



Virginia Department of Planning and Budget **Economic Impact Analysis**

12 VAC 5-600 Waterworks Operation Fee
Virginia Department of Health
Town Hall Action/Stage: 5867/10049
August 31, 2023

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

As the result of work undertaken by the Office of Drinking Water (ODW) at the Virginia Department of Health (VDH), VDH's Waterworks Advisory Committee, and a 2021 periodic review,² the State Board of Health (Board) is proposing a discretionary action to amend the *Waterworks Operation Fee* regulation. The Board seeks to add new fees for some waterworks, increase fees for others, and correct a technical error in how fees are calculated. The Board finds these changes to be necessary so that the revenues from these fees cover the costs necessary to operate the Waterworks Technical Assistance Program, as required by the Code of Virginia § 32.1-171.1,³ and to more accurately reflect the benefit that different members of the regulated community receive from this technical assistance.

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2019>.

³ See <https://law.lis.virginia.gov/vacode/title32.1/chapter6/section32.1-171.1/>.

Background

The Board seeks to amend the *Waterworks Operation Fee* regulation, which codifies how ODW generates revenue from fees charged to the waterworks that are regulated by ODW under the federal Safe Drinking Water Act and the *Waterworks Regulations* (12VAC5-590.)⁴ ODW provides technical assistance to waterworks owners and operators (and their engineers) in the form of issuing construction and operation permits, providing assistance during emergency situations, conducting inspections, reviewing sample results and monthly operation reports, assisting with monitoring and reporting requirements, including meeting requirements for providing public notice and Consumer Confidence Reports (see 12 VAC 5-590-545), and helping waterworks return to and maintain compliance with the *Waterworks Regulations* and the federal Safe Drinking Water Act. ODW also provides technical assistance to localities with source water protection programs and works with over 100 laboratories that report compliance monitoring data.

ODW experienced a budget shortfall starting in fiscal year 2022. The *2022 Appropriation Act* provided \$1,833,505 each year to cover ODW's operational cost and directed VDH and DPB to evaluate ODW's budget to determine the reasons behind the shortfall, identify and explore funding opportunities in order to maximize non-general fund sources, and determine cost efficiencies and savings.⁵ The resulting report to the General Assembly (2022 GA report) contains detailed information on ODW's funding structure, and the multifactorial causes that led to the 2022 budget deficit, and provides the rationale for the fee changes proposed in this action, including detailed analyses of alternative fee changes that were considered but not adopted.⁶

There are three main types of waterworks:

- A. Community waterworks: These entities serve “at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents,” as defined in 12 VAC 5-590-10. For example, the City of Richmond's Department of Public Utilities is a community waterworks. A community waterworks can also be a private entity. There are 1,097 community waterworks currently operating in Virginia.

⁴ This regulation governs 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. See <https://law.lis.virginia.gov/admincode/title12/agency5/chapter590/>.

⁵ See Item 296 F in <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/296/>.

⁶ See <https://rga.lis.virginia.gov/Published/2022/RD805/PDF>.

- B. Noncommunity waterworks: Noncommunity waterworks would be newly defined in the regulation to mean, “a waterworks that is not a community waterworks but operates at least 60 days out of the year.” There are two types of noncommunity waterworks, non-transient and transient:
- a. Nontransient noncommunity waterworks (NTNC): NTNCs provide water to 25 or more of the same people for more than six months out of the year; for example, schools or factories that run their own waterworks. NTNCs are usually too remote to have a service connection to a community waterworks. There are 516 NTNCs currently operating in Virginia.
 - b. Transient noncommunity waterworks (TNC): TNCs provide water to 25 or more people for more than 60 days a year. Examples include campgrounds, restaurants, and highway rest areas that have and operate their own water source. There are currently 1,251 TNCs operating in Virginia.
- C. Wholesale waterworks: Wholesale waterworks treat water and sell “finished water” to other waterworks who in turn distribute it to their customers. There are 17 wholesale waterworks in Virginia.

The Board has certain constraints with respect to how they structure waterworks fees.

First, the Code of Virginia (Code) § 32.1-171.1(A) specifies:

Every owner of a waterworks shall pay to the Department a waterworks operation fee of no more than \$160,000 per year. Based upon the number of persons served, the number of connections, or the classification of the waterworks, the Board shall, pursuant to its regulations, establish the fee to be charged each such owner and may exempt sizes and classes from the required fee. Any fee in excess of \$10,000 shall be payable quarterly. The 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.⁷

This section of the Code was created in 1992 and the \$160,000 cap has not been changed since. Although the cap applies to all types of waterworks, only the largest community waterworks’ fees are impacted by it.⁸ Second, every *Appropriations Act* since 2001 has

⁷ See <https://law.lis.virginia.gov/vacode/title32.1/chapter6/section32.1-171.1/>.

⁸ Per the 2022 GA report (page 14) twelve community waterworks with more than 53,333 service connections pay the statutory maximum of \$160,000 per year.

specified a cap on charges to community waterworks at \$3 per service connection.⁹ Due to these constraints, the Board is primarily focusing on noncommunity waterworks and wholesale waterworks for the proposed fee changes. Community waterworks would only be affected by a technical change in how fees are calculated.

The proposed fee changes for each type of waterworks are summarized below.

Community waterworks: The Board states that, “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.”¹⁰ According to the Board, the current regulatory language states that the cap is to be applied on a per waterworks basis, which provides the authority for VDH to recover this amount through a change to its billing practice. Accordingly, “Public Water System Identification Number” (PWSID) would be newly defined to mean “a unique identifying number used by [VDH] that is specific to each waterworks” and section 50 (*Community waterworks operation fee*) would be amended to specify that (a) the \$160,000 cap would be applied for each PWSID separately, and (b) the fee shall be based on the highest number of customer accounts for the waterworks in the 12 months preceding July 1. In addition, section 50 would also be amended so that the minimum amount for which owners would be allowed to pay in quarterly installments rather than a lump sum would be increased from \$400 to \$1,600.

Wholesale waterworks: Currently, a wholesale waterworks is only assessed an operation fee if it has at least one service connection to an end-user; if so, they are treated like community waterworks and charged \$3 per connection.¹¹ A wholesale waterworks that only connects to one or more waterworks is not currently assessed an operation fee regardless of how much water they process. Accordingly, the Board proposes to create a two-tiered fee (in a new section 55): wholesale waterworks with fewer than 15 non-waterworks customer accounts would now each be charged a flat \$2,500 fee per year,

⁹ See Item 294 B for the \$3 cap in the 2022 *Appropriations Act*: <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/296/>. ODW only charged \$1.50 per connection in 1992-1993 and steadily increased this fee over the years, but it had been at \$2.95 since 2012 until it was increased to \$3 in 2021. See <https://townhall.virginia.gov/l/ViewNotice.cfm?gnid=1256>.

¹⁰ See Agency Background Document (ABD) page 4, under Substance: https://townhall.virginia.gov/l/GetFile.cfm?File=58\5867\10049\AgencyStatement_VDH_10049_v1.pdf.

¹¹ This has been ODW practice although it is not currently in the regulation.

whereas wholesale waterworks with 15 or more non-waterworks customer accounts would continue to be considered as a community waterworks for the purposes of determining the fee to be assessed.

NTNC: NTNCs are currently charged a flat fee of \$90 per year. The Board reports that this fee has not been adjusted since the regulations were adopted in 1993 and proposes to amend section 60 to increase the fee to \$120 per year.

TNC: TNCs are currently not charged any fees. ODW reports that smaller waterworks, particularly TNCs and those serving fewer than 500 persons, tend to consume the most ODW resources in terms of staff time (e.g., technical assistance, reminders to monitor, training, inspections, and enforcement).¹² The Board proposes to create a new section 65 stating that each TNC would be assessed a \$60 fee per year going forward.¹³

Other proposed changes address payments, late fees, and non-payment. Specifically, section 100 (*Payments*) would be amended to require VDH to charge a convenience fee, at the prevailing credit vendor convenience fee rate, for payments made with a credit card.¹⁴ Section 110 (*Late fees, administrative charges, and non-payment considerations*) would add the following new provisions regarding what VDH may do in the case of non-payment of fees:

- Limit the technical assistance provided to a waterworks to the state's legal requirements pursuant to the Safe Drinking Water Act;

¹² See ABD page 18 and 2022 GA report, p. 14. The 2022 GA report further says, “TNCs and NTNCs require far more technical assistance and enforcement oversight because many of these waterworks lack the technical, managerial, and financial capacity to operate within the regulations. For many TNC owners, the water provision is also not their primary business purpose. They may primarily operate a marina, campground, restaurant, hotel, gas station, or some other business and simply need water to serve their customers. As a result, the monitoring and reporting that is required—usually monthly or quarterly samples to check for bacterial contamination, and annual samples to check for nitrate/nitrite contamination—is viewed by the owner as a distraction and not a high priority since it is not the main purpose of their business. Furthermore, unlike NTNC and community waterworks, TNCs are not required to employ a licensed waterworks operator, which means that many TNCs do not have support of a professional operator who is familiar with the requirements of the Waterworks Regulations. VDH staff must therefore train owners to take samples, remind them to collect and submit samples, and take enforcement action whenever they do not comply with applicable regulations.”

¹³ All three comments received in response to the 2021 periodic review implicitly or explicitly recommended that TNCs be charged a fee. See page 4 in https://townhall.virginia.gov/l/GetFile.cfm?File=C:\TownHall\docroot\Review\2019\PReview_VDH_2019_v1.pdf.

¹⁴ ODW clarified that although VDH as an agency accepts checks, money orders, credit/debit cards, EFTs, and ACHs, at the present time, the waterworks operation fee website is only set up to receive credit card payments, for which ODW is covering vendor fees. (ODW also accepts checks.)

- Limit or restrict any waterworks' access to loans, grants, or services provided by VDH;
- Collect financial records regarding the operations of the waterworks; and
- Require the submission of a Waterworks Business Operation Plan.

All other changes to the proposed text, including in Sections 40, 70, 80, and 90, appear to be merely clarifying in nature.

Estimated Benefits and Costs

Correcting the way community waterworks' fees are determined by using the PWSID would prevent an annual loss of \$177,405. Fees from noncommunity waterworks are expected to increase by \$90,540,¹⁵ and fees from wholesale waterworks are expected to increase by \$42,473.¹⁶ Thus, the proposed changes are expected to increase ODW revenues by approximately \$310,418 per year. ODW anticipates an increase in administrative costs by about \$40,000 per year as the volume of invoices to process would more than double. This would result in a net benefit to ODW of roughly \$270,000 per year, which would go towards strengthening ODW's overall financial viability.

Further, VDH is currently using an MS Access database, Excel spreadsheets, and mail merge to invoice waterworks and has been informed that MS Access does not meet state information technology requirements.¹⁷ Purchasing compliant billing software is expected to cost at least \$150,000 in the first year, with a significantly smaller annual license fee in subsequent years. Although these costs will be borne by the agency as a whole, ODW would be charged to cover a portion of the billing software costs (even without the proposed fee changes) and anticipates staff training costs once the new billing software is adopted by the agency.

TNCs, NTNCs, and wholesalers with fewer than 15 non-waterworks customer accounts would face new or higher fees as described in the previous section. Seven community waterworks would face additional fees as a result of applying the \$160,000 cap by PWSID rather

¹⁵ 1,251 TNCs would be newly charged \$60 each, for a total of \$75,060 and 516 NTNCs would pay an additional \$30, for a total of 15,480. Thus, the total additional fee revenue comes to \$90,540.

¹⁶ ODW reports that there are 17 wholesale waterworks with fewer than 15 non-waterworks customer accounts. 16 of these have no non-waterworks customer accounts and only supply to other waterworks, and would each pay \$2,500, for a total of \$40,000. One wholesale waterworks has 9 non-wholesale customer accounts; they would pay the \$2,500 flat fee rather than the \$27 they are currently charged, for a net increase of \$2,473.

¹⁷ ABD, page 7.

than by owner.¹⁸ These waterworks would continue to benefit from the technical assistance provided by ODW and maintain compliance with the *Waterworks Regulation*, and the individuals and entities served by these waterworks would benefit from continuous and reliable access to safe drinking water.

Businesses and Other Entities Affected

Seven community waterworks would face increased fees as a result of the technical change in how the \$160,000 cap is applied. 1,251 TNCs, which are largely businesses in remote areas, such as marinas, campgrounds, restaurants, hotels, and gas stations, would be newly assessed a waterworks fee of \$60 per year. Some TNCs may be at state parks or at rest stops operated by the Virginia Department of Transportation. 516 NTNCs, which include business-owned and municipal-owned waterworks in remote areas, would see their annual waterworks fee increase by \$30. Lastly, 17 wholesale waterworks would be charged a \$2,500 annual fee instead of being treated as a community waterworks for the purpose of determining their fee; 16 of these wholesale waterworks would be charged a fee for the first time. Wholesale waterworks may pass on some of their increased costs to their waterworks and non-waterworks customers. As a result, some community waterworks, TNCs, and NTNCs may be indirectly impacted if they receive water from one of the affected waterworks. Similarly, individuals patronizing businesses that have TNCs or NTNCs, and households and businesses that receive water from affected community waterworks, may be indirectly affected to the extent that waterworks fees are passed on to them.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.¹⁹ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Because the Board seeks to make discretionary changes that would create new fees for some entities and increase fees for others, an adverse impact is indicated.

¹⁸ See Table 2 on page 15 of the 2022 GA report for a list of affected community waterworks and the estimated additional fees each one would be charged.

¹⁹ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

Small Businesses²⁰ Affected:²¹

The proposed amendments would adversely affect small businesses.

Types and Estimated Number of Small Businesses Affected

Many of the 1,251 TNCs and some of the 516 NTNCs are likely operated by small businesses, though ODW does not collect data on whether each entity operating one of these types of waterworks meets the definition of a small business. Examples of affected businesses include marinas, campgrounds, restaurants, hotels, and gas stations.

Costs and Other Effects

TNCs would face a new \$60 annual waterworks fee and NTNCs would face an increase in their annual waterworks fee by \$30. However, they would benefit from continued technical assistance from ODW, which would allow them to maintain compliance with the *Waterworks Regulations* and ensure that their staff and customers have access to clean and safe drinking water.

Alternative Method that Minimizes Adverse Impact

The Board could have avoided making any changes that would affect TNCs and NTNCs, choosing instead to solely increase fees for wholesale and community waterworks. However, as mentioned previously, TNCs and NTNCs require a disproportionate amount of technical assistance from VDH staff, and comments received at the 2021 periodic review recommended that the Board consider assessing a fee to TNCs. In addition, the Board's Waterworks Advisory Committee and its Subgroup on Fee Regulations met several times to assess "how to make the operation fees more

²⁰ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

²¹ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

equitable, balancing who pays the fees and which waterworks receive the most technical assistance and engagement from ODW staff.”²²

Localities²³ Affected²⁴

The proposed fees for TNCs and NTNCs would disproportionately affect localities that are more likely to have businesses in remote locations that are unconnected to a community waterworks. In addition, local governments may be affected if they operate a wholesale or community waterworks that would be affected by the proposed changes. The 2022 GA report identifies the Fairfax County Water Authority, Prince William County Water Authority, City of Chesapeake, City of Newport News, Loudoun Water, and Western Virginia Water Authority as being impacted by the current underbilling due to the way the \$160,000 cap is applied; these localities would face additional fees once the cap is applied per PWSID rather than per owner.

Projected Impact on Employment

The proposed amendments are not likely to have a substantive impact on total employment.

Effects on the Use and Value of Private Property

The proposed amendment may slightly reduce the value of private businesses that operate a TNC or NTNC since they would now face new or increased fees, although the size of the fee or fee increase is likely a very small share of their overall operating costs. Similarly, real estate development costs would be impacted if a new development had to install a noncommunity waterworks due to the associated fees. However, such impact would be very small relative to the overall costs of real estate development.

²² WAC meeting notes, December 16, 2020, pg. 8/201 at https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\58\31457\Minutes_VDH_31457_v2.pdf. To view many meetings that address this regulatory action, see <https://townhall.virginia.gov/l/meetings.cfm?chapterid=1440&time=PastandFuture>.

²³ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

²⁴ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.