

## Waterworks Operation Fee Regulations Stakeholder Meeting Summary

9960 Mayland Drive  
Richmond, VA 23233  
Perimeter Center, Board Room #4

Electronic by WebEx

1:30 pm, Tuesday, March 15, 2022

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Stakeholders Participating In-Person: John Aulbach, Aqua Virginia; Jamie Hedges, Fairfax Water; Steven Herzog, VMDWA; Robert Wilson, Appomattox River Water Authority

Stakeholders Participating via WebEx: Eric Lasalle, Smithfield Foods; Robert Melvin, Virginia Restaurant Lodging and Travel Association; Tim Mitchell, VA AWWA

Stakeholders Absent: Mark Estes, Halifax PSA; Deborah Kendall, Town of Gordonsville; Dawn Lipscomb, Virginia DCR; Mitchell Smiley, VA Municipal League; Doug Towne, Richmond DPU; Dwayne Schwartz, City of Waynesboro;

Guests Participating: Jesse Royall, PE, Sydnor Hydro (in-person); William Mann, MD (virtually)

ODW Staff Participating In-Person: Barry Matthews (ODW), Moderator; Robert Edelman, Julie Floyd, Christine Latino, Jarrett Talley, Jason Yetter

ODW Staff Participating via WebEx: Denise Houchins, Dwayne Roadcap, Tony Singh

VDH Staff Absent: Jennifer Starkey

### **A. Meeting Overview**

The Waterworks Operation Fee Regulations Stakeholder Meeting #1 met in person at the Perimeter Center, Board Room #4, in Henrico County, on Tuesday March 15, 2022. Stakeholders and the public also joined the meeting by electronic communication (WebEx) provided through Town Hall. Participants could log on to WebEx by 1:15 p.m.

Mr. Barry Matthews, Director of the Division of Training, Capacity Development, and Outreach of the Virginia Department of Health - Office of Drinking Water, called the meeting to order at 1:30 p.m. and reviewed the agenda. Stakeholders did not request changes or additions to the agenda. Mr. Matthews asked for stakeholder feedback on holding the next meeting in-person only. He went over “ground rules” (see presentation attached to these minutes). He invited public comment noting that input is not limited to the stakeholders, but any member of the public is welcome and encouraged to participate in the process.

### **B. Waterworks Operation Fee Regulations : Presentation of Background Information**

Mr. Matthews presented background information on the following topics:

- Background of Technical Assistance (TA) provided by ODW to Waterworks
- Current Fee Structure
- TA Workload Data
- ODW Funding and Budget related to TA

Highlights from Mr. Matthews' presentation included the following topics.

- The VDH Office of Drinking Water mission statement.
- The number of currently regulated waterworks in Virginia. Of those, 18% (506) are Non Transient Non Community (NTNC) waterworks, and 44% (1,248) are transient noncommunity waterworks (TNC). This group will be focusing mostly on the NTNC and TNC waterworks.
- The Office of Drinking Water funding sources.
- The Office of Drinking Water provides TA to all regulated waterworks and enforces the provisions of the Safe Drinking Water Act.
- The Code of Virginia sets the cap for the TA fee at \$160,000 for any single waterworks.
- In 2021, Community waterworks were charged \$3 per connection, NTNC waterworks were charged \$90 per system, and TNC waterworks were not charged a fee.
- ODW evaluated staff time to perform TA activities for TNC and NTNC waterworks.
- The ODW budget related to TA, excluding Drinking Water State Revolving Fund (DWSRF) construction revenue and expenses.
- In 2013, ODW had 116 FTE staff and no positions were held vacant. In 2021, ODW had 119 FTE positions with 18 being held vacant to generate salary savings. Additionally, in 2021 18.5 staff were moved from the Public Water System Supervision (PWSS) grant to the DWSRF funding.

During the presentation, stakeholders, attendees and the moderator discussed issues related to the ODW budget. ODW has position vacancy savings currently in place. These vacancies are not sustainable. The Waterworks Operation Fee Regulation changes are a separate consideration from the current budget issues.

Mr. Matthews offered the opportunity to attendees to ask additional questions, advising those attending virtually to put their questions into chat.

Meeting attendees discussed current budget concerns. A discussion of current legislation to address the budget, including proposed budget amendments to resolve the \$1.83 million funding gap for ODW ensued. The attendees discussed the limitations of addressing the fee cap and cost per connection. ODW is evaluating business process efficiencies. The Stakeholders Group is tasked with amendments to the Waterworks Operation Fee Regulations.

### **C. Discussion of the Current Waterworks Fee Regulations and Amendments**

Mr. Matthews facilitated discussion on the following ideas:

1. *Amend 12VAC5-600-10 as needed to define terms used in the chapter.*

ODWs intends to update the definitions in the Regulations to match the Waterworks Regulations (12VAC5-590 et. seq.). There were no comments or questions.

2. *Amend 12VAC5-600-20 to expand the purpose of the regulation to include TNCs, wholesale waterworks, fair distribution of the costs of the drinking water program among all beneficiaries, and considerations of equity and environmental justice as they relate to fees waterworks pay.*

Currently, individual wholesale waterworks and TNC waterworks do not pay a (TA) fee even though they receive TA. The Stakeholder Group should consider whether to add TNCs as a category of waterworks that pay a fee. Attendees discussed regulation of TNCs. Many waterworks need TA. EPA believes that more TNCs exist in Virginia than are currently regulated.

There are 1,248 active TNC systems in Virginia, such as service stations, rest areas, rural churches on a private well, and some rural commercial establishments. ODW staff looks at places with public bathrooms and faucets. Owners at small businesses are usually more concerned with the business than running a waterworks. In the past year, ODW has codified policies and procedures when staff finds new TNCs.

Stakeholders discussed the Wholesale waterworks issues. If ODW charged wholesalers a fee, then the wholesalers would pass the new costs onto customers. ODW provides TA directly to the wholesale waterworks. Some expressed concern for a double charge, e.g., the wholesaler would pay a wholesaler fee and then receiving waterworks would pay a fee per connection. That fee structure would not seem equitable from a customer standpoint. Some wholesalers provide end-user water service. Are wholesalers paying an appropriate fee for the TA receive? How the jurisdictions choose to manage their systems should not influence how fees are charged. Wholesale waterworks consider governance and how the systems are set up rather than the VDH workload. Ultimately, the customer pays the fee.

If an end-user is paying a fee that is rolling up to a wholesale system, then a fee is being paid. If you find outliers, i.e. a wholesaler with no fees being paid because of how it is being structured, then that is something to investigate. ODW could set a fee for wholesalers and allow them to take credit for an end user charge to their customer. ODW should look at the definition of a wholesaler. Some sell to customers and others sell to other waterworks. ODW can analyze the largest wholesalers and determine what fees are associated to wholesalers. ODW can also look at the definitions of wholesale waterworks and bring more information back to the group.

3. *Amend 12VAC5-600-50 to establish a minimum annual operation fee for all community waterworks, adjust the fee for each customer account, and adjust the schedule for charges and payment of fees.*

ODW charges \$3 per connection fee. VDH systems do not capture time on a project specific basis. Shared Business Services (SBS), who handles invoicing, will send out small value invoices to waterworks. Can ODW establish a minimum fee for accounts to recoup the cost of invoicing, which might exceed the invoice amount? Has anyone looked at the actual cost of billing? If setting a minimum, what is the minimum cost to send out the invoice? If you have a business plan for cost of services, then you can back up the amount charged to waterworks. Shared Business Services can establish the cost of invoicing.

Waterworks' owners can get a consolidated invoice for multiple waterworks, so they have to issue fewer payments. What would be the minimum invoice amount? Some waterworks included in the consolidated invoice have 15 service connections. For those small waterworks, would each waterworks get a minimum charge? There is another issue regarding billing – VDH may not be invoicing by waterworks system, but by owner. The Code of Virginia requires waterworks be invoiced by waterworks, not owner.

How are the number of connections determined for each invoice? VDH uses last year's data for invoicing. If there are changes, then the owner can make those changes on the invoice. Also, some may choose to use a payment plan. Regarding the timing of billing, invoices can go out in one fiscal year and payments received in another fiscal year, which causes problems with budgeting.

Does the invoicing and receiving of payments in different fiscal years create a cash flow imbalance for the ODW budget? VDH places funds in different fiscal year budgets based on when they are paid. The Code of Virginia states that a bill greater than \$10,000 can be paid quarterly. However, regulations set that amount at \$400 to be eligible for quarterly payments. Some wholesalers bill customers quarterly. Some wholesalers bill customers quarterly. ODW may want to revisit timing of billing so that quarterly payments come in during a single fiscal year.

4. *Amend 12VAC5-600-60 to adjust the NTNC operation fee and the schedule for payment of fees.*

NTNCs pay \$90 fee, which is insufficient to cover the estimated 7.5 FTE positions required to provide TA. Attendees discussed that it appeared that set-asides funds cover TA. Set-asides cannot cover TA to TNCs. They can be used to cover TA to NTNC and community waterworks. ODW has moved as many positions as possible to the set-aside accounts, which is not sustainable. Consider what a reasonable fee for NTNC waterworks would be and bring suggestions to the next meeting.

5. *Add a section that establishes an operation fee and schedule for payment of fees for TNC.*

The Stakeholder Group discussed whether a fee for TNCs was possible.

6. *Add a section that establishes an operation fee and schedule payment of fees for wholesale waterworks.*

ODW will bring more information about wholesalers and types of wholesalers to the next meeting. There was no additional discussion.

7. *Amend 12VAC5-600-90 to distinguish between wholesale waterworks and community waterworks that have service connections (which serve as the basis for their operation fees) and also sell or deliver water to another waterworks.*

There was no additional discussion.

8. *Other amendments to consider equity and environmental justice issues related to waterworks fees.*

Equitable costs of drinking water is important for customers at small and large waterworks. What is a reasonable fee for TA services? TNCs should contribute to the program - a fee demonstrates progress on the issue of equity. Regarding environmental justice (EJ), EPA is working on a tool called "EJScreen." How does EJ influence or inform discussions about fees charged to regulated waterworks? EJ areas are those with environmental impacts; soil, water and air contamination; "redlined" areas; impacts from manufacturing and industry. How do we use EJ to update the fee regulations?

An attendee remarked that his waterworks has received substantial grant funds for serving customers in a defined EJ area tied to median household income (MHI). EPA is still working on EJ definitions, and without them, it is hard to know whether one can meet the goals that the fees support. The Stakeholder Group should consider EJ.

Does the State Corporation Commission (SCC) allow private water companies to adjust rates for Median Household Income (MHI)? The SCC regulates waterworks based on actual cost of services. For water and wastewater construction projects, the owner must report to the SCC how those projects support or hurt EJ within a community. EJ is related to the affordability of fees, MHI has been used by ODW as a measure of disadvantaged status.

#### **D. Public Comment**

The Stakeholder Group discussed clarifying the potential for different types of wholesalers. ODW offered to determine what fees are paid and who the customers are (individual customers or other wholesale waterworks).

There was discussion about how the different fees were established. Current fees pre-date most ODW staff. ODW will try to obtain more information about how the fees were set. The fee revenues have been consistent for many years while expenses have risen.

Have the set-aside percentages had changed? The 2%, 4%, 10%, and 15% set-aside percentages were set during the Safe Drinking Water Act (SDWA) revisions. DWSRF set-asides have not changed. Total allocation to each state changes in response to the needs assessment by EPA. Virginia has historically received 1.6-1.7% of the total federal capitalization grant. Virginia received about \$15.5 million from the federal capitalization grant five years ago. VDH now receives about about \$18 million/yr. The net increase to the set-asides (20% of the increase) was about \$600,000.

When the cap of \$160,000 was set, fewer systems reached that cap. Currently, there are about seven systems paying the maximum fee. Over the years, the TA fund has not grown and not kept pace with the demands of the state primacy program. In Maryland, the program only performs what is paid; EPA is considering whether to take back Maryland's Primacy.

Waterworks owners do not want to pay fees and most are responsible. However, many waterworks need regulation and oversight. Fees help waterworks control their future. That is the reason some waterworks willingly support fees. VDH works with waterworks by being reasonable. Waterworks and ODW are a

team, not adversaries. There are five categories for using the TA fees, ODW is only using the TA fund for one of the five areas.

There was additional discussion about the current state of ODW's budget. ODW has mitigated budget concerns through position vacancies. Other positions were moved to the DWSRF set-aside funds. ODW has undertaken other cost saving measures. The Stakeholder Group is not tasked with adjusting the \$3 per connection fee for community waterworks since it is tied to the General Assembly (GA) budget process. Only the GA can change the \$3 per connection cap. One commenter asked whether a fee would be a significant burden for restaurants and campgrounds. It could be problematic as that industry is still recovering from COVID-19 shutdowns. This person did not think a fee of less than \$50 would be significant; however, more than \$50 would be a significant cost. ODW was asked to reach out to Virginia Petroleum, the Retail Federation, and the Chamber of Commerce. Those organizations were concerned about the fee regulations. Staff would reach out to those groups.

#### **E. Other Business / Conclude Meeting**

The next Waterworks Operation Fee Regulations Meeting will be on the afternoon of Tuesday, April 19, 2022. The third (and final) meeting is tentatively scheduled for the morning of Thursday, May 19, 2022. ODW will let the Stakeholders and public know if WebEx is also an option for those who do not attend in-person.

Mr. Matthews adjourned the meeting at 3:40 p.m.

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#### **ACTION ITEMS:**

1. Contact Mr. Matthews for interest about an in-person meeting on April 19, 2022, with or without a virtual option.
2. Contact Mr. Matthews whether other groups to invite to the next meeting besides the Chamber of Commerce, the Retail Federation and Virginia Petroleum.
3. Determine costs associated with Operation Fee invoicing.
4. Bring back more information on wholesale waterworks and determine associated fees.

# Virginia Department of Health

## Office of Drinking Water

### Waterworks Operation Fee Regulations

*Barry E. Matthews, CPG*

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# Office of Drinking Water

Introductions

Ground Rules

- Everyone attending meeting will have a voice
- Issues decided by consensus
- Vote by members, if consensus cannot be reached
- All comments should be recorded in the meeting
- Provide written suggestions or recommendations

# Office of Drinking Water

- No gatherings to discuss Fee Regulations
- Focus on the fee regulations
- Cost is fair and equitable to all regulated groups
- All groups represented, do we need to invite others?
- Three meetings (prior to June 1, 2022):
  - 1) Introduction, Background, Data, Issues (this meeting)
  - 2) Recommended Modifications Discussion
  - 3) Review Draft Regulatory Modifications

# Background of Technical Assistance

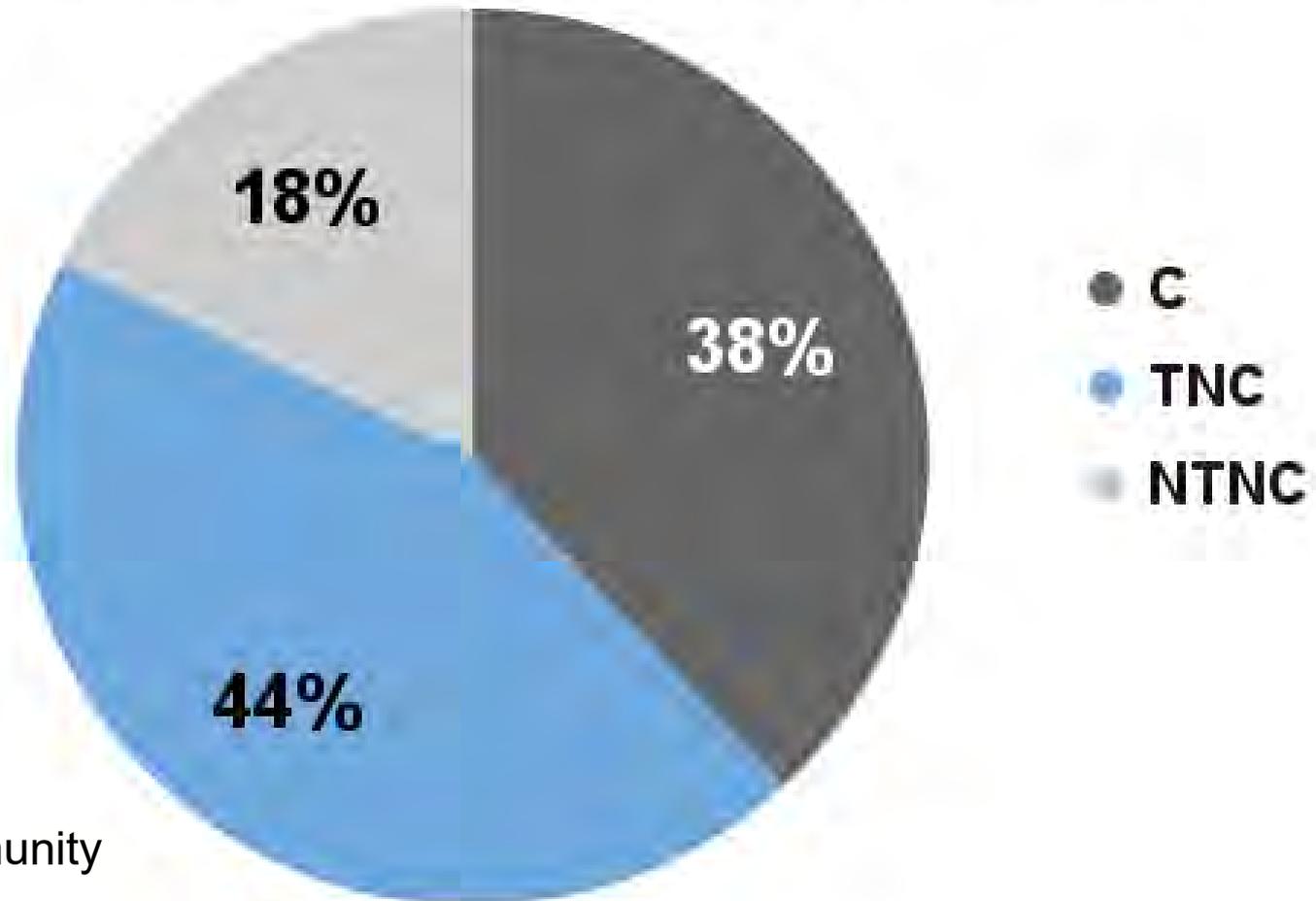
## Mission

To protect public health by ensuring all people in Virginia have access to an adequate supply of safe drinking water that meets federal and state drinking water standards.

*This translates to Waterworks that are –*

- *Reliable (consistently compliant & well run),*
- *Resilient (able to quickly recover after incident), and*
- *Sustainable (planning for the future – TMF).*

# Percent of Regulated Waterworks



1,080 Community

1,248 Transient Non Community

506 Non Transient Non Community

# Drinking Water State Revolving Fund (DWSRF)

- Enhance long term ability to produce safe drinking water
  - Program administration, operator courses, scholarships, planning and design grants, small project engineering, management training, direct technical assistance, etc.

# DWSRF Set Aside Usage

- FIFO First in, first out. Spend money in order of fund year
- EPA must review and approve each activity
- Some activities are fundable under more than 1 category
- Must use from assigned categories
- 15% set aside activity must be consistent with Capacity Development Strategy

# Background of Technical Assistance

## General Field Office Assistance

Sanitary Surveys

Sampling Instructions

General System Troubleshooting

Revised Total Coliform Rule Assessments

Record Keeping

Best Management Practices

Training

# Background of Technical Assistance

## Monitoring

- Violations / Enforcement Actions
- Safe Drinking Water Act (SDWA) Plans
- Sample Analyses Interpretation
- Sampling Reminders
- Seasonal Start Up
- Sample Kit Orders

# Background of Technical Assistance

## Permitting

- Construction

- Standard Operation

- Temporary Operation

## Other

- Waterworks Business Operation Plans

- Asset Management Plans

- Construction Assistance

- Well site approvals

Provided to Waterworks of all classifications

# Current Fee Structure

- Code of Virginia
  - Sets Waterworks Cap at \$160,000.00 Maximum Fee
  - Adjust the fee so revenues cover the costs to operate the Waterworks Technical Assistance Program.
  - The Fund shall be used only for technical assistance required by this section.
  - The Fund shall not revert to the general fund.
  - Shall be used to conduct the Waterworks Technical Assistance Program, which shall include, but need not be limited to: (i) training for operator certification, (ii) engineering evaluation and advice, (iii) sample collection for laboratory analysis, and (iv) educational seminars.

# Current Fee Structure

- Waterworks Operation Fee Regulations
  - Sets the Community per connection fee at \$3.00 maximum
  - Sets the Noncommunity Nontransient Fee at \$90.00 per system

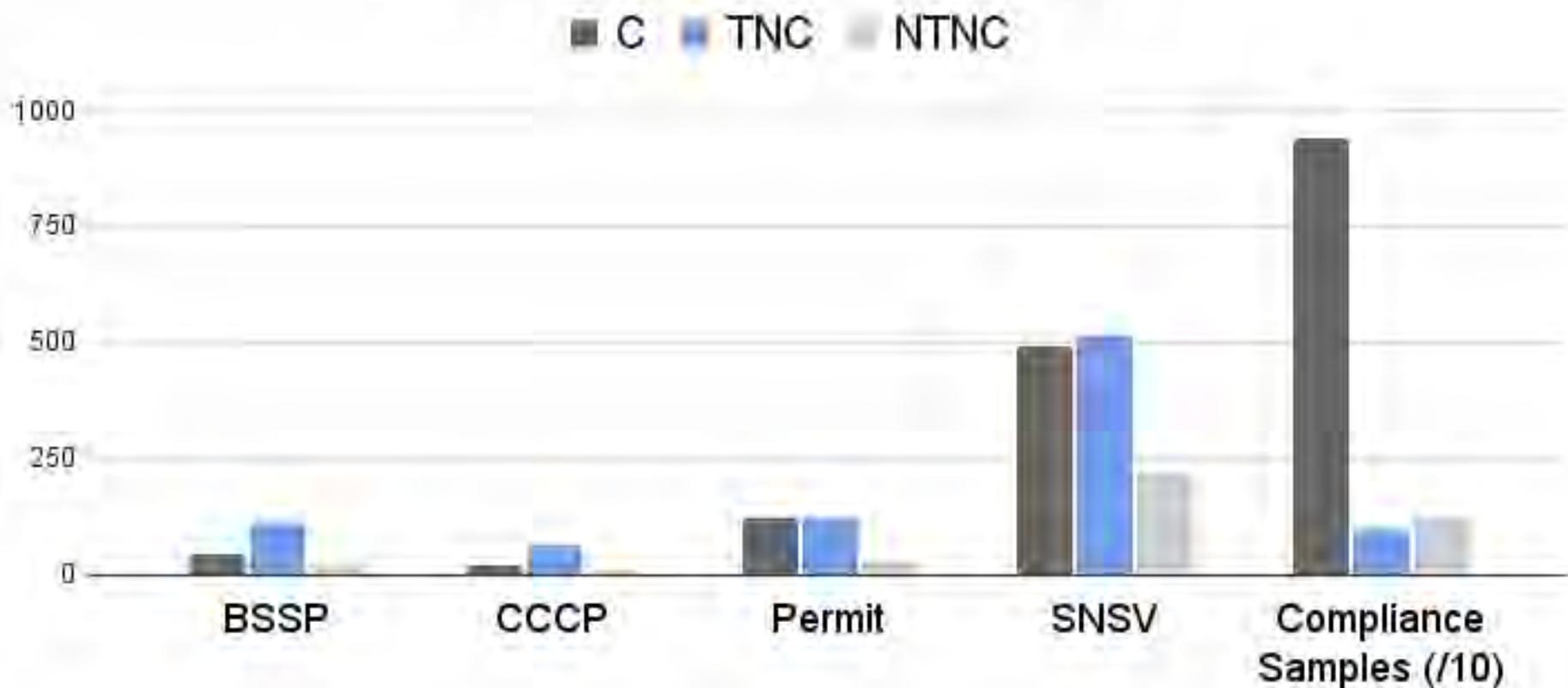
The 2021 billing was:

\$3.00 per connection per owner

\$90.00 per NTNC system

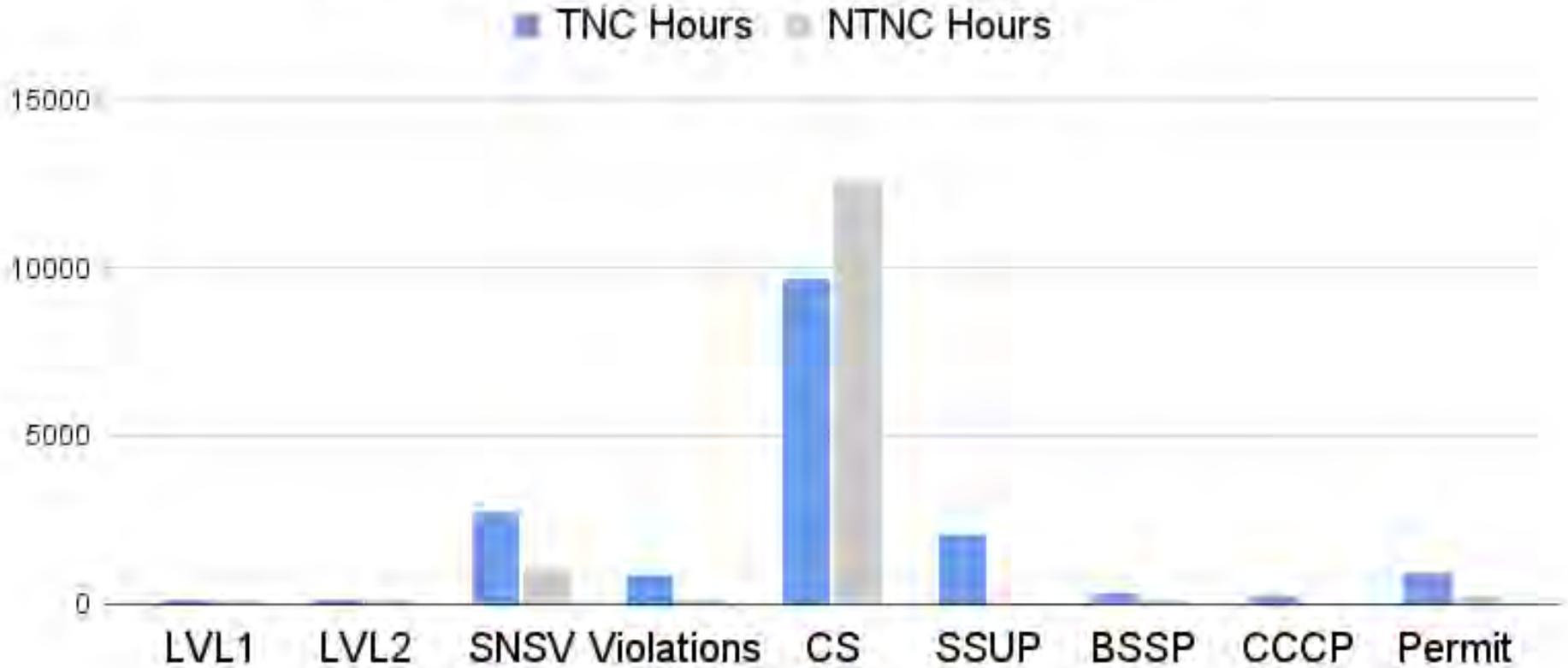
Totaling 4.7 Million

## Average Yearly Assistance Counts



Technical Assistance Activities

# TNC / NTNC Annual Staff Hours



## Technical Assistance Activity

# Technical Assistance Workload Data

- 17,150 TNC Hours = 8.6 FTEs
- 14,250 NTNC Hours = 7.1 FTEs

At least 15.7 Full Time Equivalencies (FTE) for providing Technical Assistance to Non Communities

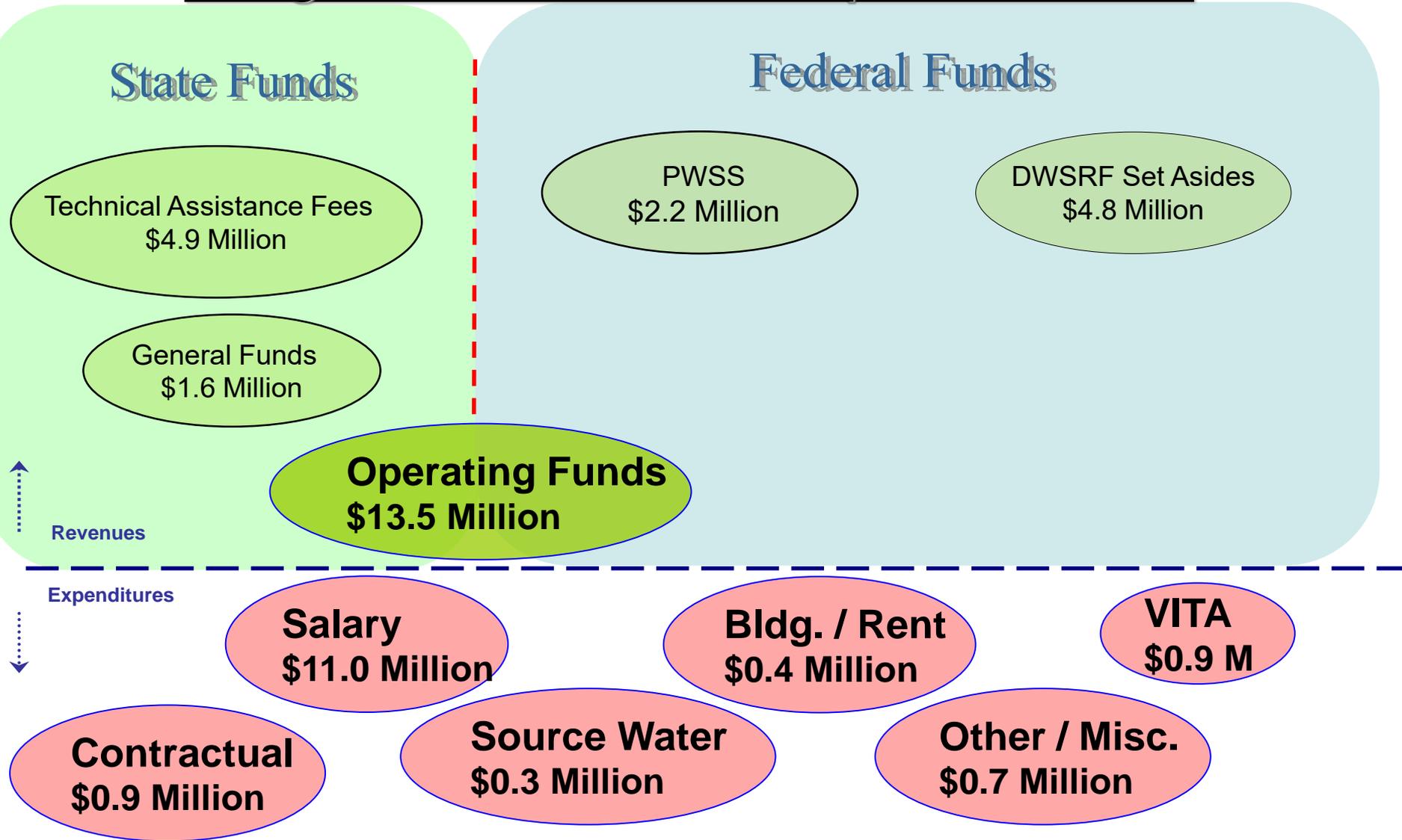
# Budget Background

- ODW funding is a complicated process
- Actual current funding sources include:
  - Public Water Supply Supervision
  - DWSRF Core Capitalization Grant
  - **DWSRF Supplemental**
  - **BIL Emerging Contaminants**
  - **BIL Lead Service Lines**
  - WIIN 2104 Grants (Construction)
  - WIIN 2107 Grants (Schools and Day Cares)
  - **ARPA (Construction)**
  - General Fund (State Matches)
  - Technical Assistance Fee Fund

# Four DWSRF Set Asides

- 2% Small Systems Technical Assistance
- 4% DWSRF Administration (Not part of Operations Fee discussion)
- 10% State Program Management
- 15% Local Assistance & Other State Programs

# Budget - Revenues and Expenditures TA



**Total Expenditures 14.2 Million\***

\*Estimated 2023

# Bipartisan Infrastructure Law Funding

- BIL funds for 5 years
- Cannot hire permanent FTEs with temporary funds
- Cannot use specific pots of funding for general FTEs
- Not a sustainable use of funds for addressing Technical Assistance

# Personnel Counts

- In 2013, ODW FTE Fund support:
  - 93 : PWSS grant, TA Fees, General Fund
  - 3 : DWSRF 4% set-aside
  - 6 : DWSRF 2% set-aside
  - 12 : DWSRF 10% set-aside
  - 2 : DWSRF 15% set-aside
- 116 FTE Total

# Personnel Counts

- In 2021, ODW FTE Fund support:
- 57.5 : PWSS, TA Fees, General Fund
- 5 : DWSRF 4% set-aside 0
- 6 : DWSRF 2% set-aside 0
- 17 : DWSRF 10% set-aside +5
- 15.5 : DWSRF 15% set-aside +13.5
- FTEs shifted from PWSS to DWSRF* - 18.5

- 18 FTE held vacant
- 119 FTE total

# Amendments Discussion

1. Amend 12VAC5-600-10 as needed to define terms used in the chapter.
2. Amend 12VAC5-600-20 to expand the purpose of the regulation to include TNCs, wholesale waterworks, fair distribution of the costs of the drinking water program among all beneficiaries, and considerations of equity and environmental justice as they relate to fees waterworks pay.
3. Amend 12VAC5-600-50 to establish a minimum annual operation fee for all community waterworks, adjust the fee for each customer account, and adjust the schedule for charges and payment of fees.

# Amendments Discussion

4. Amend 12VAC5-600-60 to adjust the NTNC operation fee and the schedule for payment of fees.
5. Add a section that establishes an operation fee and schedule for payment of fees for TNC.
6. Add a section that establishes an operation fee and schedule payment of fees for wholesale waterworks.
7. Amend 12VAC5-600-90 to distinguish between wholesale waterworks and community waterworks that have service connections (which serve as the basis for their operation fees) and also sell or deliver water to another waterworks.

# Amendments Discussion

8. Other amendments to consider equity and environmental justice issues related to waterworks fees.

# Next Steps

Final Thoughts

Set Date for Meeting #2

Adjourn