



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Virginia Department of Environmental Quality
VAC Chapter Number:	9 VAC 25-20
Regulation Title:	Fees for Permits and Certificates
Action Title:	Increase maximum allowable fees in accordance with §62.1-44.15.6 of the Code of Virginia
Date:	October 22, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary*

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed regulatory action is intended to replace the emergency regulation amendments which will expire July 1, 2004. The amendments increase by a factor of three the maximum fees for processing of applications for permits and certificates.

Proposed amendments to the 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.

Basis*

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The basis for the proposed regulatory amendment is the Act of Assembly amending § 62.1-44.15:6 of the Code of Virginia. The Act of Assembly requires that the State Water Control Board promulgate regulations to carry out the provisions of the act. “That the Virginia Waste Management Board and the State Water Control Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.” (Cite Acts of Assembly, S 592, Item 2). Full text of the Act of Assembly is available at <http://leg1.state.va.us/cgi-bin/legp504.exe?021+ful+SB592ER> . The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose*

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Fees for permits and certificates are authorized to recover, up to the maximums specified in statute, the direct and indirect costs associated with application review and permit or certificate issuance. The required January 2002 Permit Fee Program Evaluation Report to the General Assembly indicates that in Fiscal Year 2001 actual water permit program costs exceeded \$10.6 million, whereas permit fee revenues were only slightly above \$1 million. Additionally, the agency’s budget was reduced by approximately \$3 million per year with the expectation that these funds would be recouped through the increase in fees for permits and certificates. The amendment to this regulation is intended to recoup at least a portion of the funds removed from the agency’s budget.

Substance*

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The regulation is being revised to reflect the changes in maximum amounts as specified in §62.1-44.15:6 of the Code of Virginia. Proposed amendments to the existing emergency regulation include 1) changes to the definitions in Section 9 VAC 25-20-10 for Virginia Water Protection (VWP) Permit Project categories to reflect the current definitions for such projects, 2) changes to Section 9 VAC 25-20-130 in 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 in Sections 9 VAC 25-20-110, 120, and 130 that will become effective after the provisions of the Act of Assembly expire on July 1, 2004.

Issues*

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary disadvantage to the public is that the cost to obtain a permit from the State Water Control Board will triple. The increased revenue is the primary advantage to the Department of Environmental Quality and the Commonwealth, recouping at least a portion of the funds removed from the agency's budget based on the legislation.

Locality Particularly Affected*

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected. The proposed regulation applies statewide to applicants for permits and certificates.

Public Participation*

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest lands.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; (e) the projected cost of the regulation for affected individuals, businesses, or other entities; and (f) an estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

This regulatory amendment will increase the fees that the State Water Control Board charges for processing permit applications. Because a fee collection infrastructure already exists, there is no additional cost to the state projected to implement and enforce the proposed regulation.

The regulatory amendment will triple the amount of fees for permits and certificates. The increased fees will affect all individuals, business, or other entities that are required to obtain permits from the State Water Control Board. It is projected that the additional cost to localities and businesses associated with the increased fees will be approximately \$2 million per year on average statewide.

Currently, there are approximately 1,200 active Virginia Pollution Discharge Elimination System (VPDES) individual permits, 150 active Virginia Pollution Abatement (VPA) permits, and approximately 3,000 active VPDES General Permit registrations and Virginia Water Protection Program (VWPP) permits.

The gross impact upon small businesses is unknown. The impact of the regulatory amendment will be to increase by 300 percent the amount that small businesses must pay to obtain discharge permits through the State Water Control Board.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The following changes to the regulation are proposed:

9 VAC 25-20-10. Definitions – The definitions for Virginia Water Protection (VWP) Permit Project Category were changed to reflect the current definitions for such projects

9 VAC 25-20-110. Fee schedules for individual new permit issuance and individual existing permit issuance – The fee schedules were amended to reflect a 300 percent increase in the fees stipulated in the schedule. Additionally, to comply with the enabling legislation, Section 9 VAC 25-20-110.B was added to reflect the reduced fee schedules that will go into effect on July 1, 2004.

9 VAC 25-20-120. Fee Schedules for major modification of individual permits or certificates requested by the permit or certificate holder - As in 9 VAC 25-120-110, the fee schedules were amended to reflect a 300 percent increase in the fees stipulated in the schedule. Section 25-20-120.B was added to reflect reduced fee schedules that will go into effect July 1, 2004 in accordance with the enabling legislation.

9 VAC 25-20-130. Fees for filing registration statements for general permits issued by the board – The fees for filing registration statements for general permits issued by the Board were raised by 300 percent in accordance with the enabling legislation. Additionally, Section 9 VAC 25-20-130.B was added to reflect the reduction in fees effective July 1, 2004 required by the enabling legislation.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The budget for the Department of Environmental Quality was reduced by approximately \$3 million per year based on fiscal projections that increasing fees for permits and certificates would recoup these funds. Therefore, no alternatives to increasing the fees for permits and certificates were considered.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The Notice of Intended Regulatory Action was published in the Virginia Register on July 1, 2002, and a public meeting was held on July 31, 2002. During the public meeting, a decision was made to form a Technical Advisory Committee, which met one time on September 18, 2002. The Chesapeake Bay Foundation (CBF) submitted written comment on August 2, 2002. CBF strongly recommended that the revised permit fee regulation maintain, at a minimum, the increased fee schedule as incorporated in the emergency regulations. This was discussed at the

Technical Advisory Committee meeting. The agency intends to maintain the increased fee schedule for the period allowed under the enabling legislation.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

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Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The agency is currently reviewing the permit fee structure, and is scheduled to provide an interim report of findings to the General Assembly in the fall of 2002. A final report with recommendations for further revisions, if any, to the agency's fee schedule is scheduled to be provided to the General Assembly in the fall of 2003.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is anticipated that in some cases, the increased fees for permits and certificates will be passed on by the affected entities to their customers through increased connection and user fees. This may, in such cases, decrease disposable income for affected families.