Meeting Minutes
Friday, April 11, 2014

Voluntary Remediation Program (VRP)
Fee Structure
Regulatory Advisory Panel (RAP)
DEQ Central Office
629 E. Main Street, Richmond, VA

Members Present: Tom Hardy, Jim Thornhill, Peggy Farrell, Ed Wallingford, Charlie Williams, Tom Numbers, Richard Souter, Jason Early, and Channing Martin.

Members Absent: Phil Abraham, B. T. Fitzpatrick, Frederick Gusler, and Britt McMillan.

Other Attendees: Petrina Jones for Phil Abraham, Jeff Steers, William Lindsey, Rob Timmins, Debra Harris, Kevin Greene, Meade Anderson, Chris Moore, Valerie Thomson, Gary Graham, Durwood Willis, and Michelle Hollis.

Meeting convened: 10:04 a.m.   Lunch Break 11:59 a.m. – 1:36 p.m.   Adjourned: 3:23 p.m.

1. Welcome and Introduction (Debra Harris).The attendees were welcomed, were oriented to the facility, and introduced themselves. The meeting ground rules and the meaning of "consensus" was reviewed.

2. DEQ staff presented background for the meeting.
    a. Update on Senate Bill 431 (Angie Jenkins): SB431 was passed by the General Assembly and signed by the Governor. The law removed the current cap on VRP fees at the lesser of $5000 or 1% of remediation costs. It also provided that the regulatory process for developing regulations to implement this change be exempt from the Administrative Process Act, except that DEQ shall utilize a RAP to assist in development and provide an opportunity for public comment. The regulation shall be effective no later than July 1, 2014.
    b. Fee Objectives (Jeff Steers): Indications are that EPA funding for this program is being cut this year and is expected to be reduced more in the future. Additionally, EPA wants more of the funding to be used for development of new projects instead of for funding program costs. So in the future, program costs must be paid in large part by other sources such as fees. DEQ's proposals are not designed to grow the program, but to maintain the program at its current

funding. DEQ's objective is to not subject existing sites already participating in the program or sites that submitted applications prior to July 1 to the new fees.

c. Historical Trends (Durwood Willis): $720K is the current cost of funding Virginia's VRP program with a total of 3 project officers and 6 FT positions. The EPA pot of money nationwide in FY13 was $47M. There were 130 state & tribe applicants and Virginia's share was only $550K. For FY14 the EPA pot will be smaller and there are already 150 applicants, so EPA's FY14 program grant to Virginia will be much smaller than $550K.

3. DEQ staff presented the result of research on VRP programs:
    a. Virginia's Program Compared with Other States (Meade Anderson): Some states have no program. Most states have some form of fee. Some have fees based upon an hourly rate for review, which can be quite high. Most of the rest fund the program through permits. Virginia's current fee is low by comparison to other state's fees. Nearby states have initial fees and sometimes additional fees, some of which are variable, which does not give either the state or the applicants much certainty for total program costs. Certainty is a priority for Virginia's program.
    <u>Panel Member Concern</u>: The hourly billing type of fee structure has high internal costs for the agency.
    b. Further trend information (Kevin Greene): After analyzing the 435 sites in the program over the past 20+ years, there are several types of sites in the VRP program, the most numerous of which are either dry cleaner leaks or manufacturing leaks. There are 23 applications per year on average, and based upon 230 certificates issued over the past 20 years 70 % of the sites complete the program in less than 4 years, 75% are out in 4 years, and 80% are out in 5 years.

4. Staff Recommendations for discussion (Chris Moore). Handout (Summary of Various Scenarios and Options).
    a. The scenarios on the handout are based on assumptions at the bottom of the pages. The average cost is what the program costs today, $720K. The bottom line in the columns represents how well the scenario defrays this average program cost. Deficits are indicated by parentheses.
    b. The base scenarios on page 1 are what it would take to fully defray the costs of the program. Most of the other scenarios assume a low Phase 1 fee due with the application (either $2000 or $0) and a higher Phase 2 fee due after eligibility has been confirmed (variously $13,000, $18,000 and $23,000. The Phase 3 fee is an annual fee (beginning with $2000 and in increasing increments of $1000). Different scenarios evaluate the Phase 3 fee with no grace period, a one year grace period, or a three year grace period. Deficits assume EPA grants of at least that amount to cover program costs.
    <u>Panel Member Concern</u>: What if program costs increase? A: DEQ believes that the statute did not provide for fees based upon increasing future costs. If costs

increase, a future regulatory action may be necessary. Regulatory actions typically take 2 – 3 years to process unless future legislation provides for another exempt regulatory process.

5. Discussion of Models and Staff Recommendations (Jeff Steers).
   a. There seems to be some agreement that there should be a low phase 1 fee up front and some kind of phase 2 eligibility fee. What about phase 3 annual fees designed to encourage a faster remediation process?
      <u>Panel Member</u>: $3,000 annual fee seems low.
      <u>Panel Member</u>: What prevents an applicant from simply pulling out of the program and reapplying if the project is delayed and annual fees increase the costs? A. That is fine; it's a business decision.
      <u>Panel Member</u>: When there are large up-front fees, the small projects subsidize the big projects. Annual fees that help rebalance the fees are better. They should start the first year, with no deferment.
      <u>Panel Member</u>: Annual fees are disincentives to small projects because it increases the cost of the project.
      <u>Panel Member</u>: How about increasing phase 3 fees over time? A. Not needed because DEQ can do staff-sharing to get through crunch periods if work builds up.
      <u>Panel Member</u>: What about Lexus Lane/Pay-to-Play for applicants that want to pay for faster service? A. Doesn't really provide any significant additional funding and doesn't seem fair to the public or small project applicants that can't take advantage of it. If there turns out to be a strong feeling among the panel, it can be considered in more depth later.
      <u>Panel Member</u>: Big fees increase costs and push smaller projects out. Optional bigger fees up front for a Lexus Lane/Pay-to-Play group can make fees smaller for smaller projects. A. The small number of applicants likely to use such an accelerated process are too small to generate enough funding to lower other fees.
      <u>Panel Member</u>: There needs to be more incentives for dry cleaners that may just up and move instead of remediating. The tolerance of dry cleaners for fee costs is pretty low; even $13,000 total fees is too much and a lump sum up front is a real problem for them.
      <u>Panel Member</u>: The recommended fee scenarios are 2x or 3x as much as the nearby states charge for up-front fees. A. Oversight fees will be pushing up those fees into the same ballpark or higher. They can be huge.
      <u>Panel Member</u>: Some attorneys representing potential projects have been balking at total fees as low as $15,000.

Break for Lunch.

6. Additional Discussion of Models and Staff Recommendations (Jeff Steers). Deficits of greater than $250,000 are problematic for the Department because EPA funding is expected to be unable to cover that deficit.
    a. New numbers and scenarios developed over lunch and included in the revised handout (Summary of Various Scenarios and Options) (Chris Moore).
        i. One-year grace period: Pay the up-front fees in 2014, don't pay the first phase 3 annual fee until 2016.
        ii. No grace period: Pay the up-front fees in 2014, pay the first phase 3 annual fee in 2015.

    Panel Member: Phase 1 fee of $3000 and the Phase 3 fee of $4000 are no problem. It's the high phase 2 fees of $13,000 that are the problem.
    Panel Member: If we are getting $520K from EPA, why limit deficit due to program costs to $250K? A. EPA funding is expected to decrease, amount unknown. Also, the funding is supposed to be used as pass-through to facilitate individual projects, so not as much can be used to defray program costs.
    Panel Member: How about using the completion of project milestones as a way to break up and spread out fees? A. There are internal costs associated with increased review and billing for more, smaller increments of fees that would increase costs enough to offset lower incremental fees.

    CONSENSUS reached: There will be a phase 1 application fee up front in the amount of $2,000 - $3,000.

    CONSENSUS reached: There will be a phase 2 eligibility fee in the amount of $2,000 - $7,500. Under $10,000 total for both phase 1 and phase 2 fees.

    b. Phase 3 fee deliberations. (Jeff Steers) DEQ might be able to handle a deficit of $350K instead of $250K .
    Panel Member: More certainty is required on agency response times, so the Lexus Lane model should be included. A. DEQ can address agency response times in guidance.
    Panel Member: Need to make sure the numbers for phase 3 fees work for dry cleaners also.

    CONSENSUS reached: A 1-year phase 3 grace period is acceptable.

    CONSENSUS reached: A $2,000 phase 1 fee, a $7,500 phase 2 fee, and a $4,500 phase 3 annual fee with a 1-year grace period produces a $348K deficit and is acceptable to all members.

    DEQ commits to publishing guidance for response times.

    Panel Member: None of the fees are refundable.

c. Reopening certificates to change conditions:
   Panel Member: There should be a fee for reopening a certificate, such as the annual $4,500 phase 3 fee.
   Panel Member: The phase 3 fee should be the up front reentry fee for changes.
   Panel Member: This reopening phase 3 fee should only be for the same applicant. If they change applicants, they should start over.
   Panel member: If the certificate must be redone to change the type of certificate, it should be a complete re-enrollment process back into the program.

   CONSENSUS reached: An initial/annual $4,500 fee will be required for amending conditions on a certificate. Other changes require re-enrollment in the program. No call was made for consensus, but no opposition was voiced after the summary was made.

7. Regulatory process ahead (Debra Harris)
   a. Panel Member: Will there be an opportunity for the RAP members to see the draft regulation before public comment? A. Yes, but it will go out as an email – please respond only to the person sending out the draft.

8. Comments from the public at the meeting (Debra Harris). No members of the public signed up to speak.

9. No future meetings of the VRP RAP will be held.

Voluntary Remediation Program				
Summary of Various Funding Scenarios and Options				
Projected Collections in:	Base Scenario with only Phase 1 & Phase 2 fees: 2,000 Phase 1 fee, 30,725 Phase 2 fee, 0 Phase 3 fee	Base Scenario with all 3 Phases of fees: 2,000 Phase 1 fee, 30,370 Phase 2 fee, 3,000 Phase 3 fee	Scenario 1: 3 year grace on Phase 3 fee: 2,000 Phase 1 fee, 13,000 Phase 2 fee, 2,000 Phase 3 fee	Scenario 2: 3 year grace on Phase 3 fee: 2,000 Phase 1 fee, 18,000 Phase 2 fee, 2,000 Phase 3 fee
FY 2015 (July 1, 2014 to June 30, 2015)	535,600	529,920	252,000	332,000
FY 2016	719,950	712,140	330,000	440,000
FY 2017	719,950	712,140	330,000	440,000
FY 2018	719,950	718,140	334,000	444,000
FY 2019	719,950	733,140	344,000	454,000
FY 2020	719,950	748,140	354,000	464,000
FY 2021	719,950	757,140	360,000	470,000
FY 2022	719,950	760,140	362,000	472,000
FY 2023	719,950	763,140	364,000	474,000
FY 2024	719,950	766,140	366,000	476,000
10 Year Total	7,015,150	7,200,180	3,396,000	4,466,000
10 Year Average	701,515	720,018	339,600	446,600
Average Costs of Program	720,000	720,000	720,000	720,000
Difference in 10 Year Average and Average Costs of Program	(18,485)	18	(380,400)	(273,400)
Overall Assumptions:				
1. 22 applications each year, beginning July 2014. 5 one quarter, then 6 the next, and so on				
2. All applications are eligible for the program and are paid				
3. Phase 2 fees arrive 90 days after Phase 1 fees				
4. All current VRP participants are grandfathered in for Phase 3 fees				
5. Phase 3 fees, if any, are calculated on Phase 2 sites on board in December of each year				
6. Number of projected years in the program is equal to the average VRP site time from the 'Years to Complete' graph				

Voluntary Remediation Program				
Summary of Various Funding Scenarios and Options				
	3 Year Grace Period on Phase 3			
Projected Collections in:	Scenario 3: 3 year grace on Phase 3 fee: 2,000 Phase 1 fee, 23,000 Phase 2 fee, 2,000 Phase 3 fee	Scenario 4: 3 year grace on Phase 3 fee: 2,000 Phase 1 fee, 13,000 Phase 2 fee, 3,000 Phase 3 fee	Scenario 5: 3 year grace on Phase 3 fee: 2,000 Phase 1 fee, 18,000 Phase 2 fee, 3,000 Phase 3 fee	Scenario 6: 3 year grace on Phase 3 fee: 2,000 Phase 1 fee, 23,000 Phase 2 fee, 3,000 Phase 3 fee
FY 2015 (July 1, 2014 to June 30, 2015)	412,000	252,000	332,000	412,000
FY 2016	550,000	330,000	440,000	550,000
FY 2017	550,000	330,000	440,000	550,000
FY 2018	554,000	336,000	446,000	556,000
FY 2019	564,000	351,000	461,000	571,000
FY 2020	574,000	366,000	476,000	586,000
FY 2021	580,000	375,000	485,000	595,000
FY 2022	582,000	378,000	488,000	598,000
FY 2023	584,000	381,000	491,000	601,000
FY 2024	586,000	384,000	494,000	604,000
10 Year Total	5,536,000	3,483,000	4,553,000	5,623,000
10 Year Average	553,600	348,300	455,300	562,300
Average Costs of Program	720,000	720,000	720,000	720,000
Difference in 10 Year Average and Average Costs of Program	(166,400)	(371,700)	(264,700)	(157,700)
Overall Assumptions:				
1. 22 applications each year, beginning July 2014. 5 one quarter, then 6 the next, and so on				
2. All applications are eligible for the program and are paid				
3. Phase 2 fees arrive 90 days after Phase 1 fees				
4. All current VRP participants are grandfathered in for Phase 3 fees				
5. Phase 3 fees, if any, are calculated on Phase 2 sites on board in December of each year				
6. Number of projected years in the program is equal to the average VRP site time from the 'Years to Complete' graph				

Voluntary Remediation Program					
Summary of Various Funding Scenarios and Options					
		1 Year Grace Pe			
Projected Collections in:		Scenario 7: 1 yr grace on Phase 3 fee: 2,000 Phase 1 fee, 13,000 Phase 2 fee, 2,000 Phase 3 fee	Scenario 8: 1 yr grace on Phase 3 fee: 2,000 Phase 1 fee, 13,000 Phase 2 fee, 3,000 Phase 3 fee	Scenario 9: 1 yr grace on Phase 3 fee: 2,000 Phase 1 fee, 13,000 Phase 2 fee, 4,000 Phase 3 fee	Scenario 10: 1 yr grace on Phase 3 fee: 2,000 Phase 1 fee, 13,000 Phase 2 fee, 5,000 Phase 3 fee
FY 2015 (July 1, 2014 to June 30, 2015)		252,000	252,000	252,000	252,000
FY 2016		340,000	345,000	350,000	355,000
FY 2017		376,000	399,000	422,000	445,000
FY 2018		398,000	432,000	466,000	500,000
FY 2019		414,000	456,000	498,000	540,000
FY 2020		424,000	471,000	518,000	565,000
FY 2021		434,000	486,000	538,000	590,000
FY 2022		440,000	495,000	550,000	605,000
FY 2023		442,000	498,000	554,000	610,000
FY 2024		444,000	501,000	558,000	615,000
10 Year Total		3,964,000	4,335,000	4,706,000	5,077,000
10 Year Average		396,400	433,500	470,600	507,700
Average Costs of Program		720,000	720,000	720,000	720,000
Difference in 10 Year Average and Average Costs of Program		(323,600)	(286,500)	(249,400)	(212,300)
Overall Assumptions:					
1. 22 applications each year, beginning July 2014. 5 one quarter, then 6 the next, and so on					
2. All applications are eligible for the program and are paid					
3. Phase 2 fees arrive 90 days after Phase 1 fees					
4. All current VRP participants are grandfathered in for Phase 3 fees					
5. Phase 3 fees, if any, are calculated on Phase 2 sites on board in December of each year					
6. Number of projected years in the program is equal to the average VRP site time from the 'Years to Complete' graph					

Voluntary Remediation Program					
Summary of Various Funding Scenarios and Options					
		eriod on Phase 3			
Projected Collections in:		Scenario 11: 1 yr grace on Phase 3 fee: 2,000 Phase 1 fee, 18,000 Phase 2 fee, 2,000 Phase 3 fee	Scenario 12: 1 yr grace on Phase 3 fee: 2,000 Phase 1 fee, 18,000 Phase 2 fee, 3,000 Phase 3 fee	Scenario 13: 1 yr grace on Phase 3 fee: 2,000 Phase 1 fee, 18,000 Phase 2 fee, 4,000 Phase 3 fee	Scenario 14: 1 yr grace on Phase 3 fee: 2,000 Phase 1 fee, 18,000 Phase 2 fee, 5,000 Phase 3 fee
FY 2015 (July 1, 2014 to June 30, 2015)		332,000	332,000	332,000	332,000
FY 2016		450,000	455,000	460,000	465,000
FY 2017		486,000	509,000	532,000	555,000
FY 2018		508,000	542,000	576,000	610,000
FY 2019		524,000	566,000	608,000	650,000
FY 2020		534,000	581,000	628,000	675,000
FY 2021		544,000	596,000	648,000	700,000
FY 2022		550,000	605,000	660,000	715,000
FY 2023		552,000	608,000	664,000	720,000
FY 2024		554,000	611,000	668,000	725,000
10 Year Total		5,034,000	5,405,000	5,776,000	6,147,000
10 Year Average		503,400	540,500	577,600	614,700
Average Costs of Program		720,000	720,000	720,000	720,000
Difference in 10 Year Average and Average Costs of Program		(216,600)	(179,500)	(142,400)	(105,300)
<u>Overall Assumptions:</u>					
1. 22 applications each year, beginning July 2014. 5 one quarter, then 6 the next, and so on					
2. All applications are eligible for the program and are paid					
3. Phase 2 fees arrive 90 days after Phase 1 fees					
4. All current VRP participants are grandfathered in for Phase 3 fees					
5. Phase 3 fees, if any, are calculated on Phase 2 sites on board in December of each year					
6. Number of projected years in the program is equal to the average VRP site time from the 'Years to Complete' graph					

Voluntary Remediation Program					
Summary of Various Funding Scenarios and Options					
Projected Collections in:		Scenario 15: No grace on Phase 3 fee: 2,000 Phase 1 fee, 13,000 Phase 2 fee, 2,000 Phase 3 fee	Scenario 16: No grace on Phase 3 fee: 2,000 Phase 1 fee, 13,000 Phase 2 fee, 3,000 Phase 3 fee	Scenario 17: No grace on Phase 3 fee: 2,000 Phase 1 fee, 13,000 Phase 2 fee, 4,000 Phase 3 fee	Scenario 18: No grace on Phase 3 fee: 2,000 Phase 1 fee, 13,000 Phase 2 fee, 5,000 Phase 3 fee
FY 2015 (July 1, 2014 to June 30, 2015)		262,000	267,000	272,000	277,000
FY 2016		376,000	399,000	422,000	445,000
FY 2017		398,000	432,000	466,000	500,000
FY 2018		414,000	456,000	498,000	540,000
FY 2019		424,000	471,000	518,000	565,000
FY 2020		434,000	486,000	538,000	590,000
FY 2021		440,000	495,000	550,000	605,000
FY 2022		442,000	498,000	554,000	610,000
FY 2023		444,000	501,000	558,000	615,000
FY 2024		446,000	504,000	562,000	620,000
10 Year Total		4,080,000	4,509,000	4,938,000	5,367,000
10 Year Average		408,000	450,900	493,800	536,700
Average Costs of Program		720,000	720,000	720,000	720,000
Difference in 10 Year Average and Average Costs of Program		(312,000)	(269,100)	(226,200)	(183,300)
Overall Assumptions:					
1. 22 applications each year, beginning July 2014. 5 one quarter, then 6 the next, and so on					
2. All applications are eligible for the program and are paid					
3. Phase 2 fees arrive 90 days after Phase 1 fees					
4. All current VRP participants are grandfathered in for Phase 3 fees					
5. Phase 3 fees, if any, are calculated on Phase 2 sites on board in December of each year					
6. Number of projected years in the program is equal to the average VRP site time from the 'Years to Complete' graph					

Voluntary Remediation Program				
Summary of Various Funding Scenarios and Options				
	No Grace Period on Phase 3 Fees			
Projected Collections in:	Scenario 19: No grace on Phase 3 fee: 2,000 Phase 1 fee, 18,000 Phase 2 fee, 2,000 Phase 3 fee	Scenario 20: No grace on Phase 3 fee: 2,000 Phase 1 fee, 18,000 Phase 2 fee, 3,000 Phase 3 fee	Scenario 21: Lexus: 1 per yr, No grace on Phase 3 fee: 2,000 Phase 1 fee, 18,000 Phase 2 fee, 3,000 Phase 3 fee for regulars; Lexus is same except phase 2 fee is 28,000	Scenario 22: No grace on Phase 3 fee: 0 Phase 1 fee, 4,000 Phase 2 fee, 4,000 Phase 3 fee
FY 2015 (July 1, 2014 to June 30, 2015)	342,000	347,000	357,000	84,000
FY 2016	486,000	509,000	519,000	180,000
FY 2017	508,000	542,000	552,000	224,000
FY 2018	524,000	566,000	576,000	256,000
FY 2019	534,000	581,000	591,000	276,000
FY 2020	544,000	596,000	606,000	296,000
FY 2021	550,000	605,000	615,000	308,000
FY 2022	552,000	608,000	618,000	312,000
FY 2023	554,000	611,000	621,000	316,000
FY 2024	556,000	614,000	624,000	320,000
10 Year Total	5,150,000	5,579,000	5,679,000	2,572,000
10 Year Average	515,000	557,900	567,900	257,200
Average Costs of Program	720,000	720,000	720,000	720,000
Difference in 10 Year Average and Average Costs of Program	(205,000)	(162,100)	(152,100)	(462,800)
Overall Assumptions:				
1. 22 applications each year, beginning July 2014. 5 one quarter, then 6 the next, and so on				
2. All applications are eligible for the program and are paid				
3. Phase 2 fees arrive 90 days after Phase 1 fees				
4. All current VRP participants are grandfathered in for Phase 3 fees				
5. Phase 3 fees, if any, are calculated on Phase 2 sites on board in December of each year				
6. Number of projected years in the program is equal to the average VRP site time from the 'Years to Complete' graph				

Voluntary Remediation Program			
Summary of Various Funding Scenarios and Options			
Projected Collections in:		Scenario 23: No grace on Phase 3 fee: 0 Phase 1 fee, 6,000 Phase 2 fee, 6,000 Phase 3 fee	Scenario 24: No grace on Phase 3 fee: 0 Phase 1 fee, 8,000 Phase 2 fee, 8,000 Phase 3 fee
FY 2015 (July 1, 2014 to June 30, 2015)		126,000	168,000
FY 2016		270,000	360,000
FY 2017		336,000	448,000
FY 2018		384,000	512,000
FY 2019		414,000	552,000
FY 2020		444,000	592,000
FY 2021		462,000	616,000
FY 2022		468,000	624,000
FY 2023		474,000	632,000
FY 2024		480,000	640,000
10 Year Total		3,858,000	5,144,000
10 Year Average		385,800	514,400
Average Costs of Program		720,000	720,000
Difference in 10 Year Average and Average Costs of Program		(334,200)	(205,600)
Overall Assumptions:			
1. 22 applications each year, beginning July 2014. 5 one quarter, then 6 the next, and so on			
2. All applications are eligible for the program and are paid			
3. Phase 2 fees arrive 90 days after Phase 1 fees			
4. All current VRP participants are grandfathered in for Phase 3 fees			
5. Phase 3 fees, if any, are calculated on Phase 2 sites on board in December of each year			
6. Number of projected years in the program is equal to the average VRP site time from the 'Years to Complete' graph			