

Memorandum

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

Office of Water Permit Programs

9th Floor, 629 East Main Street, Richmond, VA

SUBJECT: Summary of Technical Advisory Committee Meeting September 18, 2002
Development of Regulatory Amendments to 9 VAC 25-20-10 et seq., Fees for Permits and Certificates

TO: Martin Ferguson, Office of Water Permit Programs; Cindy Berndt, Office of Policy

FROM: Jon van Soestbergen, P.E.

DATE: September 20, 2002

COPIES: Technical Advisory Committee, File

Introduction

In its 2002 session, the General Assembly of Virginia amended and enacted revisions to §62.1-44.15:6 of the Code of Virginia increasing the maximum allowable fee amounts for processing permits issued by the State Water Control Board. The provisions of the Act of Assembly expire July 1, 2004. Because of time constraints in the Act of Assembly, an emergency regulation implementing its provisions was promulgated effective July 1, 2002. Under Virginia's Administrative Process Act, emergency regulations expire 12 months from their effective date. Therefore, a regulatory action is proposed to replace the emergency regulation with a permanent regulation.

A Notice of Intended Regulatory Action was published on July 1, 2002 and a public meeting was held on July 31, 2002. As a result of the public meeting, a Technical Advisory Committee (TAC) composed of relevant stakeholders was formed to assist the staff in the development of the draft regulation. TAC membership was approved by DEQ management on August 23, 2002. A copy of the TAC membership list is attached. The TAC met one time on September 18, 2002. Meeting attendance by the TAC members is indicated on the membership list. This memorandum summarizes the discussions of the TAC at its September 18, 2002 meeting.

Summary

The meeting was opened with a summary of the public comment period and public meeting, a summary of the enabling legislation, including the sunset clause in the Act of Assembly, and an update on the activities of the current committee chaired by Kathy Frahm which is reviewing DEQ's entire fee structure per the request of the General Assembly in preparation for an interim report to be submitted to the General Assembly in the fall of 2002, and a final report to be submitted in the fall of 2003.

Comments received during the public comment period were reviewed, and suggested changes to the regulation made based on the enabling legislation and comments received from TAC members prior to the meeting were discussed. The Office of Water Programs' (OWP) plan to propose amendments which are reflective of the emergency amendments currently in effect, with only editorial changes and changes necessary to reflect the enabling legislation, without consideration of other comments and suggestions relative to workload distribution and prorating of fees, was also presented. This plan is based on the OWP opinion that such other issues are best considered by the committee on fees being chaired by Kathy Frahm, and should therefore be forwarded to that committee.

Proposed amendments to the existing emergency regulation include 1) changes to the definitions for Virginia Water Protection (VWP) Permit Project categories to reflect the current definitions for such projects, 2) recognition that there is no permit fee for VWP Permits for projects impacting less than one tenth of an acre, and 3) addition of fee schedules that will become effective after the provisions of the Act of Assembly expire on July 1, 2004. A copy of the proposed regulation, indicating changes from the emergency amendments currently in effect, is attached to this memorandum.

There was discussion relative to whether the actual fees to be collected by the DEQ will equal the projections made by the Agency, particularly in light of early application submittals by some permittees prior to July 1, 2002 in an effort to avoid being subject to the permit fee increases. Conversely, there was some discussion relative to the impact the fee increases are expected to have on some permit holders, particularly municipalities such as Augusta County, which holds multiple permits.

Recommendations

The TAC recommends that the Office of Water Programs proceed with the plan to propose only those amendments summarized above, which will clarify the regulation and reflect the changes to the enabling legislation, and present the broader issues put forth by TAC members to the fee committee being chaired by Kathy Frahm. The TAC additionally recommends that projected versus actual permit fee revenue received, as well as revised projections based on early application submittals, along with recent known impacts to permit holders subject to the increased fees, be presented to the State Water Control Board at the time staff requests authorization to proceed to public notice and public hearing.

Attachments

Technical Advisory Committee Membership List
9 VAC 25-20-10, et seq., Fees for Permits and Certificates – Proposed Amendments