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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 5-600
VAC Chapter title(s)	Waterworks Operation Fee
Date this document prepared	

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

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

"Board" means the State Board of Health.

"Community waterworks" means a waterworks that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Department" and "VDH" mean the Virginia Department of Health.

"ODW" means the Office of Drinking Water, an operational unit in the Virginia Department of Health.

"NTNC" means nontransient noncommunity waterworks. A NTNC waterworks serves at least 25 of the same persons daily for at least 4 or more hours, 6 or more months out of the year. The 25 or more people are not year-round residents served by the waterworks.

"TNC" means transient noncommunity waterworks. A TNC waterworks serves at least 25 persons daily for at least 60 days out of the year. The 25 or more people are not year-round residents served by the waterworks, nor are the same people who use the water for 4 or more hours a day, 6 or more months out of the year.

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 or 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 Virginia *Waterworks Operation Fee* regulations, 12VAC5-600, are mandated by Article 2, Chapter 6, Title 32.1 of the *Code of Virginia* titled “Public Water Supplies” (§ 32.1-167 *et seq.*), which empowers and directs the State Board of Health (Board) to adopt and promulgate regulations governing waterworks, water supplies and pure water to protect the public health and promote the public welfare.

Code of Virginia § 32.1-167 defines a “waterworks” as a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. “Waterworks” includes all structures, equipment, and appurtenances used in the storage, collection, purification, treatment, and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

Code of Virginia § 32.1-169 provides that the Board (acting through the Virginia Department of Health (Department or VDH), see *Code of Virginia* § 32.1-16) shall have general supervision and control over all water supplies and waterworks in the Commonwealth insofar as the bacteriological, chemical, radiological, and physical quality of waters furnished for human consumption may affect the public health and welfare and may require that all water supplies be pure water.

Code of Virginia § 32.1-171.1. A. and C. state that 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. Revenues from the operation fees cover costs necessary to operate the Waterworks Technical Assistance Program which includes, but is not limited to (i) training for operator certification, (ii) engineering evaluation and advice, (iii) sample collection for laboratory analysis, and (iv) educational seminars. *Id.*

Code of Virginia § 32.1-171.1 B. establishes a Waterworks Technical Assistance Fund which is to be used by the Department to conduct the Waterworks Technical Assistance Program.

Alternatives to Regulation

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.

The General Assembly established the waterworks operation fee in 1992 (Acts of Assembly Chapter 804), creating a funding source for the drinking water program separate from its general fund allocation in the state budget. In 2012, the General Assembly amended the Budget to allow VDH to increase the operation fee from \$2.05 per service connection to a maximum level of \$3.00 per service connection. The maximum fee VDH may charge community waterworks for each service connection, \$3.00, has not changed since 2012. The final budget for the 2020-2022 biennium (as adopted on April 7, 2021) states, “The fee schedule for charges to community waterworks shall be adjusted to the level necessary to cover the cost of operating the Waterworks Technical Assistance Program, consistent with § 32.1-171.1, Code

of Virginia, and shall not exceed \$3.00 per connection to all community waterworks.” Item 304 B., Budget Bill – HB1800 (Chapter 552) (2021),

The *Waterworks Operation Fee* regulation represents a fee-for-service funding model. Under this model, the waterworks help support the drinking water program and receive the benefit of the technical services VDH provides. The operation fee has provided a consistent, reliable source of funding support for VDH to provide technical assistance for waterworks.

Public Comment

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

Committer	Comment	Agency response
Matthew	<p>Why isn't there a fee charged to TNC waterworks? The regs only have fees for community waterworks and NTNC waterworks.</p>	<p>VDH, through ODW, intends to review how the agency utilizes resources (primarily ODW staff) to provide technical and regulatory assistance to different types (community, NTNC, and TNC) and sizes of waterworks.</p> <p>Working with stakeholders and the regulated community, VDH intends to amend the <i>Waterworks Operation Fee</i> regulation so that the fees more accurately reflect the benefit members of the regulated community receive through technical and regulatory assistance.</p>
<p>Steven Herzog, Hanover County Department of Public Utilities</p>	<p>Regulated community that does not currently pay fees</p> <p>Having served on the ODW's Waterworks Advisory Committee for several years I am aware of the resources that ODW invests in regulating smaller waterworks that do not pay fees to support ODW's activities. I suggest that this be looked at as part of the periodic review.</p> <p>I also recommend that the fees paid by larger waterworks be revisited to determine if they are appropriate or if changes should be considered.</p> <p>A properly funded ODW is necessary to protect the public health.</p>	<p>VDH, through ODW, intends to review how the agency provides technical and regulatory assistance to different types (community, NTNC, and TNC) and sizes of waterworks, including those serving disadvantaged communities. The agency will also consider equity and environmental justice issues as they relate to the fees waterworks pay. TNCs and NTNCs pay lower or no fees (TNCs) compared to most community waterworks.</p>

		<p>However, historically, TNCs and NTNCs have required significant technical assistance and/or enforcement to maintain compliance.</p> <p>Working with stakeholders and the regulated community, VDH intends to amend the <i>Waterworks Operation Fee</i> regulation so that fees more accurately reflect the benefit members of the regulated community receive through technical and regulatory assistance.</p>
<p>Amanda Waters, Virginia Municipal Drinking Water Association (VMDWA)</p>	<p>VMDWA's Members are Virginia local governments and water authorities that provide the essential public utility service of supplying Virginians with safe and affordable drinking water. To fulfill this critical mission while also upholding our fiduciary duty to our customers, we advocate for regulations and policies that are protective of public health and financially prudent.</p> <p>Virginia waterworks currently support approximately 46 percent of the operations of the Office of Drinking Water (ODW) via existing Waterwork[s] Operation Fees, which total approximately \$4.8 million annually. Eleven municipal public drinking water systems are each paying the statutory maximum of \$160,000 per year.</p> <p>VMDWA understands the budget challenges that ODW is facing and the need to have adequate funds to function properly. Our Members deal with these same issues. VMDWA stands ready to assist VDH in advocating for more general funds and federal appropriations as evidenced by our recent successful recommendation to the General Assembly for Lead in Drinking Water Testing for Schools and PFAS Drinking Water Testing appropriations.</p> <p>Our Members' funding comes from charging local customers who themselves are already facing significant financial challenges. Ratepayers' inability to keep current with water service bills during COVID has caused significant revenue shortfalls for waterworks, so much so that the General Assembly intervened by allocating \$100 million in CARES funds for utility customer</p>	<p>VDH acknowledges the financial contribution the eleven largest municipal waterworks make to the drinking water program. The agency appreciates how these waterworks serve and protect drinking water for all of the regulated community.</p> <p>VDH, through ODW, intends to review how the agency provides technical and regulatory assistance to different types (community, NTNC, and TNC) and sizes of waterworks, including those serving disadvantaged communities. TNCs and NTNCs pay the lowest or no fees (TNCs) as compared to community waterworks. Historically, TNCs and NTNCs have required significant technical assistance and/or enforcement to maintain compliance.</p> <p>Working with stakeholders and the regulated community, VDH intends to amend the <i>Waterworks Operation Fee</i> regulation so that fees more accurately reflect the benefit members of the regulated community receive through</p>

	<p>assistance programs in November 2020 and since then the federal government authorized additional funds in December 2020. With our Members facing increasing costs to manage COVID impacts near-term as well as continuing financial pressures related to aging infrastructure and changing regulatory requirements, we wish to work with VDH to support budgetary solutions that mitigate rather than exacerbate local ratepayer impacts.</p> <p>At this time, VMDWA’s recommendation for the periodic review is “no change” in fees for Community Water Systems. VMDWA welcomes the opportunity to work with ODW in a stakeholder process to explore ways to find greater efficiencies, determine new or expanded funding sources, and examine program costs to align those costs more equitably with services provided. This should include a review of the current structure which assess a fee of \$90 per year for Nontransient-noncommunity (NTNC) Waterworks and no fee for Transient noncommunity (TNC) waterworks.</p> <p>ODW and VMDWA share the common goal of ensuring safe and affordable drinking water for all citizens and we look forward to partnering with you to further this goal.</p> <p>Thank you for your consideration of these comments.</p>	<p>technical and regulatory assistance. Stakeholders, including VMDWA, will have an opportunity to help VDH review the current structure which assess a fee of \$90 per year for NTNC waterworks and no fee TNC waterworks and identify alternatives to ensure VDH has adequate funding for the drinking water program and the Waterworks Technical Assistance Program.</p>
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, 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.

The *Waterworks Operation Fee* regulation meets the criteria set out in Executive Order 14. The regulation is necessary for the protection of public health. The waterworks operation fees help provide funding to implement Virginia’s drinking water program (Article 2, Chapter 6, Title 32.1 of the *Code of Virginia* titled “Public Water Supplies” (§ 32.1-167 *et seq.*)), which provides oversight, technical, and financial assistance to more than 2800 waterworks in the Commonwealth serving more than two-thirds of Virginia’s population. VDH ensures waterworks have the technical, managerial, and financial capacity to consistently and reliably provide water that meets drinking water quality standards established in the *National Primary Drinking Water Regulations*, 40 CFR Part 141, and the *Waterworks Regulations*, 12VAC5-590-10 *et seq.* The regulation is clearly written and easily understandable. The *Waterworks Operation Fee* regulation uses common, everyday language that is readily understandable to the regulated entities. No public comments were received concerning the ability to understand the regulation.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The *Waterworks Operation Fee* regulation is an important component to the operation of the drinking water program and allows VDH to provide technical and regulatory assistance to all waterworks – community, NTNC, and TNC, large and small – across the Commonwealth. As such, VDH believes that the financial burden should be shared by waterworks in a more equitable manner. VDH intends to submit a Notice of Intended Regulatory Action and engage stakeholders to amend the *Waterworks Operation Fee* regulation.

Small Business Impact

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.

Continuing need – Some small business owners also operate waterworks and provide drinking water to customers. A well-regulated drinking water oversight program helps protect public health of customers to these businesses by providing technical assistance to small business owners who operate waterworks and helping them prevent waterborne disease outbreaks within their waterworks.

Public complaints/comments - VDH received three comments. All comments raised issues of equity to support the drinking water program. The law and regulations place the greatest financial burden on waterworks that serve the largest number of consumers.

Complexity of the regulation - This regulation has been in effect with no complaints about complexities.

Federal laws - The regulations complement the federal Safe Drinking Water Act by helping provide for necessary funding to maintain the drinking water program in Virginia.

Evaluation of regulation - The regulation is evaluated on an on-going basis to ensure that its effect on small businesses is fair and properly administered. However noted in the public comments, the regulated community does not uniformly feel the fee is equitably among all waterworks that are subject to and benefit from the technical services VDH provides through the drinking water program. VDH will engage stakeholders and the regulated community to review and propose amendments to the *Waterworks Operation Fee* regulation.
