WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

--- • ---

ENROLLED

HOUSE BILL No. 2461

(By Delegates D. Miller and Collins)

--- • ---

Passed April 9, 1993

In Effect Ninety Days From Passage
AN ACT to amend and reenact section eight, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of natural resources to amend legislative rules previously filed in the code of state regulations relating to revising the fee schedule for water pollution control permits for facilities that discharge stormwater and for aquaculture facilities.

Be it enacted by the Legislature of West Virginia:

That section eight, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-3-8. Division of natural resources.

1 (a) The legislative rules filed in the state register on the eighth day of December, one thousand nine hundred eighty-three, relating to the department of natural resources (surface mining), are authorized with the amendments set forth below:

6 Page 3-4, §3E.01 by adding after the word “engineer” the words “or licensed land surveyor.”
Enr. H. B. 2661]

Page 3-5, §3E.02, subsection (a), by adding after the word "mining" the words "or civil."

And,

Page 3-5, §3E.02, subsection (b), by adding after the first sentence — "Those persons who have been approved to date need not make said demonstration."

(b) The legislative rules filed in the state register on the twentieth day of January, one thousand nine hundred eighty-four, relating to the department of natural resources (solid waste management), are authorized with the amendments set forth below:

Page 9, section 4.04, line five, add the following paragraph:

"Upon request of any applicant, the division shall meet with the applicant for prefiling review of the application. The division, with the cooperation of the solid waste authority, shall assist the applicant in preparing a complete and proper application which would not be rejected as incomplete."

On page 15, section 6.03(c)(1) in the first full sentence, after the word "cease", strike the remainder of the sentence and insert in lieu thereof the words "within fifteen (15) days of receipt of an order of suspension" and in the second sentence strike the word "recommence" and insert the words "continue beyond fifteen (15) days";

(c)(2) in the first full sentence, after the word "cease" by striking out the remainder of the sentence and insert in lieu thereof the words "immediately upon receipt of an order of revocation."

(c) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred eighty-four, relating to the department of natural resources (public use of state parks, forests, hunting and fishing areas), are authorized.

(d) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (surface mining reclamation), are
authorized.

(e) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (coal refuse disposal), are authorized.

(f) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (transfer of the state national pollutant discharge elimination system program), are authorized with the amendment set forth below:

Page 10-5, by striking §10B.19 and inserting in lieu thereof a new §10B.19, to read as follows: "'Effluent limitations guidelines' means a regulation published by the Administrator under Section 304(b) or Section 301(b)(1)(B) of the CWA to adopt or revise effluent limitations or levels of effluent quality attainable through the application of secondary or equivalent treatment. For the coal industry these regulations are published at 40 C.F.R. Parts 434 and 133. (See: Appendix G and H)."

(g) The legislative rules filed in the state register on the twenty-eighth day of August, one thousand nine hundred eighty-four, relating to the department of natural resources (small arms hunting), are authorized.

(h) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the department of natural resources (hazardous waste management), are authorized.

(i) The legislative rules filed in the state register on the third day of December, one thousand nine hundred eighty-four, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of February, one thousand nine hundred eighty-five, relating to the department of natural resources (hazardous waste management), are authorized.
(j) The legislative rules filed in the state register on the tenth day of October, one thousand nine hundred eighty-five, relating to the department of natural resources (hazardous waste management: Small quantity generators and waste minimization certification), are authorized with the amendment set forth below:

On page 1, §3.1.4b, delete the word "or" in the reference to "paragraph (g) or (j)" and insert in lieu thereof the words "and, if applicable."

(k) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred eighty-five, relating to the department of natural resources (WV/NPDES regulations for the coal mining point source category and related sewage facilities), are authorized.

(l) The legislative rules filed in the state register on the eleventh day of December, one thousand nine hundred eighty-five, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management), are authorized.

(m) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred eighty-six, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of December, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management regulations), are authorized.

(n) The legislative rules filed in the state register on the seventh day of August, one thousand nine hundred eighty-six, relating to the director of the department of natural resources (procedures for transporting and dealing in furbearing animals), are authorized.

(o) The legislative rules filed in the state register on
the thirtieth day of December, one thousand nine
hundred eighty-six, relating to the department of
natural resources (WV/NPDES program for coal mines
and preparation plants, and the refuse and waste
therefrom), are authorized with the amendments set
forth below:

On page four, §1.9.1.a by inserting the words "five
thousand dollars or" after the words "significant
portion of income" means."

And,

On page four, §1.9.1.a by inserting the words "which-
ever is less," after the words "ten percent or more of
gross personal income for a calendar year."

(p) The legislative rules filed in the state register on
the fifth day of March, one thousand nine hundred
eighty-six, relating to the department of natural
resources (hazardous waste management), are
authorized.

(q) The legislative rules filed in the state register on
the twelfth day of August, one thousand nine hundred
eighty-seven, relating to the department of natural
resources (WV/NPDES regulations for coal mining
facilities), are authorized.

(r) The legislative rules filed in the state register on
the tenth day of June, one thousand nine hundred
eighty-seven, relating to the director of the department
of natural resources (outfitters and guides), are
authorized.

(s) The legislative rules filed in the state register on
the ninth day of January, one thousand nine hundred
eighty-seven, relating to the department of natural
resources (hazardous waste management regulations),
are authorized.

(t) The legislative rules filed in the state register on
the fifth day of March, one thousand nine hundred
eighty-seven, relating to the department of natural
resources (hazardous waste management regulations,
series 35), are authorized.
(u) The legislative rules filed in the state register on the seventh day of December, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations, series 35), are authorized.

(v) The legislative rules filed in the state register on the sixteenth day of December, one thousand nine hundred eighty-seven, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-eight, relating to the department of natural resources (solid waste management), are authorized.

(w) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred eighty-seven, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of August, one thousand nine hundred eighty-seven, relating to the director of the department of natural resources (boating regulations), are authorized with the amendment set forth below:

On page 16, section 6.2, line 3 by inserting following the period "This regulation does not apply to licensed outfitters and guides." These rules were proposed by the director of the department of natural resources pursuant to section seven, article one and section twenty-two, article seven, chapter twenty of this code.

(x) The legislative rules filed in the state register on the second day of September, one thousand nine hundred eighty-eight, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of October, one thousand nine hundred eighty-eight, relating to the department of natural resources (hazardous waste management), are authorized.

(y) The legislative rules filed in the state register on
the thirty-first day of August, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (boating), are authorized.

(z) The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-eight, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of August, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (commercial sale of wildlife), are authorized.

(aa) The legislative rules filed in the state register on the twenty-seventh day of January, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (catching and selling bait fish), are authorized.

(bb) The legislative rules filed in the state register on the twenty-fifth day of March, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (West Virginia public hunting and fishing areas), are authorized with the following amendment:

On page three, section 3.8.4, by inserting after the word "vehicle" the following: "and all terrain vehicle (ATV)."

(cc) The legislative rules filed in the state register on the seventeenth day of March, one thousand nine hundred eighty-nine, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of January, one thousand nine hundred ninety, relating to the division of natural resources (solid waste management), are authorized with the amendments set forth below:

On page 13, Section 3.2.6, by deleting the current language and inserting in lieu thereof the following:

"3.2.6. Within two hundred (200) feet of faults that
have had displacement in Holocene time (i.e., during the last eleven thousand years);"

On page 64, Section 3.14.25, by deleting the current language and inserting in lieu thereof the following language:

"3.14.25. Environmental Compliance History. The chief or the director may refuse to grant any permit if he has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager, thereof, or shareholder owning twenty percent (20%) or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed permitted premises, in whole or part, has exhibited a pattern of violation of the environmental statutes or regulations of this State, any other state, or the federal government."

On page 104, section 4.5.4.a, by inserting after the words “at that landfill” the following:

"Nothing within these regulations shall be construed to allow the installations of any liner or system on areas not lined as of November 30, 1989, that is not in conformance with section 4.5.4.a.E or 4.5.4.a.G of these regulations. Landfills that do have an article 5f permit and a liner installed as of November 30, 1989, may install a liner as approved by the chief."

And,

On pages 147 through 151, sections 4.11.5 and 4.11.6, by deleting the current language and inserting in lieu thereof the following:

"4.11.5. Corrective Action Program.

Whenever a statistically significant increase is found in a Phase II or Phase III monitoring parameter, or when groundwater contamination is otherwise identified by the Chief at sites without monitoring programs, which is determined by the Chief to have resulted in a significant adverse effect on an aquifer, and which is attributable to a solid waste facility, the Chief may
require appropriate corrective or remedial action
pursuant to W. Va. Code Chapter 20, article 6A, and
Chapter 20, article 50 to abate, remedi ate or correct
such pollution. Any such corrective or remedial action
order shall take into account any mitigating ground-
water quality protection standards, the existing use of
such waters, the reasonable uses of such waters,
background water quality, and the protection of human
health and the environment.”

(dd) The legislative rules filed in the state register on
the seventeenth day of February, one thousand nine
hundred eighty-nine, relating to the director of the
department of natural resources (underground storage
tanks), are authorized.

(ce) The legislative rules filed in the state register on
the twenty-seventh day of January, one thousand nine
hundred eighty-nine, relating to the director of the
department of natural resources (transporting and
selling wildlife pelts), are authorized.

(ff) The legislative rules filed in the state register on
the seventeenth day of February, one thousand nine
hundred eighty-nine, modified by the director of the
department of natural resources to meet the objections
of the legislative rule-making review committee and
refiled in the state register on the ninth day of August,
one thousand nine hundred eighty-nine, relating to the
director of the department of natural resources (under-
ground storage tank fee assessments), are authorized.

(gg) The legislative rules filed in the state register on
the twenty-fourth day of April, one thousand nine
hundred eighty-nine, modified by the director of the
department of natural resources to meet the objections
of the legislative rule-making review committee and
refiled in the state register on the twenty-second day of
May, one thousand nine hundred eighty-nine, relating to
the director of the department of natural resources
(public hunting and fishing areas), are authorized.

(hh) The legislative rules filed in the state register on
the first day of December, one thousand nine hundred
eighty-nine, relating to the department of natural
resources (water pollution control permit fee schedules),
are authorized with the amendments set forth below:

On page five, section 3.3, by deleting the following:
"Submitted fees are not refundable."

On page two, after section 2.6, by inserting the
following:

"Customer" means any person that purchases waste
disposal services from a facility permitted under article
five-a, chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended. For the
purposes of these regulations, commercial and other
non-single family dwelling customers shall be translated
into customer equivalents by dividing the total daily
estimated volume of waste water by three hundred and
fifty gallons per day." and renumbering the remaining
subsections.

On page nine, section 7.2, by striking out the words
"seven hundred fifty dollars ($750)." and inserting in
lieu thereof the following:

"Determined using Table D, but in no case shall be
less than two hundred fifty dollars ($250)."

And,

On page thirteen, by striking out all of Table D,
Schedule of Annual Permit Fees, and inserting in lieu
thereof a new Table D, designated "Schedule of Annual
Permit Fees", to read as follows:

"TABLE D
SCHEDULE OF ANNUAL PERMIT FEES
SEWAGE FACILITIES

<table>
<thead>
<tr>
<th>Number of Customers</th>
<th>Annual Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 1000</td>
<td>$ 250</td>
</tr>
<tr>
<td>1000 to 1499</td>
<td>$ 500</td>
</tr>
<tr>
<td>1500 to 1999</td>
<td>$ 750</td>
</tr>
<tr>
<td>2000 to 2499</td>
<td>$ 1000</td>
</tr>
<tr>
<td>2500 to 2999</td>
<td>$ 1250</td>
</tr>
<tr>
<td>3000 to 3499</td>
<td>$ 1500</td>
</tr>
<tr>
<td>3500 to 3999</td>
<td>$ 1750</td>
</tr>
</tbody>
</table>
INDUSTRIAL OR OTHER WASTE FACILITIES

Average Discharge Volume | Annual Permit Fee
---|---
(gallons per day)
less than 1,000 | $50
1,001 to 10,000 | $500
10,001 to 50,000 | $1000
greater than 50,000 | $2500

(ii) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-nine, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of September, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (revocation of hunting and fishing licenses), are authorized.

(jj) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-nine, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety, relating to the division of natural resources (state water pollution control revolving fund program), are authorized.

(kk) The legislative rules filed in the state register on the twenty-ninth day of March, one thousand nine hundred ninety, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of August, one thousand nine hundred ninety, relating to the division of natural resources (assessment of civil administrative penalties), are authorized.

(ll) The legislative rules filed in the state register on
the sixth day of August, one thousand nine hundred ninety, relating to the division of natural resources (water pollution control permit fee schedules), are authorized.

(mm) The legislative rules filed in the state register on the fifteenth day of June, one thousand nine hundred ninety, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, one thousand nine hundred ninety, relating to the division of natural resources (underground storage tank insurance trust fund), are authorized with the amendment set forth below:

On page four, after subsection 5.1, by inserting a new subdivision 5.1.1 to read as follows:

"5.1.1 The fee shall be one hundred dollars per tank per year ($100/tank/year) for a period of not less than one (1) year and not more than three (3) years. Second and third year capitalization fees may be levied if there is an inadequate surplus of funds, as determined by the Board of Risk and Insurance Management, the Division of Natural Resources and the Underground Storage Tank Advisory Committee pursuant to W. Va. Code, §20-5H-7."

(nn) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of October, one thousand nine hundred ninety, relating to the division of natural resources (underground storage tanks), are authorized with the amendment set forth below:

On page four, section five, subsection 5.1, after the word "requirements" by striking out the remainder of the subsection and inserting in lieu thereof, the following:

"of Title 47, Series 37 (Underground Storage Tank
Fee Assessments); Title 47, Series 36, Section 4 (Notification Requirements); and Title 47, Series 37A, Section 5 (Capitalization Fees) of the Code of State Regulations and the owner or operator presents proof of the certification to the carrier."

(oo) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, relating to the division of natural resources (dam safety), are authorized.

(pp) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of November, one thousand nine hundred ninety, relating to the division of natural resources (hazardous waste management), are authorized.

(qq) The legislative rules filed in the state register on the first day of July, one thousand nine hundred ninety-one, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of September, one thousand nine hundred ninety-one, relating to the division of natural resources (special motorboating regulations), are authorized.

(rr) The legislative rules filed in the state register on the first day of May, one thousand nine hundred ninety-one, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of July, one thousand nine hundred ninety-one, relating to the division of natural resources (special fishing regulations), are authorized with the amendment set forth below:

On page one, by striking out subsection 2.1 and inserting in lieu thereof, a new subsection 2.1, to read as follows:
472 "2.1 "Daylight hours" means the time period between
473 sixty minutes before sunrise and sixty minutes after
474 sunset."

475 (ss) The legislative rules filed in the state register on
476 the first day of July, one thousand nine hundred ninety-
477 one, modified by the division of natural resources to
478 meet the objections of the legislative rule-making review
479 committee and refiled in the state register on the
480 twenty-first day of November, one thousand nine
481 hundred ninety-one, relating to the division of natural
482 resources (boating regulations), are authorized.

483 (tt) The Legislature hereby authorizes and directs the
division of natural resources to promulgate the legisla-
tive rule relating to water pollution control permit fee
schedules, 47 CSR 26, effective the twenty-second day
of April, one thousand nine hundred ninety-one, with the
amendment set forth below:

489 On page eight, subdivision 7.4.1, at the end of the
490 subdivision by striking the period and adding the
491 following:

492 "Provided, That if the chief determines that a facility
493 is in substantial compliance with its existing permit, the
494 fee is one thousand two hundred fifty dollars
495 ($1,250.00)."

496 (uu) The Legislature hereby authorizes and directs the
division of natural resources to amend its rules
relating to water pollution control permit fee schedules
which were filed in the code of state regulations (47 CSR
26) on the thirteenth day of April, one thousand nine
hundred ninety-two, with the following amendments set
forth below:

503 On page nine, after section 7.5, by inserting the
504 following:

505 "7.6. Facilities Discharging Stormwater. The annual
506 permit fee for a facility that discharges stormwater only
507 shall be determined through the use of Table F of these
508 regulations.

509 7.7. Aquaculture facilities. The annual permit fees for
aquaculture facilities that are subject to the provisions
of the water pollution control regulations shall be
determined by Table G of these regulations."

And after Table E, on page ten, by inserting Table
F, designated “Schedule of Annual Permit Fees For
Facilities Discharging Stormwater,” and inserting
Table G, designated "Schedule of Annual Permit Fees
For Aquaculture Facilities" to read as follows:

"TABLE F

SCHEDULE OF ANNUAL PERMIT FEES FOR

FACILITIES DISCHARGING

STORMWATER

Average Discharge Volume

<table>
<thead>
<tr>
<th>Average Discharge Volume (gallons per day)</th>
<th>Annual Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 5,001</td>
<td>$ 50</td>
</tr>
<tr>
<td>5,001 to 15,000</td>
<td>$ 125</td>
</tr>
<tr>
<td>15,001 to 50,000</td>
<td>$ 250</td>
</tr>
<tr>
<td>50,001 to 100,000</td>
<td>$ 500</td>
</tr>
<tr>
<td>greater than 100,000</td>
<td>$ 750&quot;</td>
</tr>
</tbody>
</table>

"TABLE G

SCHEDULE OF ANNUAL PERMIT FEES FOR

AQUACULTURE FACILITIES

<table>
<thead>
<tr>
<th>#Feed/Month (Initial and Reissuance)</th>
<th>Annual Fee</th>
<th>Application Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>5,000 to 9,999</td>
<td>$ 250</td>
<td>$ 250</td>
</tr>
<tr>
<td>10,000 to 14,999</td>
<td>$ 500</td>
<td>$ 250</td>
</tr>
<tr>
<td>15,000 to 19,999</td>
<td>$ 750</td>
<td>$ 250</td>
</tr>
<tr>
<td>20,000 to 24,999</td>
<td>$1,000</td>
<td>$ 250</td>
</tr>
<tr>
<td>25,000 to 29,999</td>
<td>$1,250</td>
<td>$ 250</td>
</tr>
<tr>
<td>greater than 30,000</td>
<td>$1,750</td>
<td>$ 250&quot;</td>
</tr>
</tbody>
</table>

"
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

President of the Senate

Speaker of the House of Delegates

The within is approved this the 24th day of April 1993.

Governor