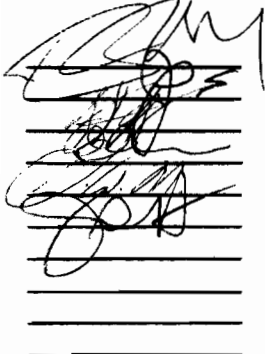


MINUTE ORDER NO. 84-121

The revised regulation attached hereto on the permit fee system has been advertised, presented to public comment, and is hereby adopted and promulgated as: "Regulation No. 9: Regulations for the Fee System for Environmental Permits."

COMMISSIONERS



Clyde Broyles
CHAIRMAN

SUBMITTED BY: Phillip Deisch DATE PASSED: 11-16-84

REGULATION NO. 9

REGULATIONS

FOR THE

FEE SYSTEM

FOR ENVIRONMENTAL PERMITS

ARKANSAS DEPARTMENT OF POLLUTION CONTROL

AND ECOLOGY

STATE OF ARKANSAS

DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

REGULATION NO. 9

REGULATIONS FOR DEVELOPMENT AND IMPLEMENTATION

OF A PERMIT FEE SYSTEM

FOR ENVIRONMENTAL PERMITS ISSUED

BY THE DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

SECTION 1. PURPOSE. It is the purpose of this regulation to develop and implement a system of fees for permits issued by the Department of Pollution Control and Ecology pursuant to the provisions of the Water and Air Pollution Control Act (Act 472 of 1949, as amended, Ark. Stats. 82-1901 et. seq.) and/or the Solid Waste Management Act (Act 237 of 1971, as amended, Ark. Stats. 82-2701 et. seq.). These fees were authorized by Act 817 of 1983 and will be used to defray administrative costs of issuance, renewal, inspection, modification, and monitoring associated with these permits.

SECTION 2. SHORT TITLE. This regulation shall be known and may be cited by the short title "Regulation No. 9: Permit Fees."

SECTION 3. DEFINITIONS. All terms used in this regulation, unless the context otherwise requires, or unless specifically defined in the enabling legislation, or in Federal regulations adopted by reference for program management, shall have their usual meaning. In addition, for purposes of this regulation, the following definitions apply:

ANIMAL UNIT

A unit or measurement for any animal or fowl feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0 plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0, plus the number of laying hens or broilers multiplied by 0.01.

ANNUAL REVIEW FEE

That fee authorized by the enabling Act to be submitted upon the anniversary date for issuance of permits required by Act 472 of 1949, as amended, and/or Act 237 of 1971, as amended, except that the first annual review fee for newly constructed facilities will not be due until completion of the first year of operation.

COMMISSION

The Commission on Pollution Control and Ecology

CONCENTRATED ANIMAL FEEDING OPERATION

Any lot or facility where animals or fowl have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

DEPARTMENT

The Arkansas Department of Pollution Control and Ecology

DIRECTOR

The executive head and active administrator of the Arkansas Department of Pollution Control and Ecology

FACILITY

An activity or operation within a specific geographical location including property contiguous thereto. A facility may consist of several manufacturing, treatment, storage, or disposal operational units. For purposes of this permit fee regulation, a facility shall be considered to be all property, facilities, or operations owned, leased, or operated by a single entity, whether a municipal, county, or state government, corporation, partnership, or proprietorship in the same geographical area, forming an integral part of the same activity or operation, whether or not such activity lies within the boundaries of the city or county. For purposes of permit fee assessment only, such property, facilities, or operations shall be considered as a single facility if they are regulated by a common state or federal permit within each permit category, or if future such consolidation of multiple permits can be realized within the scope of applicable permitting regulations, and the facilities or operations are under the supervision of a single plant manager/superintendent.

FILING FEE

That portion of the initial permit application fee that is non-refundable, and is used to defray the costs associated with the clerical and administrative tasks prior to technical review of the application.

INITIAL PERMIT
APPLICATION FEE

That fee defined as the "initial fee" required by the enabling Act to be submitted with all applications for permits issued under the authority of Act 237 of 1971, as amended, and includes a non-refundable filing fee as described in these regulations.

MODIFICATION FEE

That fee authorized by the enabling Act to be submitted for modifications of any existing or future permit required by Act 472 of 1949, as amended, and/or Act 237 of 1971, as amended, such modification being either at the request of the permittee or as required by the laws of the State of Arkansas or the regulations of the Arkansas Department of Pollution Control and Ecology. Assessments for permit modifications necessitated by changes in federal and/or state regulations shall be limited to once per year for each permit category. This limit does not apply to modifications requested by the Permittee for reasons other than changes in the regulations.

RENEWAL PERMIT

A permit issued to a facility upon expiration of an existing permit when there are significant modifications necessary to the expiring permit, and there is a significant increase in the rate of emissions or effluent flow, such determinations to be made by the Department of Pollution Control and Ecology.

RENEWAL PERMIT FEE

That fee charged for a renewal permit, as described in this regulation.

REISSUED PERMIT

A permit issued to a facility upon expiration of an existing permit when there are no significant modifications necessary to the expiring permit, and there is no significant increase in the rate of emissions or effluent flow, such determinations to be made by the Department of Pollution Control and Ecology.

SIGNIFICANT PERMIT REVISION

A revision of a permit due to anticipated facility expansions, production increase, or process modifications which will result in new or significant increases in the rate of permitted allowable emissions or pollutant discharge.

SECTION 4. APPLICABILITY. Permit fees established by this regulation shall be applicable to all water permits, including no-discharge and/or closed system permits, issued under the provisions of the Water and Air Pollution Control Act (Act 472 of 1949, as amended), all air permits issued under the Water and Air Pollution Control Act (Act 472 of 1949, as amended) or any Federal Water or Air permit program where permitting authority has been delegated to the Department, and all solid waste disposal permits issued under the provisions of the Solid Waste Management Act (Act 237 of 1971, as amended) and the Solid Waste Disposal Code. Facilities operating under the provisions of "Permits by Rule" or "Authorization by Rule" will be exempted from this regulation until such time that the facility submits an application for an individual permit within each applicable permit category.

SECTION 5. MAXIMUM FEES. The following maximum fees shall be effective per permit category (Air, Water, or Solid Waste) per facility:

Initial Permit Application Fee or Renewal Fee	\$2500
Annual Review Fee or Reissued Permit Fee	\$1000
Permit Modification Fee	\$1000

The following maximum fees shall be effective for Solid Waste Class IV landfills per facility:

Initial Permit Fee or Renewal Fee	\$150.00
Annual Review Fee or Reissued Permit Fee	\$50.00
Permit Modification Fee	\$50.00

SECTION 6. RETROACTIVITY. The "Initial Permit Application Fee" as defined above shall not be enforced retroactively against water, air, or solid waste activities that hold valid permits as of the effective date of this regulation. However, as of the effective date of this regulation, all permit holders shall be liable for permit modification fees, and for annual review fees as of the anniversary date(s) of their permits(s). An initial permit application fee will be calculated for each facility based upon design or permitted capacities, flows or emission rates for the appropriate permit category. The annual permit review fee will then be assessed in accordance with Section 10 e. below.

SECTION 7. PERMIT FEE PAYMENT. Applicable permit fees shall be paid by cash, check or money order payable to the Department for deposit in the State Treasury. The filing fee shall be submitted with all permit applications. After an initial review of the application, the Department will calculate the total permit fee and notify the applicant accordingly. The permit will not be issued until such fee, minus the filing fee, is received by the Department. Annual fees shall be due within 45 days of the anniversary date of the permit and the Permittee shall be sent a bill for the required annual review fee. Failure to receive this bill does not relieve the Permittee from liability for the annual review fee, but late charges will not be assessed until 45 days after the Permittee has been notified that the annual fee is due. The annual review fee

shall not be assessed during the years in which the initial permit application fee or the permit renewal fee is assessed. A permitted facility failing or refusing to pay the annual review fee in a timely manner shall be subject to a late payment charge as established in these regulations. Continued refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Department, which may result in revocation of the permit. When payment of fees is made by check which is subsequently returned due to insufficient funds, all review work on the particular application will immediately cease until the fee is paid in cash or money order.

SECTION 8. REFUNDS. Except for the filing fee, fees submitted for an initial permit or permit renewal are refundable in the event that a permit or renewal permit is subsequently denied or the request is withdrawn by the applicant. However, up to 60% of the initial permit application fee may be withheld at the discretion of the Department to cover the reasonable administrative and technical review costs incurred in the review process. The remainder of the initial permit application fee is reserved to cover the monitoring and inspection activities during the first year of operation, and therefore will be refunded in the event a permit or renewal permit is not issued.

SECTION 9. SOLID WASTE FEES. Due to the unique requirements for a preliminary site survey (Pre-site) of a proposed solid waste management facility prior to the submission of a permit application, the initial permit application fee for solid waste permits is composed of two parts, i.e. (1) the pre-site investigation fee, and (2) the fee based on design volume of the facility. The pre-site investigation fee shall be a fixed amount as established in these regulations and will help to recover the costs of the preliminary engineering site survey conducted by the various regulating agencies in association with this Department. This pre-site fee shall be non-refundable, and shall be paid prior to the conduct of the pre-site investigation. Upon finding of site suitability based on the pre-site, or at the owner's risk if the site is judged to be non-suitable and the owner continues to seek a permit for the site, the remainder of the initial permit application fee, not to exceed a total of \$2500, including the pre-site fee, shall be paid as specified in SECTION 7, and shall be subject to the refund provisions of SECTION 8 above.

SECTION 10. FEE SCHEDULE. The following permit fee schedule shall be applicable to the affected permit programs in the State of Arkansas. Permit fees determined with this schedule shall be the maximum fees for each particular category:

- a. Filing Fee. The first \$50 of the initial permit application fee; non-refundable in the event the permit is denied, or the application is otherwise withdrawn.
- b. Wastewater Permit Initial Application Fee. Fees shall be assessed on the basis of the lower of design flow or permitted flow in millions of gallons per day (mgd) and type of flow, as follows:
 - (1) Permits without toxic/priority pollutants limited in the permit, as defined in 40 CFR 122., Appendix D, Tables II and III, with flows in excess of .002 mgd:

INITIAL PERMIT APPLICATION FEE = \$150 + \$235 Q
where Q = discharge flow in mgd

(2) Permits with priority pollutant limitations
INITIAL PERMIT APPLICATION FEE = \$150 + \$940 Q
where Q = effluent flow in mgd

(3) Non-Contact Cooling Water or Uncontaminated Storm Run-off
with a flow in excess of .002 mgd:
INITIAL PERMIT APPLICATION FEE = \$150 + \$23.5 Q
where Q = discharge flow in mgd

(4) No-Discharge and/or Closed Systems, with flows in excess
of .002 mgd, including waste disposal systems for concentrated
animal feeding operations of 600 or more animals units,
required to be permitted under Act 472 of 1949, as amended,
and any regulations promulgated thereto.

INITIAL PERMIT APPLICATION FEE = \$150

(5) Initial Permit Application Fees referred to in sub-sections
b. (1), (2), (3), and (4) above shall not total more than
\$2500 per facility.

c. Air Permit Initial Application Fee. Fees shall be assessed on the
basis of the permitted allowable emission rate of the pollutant
with the highest emission rate in tons per year (tpy), as determined
by the Department, with an additional factor (A) for type of permit.
When a control technology is specified rather than an emission
rate, the fee will be based on the Department's estimate of the
emission rate. Total initial permit application fees shall not
exceed \$2500 per facility. The formula for determination of the
initial permit application fee is:

INITIAL PERMIT APPLICATION FEE = \$150 + 9.4Q + A
where Q = allowable emission rate (tpy) of predominant
pollutant

and A = additional factor for permit type as follows:

(In the event that more than one factor applies to a permit, only the
highest factor will apply)

SIP-----	\$250
NSPS-----	\$750
NESHAPS-----	\$750
PSD-----	\$1410

d. Solid Waste Initial Permit Application Fee. Fees shall be assessed
on the basis of the volume of waste to be disposed of in the landfill
in units of 1000 cubic yards. Fees are applicable to all classes
of facilities permitted under Act 237 of 1971, as amended, and any
regulations promulgated thereto. Fees are comprised of a fixed
pre-site investigation fee and a variable fee based on disposal
rate, the total not to exceed \$2500 per facility, except that the
initial permit application fee for a Class IV landfill shall be
\$150.00 per facility.

INITIAL PERMIT APPLICATION FEE = PRE-SITE FEE + DESIGN VOLUME FEE
For Class I, II, and III landfills:

INITIAL PERMIT APPLICATION FEE = \$150 + \$2.35V (V=DESIGN VOLUME
IN 1000 CU. YDS)

For Class IV landfills:
INITIAL PERMIT APPLICATION FEE = \$150

- e. Annual Review Fee and Permit Modification Fee. The annual review fee and permit modification fees shall be assessed as follows:
- (1) For wastewater and air permits - 40% of the calculated initial permit application fee, such annual review fee or permit modification fee not to exceed \$1000 per facility per permit category per year, nor be less than \$50.
 - (2) For solid waste permits - based on the proposed usage rate of the facility in cubic yards per year. The fee shall be calculated by dividing the design volume (cubic yards) by the proposed life of the facility in years multiplied by the rate of \$16 per 1000 cubic yards, except that for Class IV landfills a flat rate annual fee is established. Such annual fee or permit modification fee shall not exceed \$1000 per facility per year, nor be less than \$50, except that the annual fee or permit modification fee for Class IV landfills shall be \$50.00 per year per county or municipality. Privately operated Class IV landfills shall be assessed fees separately from city or county landfills. Where the Department finds that the actual disposal rate differs significantly from the proposed or estimated rate, the annual fee will be adjusted to reflect the actual disposal rate.
 - (3) Annual review fees authorized by Act 817 of 1983 shall be applicable to all existing permits on the effective date of these regulations, except that the first annual fee shall be due 12 months following the anniversary date of the current permit issuance date, and annually thereafter. Permit modification fees shall not be assessed for minor administrative changes. For facilities possessing permits in more than one permit category, the annual review fee shall be due on the anniversary date of the permit with the latest issuance date in the calendar year.
- f. Permit Renewal Fee. If a permit issued under the authority of the enabling legislation contains an expiration date and is consequently subject to renewal not later than the date of expiration, the permit renewal fee shall be assessed using the following guidelines:
- (1) If, at the time of renewal,
 - (a) significant permit provisions (as defined in Section 3) to the existing permit requested by the applicant; or
 - (b) significant permit revisions are required to comply with new or revised state or federal laws or regulations; the renewal permit shall be considered the same as an initial permit for purposes of this permit fee regulation.

(2) If, at the time of renewal, there is no significant revision to the permit, and there is no significant increase in the rate of permitted allowable emissions or effluent flow, the renewal permit shall be considered as a "reissued permit" for the purposes of these regulations, and subject to a fee equal to the annual review fee for the facility.

- g. Late Payment Charge. A late payment charge shall be assessed to facilities failing to pay the annual review fee within 45 days of the billing date, and shall be assessed at the rate of 10% of the annual review fee per month (or fraction thereof) the fee is late.

LATE PAYMENT CHARGE=10% of ANNUAL REVIEW FEE(x)#MONTHS LATE

Section 11. REVIEW OF FEES. The Department shall undertake a biennial re-evaluation of the permit fee schedule as contained in SECTION 10 above within 60 days of receiving its approved budget for the next biennium. The study shall reflect the current needs of the Department to perform essential permitting, compliance, and monitoring activities; the resources available; the balance of the permit fee fund from the previous biennium; anticipated state and federal appropriations; status of delegation of federal programs; and any other factors deemed relevant to the study by the Department. In the event the Department has not received at least partial delegation of the NPDES program by January 1, 1986, the provisions of these regulations pertaining to wastewater permit fees shall automatically expire, and shall be reauthorized only after opportunity for public comment and/or public hearing and approval by the Commission and by the Governor of the State.

SECTION 12. SEVERABILITY. If any provisions of this regulation or the application thereof to any person or circumstance are held invalid, such invalidity shall not affect other provisions or applications of this regulation which can be given effect with the invalid provision or application, and to this end provisions of this regulation are declared to be severable.

SECTION 13. APPEALS. If any applicant/permittee disagrees with the Department decision on an assessment of fees, the applicant/permittee may appeal such decision in accordance with Arkansas Stats. 82-1906 (Act 472 of 1949, as amended).

SECTION 14. EFFECTIVE DATE. This permit fee regulation shall be in full force and effect as of the date of its promulgation.

Promulgated on this 16th day of November, 1984.

BY ORDER OF THE COMMISSION ON
POLLUTION CONTROL AND ECOLOGY

By Clyde Broyles
Clyde Broyles, Chairman

Attest:

Phyllis Garnett
Phyllis Garnett, Director

Approved:

Bill Clinton
Bill Clinton, Governor
State of Arkansas