

**TITLE 45
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY**

**SERIES 22
AIR QUALITY MANAGEMENT FEE PROGRAM**

§45-22-1. General.

1.1. Scope. -- This rule establishes a program to collect fees for certificates to operate and for permits to construct, modify or relocate sources of air pollution. Funds collected from these fees will be used to supplement the Director's budget for the purpose of maintaining an effective air quality management program.

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

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

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

§45-22-2. Definitions.

2.1. "Air Pollution" has the meaning ascribed to it in W. Va. Code §22-5-2.

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

2.3. [RESERVED]

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

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

2.6. "Emissions Unit" has the meaning described in 45CSR14.

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

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

2.9. "Modification" has the meanings described in 45CSR13 and 45CSR27.

2.10. "NESHAPs" means National Emission Standards for Hazardous Air Pollutants as described in 45CSR15.

2.11. "Nonattainment Review/Bubble Concept" has the meanings as described in 45CSR19.

2.12. "NSPS" means New Source Performance Standards as described in 45CSR16.

2.13. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state and all agencies or divisions thereof, any state political subdivision, the United States of America, any municipal, public, statutory, or private corporation or association organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.

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

2.15. "PSD" means Prevention of Significant Deterioration, as described in 45CSR14.

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

2.17. "Toxic Air Pollutant" has the meaning described in 45CSR27.

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

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

3.2. Applications for permits for construction, modification or relocation shall be submitted in accordance with 45CSR13, 45CSR14, 45CSR19, and 45CSR15, whichever may be applicable.

3.3. Fee payment.

3.3.a. A person applying for a permit to construct, modify or relocate shall pay a fee when submitting the application. The fee shall be paid by a negotiable instrument (check, draft, warrant, money order, etc.) made payable to the "Air Pollution Control Fund". Any application for a permit to construct, modify or relocate shall not be deemed to have been received nor complete unless payment of the application fee is included.

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

3.4. Fee Schedule.

3.4.a. All persons required to submit an application for a permit to construct, modify or relocate pursuant to 45CSR13 shall pay an application fee of one thousand dollars (\$1000).

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3.4.b. In addition to the fee required in Section 3.4.a. of this rule, all persons subject to PSD requirements (45CSR14), Nonattainment Review/Bubble Concept requirements (45CSR19), NSPS requirements (45CSR16), NESHAPs requirements (45CSR15), or Toxic Air Pollutant requirements (45CSR27 shall pay additional fees as described below:

Category Fee

NSPS Requirements \$1,000

NESHAPs or Toxic Air Pollutant Requirements \$2,500

PSD or Nonattainment Review/
Bubble Concept for

(1) New Major Sources and
Bubble Plans, or \$10,000

(2) Major Modifications \$5,000

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

§45-22-4. Certificate to Operate.

4.1. Requirements.

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

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

4.2. Transfer of Operating Certificate.

Any person holding a valid certificate to operate may request that the Director transfer the certificate to another person providing the following conditions are met:

4.2.a. The certificate holder describes, in writing, the reasons for or circumstances of the transfer and certifies that the plant for which the certificate pertains is in compliance with all permits issued by the Director and the Director's emission rules.

4.2.b. The transferee identifies and acknowledges, in writing, that it accepts and will comply with all permits issued by the Director and will comply with all applicable rules of the Director.

4.2.c. The certificate holder or transferee pays, at the time of the request for transfer, a transfer fee of two hundred dollars (\$200) payable to the "Air Pollution Control Fund".

4.3. Fee Payment.

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A person applying for a certificate to operate shall pay a fee to the Director in accordance with the fee schedule of Sections 4.4. and 4.5. of this rule. The fee shall be paid by negotiable instrument made payable to the "Air Pollution Control Fund".

4.4. Fee Schedule.

4.4.a. Fee

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Group 1 \$10,000

Integrated Steel Plant

Electric Utility Plant (rated 300 MW or greater)

Group 2 \$8,000

Primary Aluminum Plant

Furnace and Foundry Coke
Production Plant

Portland Cement Plant

Kraft Pulp Mill

Group 3 \$5,000

Chemical Production Plant with Steam Plant(s) having total design heat input greater than 350
mmBtu/hr

Hazardous Waste Incinerator

Electric Utility Plant (rate less than 300 MW)

Group 4 \$4,000

Petroleum Refinery

Ferroalloy Production Plant

Any source containing chemical processing units emitting one or more toxic air pollutants and
subject to regulation under 45CSR27 for which a higher operating certificate fee is
not applicable

Group 5 \$3,000

Chemical Production Plant (three process units or greater)

Primary Metals Plant (not otherwise listed)

Group 6 \$2,000

Rocket Fuel Plant

Chemical Production Plant (less than three process units)

Carbon Products Plant (not otherwise listed)

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Petroleum Storage and Distribution Facility (greater than 20 million gal/yr gasoline throughput)

Glass Production Plant (total pull rate greater than 6,000 lb/hr)

Commercial/Industrial or Commercial Infectious Waste Disposal Facility

Group 7

\$1,000

Nonmetallic Mineral Products Processing Plant (500 ton/hr or greater primary crushing capacity)

Coil, Can or Sheet Coating Facility Coal Preparation Plant with Thermal Dryer

Coal or other Solid Fuel-Fired Boilers or Process Equipment (total design heat input greater than 100 mmBtu/hr, excluding all boilers less than 10 mmBtu/hr design heat input)

Lead, Aluminum or Copper Recovery Plant

Asphalt Building Product Plant

Secondary Metals Plant (not otherwise listed)

Charcoal Plant

Lime Manufacturing Plant

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Group 8 \$500

Hot Mix Asphalt Paving Plant

Wool Fiberglass Insulation Production Plant

Sewage Sludge Incinerator

Natural Gas Compressor Station (total reciprocating engine capacity greater than 1,000 h.p.)

Natural Gas Compressor Station (total turbine capacity greater than 8,000 h.p.)

Nonmetallic Minerals Processing Plant (primary crushing capacity greater than 100 tons/hr but less than 500 tons/hr)

Sulfuric Acid Manufacturing Plant

Coal or other Solid Fuel-Fired Boilers or Process Fuel Burning Equipment with total design heat input greater than 50 mmBtu/hr but less than 100 mmBtu/hr, excluding all boilers less than 10 mmBtu/hr

Refractory Manufacturing Plant

Metal Reclamation Furnace (wire, electrical equipment, batteries)

Miscellaneous Surface Coating (not otherwise listed and greater than 100 tons/yr maximum emissions of volatile organic compounds)

Coal Preparation Plant (wet washing or pneumatic cleaning not otherwise listed)

Clay Processing/Brick Manufacturing

Group 9 \$200

On-site Pathological/Infectious Waste Incinerator

Crematory Incinerator

Other Glass Manufacturing Including Specialty Manufacturing

Plastic Products Recovery Facility

Miscellaneous Surface Coating (not otherwise listed and greater than 25 tons/yr maximum emissions of volatile organic compounds)

Tank Truck and Railroad Tank Car Cleaning/Repair Facility

Metal or Ore Briquet Manufacturing/Recovery Facilities

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Gray Iron Foundry
Coal Processing and Handling (not otherwise listed)

Nonmetallic Minerals Processing Plant (primary crusher capacity less than 100 tons/hr)

Natural Gas Sweetening Plant Printing Facility (emitting greater than 150 lbs/day of volatile organic compounds)

All other sources (excluding indirect affected sources) subject to emission rules, permit, and/or registration requirements promulgated by the Director

4.4.b. If a plant or source is described by more than one of the groups in Section 4.4.a. or contains individual emitting facilities listed under more than one of the groups in Section 4.4.a., only the single highest fee shall apply. For each stationary source, no person shall be required to pay more than one fee listed in Section 4.4.a.

4.4.c. A fee paid hereunder is not refundable.

4.5. Operating Year.

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

4.5.b. For those persons making application after July 1 of the current operating year for a certificate to operate in the current operating year, such person shall pay a fee or prorated fee in accordance with the following schedule:

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

4.6. Penalty.

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

§45-22-5. Collection.

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