

**DRAFT - VSMP / NCCP Fee Schedule Notes
Regulatory Panel Advisory (RAP) Meeting #1**

Friday, February 18, 2022

Start – 9:30 AM

Attendees:

- RAP Members
 - Philip Abraham (The Vectre Corporation), Virginia Association for Commercial Real Estate
 - Evan Branosky, Home Builders Association of Virginia
 - Hannah Zegler, Dominion Energy
 - Jill Sunderland, Hampton Roads Planning District Commission
 - Normand Goulet, Northern Virginia Regional Commission
 - Lisa Ochsenhirt (AquaLaw), Virginia Municipal Stormwater Association
 - Kristin Carter, University of Virginia
 - Shannon Varner (Troutman Pepper), Virginia Environmental Restoration Association
 - Casey Jensen, EcoCap LLC
 - Brian Wagner, Resource Environmental Solutions LLC
 - John Olenik, Virginia Department of Transportation
 - Public
 - Barry Matthews, Virginia Department of Health
 - DEQ Staff
 - Nelson Daniel
 - Joe Crook
 - Scott Van Der Hyde
 - Valerie Thompson
 - Alan Brockenbrough
 - Rebecca Taylor
 - Cliff Goldsborough
 - Melanie Davenport
 - Drew Hammond
 - Erin Belt
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Welcome and Introductions:

Melanie Davenport (Director, Division of Water Permitting) welcomed the RAP members, introduced DEQ staff, and had the individual RAP members introduce themselves.

Guidelines for RAP Discussions:

Scott Van Der Hyde (Guidance and Regulations Coordinator) reviewed the rules and guidelines for conduct and discussion during the RAP meeting.

Background:

Budget items 377 L2 and L3 in Chapter 552 of the 2021 Acts of Assemble Special Session I require that fees for municipal separate stormwater systems (MS4), Virginia Stormwater Management Program (VSMP), and Nutrient Credit Certification Program (NCCP) be set at no less than 60% and no more than

62% of the direct costs to DEQ for administering these programs. Based on analysis of projected revenues and costs, fees will need to be raised in each of these programs to meet these new funding requirements. DEQ has issued two notices of intended regulatory actions to adjust the fee schedules for each of these programs to meet the new funding requirements, and has established a single Regulatory Advisory Panel (RAP) to assist DEQ in developing these new fee schedules.

Here, DEQ presented the RAP with an analysis of the current fee schedule and highlighted the additional revenue to meet the new funding requirements. DEQ facilitated a discussion regarding how the fee schedules can be changed to meet the funding requirements for each program.

Municipal Separate Storm Sewer System (MS4) Permit Fees:

Under the existing fee schedule, the current projected revenue from fees is \$405,800; while the projected cost for funding 62% of DEQ's direct program costs is \$890,810. This leaves a projected deficit of \$485,010 thereby necessitating an increase in program fees.

RAP members were hesitant to provide a definitive answer concerning their assessment of projected increase in program fees, and a majority felt they needed more time to discuss the proposed increase in program fees with their groups. The RAP member discussion was concerned with the development of new ideas for reducing the immediate impact on their groups and how the costs could be assessed more equitably. Ideas that were considered include the following:

- Further parsing the MS4 fee schedule beyond the current three tiers. Ideas for establishing how fees should be distributed included, such as:
 - Scaling fees based on the size of the area that the MS4 serves. The benefit of this approach would be to capture the varying sizes of different MS4s including ones that serve a very small geographic area (e.g., a community college or a hospital). A downside to this approach was raised, as it would not necessarily reflect the actual direct costs to DEQ since geographic size does not always correlate to the cost incurred when processing a permit.
 - Scaling fees based on the population that the MS4 serves.
 - Differentiating fees based on traditional vs. non-traditional MS4s.
 - Creating a fee schedule based on the actual cost for DEQ staffing for different types of MS4s. This has the benefit of directly reflecting actual costs to DEQ. However, it remains unclear if DEQ would be able to provide the level of detailed staffing and administration costs necessary to administer this type of fee schedule.
- Phasing in the new fee schedule in order to reduce the immediate budget impact on certain groups. DEQ has considered this option, but the new fee schedule needs to be in place by the time that this regulatory action concludes. This regulatory action is expected to take between 18-24 months. There was also a desire from some RAP members to consider the timing and adoption of the new fee schedule to better coincide with local budgeting timelines.
- Tying the new fee schedule to interest rates that gradually adjust over time. This has the benefit of gradually adjusting fees, but creates the problem of making fees less predictable year to year based on inflation.

This discussion concluded with an agreement by RAP members to further study DEQ's proposals, discuss the costs with their groups, and bring ideas for a new fee schedule to the next RAP meeting. Prior to the next meeting, DEQ will recalculate their baseline fee revenue estimates based on CPI to see if this has an effect on the overall program deficit.

VSMP Construction Permit Fees:

Under the existing fee schedule, the current projected revenue from fees is \$2.32 million; while the projected cost for funding 62% of DEQ's direct program costs is \$4,338,020. This leaves a projected deficit of \$2,018,020 thereby necessitating an increase in program fees.

There was a broad consensus from the group reflecting reducing the immediate impact on their groups' budget when considering the necessary increase in the program fees. Overall, several RAP members expressed a need to discuss the proposed program fees with their groups. Additionally, RAP members wish to have an opportunity to think through possible alternatives before weighing in on the proposed fee schedule. Areas of discussion included:

- Concern that fees were being raised for all VSMP localities. There was confusion over fees being raised both for localities that run their own VSMP, and those that opt to have DEQ serve as their VSMP authority. A desire was voiced to have the fee increases be born at a higher rate in those localities that opt out of serving as a VSMP authority. Concurrently, the suggestion was made to separate the opt-in and opt-out fee schedules into different tables in order to reduce confusion by the regulated entities.
- The suggestion of tying fees to CPI was again suggested by several RAP members. The two categories for doing this were simply adjusting the baseline numbers in DEQ's assessment based on CPI to see how much of the 62% funding would be covered by that adjustment. The other suggestion was to tie fees to CPI over time so that they would adjust gradually and diminish the immediate impact on their groups' budgets in the future. The concern raised here again was that tying fees to CPI over time would reduce year to year predictability for those paying fees.
- DEQ raised the possibility of replacing maintenance fees with reissuance fees. This is intended to solve fee collection problems that come with maintenance fees, and would only apply to construction general permits. The RAP expressed interest in DEQ developing a proposal around this and presenting it to the RAP.

As a follow up to this meeting, the RAP members agreed to review and discuss DEQ's proposals and to bring their own ideas to the next meeting. DEQ will pull together the number of permits that fall under each of the construction general permit categories and send this to the RAP.

Nutrient Credit Certification Program Fees:

Under the existing fee schedule, the current projected revenue from fees is \$75,000; while the projected cost for funding 62% of DEQ's direct program costs is \$229,179. This leaves a deficit of \$154,179 thereby necessitating an increase in program fees.

In this section, RAP members felt they need to further discuss DEQ's projected costs and fees with their groups. The primary concern raised was that the base fee may be too high and could result in a disincentive for smaller projects. Initial ideas addressing this problem included scaling fees based on different types of projects or making up the increase in base fees by further increasing supplemental fees. The goal of these suggestions were to make the overall fee schedule more practicable for smaller projects.

As a follow up to this discussion, DEQ will send their straw man fee schedule to the RAP members for consideration with their groups. The RAP members will bring back their ideas for the fee schedule at the next meeting.

Other Discussion:

Beyond the discussion of these three programs, DEQ also suggested there is an idea of consolidating all fee schedules into a single regulatory chapter rather than having many fee schedules imbedded in each of the separate program regulatory chapters. DEQ asked the RAP members to think about this for discussion at a future meeting.

Public Forum:

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

Next Meeting:

Tentatively scheduled for Friday, April 1, 2022.