



Periodic Review / Retain Regulation Agency Background Document

Agency name	Virginia Department of Health (VDH)
Virginia Administrative Code (VAC) citation	12VAC5-600 <i>et. seq.</i>
Regulation title	<i>Waterworks Operation Fee Regulations</i>
Document preparation date	December 6, 2010

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

The Virginia *Waterworks Operation Fee* regulations 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. Section 32.1-171.1 of the *Code of Virginia* requires all waterworks owners to pay an annual operation fee to VDH and establishes a Waterworks Technical Assistance Fund. The board, through 12VAC5-600 *et. seq.*, established the annual waterworks operation fee and fee schedule that each waterworks owner must pay.

Alternatives

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

The board previously considered amending the current regulations to increase the waterworks operation fee cap because federal funds to VDH have decreased and operating costs have increased. A Notice of Intended Regulatory Action (NOIRA) was published in the *Virginia Register* on February 20, 2006, to increase the maximum waterworks operation fee allowed; however, the NOIRA was withdrawn on April

10, 2007, after the public comment period ended because the applicable stakeholders did not support the increase. The board thus considers continuing with the current regulations to be the least burdensome alternative available for achieving the purpose of the regulations.

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. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
	No public comments received	

The Waterworks Advisory Committee (WAC), composed of a broad spectrum of representatives from the drinking water industry, meets periodically with VDH to assist the board in assuring the regulations are the least burdensome and least intrusive regulations possible while still providing maximum public health protection.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The Commonwealth of Virginia established its public drinking water program shortly before 1920. It was not until 1974 that Congress enacted the Safe Drinking Water Act (SDWA) and made the protection of public health from the health hazards of consuming contaminated drinking water a national priority. The goal of the SDWA is to assure the provision of safe drinking water to Americans served by public water systems (waterworks) by combining the efforts of state and federal officials. This is accomplished by making sure that drinking water meets certain water quality standards through the appropriate application of construction standards and treatment techniques, and that it is regularly tested for the various identified contaminants. Under the SDWA, the United States Environmental Protection Agency (EPA) has the responsibility of establishing regulations that set standards for safe drinking water for waterworks and for assuring that all waterworks provide water that meets these standards. It is the intent of Congress that primary enforcement under the SDWA would be by the states and territorial governments. To assume primary enforcement responsibility (primacy), the state must adopt its own drinking water regulations that are at least as stringent as those established by the EPA and adopt appropriate administrative and enforcement procedures. The EPA granted, and Virginia has maintained, primacy since 1977. No reported waterborne disease outbreaks attributed to public water supplies have occurred in Virginia in over 30 years.

The regulations do not exceed the requirements of, or authority conferred by, the Code. As stated above, the state must promulgate regulations at least as stringent as the federal regulations in order to maintain primacy. In instances where federal regulation allows for state flexibility, VDH, through the WAC, has generally recommended that the board approve regulations requiring the least restrictive option available.

Indeed, the board has strived to tailor all revised regulations to achieve the least possible interference in private enterprise and in the lives of the citizens while at the same time ensuring the protection of public health and welfare through the provision of safe drinking water to the public.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The board will retain the *Waterworks Operation Fee Regulations* without change for Virginia to maintain oversight and enforcement of this critical health program.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

The *Waterworks Operation Fee Regulations* have no anticipated or associated impacts on family rights to educate and supervise children. These regulations do not discourage economic self-sufficiency and family responsibilities and commitments, or decrease disposable family income. On the contrary, the provision of safe drinking water to the home increases economic self-sufficiency by making this resource readily available and decreases the number of illnesses that lead to lost productivity and personal income.