



Economic Impact Analysis Virginia Department of Planning and Budget

9 VAC 25-20 – Fees for Permits and Certificates

State Water Control Board

December 13, 2002

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The General Assembly mandates in §62.1-44.15.6 of the Code of Virginia that the State Water Control Board promulgate regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, the Department of Game and Inland Fisheries', and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, amend, or modify any permit or certificate which the State Water Control Board has authority to issue.

The regulation proposes the following changes: (1) Chapter 822 of the Acts of Assembly for 2002 increased by a factor of three the maximum fees that can be charged for the processing of applications for permits and applications received between July 1, 2002 and June 30, 2004. The maximum fee schedule will revert to its previous level on July 1, 2004. The proposed regulation is intended to replace the emergency regulation to this effect passed earlier this year and to reflect the new fee schedule in effect between July 1 2002 and June 30, 2004. (2) Apart

from the temporary fee increases enacted through Chapter 822 of the Acts of Assembly, the regulation permanently increases the fee charged for filing an application or registration statement for coverage under certain Virginia Water Protection (VWP) general permits. (3) The definition of the three categories of VWP individual permits are modified to make them more consistent with how similar permits are defined in federal regulations. (4) The regulation permanently removes the option that allows the Department of Environmental Quality (DEQ) in some cases to waive permit requirements for new and modified VWP individual permits. The option to waive was removed for the two years between July 1, 2002 and June 30, 2004 by the 2002 Act of Assembly. DEQ intends to make that change permanent.

Estimated Economic Impact

(1) In Chapter 822 of the Acts of Assembly for 2002, the general Assembly increased the maximum allowable fees for Virginia Pollution Discharge Elimination System (VPDES) permits, Virginia Pollution Abatement (VPA) permits, VWP permits, Surface Water Withdrawal (SWW) permits or certificates, and Ground Water Withdrawal (GWW) permits. The maximum allowable fees have been tripled for the issuance of new permits and for major modifications to existing permits. The new maximum fee schedule is to apply to all relevant permit and certificate applications received between July 1, 2002 and June 30, 2004. Barring any further legislative action, the maximum fee schedule will revert to pre-July 1, 2002 levels on July 1, 2004. The proposed regulation reflects these changes. It triples fees for the abovementioned permits and certificates over the next two years, with the fees reverting to their original levels on July 1, 2004.

According to the January 2002 Permit Fee Program Evaluation Report to the General Assembly, actual water permit program costs were over \$10.6 million and permit fee revenues were a little over \$1 million in fiscal year 2001. Moreover, DEQ's budget for the next two years was cut by approximately \$3 million per year. The higher fees for permits and certificates are intended to make up for the budget cut and cover some of the costs of running the permitting program. The provisions of the 2002 Act of Assembly will expire on June 30, 2004. However, DEQ expects legislative action before June 30, 2004 introducing permanent increases in the fees charged for permits and certificates issued by the State Water Control Board. A task force has been set up to look into the inadequacy of the current fee schedule and recommend a new fee

schedule that better reflects the time and complexity of processing a permit or certificate in each of the various categories of permits and permit actions. Following the task force's report, due in the next few months, DEQ expects the General Assembly to consider a new fee schedule for these permits and certificates in the 2004 legislative session.

The fee increases will affect all localities, businesses, and individuals seeking to get a permit from the State Water Control Board. DEQ estimates that the increase in fees will impose a \$2 million additional cost. According to DEQ, the increase in permit fee revenues will be used to make up for the budget cut and cover the costs of running the various permit programs.

Facilities that discharge pollutants into state waters have the potential to create serious public health and environmental hazards as a result of their activities. The aim of the permitting mechanism is to ensure that these activities are conducted in a manner that is protective of both public health and the environment. The cost of a permit can be viewed as the cost of safely using an environmental resource. In this case, the cost of the permit is the cost of safely using state waters to discharge pollutants. As the January 2002 Permit Fee Program Evaluation Report indicates, current permit fees fall well short of the cost incurred by DEQ in ensuring the safe use of state waters. Thus, facilities discharging pollutants are paying only a fraction of the actual cost of safely using state waters, with taxpayers paying the rest. Increasing the fees will transfer some or all of this cost to facilities that are actually discharging the pollutants into state waters.

Transferring the cost will have a positive economic impact and result in more efficient use of resources. With some of the cost being subsidized by taxpayers, localities, businesses, and individuals discharging pollutants into state waters are paying lower-than-actual costs of using state waters for that purpose. This could potentially result in the overuse of this resource. Permit fees that better reflect costs will reduce the potential for overuse, leading to the more efficient use of state waters. On the other hand, raising permit fees could have a negative economic impact by causing some localities, businesses, or individuals to postpone or abandon voluntary projects requiring permits that could be beneficial to the Commonwealth, such as wastewater reclamation and reuse projects that require a VPA or a VPDES permit.

(2) The 2002 Act of Assembly tripled the maximum fee that can be charged for VWP general permits from \$400 to \$1200. However, under the pre-July 1, 2002 policy, DEQ was charging up to \$200 for a VWP general permit and not the maximum allowable amount of \$400.

Under the proposed regulation, for a VWP general permit authorizing an impact of half an acre or more on non-tidal surface water, DEQ now intends to charge the maximum, i.e., \$1200 for permits issued before July 1, 2004 and \$400 thereafter. The proposed increase in fees is to cover the costs of running the VWP general permits program. The Commonwealth of Virginia and the Army Corps of Engineers share responsibility for issuing wetlands permits. Effective November 1, 2002, the Army Corps of Engineers issued a State Program General Permit (SPGP) that will allow DEQ to be the sole permitting agency for certain non-tidal wetlands impacts that are greater than half an acre. Most of these permits fall under the VWP general permit for which fees are being raised.

The increase in fees will affect all localities, businesses, and individuals seeking to obtain a VWP general permit that authorizes an impact of half an acre or more on non-tidal surface water. In fiscal 2002, DEQ estimates that it issued 70 VWP general permits, a large proportion of which were for impacts of half an acre or more. This number is likely to increase following November 1, 2002, when the SPGP transfers some permit applications out of the Army Corps of Engineers' permit program and into DEQ's VWP general permit program. According to DEQ, the memorandum of agreement between DEQ and the Army Corps of Engineers regarding issues such as permit compliance and enforcement and the increased volume of VWP general permit applications received by DEQ will require an increase in the DEQ's wetlands permitting staff. The higher fees are expected to go toward meeting these additional requirements.

In order to induce the most efficient use of resources, permit fees should reflect the actual cost of using a resource in a safe manner. The higher fees are simply transferring some or all of the cost of using state waters from DEQ and hence the taxpayer to the localities, businesses, or individuals who are using state waters for discharge purposes. To the extent the higher fees better reflect the cost of using state waters, the proposed change will have a positive economic impact by resulting in a more efficient use of resources. On the other hand, the proposed change could have a negative economic impact by discouraging certain wetlands projects that might have been beneficial to the state.

(3) The proposed regulation modifies the definition of the various categories of VWP individual permits to make them more consistent with how similar permits are defined in federal regulations. The definition of a VWP Category I individual permit has been modified to include

projects that cumulatively affect five acres or more of surface waters. Under current policy, a VWP Category I individual permit is issued to projects cumulatively affecting ten acres or more of surface water. A VWP Category II individual permit now refers to projects affecting two to five acres of surface waters, compared to current policy of issuing VWP Category II individual permits to projects affecting between one and ten acres. A VWP Category III individual permit will be issued to projects affecting two acres or less of surface water. Under current policy, a VWP Category III individual permit is issued to projects affecting one acre or less of surface water.

Under the proposed regulation, some projects previously classified as Category II will be classified as Category I and will be required to pay higher fees when obtaining or modifying a permit (Category I permits cost 30% more than Category II permits). However, some projects previously classified as Category II will now be classified as Category III and will have to pay lower fees when obtaining or modifying a permit (Category II permits cost over 60% more than Category III permits). The net economic impact of the proposed change will depend on the number of applicants now required to pay the higher fees compared to the number now required to pay the lower fees. In fiscal years 2001 and 2002, a total 24 Category I permits, 34 Category II permits, and 15 Category III permits were issued. However, breakdown by the amount of surface water impacted by projects within each of the categories is not available. While DEQ not believes that many projects will now have to pay higher fees, the exact number of affected projects is not available. As the proportion of Category II projects that are now likely have to pay the higher fee and the proportion that are now likely have to pay the lower fee is not known, it is not possible to estimate at this time the net economic impact of the proposed change.

(4) The proposed regulation removes a provision that allows DEQ to grant waivers to localities, businesses, and individuals allowing them to be exempt from getting a new VWP individual permit or modifying an existing VWP individual permit. The 2002 Act of Assembly removed this provision for the period between July 1, 2002 and June 30, 2004. DEQ plans to make the change permanent.

The proposed change will not have a significant economic impact. DEQ has not issued any waivers under this provision over the past few years and the proposed change is aimed at making the regulation more consistent with current practice.

Businesses and Entities Affected

The proposed regulation will affect all individuals and businesses seeking to get permits or modify existing permits issued by the State Water Control Board. For most categories of permits, fees have tripled for permits issued between July 1, 2002 and June 30, 2004. For certain types of VWP general permits, permanent fee increases have been proposed. The additional cost of obtaining permits may reduce the incentive of some businesses and individuals to undertake voluntary projects, such as wastewater reclamation and reuse, that require a permit from the State Water Control Board. The proposed regulation will also affect projects seeking to obtain or modify VWP individual permits. While some previously classified as Category II may be required to pay higher fees and get a Category I permit, others will may now be required to pay lower fees and get a Category III permit.

Localities Particularly Affected

The proposed regulation will affect all localities in the Commonwealth. Localities, such as in the Norfolk area, that have a large number of projects requiring permits from the State Water Control Board are likely to be especially affected.

Projected Impact on Employment

The proposed regulation is not expected to have a significant impact on employment.

Effects on the Use and Value of Private Property

The proposed regulation triples the cost of obtaining a permit between July 1, 2002 and June 30, 2004 from the State Water Control Board. Further legislative action is likely that will make permanent increases to fees charged for these permits and certificates. The regulation also proposes additional fee increases for certain types of VWP general permits. The higher fees are likely to increase the cost of operation for individuals and businesses required to obtain a new or modify an existing permit. Moreover, the higher cost of obtaining or modifying a permit is likely to discourage the adoption of voluntary projects, such as projects reclaiming and reusing wastewater, which require such permits. The regulation could also affect individuals and businesses requiring VWP individual permits. By redefining the categories of VWP individual permits, the regulation could increase the cost of operation for some and reduce the cost of operation for others.