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Proposed Regulation Agency Background Document

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC5-600
VAC Chapter title(s)	Waterworks Operation Fee
Action title	Amend and Update the Waterworks Operation Fee Regulations
Date this document prepared	April 19, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The State Board of Health (Board) proposes amendments to the Waterworks Operation Fee ("Regulations") as part of a routine review and update.

Code of Virginia § 32.1-171.1(A) requires that the State Board of Health establish fees to be charged to waterworks owners and "adjust the fee schedule so that the revenues from such fees cover the costs necessary to operate the Waterworks Technical Assistance Program required by this section."

The regulations codify how the Virginia Department of Health (VDH) Office of Drinking Water (ODW) generates revenue from fees charged to the waterworks that are regulated by the ODW under the federal Safe Drinking Water Act (SDWA) and the Virginia *Waterworks Regulations* (12VAC5-590.) The Regulations have not been amended since 2014. Additionally, some portions of the Regulations, such as the fee assessed for nontransient noncommunity waterworks, have not changed since the regulations were adopted in 1993. In addition to modifying the fee for nontransient noncommunity waterworks and

clarifying the method by which operation fees are calculated, the amendments seek to add categories of waterworks, not previously charged a fee, into the Regulations. Specifically, transient noncommunity waterworks and wholesale waterworks are proposed to be added to the list of categories of waterworks that are charged a fee for the technical assistance and compliance oversight provided by ODW.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"APA" means the Administrative Process Act (Code of Virginia § 2.2-4000, et seq.)

"Board" means the State Board of Health

"EPA" means the United States Environmental Protection Agency.

"NTNC" means nontransient noncommunity waterworks.

"ODW" means the Virginia Department of Health – Office of Drinking Water.

"PWSID" means the Public Water System Identification Number.

"SDWA" means the Safe Drinking Water Act.

"TNC" means transient noncommunity waterworks.

"VDH" means the Virginia Department of Health.

Any relevant technical terms are defined in 12VAC5-600-10. *Definitions*, in the Regulations.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new, or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for the change is a periodic review of the chapter completed in 2021, during which the agency determined that the chapter should be amended to reflect these proposed changes.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating agency is the State Board of Health.

Code of Virginia § 32.1-12 authorizes the Board to make, adopt, promulgate, and enforce regulations as necessary to carry out Title 32.1 of the Code of Virginia and other laws of the Commonwealth of Virginia administered by the Board, the State Health Commissioner or VDH.

Code of Virginia § 32.1-170(A)(8) authorizes the Board to set forth in its regulations a "[m]ethodology for determining the waterworks operation fee authorized by § 32.1-171.1."

Code of Virginia § 32.1-171.1(A) directs the Board, through regulation, to establish the fee to be charged each waterworks owner, allowing for certain exemptions, and states that “[t]he Board shall adjust the fee schedule so that the revenues from such fees cover the costs necessary to operate the Waterworks. Technical Assistance Program required by this section.” The Technical Assistance Program is supported by regulations of the Board (the Waterworks Regulations, 12VAC5-590) governing waterworks, water supplies, and pure water, and is designed to protect the public health and promote the public welfare and includes criteria and procedures to accomplish these purposes.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

1. VDH has primacy from United States Environmental Protection Agency (EPA) for enforcing the SDWA in Virginia. VDH carries out its primacy authority through ODW. The amendments to the Regulations will adjust the existing fee charged to NTNC systems, add a flat fee for wholesale waterworks with under 15 non-waterworks customer accounts, and add a fee for TNC systems. The fee charged to NTNC systems pursuant to the regulations has not changed since 1993. In that time, according to the U.S. Bureau of Labor Statistics, the Consumer Price Index has risen by over 100%. The amendments also clarify that the fees are charged per waterworks based on PWSID, rather than per owner. Some waterworks owners own more than one waterworks, each identified by a separate PWSID. These amendments will generate more revenue needed for ODW to provide technical assistance to waterworks to ensure compliance with federal and state drinking water law and regulations, while distributing the share of fees more broadly across all regulated entities.
2. Since 1996, after the original Regulations were adopted, ODW has been required to regulate all TNCs in the Commonwealth. Regulating TNCs has increased ODW’s workload by approximately 1,200 waterworks, or 43%. TNCs tend to be small and require a significant amount of technical assistance. TNCs have not paid any fees to VDH for the technical assistance they receive.
3. Wholesale waterworks is another category of waterworks to which the proposed regulations seek to charge a specific fee. Wholesale waterworks have “wholesale” service connections through which they pipe water to a separate downstream, regulated waterworks that distributes the water to consumers. A wholesale waterworks may also have non-wholesale connections through which water is distributed directly to consumers. A wholesale waterworks typically has a large facility producing large quantities of water through complex treatment. These facilities are regulated under the SDWA and the *Waterworks Regulations*. ODW staff regularly inspects wholesale waterworks and provides direct technical assistance.

As an example, a wholesale waterworks that qualified as a community waterworks and that had three connections, with each being a separate customer account, currently would pay \$9.00 for its waterworks operation fee even though it may produce millions of gallons of drinking water per day (the current operation fee charged to community waterworks is \$3.00 per service connection). A wholesale waterworks that has only wholesale connections (i.e., does not pipe water directly to consumers) currently may not pay any fee even though it may be producing a large amount of drinking water every day. The proposed revision to the regulation institutes a minimum fee for wholesale waterworks with fewer than 15 non-waterworks customer accounts to cover the technical assistance they receive from ODW. Under the proposed amendments to the regulations, wholesale waterworks with 15 or more non-waterworks customer accounts would continue to pay a fee using the methodology applied to community waterworks.

4. The goal of the proposed change is to allow ODW to continue to sufficiently meet the need for technical assistance, while more equitably distributing the fee among the types of waterworks that most need technical assistance. Without adequate funding, ODW will face continued challenges making decisions regarding which waterworks will be provided assistance. With reduced or no technical assistance, some waterworks may not adequately prevent or resolve water quality and supply issues, resulting in an increased risk of water-borne illness and adverse health impacts.
5. Examples of the fee structure from other states:
 - a. Pennsylvania – Pennsylvania’s 2021 Public Water System Compliance Report to the EPA (https://files.dep.state.pa.us/Water/BSDW/DrinkingWaterManagement/PublicDrinkingWater/PA_DEP_2021_Annual_Compliance_Report_Final.pdf) reported 8,273 public water systems, which is significantly more than Virginia. The fee structure it developed in 2019 (<https://files.dep.state.pa.us/Water/BSDW/Chapter109/SDW%20Fees%20Invoice%20Webinar%20Quarter%202.pdf>) was designed to cover a \$7.5 million budget shortfall. All waterworks pay a fee, and fees are charged based on the type of waterworks and the population served by that waterworks. Community waterworks fees start at \$250 for a population of 100 or less to a maximum of \$40,000 for a population of 100,001 or more. NTNCs pay a \$100 fee for a population of 100 or less up to \$1,000 for a population of 3,301 or more. TNCs pay \$50 for a population of 100 or less up to \$500 for a population of 1,001 or more. All other waterworks types pay a fee of either \$1,000 or \$2,500.
 - b. Tennessee – Tennessee’s Division of Water Resources 2021 Annual Compliance Report (https://www.tn.gov/content/dam/tn/environment/water/drinking-water-unit/wr_wq_dw_2021-annual-compliance-report.pdf) reported 770 public water systems (452 community water systems, 290 TNCs, and 28 NTNCs), which is significantly fewer than Virginia. The fee structure in Tennessee’s Public Water Systems Regulations, Chapter 0400-45-01-.32, Fees for Public Water Systems (<https://publications.tnsosfiles.com/rules/0400/0400-45/0400-45-01.20190217.pdf>) charges all public water systems an annual maintenance fee based on the type of water system and the number of connections. Community water system fees start at \$300 for a system with less than 250 connections. Community water systems with over 200,000 connections pay \$105,000 plus \$0.35 per connection for each connection over 200,000. NTNCs are divided into schools and industries. Schools are charged \$250 and industries are charged either \$250 or \$2,000 based on the type of water source (\$250 for ground or \$2,000 for surface). TNCs are divided into churches and “all others,” which includes restaurants, campgrounds, motels, etc. Churches are charged \$100 and all others are charged \$200. Wholesale waterworks with less than 15 service connections are charged \$400 if the system has a ground water source or \$2,000 if the system has a surface water source. State facilities are charged \$250 if the system has a ground water source or \$2,000 if the system has a surface water source.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The main issues discussed and proposed in the amendments as decided by the regulatory stakeholder group include:

1. The proposed amendments clarify that in applying the \$160,000 statutory cap on waterworks operation fees, the identification of waterworks that is used for calculating the fee owed is based on the PWSID. VDH’s current billing practice, which has focused on the identity of the owner when the owner owns multiple waterworks, has shorted the Waterworks Technical Assistance Fund by an estimated \$177,405 annually. While the proposed amendments clarify the method by which waterworks are identified – focusing on the PWSID – the current regulatory language states that the cap is to be applied on a per waterworks basis. The authority for VDH to increase

- recovery of this amount through a change to its current billing practice exists in the current regulation, and the proposed amendment is intended to clarify the billing practice to be used.
2. The proposed amendments will increase the NTNC annual fee from \$90 to \$120.
 3. The proposed amendments will add an annual fee of \$60 for each TNC system.
 4. ODW currently charges wholesale waterworks as community waterworks, resulting in invoices of less than \$30.00 per year for some of the largest water suppliers in the Commonwealth. Stakeholders initially proposed that wholesale waterworks pay a flat fee of \$2,500.00 annually and ultimately supported that if a wholesale waterworks has 15 or more end-user accounts, then it will pay a fee based on the methodology applied to community waterworks, rather than the \$2,500 flat fee. The 15 end-user cutoff is intended to comply with the essence of stakeholder consensus, which was that wholesale waterworks with a relatively small direct-to-consumer portion of their operations should pay the wholesale waterworks fee rather than the presumably smaller community waterworks fee (because they are more wholesalers than community waterworks). Ultimately, the proposed amendments use the term “non-waterworks customer accounts” rather than “end-user accounts.” “Customer accounts” is an existing defined term in the regulations. Creation of a new defined term – “end-user” – might create confusion. Additionally, the goal being pursued by the stakeholder group through the “end-user” concept is better addressed by framing it as “non-waterworks customer accounts.”
 5. If a waterworks chooses to pay in quarterly installments, their total fee invoice must be greater than \$1,600 under the proposed changes; the current regulations set that threshold amount at \$400.
 6. Other proposed amendments attempt to conform the language between the *Waterworks Regulations* and the *Waterworks Operation Fee* regulations.
 7. Additionally, the proposed amendments make technical corrections to identified statutory authority for certain sections of the regulations as appropriate.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

1. The primary advantage of the proposed changes is that increased fees allow ODW to continue to meet its statutory obligation to conduct the Waterworks Technical Assistance Program pursuant to Va. Code § 32.1-171.1 through technical assistance to regulated waterworks. Specifically, ODW will be able to continue to provide assistance to TNCs which serve restaurants, campgrounds, comfort stations, and other Virginia venues that have a transient population. This is in support of required compliance with the SDWA and the Waterworks Regulations. Failure of a TNC to comply with the Waterworks Regulations may impact other licenses held related to the facility served by the TNC system, such as restaurants and campgrounds that are also regulated by VDH. Without additional resources from waterworks operation fees, ODW will not be able to meet its mandate to provide such technical assistance to waterworks, which will especially impact smaller waterworks that rely on these services more than larger systems that have greater resources. Failure to provide the required technical assistance can lead to negative public health impacts for the customers of affected waterworks that depend on ODW's technical assistance program. The amendments also help the

State Board of Health satisfy its obligation in Va. Code § 32.1-171.1 to “adjust the fee schedule so that the revenues from such fees cover the costs necessary to operate the Waterworks Technical Assistance Program...”

2. Owners of TNCs, NTNCs, and certain wholesale waterworks will be charged greater fees under the proposed regulations. Private citizens may be charged slightly higher rates with the increased fee costs, depending on the degree to which their water purveyor decides to pass on the charges to their customers.
3. The amendments clarify and provide a better framework for the billing process associated with this fee.
4. There will be improved consistency between the Waterworks Regulations, which were amended in 2021, and the Waterworks Operation Fee regulations.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

Not Applicable; there are no federal requirements for assessing fees for technical assistance to regulated waterworks in Virginia.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Agencies, Localities and Other Entities Particularly Affected:

Some localities, school boards, other regional organizations, and state agencies that own transient noncommunity and/or nontransient noncommunity waterworks will be affected. As such, those entities would be impacted at most \$60 per year for newly billed transient noncommunity waterworks or \$30 per year for nontransient noncommunity waterworks. No state agencies are expected to be impacted by the change in billing of wholesale waterworks.

Additionally, all transient noncommunity waterworks, all nontransient noncommunity waterworks, and wholesale waterworks with fewer than 15 non-waterworks customer accounts will be particularly affected because of changes to the relevant fee structures.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail. b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources. 	<p>a) Waterworks Technical Assistance Fees make up the revenue referenced below and are directly billed to waterworks. The number of invoices to waterworks will more than double from approximately 1,248 to 2,817 as more waterworks are regulated under existing SDWA and <i>Waterworks Regulations</i> provisions.</p> <p>Expected revenue from FY2023 operation fees is \$4,806,225. The proposed regulatory amendments are estimated to increase annual revenue from operation fees by \$142,947. This does not include any increase in expected revenue by a change in billing practices with respect to application of the \$160,000 cap on fees per waterworks.</p> <p>b) Technical assistance expenditures to waterworks are on-going. For the FY2022 billing cycle, costs to complete invoicing (staff, printing, postage) totaled \$20,318. ODW is expecting these costs to more than double to around \$60,000 per year considering a doubling of the number of invoices and increased cost of staff and materials.</p> <p>Currently, VDH is using a MS Access database, Excel spreadsheets, and mail merge to invoice waterworks. VITA has informed ODW that MS Access does not meet VITA requirements. Consequently, VDH will be required to purchase compliant software that will meet this need. This cost will need to be incurred even if the proposed regulatory amendments do not go into effect. VDH does not have a purchase price on the software as it would require extensive evaluation and staff time. It is anticipated that the software will cost not less than \$150,000 in the first year and then drop off in subsequent years. There will be a one-time expense to purchase billing software, as well as an annual expense for the software license.</p> <p>Additionally, in the first year of using the new billing software there will be increased staff time for training and process development. Expenses in subsequent years will reflect a decrease in staff time with efficiencies and a software</p>
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	<p>licensing fee estimated at 10% of the original cost.</p> <p>c) ODW has been having budget issues. Increased costs without revenue support will exacerbate the budget shortfalls. ODW will have to implement new compliant billing software, so the expenses for the software and licensing will be borne by the agency even if the fees are not adjusted.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>No costs or revenues will be borne by any other state agencies except for those that own a regulated waterworks, such as a state park or a VDOT interstate rest area that operates a TNC waterworks. The maximum impact on these entities individually would be \$60 per year for the proposed fee for TNC systems.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The proposed amendments will increase revenues for ODW. This will allow ODW to continue providing the same level of technical assistance it historically has provided to waterworks regulated under the SDWA and thereby protect public health.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>The only impact on localities would be for those that currently own or operate a public waterworks. Most localities are customers of larger waterworks. ODW cannot estimate what portion of the change to the fee would be passed on to the customers. See ORM Economic Impact Form, Table 2.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>See ORM Economic Impact Form, Table 2</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Virginia waterworks regulated by the SDWA and the <i>Waterworks Regulations</i> will be affected by this regulatory change, with downstream impacts potentially applying to all customers of public drinking water systems.</p> <p>See ORM Economic Impact Form, Tables 1a, 3 and 4.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate</p>	<p>TNCs have not been charged a fee. With the revision of this regulation, approximately 1,251</p>

<p>of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated, and b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>TNCs will be billed \$60 per year. These represent entities of varying sizes who have a small staff and through-traffic (customers) totaling 25 or more people per day for at least 60 days out of the year. ODW does not collect information on the structure of ownership of these waterworks nor on their gross sales. It is likely that most of these entities have fewer than 500 full-time employees.</p> <p>NTNCs are currently charged \$90 per year. There are approximately 516 NTNC systems. The revision would increase the fee to \$120 per year, an increase of \$30 annually. These represent businesses and some municipal owned waterworks that serve 25 or more of the same people per year (non-residential; typically, employees). ODW does not collect information on the structure of ownership of these waterworks nor on their gross sales. It is likely that most of these entities have fewer than 500 full-time employees.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change. c) fees. d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>Other than the increased fee for some waterworks, as described above, the only additional cost should be the time required for TNCs to receive, process, and pay the new annual invoice. Administrative costs for waterworks that have historically received a waterworks operation fee invoice should not change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The proposed regulatory amendments will allow ODW to provide enhanced technical assistance to affected waterworks.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The main alternative is to take no action, but the Board is unable to fulfill the responsibilities mandated in Code of Virginia § 32.1-171.1(A), which require the Board to “adjust the fee schedule so that the revenues from such fees cover the costs necessary to operate the Waterworks Technical Assistance Program...” ODW has struggled with stagnant revenue streams while costs and overhead are increasing.

Grant funding, general fund monies, and regulant fees have changed very little. A VDH-Department of Planning and Budget 2022 report to the General Assembly reviewed ODW’s budget. (See “Review of the Budget and Structure of the Office of Drinking Water as required in Item 296 of the 2022 Appropriation Act,” <https://rga.lis.virginia.gov/Published/2022/RD805/PDF>.) The report notes that regulants’ fees, among other sources of revenue, have been static for several years, while expenditures are increasing. Inflation from 1992 to 2022 has caused the value of \$1.00 in 1992 to drop to \$0.47 in 2022, such that any increases in NTNC and community waterworks fees have not been able to keep up with increases in costs. (See “Review of the Budget and Structure of the Office of Drinking Water as required in Item 296 of the 2022 Appropriation Act,” <https://rga.lis.virginia.gov/Published/2022/RD805/PDF>, pages 12-13). The report identifies a number of possible ways to address ODW’s budget strain, including several options that would require direction by the General Assembly such as raising or eliminating the \$160,000 cap on fees and increasing the fee that can be charged per connection from \$3. (See “Review of the Budget and Structure of the Office of Drinking Water as required in Item 296 of the 2022 Appropriation Act,” <https://rga.lis.virginia.gov/Published/2022/RD805/PDF>; pages 12-18 in particular.) Further, in 2022, the EPA hired a consulting firm to evaluate ODW’s workload and resource needs. As noted in the budget report, the consulting firm’s preliminary report notes that ODW needs at least 21 to 46 FTEs and a minimum of \$2.5 million in additional revenue by 2025 to “adequately sustain the drinking water program.” (See “Review of the Budget and Structure of the Office of Drinking Water as required in Item 296 of the 2022 Appropriation Act,” <https://rga.lis.virginia.gov/Published/2022/RD805/PDF>, page 31.) The final report from the consulting firm states that Virginia’s drinking water program needs \$9,412,098 in additional funding. Additionally, ODW currently has seven staff vacancies for which hiring is on hold due to its budget shortfall. Thus, taking no action is not considered viable.

In 2022, the General Assembly provided significant assistance to ODW; however, the waterworks operation fee is intended to cover the costs associated with providing technical assistance services to the waterworks. Currently, only community and NTNC waterworks pay a fee, though ODW provides assistance to all regulated waterworks. Technical assistance costs are higher than the fees collected.

ODW has determined that waterworks that have been paying the waterworks operation fee are essentially subsidizing those waterworks that are not assessed such a fee. This proposed regulatory change will ensure that all waterworks types that get the benefit of technical assistance from ODW are funding that service. The proposed regulatory change also increases certain existing fees to reflect increases in costs that ODW has experienced due to inflation.

See also Table 1c on the ORM Economic Impact form.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

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1. Not applicable

2. The regulations impose payment deadlines and assess late fees for failure to make timely payment. The amended regulations could adopt a less stringent payment schedule, but doing so would likely impact how quickly waterworks owners pay their fees. A delay in payment of fees would negatively impact the amount of funding for ODW’s Waterworks Technical Assistance Program early in the fiscal year. The amended regulations could elect to not impose any late fees for payment that is not timely. Doing so, however, would remove an incentive for waterworks owners to timely pay their fee and may negatively impact the health of the fund that ODW relies on for the statutorily required Waterworks Technical Assistance Program.
3. Not applicable
4. Not applicable
5. Small waterworks, in the form of TNC systems, which may be small businesses, have been exempt from these regulations and have paid no fees, while receiving technical assistance from ODW. In 2021, TNC systems comprised 44% of all regulated waterworks, and ODW staff provided 17,150 hours of assistance to them. Covering these costs has been accomplished by use of federal funds (which are not sufficient) and the use of State general funds. Fees will help defray costs to these funding sources. Small waterworks are often the beneficiaries of the technical assistance that is provided by ODW thanks to funding provided via the waterworks operation fee. The proposed amendments to the regulations seek to more equitably spread the burden of these fees in comparison to the historical approach. As stated above, it is likely that most TNCs and NTNCs are small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

**Periodic Review and
Small Business Impact Review Report of Findings**

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This form is not being used to report a result of periodic review.

1. ODW depends on these funds to run its technical assistance programs. ODW helps protect the public health, safety, and welfare by providing support to waterworks through ODW’s technical assistance program. Code of Virginia § 32.1-171.1(A) requires that the Board establish fees to be charged to waterworks owners and “adjust the fee schedule so that the revenues from such fees cover the costs necessary to operate the Waterworks Technical Assistance Program required by this section.”
2. There have not been any complaints regarding these regulations outside of the stakeholder review process. The comments have been mainly to keep the TNC fee as low as possible. It was also noted that applying the \$160,000 cap on fees based on the waterworks, rather than the identity of the owner, will increase Prince William County Water Authorities’ invoice significantly. Applying the \$160,000 cap per waterworks is already allowed under the current regulations.

3. The regulatory fee structure is uncomplicated as it is clearly written and easily understandable. Additionally, VDH handles much of the work required by the regulations as the agency generates the annual invoices and monitors payment. The regulated community pays the annual fee through either a one-time payment or by quarterly installments. The regulated community also has the ability to request an adjustment to an annual fee by providing updated information on changes to the number of customer accounts.
4. There are no overlaps, nor conflicts, with any other federal or state laws or regulations.
5. The operation fee structure has not changed since 2012, and inflation has eroded ODW's ability to provide the regulated community with technical assistance. While the proposed regulatory change includes a new fee for TNC systems, these waterworks must be able to provide the public and their employees with safe, clean drinking water, and they rely on ODW for technical assistance to do so. These fees will allow ODW to continue to assist these waterworks in their efforts. Any economic impact on small business is expected to be minor. A small business that owns a TNC system will be assessed an annual fee of \$60, while a small business that owns a NTNC system will see its annual fee increase by \$30.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Comme nter	Comment	Agency response
<p>Sarah Holland</p> <p>Chief Executive Officer, Virginia Health Catalyst</p>	<p>Dear Mr. Roadcap,</p> <p>I write to you on behalf of Virginia Health Catalyst (Catalyst) staff, board, and partners. Catalyst is a statewide advocacy nonprofit committed to ensuring all Virginians have equitable access to safe, trusted, affordable, fluoridated drinking water – and that it's Virginian's beverage of choice.</p> <p>Thank you for the opportunity to provide comment on the Notice of Intended Regulatory Action to consider amending 12VAC5-600, Waterworks Operation Fee. Catalyst supports the prioritization of equity and environmental justice in any amendments to be made.</p> <p>Communities of color, rural populations, and low-wealth individuals experience more barriers to accessing clean water than privileged communities.</p> <p>Black, Hispanic and Native American residents are more likely to live in environmentally disadvantaged neighborhoods, with exposure to water that violates quality standards. (1)</p> <p>Black and Hispanic children and adults are two to three times more likely to report not drinking their tap water than members of white households. In 2017-2018, roughly 3 out of 10 Black adults and children and nearly 4 of 10 Hispanic adults and children didn't drink their tap water. (2)</p>	<p>Equity was a primary consideration during the discussions on modifications to these regulations. Some water systems are not paying an equitable fee based on the level of technical assistance provided by the Virginia Department of Health – Office of Drinking Water. These proposed modifications attempt to spread the costs of compliance and technical assistance programs among the water systems more equitably.</p> <p>Since these regulations only apply to a fee for technical assistance, there is no direct environmental justice issues related to these regulations. Indirectly, the VDH – ODW can better provide technical assistance to address environmental justice with</p>

	<p>Small and rural community water systems are more likely to serve marginalized communities and face unique challenges compared with large and urban systems, and are found to have more compliance violations than urban systems. (3)</p> <p>In order for all Virginians to have equitable access to safe, affordable, trusted drinking water, equity must remain a priority and emphasis in all of our work. Catalyst is currently convening a taskforce (Water Equity Taskforce) comprised of water stakeholders from across the commonwealth to develop recommendations to improve equitable access to water, and we are pleased to partner with the Office of Drinking Water staff in this effort. We commend the Office of Drinking Water staff for their hard work to keep Virginia’s water safe, and to appropriately assess the needs of communities by prioritizing a better understanding of equity and environmental injustice.</p> <p>If you have any questions, please do not hesitate to contact me at sholland@vahealthcatalyst.org.</p> <p>Thank you,</p> <p>Sarah Holland</p> <p>Chief Executive Officer, Virginia Health Catalyst</p> <p>Jill Baumgartner, Judith Rodriguez, Frans Berkhout, Yvonne Doyle, Majid Ezzati, George Owuso, Zahidul Quayyum, Bethlehem Solomon, Meghan Winters, Gary Adamkiewicz, Brian E. Robinson, Synthesizing the links between secure housing tenure and health for more equitable cities, Wellcome Open Research, 10.12688/wellcomeopenres.17244.1, 7, (18), (2022).</p> <p>Rosinger, A. Y., Patel, A. I., & Weaks, F. (2021). Examining recent trends in the racial disparity gap in tap water consumption: Nhanes 2011–2018. Public Health Nutrition, 1–7. https://doi.org/10.1017/s1368980021002603</p> <p>Marcillo, C. E. & Krometis, L. A. H. Small towns, big challenges: does rurality influence Safe Drinking Water Act compliance? AWWA Water Sci. 1, e1120 (2019).</p>	<p>more equitable fees paid by all regulated water systems.</p>
<p>Waterworks Advisory Committee – Fee Regulations Subgroup</p>	<p>See minutes of 5/12/2022 meeting on Town Hall: https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\58\35143\Minutes_VDH_35143_v1.pdf.</p>	<p>Comments consolidated into the proposed revised regulations.</p>

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The State Board of Health is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to:
 Barry E. Matthews
 109 Governor Street, 6th Floor
 Richmond, Virginia 23219
 804 477-5171 or barry.matthews@vdh.virginia.gov.

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10	N/A	Sets forth definitions.	Change: Adds the following new definitions: consecutive waterworks, noncommunity waterworks, non-payment, person, Public Water System Identification Number, transient noncommunity waterworks, and wholesale waterworks. Revised the following existing definitions: customer

			<p>account, nontransient noncommunity waterworks, service connection, and waterworks.</p> <p>Intent: Provide definitions for terms as necessary to aid in the understanding of the substantive requirements of the regulations as proposed to be amended. Additionally, when defined terms are also defined in the Waterworks Regulations, 12VAC5-590, ensure that the definitions are identical.</p> <p>Rationale: These changes provide consistency between the two sets of regulations that govern drinking water in Virginia. Additional definitions were added for terms as needed to provide clarity.</p> <p>Likely Impact: Provides clarity.</p>
20	N/A	<p>Establishes that the fee schedule is based on the number of customer accounts for a community waterworks and is based on status as a NTNC for NTNC systems. Establishes a cap of \$160,000 per year per waterworks on the fee owed by a waterworks owner.</p>	<p>Change: Adds that the fee schedule for a TNC is based on its status as a TNC. Adds that the fee schedule for a wholesale waterworks is based on it being classified as a wholesale waterworks. Clarifies that the \$160,000 cap is applied per the PWSID, which is assigned to each waterworks.</p> <p>Intent: To explain generally how fees are applied to NTNCs and wholesale waterworks, which are subject to fees under the proposed regulation. Provide clarity as to the application of the \$160,000 fee cap.</p> <p>Rationale: Explain in a central location the general method by which fees are calculated and the fee cap applied, while later sections provide more detail.</p> <p>Likely impact: Provides clarity.</p>
30	Repealed	<p>States that the APA applies to this chapter.</p>	<p>Change: Repeal.</p> <p>Intent: To remove unnecessary language.</p> <p>Rationale: The APA applies under operation of statute whether or not the regulation states that it applies.</p>

			Likely Impact: To streamline the regulation.
40	N/A	Clarifies that the Commissioner may enforce this chapter through any lawful means, including revocation.	<p>Changes: Minor stylistic edit.</p> <p>Intent: To improve readability.</p> <p>Rationale: Make the regulation easier to read.</p> <p>Likely Impact: Improves the readability of the section.</p>
50	N/A	Currently requires a community waterworks owner to pay an annual assessed fee of \$3 for each customer account, describes how and when payment is to be made, and describes how the number of customer accounts will be determined.	<p>Change: Clarifies that invoicing is to be based on a community waterworks' PSWID, which is specific to each waterworks. The number of customer accounts for community waterworks is determined based on the highest number of customer accounts in the 12 months preceding July 1. The language relating to payment methodology clarifies the dates by which payment must be made and modifies when a community waterworks owner can pay in quarterly installments rather than a yearly lump sum by increasing the threshold amount under which a waterworks may pay in quarterly installments (from when the fee is more than \$400 to when the fee is more than \$1,600).</p> <p>Intent: To provide clarity on the payment methodology, including how to determine the number of customer accounts, and increase the threshold amount for a community waterworks to be able to submit fees quarterly in order to limit the administrative costs associated with managing quarterly installments.</p> <p>Rationale: Clarification is needed on how a community waterworks is identified, and the number of customer accounts is calculated, when assessing the annual fee. Additionally, the increase to the threshold amount for quarterly payments reduces ODW's administrative and billing costs associated with those waterworks that take advantage of a low threshold for quarterly installments.</p>

			<p>Likely impact: Provides clarity on how the fee is calculated and reduces agency costs.</p>
N/A	55	N/A	<p>Change: Establishes a \$2,500 annual fee for wholesale waterworks systems with fewer than 15 customer accounts that are non-waterworks. Wholesale waterworks with 15 or more customer accounts that are non-waterworks will be treated as community waterworks and subject to the fee established in 12VAC5-600-50.</p> <p>Intent: Replace and clarify the language in 12VAC5-600-90, which would be repealed, and adopt a fee for wholesale waterworks.</p> <p>Rationale: Wholesale waterworks that are community waterworks have previously paid an annual fee based on their number of customer accounts, which may be very few even though such waterworks may produce very large amounts of water. Historically, these systems have requested and benefited from the technical assistance provided by ODW. This change differentiates between wholesale waterworks with less than 15 non-waterworks customer accounts, which would now pay \$2,500 annually, and wholesale waterworks with 15 or more non-waterworks customer accounts, which will be assessed a fee as a community waterworks as specified in 12VAC5-600-50.</p> <p>Likely impact: Some wholesale waterworks will see a fee increase. Improved clarity of the regulatory language.</p>
60	N/A	Establishes an annual fee of \$90 for each NTNC system and describes how and when payment is to be made.	<p>Change: Increases the annual fee for each NTNC system by \$30 and clarifies that invoicing is to be based on a waterworks' PSWID, which is specific to each waterworks. The language also changes the date by which payment is due from November 1 of each year to August 1.</p> <p>Intent: The fee is increased in recognition of the funding needs of the technical assistance program. The</p>

			<p>date change helps to ensure that technical assistance funding is available beginning early in the fiscal year.</p> <p>Rationale: The fee for NTNC systems has not changed since 1993, and these systems are heavy users of technical assistance services. In 2021, NTNC systems comprised 38% of all regulated waterworks, and this class of systems used 14,250 hours of ODW time for technical assistance services. This minimal fee increase is necessary to appropriately fund the technical assistance program. The addition of the PWSID is to provide clarity and to be consistent with the same change for community waterworks.</p> <p>Likely impact: Minimal increase in the fee paid by NTNCs and provides clarity.</p>
N/A	65	N/A	<p>Change: Establishes a \$60 annual fee and the payment requirements for TNC systems.</p> <p>Intent: To have TNC systems share the burden of funding ODW’s technical assistance activities.</p> <p>Rationale: Historically, these systems have been the heaviest users of technical assistance services, significantly more than other system types, without having to share in the burden of supporting the technical services they benefit from. In 2021, this system class comprised 44% of all regulated waterworks and used 17,150 hours of ODW staff time for technical services.</p> <p>Likely impact: A minimal annual cost to these systems.</p>
70	N/A	Requires VDH to send each waterworks owner a payment form/data verification notice by July 1 while noting that the waterworks owner is not relieved of its duties if the owner does not receive such a form.	<p>Change: Rather than referencing a “payment form/data verification notice” generically, specifically identifies the “Waterworks Operation Fee – Invoice/Data Verification Notice,” which is identified as a form at the end of the chapter.</p>

			<p>Intent: Provide clarification and a direct reference to the cited form.</p> <p>Rationale: A direct reference to the applicable form is preferable to a generic reference to a form.</p> <p>Likely impact: Improve clarity.</p>
80	N/A	Establishes that the fees are nonrefundable but are credited to a new owner of the same waterworks.	<p>Change: Adds citation to new sections of the regulations, 12VAC5-600-55 and 12VAC5-600-65, as they include new fees for wholesale waterworks and transient noncommunity systems.</p> <p>Intent: To clarify that the new fees will be treated the same in 12VAC5-600-80 as the existing fees.</p> <p>Rationale: All classes of waterworks should be treated equally, and this language change is necessary to achieve this.</p> <p>Likely impact: Improve clarity and establish uniformity as to fees not being refundable.</p>
90	55	Provides an exemption from the community waterworks fee under 12VAC5-600-50 for customer accounts through which water is sold or delivered to another waterworks.	<p>Change: Repealed and replaced by 12VAC5-600-55 of this chapter.</p> <p>Intent: To repeal this section.</p> <p>Rationale: With the promulgation of 12VAC5-600-55, this section was no longer needed and was not accurate.</p> <p>Likely impact: Removes an unnecessary and inaccurate section of the regulations in light of the addition of 12VAC5-600-55.</p>
100	N/A	Provides the address where payments are to be made and to whom the payment is to be made.	<p>Change: Adds language that assesses a convenience fee for credit card payments, clarifies the type of payment that has to be mailed to ODW, and removes ODW's mailing address.</p> <p>Intent: Clarify how electronic payments and non-electronic payments are to be made.</p> <p>Rationale: The additional language will shift the financial burden of credit card-type payments from ODW to the waterworks, who benefit from the ease</p>

			<p>of this type of payment. With the increase in the use of electronic payments, clarification was needed on how non-electronic payments needed to be made. VDH's mailing address is included on the fee invoice that each owner receives, so the address was removed from this section as both unnecessary and redundant. Additionally, agency addresses are not generally included in regulations so as to avoid having to amend the regulation if the agency's address changes.</p> <p>Likely impact: Nominal increase in costs to waterworks that choose to pay using a credit card.</p>
110	N/A	Establishes that operation fees that are not timely paid are subject to interest, administrative charges, and late penalty fees pursuant to § 2.2-4805 of the Code of Virginia.	<p>Change: Adds non-monetary impacts for a waterworks owner's nonpayment of the required fee.</p> <p>Intent: To encourage waterworks owners to pay operation fees.</p> <p>Rationale: Provides additional incentives for owners to pay the waterworks operation fee. The current regulation does not provide a process under which VDH could reduce or refuse to provide funding and technical assistance services to an owner who fails to pay the required fee. This addition to the regulation will further encourage owners to pay the required fee in order to continue to receive future funding and/or technical assistance or be required to provide documentation to remain in compliance. This change will also be more equitable, in that owners that pay their fees will have access to all of the benefits and services ODW provides, whereas owners that do not pay risk losing such access.</p> <p>Likely impact: A reduction in the number of owners that fail to pay their annual operation fees.</p>
Forms	N/A	Two forms currently available.	Change: The two existing forms were consolidated into one form and the version date updated.

			<p>Intent: Streamline the billing process and reduce costs.</p> <p>Rationale: Two forms are not needed. The two existing forms were so similar that they could easily be combined making the fee billing process more efficient and less costly.</p> <p>Likely impact: Greater efficiency resulting in reduced costs in billing operation fees and lower operation costs in administering the Waterworks Technical Assistance Fund.</p>
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