VSMP / NCCP Fee Schedule
Regulatory Panel Advisory (RAP) Meeting #2

Friday, April 1, 2022
3rd Floor Conference Room
DEQ Central Office
1111 East Main Street
Richmond, Virginia 23219

Start – 9:30 AM

Attendees:

- RAP Members
    - Philip Abraham (The Vectre Corporation), Virginia Association for Commercial Real Estate
    - Andrew Clark, Home Builders Association of Virginia
    - Lacey England, NiSource
    - Hannah Zegler, Dominion Energy
    - Jill Sunderland, Hampton Roads Planning District Commission
    - Normand Goulet, Northern Virginia Regional Commission
    - Chris Pomeroy (AquaLaw), Virginia Municipal Stormwater Association
    - Kristin Carter, University of Virginia
    - Joe Lerch, Virginia Association of Counties
    - Shannon Varner (Troutman Pepper), Virginia Environmental Restoration Association
    - Casey Jensen, EcoCap LLC
    - Brian Wagner, Resource Environmental Solutions LLC
    - Peter Stults, Resource Environmental Solutions LLC
    - John Olenik, Virginia Department of Transportation
- DEQ Staff
    - Melanie Davenport- Director, Water Permitting Division
    - Drew Hammond- Director of Water Permits
    - Amy Owens- Valley Regional Office Director
    - Valerie Thompson- Director of Administration
    - Cliff Goldsborough- Director of Financial Management
    - Erin Belt- Manager, Office of Stormwater Management
    - Allan Brockenbrough- Manager, Office of VPDES Permits
    - Scott Van Der Hyde- Regulatory Analyst
    - Joe Crook- Regulatory Analyst
    - Nelson Daniel- Water Policy Analyst

Welcome and Introductions:

Amy Owens welcomed the RAP members and had DEQ staff re-introduce themselves.

Review of Meeting #1 Minutes:
Scott Van Der Hyde requested RAP members to provide any final comments or additions to the minutes from the first RAP Meeting on February 18, 2022. Two RAP members provided comments, which will be incorporated into the final minutes.

Overview:
Drew Hammond provided an overview of the work DEQ did following the first RAP meeting, which included applying CPI to projected program revenues and calculating the difference in revenue needed to fund program costs at both 60% and 62%.

At the request of RAP members, DEQ showed projected revenues after applying CPI for each of the MS4, Construction, and NCCP programs. This showed that applying CPI to projected revenues does shrink the deficit between projected costs and projected revenues, but does not eliminate the need to raise fees in each of the programs to cover 60%-62% of program costs. In a discussion of these numbers, questions were raised about the revenue projections for the NCCP and Construction programs (this is captured in more detail below).

Municipal Separate Storm Sewer System (MS4) Permit Fees:
Under the existing fee schedule, the current projected revenue from fees is $405,800. Following the last RAP meeting, DEQ calculated projected program costs for funding 60% and 62% of direct program costs. Projected costs for funding 60% of program costs is $862,074 leaving a deficit of $456,274, and the projected cost for funding 62% of program costs is $890,810 leaving deficit of $485,010. The discussion centered on the following:

MS4 categories:

- At the first RAP meeting, there was an extensive discussion about categorizing based on a variety of considerations including type of MS4, area served, population served, etc.
- At this meeting, RAP members voiced support for keeping DEQ's current tiered classification: MS4 Individual (Large and Medium); MS4 Individual (Small); and MS4 General Permit (Small).

More specific data on DEQ costs:

- RAP members voiced a desire to see more specific data on cost based on types of activity that require more effort and time for DEQ. The idea is that this should more accurately reflect actual cost to DEQ.
- DEQ does not currently keep data that would allow breaking down costs in the way. Currently, the best breakdown that DEQ is able to do is parsing the costs for permitting versus compliance activities.

Phased in fee increase:

- A key concern of RAP members continued to be the sticker shock of the fee increases to achieve the required funding levels. Many RAP members voiced that they had expected the fees to only go up about 13.5%.
- As a means of offsetting the sharp immediate increase, RAP members raised the suggestion of phasing in the fees over several years. There was not agreement on what the rate of increase

should be, but it was requested that DEQ look at this and provide options for what that could look like. RAP members also said that they would talk to their groups about what the curve for a phased in rate increase should look like.

Mechanism for raising fees in the future while reducing sticker shock:

- Moving forward, it was suggested that DEQ create a mechanism that would raise fees on a more regular basis in order to prevent large immediate fee increases in the future. Most RAP members voiced support for this concept, and there was discussion of what such a mechanism should look like.
- Some of the MS4s represented at the RAP voiced concern with tying fees to CPI as a means of raising fees in the future. This was in response to a discussion at the last meeting that RAP members relayed to their groups. The concern is that adjusting fees year to year based on fluctuations in CPI would create difficulties for localities in setting their annual budgets.
- Another idea was to use CPI, but only adjust fees every 3-5 years rather than every year in order to protect against year to year CPI fluctuations.
- The idea that seemed to get the most support was deciding on a reasonable number that would go up each year to account for DEQ's costs. This would involve deciding what that number should be, but maintaining a flat rate of increase year to year. This would allow more predictability for local governments to plan for fee increases.

Nutrient Credit Certification Program Fees:
Under the existing fee schedule, the current projected revenue from fees is $75,000. Following the last RAP meeting, DEQ calculated projected program costs for funding 60% and 62% of direct program costs. Projected costs for funding 60% of program costs is $221,786 leaving a deficit of $146,786, and the projected cost for funding 62% of program costs is $229,179 leaving deficit of $154,179. The discussion centered on the following:

Projected revenue:

- DEQ's projected revenue from fees in this program was largely based on a projection of the number of projects that should be expected in the coming year. One assumption built in to this was that the large number of 2021 projects reflected pent up demand as a result of the pandemic, but that this demand for projects would not continue indefinitely.
- RAP members felt that the estimate of projects for the next was low, and asked DEQ to revisit the revenue projection. They felt that this would provide them with a better picture of how to structure the fee schedule.

Fee allocation:

- RAP members suggested allocating fees based on the type of project being undertaken, such as creating different fees for land conversion projects versus stream bank restoration projects. The idea behind this is that not all projects require the same level of time and effort by DEQ, and allocating fees based on project type might better reflect the actual cost to DEQ.
- In addition to project type, it was suggested that DEQ further differentiate fees based on the size of the project.
- Finally, RAP members suggested that permit fees be tied to milestones based on different phases of a project. For example, requiring an application fee and a credit release fee. The idea is to spread fee costs over the life of the project rather than requiring the full cost at once.
- DEQ expressed openness to exploring these options for the fee schedule.

Gradual fee increases in the future:

- RAP members voiced support for creating a mechanism for more regularly raising fees in the future to avoid large jumps in the price of fees. There was more support for doing this by setting a regular, stable increase rather than tying the fee increase to CPI, which can be unstable year to year.

Construction Permit Fees:
Under the existing fee schedule, the current projected revenue from fees is $2.32 million. Following the last RAP meeting, DEQ calculated projected program costs for funding 60% and 62% of direct program costs. Projected costs for funding 60% of program costs is $4,198,084 leaving a deficit of $1,878,084, and the projected cost for funding 62% of program costs is $4,338,020 leaving deficit of $2,018,020. The discussion centered on the following:

Projected revenue estimate:

- RAP members raised concern that the projected revenue may be low.
- RAP members requested that DEQ broaden the years they are looking at to before 2017 and calculate a revenue average. They felt this would more accurately project future revenue.

Fee allocation:

- DEQ provided a breakdown of the types of permit actions they take that generate fees. These permit actions are broken in to Issuance, Modification, Transfer, and Termination. Of these, the bulk of the fees that DEQ collects come from permit issuance.
- A continuing desire that carried over from our first meeting is to allocate fees based on whether DEQ or the local government serves as the VSMP authority. The desire here is for the fees to be higher for localities that opt to have DEQ serve as the VSMP authority in order to more accurately capture the actual costs to DEQ. One hurdle to this type of apportionment is that there is a limit for how much cost DEQ can ask any one locality to bear.
    - DEQ also suggested creating different tables for opt-in and opt-out localities in order to prevent confusion by adding another column to the current fee table.
- RAP members suggested further allocating fees based on the acreage of a project.
- One issue raised by DEQ is that the existing cost estimates assume that each project's stormwater management plan will need to be reviewed only two times, which is much lower than the actual average. RAP members suggested trying to find a way to tie fees to the number of times an insufficient application is resubmitted and reviewed. DEQ thinks that they can quantify an average for how frequently this happens.
- A continuous theme in each of these suggestions is the desire to quantify the actual time and effort that different projects require from DEQ and to allocate the fees accordingly.
- The suggestion was raised to remove the costs of reviewing stormwater management plans for state and federal projects so that the regulated community is not bearing those costs.
- At the first RAP meeting, DEQ raised the possibility of replacing maintenance fees, which are very difficult to collect. The only discussion at this meeting was to ensure that if this is done, local governments do not lose their ability to collect maintenance fees at the local level.

Gradual fee increases:

- RAP members voiced a desire to create a mechanism for raising fees more regularly in the future in order to prevent sudden jumps in fees.

- Local governments do not like the idea of annual increases because this is too burdensome to implement in local ordinances, and do not like using CPI because it can be unpredictable.
- RAP members liked the idea of reviewing fees every 3-5 years, but there was no agreement on what the fee increase number should be.
  - One idea was to mimic the local government solar program, which is authorized to raise fees 10% every 5 years.
  - Support was also voiced for having meetings every 3-5 years to set fees rather than having a set number that increases automatically. This offers the opportunity to reassess program changes and costs.

Public Forum:
An opportunity for public comment was provided, but no members of the public provided any comment.

Meeting ended at 3:30PM

Next Meeting:
Tentatively scheduled for Thursday, April 28, 2022 at DEQ Central Office.