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Periodic Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-20
Regulation title	Fees for Permits and Certificates
Date this document prepared	July 18, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

DCR- Department of Conservation and Recreation
DEQ- Department of Environmental Quality
FY- Fiscal Year
GW- Groundwater
HB- House Bill
MS4- Municipal Separate Storm Sewer System
SW- Surface Water
VAMWA- Virginia Association of Municipal Wastewater Agencies
VPA- Virginia Pollution Abatement
VPDES- Virginia Pollution Discharge Elimination System
VSMP- Virginia Stormwater Management Program
VWP- Virginia Water Protection

Legal Basis

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

Section 62.1-44.15:6 of the Code of Virginia authorizes the State Water Control Board to adopt regulations to assess fees to issue, reissue, amend or modify any permit or certificate. This includes Groundwater (GW) withdrawals, Surface Water (SW) withdrawals, Virginia Pollution Discharge Elimination System (VPDES), Virginia Pollution Abatement (VPA) and Virginia Water Protection (VWP) permits. This section of the code also establishes maximum permit application and maintenance fees. Budget item 355 of HB30 (2010) allows the permit fees to be established at an amount representing not

more than 50% of the direct costs for the administration, compliance and enforcement of the Virginia Pollution Discharge Elimination System (VPDES) and Virginia Pollution Abatement (VPA) permits.

Section 62.1-44.19:3 of the Code of Virginia requires the promulgation of regulations establishing a fee to be charged to all permit holders and persons applying for permits and permit modifications associated with land application of biosolids. Section 62.1-44.16 of the Code of Virginia requires the promulgation of regulations requiring the payment of a fee by persons land applying solid or semisolid industrial wastes. Section 62.1-44.19:3 of the Code of Virginia also requires the payment of fees for each dry ton of sewage sludge that is land applied in the Commonwealth. Enactment clause 3 of Chapter 677 of the 2015 Acts of Assembly and enactment clause 3 of Chapter 104 of the 2015 Acts of Assembly establishes a \$5 fee per dry ton of solid or semisolid industrial waste that is land applied, and this fee is reflected in the current regulation.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

Section 62.1-44.15:6 of the Code of Virginia directs the State Water Control Board to adopt regulations to assess fees to issue, reissue, amend or modify any permit or certificate. Sections 62.1-44.19:3 and 62.1-44.16 of the Code of Virginia require the promulgation of regulations establishing a fee to be charged to all permit holders and persons applying for permits and permit modifications associated with land application of biosolids and also requires the payment of a fee by persons land applying solid or semisolid industrial wastes. Since this regulation is required to be adopted by state law, no viable alternatives to this regulation were identified.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed to assist with conducting this periodic review.

Commenter	Comment	Agency response
Virginia Association of Municipal Wastewater Agencies (VAMWA)	VAMWA requested the regulation be retained in its current form. VAMWA has supported previous increases to permit fees but sees no justification in increasing fees at this time.	The permit fees are not being increased at this time. The agency does intend to amend this regulation to remove fees for permits related to Municipal Separate Storm Sewer Systems (MS4) and construction activities since this regulation is no longer used to assess fees for these activities.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation specifies the amounts of permit application fees and annual maintenance fees related to water permits. The revenue generated through permit application and annual maintenance fees is used to support the Department of Environmental Quality's (DEQ) direct costs related to the administration, compliance and enforcement of water permits. The current fees support a portion of the water permitting program.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency recommends this regulation be amended. The MS4 and Construction Activity permitting fees contained in 9VAC25-20 are a carryover from when the stormwater program was administered by DEQ prior to the program's transfer to the Department of Conservation and Recreation (DCR) (in January 2005). Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) and are no longer needed in 9VAC25-20.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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 the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

This regulation continues to be needed. The fees collected through this regulation are used to defray a portion of the costs for the water permit programs.

Comments were received from VAMWA. VAMWA has supported previous increases to permit fees but sees no justification in increasing fees at this time. VAMWA requested the regulation be retained in its current form.

The regulation specifies the fees associated with water related permit applications, annual maintenance fees, and fees for the application of biosolids. The regulation specifies the applicable fees for each activity, the process for payment of the fees, when fees are due, and the manner for adjusting fees for inflation. The regulation has been written to address the different types of applicable fees in separate sections to minimize the complexity of the regulation. The agency distributes bills to VPDES and VPA permit holders to minimize confusion concerning the annual maintenance fees due.

The permit fees collected by this regulation are state fees used to support the water permitting and biosolids programs. There are no federal regulations requiring fees to be collected for water permit application fees, annual maintenance fees, or biosolids application fees. Federal funding received is unable to support the costs of the permit program.

This regulation was last amended in 2018 to revise the GW withdrawal permit application fees in response to legislation extending the permit term for GW withdrawal permits to 15 years. Biosolid related fees were last revised in 2015 and 2016. Annual Maintenance fees for other water permit fees were revised in 2010 to generate \$1.25 million in response to DEQ's General Fund revenue being reduced by \$1.25 million.

The regulation was developed to minimize the impact on small businesses. Some of the permit fees assessed are based on the size of the facility and small businesses will likely operate smaller facilities. Some activities conducted by small businesses may be covered by a general permit, and the general permit fee is substantially lower than a permit for an individual permit.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

This regulation does not have a direct impact on the family or family stability.