

**REPORT OF THE VIRGINIA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

**Water Withdrawal Permit Annual
Maintenance Fee Working Group:
Summary of Discussions and
Recommendations for a Schedule of
Permit Annual Maintenance Fees for
Water Withdrawal Permits
(Chapter 275, 2021 SSI)**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**A REPORT TO
THE HONORABLE RALPH NORTHAM, GOVERNOR,
AND
THE GENERAL ASSEMBLY OF VIRGINIA**

**WATER WITHDRAWAL PERMIT ANNUAL MAINTENANCE FEE WORKING
GROUP: SUMMARY OF DISCUSSIONS AND RECOMMENDATIONS FOR A
SCHEDULE OF PERMIT ANNUAL MAINTENANCE FEES FOR WATER
WITHDRAWAL PERMITS**

DECEMBER 2021

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Water Withdrawal Permit Annual Maintenance Fee Working Group

Executive Summary

Chapter 275 of the 2021 Special Session I Acts of Assembly required the Director of the Department of Environmental Quality (DEQ) to:

[C]onvene a working group for the purpose of developing a schedule of annual maintenance fees for water withdrawal permits including (i) Virginia Water Protection Individual-minimum instream flow permits, (ii) Virginia Water Protection Individual-reservoir permits, (iii) Ground Water Withdrawal permits, and (iv) Surface Water Withdrawal permits.¹

The Director was directed to convene the working group no later than August 1, 2021. DEQ was tasked to submit to the Governor and the General Assembly:

[A] summary of the working group's discussions and recommendations for a schedule of annual maintenance fees that shall, at a minimum, be sufficient to reflect no less than 40 percent of the direct costs required for the development, administration, compliance, and enforcement of such permits.²

The DEQ Director appointed members of the Water Withdrawal Permit Annual Maintenance Fee Working Group pursuant to Chapter 275 of the 2021 Special Session I Acts of Assembly. The working group met three times, meeting on July 22, 2021, August 19, 2021, and September 9, 2021. The working group developed a permit annual maintenance fee recommendation, which is included in this report. The recommendation is a tiered approach based on the type of permit and the amount of withdrawal authorized by the permit.

¹ 2021 Special Session I Va. Acts Ch. 275.

² *Id.*

Introduction

Chapter 275 of the 2021 Special Session I Acts of Assembly required the Director of the Department of Environmental Quality (DEQ) to:

[C]onvene a working group for the purpose of developing a schedule of annual maintenance fees for water withdrawal permits including (i) Virginia Water Protection Individual-minimum instream flow permits, (ii) Virginia Water Protection Individual-reservoir permits, (iii) Ground Water Withdrawal permits, and (iv) Surface Water Withdrawal permits.³

This legislation further specified that the working group was to include representatives of:

(a) ground water withdrawal permittees, including at least one representative each from the municipal, commercial, and industrial sectors; (b) Virginia Water Protection surface water withdrawal permittees, including at least one representative each from the municipal, commercial, and power generation sectors; (c) environmental organizations; (d) agricultural organizations; and (e) any others whom the Director determines would assist the group in its deliberations.⁴

The Director was directed to convene the working group no later than August 1, 2021. DEQ was tasked to submit to the Governor and the General Assembly:

[A] summary of the working group's discussions and recommendations for a schedule of annual maintenance fees that shall, at a minimum, be sufficient to reflect no less than 40 percent of the direct costs required for the development, administration, compliance, and enforcement of such permits.⁵

DEQ's Office of Water Supply currently manages about 100 Virginia Water Protection (VWP) permits. There are an additional 848 facilities that DEQ has identified with surface water withdrawals, however, many of these are not required to obtain a VWP permit pursuant to the Code of Virginia or the VWP Regulation. Specifically, § 62.1-44.15:22 B provides in part:

Notwithstanding any other provision, no Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.⁶

³ 2021 Special Session I Va. Acts Ch. 275.

⁴ *Id.*

⁵ *Id.*

⁶ Va. Code § 62.1-44.15:22 B.

Certain other surface water withdrawals are excluded from the requirement to obtain a VWP permit pursuant to the VWP Regulation, such as withdrawals that fall below certain thresholds or withdrawals that are for specific purposes.⁷

DEQ's Office of Water Supply manages about 367 Ground Water Withdrawal permits. Ground Water Withdrawal permits are required for withdrawals in a declared Ground Water Management Area that exceed 300,000 gallons in any one month. Currently there are two declared Ground Water Management Areas in Virginia, the Eastern Shore Ground Water Management Area and the Eastern Virginia Ground Water Management Area.⁸ Collectively these two Ground Water Management Areas cover all of Virginia east of Interstate 95.⁹ There are an additional 756 facilities that DEQ has identified with ground water withdrawals; the majority of these are located outside of a declared Ground Water management Area. Additionally, DEQ does not track and does not regulate private residential home wells (which would fall below the Ground Water Withdrawal permit threshold of a withdrawal that exceeds 300,000 gallons in any one month).

Surface Water Withdrawal permits are permits that would be issued if a Surface Water Management Area were declared. To date there are no Surface Water Management Areas in Virginia.

VWP permit applicants and Ground Water Withdrawal permit applicants pay permit application fees, which are set in § 62.1-44.15:6 of the Code of Virginia. VWP Individual-minimum instream flow permit applicants pay an application fee of \$25,000 and VWP Individual-reservoir permit applicants pay an application fee of \$35,000.¹⁰ Ground Water Withdrawal permit applicants pay an application fee of \$9,000.¹¹ While other water permit programs administered by DEQ require the payment of annual maintenance fees, currently there are no permit annual maintenance fees for these water withdrawal permits.¹²

The total projected annual direct costs for DEQ's Office of Water Supply related to the Ground Water Withdrawal permit program is approximately \$4,858,690 and the total projected direct costs for DEQ's Office of Water Supply related to surface water withdrawal permits is approximately \$1,170,082. This results in a total projected annual direct cost for DEQ's Office of Water Supply related to water withdrawal permitting of approximately \$6,028,772. These direct costs include: direct salary and benefits, non-personnel costs (travel, skilled services, field supplies, and field equipment), field equipment maintenance, permitting data, reporting and compliance mitigation, and maintenance, and permit review modeling. Currently DEQ collects an annual average of about \$128,920 in Ground Water Withdrawal permit application fee revenues and an annual average of about \$133,616 in surface water permit application fee revenues. Subtracting the current permit application fee revenues from total projected direct costs and multiplying by forty percent results in an amount of \$2,148,973 that would need to be

⁷ 9VAC25-210-310.

⁸ 9VAC25-600-20.

⁹ *Id.*

¹⁰ Va. Code § 62.1-44.15:6.

¹¹ *Id.*

¹² *See id.*

generated by a permit annual maintenance fee schedule to comply with the directive in 2021 Special Session I Va. Acts Ch. 275.

Membership of the Water Withdrawal Permit Annual Maintenance Fee Working Group

The DEQ Director appointed members of the Water Withdrawal Permit Annual Maintenance Fee Working Group pursuant to Chapter 275 of the 2021 Special Session I Acts of Assembly.

Members appointed to the working group included:

- (a) Ground Water Withdrawal Permit Permittees
 - Municipal – Steve Herzog, Hanover County
 - Commercial – Robert Underwood, Colonial Williamsburg Foundation¹³
 - Industrial – Matt Wells, WestRock

- (b) Virginia Water Protection Permit Permittees
 - Municipal – Pam Kenel, Loudoun Water
 - Commercial – Robert Bohannon, Golf Course Superintendents Association
 - Power Generation – Edward Brennan, American Electric Power

- (c) Environmental Organizations
 - Anna Killius, James River Association

- (d) Agricultural Organizations
 - Kyle Shreve, Virginia Agribusiness Council

- (e) Director’s Determination
 - Jerry Gouldman, King George County
 - Melissa Rollins, Surry County

Meetings of the Water Withdrawal Permit Annual Maintenance Fee Working Group

The working group met three times, meeting on July 22, 2021, August 19, 2021, and September 9, 2021. The meetings were open to the public and held in in the 14th floor conference room at DEQ Central Office, 1111 East Main Street, Richmond, Virginia.

The July 22, 2021 meeting served to convene the workgroup, identify the focus of Chapter 275 of the 2021 Special Session I Acts of Assembly, and to establish the goals and ground rules for the working group’s meetings. An overview of the DEQ Office of Water Supply’s water withdrawal permitting and compliance activities was provided. This overview included the program’s organization and activities related to water withdrawal permits. In addition to this background on the water supply programs, the associated current costs and total projected costs for these activities were presented. The working group asked DEQ to provide several annual maintenance fee draft proposals to review at the following meeting. The working group requested that these draft proposals include a range of options by permit type, beneficial use type, and permitted withdrawal amounts.

¹³ Following the first meeting of the working group the representative from the Colonial Williamsburg Foundation withdrew from further participation in the working group citing the heavy workload at Colonial Williamsburg.

The August 19, 2021 working group meeting addressed questions that arose from the previous meeting and presented the working group with a set of six options for potential fee schedules. The first half of the meeting guided the working group through questions from the prior meeting's presentation on the cost structure of DEQ's Office of Water Supply Programs, specifically the projected direct costs for groundwater and surface water withdrawal permitting programs. In addition to inquiries on projected costs, the working group discussed issues related water withdrawal permit exclusions. The working group felt compelled to acknowledge that permitted users would disproportionately bear the program costs under the directives of the legislation; further elaboration on this point can be found in the Recommendation Considerations section below.

The second portion of the August 19, 2021 working group meeting focused on narrowing down the presented fee schedule scenarios. The options DEQ provided as examples included a standard rate per gallon for permitted annual water withdrawals approach, a standard rate per permit (regardless of withdrawal amount) approach, and various tiered rate approaches based on total permits, permitted withdrawal amounts, application categories, and program type. At this meeting the working group did not reach a consensus on any of the proposed options; further elaboration on the proposed options was requested for the third meeting.

The September 9, 2021 working group meeting provided the working group with additional information on four of the previous options DEQ had prepared for the working group's consideration. Following the presentation of the additional information for the options, the working group narrowed them down and identified concerns for each of the remaining options. The concerns echoed those of the previous meetings; specifically, the atypical nature of the water withdrawal permitting program, equity between the imposed fees for the groundwater and surface water permit programs—stemming from the 80/20 split in water withdrawal program direct costs, respectively, and the question about whether to exclude agricultural users from the annual maintenance fee program consistent with current statutory provisions that exclude agricultural users from the requirement to pay permit application fees.

Working Group Recommendations

The working group proposed the following recommendation for a schedule of annual maintenance fees that is sufficient to reflect no less than 40 percent of the direct costs required for the development, administration, compliance, and enforcement of DEQ's water withdrawal permits. The working group recommends a tiered fee schedule based on the total permitted withdrawal authorized by the permit and separate fee schedules for surface water withdrawal and Ground Water Withdrawal permits. The working group also recommends excluding agricultural users permitted under those programs from paying permit annual maintenance fees to maintain consistency with current statutory provisions that exclude agricultural users from the requirement to pay permit application fees.

The working group's rationale for this recommendation, as discussed in the technical advisory committee meetings, was based on the following considerations.

a) Use of a Tiered Fee Structure

The working group decided to recommend a fee schedule that sets tiers based on the authorized withdrawal amount in the permit. Under this approach permittees with larger authorized total withdrawal amounts will pay more than permittees with smaller authorized total withdrawal amounts.

b) Fee Schedule Based on Total Permitted Withdrawals

The working group decided to recommend a fee schedule based on the total withdrawal amount authorized in the permit rather than based on reported withdrawal amounts. This accounts for water withdrawal permits that are not actively reporting withdrawals but still require permit program expenditures (e.g., compliance inspections, model maintenance). Furthermore, utilizing the total authorized withdrawal amount in the permit as the basis for the permit annual maintenance fee results in more predictable and consistent revenues because fee revenues will be less prone to fluctuation caused by annual changes in water withdrawal volumes across users. For facilities with water withdrawal permits that do not have a maximum annual permitted withdrawal defined (e.g., run-of-the-river hydroelectric facilities), then the total maximum diversion of the facility will be considered to be the total permitted withdrawal amount for the purposes of the working group’s recommendations.

c) Separate Fee Schedules by Permit Type

The working group decided to recommend different fee schedules for surface water withdrawals and Ground Water Withdrawal permits. This accounts for the uneven distribution of direct costs across the two types of water withdrawal permits.

d) Exclusion of Agriculture

The working group decided to recommend excluding agricultural users from the permit annual maintenance fee program to align the recommendation with the precedent set by the General Assembly with respect to permit application fees.

Figure 1: Recommended Schedule of Annual Maintenance Fees for 40% Coverage of DEQ Program Cost

Type of Permit/Certificate Category	Amount
1. Virginia Water Protection (VWP) Permit	
VWP permit that authorizes a surface water withdrawal of less than 10 million gallons per year	\$750
VWP permit that authorizes a surface water withdrawal of equal to or greater than 10 million gallons per year but less than 25 million gallons per year	\$1,250
VWP permit that authorizes a surface water withdrawal of equal to or greater than 25 million gallons per year but less than 50 million gallons per year	\$2,500
VWP permit that authorizes a surface water withdrawal of equal to or greater than 50 million gallons per year but less than 100 million gallons per year	\$5,000
VWP permit that authorizes a surface water withdrawal of equal to or greater than 100 million gallons per year but less than 1 billion gallons per year	\$7,500

VWP permit that authorizes a surface water withdrawal of equal to or greater than 1 billion gallons per year but less than 10 billion gallons per year	\$12,500
VWP permit that authorizes a surface water withdrawal of equal to or greater than 10 billion gallons per year	\$25,000
2. Surface Water Withdrawal Permit or Certificate	
Surface water withdrawal permit or certificate that authorizes a surface water withdrawal of less than 10 million gallons per year	\$750
Surface water withdrawal permit or certificate that authorizes a surface water withdrawal of equal to or greater than 10 million gallons per year but less than 25 million gallons per year	\$1,250
Surface water withdrawal permit or certificate that authorizes a surface water withdrawal of equal to or greater than 25 million gallons per year but less than 50 million gallons per year	\$2,500
Surface water withdrawal permit or certificate that authorizes a surface water withdrawal of equal to or greater than 50 million gallons per year but less than 100 million gallons per year	\$5,000
Surface water withdrawal permit or certificate that authorizes a surface water withdrawal of equal to or greater than 100 million gallons per year but less than 1 billion gallons per year	\$7,500
Surface water withdrawal permit or certificate that authorizes a surface water withdrawal of equal to or greater than 1 billion gallons per year but less than 10 billion gallons per year	\$12,500
Surface water withdrawal permit or certificate that authorizes a surface water withdrawal of equal to or greater than 10 billion gallons per year	\$25,000
3. Ground Water Withdrawal Permit	
Ground water withdrawal permit that authorizes a ground water withdrawal of less than 10 million gallons per year	\$750
Ground water withdrawal permit that authorizes a ground water withdrawal of equal to or greater than 10 million gallons per year but less than 25 million gallons per year	\$2,500
Ground water withdrawal permit that authorizes a ground water withdrawal of equal to or greater than 25 million gallons per year but less than 50 million gallons per year	\$5,000
Ground water withdrawal permit that authorizes a ground water withdrawal of equal to or greater than 50 million gallons per year but less than 100 million gallons per year	\$10,000
Ground water withdrawal permit that authorizes a ground water withdrawal of equal to or greater than 100 million gallons per year but less than 1 billion gallons per year	\$15,000
Ground water withdrawal permit that authorizes a ground water withdrawal of equal to or greater than 1 billion gallons per year but less than 10 billion gallons per year	\$25,000
Ground water withdrawal permit that authorizes a ground water withdrawal of equal to or greater than 10 billion gallons per year	\$50,000

No permit maintenance fee shall be assessed for permits pertaining to a farming operation engaged in production for market.

Recommendation Considerations

Members of working group acknowledged the atypical nature of the water withdrawal permitting program, and the subsequent impact that has for permitted users under the directive of the legislation. The water withdrawal permit program manages and monitors over 1,500 permitted and unpermitted facilities, however, only 467 of those facilities have been issued either a Ground Water Withdrawal or a surface water withdrawal permit.

