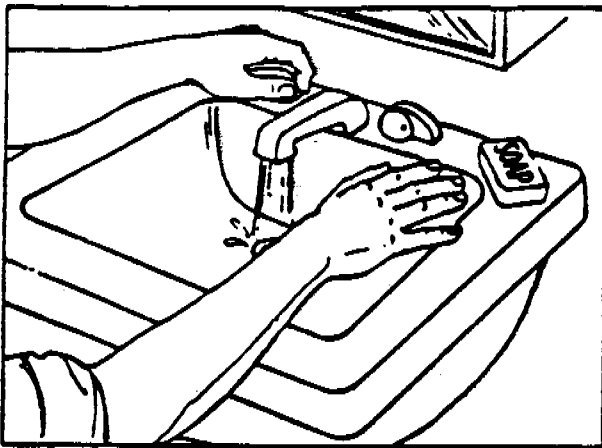


WARNING

Sketch 4. Never sand on existing floor covering; not sand or dry sweep residual fill.

5

Special Precautions (Continued)

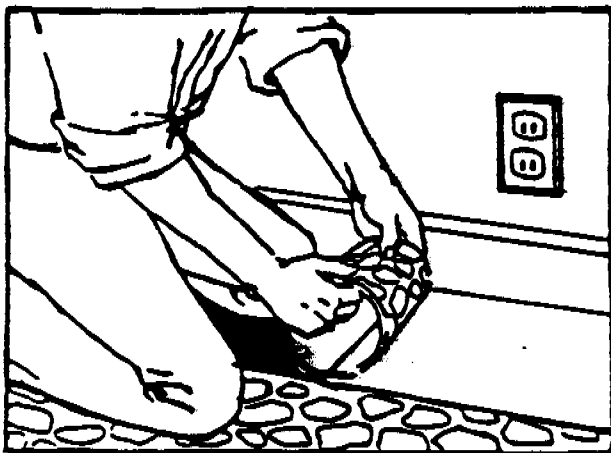


WARNING

Sketch 5. Wash hands before eating and at the end of the work day.

Complete Removal of an Unadhered (Loose-Lay) or Peripherally Adhered Sheet Vinyl Floor Covering

- Remove any binding strips or other restrictive moldings from doorways, walls, etc.
- Cut a strip the length of the floor and about 18" wide along one wall. Remove this strip, gently turn it over and roll face out into a tight roll (see Sketch 6). Tie or tape securely so it will not unroll. Place

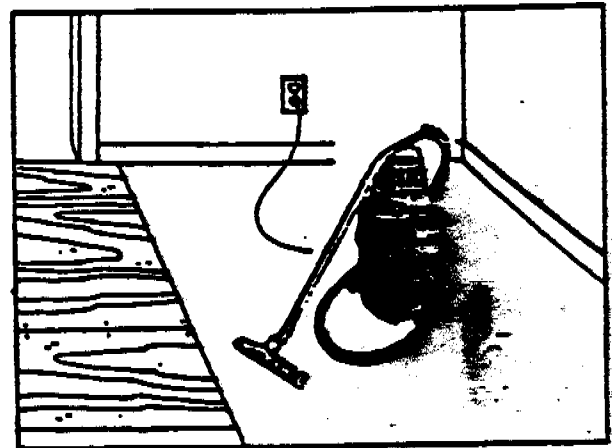


Sketch 6. When removing cut strips, roll face out into a tight roll.

6

it in a heavy-duty impermeable trash bag, or closed impermeable container big enough to accommodate several rolls, for disposal.

- Clean the exposed floor with a vacuum cleaner positioned so that exhaust air does not blow over the unclean area (see Sketch 7). **DO NOT DRY SWEEP. IF UNAVOIDABLE, USE WATER OR OTHER DUST SUPPRESSANTS.**
- Repeat the above, cutting, removing, rolling, disposing of one strip at a time and clearing the newly exposed area immediately until the whole floor covering has been removed and the whole floor vacuumed clean.

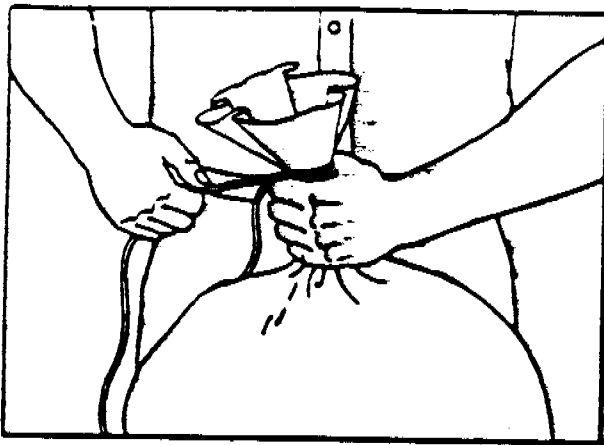


WARNING

Sketch 7. Position vacuum so that exhaust air does not blow over unclean area. Do not create dust.

- If seams or door openings have been adhered with double faced tape, remove the tape and place in the heavy-duty impermeable trash bag or closed impermeable container.
- If any floor covering areas have been adhered with adhesive and remain stuck to the floor, they should be removed by the wet scraping method explained in page 10. **DO NOT DRY SCRAPE OR SAND.**
- Carefully remove the dust bag from the cleaner and place it in the trash bag.
- Close and seal the trash bags tightly for disposal (see Sketch 8). Identify contents with a label stating, "Caution—Contains Asbestos—Dispose in an approved land fill only."

7



Sketch 8. Seal trash bags securely for disposal.

- i. Install the new resilient floor covering according to the manufacturer's instructions.

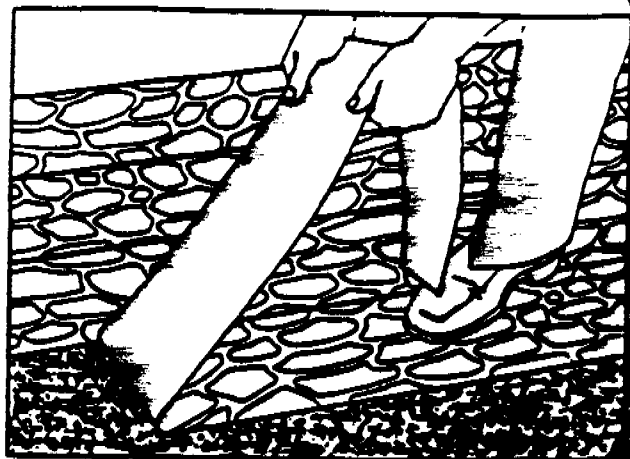
Partial Removal of Existing Adhered Sheet Vinyl Floor Covering

Most felt backed sheet floor coverings can be separated in the backing or felt layer. The felt left on the floor presents a smooth surface on which some new sheet floor coverings can be installed directly. Be sure to follow the manufacturer's instructions. Use the following procedure to partially remove the existing adhered floor covering:



Never Sand an Existing Floor Covering

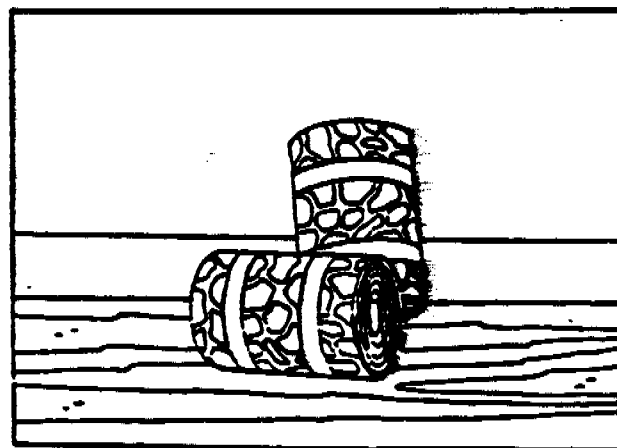
- a. Remove any binding strips or other restrictive moldings from doorways, walls, etc.
- b. Make a series of parallel cuts 4 to 8 inches apart through the top layers and about halfway through the backing, parallel to the wall.
- c. Start at the end of the room farthest from the entrance door and pry up the corner of a strip, separating the backing layer. Pull the top layer back upon itself slowly and evenly at the angle that permits the best separation, and half the backing and the top layers will pull free (see Sketch 9). After



Sketch 9. Separating top layer from backing.

it is removed, roll up the strip face out into a tight roll. Tie or tape securely (see Sketch 10) and place in the heavy-duty impermeable trash bag or closing impermeable container for disposal.

- d. Each succeeding strip should be removed in the above manner. Avoid walking on the remaining floor as much as possible. Roll up each strip, tie or tape, move and place it in the trash bag or impermeable container. Close full bags tightly and seal securely before



Sketch 10. Rolled up strips must be tied or taped securely.

disposal. Identify with a label stating, "Caution—contains asbestos. Dispose in an approved land fill only."

- e. Occasionally, parts of the top layers will stick to the backing. This can often be eliminated by peeling from the opposite direction. The stiff-bladed scraper will help in stubborn areas.
- f. Any high spots of felt on the floor can be levelled by wet scraping.

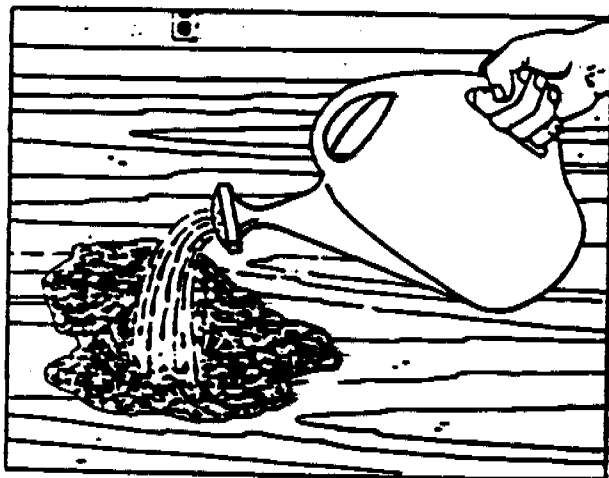


WARNING

Never Sand or Dry Scrape Residual Felt

Wet scraping is done as follows:

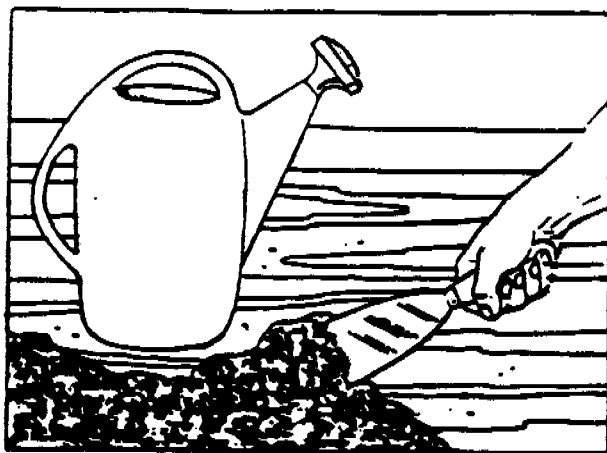
1. Pour the detergent solution into the sprayer or sprinkling can.
2. Thoroughly wet the high felt spot with this solution. Wait a few minutes to allow the solution to soak into the felt (see Sketch 11 below).



WARNING

Sketch 11. Do not dry scrape. Thoroughly wet dry felt before removal.

3. Use the stiff-bladed scraper to remove the excess felt (see Sketch 12). If felt dries out, or dry felt is exposed during scraping, re-wet with more solution.
4. Pick up the larger pieces by hand and place in the trash bag immediately.
- g. Non-adhered felt left on the floor can be cut open and re-adhered to the floor with adhesive.



Sketch 12. After wetting felt, use stiff-bladed scraper to remove.

- h. If small areas of backing pull free from the floor, the depression should be filled with latex patching compound, as recommended by the floor covering manufacturer. Patching compound must be troweled to finished smoothness since the area cannot be sanded later.
- i. Clean the floor with the vacuum cleaner using the metal floor tool. **DO NOT DRY SWEEP WITH A BROOM.** Position the vacuum cleaner so that discharge air does not blow on the felt. Carefully remove the dust bag from the cleaner immediately and place in a heavy-duty impermeable trash bag or closed impermeable container.
- j. Close and seal trash bags tightly for disposal. Identify contents with a label: "Caution—contains asbestos. Dispose in an approved land fill only."
- k. Do not walk over the felt unnecessarily, as this might scuff the felt and raise dust.
- l. Install the new resilient floor covering immediately, following the manufacturer's instructions.

Complete Removal of an Existing Adhered Sheet Vinyl Floor Covering

If complete removal is required, follow these instructions:

**WARNING****Never Sand an Existing Floor Covering**

- a. Remove any binding strips or other restrictive moldings from doorways, walls, etc.
- b. Make a series of parallel cuts 4 to 8 inches apart, parallel to a wall.
- c. Start at the end of the room farthest from the entrance door, pry up the corner of the first strip, separating the backing layer. Pull the top layer back upon itself slowly and evenly at an angle that permits the best separation, and most of the backing and top layers will pull free (see Sketch 9). Remove this strip, gently turn it over and roll face out into a tight roll. Tie or tape securely (see Sketch 10) and place in a heavy-duty impermeable trash bag or closed impermeable container for disposal.
- d. Repeat the above on the next two strips but do not remove anymore than a total of three strips at this time.
- e. Remove the felt remaining on the floor in the stripped area by wet scraping.

**WARNING****Never Sand or Dry Scrape Residual Felt**

Wet scraping is done as follows:

1. Pour the detergent solution into the sprayer or sprinkling can.
2. Thoroughly wet the residual felt with this solution. Wait a few minutes to allow the solution to soak into the felt (see Sketch 11).
3. Stand on the remaining floor covering (not the felt) and use the stiff-bladed scraper to scrape up the wet felt (see Sketch 13 below).

**WARNING****Do Not Scrape Dry Felt**

Re-wet the felt if it dries out or if dry felt is exposed during scraping. Pick up the scrapings as they are removed from the floor and place in a heavy-duty impermeable trash bag or closed impermeable container. Scrape all felt from this floor area before proceeding further.



Sketch 13. Stand on the remaining floor covering, not the felt, during felt removal.

4. Repeat the above on the next series of strips. Do only one three-strip area at a time. Stand on the remaining floor covering or clean floor (do not stand on the felt) to scrape up the felt.
5. Repeat this operation until the felt has been removed from the whole floor. Close full bags tightly, and seal securely for disposal. Identify with a label stating, "Caution—Contains Asbestos. Dispose in an approved land fill only."
- f. When the whole floor has been cleaned free of felt, let it dry and vacuum up any dirt using the vacuum cleaner with the metal floor tool. Stand only in vacuumed areas as you proceed across the floor.

**WARNING****Do Not Dry Sweep**

- g. Position the vacuum cleaner so that the discharge air does not blow on the floor being cleaned.
- g. Carefully remove the dust bag from the cleaner and place in a heavy-duty impermeable trash bag or closed impermeable container for later disposal.
- h. When the floor is dry, it is ready to have a new resilient floor covering installed. Follow the floor covering manufacturer's instructions.

RESILIENT TILE FLOOR COVERING

Preparation of Floors With Existing Resilient Tiles to Receive New Resilient Floor Covering

Some resilient floor coverings can be installed over existing resilient tile installations. Follow the installation instructions published by the manufacturer of the new floor covering when a new resilient floor covering is to be installed on a surface presently covered with a resilient floor covering. These instructions will tell you what must be done to the existing surface before the new resilient floor covering can be installed.



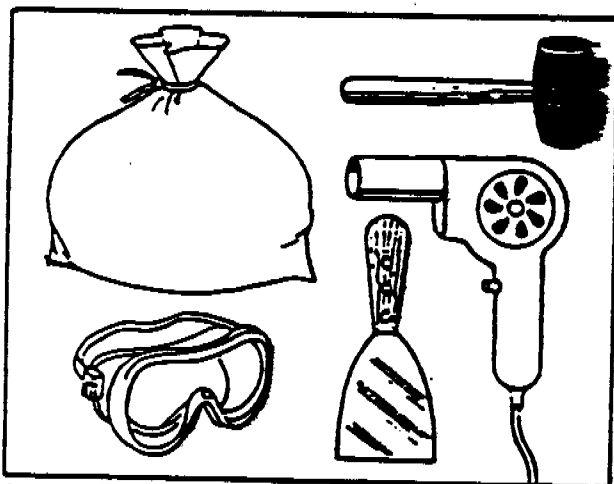
WARNING

Never Sand an Existing Tile Installation
(see Sketch 4)

Complete Removal of Existing Resilient Tile Floor Covering

Supplies and Tools (refer Sketch 14)

1. Heavy-duty wall scraper with approximately 4" blade and 6" to 8" handle.
2. Hammer.
3. Commercial type hand-held hot air blower.
4. Heavy-duty polyethylene bags at least 6 mils thick (or closed impermeable containers), ties, and labels.

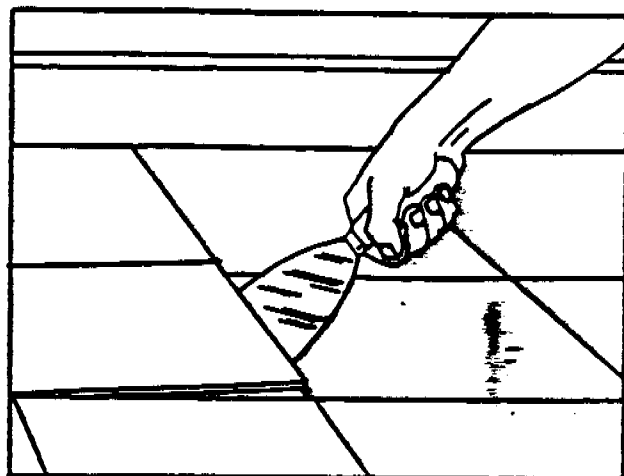


Sketch 14. Tools and supplies for tile removal.

14

Removal Procedure

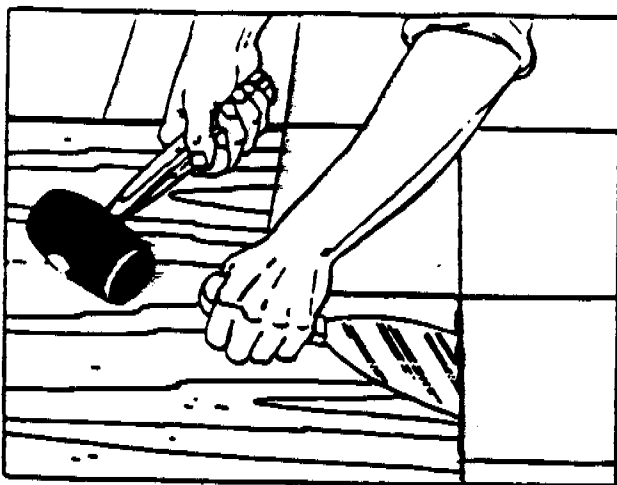
- a. Those areas normally exposed to heavy foot traffic patterns usually have tiles adhered the tightest. As a matter of good practice in starting the tile removal, those sections which receive least traffic should be the locations selected for starting the removal of the tile. Since tiles are normally in a 9" x 9" or 12" x 12" dimension, it should be the goal to remove individual tiles as a complete unit.



Sketch 15. Wedge the scraper in the seam of two adjoining tiles and gradually force tile upward.

- b. Start the removal by carefully wedging the wall scraper in the seam of two adjoining tiles and gradually forcing the edge of one of the tiles up and away from the floor (see Sketch 15). Do not break off pieces of the tile but continue to force the balance of the tile up by working the scraper beneath the tile and exerting both a forward pressure and a twisting action on the blade to promote release of the tile from the adhesive and the floor.
- c. When the first tile is removed place it, without breaking it into smaller pieces, in the heavy-duty impermeable trash bag or closed impermeable container which will be used for disposal.

15



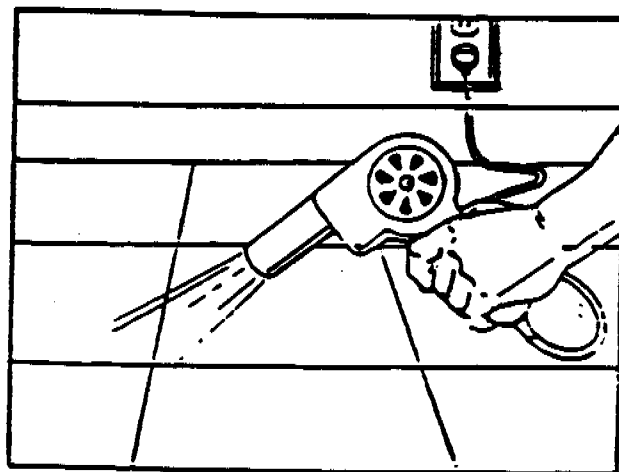
Sketch 16. Difficult tile removal can often be accomplished by striking the scraper handle with a hammer or mallet as shown.

- d. With the removal of the first tile accessibility of the other tiles is improved. Force the wall scraper under the exposed edge of another tile and continue to exert a prying twisting force to the scraper as it is moved under the tile until the tile releases from the floor. Again, dispose of the tile, and succeeding tiles, by placing in the heavy-duty bag or closed container without additional breaking.
- e. Some tiles will release quite easily while others require varying degrees of force. Where the adhesive is spread heavily or is quite hard, it may prove easier to force the scraper through the tightly adhered areas by striking the scraper handle with a hammer using blows of moderate force while maintaining the scraper at a 25° to 30° angle to the floor (see Sketch 16). Caution: Use safety goggles.
- f. If some areas are encountered where even the technique detailed in the previous paragraph proves to be inadequate, the removal procedure can be simplified by thoroughly heating the tile(s) with a hot air blower until the heat penetrates through the tile and softens the adhesive.

NOTE 1: Handle the hot air blower, tiles, and adhesive carefully to avoid personal burns (see Sketch 17 below).

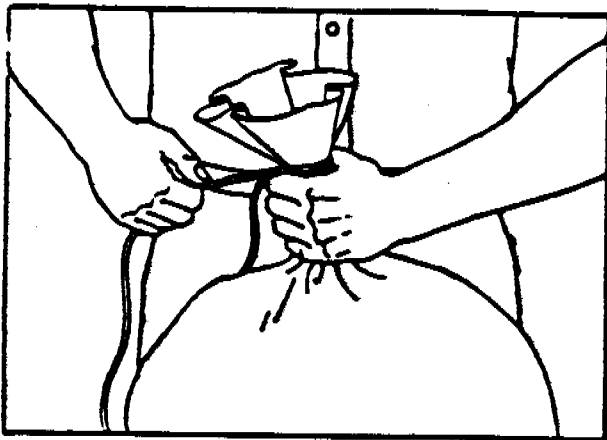
NOTE 2: Do not handle the heated tiles and adhesive without suitable glove protection for the hands.

- g. As small areas of subfloor are cleared of tile, the adhesive remaining on the floor must be scraped up with the 4" hand scraper until only a thin, smooth film remains. In those areas where deposits are heavy or difficult to scrape, the removal can be expedited by heating with the hot air blower prior to scraping. Deposit scrapings in a heavy-duty impermeable trash bag or closed impermeable container.
- h. As indicated in previous paragraphs, tiles should be placed immediately in a heavy-duty impermeable trash bag or closed impermeable container. Do not attempt to break tiles after they are in the bag.



Sketch 17. In very difficult areas, using a hot air blower can simplify tile removal.

1. When all tiles have been removed from the floor and placed in heavy-duty polyethylene bags at least 6 mils thick or closed containers, seal the bags securely for disposal (see Sketch 18 below) and mark: "Caution—Contains Asbestos—Dispose in an approved land fill only."



Sketch 18. Seal trash bags securely for disposal.



WARNING

Do Not Sand Existing Resilient Flooring Backing Or Lining Felt. These Products May Contain Asbestos Fibers That Are Not Readily Identifiable. Sanding Of Asbestos Containing Material Can Place Fine Particles Of Asbestos In The Air. These Asbestos Particles If Inhaled May Cause Serious Bodily Harm. Smoking Greatly Increases The Risk Of Serious Bodily Harm.

APPENDIX C

FEDERAL AGENCY STATEMENTS ABOUT THE
NON-FRIABLE NATURE OF RESILIENT FLOORING

Environmental Protection Agency

" . . . ACM such as floor tile, roofing material, packings and gaskets...are not friable..." EPA Memorandum, "Clarification of EPA NESHAP Policy - Nonfriable ACM" (Feb. 23, 1990) (emphasis added).

"Some nonfriable asbestos-containing materials, such as packings, gaskets, asphalt roofing, and vinyl flooring, that normally do not emit asbestos fibers are not subject to the removal and disposal provisions of the [asbestos NESHAP] standard." 54 Fed. Reg. 912, 916 (Jan. 10, 1988) (emphasis added).

" . . . some amount of nonfriable ACM such as floor tile, transite board, and fire doors." 52 Fed. Reg. 41826, 41845 (Oct. 30, 1987) (emphasis added).

"Most ACM in this [other miscellaneous] category (e.g., wall board, ceiling tile, floor tile) is hard and nonfriable." EPA, Guidance for Controlling Asbestos-Containing Materials in Buildings, at 2-8 (June, 1985) (emphasis added).

"The use of the word "friable" is intended to distinguish between such materials as vinyl-asbestos floor tile, in which the asbestos fibers are well bound, and such materials as common types of molded asbestos pipe insulation, from which the asbestos fibers can be readily released. The intent of the asbestos standard is not to control handling of vinyl-asbestos floor tile, asbestos felt roofing, or similar materials, since it is the Administrator's judgement that such activities will not release asbestos in a manner which is dangerous to human health. EPA, Background Information on National Emission Standards for Hazardous Air Pollutants - Proposed Amendments to Standards for Asbestos and Mercury, EPA - 450/2-74-009a, at 16 (October, 1974) (emphasis added).

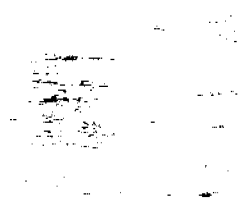
Occupational Safety and Health Administration

"Materials such as vinyl-asbestos floor tile or roofing felts are considered nonfriable and generally do not emit airborne fibers unless subjected to sanding or sawing operations." 51 Fed. Reg. 22612, 22754 (June 20, 1986) (emphasis added).

General Services Administration

"Asbestos is still used in its nonfriable form (which means it doesn't crumble easily) in building products and materials ranging from floor tiles to roofing shingles." GSA Answers Your Asbestos Concerns (October 1986) (emphasis added).

APPENDIX D



U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:



February 6, 1990

Mr. Walter D. Anderson
Managing Director
Resilient Floor Covering Institute
966 Hungerford Drive, Suite 12-B
Rockville, Maryland 20850

Dear Mr. Anderson:

This is in response to your letter of January 26, regarding your request for exemption from the initial monitoring provision of the Occupational Safety and Health Administration's (OSHA) asbestos standard, 29 CFR 1926.58(f)(2)(i).

Along with your letter, you submitted a summary of a study by ENVIRON for OSHA's consideration and confirmation that this study constitutes historical data for the determination of employee exposure to asbestos when removing resilient floor tile, in accordance with the industry's recommended work practices that were the basis for the study.

As communicated to you during our previous meetings, your data can be considered as historical data, when they are representative of your prevailing work conditions and work practices. OSHA is not in a position to validate your data or attest to the effectiveness of your recommended work practices. The local OSHA Area Office would evaluate the claim of exemption from initial monitoring on a case by case basis, when the compliance officer determines that the ENVIRON sampling results represent the actual work conditions and that the recommended work practices are strictly followed.

We appreciate your efforts in gathering the data and would suggest that you provide your employees or contractors these data along with your recommended work practices for use as historical data to claim exemption from the initial monitoring requirement. However, if data from other sources including OSHA's field data show that these results are not reproducible, OSHA reserves the right to notify the Resilient Floor Covering Institute and other relevant parties that an exemption based on ENVIRON study would not be possible.

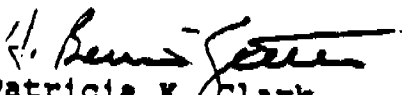
2

Your data covered the period of asbestos tile removal and floor clean-up but did not extend to initial preparations, installation of new resilient floor covering not containing asbestos or other work activities subsequent to the removal itself. Therefore, the contractors may still be responsible for initial monitoring during activities subsequent to the removal that may subject employees to asbestos exposure.

Please note that the asbestos standard is subject to change and that future changes of the standard may affect the provision for exemption from initial air monitoring.

If we can be of further assistance, please do not hesitate to contact us again.

Sincerely,


for Patricia K. Clark
Director Designate
Directorate of Compliance Programs

APPENDIX E



FEB 23 1990

F A C I L I T Y N E M I T T A L M E
TO: Bill Hall
DEPT: Breed A/BOT FAX #: _____
FROM: Wally PHONE: _____
CO: REC-1 FAX #: _____
Post-Net brand fax transmission memo 7075

MEMORANDUM

SUBJECT: Clarification of EPA NESHAP Policy - Nonfriable ACM

FROM: Jack R. Farmer, Director
Emission Standards Division (ED-104) *Jack R. Farmer*

John S. Seitz, Director
Stationary Source Compliance Division (EN-341) *John S. Seitz*

Michael S. Alushin *M. S. Alushin*
Associate Enforcement Counsel for Air Enforcement (LE-134A)

TO: See Below

This memorandum clarifies the requirements of the Asbestos NESHAP regarding nonfriable asbestos containing material (ACM), such as floor tile, roofing material, packing, and gaskets.

BACKGROUND

The issue of friability and the intent of the original standards for demolition and renovation activities have been the source of many questions and comments. In recent months, we have spent considerable time discussing this issue and reviewing subsequent interpretations of the standards. The rulemaking proposed on January 10, 1989 only addresses administrative changes or clarifications to the original standards. Thus, the final rulemaking can not result in a change that would affect the stringency of the original standards.

In the original rule, published in 1973, a distinction was made between building materials that would release a significant amount of asbestos fibers and materials that would not. Floor tile, roofing material, packings, and gaskets were identified as materials that would not release significant amounts of fiber when disturbed. The term "friable" was used to make this distinction. In December 1985, we issued a determination which stated that if nonfriable ACM could be damaged to the extent that it would be crumbled, pulverized, or reduced to powder, it should be removed prior to demolition. The 1985 determination was intended to affect only practices and ACM that could result in the release of significant quantities of asbestos. While it was unclear whether this determination was intended to affect ACM such as floor tile, roofing material, packings and gaskets that are not friable, some delegated enforcement agencies were inferring this material must be removed prior to demolition to ensure compliance with the NESHAP.

Although no research has been conducted on the conditions which will cause nonfriable materials to become friable, it is considered probable that some conditions (e.g. severe weathering, prolonged exposure to harsh chemicals) will cause this effect. Furthermore, certain practices such as burning, sanding, or grinding could crumble, pulverize, or reduce to powder nonfriable ACM.

POLICY

Therefore, we recommend the following approach:

- Floor tile, roofing material, packing, and gaskets (normally nonfriable ACM) must be inspected before demolition to determine if the ACM is in poor condition, indicated by peeling, cracking, or crumbling of the material. If normally nonfriable ACM is in poor condition, then the material must be tested for friability. If the ACM is friable, it must be handled in accordance with the NESHAP. The above four nonfriable ACM should be removed before demolition only if they are in poor condition and are friable.

- If the nonfriable ACM is subjected to sanding, grinding, or abrading as part of demolition or renovation, then the nonfriable ACM must be handled in accordance with the NESHAP. If a building is demolished by burning, all ACM must be removed prior to the demolition.

We believe that this approach is consistent with the original rule and the 1985 interpretation.

PLANNED FUTURE ACTION

After passage of Title III of the new Clean Air Act amendments we intend to review the asbestos NESHAP. This will allow us to further consider appropriate changes to this NESHAP.

ADDRESSEES:

Kent Anderson, OSW (WH-565E)
Mike Beard, ORD (MD-77)
Jim Crowder, ESD (MD-13)
Fred Dimmick, ESD (MD-13)
Stan Durkee, ORD (EN-340F)
Pat Embry OGC, (LE-132A)
Robert Fegley, OPPE (PM-221)
Charlie Garlow, OEMC (LE-134A)
Charles Gregg, OW (WH-556)
Bob Jordan, OTS (TS-788A)
Asbestos NESHAP Coordinator, Regions I-X

Kathy Kaufman, OPAR (ANR-443)
Bob Kellam, ESD (MD-13)
Dennis Kotchmar, ECAO (MD-52)
Gary McAlister, ESD (MD-19)
Bruce Moore, ESD (MD-13)
Brenda Riddle, ESD (MD-13)
Sims Roy, ESD (MD-13)
Ron Shafer, SSCD (EN-341)
Al Vervaert, ESD (MD-13)
Dave Wagner, OTS (TS-794)
Roger Wilmoth, AEERL, Cincinnati
Gil Wood, EMB (MD-14)

cc: Bob Ajax (MD-13)
Robert Bronstrup, EPA-OIG - Chicago
Regional Counsels, Regions I - X

Ron Campbell (MD-10)
Regional Counsel Air Branch Chiefs



State of West Virginia

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

MEMORANDUM

RECEIVED

JUN 22 1990

DATE: June 7, 1990

**REGULATORY DEVELOPMENT
SECTION**

TO: Joan

FROM: Madonna *MR*

RE: Title 64 WV Legislative Rules Division of Health
Fees for Services

After reviewing the Rules, I propose language be included in the rules exempting Home Health Services (defined in Chapter 16 Article 2C-1-2-3-4-5 of the WV code) from complying with or being subject to the provisions of these rules since Home Health Services are already well-defined in the WV code.

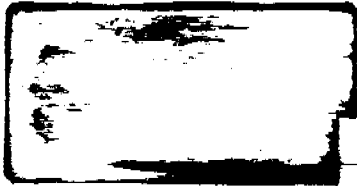
Home Health Services provided by local health departments have multiple regulations governing their operations now.

I would also like to suggest some changes which include the following:

1. 64-51-9.1.2. delete reference to master's prepared social workers and use licensed as the criteria; I see no reference to the health profession of sanitarian, psychologist, counseling psychologist, or counselor. Either the scope of definition for Professional Health Services needs expanded or a clause put in "but not limited to". I would question why this definition is even listed since there is no further reference to it in the rules but perhaps there needs to be under 64-51-9.6.
2. There is a definition for Professional Health Services but what about the services of Licensed Practical Nurses, aides, outreach workers, personal care aides, etc.
3. 64-51-9.6. This area addresses the mechanism for proposing fees but has no reference to 64-51-9.1.2. the Health Professional Services.

4. 64-51-9.9. Add "annual" in the sentence ...fees other than in the annual budget plan... Delete "only upon petition" and change to "by submitting an addendum to the annual budget and program document by the local board of health...."
5. A definition of budget plan and program document needs to be added. By adding this to the definitions the document becomes formalized making the review process more formalized.
6. 64-51-9.3b.-Could insurances refuse payment to local boards of health for immunizations because of this paragraph? This section sounds as if it is granting an exception from fees for any person seeking immunization services. Insurances can argue that their subscribers should never have been charged for these services.

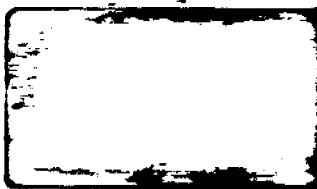
I would like to be kept updated every step of the way on these rules especially if Home Health Services are not exempt from this language.



Brenda Walker
Union WV

Opposed to entire rule.

Telephone





West Virginia Association of REALTORS

814 Virginia Street, E.
Suite 202
Charleston, West Virginia 25301
(304) 342-7600

THE VOICE FOR REAL ESTATE IN WEST VIRGINIA

June 22, 1990

Regulatory Development
Room 204, Building 3
Capitol Complex
Charleston, WV 25305

RE: Fees for Service
Proposed Legislative Rule

Gentlemen:

On behalf of over 2,500 members of this Association, we oppose the imposition of fees as proposed by the West Virginia Board of Health.

It has been, and continues to be, the direction of the Executive and Legislative Branches of our State Government to reduce the size and expense of Government. That direction was clearly stated in legislation which established a budget reducing requested appropriations by various agencies. We, the Association, and the public in general, applaud this legislative action.

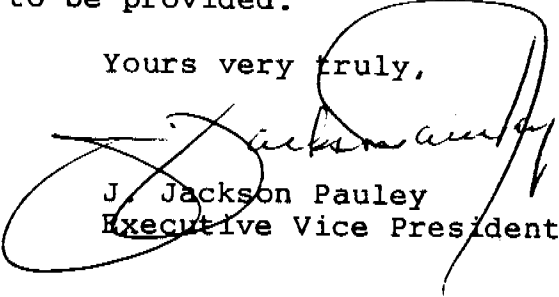
The fiscal note to the proposed rule states the justification for the fees: to restore funding to the Agency which the legislature; the constitutionally authorized taxing and appropriation body of the State; reduced. The fees proposed; which are not directly related to services being provided, or to be provided; are an affront to the legislative process. The proposed fees are nothing more than an excise tax being enacted outside the legislative process.

We generally oppose the proposed tax increase, and we specifically oppose those fees (taxes) which directly effect the cost of home ownership, or rental housing costs. The cost of water and sewer services will increase due to taxes which must be passed to the consumers. Private water well permits are an immediate added cost to many consumers. For other than a standard on-site septic tank sewage system, a \$150.00 annual fee will burden many citizens.

Regulatory Development
Page 2
June 22, 1990

The proposed regulation should be withdrawn as an ill advised and possibly illegal excise tax, since no directly related services are proposed to be provided.

Yours very truly,



J. Jackson Pauley
Executive Vice President

JJP/dak

RECEIVED

JUN 25 1990

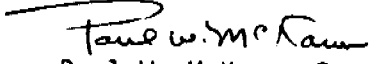
**REGULATORY DEVELOPMENT
SECTION**

STATEMENT OF WEST VIRGINIA RETAILERS ASSOCIATION

Re: Title 61, Series 51 Rules

With the recent passage of Fees for Permits by the Board of Health, for Food Service Establishments of \$25.00 to \$150.00. By imposing Series 51, an additional fee of \$150.00 will be placed on Food Service Establishments.

This appears to be a double fee on our grocery stores. We feel this is unfair to our small grocery retailers in the state and ask that this fee be dropped from the regulation.


Paul W. McKown, President
West Virginia Retailers Association

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**

Charlie Davis, President
Beckley, WV

Don Turnbull, Ranking Vice-President
Mt. Pleasant, PA

West Virginia Soft Drink Association
184 Summers St., Suite 202 • Charleston, WV 25301
(304) 346-9883

Larry Caramela, Vice-President
Richmond, VA

Larry Swann
Executive Director

June 22, 1990

Mr. Don Kuntz, Director
Environmental Engineering
Bureau of Public Health
1900 Kanawha Boulevard East
Charleston, West Virginia 25305

Board Members

William Elmore
Charleston, WV

Wendy Cameron
Washington, PA

Mike Tucker
Charleston, WV

John Wilt
Morgantown, WV

Randall Roberts
Parkersburg, WV

Jim Ovies
Moundsville, WV

Gib Harry
Princeton, WV

Sherwood Edens
Huntington, WV

Lauren Steele
Charlotte, NC

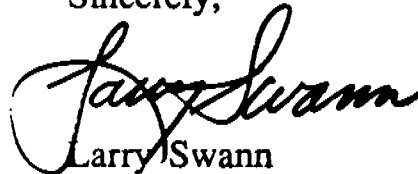
Dear Don:

This is in reference to our telephone conversation of June 21. I appreciate your willingness to amend the definition of vending machines under the proposed Health Department regulations to clarify that the new fees proposed will only apply to water vending machines and do not apply to soft drink products.

Although a close review of the regulations and the fees appear to only apply to water, further clarification should alleviate any questions.

I very much appreciate your helpful and cooperative attitude.

Sincerely,


Larry Swann

cc: All Board Members

RECEIVED

JUN 22 1990

**REGULATORY DEVELOPMENT
SECTION**



WEST VIRGINIA PUBLIC HEALTH ASSOCIATION, INC.

AFFILIATED WITH AMERICAN PUBLIC HEALTH ASSOCIATION

CHARLESTON, WEST VIRGINIA 25305

June 29, 1990

The Honorable Kenneth Heckler
Secretary of State
State of West Virginia
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Heckler:

I am writing on behalf of the Local Health Administration Section of the West Virginia Public Health Association, which represents the fifty-five (55) county health departments.

House Bill #1130, which became law in 1983, has been the basis of supplemental income to county health departments and has assisted many of us to survive since the elimination of federal revenue sharing monies.

Rule #30, "Fees For Permits", has been submitted to your office for filing as an emergency rule by the state health agency. These fees simply provided a realistic increase in the fees originally set by House Bill #1130 in 1983 and would provide small funding increases to county health departments to meet our public charge to provide these environments services and protect the public from unsanitary practices and potential food-bourne illness or outbreaks. In addition to losses from revenue sharing, some twenty (20) county health departments receive NO funding from their county commissions. These severe reductions of funding and the fact that the county health departments are very limited in their ability to raise additional funds make the passage of this emergency rule imperative to the continuation of many of our environmental programs and personnel. Only 50% of our county health departments presently charge fees and many charge far less than the maximum allowed by law.

We urge you to file Rule #30 as approved by the State Board of Health on June 15, 1990 and appreciate your fair review of this matter.

Sincerely,

John W. Bertram, R.S.
John W. Bertram, R.S.

Chairman

Local Health Administration Section

JWB:elt

TO: Ken Hechler, Secretary of State

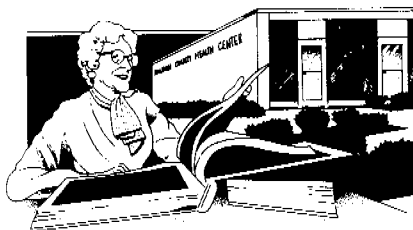
FROM:

John S. Baughman, Jr. City Hall W-SS-

RE: Fees for Permits, Series 30

I am writing in regard to WV Legislative Rules, Board of Health, Fees for Permits, Series 30. This is essential for the survival of County Health Departments. With the cuts in funding from the State and counties, each Health Department is struggling just to stay open. If you reject Fees for Permits, you are dealing yet another blow to Local Health Departments.

Thank you very much for your consideration in this matter.



ELINOR HURT MEMORIAL HEALTH CENTER
BECKLEY-RALEIGH COUNTY PUBLIC HEALTH SERVICES

1602 Harper Road — Beckley, West Virginia 25801 — Telephone: 252-8531

July 2, 1990

Secretary of State
Ken Heckler
Suite 157-K
Ground Floor, Main Unit
Capitol Building
Charleston, West Virginia 25305

RE: EMERGENCY FILING OF SERIES 30 FEE'S FOR PERMITS

Dear Secretary Heckler:

The State Board of Health will be filing Series 30 Fees for Permits with your office on July 2, 1990 on an emergency basis. These fees are used only by local health departments. Funding has been decreased by contributing agencies, causing some health departments to reduce services and operating hours.

The proposed fee bill will allow us to continue needed public health services at the local level. Failure to pass the bill will affect all the citizens of West Virginia.

Sincerely,

BECKLEY-RALEIGH COUNTY HEALTH
DEPARTMENT

N. Allen Dyer, M.D., M.P.H.
Health Officer

Barbara A. Wolman

Barbara A. Wolman, Sanitarian II
Environmental Health Program

BAW/kf

1602 Harper Road
Beckley, WV 25801

Nicholas County Health Department

July 3, 1990

The Honorable Ken Hechler
Secretary of State
State of West Virginia
State Capitol Building
Charleston, WV 25305

Dear Secretary Hechler:

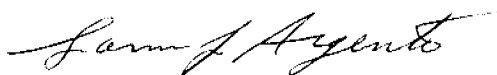
The Nicholas County Health Department urges your support to an issue now before your office and one that will affect the ability of local health departments to function and provide health services. This issue concerns Rule 30 "Fees for Permits". We urge you to allow this rule to be filed as an emergency in order to enable local health departments to continue to provide local services without major reduction.

Our department suffered a \$60,000. loss of local funding this year. We have already had to reduce some services because of this. In order to help offset this set back and continue with the present staff and further reductions in services, we need your help.

There are currently over twenty (20) health departments which have lost funding from their county commissions. We, as many health departments, have planned operating budgets for this fiscal year based on implementations of these fees. Rule 30 will only upgrade the existing fees and include some fees that were not included in the existing structure.

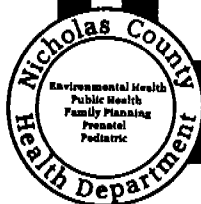
I know you will judge this matter on what is in the best interest for the people of West Virginia. Thank you for your time and consideration.

Sincerely,



Sam J. Argento, R.S., Administrator
Nicholas County Health Department

Public Health
Box 209 Stevens Rd.
Summersville, WV 872-5329



Environmental Health, Court House Annex Summersville, WV 872-3630

Public Health, Box 209, Stevens Rd, Summersville, WV 872-5329



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex
Charleston, WV 25305

Gaston Caperton
Governor

July 3, 1990

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-K
Charleston, WV 25305

Dear Mr. Hechler:

A request to emergency file -64CSR-30- West Virginia Legislative Rules - Fees for Permits, has recently come before you.

Apparently the legislature is now tentative regarding the need for emergency filing of these rules.

Please be advised that many county health departments are relying on these increased fees to balance their budgets. As you may be aware from much recent publicity, many county health departments are hard pressed for funds. Approximately half of the departments are operating only on state funds and fees for permits, without any county commission support or board of education funding, as has previously been traditional.

I would greatly request that your office file -64CSR-30- as soon as possible as these funds are desperately needed. Thank you.

Sincerely yours,

A handwritten signature in cursive script, reading "Clarence T. Christian".

Clarence T. Christian
District Sanitarian
Public Health Sanitation Division
Beckley District Office

CTC/bsw

OFFICE OF ENVIRONMENTAL HEALTH SERVICES
BECKLEY DISTRICT OFFICE
BECKLEY, WV 25801

109 S. EISENHOWER DRIVE

TELEPHONE (304) 256-6666

TO: Ken Hechler, Secretary of State

FROM: Gay Sebert, R.N., B.S.N., Nursing Director, Greenbrier County
Health Department

Re: H. B. #4660

I am writing to urge your full support for Section "C" of H. B. #4660 empowering local health departments to charge fees for nursing services as of July 1, 1990. These fees for service (not to be confused with State permit fees) are absolutely essential for financially troubled county/local health departments. Efforts are being made to ensure that these nursing costs to private sector are fair and just. County/local health department budgets for 1990-91 have already been prepared and submitted with these expected fees included. In many instances, those fees allowed budgets to be balanced and insured stability of health department services for all West Virginians. Fees for local nursing services should not be disallowed because of State Fees. These are actually separate issues.

Please support our efforts under this bill to continue public health nursing services under Section "C" by allowing public health nursing services to be chargeable.

CC: Nancy Tolliver
Taunja Willis-Miller
Joan Kenney

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICHARD O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

Jefferson Co. Health Dept
John Cooper, Environmental Section
(304) 728-8415

FILED
1990 JUL -3 AM 10:54
JUL 3 1990

Permits, Series 30, Helps his department maintain services.

Called July 3, 1990 10:00 am

Mr. Turner, Chair. of Bd.
Berkeley Co.

Need - Rules in Place

Growth is so unreal; if funds are not
raised, there will be massive Lay-offs or
closure.

Fayette County Health Department
202 Church St.
Fayetteville, WV 25840
Phone: 304-574-1617

June 29, 1990

Fayetteville, W. Va.
THE Honorable Ken Heckler
Secretary of State
Capital Building, 1 Suite 157
Charleston, W. Va. 25305

Dear Mr. Heckler:

This letter will confirm our conversation, on the telephone, this morning, in which I asked you to please allow the increases in the fees for service, which had been approved by the State Board of Health.

As you know, these fees are to be voluntary by each County, and in my County of Fayette, we are going to be using the very least amount of fees, that we feel we can get by with.

My Health Officer, Dr. Newell Jr., and I feel that the people in Fayette County have already been hit very hard with an increase in Real Estate and Personal Property Taxes.

I have asked all the other County Representatives, who were in our meeting this morning to also write you today.

As you indicated in our conversation I hope you will see fit to delay your

~~My~~ decision, for a day or two, at least until you get the other County Representatives' opinion.

Many of the County Commissions have interrupted all funding to the Health Departments, since Revenue Sharing has been discontinued, and the small amount of increase in Request 30 - will give them a very needed boost in their funding.

Again hoping you can allow this New Fee proposal # 30, and thanking you for your very kind understanding.
Lam -

Sincerely Yours
G. Lee Massey.

G. LEE MASSEY
Adm. Asst to the Health
Office, Fayette County
Health Dept.

202 CHURCH Street
Fayetteville, W. Va. 25840

P.S. I am mailing you this without having it typed. Please Excuse my writing -



Kanawha-Charleston Health Department

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



Donald M. Rosenberg, M.D.
Medical Director

July 2, 1990

The Honorable Ken Hechler
Secretary of State
State of West Virginia
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Hechler:

The Kanawha-Charleston Health Department respectfully requests that you act favorably on Rule 30 "Fees for Permits" that has been submitted to your office for filing as an emergency rule by the state health agency. This rule allows local health departments to collect fees for environmental permits and services. Without these fees a number of county health departments will be forced to curtail health services.

We urge you to act favorably on this issue and we wish to thank for your consideration in this matter.

Yours truly,

Charles R. Saber

Charles R. Saber, R.S.
Chief Sanitarian

CRS:sd



FAYETTE COUNTY HEALTH DEPARTMENT
FAYETTEVILLE, WEST VIRGINIA

June 29, 1990

1000 JUL - 3 1990
FAYETTEVILLE, WV
FAYETTE COUNTY HEALTH DEPARTMENT

The Honorable Ken Heckler
Secretary of State
Capitol Building 1, Suite 157
Charleston, W.Va. 25305

Dear Mr. Heckler,

I am writing this letter to ask you to please recognize the Fees for Permits, Series 30, 1990, and to allow the new "fee schedule" to go into effect as of June 30, 1990.

All counties, when they received the new schedule, and were told that it was approved by the State Board of Health, considered it to be in effect. The counties, one especially (Greenbrier) has already collected \$10,000.00 in new fees, and don't know how they could possibly make a refund if you should turn down the new schedule.

Mr. Lee Massey, Administrative Assistant to the Health Officer of Fayette County, told us that he had talked with you this morning and that you seemed inclined to delay your decision until the counties had time to get letters to you.

I want to impress on you how much the new fee schedule 30 will help most counties survive their money shortage.

Thank you for your consideration in this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Jack Oxley".

Jack Oxley
Sanitarian I
Fayette County Health Department

J0/bw

TO: Ken Hechler, Secretary of State

FROM:

Bonnie L Morgan

RE: Fees for Permits, Series 30

I am writing in regard to WV Legislative Rules, Board of Health, Fees for Permits, Series 30. This is essential for the survival of County Health Departments. With the cuts in funding from the State and counties, each Health Department is struggling just to stay open. If you reject Fees for Permits, you are dealing yet another blow to Local Health Departments.

Thank you very much for your consideration in this matter.

Rt. 2 Box 416 A
Ronceverte, WV 24970

TO: Ken Hechler, Secretary of State

FROM:

Michael K. Eltzroth

RE: Fees for Permits, Series 30

7-10
JUL -3 1981

OFFICE OF
SECRETARY OF STATE

I am writing in regard to WV Legislative Rules, Board of Health, Fees for Permits, Series 30. This is essential for the survival of County Health Departments. With the cuts in funding from the State and counties, each Health Department is struggling just to stay open. If you reject Fees for Permits, you are dealing yet another blow to Local Health Departments.

Thank you very much for your consideration in this matter.

Michael K. Eltzroth
White Sulphur Springs, WV 24986



FAYETTE COUNTY HEALTH DEPARTMENT
FAYETTEVILLE, WEST VIRGINIA

June 29, 1990

The Honorable Ken Heckler
Secretary of State
Capitol Building 1, Suite 157
Charleston, W.Va. 25305

Dear Mr. Heckler,

I am writing this letter to ask you to please recognize the Fees for Permits, Series 30, 1990, and to allow the new "fee schedule" to go into effect as of June 30, 1990.

All counties, when they received the new schedule, and were told that it was approved by the State Board of Health, considered it to be in effect. The counties, one especially (Greenbrier) has already collected \$10,000.00 in new fees, and don't know how they could possibly make a refund if you should turn down the new schedule.

Mr. Lee Massey, Administrative Assistant to the Health Officer of Fayette County, told us that he had talked with you this morning and that you seemed inclined to delay your decision until the counties had time to get letters to you.

I want to impress on you how much the new fee schedule 30 will help most counties survive their money shortage.

Thank you for your consideration in this matter.

Sincerely yours,

F. Keith Lyons

F. Keith Lyons
Sanitarian II
Fayette County Health Department

FKL/bw

Greenbrier County
Health Department
P.O. Box 890
Fairlea, WV 24902

From:

SANDRA PERRY
153 Hidden Vly Dr.
Ronceverte, WV 24972
645-6637

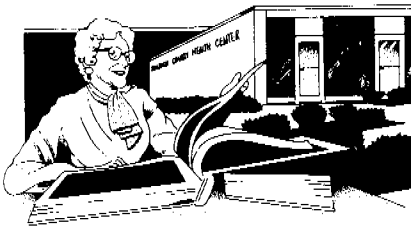
To: KEN HECKLER, SEC. OF STATE

I am writing in regard to
W.V. Legislative Rules, Board of
Health, Fees for Permits, Series 30.
This is essential for the
survival of County Health
Departments. With the cuts
in funding from the State
and counties, each health
department is struggling
just to stay open. If
you reject FEES FOR
PERMITS, you are signing

the death warrant for
Local Health Departments.

Thank you very much
for your consideration in
this matter.

Sandra Perry



ELINOR HURT MEMORIAL HEALTH CENTER
BECKLEY-RALEIGH COUNTY PUBLIC HEALTH SERVICES

1602 Harper Road — Beckley, West Virginia 25801 — Telephone: 252-8531

June 29, 1990

Secretary of State
Ken Heckler
Suite 157-K
Ground Floor, Main Unit
Capitol Building
Charleston, West Virginia 25305

RE: SERIES 30 FEE'S FOR PERMIT EMERGENCY FILING

Dear Mr. Heckler:

I have been advised that the State Board of Health will be filing Series 30 Fee's For Permit to your office on July 2, 1990 on an emergency.

The Fee's For Permit Legislative Rules are fees that are used strictly by local health departments. In the past few years funding has been decreased by local contributing agencies and caused many health departments to cut back services and reduce operating hours.

The proposed fee bill will allow local health departments to offset some of these cutbacks and help in continuing necessary public health services. If this bill is not passed, further cutbacks will have to be made at the local health departments where direct services are provided to the citizens of West Virginia.

Your approval of this emergency rule would be appreciated.

Sincerely,

BECKLEY-RALEIGH COUNTY HEALTH
DEPARTMENT

N. Allen Dyer, M.D., M.P.H.
Health Officer

Stan Walls

Stan Walls, Manager
Environmental Health Program

SW/kf

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

RULE REQUEST FORM

NAME

Michael Eltzroth

645 1539

645-1787

ADDRESS

Greenbrier Co.

desperate

RULE REQUEST:

Series 30-

Want Approved

(\$86,000 Shortfall in
not approved)

June 15, 1990

Mr. Ken Hechler
Secretary of State
Capitol Complex, Bldg. 1, Suite 157-K
Charleston, WV 25305

re: Proposed fees for WV Legislative Rules, Board of Health,
Title 64 - Series 30 - Fees for Permits

Dear Mr. Hechler:

I would respectfully request that you do not accept Series 30
(Fees for Permits) for the following reasons.

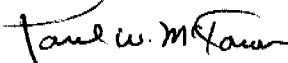
The retail food industry has a tremendous turnover of employees. It is the entry level for many young people, retail employment is not looked upon as being a place where one will make it a career. A large number of employees are either temporary or part-time. The retail grocery business depends on a high volume of sales and therefore earns a very low profit. The industry is very competitive in particular border counties and this back door tax increase approach will be very devastating to middle and small business.

Those in the grocery business have a good food safety awareness program in place for all their employees, particularly in their perishable departments.

Our main concern is section 3.7 of the Rule (Food Service Worker) would be extremely burdensome to our retail food industry economically and would also be very difficult and costly to administer. Turnover among our part-time (temporary) workers would create a continuing "uncapped" cost and we would be limited in our ability to transfer workers into perishable departments.

I would sincerely hope you would refuse to accept these rules as emergency rules and let us go before the Legislative Review Committee and solve our problems.

Sincerely,



Paul W. McKown,
President



*West Virginia
Petroleum Marketers
Association*

*West Virginia
Association of Convenience
Stores*



SUITE 712, ATLAS BUILDING • CHARLESTON, WEST VIRGINIA 25301 • (304) 343-5885
David W. Haines
Executive Director

June 15, 1990

The Honorable Ken Hechler
West Virginia Secretary of State
State Capital
Charleston, West Virginia 25305

RE: Emergency Rule, Series 30, Fees for Permits by
West Virginia Board of Health

Dear Secretary Hechler:

It is on behalf of the Convenience Store operator population in West Virginia that I write to you regarding the above.

These small West Virginia businesses urge you to reject the above Rule being filed as an Emergency Rule with your office.

I have attached a copy of the Comments that we filed with the Board of Health containing facts covering our opposition to the Rule.

Your consideration of our request in this matter is very much appreciated.

Sincerely,

David W. Haines
Executive Director

cc: Harold L. Wilkes, President

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 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

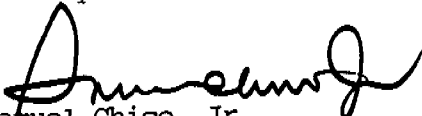
Mr. David Haines
WV Petroleum Marketers Association
and WV Assn. of Convenience Stores

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

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