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Title 62.1 - Chapter 2 - Policy as to State Waters

§ 62.1-10. Definitions.

As used in this chapter, the following terms shall have the meanings respectively ascribed to them:

- (a) "Water" includes all waters, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction and which affect the public welfare.
- (b) "Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.

§ 62.1-11. Waters declared natural resource; state regulation and conservation; limitations upon right to use.

- A. Such waters are a natural resource which should be regulated by the Commonwealth.
- B. The regulation, control, development and use of waters for all purposes beneficial to the public are within the jurisdiction of the Commonwealth which in the exercise of its police powers may establish measures to effectuate the proper and comprehensive utilization and protection of such waters.
- C. The changing wants and needs of the people of the Commonwealth may require the water resources of the Commonwealth to be put to uses beneficial to the public to the extent of which they are reasonably capable; the waste or unreasonable use or unreasonable method of use of water should be prevented; and the conservation of such water is to be exercised with a view to the welfare of the people of the Commonwealth and their interest in the reasonable and beneficial use thereof.
- D. The public welfare and interest of the people of the Commonwealth require the proper development, wise use, conservation and protection of water resources together with protection of land resources, as affected thereby.
- E. The right to the use of water or to the flow of water in or from any natural stream, lake or other

watercourse in this Commonwealth is and shall be limited to such water as may reasonably be required for the beneficial use of the public to be served; such right shall not extend to the waste or unreasonable use or unreasonable method of use of such water.

F. The quality of state waters is affected by the quantity of water and it is the intent of the Commonwealth, to the extent practicable, to maintain flow conditions to protect instream beneficial uses and public water supplies for human consumption

§ 62.1-12. Valid uses not affected; chapter not applicable to proceedings determining rights. Nothing in this chapter shall operate to affect any existing valid use of such waters or interfere with such uses hereafter acquired, nor shall it be construed as applying to the determination of rights in any proceeding now pending or hereafter instituted.

§ 62.1-13. Construction with reference to rights, etc., of counties, cities and towns. Nothing in this chapter contained shall be construed as a declaration of policy of the Commonwealth to divest any county, city or town of its title or right to any water or of its powers conferred by law with respect to the disposition thereof; nor shall anything in this chapter be construed to authorize the impairment of any contract to which such county, city or town is a party, or to obligate any county, city or town to appropriate or expend any funds. The purpose of this chapter is to recognize the public use to which such water is devoted.

Title 62.1 - Chapter 3.1 - State Water Control Law

§ 62.1-44.2. Short title; purpose.

The short title of this chapter is the State Water Control Law. It is the policy of the Commonwealth of Virginia and the purpose of this law to: (1) protect existing high quality state waters and restore all other state waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (2) safeguard the clean waters of the Commonwealth from pollution; (3) prevent any increase in pollution; (4) reduce existing pollution; (5) promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health; and (6) promote water resource conservation, management and distribution, and encourage water consumption reduction in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

§ 62.1-44.3. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the meanings hereinafter respectively ascribed to them:

"Board" means the State Water Control Board.

"Member" means a member of the Board.

"Certificate" means any certificate issued by the Board.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands;

"Owner" means the Commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or

any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution" for the terms and purposes of this chapter.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances, except industrial wastes and sewage, which may cause pollution in any state waters.

"Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the

physical, chemical or biological properties of any state waters.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal.

"Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in accordance with the requirements of the Board.

"Reclaimed water" means water resulting from the treatment of domestic, municipal or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur. Specifically excluded from this definition is "gray water."

"Reclamation" means the treatment of domestic, municipal or industrial wastewater or sewage to produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

"The law" or "this law" means the law contained in this chapter as now existing or hereafter amended.

"Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to § 62.1-44.15 (7).

"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

"Ruling" means a ruling issued under § 62.1-44.15 (9).

"Regulation" means a regulation issued under § 62.1-44.15 (10).

"Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.

"Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation or any other legal entity.

"Pretreatment requirements" means any requirements arising under the Board's pretreatment regulations including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the Board.

"Pretreatment standards" means any standards of performance or other requirements imposed by

regulation of the Board upon an industrial user of a publicly owned treatment works.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.1-22.29, and any activity that is conducted as part of or in furtherance of such agricultural operation, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Normal silvicultural activities" means any silvicultural activity, as defined in § 10.1-1181.1, and any activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Sewage treatment works" or "treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment, and appurtenances, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative discharging sewage systems.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

§ 62.1-44.4. Control by Commonwealth as to water quality.

(1) No right to continue existing quality degradation in any state water shall exist nor shall such right be or be deemed to have been acquired by virtue of past or future discharge of sewage, industrial wastes or other wastes or other action by any owner. The right and control of the Commonwealth in and over

all state waters is hereby expressly reserved and reaffirmed.

(2) Waters whose existing quality is better than the established standards as of the date on which such standards become effective will be maintained at high quality; provided that the Board has the power to authorize any project or development, which would constitute a new or an increased discharge of effluent to high quality water, when it has been affirmatively demonstrated that a change is justifiable to provide necessary economic or social development; and provided, further, that the necessary degree of waste treatment to maintain high water quality will be required where physically and economically feasible. Present and anticipated use of such waters will be preserved and protected.

§ 62.1-44.5. Prohibition of waste discharges or other quality alterations of state waters except as authorized by permit; notification required.

A. Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
  - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
  - b. Filling or dumping;
  - c. Permanent flooding or impounding; or
  - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the

Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.

§ 62.1-44.6. Chapter supplementary to existing laws.

This chapter is intended to supplement existing laws and no part thereof shall be construed to repeal any existing laws specifically enacted for the protection of health or the protection of fish, shellfish and game of the Commonwealth, except that the administration of any such laws pertaining to the pollution of state waters, as herein defined, shall be in accord with the purpose of this chapter and general policies adopted by the Board.

§ 62.1-44.7. Board continued.

The State Water Control Board established in the Executive Department of the Commonwealth, is continued.

§ 62.1-44.8. Number, appointment and terms of members.

The Board shall consist of seven members appointed by the Governor subject to confirmation by the General Assembly. Members appointed before July 1, 1970, shall continue in office for the terms for which appointed. Effective July 1, 1970, two members shall be appointed for a term of one year, and two members shall be appointed for a term of four years. Thereafter the successors of all members shall be appointed for the terms of four years each. Vacancies other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term.

§ 62.1-44.9. Qualifications of members.

A. Members of the Board shall be citizens of the Commonwealth; shall be selected from the Commonwealth at large for merit without regard to political affiliation; and shall, by character and reputation, reasonably be expected to inspire the highest degree of cooperation and confidence in the work of the Board. No person shall become a member of the Board who receives, or during the

previous two years has received, a significant portion of his income directly or indirectly from certificate or permit holders or applicants for a certificate or permit.

For the purposes of this section, "significant portion of income" means ten percent or more of gross personal income for a calendar year, except that it means fifty percent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement. Income includes retirement benefits, consultant fees, and stock dividends. Income is not received directly or indirectly from certificate or permit holders or applicants for certificates or permits when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

B. Notwithstanding any other provision of this section relating to Board membership, the qualifications for Board membership shall not be more strict than those which may be required by federal statute or regulations of the United States Environmental Protection Agency.

§ 62.1-44.10. Repealed by Acts 1980, c. 728.

§ 62.1-44.11. Meetings.

The Board shall meet at least four times a year, and other meetings may be held at any time or place determined by the Board or upon call of the chairman or upon written request of any two members. All members shall be duly notified of the time and place of any regular or other meeting at least five days in advance of such meeting.

§ 62.1-44.12. Records of proceedings; special orders, standards, policies, rules and regulations. The Board shall keep a complete and accurate record of the proceedings at all its meetings, a copy of which shall be kept on file in the office of the Executive Director and open to public inspection. Any standards, policies, rules or regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 9-6.15 et seq.). The owner to whom any special order is issued under the provisions of § 62.1-44.15 shall be notified by certified mail sent to the last known

address of such owner and the time limits specified shall be counted from the date of mailing.

§ 62.1-44.13. Inspections and investigations, etc. The Board shall make such inspections, conduct such investigations and do such other things as are necessary to carry out the provisions of this chapter, within the limits of appropriation, funds, or personnel which are, or become, available from any source for this purpose.

§ 62.1-44.14. Chairman; Executive Director; employment of personnel; supervision; budget preparation.

The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in § 2.1-41.2. The Executive Director shall serve as executive officer and devote his whole time to the performance of his duties, and he shall have such administrative powers as are conferred upon him by the Board; and, further, the Board may delegate to its Executive Director any of the powers and duties invested in it by this chapter except the adoption and promulgation of standards, rules and regulations; the revocation of certificates; and the issuance, modification, or revocation of orders. The Executive Director is authorized to issue, modify or revoke orders in cases of emergency as described in § 62.1-44.15 (8b) and § 62.1-44.34:20 of this chapter. The Executive Director is further authorized to employ such consultants and full-time technical and clerical workers as are necessary and within the available funds to carry out the purposes of this chapter.

It shall be the duty of the Executive Director to exercise general supervision and control over the quality and management of all state waters and to administer and enforce this chapter, and all certificates, standards, policies, rules, regulations, rulings and special orders promulgated by the Board. The Executive Director shall prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations.

§ 62.1-44.15. Powers and duties.

It shall be the duty of the Board and it shall have the authority:

(1) [Repealed.]

(2) To study and investigate all problems concerned with the quality of state waters and to make reports and recommendations.

(2a) To study and investigate methods, procedures, devices, appliances, and technologies which could assist in water conservation or water consumption reduction.

(2b) To coordinate its efforts toward water conservation with other persons or groups, within or without the Commonwealth.

(2c) To make reports concerning, and formulate recommendations based upon, any such water conservation studies to ensure that present and future water needs of the citizens of the Commonwealth are met.

(3a) To establish such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established, except that a description of provisions of any proposed standard or policy adopted by regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the standard or policy are most properly referable. The Board shall, from time to time, but at least once every three years, hold public hearings pursuant to subsection B of § 9-6.14:7.1 but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § 9-6.14:8, for the purpose of reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling such standards. Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give due consideration to, among other factors, the economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or cancelled. The Board shall also give due consideration to the public health standards issued by the Virginia Department of Health with respect to issues of public health policy and protection. If the Board does not follow the public health standards of the Virginia Department of Health, the

Board's reason for any deviation shall be made in writing and published for any and all concerned parties.

(3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or modified, amended or cancelled in the manner provided by the Administrative Process Act (§ 9-6.14:1 et seq.).

(4) To conduct or have conducted scientific experiments, investigations, studies, and research to discover methods for maintaining water quality consistent with the purposes of this chapter. To this end the Board may cooperate with any public or private agency in the conduct of such experiments, investigations and research and may receive in behalf of the Commonwealth any moneys which any such agency may contribute as its share of the cost under any such cooperative agreement. Such moneys shall be used only for the purposes for which they are contributed and any balance remaining after the conclusion of the experiments, investigations, studies, and research, shall be returned to the contributors.

(5) To issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of sewage, industrial wastes and other wastes into or adjacent to state waters; (b) the alteration otherwise of the physical, chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions.

(5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed fifteen years. The term of a Virginia Pollution Abatement permit shall not exceed ten years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be ten years. The

Department of Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been issued at least once every five years, except that the Department shall inspect all facilities covered by the Virginia Pollution Abatement permit for confined animal feeding operations annually. Department personnel performing inspections of confined animal feeding operations shall be certified under the voluntary nutrient management training and certification program established in § 10.1-104.2. The term of a certificate issued by the Board shall not be extended by modification beyond the maximum duration and the certificate shall expire at the end of the term unless an application for a new permit has been timely filed as required by the regulations of the Board and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

(5b) Any certificate issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The owner has violated any regulation or order of the Board, any condition of a certificate, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for or inability to comply with applicable laws, regulations, or requirements;
2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a certificate, or in any other report or document required under this law or under the regulations of the Board;
3. The activity for which the certificate was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the certificate; or
4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the certificate

necessary to protect human health or the environment.

(5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under Chapter 12 (§ [28.2-1200](#) et seq.) or Chapter 13 (§ [28.2-1300](#) et seq.) of Title 28.2 may be conditioned upon a demonstration of financial responsibility for the completion of compensatory mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration of financial responsibility for the completion of compensatory mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this requirement.

(6) To make investigations and inspections, to ensure compliance with any certificates, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance. In recognition of §§ 32.1-164 and 62.1-44.18, the Board and the State Department of Health shall enter into a memorandum of understanding establishing a common format to consolidate and simplify inspections of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall ensure that all sewage treatment plants are inspected at appropriate intervals in order to protect water quality and public health and at the same time avoid any unnecessary administrative burden on those being inspected.

(7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such means as the Board may prescribe.

(8a) To issue special orders to owners (i) who are permitting or causing the pollution, as defined by § 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to construct facilities in accordance with final approved plans and specifications to construct such facilities in accordance with final approved plans and

specifications, (iii) who have violated the terms and provisions of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to comply with a directive from the Board to comply with such directive, (v) who have contravened duly adopted and promulgated water quality standards and policies to cease and desist from such contravention and to comply with such water quality standards and policies, (vi) who have violated the terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned treatment works to comply with such terms and provisions or (vii) who have contravened any applicable pretreatment standard or requirement to comply with such standard or requirement; and also to issue such orders to require any owner to comply with the provisions of this chapter and any decision of the Board.

(8b) Such special orders are to be issued only after a hearing with at least thirty days' notice to the affected owners, of the time, place and purpose thereof, and they shall become effective not less than fifteen days after service as provided in § 62.1-44.12; provided that if the Board finds that any such owner is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing the owner to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within forty-eight hours of the issuance of the injunction.

(8c) The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-44.32

for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

(8d) With the consent of any owner who has violated or failed, neglected or refused to obey any regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and shall not be subject to the provisions of § 2.1-127. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of Title 10.1, excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of this title, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

The amendments to this section adopted by the 1976 Session of the General Assembly shall not be construed as limiting or expanding any cause of action or any other remedy possessed by the Board prior to the effective date of said amendments.

(9) To make such rulings under §§ 62.1-44.16, 62.1-44.17 and 62.1-44.19 as may be required upon requests or applications to the Board, the owner or owners affected to be notified by certified mail as soon as practicable after the Board makes them and such rulings to become effective upon such notification.

(10) To adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

(11) To investigate any large-scale killing of fish.

(a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect such settlement with the owner as will cover the costs incurred by the Board and by the Department of Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover from the owner such costs and value, plus any court or other legal costs incurred in connection with such action.

(b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any circuit court within the territory embraced by such political subdivision. If the owner is an establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the circuit court of the county in which such establishment is located. If the owner is an individual or group of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in which such person or any of them reside.

(c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of the fish killed and the proceedings shall be as though the State Water Control Board were the owner of the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as a defense in bar to any such action.

(d) The proceeds of any recovery had under this subsection shall, when received by the Board, be applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The balance shall be paid to the Board of Game and Inland Fisheries to be used for the fisheries' management practices as in its judgment will best restore or replace the fisheries' values lost as a result of such discharge of waste, including, where appropriate, replacement of the fish killed with game fish or other appropriate species. Any such funds received are hereby appropriated for that purpose.

(e) Nothing in this subsection shall be construed in any way to limit or prevent any other action which is now authorized by law by the Board against any owner.

(f) Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who adds or applies any chemicals or other substances that are recommended or approved by the State Department of Health to state waters in the course of processing or treating such waters for public water supply purposes, except where negligence is shown.

(12) To administer programs of financial assistance for planning, construction, operation, and maintenance of water quality control facilities for political subdivisions in this Commonwealth.

(13) To establish policies and programs for effective area-wide or basin-wide water quality control and management. The Board may develop comprehensive pollution abatement and water quality control plans on an area-wide or basin-wide basis. In conjunction with this, the Board, when considering proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water quality management and pollution control plan in the watershed or basin as a whole. In making such determinations, the Board is to seek the advice of local, regional, or state planning authorities.

(14) To establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter; however, no treatment shall be less than secondary or its equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the purposes of this chapter.

(15) To promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into waters of the state. The requirements shall address various potential categories of reuse and may include general permits and provide for greater flexibility and less stringent requirements commensurate with the quality of the reclaimed water and its intended use. The requirements shall be developed in consultation with the Department of Health and other appropriate state agencies. This

authority shall not be construed as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

(16) To establish and implement policies and programs to protect and enhance the Commonwealth's wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

§ 62.1-44.15:01. Further duties of Board; localities particularly affected.

After June 30, 1994, before promulgating any regulation under consideration or granting any variance to an existing regulation, or issuing any permit, if the Board finds that there are localities particularly affected by the regulation, variance or permit, the Board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least thirty days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged.

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the Board for at least fifteen days after any hearing on the regulation, variance or permit, unless the Board votes to shorten the period.

For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

§ 62.1-44.15:1. Limitation on power to require construction of sewerage systems or sewage or other waste treatment works.

Nothing contained in this chapter shall be construed to empower the Board to require the

Commonwealth, or any political subdivision thereof, or any authority created under the provisions of § 15.2-5102 or §§ 19.2-5152 through 19.2-5197, to construct any sewerage system, sewage treatment works, or water treatment plant waste treatment works or system necessary to (1) upgrade the present level of treatment in existing systems or works to abate existing pollution of state waters, or (2) expand a system or works to accommodate additional growth, unless the Board shall have previously committed itself to provide financial assistance from federal and state funds equal to the maximum amount provided for under § 8 or other applicable sections of the Federal Water Pollution Control Act (P.L. 84-660, as amended), or unless the Commonwealth or political subdivision or authority voluntarily agrees, or is directed by the Board with the concurrence of the Governor, to proceed with such construction, subject to reimbursement under § 8, or other applicable sections of such federal act.

The foregoing restriction shall not apply to those cases where existing sewerage systems or sewage or other waste treatment works cease to perform in accordance with their approved certificate requirements.

Nothing contained in this chapter shall be construed to empower the Board to require the Commonwealth, or any political subdivision thereof, to upgrade the level of treatment in any works to a level more stringent than that required by applicable provisions of the Federal Water Pollution Control Act, as amended.

§ 62.1-44.15:1.1. Special orders; penalties.

The Board is authorized to issue special orders in compliance with the Administrative Process Act (§ 9-6.14:1 et seq.) requiring that an owner file with the Board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the Board, submission of a bond, corporate guarantee based upon audited financial statements, or such other instruments as the Board may deem appropriate.

The Board may require that such plan and instruments be updated as appropriate. The Board shall give due consideration to any plan submitted by the owner in accordance with §§ 10.1-1309.1, 10.1-1410, and 10.1-1428, in determining the necessity for and suitability of any plan submitted under this section.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a facility which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 62.1-44.15:1.2. Lake level contingency plans. Any Virginia Pollutant Discharge Elimination System permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions. The plan shall take into account and minimize any adverse effects of any release reduction requirements on beneficial uses, as defined in § 62.1-10, within the impoundment, and on downstream users. The reduction in release

amounts required by a lake level contingency plan shall not be implemented to the extent they result in an adverse impact to (i) the ability to meet water quality standards based upon permitted discharge amounts, (ii) the ability to provide adequate water supplies for consumptive purposes such as drinking water and fire protection, and (iii) fish and wildlife resources. In the event there is an imminent threat of such an adverse impact, the permit holder and the Department of Environmental Quality shall be notified. Upon such notification, the permit holder may increase release amounts as specified in the permit for up to forty-eight hours or until such time as the Department of Environmental Quality determines whether or not the increase in release amounts is necessary. This section shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

§ 62.1-44.15:2. Extraordinary hardship program. There is hereby established a supplemental program of financial assistance for the construction of water quality control facilities by political subdivisions of the Commonwealth. All sums appropriated for this program shall be apportioned by the Board among the political subdivisions qualifying, to provide financial assistance in addition to that otherwise available to help relieve extraordinary hardship in local funding of the construction of such facilities.

§ 62.1-44.15:3. When application to discharge sewage considered complete.

A. No application submitted to the Board for a new individual Virginia Pollutant Discharge Elimination permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The county, city or town shall inform in writing the applicant and the Board of the discharging facility's compliance or noncompliance not more than thirty days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city or town fail to provide such written notification within thirty days, the

requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid certificate had been issued prior to March 10, 2000.

B. No application for a certificate to discharge sewage into or adjacent to state waters from a privately owned wastewater treatment system serving fifty or more residences shall be considered complete unless the applicant has provided the Executive Director with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

§ 62.1-44.15:4. Notification of local governments and property owners.

A. Upon determining that there has been a violation of a regulation promulgated under this chapter and such violation poses an imminent threat to the health, safety or welfare of the public, the Executive Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Executive Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this subsection.

B. Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the Board's antidegradation policy, as required by 40 C.F.R. § 131.12, the Board shall notify each locality in which the waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdictions upon request by the Board. After receipt of the notice of the

nomination localities shall be provided sixty days to comment on the consistency of the nomination with the locality's comprehensive plan.

C. Upon determining that a waterway or any segment of a waterway does not meet its water quality standard use designation as set out in the Board's regulations and as required by § 1313 (d) of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) and 40 C.F.R. § 130.7 (b), the Board shall notify each locality in which the waterway or segment lies. The written notification shall include, at a minimum: (i) a description of the reasons the waters do not meet the water quality standard including specific parameters and criteria not met; (ii) a layman's description of the location of the waters; (iii) the known sources of the pollution; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the failure of the waterway or segment to meet the standards. After receipt of the notification, local governments shall have thirty days to comment.

D. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the Board shall notify, in writing, the locality wherein the discharge does or is proposed to take place of, at a minimum: (i) the name of the applicant; (ii) the nature of the application and proposed discharge; (iii) the availability and timing of any comment period; and (iv) upon request, any other information known to, or in the possession of, the Board or the Department regarding the applicant not required to be held confidential by this chapter. The Board shall make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one quarter mile downstream and one quarter mile upstream or to the fall line whichever is closer on tidal waters, and (ii) each locality and riparian property owner to a distance one half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river, at the point or proposed point of discharge, is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the

Commissioners of the Revenue or the tax assessor's office of the affected jurisdictions upon request by the Board.

E. Upon the commencement of public notice of an enforcement action pursuant to this chapter, the Board shall notify, in writing, the locality where the alleged offense has or is taking place of: (i) the name of the alleged violator; (ii) the facts of the alleged violation; (iii) the statutory remedies for the alleged violation; (iv) the availability and timing of any comment period; and (v) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the alleged violation.

F. The comment periods established in subsections B and C shall in no way impact a locality's ability to comment during any additional comment periods established by the Board.

§ 62.1-44.15:4.1. Listing and notice of confirmed oil releases and discharges.

The Department of Environmental Quality shall notify the Department of Health of any confirmed release or discharge of oil, as defined in §§ 62.1-44.34:8 and 62.1-44.34:14, respectively, which requires that a site characterization investigation be conducted. Monthly notification to the Department of Health shall occur within one week from the last day of the previous month and shall include information on the location of the site of each confirmed release or discharge during the monthly reporting period. The reporting of such information shall begin for releases or discharges of oil that have been confirmed on and after January 1, 1999.

§ 62.1-44.15:5. Virginia Water Protection Permit.

A. Issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act.

B. The Board shall, after providing an opportunity for public comment, issue a Virginia Water Protection Permit if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses.

C. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural, and aesthetic values is a beneficial use of Virginia's waters. Conditions contained in a

Virginia Water Protection Permit may include, but are not limited to, the volume of water which may be withdrawn as a part of the permitted activity. Domestic and other existing beneficial uses shall be considered the highest priority uses.

D. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this subsection, it shall be unlawful to excavate in a wetland. On and after October 1, 2001, except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this subsection, it shall also be unlawful to conduct the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions. Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. Permits shall contain requirements for compensating impacts on wetlands. Such compensation requirements shall be sufficient to achieve no net loss of existing wetland acreage and functions, and may be met through wetland creation or restoration, purchase or use of mitigation bank credits pursuant to subsection E, or contributing to a fund that is approved by the Board and is dedicated to achieving no net loss of wetland acreage and functions. When utilized in conjunction with creation, restoration or mitigation bank credits, compensation may incorporate (i) preservation or restoration of upland buffers adjacent to wetlands or other state waters or (ii) preservation of wetlands. The Board shall assess compensation implementation, inventory permitted wetland impacts, and work to prevent unpermitted impacts. Within 15 days of receipt of an individual permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. Within 120 days of receipt of a complete application, the Board shall issue the permit, issue the permit with conditions, deny the permit or

decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such a proceeding and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing.

The Board shall develop general permits for such activities in wetlands as it deems appropriate. General permits shall include such terms and conditions as the Board deems necessary to protect state waters and fish and wildlife resources from significant impairment. The Board shall deny, approve or approve with conditions any application for coverage under a general permit within 45 days of receipt of a complete preconstruction application. The application shall be deemed approved if the Board fails to act within 45 days. The Board is authorized to waive the requirement for a general permit, or deem an activity in compliance with a general permit, when it determines that an isolated wetland is of minimal ecological value.

The Board shall develop general permits for:

1. Activities causing wetland impacts of less than one-half of an acre;
2. Facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or State Corporation Commission. No Board action on an individual or general permit for such facilities shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval. The Board and the State Corporation Commission shall develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1 and 56-580 to ensure that consultation on wetland impacts occurs prior to siting determinations;
3. Coal, natural gas, and coalbed methane gas mining activities authorized by the Department of Mines, Minerals and Energy, and sand mining;
4. Virginia Department of Transportation or other linear transportation projects; and
5. Activities governed by nationwide or regional permits approved by the Board and issued by the U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not be limited to, filing with the Board copies of any preconstruction notification, postconstruction report and certificate of compliance required by the U.S. Army Corps of Engineers.

The Board shall utilize the U.S. Army Corps of Engineers' "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" as the approved method for delineating wetlands. The Board shall adopt appropriate guidance and regulations to ensure consistency with the U.S. Army Corps of Engineers' implementation of delineation practices. The Board shall also adopt guidance and regulations for review and approval of the geographic area of a delineated wetland. Any such approval of a delineation shall remain effective for a period of five years; however, if the Board issues a permit pursuant to this subsection for an activity in the delineated wetland within the five-year period, the approval shall remain effective for the term of the permit. Any delineation accepted by the U.S. Army Corps of Engineers as sufficient for its exercise of jurisdiction pursuant to § 404 of the Clean Water Act shall be determinative of the geographic area of that delineated wetland. This subsection shall not apply to activities governed under Chapter 13 (§ 28.2-100 et seq.) of Title 28.2 or normal agricultural activities or normal silvicultural activities. This subsection shall also not apply to normal residential gardening, lawn and landscape maintenance, or other similar activities which are incidental to an occupant's ongoing residential use of property and of minimal ecological impact; the Board shall develop criteria governing this exemption and shall specifically identify the activities meeting these criteria in its regulations.

No locality may impose wetlands permit requirements duplicating state or federal wetlands permit requirements.

E. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetlands mitigation bank, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws or regulations for the establishment, use and operation of mitigation banks as long as: (1) the bank is in the same U.S.G.S. cataloging unit, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), or an adjacent cataloging unit within the same river watershed, as the impacted

site, or it meets all the conditions found in clauses (i) through (iv) and either clause (v) or (vi) of this subsection; (2) the bank is ecologically preferable to practicable on-site and off-site individual mitigation options, as defined by federal wetland regulations; and (3) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same cataloging unit or adjacent cataloging unit within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Department of Environmental Quality that (i) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction crosses multiple river watersheds; (ii) there is no practical same river watershed mitigation alternative; (iii) the impacts are less than one acre in a single and complete project within a cataloging unit; (iv) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (v) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (vi) impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), are mitigated in-kind within those hydrologic cataloging units, as close as possible to the impacted site. After July 1, 2002, the provisions of clause (vi) shall apply only to impacts within subdivisions of the listed cataloging units where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department has made such a determination by that date. The Department of Environmental Quality is authorized to serve as a signatory to agreements governing the operation of wetlands mitigation banks. The Commonwealth, its officials, agencies, and employees shall not be liable for any action taken under any agreement developed pursuant to such authority. State agencies are authorized to purchase credits from wetland mitigation banks.

F. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with, and give full consideration to the written recommendations of, the following agencies: the

Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer Services and any other interested and affected agencies. Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within 45 days after notification by the Board. The Board shall assume that if written comments are not submitted by an agency within this time period, the agency has no comments on the proposed permit.

G. 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.

H. 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 has 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.

I. On and after July 1, 2000, and prior to the adoption of regulations promulgated pursuant to subsection D, absent the issuance of a permit by the U.S. Army Corps of Engineers pursuant to § 404 of the Clean Water Act, no person shall excavate in a wetland without compensating for the impact to the wetland to the satisfaction of the Board in a manner sufficient to achieve no net loss of existing wetland acreage and functions.

J. The Board may issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal when it finds that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety. Such a permit may be issued to authorize the proposed activity only after conservation measures mandated by local or state authorities have failed to protect public health and safety and notification of the agencies designated in subsection F, and only for the amount of water necessary to protect public health and safety. These agencies shall have five days to provide comments or written recommendations on the issuance of the

permit. Notwithstanding the provisions of subsection B, no public comment shall be required prior to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit, the permit holder shall apply for a Virginia Water Protection Permit authorized under the other provisions of this section. The application for the Virginia Water Protection Permit shall be subject to public comment for a period established by the Board. Any Emergency Virginia Water Protection Permit issued under this subsection shall be valid until the Board approves or denies the subsequent request for a Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection Permit.

§ 62.1-44.15:5.1. General permit for certain water quality improvement activities.

A. The Board shall coordinate the development of a general permit for activities such as bioengineered streambank stabilization projects and livestock stream crossings that: (i) are coverable by the Nationwide Permit Program (33 C.F.R. Part 330) of the United States Army Corps of Engineers and for which certification has not been waived by the Board; (ii) are conservation practices designed and supervised by a soil and water conservation district; (iii) meet the design standards of the Department of Conservation and Recreation and the United States Department of Agriculture's Natural Resource Conservation Service; and (iv) are intended to improve water quality. The development of the general permit shall be exempt from Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act.

B. The development of the general permit shall be a coordinated effort between the Department of Environmental Quality, the Virginia Marine Resources Commission and such other agencies as may be needed to develop a single, unified, process that will expedite the implementation of the projects described in subsection A and unify and streamline the permitting process for such projects.

C. A general permit pursuant to this section shall be promulgated as final by July 1, 1998.

§ 62.1-44.15:5.2. General permits for ready-mix concrete plant discharges.

Any general permit issued by the Board for discharges of stormwater and process wastewater from industrial activities associated with the manufacture of ready-mix concrete shall apply to both permanent and portable plants. The general permit may include a requirement that settling basins for the treatment and control of process wastewater and commingled stormwater be lined with concrete or other impermeable materials for settling basins constructed on or before February 1, 1998, and shall include such a requirement for all settling basins constructed on or after February 2, 1998.

§ 62.1-44.15:6. (Effective until July 1, 2004) Permit fee regulations.

A. The Board shall 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 Board has authority to issue under this chapter and Chapters 24 (§ [62.1-242](#) et seq.) and 25 (§ [62.1-254](#) et seq.) of this title, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. The Board shall have no authority to charge such fees where the authority to issue such permits has been delegated to another agency that imposes permit fees.

B. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. However, notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market or for a permit pertaining to maintenance dredging for federal navigation channels or other Corps of Engineers sponsored dredging projects, and in no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
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1. Virginia Pollutant Discharge Elimination System		
Major	\$24,000	
Minor	\$10,500	
General	\$ 1,200	
2. Virginia Pollution Abatement		
Industrial/Wastewater		\$15,000
Industrial/Sludge	\$ 7,500	
Municipal/Wastewater		\$15,000
Municipal/Sludge	\$ 7,500	
Other	\$ 750	
3. 401 Certification/Virginia Water Protection		
Individual	\$ 9,000	
General	\$ 1,200	
4. Ground Water Withdrawal		\$ 6,000
5. Surface Water Withdrawal		\$12,000

When modifications in these permits or certificates have been initiated by the Board, the fee for the modified permit or certificate shall not exceed seventy-five percent of the maximum amount established by this subsection. Payments for the costs of processing applications by the Department of Game and Inland Fisheries and the Department of Conservation and Recreation shall be limited to the lesser of twenty-five percent of the fees prescribed by regulation or \$100 per permit or certificate and shall further be limited to those permits or certificates these agencies are required to review by the Code of Virginia.

C. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board shall make a report on the implementation of the water permit program to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources and the House Committee on Finance. The report shall include the following: (i) the total costs, both direct and indirect, including the costs of overhead, water quality planning, water quality

assessment, operations coordination, and surface water and ground water investigations, (ii) the total fees collected by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal funds received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number of permit applications received by category, (vii) the number of permits issued by category, (viii) the progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and indirect costs to neighboring states of administering their water permit programs, including what activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders and applicants.

E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Board.

F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any additional permits that may be required by the federal government and administered by the Board, or any new permit required pursuant to any law of the Commonwealth.

G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees for facilities that have established a record of compliance with the terms and requirements of their permits.

(1992, cc. 621, 657; 1993, cc. 749, 756; 1995, c. 107; 1997, cc. 115, 154; 2002, c. 822.)

§ 62.1-44.15:6. (Effective July 1, 2004) Permit fee regulations.

A. The Board shall 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 Board has authority to issue under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. The Board shall have no

authority to charge such fees where the authority to issue such permits has been delegated to another agency which imposes permit fees.

B. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. However, notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market or for a permit pertaining to maintenance dredging for federal navigation channels or other Corps of Engineers sponsored dredging projects, and in no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major	\$ 8,000
Minor	\$ 3,500
General	\$ 400
2. Virginia Pollution Abatement	
Industrial/Wastewater	\$
5,000	
Industrial/Sludge	\$ 2,500
Municipal/Wastewater	\$
5,000	
Municipal/Sludge	\$ 2,500
Other	\$ 250
3. 401 Certification/Virginia Water Protection	
Individual	\$ 3,000
General	\$ 400
Waiver	\$ 400
4. Ground Water Withdrawal	\$
2,000	
5. Surface Water Withdrawal	\$
4,000	

When modifications in these permits or certificates have been initiated by the Board, the fee for the modified permit or certificate shall not exceed seventy-five percent of the maximum amount established by this subsection. Payments for the costs of processing applications by the Department of Game and Inland Fisheries and the Department of Conservation and Recreation shall be limited to the lesser of twenty-five percent of the fees prescribed by regulation or \$100 per permit or certificate and shall further be limited to those

permits or certificates these agencies are required to review by the Code of Virginia.

C. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board shall make a report on the implementation of the water permit program to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Conservation and Natural Resources and the House Committee on Finance. The report shall include the following: (i) the total costs, both direct and indirect, including the costs of overhead, water quality planning, water quality assessment, operations coordination, and surface water and ground water investigations, (ii) the total fees collected by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal funds received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number of permit applications received by category, (vii) the number of permits issued by category, (viii) the progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and indirect costs to neighboring states of administering their water permit programs, including what activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders and applicants. In addition, the 1998 report shall include an analysis and estimate of the annual costs to permit holders and permit applicants if the direct and indirect costs of administering the water permit program were to be apportioned in a manner that would require the permit holders and applicants to pay fifty, seventy-five, and one hundred percent of the program's total cost through annual permit fees. The Department shall propose how the following factors could be used to adjust individual permit fees: (i) the average time and complexity of processing a permit in each of the various categories of permits and permit actions, (ii) the permit holder's compliance history, (iii) whether the permit holder has implemented pollution prevention

plans, (iv) whether the applicant or permit holder has used innovative technology and (v) the financial hardship of the applicant or permit holder.

E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Board.

F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any additional permits which may be required by the federal government and administered by the Board, or any new permit required pursuant to any law of the Commonwealth.

G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees for facilities which have established a record of compliance with the terms and requirements of their permits.

§ 62.1-44.15:7. Permit Program Fund established; use of moneys.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the State Water Control Board Permit Program Fund, hereafter referred to as the Fund.

Notwithstanding the provisions of § 2.1-180, all moneys collected pursuant to § 62.1-44.15:6 shall be paid into the state treasury to the credit of the Fund.

B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

C. The Board is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes of recovering portions of the costs of processing applications under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title under the direction of the Executive Director.

D. An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller and furnished upon request to the Governor or the General Assembly.

§ 62.1-44.15:8. Conformance with federal requirements.

Notwithstanding the provisions of this article, any fee system developed by the Board may be modified by regulation promulgated by the Board, as may be necessary to conform with the

requirements of the federal Clean Water Act and any regulations promulgated thereunder. Any modification imposed under this section shall be submitted to the members of the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Conservation and Natural Resources, and Finance.

§ 62.1-44.16. Industrial wastes.

(1) Any owner who erects, constructs, opens, reopens, expands or employs new processes in or operates any establishment from which there is a potential or actual discharge of industrial wastes or other wastes to state waters shall first provide facilities approved by the Board for the treatment or control of such industrial wastes or other wastes. Application for such discharge shall be made to the Board and shall be accompanied by pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the Board.

(a) Public notice of every such application shall be given by notice published once a week for two successive weeks in a newspaper of general circulation in the county or city where the certificate is applied for or by such other means as the Board may prescribe.

(b) The Board shall review the application and the information that accompanies it as soon as practicable and making a ruling within a period of four months from the date the application is filed with the Board approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the Board shall grant a certificate for the discharge of the industrial wastes or other wastes into state waters or for the other alteration of the physical, chemical or biological properties of state waters, as the case may be. If the application is disapproved, the Board shall notify the owner as to what measures, if any, the owner may take to secure approval.

(2) (a) Any owner operating under a valid certificate issued by the Board who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the Board within a reasonable time to meet such new requirements; provided,

however, that such facilities shall be reasonable and practicable of attainment giving consideration to the public interest and the equities of the case. The Board may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least thirty days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved, the hearing and notice may be dispensed with.

(b) The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under subdivisions (8a), (8b), and (8c) of § 62.1-44.15 (8).

#### § 62.1-44.17. Other wastes.

(1) Any owner who handles, stores, distributes or produces other wastes as defined in § 62.1-44.3, any owner who causes or permits same to be handled, stored, distributed or produced or any owner upon or in whose establishment other wastes are handled, stored, distributed or produced shall upon request of the Board install facilities approved by the Board or adopt such measures approved by the Board as are necessary to prevent the escape, flow or discharge into any state waters when the escape, flow or discharge of such other wastes into any state waters would cause pollution of such state waters.

(2) Any owner under this section requested by the Board to provide facilities or adopt such measures shall make application therefor to the Board. Such application shall be accompanied by a copy of pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the Board.

(3) The Board shall review the application and the information that accompanies it as soon as practicable and make a ruling within a period of four months from the date the application is filed with the Board approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the Board shall grant a certificate for the handling, storing, distribution or production of such other wastes. If the application is disapproved, the Board shall notify the owner as to what measures the owner may take to secure approval.

§ 62.1-44.17:1. General Permits for confined animal feeding operations.

A. For the purposes of this chapter, "confined animal feeding operation" means a lot or facility, together with any associated treatment works, where both of the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Two or more confined animal feeding operations under common ownership are considered to be a single confined animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of liquid waste.

A1. Notwithstanding the provisions of subsection B, the Board shall promulgate regulations requiring Virginia Pollutant Discharge Elimination System permits for confined animal feeding operations to the extent necessary to comply with §402 of the federal Clean Water Act, as amended.

B. A confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system, upon fulfillment of the requirements of this section, shall be permitted by a General Virginia Pollution Abatement permit (hereafter referred to as the "General Permit"), adopted by the Board. In adopting the General Permit the Board shall:

1. Authorize the General Permit to pertain to confined animal feeding operations having 300 or more animal units;
2. Establish procedures for submitting a registration statement meeting the requirements of subsection C. Submitting a registration statement shall be evidence of intention to be covered by the General Permit; and
3. Establish criteria for the design and operation of confined animal feeding operations only as described in subsection E.

C. For coverage under the General Permit, the owner of the confined animal feeding operation shall file a registration statement with the Department of Environmental Quality providing the name and address of the owner of the operation, the name and address of the operator of the operation (if different than the owner), the mailing address and location of the operation, and a list of the types,

maximum number and average weight of the animals which will be maintained at the facility. The owner shall attach to the registration statement:

1. A copy of a letter of approval of the nutrient management plan for the operation from the Department of Conservation and Recreation;
2. A copy of the approved nutrient management plan;
3. A notification from the governing body of the locality where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2;
4. A certification that the owner or operator meets all the requirements of the Board for the General Permit; and
5. A certification that the owner has given notice of the registration statement to all owners or residents of property that adjoins the property on which the proposed operation will be located. Such notice shall include (i) the types and maximum number of animals which will be maintained at the facility and (ii) the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. Such certification of notice shall be waived whenever the registration is for the purpose of renewing coverage under a permit for which no expansion is proposed and the Department of Environmental Quality has not issued any special or consent order relating to violations under the existing permit.

D. Any person may submit written comments on the proposed operation to the Department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the Director determines that the proposed operation will not be capable of complying with the provisions of this section, the Director shall require the owner to obtain an individual permit for the operation. Any such determination by the Director shall be made in writing and received by the owner not more than 45 days after the filing of the registration statement or, if in the Director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.

E. The criteria for the design and operation of a confined animal feeding operation shall be as follows:

1. The operation shall have a liquid manure collection and storage facility designed and operated to: (i) prevent any discharge to state waters, except a discharge resulting from a storm event exceeding a 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste;
2. The operation shall implement and maintain on site a nutrient management plan approved pursuant to subdivision 1 of subsection C. The nutrient management plan shall contain at a minimum the following information: (i) a site map indicating the location of the waste storage facilities and the fields where waste will be applied; (ii) site evaluation and assessment of soil types and potential productivities; (iii) nutrient management sampling including soil and waste monitoring; (iv) storage and land area requirements; (v) calculation of waste application rates; (vi) waste application schedules; and (vii) a plan for waste utilization in the event the operation is discontinued;
3. Adequate buffer zones, where waste shall not be applied, shall be maintained between areas where waste may be applied and (i) water supply wells or springs, (ii) surface water courses, (iii) rock outcroppings, (iv) sinkholes, and (v) occupied dwellings unless a waiver is signed by the occupants of the dwellings;
4. The operation shall be monitored as follows: (i) waste shall be monitored at least once per year; (ii) soil shall be monitored at least once every three years; (iii) ground water shall be monitored at new earthen waste storage facilities constructed to an elevation below the seasonal high water table or within one foot thereof; and (iv) all facilities previously covered by a Virginia Pollution Abatement permit that required ground water monitoring shall continue such monitoring. In such facilities constructed below the water table, the top surface of the waste must be maintained at a level of at least two feet above the water table. The Department of Environmental Quality and the

Department of Conservation and Recreation may include in the permit or nutrient management plan more frequent or additional monitoring of waste, soils or groundwater as required to protect state waters. Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted. Such records shall be available for inspection by the Department of Environmental Quality and shall be maintained for a period of five years after recorded application is made;

5. New earthen waste storage facilities shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this section;

6. New waste storage facilities shall not be located on a 100-year flood plain;

7. All facilities must maintain one foot of freeboard at all times, up to and including a 25-year, 24-hour storm;

8. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. Manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate;

9. The owner or operator of the operation shall notify the Department of Environmental Quality at least 14 days prior to animals being placed in the confined facility; and

10. Each operator of a facility covered by the General Permit on July 1, 1999, shall, by January 1, 2000, complete the training program offered or approved by the Department of Conservation and Recreation under subsection F. Each operator of a facility permitted after July 1, 1999, shall complete such training within one year after the registration statement required by subsection C has been

submitted. Thereafter, all operators shall complete the training program at least once every three years.

F. The Department of Conservation and Recreation, in consultation with the Department of Environmental Quality and the Virginia Cooperative Extension Service, shall develop or approve a training program for persons operating confined animal feeding operations covered by the General Permit. The program shall include training in the requirements of the General Permit; the use of best management practices; inspection and management of liquid manure collection, storage and application systems; water quality monitoring and spill prevention; and emergency procedures.

G. Operations having an individual Virginia Pollution Abatement permit or a No Discharge Certificate may submit a registration statement for operation under the General Permit pursuant to this section.

H. The Director of the Department of Environmental Quality may require the owner of a confined animal feeding operation to obtain an individual permit for an operation subject to this section upon determining that the operation is in violation of the provisions of this section or if coverage under an individual permit is required to comply with federal law. New or reissued individual permits shall contain criteria for the design and operation of confined animal feeding operations including, but not limited to, those described in subsection E.

I. No person shall operate a confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system after July 1, 2000, without having submitted a registration statement as provided in subsection C or being covered by a Virginia Pollutant Discharge Elimination System permit or an individual Virginia Pollution Abatement permit.

J. Any person violating this section shall be subject only to the provisions of §§ 62.1-44.23 and 62.1-44.32 (a), except that any civil penalty imposed shall not exceed \$2,500.

§ 62.1-44.17:1.1. Poultry waste management program.

A. As used in this section, unless the context requires a different meaning:

"Commercial poultry processor" means any animal food manufacturer, as defined in § 3.1-884.18, that

contracts with poultry growers for the raising of poultry.

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry.

"Nutrient management plan" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters.

"Poultry grower" means any person who owns or operates a confined poultry feeding operation.

B. The Board shall develop a regulatory program governing the storage, treatment and management of poultry waste, including dry litter, that:

1. Requires the development and implementation of nutrient management plans for any person owning or operating a confined poultry feeding operation;
2. Provides for waste tracking and accounting; and
3. Ensures proper storage of waste consistent with the terms and provisions of a nutrient management plan.

C. The program shall include, at a minimum:

1. Provisions for permitting confined poultry feeding operations under a general permit; however, the Board may require an individual permit upon determining that an operation is in violation of the program developed under this section;
2. Provisions requiring that:

a. Nitrogen application rates contained in nutrient management plans developed pursuant to this section shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leaching, and volatilization losses, and reduce adverse water quality impacts from nitrogen;

b. For all nutrient management plans developed pursuant to this section after October 1, 2001, phosphorus application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal, as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous;

c. By December 31, 2005, the Department of Conservation and Recreation, in consultation with

the Department of Environmental Quality, shall (i) complete an examination of current developments in scientific research and technology which shall include a review of land application of poultry waste, soil nutrient retention capacity, and water quality degradation and (ii) adopt and implement regulatory or other changes, if any, to its nutrient management plan program that it concludes are appropriate as a result of this examination; and d. For all nutrient management plans developed pursuant to this section after December 31, 2005, and not prior thereto, phosphorous application rates shall conform to the provisions of subdivision 2 b of this subsection and shall be in accordance with other regulatory criteria and standards, if any, amended or adopted by the Department of Conservation and Recreation pursuant to subdivision 2 c of this subsection to protect water quality or to reduce soil concentrations of phosphorous or phosphorous loadings. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

D. The program shall reflect Board consideration of existing state-approved nutrient management plans and existing general permit programs for other confined animal feeding operations, and may include such other provisions as the Board determines appropriate for the protection of state waters.

E. After October 1, 2001, all persons owning or operating a confined poultry feeding operation shall operate in compliance with the provisions of this section and any regulations promulgated thereunder.

F. Any person violating this section shall be subject only to the provisions of §§ 62.1-44.23 and 62.1-44.32 (a), except that any civil penalty shall not exceed \$2,500.

G. On or before January 1, 2000, or prior to commencing operations, each commercial poultry processor operating in the Commonwealth shall file with the Board a plan under which the processor, either directly or under contract with a third party, shall:

1. Provide technical assistance to the poultry growers with whom it contracts on the proper management and storage of poultry waste in accordance with best management practices;

2. Provide education programs on poultry waste nutrient management for the poultry growers with whom it contracts as well as for poultry litter brokers and persons utilizing poultry waste;

3. Provide a toll-free hotline and advertising program to assist poultry growers with excess amounts of poultry waste to make available such waste to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes;

4. Participate in the development of a poultry waste transportation and alternative use equal matching grant program between the Commonwealth and commercial poultry processors to (i) facilitate the transportation of excess poultry waste in the possession of poultry growers with whom it contracts to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes and (ii) encourage alternative uses to land application of poultry waste;

5. Conduct research on the reduction of phosphorus in poultry waste, innovative best management practices for poultry waste, water quality issues concerning poultry waste, or alternative uses of poultry waste; and

6. Conduct research on and consider implementation of nutrient reduction strategies in the formulation of feed. Such nutrient reduction strategies may include the addition of phytase or other feed additives or modifications to reduce nutrients in poultry waste.

H. Any amendments to the plan required by subsection G shall be filed with the Board before they are implemented. After January 1, 2000, each commercial poultry processor shall implement its plan and any amendments thereto. Each commercial poultry processor shall report annually to the Board on the activities it has undertaken pursuant to its plan and any amendments thereto. Failure to comply with the provisions of this section or to implement and follow a filed plan or any amendments thereto shall constitute a violation of this section.

§ 62.1-44.17:2. Definitions.

As used in this article, unless the context requires a different meaning:

"Toxicity" means the inherent potential or capacity of a material to cause adverse effects on a living

organism, including acute or chronic effects on aquatic life, detrimental effects on human health or other adverse environmental effects.

"Toxics" or "toxic substance" means any agent or material listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act and those substances on the "toxics of concern" list of the Chesapeake Bay Program as of January 1, 1997.

§ 62.1-44.17:3. Toxics reduction in state waters; report required.

A. The Board shall (i) conduct ongoing assessments of the amounts of toxics in Virginia's waters and (ii) develop and implement a plan for the reduction of toxics in Virginia's waters.

B. The status of the Board's efforts to reduce the level of toxic substances in state waters shall be reported annually, no later than January 1, to the House Committees on Conservation and Natural Resources and Chesapeake and Its Tributaries, and the Senate Committee on Agriculture, Conservation and Natural Resources. The initial report shall be submitted no later than January 1, 1998, and shall include data from the previous five years on the trends of the reduction and monitoring of toxics in state waters. The initial report and each subsequent annual report shall include, but not be limited to, the following information:

1. Compliance data on permits that have limits for toxics
2. The number of new permits or reissued permits that have toxic limits and the location of each permitted facility;
3. The location and number of monitoring stations and the period of time that monitoring has occurred at each location;
4. A summary of pollution prevention and pollution control activities for the reduction of toxics in state waters;
5. The sampling results from the monitoring stations for the previous year;
6. The Board's plan for continued reduction of the discharge of toxics which shall include, but not be limited to, additional monitoring activities, a work plan for the pollution prevention program, and any pilot projects established for the use of innovative technologies to reduce the discharge of toxics;
7. The identification of any segments for which the Board or the Director of the Department of Environmental Quality has made a decision to

conduct additional evaluation or monitoring. Information regarding these segments shall include, at a minimum, the geographic location of the stream segment within a named county or city; and 8. The identification of any segments that are designated as toxic impaired waters as defined in § 62.1-44.19:4 and any plans to address the impairment.

§ 62.1-44.17:4. Evaluation of toxics removal and remediation technology.

The Board shall conduct a review of instream toxics removal or remediation technologies, a minimum of once every five years, to determine whether (i) new technologies for responding to toxic contamination will necessitate any changes in the selection of removal or remediation strategies previously included as provisions of Board agreements and (ii) any of the Department of Environmental Quality's current strategies for responding to toxic contamination need to be revised.

§ 62.1-44.18. Sewerage systems, etc., under supervision of Board and Department of Environmental Quality; Board to regulate design specification and plans.

A. All sewerage systems and sewage treatment works shall be under the general supervision of the Board.

B. The Department of Environmental Quality shall, when requested, consult with and advise the authorities of cities, towns, sanitary districts, and any owner having or intending to have installed sewage treatment works as to the most appropriate type of treatment, but the Department shall not prepare plans, specifications, or detailed estimates of cost for any improvement of an existing or proposed sewage treatment works.

C. It shall be the duty of the owner of any such sewerage system or sewage treatment works from which sewage is being discharged into any state waters to furnish, when requested by the Board, information with regard to the quantities and character of the raw and treated sewage and the operation results obtained in the removal and disposal of organic matter and other pertinent information as is required.

D. The regulations of the Board shall govern the collection, conveyance, treatment and disposal of sewage. Such regulations shall be designed to

protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit prior to the construction, installation, modification or operation of a sewerage system or treatment;
  2. Criteria for the granting or denial of such permits;
  3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works;
  4. Standards specifying the minimum distance between sewerage systems or treatment works and:
    - (a) Public and private wells supplying water for human consumption,
    - (b) Lakes and other impounded waters,
    - (c) Streams and rivers,
    - (d) Shellfish waters,
    - (e) Ground waters,
    - (f) Areas and places of human habitation, and
    - (g) Property lines;
  5. Standards as to the adequacy of an approved water supply;
  6. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth; and
  7. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted through the then current sewage handling and disposal regulations, to treat and dispose of sewage as effectively as approved methods.
- E. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

§ 62.1-44.18:1.

Repealed by Acts 1991, c. 194.

§ 62.1-44.18:2. When Board may prohibit discharge; permits.

A. Notwithstanding any other provision of this chapter, the Board shall have the authority to prohibit any present or proposed discharge of sewage, industrial wastes, or other wastes into any sewerage system or treatment works when it has determined that such discharge would threaten the

public health and safety, or would substantially interfere or be incompatible with the treatment works, or would substantially interfere with usage of state waters as designated by the Board. Before making any such determination, the Board shall consult with and receive the advice of the State Department of Health.

B. The Board shall have the authority to issue permits which prescribe the terms and conditions upon which the discharge of sewage, industrial wastes, or other wastes may be made into any sewerage system or treatment works. The Board may revoke or amend any such permit for good cause and after proper hearing. Notwithstanding the requirement for notice and a hearing, the Board may, after consultation with the State Department of Health, summarily revoke or amend such permit when it determines that the permitted discharge poses a threat to the public health and safety, or is interfering substantially with the treatment works, or is grossly affecting usage of state waters as designated by the Board. In such case, the Board shall hold a hearing as soon as practicable but in no event later than twenty days after the revocation or amendment with reasonable notice to the owner as to the time and place thereof to affirm, modify, or rescind the summary revocation or amendment of such permit.

C. Nothing in this section shall limit the authority of the Board to proceed against such owner directly under § 62.1-44.23 or § 62.1-44.32 after the Board has prohibited discharge, or after the Board has summarily amended or revoked the permit which authorized the discharge. If a proposed revocation or amendment of a permit is mutually agreeable to the Board and the owner, the hearing and notice thereof may be dispensed with.

§ 62.1-44.18:3. Permit for private sewerage facility; financial assurance; violations.

A. No person shall operate a privately owned sewerage system or sewerage treatment works, including an LHS 120 facility, that discharges more than 1,000 gallons per day and less than 40,000 gallons per day without obtaining a Virginia Pollutant Discharge Elimination System permit. Any owner of such a facility shall file with the Board a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely

to occur if such facility ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the creation of a trust fund, a submission of a bond, a corporate guarantee based upon audited financial statements, or such other instruments as the Board may deem appropriate. The Board may require that such plan and instruments be updated as appropriate.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a facility that is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat. This shall not in any way limit other recourse available to the Board.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

B. The Board may waive the filing of the plan required pursuant to subsection A for any person who operates a privately owned sewerage system or sewerage treatment works that was permitted prior to January 1, 2001, and discharges less than 5,000 gallons per day upon a finding that such person has not violated any regulation or order of the Board, any condition of a permit to operate the facility, or any provision of this chapter for a period of not less than five years; provided, that no waiver may be approved by the Board until after the governing body of the locality in which the facility is located

approves the waiver after a public hearing. The Board may revoke such waiver at any time for good cause. Any person receiving a waiver who ceases operations shall, if such cessation of operation results in a significant harm or an imminent and substantial risk of significant harm to human health and the environment, be guilty of a Class 4 felony and liable to the Commonwealth and any political subdivision thereof, for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

C. The Department of Environmental Quality shall promulgate regulations necessary to carry out the provisions of this section. The Department shall identify by January 1, 2001, those facilities regulated under this section.

§ 62.1-44.19. Approval of sewerage systems and sewage treatment works.

A. Before any owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the Board an application for a certificate in scope and detail satisfactory to the Board.

B. If the application involves a system or works from which there is or is to be a discharge to state waters, the application shall be given public notice by publication once a week for two successive weeks in a newspaper of general circulation in the county or city where the certificate is applied for or by such other means as the Board may prescribe. Before issuing the certificate, the Board shall consult with and give consideration to the written recommendations of the State Department of Health pertaining to the protection of public health. Upon completion of advertising, the Board shall determine if the application is complete, and if so, shall act upon it within 21 days of such determination. The Board shall approve such application if it determines that minimum treatment requirements will be met and that the discharge will not result in violations of water quality standards. If the Board disapproves the application, it shall state what modifications or changes, if any, will be required for approval.

C. After the certificate has been issued or amended by the Board, the owner shall acquire from the Department of Environmental Quality (i)

authorization to construct the systems or works for which the Board has issued a discharge certificate and (ii) upon completion of construction, authorization to operate the sewerage system or sewage treatment works. These authorizations shall be obtained in accordance with regulations promulgated by the Board.

D. Any owner operating under a valid certificate issued by the Board who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the Department of Environmental Quality, in accordance with the provisions of subsection C of this section, within a reasonable time to meet such new requirements. The Board may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least 30 days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved, the hearing and notice may be dispensed with.

E. The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

§§ 62.1-44.19:1. , 62.1-44.19:2. Not set out.

§ 62.1-44.19:3. Prohibition on land application, marketing and distribution of sewage sludge without permit.

A. No owner of a sewage treatment works shall land apply, market or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit issued by the Board.

B. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit from the Board or a current permit from the State Health Commissioner authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution.

C. Any county, city or town may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations.

D. Not later than January 1, 2003, the Board of Health shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under subsection B, in counties, cities or towns that have adopted ordinances in accordance with subsection C. The person land applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department of Health as provided for by regulation. The fee shall not exceed the amount necessary to reimburse the direct costs for a reasonable amount of testing and for the monitoring of the land application of sewage sludge by counties, cities and towns that have adopted such ordinances. The fee shall be imposed on each dry ton of sewage sludge that is land applied in such counties, cities and towns in accordance with the regulations adopted by the Board of Health. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department of Health;
2. Retention of proceeds in a special nonreverting fund to be administered by the Department of Health; and
3. Disbursement of proceeds by the Department of Health to reimburse counties, cities and towns with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge, as provided for in this subsection.

§ 62.1-44.19:4. Definitions.

As used in this article unless the context requires a different meaning:

"Clean Water Act" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1251 et seq.).

"Fully supporting" means those waters meeting the fishable and swimmable goals of the Clean Water Act.

"Impaired waters" means those water bodies or water body segments that are not fully supporting or are partially supporting of the fishable and swimmable goals of the Clean Water Act and

include those waters identified in subdivision C 1 of § 62.1-44.19:5 as impaired waters.

"Toxic impaired waters" means those water bodies or water body segments identified as impaired due to one or more toxic substances in the reports prepared pursuant to § 62.1-44.19:5.

"Toxic substance" or "toxics" means any agent or material listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act and those substances on the "toxics of concern" list of the Chesapeake Bay Program as of January 1, 1997.

§ 62.1-44.19:5. Water quality monitoring and reporting.

A. The Board shall develop the reports required by § 1313(d) (hereafter the 303(d) report) and § 1315(b) (hereafter the 305(b) report) of the Clean Water Act in a manner such that the reports will: (i) provide an accurate and comprehensive assessment of the quality of state surface waters; (ii) identify trends in water quality for specific and easily identifiable geographically defined water segments; (iii) provide a basis for developing initiatives and programs to address current and potential water quality impairment; (iv) be consistent and comparable documents; and (v) contain accurate and comparable data that is representative of the state as a whole. The reports shall be produced in accordance with the schedule required by federal law, but shall incorporate at least the preceding five years of data. Data older than five years shall be incorporated when scientifically appropriate for trend analysis. The Board shall conduct monitoring as described in subsection B and consider and incorporate factors as described in subsection C into the reports. The Board may conduct additional monitoring and consider and incorporate other factors or information it deems appropriate or necessary.

B. Monitoring shall be conducted so that it:

1. Establishes consistent siting and monitoring techniques to ensure data reliability, comparability of data collected throughout the state, and ability to determine water quality trends within specific and easily identifiable geographically defined water segments.
2. Expands the percentage of river and stream miles monitored so as ultimately to be representative of all river and stream miles in the state according to a developed plan and schedule. Contingent upon the

appropriation of adequate funding for this purpose, the number of water quality monitoring stations and the frequency of sampling shall be increased by at least five percent annually, until such representative monitoring is achieved, and shall be expanded first to water bodies for which there is credible evidence to support an indication of impairment.

3. Monitors, according to a plan and schedule, for all substances that are discharged to state waters and that are: (i) listed on the Chesapeake Bay Program's "toxics of concern" list as of January 1, 1997; (ii) listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act; (iii) subject to water quality standards; or (iv) necessary to determine water quality conditions. The Board shall update the plan annually. The Board shall develop and implement the plan and schedule for the phasing in of monitoring required by this subdivision. The Board shall, upon development of the plan, publish notice in the Virginia Register that the plan is available for public inspection.

4. Provides, according to the plan in subdivision B 3, for increased use, as necessary, beyond 1996 levels, of sediment monitoring as well as benthic macro-invertebrate organisms and fish tissue monitoring, and provides for specific assessments of water quality based on the results of such monitoring. Contingent upon the appropriation of adequate funding for this purpose, all fish tissue and sediment monitoring for the segments identified in the water quality monitoring plan shall occur at least once every three years.

5. Increases frequency of sample collection at each chemical monitoring station to one or more per month when scientifically necessary to provide accurate and usable data. If statistical analysis is necessary to resolve issues surrounding potentially low sampling frequency, a sensitivity analysis shall be used to describe both potential overestimation and underestimation of water quality.

6. Utilizes a mobile laboratory or other laboratories to provide independent monitoring and assessments of effluent from permitted industrial and municipal establishments and other discharges to state waters.

7. Utilizes announced and unannounced inspections, and collection and testing of samples from establishments discharging to state surface waters.

C. The 303(d) report shall:

1. In addition to such other categories as the Board deems necessary or appropriate, identify geographically defined water segments as impaired if monitoring or other evidence shows: (i) violations of ambient water quality standards or human health standards; (ii) fishing restrictions or advisories; (iii) shellfish consumption restrictions due to contamination; (iv) nutrient over-enrichment; (v) significant declines in aquatic life biodiversity or populations; or (vi) contamination of sediment at levels which violate water quality standards or threaten aquatic life or human health. Waters identified as "naturally impaired," "fully supporting but threatened," or "evaluated (without monitoring) as impaired" shall be set out in the report in the same format as those listed as "impaired." The Board shall develop and publish a procedure governing its process for defining and determining impaired water segments and shall provide for public comment on the procedure.

2. Include an assessment, conducted in conjunction with other appropriate state agencies, for the attribution of impairment to point and nonpoint sources. The absence of point source permit violations on or near the impaired water shall not conclusively support a determination that impairment is due to nonpoint sources. In determining the cause for impairment, the Board shall consider the cumulative impact of (i) multiple point source discharges, (ii) individual discharges over time, and (iii) nonpoint sources.

D. The 303(d) and 305(b) reports shall:

1. Be developed in consultation with scientists from state universities prior to its submission by the Board to the United States Environmental Protection Agency.

2. Indicate water quality trends for specific and easily identifiable geographically defined water segments and provide summaries of the trends as well as available data and evaluations so that citizens of the Commonwealth can easily interpret and understand the conditions of the geographically defined water segments.

E. The Board shall refer to the 303(d) and 305(b) reports in determining proper staff and resource allocation.

F. The Board shall accept and review requests from the public regarding specific segments that should be included in the water quality monitoring plan described in subdivision B 3 of this section. Each

request received by December 31 of the preceding year shall be reviewed when the agency develops or updates the water quality monitoring plan. Such requests shall include (i) a geographical description of the waterbody recommended for monitoring, (ii) the reason the monitoring is requested, and (iii) any water quality data that the petitioner may have collected or compiled. The Board shall respond in writing, either approving the request or stating the reasons a request under this subsection has been denied, by April 30 for requests received by December 31 of the preceding year. Such determination shall not be a regulation or case decision as defined by § 9-6.14:4.

§ 62.1-44.19:6. Citizen right-to-know provisions.

A. The Board, based on the information in the 303(d) and 305(b) reports, shall:

1. Request the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission to post notices at public access points to all toxic impaired waters. The notice shall be prepared by the Board and shall contain (i) the basis for the impaired designation and (ii) a statement of the potential health risks provided by the Virginia Department of Health. The Board shall annually notify local newspapers, and persons who request notice, of any posting and its contents. The Board shall coordinate with the Virginia Marine Resources Commission and the Department of Game and Inland Fisheries to assure that adequate notice of posted waters is provided to those purchasing hunting and fishing licenses.
2. Maintain a "citizen hot-line" for citizens to obtain, either telephonically or electronically, information about the condition of waterways, including information on toxics, toxic discharges, permit violations and other water quality related issues.
3. Make information regarding the presence of toxics in fish tissue and sediments available to the public on the Internet and through other reasonable means for at least five years after the information is received by the Department of Environmental Quality. The Department of Environmental Quality shall post on the Internet and in the Virginia Register on or about January 1 and July 1 of each year an announcement of any new data that has been received over the past six months and shall

make a copy of the information available upon request.

B. The Board shall provide to a local newspaper the discharge information reported to the Director of the Department of Environmental Quality pursuant to § 62.1-44.5, when the Virginia Department of Health determines that the discharge may be detrimental to the public health or the Board determines that the discharge may impair beneficial uses of state waters.

§ 62.1-44.19:7. Plans to address impaired waters.

A. The Board shall develop and implement a plan to achieve fully supporting status for impaired waters, except when the impairment is established as naturally occurring. The plan shall include the date of expected achievement of water quality objectives, measurable goals, the corrective actions necessary, and the associated costs, benefits, and environmental impact of addressing impairment and the expeditious development and implementation of total maximum daily loads when appropriate and as required pursuant to subsection C.

B. The plan required by subsection A shall include, but not be limited to, the promulgation of water quality standards for those substances: (i) listed on the Chesapeake Bay Program's "toxics of concern" list as of January 1, 1997; (ii) listed by the USEPA Administrator pursuant to § 307 (a) of the Clean Water Act; or (iii) identified by the Board as having a particularly adverse effect on state water quality or living resources. The standards shall be promulgated pursuant to a schedule established by the Board following public notice and comment. Standards shall be adopted according to applicable federal criteria or standards unless the Board determines that an additional or more stringent standard is necessary to protect public health, aquatic life or drinking water supplies.

C. The plan required by subsection A shall, upon identification by the Board of impaired waters, establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Board shall develop and implement pursuant to a schedule total maximum daily loads of pollutants that may enter the water for each impaired water body as required by the Clean Water Act.

D. The plan required by subsection A shall, upon identification by the Board of toxic -impaired

waters, include provisions as required by § 62.1-44.19:8.

§ 62.1-44.19:8. Control of discharges to toxic-impaired water.

Owners of establishments that discharge toxics to toxic-impaired waters shall evaluate the options described in §§ 10.1-1425.10 and 10.1-1425.11 in determining the appropriate means to control such discharges. Prior to issuing or reissuing any permit for the discharge of toxics to toxic-impaired waters, the Board shall review and consider the owner's evaluation of the options in determining the conditions and limitations of the permit.

§ 62.1-44.19:9. Transmission of toxics information.

The Virginia Department of Health and the Department of Environmental Quality shall cooperate, in accordance with a memorandum of agreement to be signed by the Commissioner of Health and the Director of the Department of Environmental Quality, to ensure the timely transmission and evaluation of reliable water quality and fish advisory information. The memorandum of agreement, at a minimum, shall include specific time frames for the (i) transfer of information from the Department of Environmental Quality to the Virginia Department of Health; (ii) assessments and recommendations to be made by the Virginia Department of Health, when the toxicity of the substance is known; and (iii) transmission of the Virginia Department of Health's assessments and recommendations to the Department of Environmental Quality and the dissemination of the assessments and recommendations to the public. Copies of the proposed memorandum of agreement shall be provided to the Chairmen of the House Committees on Conservation and Natural Resources and Chesapeake and Its Tributaries and the Senate Committee on Agriculture, Conservation and Natural Resources at least one month prior to final signature by the heads of the two agencies but no later than December 1, 2000. Any revision of the agreement shall be submitted to the chairmen of these committees no later than one month prior to adoption by the Virginia Department of Health and the Department of Environmental Quality.

§ 62.1-44.19:10. Assessment of sources of toxic contamination.

The Department of Environmental Quality shall develop a written policy describing the circumstances or factors that indicate the need to conduct an assessment of potential sources of toxic contamination. The Department of Environmental Quality shall conduct source assessments as provided for in the written policy and shall develop strategies to remediate the contamination. A copy of the written policy shall be provided to the Chairmen of the House Committees on Conservation and Natural Resources and Chesapeake and Its Tributaries and the Senate Committee on Agriculture, Conservation and Natural Resources no later than one month prior to the adoption of the policy but no later than December 1, 2000. Any revision of the policy shall be submitted to the chairmen of these committees no later than one month prior to the adoption of the revision by the Department.

§ 62.1-44.19:11. Citizen water quality monitoring program.

The Department of Environmental Quality shall establish a citizen water quality monitoring program to provide technical assistance and may provide grants to support citizen water quality monitoring groups if (i) the monitoring is done pursuant to a memorandum of agreement with the Department, (ii) the project or activity is consistent with the Department of Environmental Quality's water quality monitoring program, (iii) the monitoring is conducted in a manner consistent with the Virginia Citizens Monitoring Methods Manual, and (iv) the location of the water quality monitoring activity is part of the water quality control plan required under § [62.1-44.19:5](#). The results of such citizen monitoring shall not be used as evidence in any enforcement action.

§ 62.1-44.20. Right to entry to obtain information, etc.

Any duly authorized agent of the Board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.

§ 62.1-44.21. Information to be furnished to Board. The Board may require every owner to furnish when requested such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter. The Board shall not at any time disclose to any person other than appropriate officials of the Environmental Protection Agency pursuant to the requirements of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) any secret formulae, secret processes, or secret methods other than effluent data used by any owner or under that owner's direction.

§ 62.1-44.22. Private rights not affected. The fact that any owner holds or has held a certificate issued under this chapter shall not constitute a defense in any civil action involving private rights.

§ 62.1-44.23. Enforcement by injunction, etc. Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water quality standard, pretreatment standard, or requirement of or any provision of any certificate issued by the Board, or by the owner of a publicly owned treatment works issued to an industrial user, or any provisions of this chapter may be compelled in a proceeding instituted in any appropriate court by the Board to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

§ 62.1-44.23:1. Intervention of Commonwealth in actions involving surface water withdrawals. The Board, in representing the public's interest, shall have the authority and standing to intervene as an interested party in any civil action, including actions both within and without the Commonwealth, pertaining to the withdrawal of any of the surface waters of the Commonwealth.

§ 62.1-44.24. Testing validity of regulations; judicial review.

(1) The validity of any regulation may be determined through judicial review in accordance

with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

(2) [Repealed.]

(3) An appeal may be taken from the decision of the court to the Court of Appeals as provided by law.

§ 62.1-44.25. Right to hearing.

Any owner under §§ 62.1-44.16, 62.1-44.17, and 62.1-44.19 aggrieved by any action of the Board taken without a formal hearing, or by inaction of the Board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the Board. In cases involving actions of the Board, such petition must be filed within thirty days after notice of such action is mailed to such owner by certified mail.

§ 62.1-44.26. Hearings.

A. The hearings held under this chapter may be conducted by the Board itself at a regular or special meeting of the Board, or by at least one member of the Board designated by the chairman to conduct such hearings on behalf of the Board at any other time and place authorized by the Board.

B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board. Depositions may be taken and read as in actions at law.

C. The Board shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Board in the manner prescribed in § 9-6.14:13. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

§ 62.1-44.27. Rules of evidence in hearings.

In all hearings under this chapter:

(1) All relevant and material evidence shall be received, except that (a) the rules relating to privileged communications and privileged topics shall be observed; (b) hearsay evidence shall be received only if the declarant is not readily available as a witness; and (c) secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a witness or document is readily available, the Board or hearing officer shall balance the

importance of the evidence against the difficulty of obtaining it, and the more important the evidence is the more effort should be made to produce the eyewitness or the original document.

(2) All reports of inspectors and subordinates of the Board and other records and documents in the possession of the Board bearing on the case shall be introduced by the Board at the hearing.

(3) Subject to the provisions of subdivision (1) of this section every party shall have the right to cross-examine adverse witnesses and any inspector or subordinate of the Board whose report is in evidence and to submit rebuttal evidence.

(4) The decision of the Board shall be based only on evidence received at the hearing and matters of which a court of record could take judicial notice.

§ 62.1-44.28. Decisions of the Board in hearings pursuant to §§/n 62.1-44.15 and 62.1-44.25. To be valid and operative, the decision by the Board rendered pursuant to hearings under subdivisions (8a), (8b), and (8c) of §§ 62.1-44.15 and 62.1-44.25 must be reduced to writing and contain the explicit findings of fact and conclusions of law upon which the decision of the Board is based and certified copies thereof must be mailed by certified mail to the parties affected by it.

§ 62.1-44.29. Judicial review.

Any owner aggrieved by, or any person who has participated, in person or by submittal of written comments, in the public comment process related to, a final decision of the Board under §§ 62.1-44.15 (5), 62.1-44.15 (8a), (8b), and (8c), 62.1-44.15:5, 62.1-44.16, 62.1-44.17, 62.1-44.19 or § 62.1-44.25, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and

(iii) such injury will likely be redressed by a favorable decision by the court.

§ 62.1-44.30. Appeal to Court of Appeals.

From the final decision of the circuit court an appeal may be taken to the Court of Appeals as provided in § 17.1-405.

§ 62.1-44.31. Violation of special order or certificate or failure to cooperate with Board.

It shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter, or to fail to comply with a pretreatment condition incorporated into the permit issued to it by the owner of a publicly owned treatment works or to fail to comply with any pretreatment standard or pretreatment requirement, or to discharge sewage, industrial waste or other waste in violation of any condition contained in a certificate issued by the Board or in excess of the waste covered by such certificate, or to fail or refuse to furnish information, plans, specifications or other data reasonably necessary and pertinent required by the Board under this chapter.

For the purpose of this section, the term "owner" shall mean, in addition to the definition contained in § 62.1-44.3, any responsible corporate officer so designated in the applicable discharge permit.

§ 62.1-44.32. Penalties.

(a) Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any order of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$25,000 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the

treasury of the county, city, or town in which the violation occurred, to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its agent, may initiate a civil action against any user or users of a waste water treatment facility to recover that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of such user or users in violation of any applicable federal, state, or local requirements.

(b) Any person who willfully or negligently violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not less than \$2,500 nor more than \$25,000, either or both. Any person who knowingly violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

(c) Any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1,000,000 or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

(d) Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

§ 62.1-44.33. Board to make rules and regulations. The State Water Control Board is empowered and directed to adopt and promulgate all necessary rules and regulations for the purpose of controlling the discharge of sewage and other wastes from both documented and undocumented boats and vessels on all navigable and nonnavigable waters within this Commonwealth. No such regulation shall impose restrictions which are more restrictive than the regulations applicable under federal law; provided, however, the Board may adopt such regulations as are reasonably necessary with respect to vessels regularly berthed in marinas or other places where vessels are moored, in order to limit or avoid the closing of shellfish grounds. The regulations controlling the discharge of sewage and other wastes from both documented and undocumented boats and vessels shall become effective no later than July 1, 2002. Documented and undocumented boats and vessels are prohibited from discharging into the Chesapeake Bay and the tidal portions of its tributaries sewage that has not been treated by a Coast Guard-approved Marine Sanitation Device (MSD Type 1 or Type 2); however, the discharge of treated or untreated sewage by such boats and vessels is prohibited in areas that have been designated as no discharge

zones by the United States Environmental Protection Agency.

In formulating rules and regulations pursuant to this section, the Board shall consult with the State Department of Health, the Department of Game and Inland Fisheries and the Marine Resources Commission for the purpose of coordinating such rules and regulations with the activities of such agencies.

Violation of such rules and regulations and violations of the prohibitions created by this section on the discharge of treated and untreated sewage from documented and undocumented boats and vessels shall, upon conviction, be a Class 1 misdemeanor. Every law-enforcement officer of this Commonwealth and its subdivisions shall have the authority to enforce the rules and regulations adopted and promulgated under the provisions of this section and to enforce the prohibitions on the discharge of treated and untreated sewage created by this section.

§ 62.1-44.34. Repealed by Acts 1978, c. 816.

§§ 62.1-44.34:1 through 62.1-44.34:6. Repealed by Acts 1990, c. 917.

§ 62.1-44.34:7. Repealed by Acts 1989, c. 627.

§ 62.1-44.34:8. Definitions.

The following terms as used in this article shall have the meanings ascribed to them:

"Aboveground storage tanks" means any one or combination of tanks, including pipes used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended, and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and

petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner of an underground storage tank" means:

1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank for the storage, use, or dispensing of regulated substances; and

2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or

2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from

an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time a release is reported to the Board.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground. Exemptions from this definition and regulations promulgated under this article include:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;
2. Tanks used for storing heating oil for consumption on the premises where stored;
3. Septic tanks;
4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this subdivision;
5. Surface impoundments, pits, ponds, or lagoons;
6. Storm water or waste water collection systems;
7. Flow-through process tanks;
8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

§ 62.1-44.34:9. Powers and duties of Board.

The Board is responsible for carrying out the provisions of this article and compatible provisions of federal acts and is authorized to:

1. Enforce the interim prohibition provisions in § 9003 (g) of United States Public Law 98-616. Until state underground storage tank standards promulgated by regulation become effective, the Board shall enforce the federal interim standard which prohibits installation of an underground storage tank for the purpose of storing regulated substances unless such tank:

- a. Will prevent releases due to corrosion or structural failure for the operational life of the tank;
- b. Is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and
- c. The material used in the construction or lining of the tank is compatible with the substance to be stored.

2. Exercise general supervision and control over underground storage tank activities in this Commonwealth.
3. Provide technical assistance and advice concerning all aspects of underground storage tank management.
4. Collect such data and information as may be necessary to conduct the state underground storage tank program.
5. Apply for such federal funds as may become available under federal acts and transmit such funds to appropriate persons.
6. Require notification by owners of underground storage tanks in accordance with the provisions of § 9002 of United States Public Law 98-616.
7. Require notification by owners of property who have actual knowledge of underground storage tanks on such property that were taken out of service before January 1, 1974; however, the civil penalties specified in § 9006 (d) of United States Public Law 98-616 shall not apply to the foregoing notification requirement.
8. Promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations.
9. Require the owner or operator of an underground storage tank who is the responsible person for the release to undertake corrective action for any release of petroleum or any other regulated substance when the Board determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs, regardless of when the release occurred; or undertake corrective action for any release of petroleum or any other regulated substance into the environment from an underground storage tank if such action is necessary, in the judgment of the Board, to protect human health and the environment.

10. Seek recovery of costs incurred, excluding moneys expended from the Virginia Petroleum Storage Tank Fund which are governed by § 62.1-44.34:11, for undertaking corrective action or enforcement action with respect to the release of a regulated substance from an underground storage tank or oil from a facility.

§ 62.1-44.34:10. Definitions.

The following terms as used in this article shall have the meanings ascribed to them:

"Aboveground storage tanks" means any one or combination of tanks, including pipes used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended, and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.

"Fund" means the Virginia Petroleum Storage Tank Fund.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator of a facility" means any person who owns, operates, rents or otherwise exercises control over or responsibility for a facility.

"Operator of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner of an underground storage tank" means:

1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and

2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or

2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees F and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time the release is reported to the Board.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground. Exemptions from this definition include:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;
2. Tanks used for storing heating oil for consumption on the premises where stored;
3. Septic tanks;
4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this definition;
5. Surface impoundments, pits, ponds, or lagoons;
6. Storm water or waste water collection systems;
7. Flow-through process tanks;
8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

§ 62.1-44.34:11. Virginia Petroleum Storage Tank Fund.

A. The Virginia Petroleum Storage Tank Fund is hereby established as a nonlapsing revolving fund to be used by the Board for (i) administering the state regulatory programs authorized by Articles 9, 10 and 11 (§ 62.1-44.34:8 et seq.) of this chapter, (ii) demonstrating financial responsibility, and (iii) other purposes as provided for by applicable provisions of state and federal law. All expenses, costs, civil penalties, charges and judgments recovered by or on behalf of the Board pursuant to Articles 9, 10 and 11 of this chapter, and all moneys received as reimbursement in accordance with applicable provisions of federal law and all fees collected pursuant to §§ 62.1-44.34:19.1 and 62.1-44.34:21, shall be deposited into the Fund. Interest earned on the Fund shall be credited to the Fund. No moneys shall be credited to the balance in the Fund until they have been received by the Fund. The Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. The Fund shall be administered by the Board consistent with the provisions of Subtitle I of the federal Solid Waste Disposal Act (P.L. 98-616, §

9001 et seq.) and any approved state underground storage tank program and in accordance with the following provisions:

1. The Fund shall be maintained in a separate account. An accounting of moneys received and disbursed shall be kept, and furnished upon request to the Governor or the General Assembly.
2. Disbursements from the Fund may be made only for the following purposes:
  - a. Reasonable and necessary per occurrence costs incurred for releases reported after December 22, 1989, by the owner or operator who is the responsible person, in taking corrective action for any release of petroleum into the environment from an underground storage tank which are in excess of the per occurrence financial responsibility requirement imposed in subsection B of § 62.1-44.34:12, up to one million dollars.
  - b. Reasonable and necessary per occurrence costs incurred for releases reported after December 22, 1989, by the owner or operator who is the responsible person for compensating third parties, including payment of judgments for bodily injury and property damage caused by the release of petroleum into the environment from an underground storage tank, which are in excess of the per occurrence financial responsibility requirement imposed by subsection B of § 62.1-44.34:12, up to one million dollars. Disbursements for third party claims shall be subordinate to disbursements for the corrective action costs in subdivision A 2 a of this section.
  - c. Reasonable and necessary per occurrence costs incurred by an operator whose net annual profits from all facilities do not exceed ten million dollars for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 as follows: (i) for an operator of a facility with a storage capacity less than 25,000 gallons, per occurrence costs in excess of \$2,500 up to one million dollars; (ii) for an operator of a facility with a storage capacity from 25,000 gallons to 100,000 gallons, per occurrence costs in excess of \$5,000 up to one million dollars; (iii) for an operator of a facility with a storage capacity from 100,000 gallons to four million gallons, per occurrence costs in excess of five cents per gallon of aboveground storage capacity up to one million dollars; and (iv) for an operator of a facility with a storage capacity greater than four million gallons, per occurrence

costs in excess of \$200,000 up to one million dollars. For purposes of this subdivision (2c), the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for the facility from which the discharge occurs.

d. Reasonable and necessary per occurrence costs incurred by an operator whose net annual profits from all facilities exceed ten million dollars for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 as follows: (i) for an operator of a facility with a storage capacity less than four million gallons, per occurrence costs in excess of \$200,000 up to one million dollars; (ii) for an operator of a facility with a storage capacity from four million gallons to twenty million gallons, per occurrence costs in excess of five cents per gallon of aboveground storage capacity up to one million dollars; and (iii) an operator of a facility with a storage capacity greater than twenty million gallons shall have no access to the Fund. For purposes of this subdivision, the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for all facilities located within the Commonwealth.

e. Costs incurred by the Board in taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank or from underground storage tanks exempted in subdivisions 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10, if such action is necessary, in the judgment of the Board, to protect human health and the environment.

f. Costs of corrective action up to one million dollars for any release of petroleum into the environment from underground storage tanks or from underground storage tanks exempted in subdivisions 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10 (i) whose owner or operator cannot be determined by the Board within ninety days; or (ii) whose owner or operator is incapable, in the judgment of the Board, of carrying out such corrective action properly.

g. Costs of corrective action incurred by the Board for any release of petroleum into the environment from underground storage tanks which are

otherwise specifically listed in exemptions 1 through 9 of the definition of an underground storage tank in § 62.1-44.34:10.

h. Reasonable and necessary per occurrence costs of corrective action incurred for releases reported after December 22, 1989, by the owner or operator in excess of \$500 up to one million dollars for any release of petroleum into the environment from an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in § 62.1-44.34:10 and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

i. The "cost share" of corrective action with respect to any release of petroleum into the environment from underground storage tanks undertaken under a cooperative agreement with the Administrator of the United States Environmental Protection Agency, as determined by the Administrator of the United States Environmental Protection Agency in accordance with the provisions of § 9003 (h) (7) (B) of the United States Public Law 98-616 (as amended in 1986 by United States Public Law 99-662).

j. Administrative costs incurred by the Board in carrying out the provisions of regulatory programs authorized by Articles 9, 10, and 11 (§ 62.1-44.34:8 et seq.) of this chapter.

k. All costs and expenses, including but not limited to personnel, administrative, and equipment costs and expenses, directly incurred by the Board or by any other state agency acting at the direction of the Board, in and for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title.

l. Procurement, maintenance and replenishment of materials, equipment and supplies, in such quantities and at such locations as the Board may deem necessary, for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title.

m. Costs and expenses, incurred by the Board or by any other state agency, acting at the direction of the Board, for the protection, cleanup and rehabilitation of waterfowl, wildlife, shellfish beds and other natural resources, damaged or threatened by the discharge of oil, owned by the Commonwealth or held in trust by the Commonwealth for the benefit of its citizens.

n. Refund of cash deposits held in escrow pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title and reasonable interest thereon, and refunds of fees collected pursuant to § 62.1-44.34:21 as authorized by this chapter.

o. Administrative costs incurred by the Department of Motor Vehicles in the collection of fees specified in § 62.1-44.34:13.

p. Reasonable and necessary costs incurred by the Virginia Department of Transportation in taking corrective action on property acquired for transportation purposes. If the costs of taking corrective action are recovered, in whole or in part, from any responsible party, the recovery shall be deposited to the Fund.

q. Reasonable and necessary per occurrence costs for releases reported after December 22, 1989, in taking corrective action for any release of petroleum into the environment from an underground storage tank, which are in excess of \$5,000 up to one million dollars, by any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

3. No funds shall be paid for reimbursement of costs incurred for corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in § 62.1-44.34:10, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

4. No funds shall be paid for reimbursement of costs incurred prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13

5. No funds shall be paid for reimbursement of moneys expended for payment of interest or other finance charges on loans which were used for corrective action or containment and cleanup of a release by a person in subdivisions A 3 or A 4 of this section, except for an owner or operator which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, provided that: (i) the loan moneys have been paid for corrective action that

was pre-approved by the Board, (ii) any and all disbursements received from the Fund shall be paid against the loan or for interest and points, and (iii) the payment of interest and points under this subdivision shall be limited to five years from the date the release is reported to the Board. The Board may extend the period for payment of interest and points if, in the judgment of the Board, such action is necessary. The restrictions imposed in clauses (i), (ii) and (iii) shall not apply to loans made prior to June 1, 1992, to an owner or operator exempt from taxation under § 501 (c) (3) of the Internal Revenue Code.

6. No funds shall be paid for penalties, charges or fines imposed pursuant to any applicable local, state or federal law.

7. No funds shall be paid for containment and cleanup costs that are reimbursed or are reimbursable from other applicable state or federal programs.

8. No funds shall be paid if the operator of the facility has not complied with applicable statutes or regulations governing reporting, prevention, containment and cleanup of a discharge of oil.

9. No funds shall be paid if the owner or operator of an underground storage tank or the operator of an aboveground storage tank facility fails to report a release of petroleum or a discharge of oil to the Board as required by applicable statutes, laws or regulations.

10. No funds shall be paid from the Fund unless a reimbursement claim has been filed with the Board within two years from the date the Board issues a site remediation closure letter for that release or July 1, 2000, whichever date is later.

11. The Fund balance shall be maintained at a level sufficient to ensure that the Fund can serve as a financial responsibility demonstration mechanism for the owners and operators of underground storage tanks. Any disbursements made by the Board pursuant to subdivision 2 of this subsection may be temporarily reduced or delayed, in whole or in part, if such action is necessary, in the judgment of the Board, to maintain the Fund balance.

B. The Board shall seek recovery of moneys expended from the Fund for corrective action under this section where the owner or operator of an underground storage tank has violated substantive environmental protection rules and regulations

pertaining to underground storage tanks which have been promulgated by the Board.

C. For costs incurred for corrective action as authorized in subdivision A 2 e of this section, the Board shall seek recovery of moneys from the owner or operator of an underground storage tank up to the minimum financial responsibility requirement imposed on the owner or operator in subsection B of § 62.1-44.34:12 if any, or seek recovery of such costs incurred from any available federal government funds.

D. For costs incurred for corrective action taken resulting from a release from underground storage tanks specified in subdivision A 2 f of this section, the Board shall seek recovery of moneys from the owner or operator up to the minimum financial responsibility requirement imposed on the owner or operator in subsection B of § 62.1-44.34:12 if any, or seek recovery of such costs incurred from any available federal government funds.

E. The Board shall seek recovery of moneys expended from the Fund for costs incurred for corrective action as authorized in subdivision A 2 g of this section or seek recovery of such costs incurred from any available federal government funds. However, the Board shall not seek recovery of moneys expended from the Fund for costs of corrective action in excess of \$500 from the owner or operator of an underground tank exempted in subdivisions 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10 and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

F. The Board shall have the right of subrogation for moneys expended from the Fund as compensation for personal injury, death or property damage against any person who is liable for such injury, death or damage.

G. The Board shall promptly initiate an action to recover all costs and expenses incurred by the Commonwealth for investigation, containment and cleanup of a discharge of oil or threat of discharge against any person liable for a discharge of oil as specified in Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title; however, the Board shall seek recovery from an operator of expenditures from the Fund only in the amount by which such expenditures exceed the amount authorized to be

disbursed to the operator under subdivisions A 2 through A 8 of this section.

§ 62.1-44.34:12. Financial responsibility.

A. The Board shall adopt regulations that conform to the federal financial responsibility requirements of 42 U.S.C. § 6991b(d) and any regulations adopted thereunder. Owners and operators of underground storage tanks shall annually demonstrate and maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage in accordance with regulations adopted by the Board. Financial responsibility established in accordance with regulations adopted by the Board may be demonstrated by any combination of the following mechanisms: insurance, guarantee, surety bond, letter of credit, irrevocable trust fund, qualification as a self-insurer, or the Fund. The Fund may be used as a mechanism to demonstrate the portion of the federal financial responsibility requirements that are in excess of the state financial responsibility requirements contained in subsection B.

B. State requirements for owners and operators of underground storage tanks for maintaining evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage shall be as follows:

1. Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$5,000 per occurrence for taking corrective action and \$15,000 per occurrence for compensating third parties, with an annual aggregate of \$20,000;
2. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$10,000 per occurrence for taking corrective action and \$30,000 per occurrence for compensating third parties, with an annual aggregate of \$40,000;
3. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$20,000 per occurrence for taking corrective action and \$60,000 per occurrence for compensating third parties, with an annual aggregate of \$80,000;

4. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$30,000 per occurrence for taking corrective action and \$120,000 per occurrence for compensating third parties, with an annual aggregate of \$150,000;

5. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$50,000 per occurrence for taking corrective action and \$150,000 per occurrence for compensating third parties, with an annual aggregate of \$200,000; and

6. Other owners and operators, \$50,000 per occurrence for taking corrective action and \$150,000 per occurrence for compensating third parties, with an annual aggregate of \$200,000.

C. Any claim arising out of conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the person guaranteeing or providing evidence of financial responsibility. In such a case, the person against whom the claim is made shall be entitled to invoke all rights and defenses which would have been available to the owner or operator had such action been brought directly against the owner or operator.

This section shall not limit any other state or federal statutory, contractual, or common law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This section does not diminish the liability of any person under § 107 or § 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or other applicable law.

The Board shall adopt regulations specifying compliance dates for the demonstration of financial responsibility required by this section, in accordance with the compliance dates established in federal regulations by the United States Environmental Protection Agency.

D. Owners and operators of underground storage tanks who are unable to demonstrate financial responsibility in the minimum amounts specified in subsection B, and operators of facilities who are unable to demonstrate financial responsibility in amounts established pursuant to subsection D of § 62.1-44.34:16, may establish an insurance pool in order to demonstrate such financial responsibility.

Any contract establishing such an insurance pool shall provide:

1. For election by pool members of a governing authority for the pool, which may be a board of directors, a majority of whom shall be elected or appointed officials of pool members.

2. A financial plan setting forth in general terms:

a. The insurance coverages to be offered by the insurance pool, applicable deductible levels, and the maximum level of claims which the pool will self-insure;

b. The amount of cash reserves to be set aside for the payment of claims;

c. The amount of insurance to be purchased by the pool to provide coverage over and above the claims which are not to be satisfied directly from the pool's resources; and

d. The amount, if any, of aggregate excess insurance coverage to be purchased and maintained in the event that the insurance pool's resources are exhausted in a given fiscal period.

3. A plan of management which provides for all of the following:

a. The means of establishing the governing authority of the pool;

b. The responsibility of the governing authority for fixing contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administration of the pool in the event of termination or insolvency;

c. The basis upon which new members may be admitted to, and existing members may leave, the pool;

d. The identification of funds and reserves by exposure areas; and

e. Such other provisions as are necessary or desirable for the operation of the pool.

E. The formation and operation of an insurance pool under this section shall be subject to approval by the State Corporation Commission which may, after notice and hearing, establish reasonable requirements and regulations for the approval and monitoring of such pools, including prior approval of pool administrators and provisions for periodic examinations of financial condition.

The State Corporation Commission may disapprove an application for the formation of an insurance pool, and may suspend or withdraw such approval whenever it finds that such applicant or pool:

1. Has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Commission or its representative;
2. Has refused, or its officers or agents have refused, to furnish satisfactory evidence of its financial and business standing or solvency;
3. Is insolvent, or is in such condition that its further transaction of business in this Commonwealth is hazardous to its members and creditors in this Commonwealth, and to the public;
4. Has refused or neglected to pay a valid final judgment against it within sixty days after its rendition;
5. Has violated any law of this Commonwealth or has violated or exceeded the powers granted by its members;
6. Has failed to pay any fees, taxes or charges imposed in this Commonwealth within sixty days after they are due and payable, or within sixty days after final disposition of any legal contest with respect to liability therefor; or
7. Has been found insolvent by a court of any other state, or by the Insurance Commissioner or other proper officer or agency of any other state, and has been prohibited from doing business in such state.

§ 62.1-44.34:13. (Effective until January 1, 2001)  
Levy of fee for Fund maintenance.

A. In order to generate revenue for the Fund and to make the Fund available to owners and operators of underground storage tanks and to owners and operators of aboveground storage tanks, there shall be imposed a fee of one-fifth of one cent on each gallon of the following fuels sold and delivered or used in the Commonwealth: motor fuel; aviation motor fuel; diesel fuel; dyed diesel fuel and heating oil, as such terms are defined in § 58.1-2101, except:

1. Motor fuel, diesel fuel, dyed diesel fuel or heating oil sold to the United States or its departments, agencies and instrumentalities thereof;
2. Motor fuel sold to a duly licensed dealer; or
3. Diesel fuel, dyed diesel fuel or heating oil sold to a licensed supplier.

Any dealer or supplier, as defined in § 58.1-2101, or any other person licensed with the Department of Motor Vehicles to sell such fuels in the Commonwealth shall be liable for payment thereof to the Department of Motor Vehicles.

B. The fee shall be remitted to the Department of Motor Vehicles in the same manner and subject to the same provisions specified in Article 4 (§ 58.1-2128 et seq.) of Chapter 21 of Title 58.1, except § 58.1-2129 shall not apply.

C. Any person who purchases motor fuel, aviation motor fuel, dyed diesel fuel, diesel fuel, or heating oil upon which the fee imposed by this article has been paid shall be entitled to a refund for the amount of the fee paid if such person subsequently transports and delivers such fuel to another state, district or country for sale or use outside the Commonwealth. The application for refund shall be accompanied by a paid ticket or invoice covering the sales of such fuel and shall be filed with the Commissioner of the Department of Motor Vehicles within one year of the date of payment of the fee for which the refund is claimed. A refund shall not be granted pursuant to this article on any fuel which is transported and delivered outside the Commonwealth in the fuel supply tank of a highway vehicle or aircraft.

D. To maintain the Fund at an appropriate operating level, the Commissioner of the Department of Motor Vehicles shall increase the fee to three-fifths of one cent when notified by the Comptroller that the Fund has been or is likely in the near future to be reduced below three million dollars, exclusive of fees collected pursuant to § 62.1-44.34:21, and he shall reinstitute the one-fifth of one cent fee when the Comptroller notifies him that the Fund has been restored to twelve million dollars exclusive of fees collected pursuant to § 62.1-44.34:21.

E. The Comptroller shall report to the Commissioner quarterly regarding the Fund expenditures and Fund total for the preceding quarter.

F. Revenues from such fees, less refunds and administrative expenses, shall be deposited in the Fund and used for the purposes set forth in this article.

§ 62.1-44.34:13. (Effective January 1, 2001) Levy of fee for Fund maintenance

A. In order to generate revenue for the Fund and to make the Fund available to owners and operators of underground storage tanks and to owners and operators of aboveground storage tanks, there shall be imposed a fee of one-fifth of one cent on each gallon of the following fuels sold and delivered or

used in the Commonwealth: gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil, as such terms are defined in § 58.1-2201; however, such fee shall not be imposed on (i) gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered to the United States or its departments, agencies and instrumentalities for the exclusive use by the United States or its departments, agencies and instrumentalities, (ii) alternative fuel as defined in § 58.1-2201, or (iii) aviation jet fuel as defined in § 58.1-2201.

B. The fee shall be remitted to the Department of Motor Vehicles in the same manner and subject to the same provisions specified in Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1, except § 58.1-2236 shall not apply.

C. Any person who purchases gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, or heating oil upon which the fee imposed by this article has been paid shall be entitled to a refund for the amount of the fee paid if such person subsequently transports and delivers such fuel to another state, district or country for sale or use outside the Commonwealth. The application for refund shall be accompanied by a paid ticket or invoice covering the sales of such fuel and shall be filed with the Commissioner of the Department of Motor Vehicles within one year of the date of payment of the fee for which the refund is claimed. A refund shall not be granted pursuant to this article on any fuel which is transported and delivered outside the Commonwealth in the fuel supply tank of a highway vehicle or aircraft.

D. To maintain the Fund at an appropriate operating level, the Commissioner of the Department of Motor Vehicles shall increase the fee to three-fifths of one cent when notified by the Comptroller that the Fund has been or is likely in the near future to be reduced below three million dollars, exclusive of fees collected pursuant to § 62.1-44.34:21, and he shall reinstitute the one-fifth of one cent fee when the Comptroller notifies him that the Fund has been restored to twelve million dollars exclusive of fees collected pursuant to § 62.1-44.34:21.

E. The Comptroller shall report to the Commissioner quarterly regarding the Fund expenditures and Fund total for the preceding quarter.

F. Revenues from such fees, less refunds and administrative expenses, shall be deposited in the Fund and used for the purposes set forth in this article.

#### § 62.1-44.34:14. Definitions.

As used in this article unless the context requires a different meaning:

"Aboveground storage tank" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

"Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

"Pipeline" means all new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel or plastic, which

provide structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280.

"Tank vessel" means any vessel used in the transportation of oil as cargo.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

§ 62.1-44.34:15. Oil discharge contingency plans.

A. No operator shall cause or permit the operation of a facility in the Commonwealth unless an oil discharge contingency plan applicable to the facility has been filed with and approved by the Board. No operator shall cause or permit a tank vessel to transport or transfer oil in state waters unless an oil discharge contingency plan applicable to the tank vessel has been filed with and approved by the Board.

B. Application for approval of an oil discharge contingency plan shall be made to the Board and shall be accompanied by plans, specifications, maps and such other relevant information as may be required, in scope and detail satisfactory to the Board. An oil discharge contingency plan must conform to the requirements and standards determined by the Board to be necessary to ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, clean up and mitigate an oil discharge within the shortest feasible time. Each such plan shall provide for the use of the best available technology at the time the plan is submitted for approval. The applicant shall notify the Board immediately of any significant change in the operation or capacity of or the type of product dealt in, stored, handled, transported or transferred in or by any facility or vessel covered by the plan that will necessitate a change in the plan and shall update the plan periodically as required by the Board, but in no event more frequently than once every thirty-six months. The Board, on a finding of need, may require an oil discharge exercise designed to demonstrate the facility's or vessel's

ability to implement its oil discharge contingency plan either before or after the plan is approved.

C. The Board, after notice and opportunity for a conference pursuant to § 9-6.14:11, may modify its approval of an oil discharge contingency plan if it determines that:

1. A change has occurred in the operation of any facility or vessel covered by the plan that necessitates an amended or supplemented plan;
2. The facility's or vessel's discharge experience or its inability to implement its plan in an oil discharge exercise demonstrates a necessity for modification; or
3. There has been a significant change in the best available technology since the plan was approved.

D. The Board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;
2. The plan cannot be implemented as approved; or
3. A term or condition of approval has been violated.

§ 62.1-44.34:15.1. Regulations for aboveground storage tanks.

The Board shall adopt regulations and develop procedures necessary to prevent pollution of state waters, lands, or storm drain systems from the discharge of oil from new and existing aboveground storage tanks. These regulations shall be developed in substantial conformity with the current codes and standards recommended by the National Fire Protection Association. To the extent that they are consistent with the Board's program, the Board shall incorporate accepted industry practices contained in the American Petroleum Institute publications and other accepted industry standards when developing the regulations contemplated by this section. The regulations shall provide the following:

1. For existing aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater:
  - a. To prevent leaks from aboveground storage tanks, requirements for inventory control, testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board) and formal tank inspections every five years

in accordance with accepted industry practices and procedures approved by the Board. Initial testing shall be on a schedule approved by the Board. Aboveground storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

b. To prevent overfills, requirements for safe fill and shut down procedures, including an audible staged alarm with immediate and controlled shut down procedures, or equivalent measures established by the Board;

c. To prevent leaks from piping, requirements for cathodic protection, and pressure testing to be conducted at least once every five years, or equivalent measures established by the Board;

d. To prevent and identify leaks from any source, requirements (i) for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements, (ii) for monthly gauging and inspection of all ground water monitoring wells located at the facility, and monitoring of the well head space for the presence of vapors indicating the presence of petroleum, and (iii) for quarterly sampling and laboratory analysis of the fluids present in each such monitoring well to determine the presence of petroleum or petroleum by-product contamination; and

e. To ensure proper training of individuals conducting inspections, requirements for proper

certification or training by operators relative to aboveground storage tanks.

2. For existing aboveground storage tanks at facilities with an aggregate capacity of less than one million gallons but more than 25,000 gallons:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control and testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board). Initial testing shall be on a schedule approved by the Board. Aboveground storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

b. To prevent overfills, requirements for safe fill and shut down procedures;

c. To prevent leaks from piping, requirements for pressure testing to be conducted at least once every five years or equivalent measures established by the Board; and

d. To prevent and identify leaks from any source, requirements for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements developed in accordance with subdivision 1 of this section.

3. For aboveground storage tanks existing prior to the effective date of the regulations required by this section, when the results of a tank inspection indicate the need for replacement of the tank bottom, the operator of a facility shall install a

release prevention barrier (RPB) capable of: (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection. The decision to replace an existing tank bottom shall be based on the criteria established by regulations pursuant to this section.

4. The Board shall establish performance standards for aboveground storage tanks installed, retrofitted or brought into use after the effective date of the regulations promulgated pursuant to this subsection that incorporate all technologies designed to prevent oil discharges that have been proven in accordance with accepted industry practices and shown to be cost-effective.

5. The Board shall establish criteria for granting variances from the requirements of the regulations promulgated pursuant to this section (i) on a case-by-case basis and (ii) by regulation for categories of aboveground storage tanks, except that the Board shall not grant a variance that would result in an unreasonable risk to the public health or the environment. Variances by regulation shall be based on relevant factors such as tank size, use, and location. Within thirty days after the grant of a variance for a facility, the Board shall send written notification of the variance to the chief administrative officer of the locality in which the facility is located.

§ 62.1-44.34:16. Financial responsibility for vessels and facilities.

A. The operator of any tank vessel entering upon state waters shall deposit with the Board cash or its equivalent in the amount of \$500 per gross ton of such vessel. Any such cash deposits received by the Board shall be held in escrow in the Virginia Petroleum Storage Tank Fund.

B. If the Board determines that oil has been discharged in violation of this article or that there has been a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under this chapter.

C. The Board shall exempt an operator of a tank vessel from the cash deposit requirements specified in this section if the operator of the tank vessel provides evidence of financial responsibility pursuant to the terms and conditions of this subsection. The Board shall adopt requirements for

operators of tank vessels for maintaining evidence of financial responsibility in an amount equivalent to the cash deposit which would be required for such tank vessel pursuant to this section.

D. The Board is authorized to promulgate regulations requiring operators of facilities to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Operators of facilities shall demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth. Regulations governing the amount of any financial responsibility required shall take into consideration the type, oil storage or handling capacity and location of a facility, the risk of a discharge of oil at that type of facility in the Commonwealth, the potential damage or injury to state waters or the impairment of their beneficial use that may result from a discharge at that type of facility, the potential cost of containment and cleanup at that type of facility, and the nature and degree of injury or interference with general health, welfare and property that may result from a discharge at that type of facility. In no instance shall the financial responsibility requirements for facilities exceed five cents per gallon of aboveground storage capacity or five million dollars for a pipeline. In no instance shall any financial test of self-insurance require the operator of a facility to demonstrate more than one dollar of net worth for each dollar of required financial responsibility. If such net worth does not equal the required financial responsibility, then the operator shall demonstrate the minimum required amount by a combination of financial responsibility mechanisms in accordance with subsection E of this section. No governmental agency shall be required to comply with any such regulations.

E. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the Board, or any combination thereof, under the terms the Board may prescribe. To obtain an exemption from the cash deposit requirements under this section: the operator of a tank vessel and insurer, guarantor or surety shall appoint an agent for service of process in the Commonwealth; any insurer must be authorized by the Commonwealth to engage in the insurance business; and any instrument of insurance, guaranty or surety must provide that

actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation of this chapter by the operator up to, but not exceeding, the amount insured, guaranteed or otherwise pledged.

An operator of a tank vessel or facility whose financial responsibility is accepted by the Board under this subsection shall notify the Board at least thirty days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety. Operators of facilities who are unable to demonstrate financial responsibility in the amounts established pursuant to subsection D may establish an insurance pool pursuant to the requirements of § 62.1-44.34:12 in order to demonstrate such financial responsibility.

F. Acceptance of proof of financial responsibility for tank vessels shall expire:

1. One year from the date on which the Board exempts an operator from the cash deposit requirement based on evidence of self-insurance, except that the Board may establish by regulation a different expiration date for acceptance of evidence of self-insurance submitted by public agencies;
2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or
3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.

G. Operators of facilities shall annually demonstrate and maintain evidence of financial responsibility for containment and cleanup in accordance with regulations adopted by the Board.

H. The Board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or
2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

I. It is not a defense to any action brought for failure to comply with the cash deposit requirement or to provide acceptable evidence of financial responsibility that the

person charged believed in good faith that the tank vessel or facility or the operator of the tank vessel or facility had made the required cash deposit or possessed evidence of financial responsibility accepted by the Board.

II.

§ 62.1-44.34:17. Exemptions.

A. Sections 62.1-44.34:15 and 62.1-44.34:16 do not apply to a facility having a maximum storage or handling capacity of less than 25,000 gallons of oil or to a tank vessel having a maximum storage, handling or transporting capacity of less than 15,000 gallons of oil or to a tank used to contain oil for less than 120 days and only in connection with activities related to the containment and cleanup of oil or to any vessel engaged only in activities within state waters related to the containment and cleanup of oil, including response-related training or drills.

B. Facilities having a maximum storage or handling capacity of between 25,000 gallons and one million gallons of oil shall be exempt until July 1, 1993, from any requirement under § 62.1-44.34:15 to install ground water monitoring wells or other ground water protection devices.

C. For purposes of §§ 62.1-44.34:15 and 62.1-44.34:16, the definition of oil does not include nonpetroleum hydrocarbon-based animal and vegetable oils, or petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601) and which is subject to the provisions of that Act.

D. Facilities not engaged in the resale of oil from aboveground storage tanks shall not be subject to regulations promulgated pursuant to § 62.1-44.34:15.1 until July 1, 1995, or any date later specified by the Board.

E. Aboveground storage tanks with a capacity of 5,000 gallons or less containing heating oil for consumption on the premises where stored shall be exempt from the provisions of § 62.1-44.34:15.1.

F. For purposes of §§ 62.1-44.34:15.1 and 62.1-44.34:16, and for the purposes of any requirement under § 62.1-44.34:15 to install ground water monitoring wells, ground water protection devices, or to conduct ground water characterization studies,

the definition of oil does not include asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute).

§ 62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge.

A. The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

B. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge shall, immediately upon learning of such discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this article or take such other action as may be deemed necessary in the judgment of the Board to contain and clean up such discharge or threat of such discharge. In the event of such discharge or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons.

C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth,

discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge, shall be liable to:

1. The Commonwealth of Virginia or any political subdivision thereof for all costs and expenses of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge, including, but not limited to, reasonable personnel, administrative, and equipment costs and expenses directly incurred by the Commonwealth or political subdivision, in and for preventing or alleviating damage, loss, hardship, or harm to human health or the environment caused or threatened to be caused by such discharge or threat of discharge;
2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;
3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge, and compensation for the loss of any natural resources that cannot be restocked, replenished or restored; and
4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages or costs and expenses of containment and cleanup under this section that are caused by the acts or omissions of such person in rendering such assistance; however,

such liability provision shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge. In addition, a person, other than an operator, who voluntarily, without compensation, and upon the request of a governmental agency, assists in the containment or cleanup of a discharge of oil, shall not be liable for any civil damages resulting from any act or omission on his part in the course of his rendering such assistance in good faith; nor shall any person or any organization exempt from income taxation under § 501 (c) (3) of the Internal Revenue Code who notifies or assists in notifying the membership of such organization to assist in the containment or cleanup of a discharge of oil, voluntarily, without compensation, and upon the request of a government agency, be liable for any civil damages resulting from such notification rendered in good faith.

E. In any action brought under this article, it shall not be necessary for the Commonwealth, political subdivision or any person, to plead or prove negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; however, this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or

operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection B of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under § 62.1-44.34:16 or \$10,000,000, whichever is greater; however, there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection B of this section.

I. An operator that incurs costs pursuant to subsection B shall have the right to recover all or part of such costs in an action for contribution against any person or persons whose acts or omissions caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs among the parties using such equitable factors as the court deems appropriate.

J. Any person or operator who pays costs or damages pursuant to subsection C shall have the right to recover all or part of such costs or damages in an action for contribution against any person or persons whose act or omission has caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs or damages among the parties using such equitable factors as the court deems appropriate.

§ 62.1-44.34:19. Reporting of discharge.

A. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, shall, immediately upon learning of the discharge, notify the Board, the director or coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision in which the discharge occurs and any other political subdivision reasonably expected to be affected by the discharge, and appropriate federal authorities of such discharge. Notice will be deemed to have been given under this section for any discharge of oil to state lands in amounts less than twenty-five gallons if the recordkeeping requirements of subsection C of § 62.1-44.34:19.2 have been met and the oil has been cleaned up in accordance with the requirements of this article.

B. Observations and data gathered as a result of the monthly and quarterly inspection activities required by § 62.1-44.34:15.1 (1) (d) shall be maintained on site pursuant to § 62.1-44.34:19.2, and compiled into a summary, on a form developed by the Board, such summary to be submitted to the Board annually on a schedule established by the Board. Should any such observations or data indicate the presence of petroleum hydrocarbons in ground water, the results shall be reported immediately to the Board and to the local director or coordinator of emergency services appointed pursuant to § 44-146.19.

§ 62.1-44.34:19.1. Registration of aboveground storage tanks.

A. The Board shall compile an inventory of facilities with an aboveground storage capacity of more than 1320 gallons of oil or individual aboveground storage tanks having a storage capacity of more than 660 gallons of oil within the Commonwealth. To develop such an inventory, the Board is hereby authorized to develop regulations regarding registration requirements for facilities and aboveground storage tanks. In adopting such

regulations, the Board shall consider whether any registration program required under federal law or regulations is sufficient for purposes of this section.

B. Within ninety days of the effective date of the regulations referred to in subsection A, the operators of a facility shall register the facility with the Board and the local director or coordinator of emergency services appointed pursuant to § 44-146.19, and provide an inventory of aboveground storage tanks at the facility. If the Board determines that registration under federal law or regulations is inadequate for the purpose of compiling its inventory and that additional registration requirements are necessary, the Board is authorized to assess a fee, according to a schedule based on the size and type of the facility or tank, not to exceed \$100 per facility or \$50 per tank, whichever is less. Such fee shall be paid at the time of registration or registration renewal. Registration shall be renewed every five years or whenever title to a facility or tank is transferred, whichever first occurs.

C. The operator shall, within thirty days after the upgrade, repair, replacement, or closure of an existing tank or installation of a new tank, notify the Board in writing of such upgrade, repair, replacement, closure or installation.

§ 62.1-44.34:19.2. Recordkeeping and access to records and facilities.

A. All records relating to compliance with the requirements of this article shall be maintained by the operator of a facility at the facility or at an alternate location approved by the Board for a period of at least five years. Such records shall be available for inspection and copying by the Board and shall include books, papers, documents and records relating to the daily measurement and inventory of oil stored at a facility, all information relating to tank testing, all records relating to spill events or other discharges of oil from the facility, all supporting documentation for developed contingency plans, and any records required to be kept by regulations of the Board.

B. In the case of a pipeline, all records relating to compliance with the requirements of the Hazardous Liquid Pipeline Safety Act of 1979, all records relating to spill events or other discharges of oil from the pipeline in the Commonwealth, and all supporting documentation for approved contingency plans shall be maintained by the

operator of a pipeline at the facility or at an alternate location approved by the Board for a period of at least five years.

C. A record of all discharges of oil to state lands in amounts less than twenty-five gallons shall be established and maintained for a period of five years in accordance with subsections A and B of this section.

D. Every operator of a facility shall, upon reasonable notice, permit at reasonable times and under reasonable circumstances a duly designated official of the political subdivision in which the facility is located or of any political subdivision within one mile of the facility or duly designated agent retained or employed by such political subdivisions to have access to and to copy all information required to be kept in subsections A, B and C.

E. Any duly designated official of the political subdivision in which the facility is located or of any political subdivision within one mile of the facility or duly designated agent retained or employed by such political subdivisions may, at reasonable times and under reasonable circumstances, enter and inspect any facility, provided that in nonemergency situations such local official, agent or employee shall be accompanied by the operator or his designee.

§ 62.1-44.34:20. Enforcement and penalties.

A. Upon a finding of a violation of this article or a regulation or term or condition of approval issued pursuant to this article, the Board is authorized to issue a special order requiring any person to cease and desist from causing or permitting such violation or requiring any person to comply with any such provision, regulation or term or condition of approval. Such special orders shall be issued only after notice and an opportunity for hearing except that, if the Board finds that any discharge in violation of this article poses a serious threat to (i) the public health, safety or welfare or the health of animals, fish, botanic or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, the Board may issue, without advance notice or hearing, an emergency special order requiring the operator of any facility, vehicle or vessel to cease such discharge immediately, to implement any applicable contingency plan and to effect

containment and cleanup. Such emergency special order may also require the operator of a facility to modify or cease regular operation of the facility, or any portion thereof, until the Board determines that continuing regular operation of the facility, or such portion thereof, will not pose a substantial threat of additional or continued discharges. The Board shall affirm, modify, amend or cancel any such emergency order after providing notice and opportunity for hearing to the operator charged with the violation. The notice of the hearing and the emergency order shall be issued at the same time. If an operator who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with subsection B of this section, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires modification or cessation of operations, the Board shall provide an opportunity for a hearing within forty-eight hours of the issuance of the injunction.

B. In the event of a violation of this article or a regulation, administrative or judicial order, or term or condition of approval issued under this article, or in the event of failure to comply with a special order issued by the Board pursuant to this section, the Board is authorized to proceed by civil action to obtain an injunction of such violation, to obtain such affirmative equitable relief as is appropriate and to recover all costs, damages and civil penalties resulting from such violation or failure to comply. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action in which it is a prevailing party.

C. Any person who violates or causes or permits to be violated a provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, shall be subject to a civil penalty for each such violation as follows:

1. For failing to obtain approval of an oil discharge contingency plan as required by § 62.1-44.34:15, not less than \$1,000 nor more than \$50,000 for the initial violation, and \$5,000 per day for each day of violation thereafter;
2. For failing to maintain evidence of financial responsibility as required by § 62.1-44.34:16, not

less than \$1,000 nor more than \$100,000 for the initial violation, and \$5,000 per day for each day of violation thereafter;

3. For discharging or causing or permitting a discharge of oil into or upon state waters, or owning or operating any facility, vessel or vehicle from which such discharge originates in violation of § 62.1-44.34:18, up to \$100 per gallon of oil discharged;

4. For failing to cooperate in containment and cleanup of a discharge as required by § 62.1-44.34:18 or for failing to report a discharge as required by § 62.1-44.34:19, not less than \$1,000 nor more than \$50,000 for the initial violation, and \$10,000 for each day of violation thereafter; and

5. For violating or causing or permitting to be violated any other provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, up to \$25,000 for each violation. Each day of violation of each requirement shall constitute a separate offense.

D. Civil penalties may be assessed under this article either by a court in an action brought by the Board pursuant to this section or with the consent of the person charged, in a special order issued by the Board. All penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Underground Petroleum Storage Tank Fund as established in § 62.1-44.34:11. In determining the amount of any penalty, consideration shall be given to the willfulness of the violation, any history of noncompliance, the actions of the person in reporting, containing and cleaning up any discharge or threat of discharge, the damage or injury to state waters or the impairment of their beneficial use, the cost of containment and cleanup, the nature and degree of injury to or interference with general health, welfare and property, and the available technology for preventing, containing, reducing or eliminating the discharge.

E. Any person who knowingly violates, or causes or permits to be violated, a provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not more than \$100,000, either or both. Any person who knowingly or willfully makes any false statement, representation or

certification in any application, record, report, plan or other document filed or required to be maintained by this article or by administrative or judicial order issued under this article shall be guilty of a felony punishable by a term of imprisonment of not less than one nor more than three years and a fine of not more than \$100,000, either or both. In the case of a discharge of oil into or upon state waters:

1. Any person who negligently discharges or negligently causes or permits such discharge shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not more than \$50,000, either or both.

2. Any person who knowingly and willfully discharges or knowingly and willfully causes or permits such discharge shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than ten years and a fine of not more than \$100,000, either or both.

F. Each day of violation of each requirement shall constitute a separate offense. In the event the violation of this article follows a prior felony conviction under subdivision E 2 of this section, such violation shall constitute a felony and shall be punishable by a term of imprisonment of not less than two years nor more than ten years and a fine of not more than \$200,000, either or both.

G. Upon conviction for a violation of any provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, a defendant who is not an individual shall be sentenced to pay a fine not exceeding the greater of:

1. \$1,000,000; or

2. An amount that is three times the economic benefit, if any, realized by the defendant as a result of the offense.

H. Any tank vessel entering upon state waters which fails to provide evidence of financial responsibility required by § 62.1-44.34:16, and any vessel from which oil is discharged into or upon state waters, may be detained and held as security for payment to the Commonwealth of any damages or penalties assessed under this section. Such damages and penalties shall constitute a lien on the vessel and the lien shall secure all costs of containment and cleanup, damages, fines and penalties, as the case may be, for which the operator may be liable. The vessel shall be released upon

posting of a bond with surety in the maximum amount of such damages or penalties.

§ 62.1-44.34:21. Administrative fees.

A. The Board is authorized to collect from any applicant for approval of an oil discharge contingency plan and from any operator seeking acceptance of evidence of financial responsibility fees sufficient to meet, but not exceed, the costs of the Board related to implementation of § 62.1-44.34:15 as to an applicant for approval of an oil discharge contingency plan and of § 62.1-44.34:16 as to an operator seeking acceptance of evidence of financial responsibility. The Board shall establish by regulation a schedule of fees that takes into account the nature and type of facility and the effect of any prior professional certification or federal review or approval on the level of review required by the Board. All such fees received by the Board shall be used exclusively to implement the provisions of this article.

B. Fees charged an applicant should reflect the average time and complexity of processing approvals in each of the various categories.

C. When adopting regulations for fees, the Board shall take into account the fees charged in neighboring states, and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage. Within six months of receipt of any federal moneys that would offset the costs of implementing this article, the Board shall review the amount of fees set by regulation to determine the amount of fees which should be refunded. Such refunds shall only be required if the fees plus the federal moneys received for the implementation of the program under this article as it applies to facilities exceed the actual cost to the Board of administering the program.

D. On October 1, 1995, and every two years thereafter, the Board shall make an evaluation of the implementation of the fee programs and provide this evaluation in writing to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Chesapeake and Its Tributaries, and Finance.

§ 62.1-44.34:22. Applicability of Administrative Process Act.

The Administrative Process Act (§ 9-6.14:1 et seq.) shall govern the activities and the proceedings of the Board under this article.

§ 62.1-44.34:23. Exceptions.

A. Nothing in this article shall apply to: (i) normal discharges from properly functioning vehicles and equipment, marine engines, outboard motors or hydroelectric facilities; (ii) accidental discharges from farm vehicles or noncommercial vehicles; (iii) accidental discharges from the fuel tanks of commercial vehicles or vessels that have a fuel tank capacity of 150 gallons or less; (iv) discharges authorized by a valid permit issued by the Board pursuant to § 62.1-44.15 (5) or by the United States Environmental Protection Agency; (v) underground storage tanks regulated under a state program; (vi) releases from underground storage tanks as defined in § 62.1-44.34:8, regardless of when the release occurred; (vii) discharges of hydrostatic test media from a pipeline undergoing a hydrostatic test in accordance with federal pipeline safety regulations; or (viii) discharges authorized by the federal on-scene coordinator and the Executive Director or his designee in connection with activities related to the recovery of spilled oil where such activities are undertaken to minimize overall environmental damage due to an oil spill into or on state waters. However, the exception provided in clause (viii) shall in no way reduce the liability of the person who initially spilled the oil which is being recovered.

B. Notwithstanding the exemption set forth in clause (vi) of subsection A of this section, a political subdivision may recover pursuant to subsection C of § 62.1-44.34:18 for a discharge of oil into or upon state waters, lands, or storm drain systems from an underground storage tank regulated under a state program at facilities with an aggregate capacity of one million gallons or greater.

§ 62.1-44.34:24. Definitions.

As used in this article, unless the context requires otherwise:

"Council" means the Virginia Spill Response Council.

"Discharge" means spillage, leakage, pumping, pouring, seepage, emitting, dumping, emptying, injecting, escaping, leaching, fire, explosion, or other releases.

"Hazardous materials" means substances or materials which may pose unreasonable risks to health, safety, property, or the environment when used, transported, stored, or disposed of, which may include materials which are solid, liquid, or gas. Hazardous materials may include toxic substances, flammable and ignitable materials, explosives, corrosive materials, and radioactive materials and include (i) those substances or materials in a form or quantity which may pose an unreasonable risk to health, safety, or property when transported, and which the Secretary of Transportation of the United States has so designated by regulation or order; (ii) hazardous substances as defined or designated by law or regulation of the Commonwealth or law or regulation of the United States government; and (iii) hazardous waste as defined or designated by law or regulation of the Commonwealth. "Oil" means oil of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with waste, crude oils, and other liquid hydrocarbons regardless of specific gravity.

§ 62.1-44.34:25. Virginia Spill Response Council created; purpose; membership.

A. There is hereby created the Virginia Spill Response Council. The purpose of the Council is to (i) improve the Commonwealth's capability to respond in a timely and coordinated fashion to incidents involving the discharge of oil or hazardous materials which pose a threat to the environment, its living resources, and the health, safety, and welfare of the people of the Commonwealth and (ii) provide an ongoing forum for discussions between agencies which are charged with the prevention of, and response to, oil spills and hazardous materials incidents, and those agencies responsible for the remediation of such incidents.

B. The Secretary of Natural Resources and the Secretary of Public Safety, upon the advice of the director of the agency, shall select one representative from each of the following agencies to serve as a member of the Council: Department of Emergency Management, State Water Control Board, Department of Environmental Quality, Virginia Marine Resources Commission, Department of Game and Inland Fisheries,

Department of Health, Department of Fire Programs, and the Council on the Environment. C. The Secretary of Natural Resources or his designee shall serve as chairman of the Council.

§ 62.1-44.34:26. Responsibilities of the Council. The Council shall have the following responsibilities:

1. To foster the exchange of information between the federal, state, and local government;
2. To enhance Virginia's participation in the United States Environmental Protection Agency's Region III Response Team;
3. To review and evaluate the response to emergency situations and recommend changes to the Commonwealth of Virginia's Oil and Hazardous Materials Emergency Response Plan;
4. To provide ongoing analysis of the most recent technical developments for the remediation of discharges; and
5. To coordinate its activities with the State Hazardous Materials Emergency Response Advisory Council and the Virginia Emergency Response Council.

§ 62.1-44.34:27. Cooperation of agencies and institutions.

Technical support shall be made available to the Council by the appropriate state agencies and educational institutions.

§ 62.1-44.34:28. Council to submit annual report. The Council shall submit a report annually to the Secretaries of Natural Resources and Transportation and Public Safety, which includes (i) an evaluation of the emergency response preparedness activities undertaken and the emergency response activities conducted during the year and (ii) a description of the activities of the Council during the year.

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Title 62.1 - Chapter 3.2 - Conservation of Water Resources: State Water Control Board

§ 62.1-44.35. Repealed by Acts 1984, c. 750.

§ 62.1-44.36. Responsibility of State Water Control Board; formulation of policy.

Being cognizant of the crucial importance of the Commonwealth's water resources to the health and welfare of the people of Virginia, and of the need of a water supply to assure further industrial growth and economic prosperity for the Commonwealth, and recognizing the necessity for continuous cooperative planning and effective state-level guidance in the use of water resources, the State Water Control Board is assigned the responsibility for planning the development, conservation and utilization of Virginia's water resources.

The Board shall continue the study of existing water resources of this Commonwealth, means and methods of conserving and augmenting such water resources, and existing and contemplated uses and needs of water for all purposes. Based upon these studies and such policies as have been initiated by the Division of Water Resources, and after an opportunity has been given to all concerned state agencies and political subdivisions to be heard, the Board shall formulate a coordinated policy for the use and control of all the water resources of the Commonwealth and issue a statement thereof. In formulating the Commonwealth's water resources policy, the Board shall, among other things, take into consideration but not be limited to the following principles and policies:

- (1) Existing water rights are to be protected and preserved subject to the principle that all of the state waters belong to the public for use by the people for beneficial purposes without waste;
- (2) Adequate and safe supplies should be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses. When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses;
- (3) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development

thereof for the benefit of the Commonwealth as a whole;

(4) In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;

(5) The maintenance of stream flows sufficient to support aquatic life and to minimize pollution shall be fostered and encouraged;

(6) Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;

(7) Due regard shall be given in the planning and development of water recreation facilities to safeguard against pollution.

The statement of water resource policy shall be revised from time to time whenever the Board shall determine it to be in the public interest.

The initial statement of state water resource policy and any subsequent revisions thereof shall be furnished by the Board to all state agencies and to all political subdivisions of the Commonwealth.

§ 62.1-44.37. Resolution of conflicts as to water use; public hearings.

The Board shall upon application of any state agency or political subdivision, and may upon its own motion, recommend a plan to resolve any conflict as to actual or proposed water use or other practice directly affecting water use that involves a potential or existing conflict between water use functions under the jurisdiction of different state agencies. If requested by any state agency or political subdivision directly affected, or at the Board's discretion, the Board shall hold public hearings on such question at which all persons concerned shall be heard.

§ 62.1-44.38. Plans and programs; registration of certain data by water users; advisory committees; committee membership for federal, state, and local agencies; water supply planning assistance.

A. The Board shall prepare plans and programs for the management of the water resources of this Commonwealth in such a manner as to encourage, promote and secure the maximum beneficial use and control thereof. These plans and programs shall be prepared for each major river basin of this

Commonwealth, and appropriate subbasins therein, including specifically the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, the Tennessee-Big Sandy River Basin, and for those areas in the Tidewater and elsewhere in the Commonwealth not within these major river basins. Reports for each basin shall be published by the Board.

B. In preparing river basin plan and program reports enumerated in subsection A of this section, the Board shall (i) estimate current water withdrawals and use for agriculture, industry, domestic use, and other significant categories of water users; (ii) project water withdrawals and use by agriculture, industry, domestic water use, and other significant categories of water users; (iii) estimate, for each major river and stream, the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries; (iv) evaluate, to the extent practicable, the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions; (v) evaluate, in cooperation with the Virginia Department of Health and local water supply managers, the current and future capability of public water systems to provide adequate quantity and quality of water; (vi) identify water management problems and alternative water management plans to address such problems; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified.

C. The Board may, by regulation, require each water user withdrawing surface or subsurface water or both during each year to register, by a date to be established by the Board, water withdrawal and use data for the previous year including the estimated average daily withdrawal, maximum daily withdrawal, sources of water withdrawn, and volume of wastewater discharge, provided that the withdrawal exceeds one million gallons in any single month for use for crop irrigation, or that the daily average during any single month exceeds 10,000 gallons per day for all other users.

D. The Board shall establish advisory committees to assist it in the formulation of such plans or

programs and in formulating recommendations called for in subsection E of this section. In this connection, the Board may include committee membership for branches or agencies of the federal government, branches or agencies of the Commonwealth, branches or agencies of the government of any state in a river basin located within that state and Virginia, the political subdivisions of the Commonwealth, and all persons and corporations interested in or directly affected by any proposed or existing plan or program.

E. The Board shall prepare plans or programs and shall include in reports prepared under subsection A of this section recommended actions to be considered by the General Assembly, the agencies of the Commonwealth and local political subdivisions, the agencies of the federal government, or any other persons that the Board may deem necessary or desirable for the accomplishment of plans or programs prepared under subsection B of this section.

F. In addition to the preparation of plans called for in subsection A of this section, the Board, upon written request of a political subdivision of the Commonwealth, shall provide water supply planning assistance to such political subdivision, to include assistance in preparing drought management strategies, water conservation programs, evaluation of alternative water sources, state enabling legislation to facilitate a specific situation, applications for federal grants or permits, or other such planning activities to facilitate intergovernmental cooperation and coordination.

§62.1-44.28.1. Comprehensive water supply planning process; state, regional and local water supply plans.

A. The Board, with the advice and guidance from the Commissioner of Health, local governments, public service authorities, and other interested parties, shall establish a comprehensive water supply planning process for the development of local, regional and state water supply plans consistent with the provisions of this chapter. This process shall be designed to (i) ensure that adequate and safe drinking water is available to all citizens of the Commonwealth, (ii) encourage, promote, and protect all other beneficial uses of the Commonwealth's water resources, and (iii) encourage, promote, and develop incentives for

alternative water sources, including but not limited to desalinization.

B. Local or regional water supply plans shall be prepared and submitted to the Department of Environmental Quality in accordance with criteria and guidelines developed by the Board. Such criteria and guidelines shall take into account existing local and regional water supply planning efforts and requirements imposed under other state or federal laws.

(Notes: Board must adopt regulations not to become effective before 7/1/2004. Draft criteria to be developed by 12/1/2003. Preliminary state plan to be submitted by 12/1/2003. Water Policy Technical Advisory Committee to advise.

Provisions of section have no affect on any water supply project for which application was submitted prior to 1/1/2003.

§ 62.1-44.39. Technical advice and information to be made available.

The Board may make available technical advice and information on water resources to any agency or political subdivision of this Commonwealth, any committee, association or person interested in the conservation or use of water resources, any interstate agency or any agency of the federal government, all for the purpose of assisting in the preparation or effectuation of any plan or program concerning the use or control of the water resources of this Commonwealth in harmony with the state water resources policy or otherwise with the public interest in encouraging, promoting and securing the maximum beneficial use and control of the water resources of this Commonwealth.

§ 62.1-44.40. Governor and General Assembly to be advised; annual report.

The Board shall submit an annual report to the Governor and the General Assembly on or before October 1 of each year on matters relating to the state's water resources policy and the status of the state's water resources, including ground water. The annual report shall be distributed in accordance with the provisions of § 2.1-467.

§ 62.1-44.41. Board authorized to speak and act for Commonwealth.

(1) In all matters directly related to conservation or use of the Commonwealth's water resources, except

as otherwise provided by law, the Board is authorized to speak and act for the Commonwealth in all relations with the federal government or with the government of other states or with interstate agencies or authorities directly concerning conservation or use of the Commonwealth's water resources.

(2) In regard to such matters, the Board, or such person or state agency as may be designated by it, may appear and testify for the Commonwealth before any committee of the United States Congress or any branch or agency of the federal government or the legislature or any court or commission of any state.

§ 62.1-44.42. Cooperation with other agencies.

(1) In order to assist the Board in carrying out its functions as provided by law, the Board may:

(a) Call upon the other agencies and political subdivisions of this Commonwealth to furnish or make available to the Board information concerning the water resources of this Commonwealth which such state agencies or political subdivisions have acquired or may acquire in the performance of their functions.

(b) Cooperate with the other agencies or political subdivisions of the Commonwealth in utilizing the services, records and other facilities of such agencies or political subdivisions to the maximum extent practicable.

(2) All officers and employees of the Commonwealth or the political subdivisions of the Commonwealth shall cooperate with the Board in the discharge of its duties and in effectuating the water resources policy of the Commonwealth.

(3) Upon receipt and approval by the Board of a claim therefor, any special or extraordinary expense incurred by any other agency or political subdivision of this Commonwealth in cooperating with the Board under subsections (1) and (2) of this section shall be paid to such other agency or political subdivision of the Commonwealth.

§ 62.1-44.43. Additional powers of Board.

In addition to other powers conferred by the foregoing sections, the Board shall have the following powers:

(a) To administer all funds available to the Board for carrying out the purposes and duties prescribed in §§ 62.1-44.36 through 62.1-44.43;

(b) To disburse funds to any department, commission, board, agency, officer or institution of the Commonwealth, or any political subdivision thereof for carrying out such purposes but in the disbursement of such funds the Board shall have no power to include, require or consider membership or nonmembership in any group, organization or political entity of whatsoever nature, and any formula for such distribution; except to the extent as may be required for qualification for such federal funds as may be involved in such distribution;

(c) To apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from federal programs respecting or related to conservation or development of the Commonwealth's water and related land resources;

(d) To act either independently or jointly with any department, commission, board, agency, officer or institution of the Commonwealth or any political subdivision thereof in order to carry out the Board's powers and duties;

(e) To accept gifts, bequests and any other things to be used for carrying out its purposes, powers and duties.

§ 62.1-44.44. Construction of chapter.

(a) Nothing in this chapter shall be construed as superseding any provisions of Chapter 5 of Title 10.1, or as limiting or affecting any powers, duties or responsibilities conferred or imposed heretofore or hereafter on the Virginia Soil and Water Conservation Board.

(b) Nothing in this chapter shall be construed as altering, or as authorizing any alteration of, any existing riparian rights or other vested rights in water or water use.

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Title 62.1 - Chapter Potomac River Riparian Rights

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Title 62.1 - Chapter 8 - Impoundment of Surface Waters

§ 62.1-104. Definitions.

- (1) Except as modified below, the definitions contained in Title 1 shall apply in this chapter.
- (2) "Board" means the State Water Control Board.
- (3) "Impounding structure" means a man-made device, whether a dam across a watercourse or other

Act

§ 62.1-44.113. Short title.

This chapter shall be known as the "Potomac River Riparian Rights Act."

§ 62.1-44.114. Use of Potomac River; riparian rights.

The Commonwealth and its citizens shall have the right to such use of the Potomac River as may be necessary to the full enjoyment of their riparian ownership as provided at common law and in § 7.1-7 of the Compact of 1785 with Maryland, and confirmed by the Black-Jenkins Determination of 1877 and Article VII, § 1 of § 28.1-203, cited as the Potomac River Compact of 1958.

§ 62.1-44.115. Review of uses by Water Control Board; report.

The State Water Control Board shall annually review the uses and development of the waters of the Potomac River, and make such report thereon as it deems advisable to the Governor and to the General Assembly, together with such recommendations as the Board feels are necessary for the protection and full enjoyment of Virginia's riparian rights in such river.

§ 62.1-44.116. Assistance by Board in riparian disputes.

In the event non-Virginia claimants question or seek to abridge the riparian use of the waters of the Potomac River by Virginia riparian owners, the State Water Control Board shall advise and assist such riparian owners in the proper exercise and protection of their rights, giving due consideration to the rights of others and to the wise use of the water, and the Board shall assist in the resolution of conflicts concerning such rights.

structure outside a watercourse, used or to be used for the authorized storage of flood waters for subsequent beneficial use.

(4) "Watercourse" means a natural channel having a well-defined bed and banks and in which water flows when it normally does flow. For the purposes hereof they shall be limited to rivers, creeks, streams, branches, and other watercourses which

are nonnavigable in fact and which are wholly within the jurisdiction of the Commonwealth.

(5) "Riparian land" is land which is contiguous to and touches a watercourse. It does not include land outside the watershed of the watercourse. Real property under common ownership and which is not separated from riparian land by land of any other ownership shall likewise be deemed riparian land, notwithstanding that such real property is divided into tracts and parcels which may not bound upon the watercourse.

(6) "Riparian owner" is an owner of riparian land.

(7) "Average flow" means the average discharge of a stream at a particular point and normally is expressed in cubic feet per second. It may be determined from actual measurements or computed from the most accurate information available.

(8) "Diffused surface waters" are those which, resulting from precipitation, flow down across the surface of the land until they reach a watercourse, after which they become parts of streams.

(9) "Floodwaters" means water in a stream which is over and above the average flow.

(10) "Court" means the circuit court of the county or city in which an impoundment is located or proposed to be located.

§ 62.1-104.1. Repealed by Acts 1982, c. 583.

§ 62.1-105. Impoundment of diffused surface waters.

Diffused surface waters may be captured and impounded by the owner of the land on which they are present and, when so impounded, become the property of that owner. Such impoundment shall not cause damage to others; however, the owner of land on which an impounding structure as defined in § 10.1-604 is to be located shall comply with the rules and regulations of the State Water Control Board.

§ 62.1-106. When floodwaters may be captured and stored by riparian owners.

Water in watercourses which is over and above the average flow of the stream may, upon approval, be captured and stored by riparian owners for their later use under the following conditions:

(1) As a result of the capture and storage of such waters, there will be no damage to others.

(2) The title to the land on which the impounding structure and the impounded water will rest are in the person or persons requesting the authority.

(3) All costs incident to such impoundment, including devices above and below for indicating average flow, will be borne by the person or persons requesting the authority.

(4) For impoundments with a capacity of more than fifty acre-feet of storage all construction is approved by a licensed professional engineer. For those with capacities of fifty acre-feet, or less, of storage all construction will be approved by a licensed professional engineer or by some other competent person.

(5) Those requesting the authority will insure that the flow below the impoundment is equal to:

(a) At least the average flow when the flow immediately above the impounding structure is greater than the average flow, or

(b) At least the flow immediately above the impounding structure when that flow is equal to or less than the average flow.

(6) If needed, provision will be made in the impounding structure for an adequate spillway and for means of releasing water to maintain the required flow downstream.

(7) If for the purposes of irrigation, the quantity of water stored (exclusive of foreseeable losses) will not exceed that required for a period of twelve months to irrigate the cleared acreage owned by those participating in the undertaking and lying in the watershed of the stream from which the water is taken.

(8) All structures and equipment incident to such impoundment will be maintained in safe and serviceable condition by the owners and all parts thereof in a watercourse will be removed when no longer required for the purpose.

(9) Priority to the right to store floodwaters, as outlined, will go to upstream riparian owners.

(10) Those impounding floodwaters will, upon request, provide appropriate information concerning the impoundment to the State Water Control Board.

(11) The plans for an impounding structure as defined in § 10.1-604 have the approval of the State Water Control Board and conform to the rules and regulations promulgated by the Board.

§ 62.1-107. Application for leave to store floodwaters; notice to interested persons and to State Water Control Board.

Any riparian owner, or riparian owners, desiring to store floodwaters under the conditions specified in § 62.1-106 may apply for leave so to do to the circuit court of the county or city wherein the impounding structure is proposed to be built. Such application shall be made by petition filed in the clerk's office of the court. It shall set forth the name and address of the riparian owner, or owners, the purpose of the proposed impoundment, the desired storage capacity and the basis on which determined, the stream and the point on it from which floodwaters are proposed to be taken, the estimated cost of the project, and an agreement to abide by the provisions of § 62.1-106. It shall be accompanied by a plat or sketch of the riparian property which he or they own and on which is shown the site of the impounding structure and the area to be flooded by the impounded water. The plat or sketch shall include data sufficient to permit the location of the property on the official highway map of the county or a map of the city or town where appropriate. It shall also be accompanied by a plan of the proposed impounding structure on which appears the approval of the plan by a registered civil engineer or registered agricultural engineer, (or other competent person for storage capacities of fifty acre-feet or less) and agreement thereto by the riparian owner. All interested persons shall be given notice of such application by publication in accordance with §§ 8.01-316 and 8.01-317. A copy of the petition, together with a copy of the plat and a copy of the plan, shall be sent by registered mail to the State Water Control Board.

§ 62.1-108. Time and place of hearing on petition; parties.

Upon the filing of any such petition, the court or judge thereof in vacation shall set a time and place for hearing the same, which time and place shall be set forth in the order of publication. Any person affected may appear and be made a party to such proceeding by leave of court.

§ 62.1-109. Board to examine petition and report to court.

Upon receipt of a copy of any such petition the Board shall examine the same and report thereon to the court upon the following matters:

- (1) The average flow of the stream at the point from which water for storage will be taken.
- (2) Whether the proposed project conflicts with any other proposed or likely developments on the watershed.
- (3) The effect of the proposed impoundment on pollution abatement to be evidenced by a certified statement together with such other relevant comments as the Board desires to make.
- (4) Any other relevant matters which the Board desires to place before the court.

§ 62.1-110. Court to hear and determine issues; reference to commissioner.

The court, on the day specified in the order of publication, shall hear and determine the issues in the proceeding based on the report and other evidence. In its discretion the court may refer any matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court.

§ 62.1-111. When leave not granted; terms and conditions; appeals.

If, on the report and other evidence, it appears to the court that by granting such leave other riparian owners will be injured, or there are other justifiable reasons for denying the petition, the leave shall not be granted; provided that in no case shall leave be granted if the certified statement from the State Water Control Board filed under § 62.1-109 shows that, in the opinion of such Board, the reduction of pollution will be impaired or made more difficult. If it be granted, the court shall place the applicant under such terms and conditions as shall seem to it right. An appeal shall lie to the Court of Appeals.

§ 62.1-112. When leave shall expire.

If the applicant shall not begin his work within two years, and so far finish it within three years after such leave, as then to have his impounding structure in good condition for use; or if such impounding structure be at any time destroyed or rendered unfit for use and the rebuilding or repair thereof shall not within two years from the time of such destruction or unfitness, be commenced, and within five years from that time be so far finished as then to be in

good condition for use, the leave so granted shall then expire.

§ 62.1-113. Use of bed of watercourse.

The Commonwealth hereby gives its consent to the use of the bed of any watercourse to which it has title for the construction of any impounding structure under the provisions of this chapter. No right to construct an impounding structure resting upon the bed of any other watercourse shall lie unless the owner or owners seeking to construct the same has title to the bed of such watercourse.

§ 62.1-114. Exceptions to application of chapter.

The provisions of this chapter shall not apply to any construction which should be undertaken under Chapter 7 (§ 62.1-80 et seq.) or 9 (§ 62.1-116 et seq.) of this title nor shall it apply in any case in which the consent of the federal government or of any agency or instrumentality thereof is required.

§ 62.1-115. Use of waters stored.

Any owner constructing an impounding structure under the provisions of this chapter shall have the sole and unrestricted use of the floodwaters thus stored for the purpose for which the storage was authorized.

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Title 62.1 - Chapter 20 - Miscellaneous Offenses

§ 62.1-194. Casting garbage, etc., into waters.

Except as otherwise permitted by law, it shall be unlawful for any person to cast, throw or dump any garbage, refuse, dead animal, trash, carton, can, bottle, container, box, lumber, timber or like material, or other solid waste, except fish or crab bait in any form, into any of the waters of this Commonwealth. When a violation of any provision of this section has been observed by any person, and the matter dumped or disposed of in the waters of this Commonwealth has been ejected from a boat, the owner or operator of such boat shall be presumed to be the person ejecting such matter; provided, however, that such presumption shall be rebuttable by competent evidence. Every such act shall be a misdemeanor punishable by a fine not to exceed \$100 or confinement in jail not to exceed thirty days, or both. Every law-enforcement officer of this Commonwealth and its subdivisions shall have authority to enforce the provisions of this section.

§ 62.1-194.1. Obstructing or contaminating state waters.

Except as otherwise permitted by law, it shall be unlawful for any person to dump, place or put, or cause to be dumped, placed or put into, upon the banks of or into the channels of any state waters any object or substance, noxious or otherwise, which may reasonably be expected to endanger, obstruct, impede, contaminate or substantially impair the lawful use or enjoyment of such waters and their

environs by others. Any person who violates any provision of this law shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than \$100 nor more than \$500 or by confinement in jail not more than twelve months or both such fine and imprisonment. Each day that any of said materials or substances so dumped, placed or put, or caused to be dumped, placed or put into, upon the banks of or into the channels of, said streams shall constitute a separate offense and be punished as such.

In addition to the foregoing penalties for violation of this law, the judge of the circuit court of the county or corporation court of the city wherein any such violation occurs, whether there be a criminal conviction therefor or not shall, upon a bill in equity, filed by the attorney for the Commonwealth of such county or by any person whose property is damaged or whose property is threatened with damage from any such violation, award an injunction enjoining any violation of this law by any person found by the court in such suit to have violated this law or causing the same to be violated, when made a party defendant to such suit.

§ 62.1-194.1:1. Repealed by Acts 1992, c. 836.

§ 62.1-194.2. Throwing trash, etc., into or obstructing river, creek, stream or swamp.

It shall be unlawful for any person to throw or otherwise dispose of trash, debris, tree tops, logs, or fell timber or make or cause to be made any

obstruction which exists for more than a week (excepting a lawfully constructed dam) in, under, over or across any river, creek, stream, or swamp, so as to obstruct the free passage of boats, canoes, or other floating vessels, or fish in such waters. The provisions of this section shall be enforceable by duly authorized state and local law-enforcement officials and by game wardens whose general police power under § 29.1-205 and forest wardens whose general police powers under § 10.1-1135 shall be deemed to include enforcement of the provisions of this section. Violations of this section shall be punishable as a misdemeanor under § 18.2-12; and each day for which any violation continues without removal of such obstruction, on and after the tenth day following service of process on the violator in accordance with § 19.2-75, shall constitute a separate offense punishable as a misdemeanor under § 18.2-12.

§ 62.1-194.3. Obstructing tributaries of Big Sandy River; dumping refuse, etc., into Big Sandy River or its tributaries.

(a) If any person place any dam or other obstruction in any tributary of Big Sandy River so as to prevent the free passage of timber, or any raft or boat, he shall be fined not less than \$50 nor more than \$500; and, upon conviction thereof, the court or judge of the county court shall order the dam or other obstruction to be removed at his expense.

(b) It shall also be unlawful for any person to dump, place or put, or cause to be dumped, placed, or put into, upon the banks of or into the channels of Big Sandy River or any of its tributaries, any dirt, stone, coal, slate, cinders, mine refuse, trees, timber, logs, garbage or any other material or substance so as to in anywise narrow, fill or restrict or partially narrow, fill or restrict the channels of said streams or impede the natural flow of the waters of said river or any of its tributaries or dump, place or put, or cause to be dumped, placed or put any dirt, stone, coal, slate, cinders, mine refuse, trees, timber, logs, garbage or any other material, or substance where the same does by natural rainfall or flow of water become washed or otherwise carried into, upon the banks of, or into the channels of, such river or any of its tributaries so as to in anywise narrow, fill or restrict or partially narrow, fill or restrict the channels of any of said streams or impede the natural flow of the waters thereof. Any person who

violates any provision of this law shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than \$100 nor more than \$500 or by confinement in jail not more than twelve months or both such fine and imprisonment. Each day that any of said materials or substances so dumped, placed or put, or caused to be dumped, placed or put into or so allowed to be washed or otherwise so carried into, upon the banks of or into the channels of, said streams shall constitute a separate offense and be punished as such.

(c) In addition to the foregoing penalties for violation of this law, the judge of the circuit court of the county wherein any such violation occurs, whether there be a criminal conviction therefor or not shall, upon a bill in equity, filed by the attorney for the Commonwealth of such county or by any person whose property is damaged or whose property is threatened with damage from any such violation, award an injunction enjoining any violation of this law by any person found by the court in such suit to have violated this law or causing the same to be violated, when made a party defendant to such suit.

(d) This section shall not be construed to restrict the construction or reconstruction of highways, or the construction or reconstruction of the right-of-way of any company subject to the Commonwealth Corporation Commission, or the maintenance thereof in either case, provided the channel thereafter continues to permit a flow of water in such stream at least as large as that prevailing theretofore, provided that if the channel above the point of such work be widened or deepened subsequently then such company may be required by the circuit court of the county on petition of any interested person to change its right-of-way where practicable so as to permit the increased flow of water.

§ 62.1-195. Repealed by Acts 1990, c. 917.

§ 62.1-195.1. Chesapeake Bay; drilling for oil or gas prohibited.

A. Notwithstanding any other law, a person shall not drill for oil or gas in the waters of the Chesapeake Bay or any of its tributaries. In Tidewater Virginia, as defined in § 10.1-2101, a person shall not drill for oil or gas in, whichever is

the greater distance, as measured landward of the shoreline:

1. Those Chesapeake Bay Preservation Areas, as defined in § 10.1-2101, which a local government designates as "Resource Protection Areas" and incorporates into its local comprehensive plan.

"Resource Protection Areas" shall be defined according to the criteria developed by the Chesapeake Bay Local Assistance Board pursuant to § 10.1-2107; or

2. Five hundred feet from the shoreline of the waters of the Chesapeake Bay or any of its tributaries.

B. In the event that any person desires to drill for oil or gas in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A of this section, he shall submit to the Department of Mines, Minerals and Energy as part of his application for permit to drill an environmental impact assessment. The environmental impact assessment shall include:

1. The probabilities and consequences of accidental discharge of oil or gas into the environment during drilling, production, and transportation on:

- a. Finfish, shellfish, and other marine or freshwater organisms;
- b. Birds and other wildlife that use the air and water resources;
- c. Air and water quality; and
- d. Land and water resources;

2. Recommendations for minimizing any adverse economic, fiscal, or environmental impacts; and

3. An examination of the secondary environmental effects of induced economic development due to the drilling and production.

C. Upon receipt of an environmental impact assessment, the Department of Mines, Minerals and Energy shall notify the Department of Environmental Quality to coordinate a review of the environmental impact assessment. The Department of Environmental Quality shall:

1. Publish in the Virginia Register of Regulations a notice sufficient to identify the environmental impact assessment and providing an opportunity for public review of and comment on the assessment.

The period for public review and comment shall not be less than thirty days from the date of publication;

2. Submit the environmental impact assessment to all appropriate state agencies to review the

assessment and submit their comments to the Department of Environmental Quality; and

3. Based upon the review by all appropriate state agencies and the public comments received, submit findings and recommendations to the Department of Mines, Minerals and Energy, within ninety days after notification and receipt of the environmental impact assessment from the Department.

D. The Department of Mines, Minerals and Energy may not grant a permit under § 45.1-361.29 until it has considered the findings and recommendations of the Department of Environmental Quality.

E. The Department of Environmental Quality shall, in conjunction with other state agencies and in conformance with the Administrative Process Act (§ 9-6.14:1 et seq.), develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments required by this section.

F. A person may drill an exploratory well or a gas well in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A of this section only if:

1. For directional drilling, the person has the permission of the owners of all lands to be directionally drilled into;

2. The person files an oil discharge contingency plan and proof of financial responsibility to implement the plan, both of which have been filed with and approved by the State Water Control Board. For purposes of this section, the oil discharge contingency plan shall comply with the requirements set forth in § 62.1-44.34:15. The Board's regulations governing the amount of any financial responsibility required shall take into account the type of operation, location of the well, the risk of discharge or accidental release, the potential damage or injury to state waters or sensitive natural resource features or the impairment of their beneficial use that may result from discharge or release, the potential cost of containment and cleanup, and the nature and degree of injury or interference with general health, welfare and property that may result from discharge or accidental release;

3. All land-disturbing activities resulting from the construction and operation of the permanent facilities necessary to implement the contingency plan and the area within the berm will be located

outside of those areas described in subsection A of this section;

4. The drilling site is stabilized with boards or gravel or other materials which will result in minimal amounts of runoff;
5. Persons certified in blowout prevention are present at all times during drilling;
6. Conductor pipe is set as necessary from the surface;
7. Casing is set and pressure grouted from the surface to a point at least 2500 feet below the surface or 300 feet below the deepest known ground water, as defined in § 62.1-255, for a beneficial use, as defined in § 62.1-10, whichever is deeper;
8. Freshwater-based drilling mud is used during drilling;
9. There is no onsite disposal of drilling muds, produced contaminated fluids, waste contaminated fluids or other contaminated fluids;
10. Multiple blow-out preventers are employed; and
11. The person complies with all requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 and regulations promulgated thereunder.

G. The provisions of subsection A and subdivisions 1 and 4 through 9 of subsection F of this section shall be enforced consistent with the requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1.

H. In the event that exploration activities in Tidewater Virginia result in a finding by the

Title 62.1 Chapter 21 - Virginia Resources Authority

§ 62.1-197. Short title.

This chapter shall be known and may be cited as the Virginia Resources Authority Act.

§ 62.1-198. Legislative findings and purposes. The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for water supply, wastewater treatment facilities, drainage facilities, solid waste treatment, disposal and management facilities, recycling facilities, resource recovery facilities, professional sports facilities, certain heavy rail transportation facilities, public safety facilities, airport facilities, and the remediation of brownfields and contaminated properties. This need can be alleviated in part through the creation of a

Director of the Department of Mines, Minerals and Energy that production of commercially recoverable quantities of oil is likely and imminent, the Director of the Department of Mines, Minerals and Energy shall notify the Secretary of Commerce and Trade and the Secretary of Natural Resources. At that time, the Secretaries shall develop a joint report to the Governor and the General Assembly assessing the environmental risks and safeguards; transportation issues; state-of-the-art oil production well technology; economic impacts; regulatory initiatives; operational standards; and other matters related to the production of oil in the region. No permits for oil production wells shall be issued until (i) the Governor has had an opportunity to review the report and make recommendations, in the public interest, for legislative and regulatory changes, (ii) the General Assembly, during the next upcoming regular session, has acted on the Governor's recommendations or on its own initiatives, and (iii) any resulting legislation has become effective. The report by the Secretaries and the Governor's recommendations shall be completed within eighteen months of the findings of the Director of the Department of Mines, Minerals and Energy.

§ 62.1-195.2. Expired.

§ 62.1-196. Repealed by Acts 1987, c. 488.

resources authority. Its purpose is to encourage the investment of both public and private funds and to make loans, grants, and credit enhancements available to local governments to finance water and sewer projects, drainage projects, solid waste treatment, disposal and management projects, recycling projects, professional sports facilities, resource recovery projects, public safety facilities, airport facilities, and the remediation of brownfields and contaminated properties. The General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity of the people of the Commonwealth.

§ 62.1-199. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created by this chapter.

"Board of Directors" means the Board of Directors of the Authority.

"Bonds" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, lease and sale-leaseback transactions or any other evidences of indebtedness of the Authority.

"Capital Reserve Fund" means the reserve fund created and established by the Authority in accordance with § 62.1-215.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred by the local government in the course of the development of the project, including the cost of any credit enhancements, carrying charges incurred before placing the project in service, interest on local obligations issued to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary. It also includes the amount of any contribution, grant or aid which a local government may make or give to any adjoining state, the District of Columbia or any department, agency or instrumentality thereof to pay the costs incident and necessary to the accomplishment of any project, including, without limitation, the items set forth above.

"Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees and other forms of collateral or security.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth or any combination of any two or more of the foregoing.

"Local obligations" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, leases or any other evidences of indebtedness of a local government.

"Minimum capital reserve fund requirement" means, as of any particular date of computation, the amount of money designated as the minimum capital reserve fund requirement which may be established in the resolution of the Authority authorizing the issuance of, or the trust indenture securing, any outstanding issue of bonds or credit enhancement.

"Project" means any water supply or wastewater treatment facility including a facility for receiving and stabilizing septage or a soil drainage management facility and any solid waste treatment, disposal, or management facility, recycling facility, or resource recovery facility located or to be located in the Commonwealth, the District of Columbia or any adjoining state, all or part of which facility serves or is to serve any local government. The term includes, without limitation, water supply and intake facilities; water treatment and filtration facilities; water storage facilities; water distribution facilities; sewage and wastewater (including surface and ground water) collection, treatment and disposal facilities; drainage facilities and projects; solid waste treatment, disposal or management facilities; recycling facilities; resource recovery facilities; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto. The term also means any heavy rail transportation facilities operated by a transportation district, created under the Transportation District Act of 1964 (§ 15.2-4500 et seq.), which operates heavy rail freight service, including rolling stock, barge loading facilities, and any related marine or rail equipment. In addition, the term means any

project as defined in § 5.1-30.1 and any professional sports facility, including a major league baseball stadium as defined in § 15.2-5800, provided that the specific professional sports facility projects have been designated by General Assembly as eligible for assistance from the Authority. The term also means facilities supporting, related to, or otherwise used for public safety including, but not limited to, law-enforcement training facilities and emergency response, fire, rescue and police stations. The term also means the remediation, redevelopment and rehabilitation of property contaminated by the release of hazardous substances, hazardous wastes, solid wastes or petroleum where such remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department of Environmental Quality, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived.

§ 62.1-200. Creation of Authority.

The Virginia Resources Authority is created, with the duties and powers set forth in this chapter, as a public body corporate and as a political subdivision of the Commonwealth. The exercise by the Authority of the duties and powers conferred by this chapter shall be deemed to be the performance of an essential governmental function of the Commonwealth.

§ 62.1-201. Board of Directors.

A. All powers, rights and duties conferred by this chapter or other provisions of law upon the Authority shall be exercised by a board of directors consisting of the State Treasurer, the State Health Commissioner, the Director of the Department of Environmental Quality or his designee, the Director of the Department of Aviation or his designee, and seven members appointed by the Governor, subject to confirmation by the General Assembly. The members of the Board of Directors appointed by the Governor shall serve terms of four years each, except that the original terms of three

members appointed by the Governor shall end on June 30, 1985, 1986, and 1987, respectively, as designated by the Governor. Any appointment to fill a vacancy on the Board of Directors shall be made for the unexpired term of the member whose death, resignation or removal created the vacancy. All members of the Board of Directors shall be residents of the Commonwealth. Members may be appointed to successive terms on the Board of Directors. Each member of the Board of Directors shall be reimbursed for his or her reasonable expenses incurred in attendance at meetings or when otherwise engaged in the business of the Authority and shall be compensated at the rate provided in § 2.1-20.3 for each day or portion thereof in which the member is engaged in the business of the Authority.

B. The Governor shall designate one member of the Board of Directors as chairman; he shall be the chief executive officer of the Authority. The Board of Directors may elect one member as vice-chairman; he shall exercise the powers of chairman in the absence of the chairman or as directed by the chairman. The State Treasurer, the Director of the Department of Environmental Quality or his designee, the Director of the Department of Aviation or his designee, and the State Health Commissioner shall not be eligible to serve as chairman or vice-chairman.

C. Meetings of the Board of Directors shall be held at the call of the chairman or of any five members. Six members of the Board of Directors shall constitute a quorum for the transaction of the business of the Authority. An act of the majority of the members of the Board of Directors present at any regular or special meeting at which a quorum is present shall be an act of the Board of Directors. No vacancy on the Board of Directors shall impair the right of a majority of a quorum of the members of the Board of Directors to exercise all the rights and perform all the duties of the Authority.

D. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall have forfeited his or her office or employment by reason of acceptance of membership on the Board of Directors or by providing service to the Authority.

§ 62.1-202. Appointment and duties of Executive Director.

The Governor shall appoint an Executive Director of the Authority, who shall report to, but not be a member of, the Board of Directors. The Executive Director shall serve as the ex officio secretary of the Board of Directors and shall administer, manage and direct the affairs and activities of the Authority in accordance with the policies and under the control and direction of the Board of Directors. He shall attend meetings of the Board of Directors, shall keep a record of the proceedings of the Board of Directors and shall maintain and be custodian of all books, documents and papers of the Authority, the minute book of the Authority and its official seal. He may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that the copies are true copies, and all persons dealing with the Authority may rely upon the certificates. He shall also perform other duties as instructed by the Board of Directors in carrying out the purposes of this chapter. He shall execute a surety bond in a penalty sum determined by the Board of Directors. The surety bond shall be executed by a surety company authorized to transact business in the Commonwealth and shall be conditioned upon the faithful performance of the duties of the office.

§ 62.1-203. Powers of Authority.

The Authority is granted all powers necessary or appropriate to carry out and to effectuate its purposes, including the following:

1. To have perpetual succession as a public body corporate and as a political subdivision of the Commonwealth;
2. To adopt, amend and repeal bylaws, and rules and regulations, not inconsistent with this chapter for the administration and regulation of its affairs and to carry into effect the powers and purposes of the Authority and the conduct of its business;
3. To sue and be sued in its own name;
4. To have an official seal and alter it at will although the failure to affix this seal shall not affect the validity of any instrument executed on behalf of the Authority;
5. To maintain an office at any place within the Commonwealth which it designates;

6. To make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;

7. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its properties and assets;

8. To employ officers, employees, agents, advisers and consultants, including without limitations, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality;

9. To procure insurance, in amounts and from insurers of its choice, or provide self-insurance, against any loss, cost, or expense in connection with its property, assets or activities, including insurance or self-insurance against liability for its acts or the acts of its directors, employees or agents and for the indemnification of the members of its Board of Directors and its employees and agents;

10. To procure credit enhancements from any public or private entities, including any department, agency or instrumentality of the United States of America or the Commonwealth, for the payment of any bonds issued by the Authority, including the power to pay premiums or fees on any such credit enhancements;

11. To receive and accept from any source aid, grants and contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which the aid, grants or contributions are made;

12. To enter into agreements with any department, agency or instrumentality of the United States of America or, the Commonwealth, the District of Columbia or any adjoining state for the purpose of planning, regulating and providing for the financing of any projects;

13. To collect, or to authorize the trustee under any trust indenture securing any bonds or any other fiduciary to collect, amounts due under any local obligations owned or credit enhanced by the Authority, including taking the action

required by § 15.2-2659 or § 62.1-216.1 to obtain payment of any sums in default;

14. To enter into contracts or agreements for the servicing and processing of local obligations owned by the Authority;

15. To invest or reinvest its funds as provided in this chapter or permitted by applicable law;

16. Unless restricted under any agreement with holders of bonds, to consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any local obligations owned by the Authority;

17. To establish and revise, amend and repeal, and to charge and collect, fees and charges in connection with any activities or services of the Authority;

18. To do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this chapter; and

19. To pledge as security for the payment of any or all bonds of the Authority, all or any part of the Capital Reserve Fund transferred to a trustee for such purpose from the Water Facilities Revolving Fund pursuant to § 62.1-231 or from the Water Supply Revolving Fund pursuant to § 62.1-240 or from the Virginia Solid Waste or Recycling Revolving Fund pursuant to § 62.1-241.9 or from the Virginia Airports Revolving Fund pursuant to § 5.1-30.6.

§ 62.1-204. Power to borrow money and issue bonds and credit enhancements.

The Authority shall have the power to borrow money and issue its bonds in amounts the Authority determines to be necessary or convenient to provide funds to carry out its purposes and powers and to pay all costs and expenses incurred in connection with the issuance of bonds. The Authority shall also have the power to issue credit enhancements with respect to local obligations issued to finance or refinance the cost of any project. The total outstanding aggregate principal amount of bonds issued by the Authority and local obligations guaranteed by the Authority pursuant to credit enhancements, that in either case are secured by a capital reserve fund pursuant to the provisions of § 62.1-215, shall not exceed the sum of \$900 million without prior approval of the General Assembly.

Notwithstanding the foregoing, the Authority shall not exceed the sum of eight million dollars in the total principal amount of bonds outstanding at any one time for the purpose of financing any heavy rail transportation facilities.

§ 62.1-205. Power to issue refunding bonds.

The Authority shall have the power: (i) to issue bonds to renew or to pay bonds, including the interest, (ii) whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and (iii) to issue bonds partly to refund bonds then outstanding and partly for its corporate purposes. The refunding bonds may be exchanged for the bonds to be refunded or they may be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded. The amount of the bonds issued by the Authority and refunded with proceeds of refunding bonds issued hereunder shall not be included in the total of outstanding bonds for purposes of the limit on the amount of bonds issued by the Authority as provided in § 62.1-204.

§ 62.1-206. Sources of payment and security for bonds and credit enhancements.

The Authority shall have the power to pledge any revenue or funds of or under the control of the Authority to the payment of its bonds and credit enhancements, subject only to any prior agreements with the holders of particular bonds or the beneficiaries of particular credit enhancements pledging money or revenue. Bonds or credit enhancements issued by the Authority may be secured by a pledge of any local obligation owned by the Authority, any grant, contribution or guaranty from the United States of America, the Commonwealth or any corporation, association, institution or person, any other property or assets of or under the control of the Authority, or a pledge of any money, income or revenue of the Authority from any source.

§ 62.1-207. Liability of Commonwealth, political subdivisions and members of board of directors.

No bonds or credit enhancements issued by the Authority under this chapter shall constitute a debt or a pledge of the faith and credit of the

Commonwealth, or any political subdivision thereof other than the Authority, but shall be payable solely from the revenue, money or property of the Authority as provided for in this chapter. No member of the board of directors or officer, employee or agent of the Authority or any person executing bonds or credit enhancements of the Authority shall be liable personally on the bonds or credit enhancements by reason of their issuance or execution. Each bond or credit enhancement issued under this chapter shall contain on its face a statement to the effect (i) that neither the Commonwealth, nor any political subdivision thereof, nor the Authority shall be obligated to pay the principal of, or interest or premium on, the bond or credit enhancement or other costs incident to the bond or credit enhancement except from the revenue, money or property of the Authority pledged and (ii) that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of or interests or premium on the bond or credit enhancement.

§ 62.1-208. Authorization, content and sale of bonds and credit enhancements.

A. The bonds and credit enhancements of the Authority shall be authorized by a resolution of the Board of Directors.

B. The bonds shall bear the date or dates and mature at the time or times that the resolution provides, except that no bond shall mature more than fifty years from its date of issue. The bonds may be in the denominations, be executed in the manner, be payable in the medium of payment, be payable at the place or places and at the time or times, and be subject to redemption or repurchase and contain such other provisions as may be determined by the Authority prior to their issuance. The bonds may bear interest payable at such time or times and at such rate or rates as determined by the Authority or as determined in such manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by it. Bonds may be sold by the Authority at public or private sale at the price or prices that the Authority determines and approves.

C. The Authority may bring action pursuant to Article 6 (§ 15.2-2650 et seq.) of Chapter 26 of

Title 15.2 to determine the validity of any issuance or proposed issuance of its bonds or credit enhancements under this chapter and the legality and validity of all proceedings previously taken, or proposed in a resolution of the Authority to be taken, for the authorization, issuance, sale and delivery of bonds or credit enhancements and for the payment of the principal of and premium, if any, and interest on bonds or payments of amounts due under credit enhancements of the Authority.

§ 62.1-209. Provisions of resolution or trust indenture authorizing issuance of bonds.

A. Bonds may be secured by a trust indenture between the Authority and a corporate trustee, which may be any bank having the power of a trust company or any trust company within or without the Commonwealth. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its powers and the custody, safekeeping and application of all money. The Authority may provide by the trust indenture for the payment of the proceeds of the bonds and all or any part of the revenues of the Authority to the trustee under the trust indenture or to some other depository, and for the method of their disbursement with whatever safeguards and restrictions as the Authority specifies. All expenses incurred in carrying out the trust indenture may be treated as part of the operating expenses of the Authority.

B. Any resolution or trust indenture pursuant to which bonds are issued may contain provisions, which shall be part of the contract or contracts with the holders of such bonds as to:

1. Pledging all or any part of the revenue of the Authority to secure the payment of the bonds, subject to any agreements with bondholders that then exist;
2. Pledging all or any part of the assets of, or funds under control of the Authority, including local obligations owned by the Authority, to secure the payment of the bonds, subject to any agreements with bondholders that then exist;
3. The use and disposition of the gross income from, and payment of the principal of and

premium, if any, and interest on local obligations owned by the Authority;

4. The establishment of reserves, sinking funds and other funds and accounts and the regulation and disposition thereof;
5. Limitations on the purposes to which the proceeds from the sale of the bonds may be applied, and limitations pledging the proceeds to secure the payment of the bonds;
6. Limitations on the issuance of additional bonds, the terms on which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;
7. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds, if any, the holders of which must consent thereto, and the manner in which any consent may be given;
8. Limitations on the amount of money to be expended by the Authority for operating expenses of the Authority;
9. Vesting in a trustee or trustees any property, rights, powers and duties in trust that the Authority may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limit the rights, powers and duties of the trustees;
10. Defining the acts or omissions which shall constitute a default, the obligations or duties of the Authority to the holders of the bonds, and the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver; these rights and remedies may include the general laws of the Commonwealth and other provisions of this chapter;
11. Requiring the Authority or the trustees under the trust indenture to file a petition with the Governor and to take any and all other actions required under § 15.2-2659 or § 62.1-216.1 to obtain payment of all sums necessary to cover any default as to any principal of and premium, if any, and interest on local obligations owned by the Authority or held by a trustee to which § 15.2-2659 or § 62.1-216.1 shall be applicable; and
12. Any other matter, of like or different character, relating to the terms of the bonds or the security or protection of the holders of the bonds.

§ 62.1-210. Pledge by Authority.

Any pledge made by the Authority shall be valid and binding from the time when the pledge is made. The revenue, money or property so pledged and thereafter received by the Authority shall immediately be subject to the lien of such a pledge without any physical delivery thereof or further act. Furthermore, the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether the parties have notice of the pledge. No recording or filing of the resolution authorizing the issuance of bonds or credit enhancements, the trust indenture securing bonds or any other instrument, including filings under Title 8.9 (§ 8.9-101 et seq.) of the Uniform Commercial Code of Virginia, shall be necessary to create or perfect any pledge or security interest granted by the Authority to secure any bonds or credit enhancements.

§ 62.1-211. Purchase of bonds by Authority. The Authority, subject to such agreements with bondholders as may then exist, shall have the power to purchase bonds of the Authority out of any available funds, at any reasonable price. If the bonds are then redeemable, this price shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date.

§ 62.1-212. Bonds as negotiable instruments. Whether or not in form and character of negotiable instruments, the bonds of the Authority are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

§ 62.1-213. Validity of signatures of prior members or officers. In the event that any of the members of the board of directors or any officers of the Authority cease to be members or officers before the delivery of any bonds or credit enhancements signed by them, their signatures or authorized substitute signatures shall nevertheless be valid and sufficient for all purposes as if the members or officers had remained in office until delivery.

§ 62.1-214. Bondholder protection.

Subsequent amendments to this chapter shall not limit the rights vested in the Authority with respect to any agreements made with, or remedies available to, the holders of bonds or the beneficiaries of credit enhancements issued under this chapter before the enactment of the amendments until the bonds, together with all premium and interest thereon, and the credit enhancements, and all costs and expenses in connection with any proceeding by or on behalf of the holders or the beneficiaries, are fully met and discharged.

§ 62.1-215. Establishment of capital reserve funds.

A. 1. The Authority may create and establish one or more capital reserve funds and may pay into each capital reserve fund (i) any moneys appropriated and made available by the Commonwealth for the purpose of such a fund, (ii) any proceeds of the sale of bonds of the Authority, to the extent provided in the resolution authorizing the issuance of, or the trust indenture securing, the bonds, and (iii) any other moneys which may be made available to the Authority for the purpose of such a fund from any other source. All moneys held in any capital reserve fund, except as hereinafter provided, shall be used solely for the payment when due of the principal of and premium, if any, and interest on the bonds or obligations under credit enhancements issued by the Authority secured in whole or in part by such a fund. If, however, moneys in any such fund are ever less than the minimum capital reserve fund requirement established for the fund, the Authority shall not use the moneys for any optional purchase or redemption of bonds. Any income or interest earned on, or increment to, any capital reserve fund due to its investment may be transferred by the Authority to other funds or accounts of the Authority to the extent it does not reduce the amount of the capital reserve fund below its minimal requirement.

2. The Authority shall not at any time issue bonds or credit enhancements secured in whole or in part by any capital reserve fund, if upon the issuance of the bonds or credit enhancements, the amount in the capital reserve fund will be less than its minimal requirement unless the Authority, at the time of issuance of the bonds or credit enhancements, deposits in the fund an

amount which, together with the amount then in the fund, will not be less than the fund's minimal capital reserve requirement.

B. In order to assure further the maintenance of capital reserve funds, the chairman of the Authority shall annually, on or before December 1, make and deliver to the Governor and the Secretary of Administration a certificate stating the sum, if any, required to restore each capital reserve fund to its minimal requirement. Within five days after the beginning of each session of the General Assembly, the Governor shall submit to the presiding officer of each House of the General Assembly printed copies of a budget including the sum, if any, required to restore each capital reserve fund to its minimal requirement. All sums, if any, which may be appropriated by the General Assembly for any restoration and paid to the Authority shall be deposited by the Authority in the applicable capital reserve fund. All amounts paid to the Authority by the Commonwealth pursuant to the provisions of this section shall constitute and be accounted for as advances by the Commonwealth to the Authority and, subject to the rights of the holders of any bonds of the Authority or the beneficiaries of credit enhancements of the Authority, shall be repaid to the Commonwealth without interest from available operating revenues of the Authority in excess of amounts required for the payment of bonds, credit enhancements or other obligations of the Authority, the maintenance of capital reserve funds, and operating expenses. In addition, no bonds issued by the Authority to finance a professional sports facility shall be secured by a capital reserve fund.

C. The Authority may create and establish other funds as necessary or desirable for its corporate purposes.

D. Nothing in this section shall be construed as limiting the power of the Authority to issue bonds or credit enhancements not secured by a capital reserve fund.

§ 62.1-216. Purchase and credit enhancements of local obligations.

The Authority shall have the power and authority, with any funds of the Authority available for such a purpose, to purchase and acquire, on terms which the Authority determines, local obligations to finance or

refinance the cost of any project. The Authority may pledge to the payment of any bonds all or any portion of the local obligations so purchased. The Authority may also, subject to any such pledge, sell any local obligations so purchased and apply the proceeds of such a sale to the purchase of other local obligations for financing or refinancing the cost of any project or for any other corporate purpose of the Authority.

The Authority shall also have the power and authority to issue credit enhancements, on terms which the Authority determines, to credit enhance local obligations issued to finance or refinance the cost of any project.

The Authority may require, as a condition to the purchase or credit enhancement of any local obligations, that the local government issuing the local obligations covenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the local obligations; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. Create and maintain a special fund or funds for the payment of the principal of and premium, if any, and interest on the local obligations and any other amounts becoming due under any agreement entered into in connection with the local obligations, or for the operation, maintenance, repair or replacement of the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments as they become due and payable;

C. Create and maintain other special funds as required by the Authority; and

D. Perform other acts, including the conveyance of real and personal property together with all right, title and interest therein to the Authority, or take other actions as may be deemed necessary or desirable by the Authority to secure

payment of the principal of and premium, if any, and interest on the local obligations or obligations to the Authority with respect to any credit enhancement and to provide for the remedies of the Authority or other holder of the local obligations in the event of any default by the local government in the payment, including, without limitation, any of the following:

1. The procurement of credit enhancements or liquidity arrangements for local obligations from any source, public or private, and the payment therefor of premiums, fees or other charges.

2. The payment of the allocable shares of the local governments, as determined by the Authority, of any costs, fees, charges or expenses attributable to liquidity arrangements incurred in connection with the issuance of bonds by the Authority to acquire local obligations of one or more local governments. The determination of such allocable shares may be made by the Authority on any reasonable basis.

3. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure local obligations issued in connection with such combination or any part or parts thereof.

4. The payment of the allocable shares of the local governments, as determined by the Authority on any reasonable basis, of rate stabilization funds established or required by the Authority in connection with the issuance of bonds by the Authority to acquire or provide credit enhancement for local obligations of two or more local governments.

All local governments issuing and selling local obligations to the Authority or to be credit enhanced by the Authority are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts with the Authority that are contemplated by this chapter. Such contracts need not be identical among all participants in financings of the Authority, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Authority.

To the extent permitted by law for local obligations issued after July 1, 2003, local governments may enter into agreements with the Authority that provide for a local government to consider and make appropriations of any funds or revenue generated from the following: (i) taxes, funds and assessments from service districts created under Chapter 24 (§ 15.2-2400 et seq.) of Title 15.2, (ii) funds held by the local government, or (iii) any revenue or funds generated from sources other than property taxes imposed under Chapter 32 (§ 58.1-3200 et seq.) or Chapter 35 (§ 58.1-3500 et seq.) of Title 58.1 in amounts sufficient to pay all or a specified portion of the amounts set forth in subsections B and C and to pledge and apply the amounts so appropriated for such purposes.

§ 62.1-216.1. Investigation by Governor of alleged defaults; withholding state funds from defaulting locality; payment of funds withheld; receipts, reports, etc.

Whenever it appears to the Governor from an affidavit filed with him by or on behalf of the Authority as the holder or credit enhancer of local obligations (regardless of the security therefor) issued by any county, city or town that the county, city or town has defaulted in its payment of the principal of or premium, if any, or interest on any of its outstanding local obligations held or credit enhanced by the Authority, the Governor shall immediately make a summary investigation into the facts set forth in the affidavit. The Authority may, but shall not be required to, file such an affidavit unless the Authority has otherwise contracted to make such filing for the benefit of the holders of any of its bonds or the local obligations credit enhanced by it.

If it is established to the satisfaction of the Governor that the county, city or town is in default in the payment of such local obligations or the interest on them, the Governor shall immediately make an order directing the Comptroller to withhold all further payment to the county, city or town of all funds, or of any part of them, appropriated and payable by the Commonwealth to the county, city or town for any and all purposes, until the default is cured. The Governor shall, while the default continues, direct in writing the payment of all sums withheld by the Comptroller, or as much of them

as is necessary, to the Authority, so as to cure, or cure insofar as possible, the default as to the local obligations or interest on them.

The Governor shall, as soon as practicable, give notice of the default and of the availability of funds with the Comptroller in writing to the Authority. Any payment so made by the Comptroller to the Authority shall be credited as if made directly by the county, city or town and shall be charged by the Comptroller against the first appropriations otherwise payable to the county, city or town as if paid to the county, city or town. The Authority, at the time of payment or at the time of each payment shall receipt for the payment and deliver to the Comptroller all local obligations or other instruments or documents, in a form satisfactory to the Comptroller, evidencing the Authority's right to receive the amounts satisfied by the payment. The Comptroller shall report each payment made to the governing body of the defaulting county, city or town and deliver or send by registered mail to the governing body all local obligations, or other instruments or documents received by the Comptroller under the provisions of this section.

Nothing in this section shall be construed to create any obligation on the part of the Comptroller or the Commonwealth to make any payment on behalf of the defaulting county, city or town other than from funds appropriated and payable to the defaulting county, city or town.

§ 62.1-217. Grants from Commonwealth. The Commonwealth may make grants of money or property to the Authority for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers, including deposits to the capital reserve funds. This section shall not be construed to limit any other power the Commonwealth may have to make grants to the Authority.

§ 62.1-218. Grants to local governments. The Authority shall have the power and authority, with any funds of the Authority available for this purpose, to make grants to local governments. In determining which local governments are to receive grants, the Department of Environmental Quality, the Department of Health, and the Virginia Waste Management Board shall assist the Authority in

determining needs for wastewater treatment facilities, water supply facilities, solid waste treatment, disposal or management facilities, or recycling facilities, and the method and form of such grants.

§ 62.1-219. Exemption from taxation.

As set forth in § 62.1-200, the Authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. Accordingly, the Authority shall not be required to pay any taxes or assessments upon any project or any property or upon any operations of the Authority or the income therefrom, or any taxes or assessments upon any project or any property or local obligation acquired, credit enhanced or used by the Authority under the provisions of this chapter or upon the income therefrom. Any bonds and credit enhancements issued by the Authority under the provisions of this chapter, the transfer thereof and the income therefrom, including any profit on the sale thereof, shall at all times be free from taxation and assessment of every kind by the Commonwealth and by the local governments and other political subdivisions of the Commonwealth.

§ 62.1-220. Bonds as legal investments and securities.

The bonds issued by the Authority in accordance with the provisions of this chapter are declared to be legal investments in which all public officers or public bodies of the Commonwealth, its political subdivisions, all municipalities and municipal subdivisions; all insurance companies and associations and other persons carrying on insurance business; all banks, bankers, banking associations, trust companies, savings banks, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees and other fiduciaries; and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth, may invest funds, including capital, in their control or belonging to them. The bonds of the Authority are also hereby made securities which may be deposited with and received by all public officers and bodies of the

Commonwealth or any agency or political subdivision of the Commonwealth and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may be later authorized by law.

§ 62.1-221. Deposit of money; expenditures; security for deposits.

A. All money of the Authority, except as otherwise authorized by law or provided in this chapter, shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director or other officers or employees and designated by the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits.

B. Notwithstanding the provisions of subsection A the Authority shall have the power to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any money of the Authority and of any money held in trust or otherwise for the payment of bonds and to carry out such a contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the Authority, and all banks and trust companies are authorized to give security for the deposits.

C. Subject to the provisions of subsection B hereof, funds of the Authority not needed for immediate use or disbursement, including any funds held in reserve, may be invested in (i) obligations or securities which are considered lawful investments for fiduciaries, both individual and corporate, as set forth in § 26-40, (ii) bankers' acceptances, or (iii) repurchase agreements, reverse repurchase agreements, rate guarantee or investment agreements or other similar banking arrangements.

D. Whenever investments are made in accordance with this section, no director, officer

or employee of the Authority shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance or nonfeasance on his part.

§ 62.1-222. Annual reports; audit.

The Authority shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor. The Clerk of each House of the General Assembly may receive a copy of the report by making a request for it to the chairman of the Authority. Each report shall set forth a complete operating and financial statement for the Authority during the fiscal year it covers. An independent certified public accountant or the Auditor of Public Accounts shall perform an audit of the books and accounts of the Authority at least once in each fiscal year.

§ 62.1-223. Liberal construction of chapter.

The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. No proceedings, notice or approval shall be required for the issuance of any bonds of the Authority or any instruments or the security thereof, except as provided in this chapter. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

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Title 62.1 - Chapter 22 - Virginia Water Facilities Revolving Fund

§ 62.1-224. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of Title 62.1.

"Board" means the State Water Control Board.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost

of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary.

"Fund" means the Virginia Water Facilities Revolving Fund created by this chapter.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth or any combination of any two or more of the foregoing. The term "local government" includes any authority, commission, district, sanitary board or governmental entity issuing bonds on behalf of an authority, commission, district or sanitary board of an adjoining state that operates a wastewater treatment facility located in Virginia.

"Other entities" means owners of private wastewater treatment facilities.

"Project" means any small water facility project as defined in § 62.1-229 and any wastewater treatment facility located or to be located in the Commonwealth, all or part of which facility serves the citizens of the Commonwealth. The term includes, without limitation, sewage and wastewater (including surface and ground water) collection, treatment and disposal facilities; drainage facilities and projects; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto.

§ 62.1-225. Creation and management of Fund.

There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia

Water Facilities Revolving Fund," sums appropriated to the Fund by the General Assembly, sums allocated to the Commonwealth expressly for the purposes of establishing a revolving fund concept through the Clean Water Act (33 U.S.C. § 1251 et seq.), as amended from time to time, all receipts by the Fund from loans made by it to local governments or other entities as permitted by federal law, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private. The Fund shall be administered and managed by the Authority as prescribed in this chapter, subject to the right of the Board, following consultation with the Authority, to direct the distribution of loans or grants from the Fund to particular local governments or other entities and to establish the interest rates and repayment terms of such loans as provided in this chapter. In order to carry out the administration and management of the Fund, the Authority is granted the power to employ officers, employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund and a reasonable fee to be approved by the Board for its management services.

§ 62.1-226. Deposit of money; expenditures; investments.

All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be

prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities which are considered lawful investments for public funds under the laws of the Commonwealth.

§ 62.1-227. Annual audit.

The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the accounts of the Authority, and the cost of such audit services as shall be required shall be borne by the Authority. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as considered necessary under the circumstances. The Authority shall furnish copies of such audit to the Governor and to the Board.

§ 62.1-228. Collection of money due Fund.

The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan to a local government or other entity, including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

§ 62.1-229. Loans to local governments or other entities.

Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments or other entities as permitted by federal law to finance or refinance the cost of any project. The local governments or other entities to which loans are to be made, the purposes of the loan, the amount of each such loan, the interest rate thereon and the repayment terms thereof, which may vary between loan recipients, shall be designated in writing by the Board to the Authority following consultation with the Authority. No loan from the Fund shall

exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses. Loans may also be made from the Fund, in the Board's discretion, to a local government which has developed a low-interest loan program to provide loans or other incentives to facilitate the correction of onsite sewage disposal problems (small water facility projects), provided that the moneys may be used only for the program and that the onsite sewage disposal systems to be repaired or upgraded are owned by individual citizens of the Commonwealth where (i) public health or water quality concerns are present and (ii) connection to a public sewer system is not feasible because of location or cost.

Except as set forth above, the Authority shall determine the terms and conditions of any loan from the Fund, which may vary between loan recipients. Each loan shall be evidenced by appropriate bonds or notes of the local government or other entity payable to the Fund. The bonds or notes shall have been duly authorized by the local government or other entity and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government or other entity receiving the loan covenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the loan from the Fund to the local government or other entity; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. With respect to local governments, levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government;

C. Create and maintain a special fund or funds for the payment of the principal of and premium, if any, and interest on the loan from the Fund to the local government or other entity and any other amounts becoming due under any agreement entered into in connection with the loan, or for the operation, maintenance, repair or replacement of the project or any portions thereof or other property of the local government or other entity, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable;

D. Create and maintain other special funds as required by the Authority; and

E. Perform other acts, including the conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein, to the Fund, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal of and premium, if any, and interest on the loan from the Fund and to provide for the remedies of the Fund in the event of any default in the payment of the loan, including, without limitation, any of the following:

1. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees or other charges;
2. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure the loan from the Fund made in connection with such combination or any part or parts thereof;
3. The maintenance, replacement, renewal and repair of the project; and
4. The procurement of casualty and liability insurance.

All local governments or other entities borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments or other entities, but may be structured as determined by the Authority according to the needs of the contracting local governments or other entities and the Fund. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan subject to guidelines adopted by the Board.

§ 62.1-229.1. Loans for agricultural best management practices.

Loans may be made from the Fund, in the Board's discretion, to an individual for the construction of facilities or structures to implement agricultural best management practices to prevent pollution of state waters, to a local government which has developed a low-interest loan program to provide loans or other incentives to facilitate the construction of such facilities or structures, or to a financial institution working with a local government to establish such a program. The Board shall develop guidelines for the administration of such loans and shall determine the terms and conditions of any loan from the Fund.

§ 62.1-229.2. Loans for remediation of contaminated properties.

Loans may be made from the Fund, in the Board's discretion, to local governments, public authorities, partnerships or corporations for necessary remediation activities undertaken at a brownfield site, as defined in §10.1-1230 for the purpose of reducing ground water contamination or reducing risk to public health. The Board shall develop guidelines for the administration of such loans.

§ 62.1-229.3. Loans for land conservation.

Loans may be made from the Fund, in the Board's discretion, to a local government or a holder as defined in § [10.1-1009](#) for acquiring fee simple title to or a permanent conservation or open-space easement in real property upon the local government or holder establishing to

the satisfaction of the Board that the acquisition will (i) protect or improve water quality and prevent the pollution of state waters, and (ii) protect the natural or open-space values of the property or assure its availability for agricultural, forestal, recreational, or open-space use. The Board shall consult with the Department of Conservation and Recreation in making a determination on whether the acquisition will meet the above requirements. Loans for land acquisition may be made only in fiscal years in which all loan requests from local governments for eligible projects as defined in § [62.1-224](#) have first been satisfied. The Board shall develop guidelines for the administration of such loans.

§ 62.1-230. Grants to local governments.

Subject to any restrictions which may apply to the use of money in the Fund, the Board in its discretion may approve the use of money in the Fund to make grants or appropriations to local governments to pay the cost of any project. The Board may establish such terms and conditions on any grant as it deems appropriate. Grants shall be disbursed from the Fund by the Authority in accordance with the written direction of the Board.

§ 62.1-230.1. Loans and grants for regional projects, etc.

In approving loans and grants, the Board shall give preference to loans and grants for projects that will (i) utilize private industry in operation and maintenance of such projects where a material savings in cost can be shown over public operation and maintenance or (ii) serve two or more local governments to encourage regional cooperation or (iii) both.

§ 62.1-231. Pledge of loans to secure bonds of Authority.

The Authority is empowered at any time and from time to time to transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of and premium, if any, and interest on any or all of the bonds (as defined in § 62.1-199) of the Authority. The interests of the Fund in any obligations so transferred shall be subordinate to the rights of the trustee under the

pledge. To the extent funds are not available from other sources pledged for such purpose, any payments of principal and interest received on the assets transferred or held in trust may be applied by the trustee thereof to the payment of the principal of and premium, if any, and interest on such bonds of the Authority to which the obligations have been pledged, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of and premium, if any, and interest on such bonds of the Authority. Any assets of the Fund transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge to secure the bonds of the Authority and shall be held by the trustee to which they are pledged until no longer required for such purpose by the terms of the pledge. On or before the tenth day of January in each year, the Authority shall transfer, or shall cause the trustee to transfer, to the Fund any assets transferred or held in trust as set forth above which are no longer required to be held in trust pursuant to the terms of the pledge.

§ 62.1-231.1. Sale of loans.

The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the fund.

§ 62.1-231.2. Powers of the Authority.

The Authority is authorized to do any act necessary or convenient to the exercise of the powers granted in this chapter or reasonably implied thereby.

§ 62.1-232. Liberal construction of chapter.

The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

Title 62.1- Chapter 23 - Virginia Water Supply Revolving Fund.

§ 62.1-233. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context: "Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of this title.

"Board" means the Board of Health.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary.

"Fund" means the Virginia Water Supply Revolving Fund created by this chapter.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth or any combination of any two or more of the foregoing.

"Noncommunity waterworks" means a waterworks that serves an average of at least twenty-five individuals for at least sixty days out

of the year and such individuals are not year-round residents.

"Other entities" means owners of waterworks; however, this term does not include the federal government or owners of noncommunity waterworks operated for profit.

"Project" means any water supply facility which serves primarily residents of the Commonwealth or which is located or to be located in the Commonwealth. The term includes, without limitation, water supply and intake facilities; water treatment and filtration facilities; water storage facilities; water distribution facilities; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least fifteen connections or (iii) an average of twenty-five individuals for at least sixty days out of the year. The term includes all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

§ 62.1-234. Creation and management of Fund.

A. There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Water Supply Revolving Fund," sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it to local governments or other entities, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private. The Fund shall be administered and managed by the Authority as prescribed in this chapter, subject to the right of the Board, following consultation with the Authority, to direct the distribution of loans, loan subsidies (including principal forgiveness) or grants from the Fund to particular local governments or other entities and to establish the interest rates and repayment terms and those public health conditions deemed necessary by the Board of such loans, loan subsidies or grants as provided in this chapter. In order to carry out the administration and management of the Fund, the Authority is granted the power to employ officers, employees, agents, advisers and

consultants, including, without limitation, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. However, the Authority shall adopt policies and procedures that minimize the costs of professional services associated with the processing of a loan application and the financing or refinancing of a project, especially in those instances in which the Board has identified the applicant as "disadvantaged."

The Board shall reimburse the Authority for its reasonable costs and expenses incurred in the administration and management of the Fund, and the Board may disburse a reasonable fee, to be approved by the Board, for the Authority's management services. The Board may require status reports on the Fund from the Authority.

B. The Board may enter into a memorandum of understanding or interagency agreement with the State Water Control Board to manage aspects of the Fund, which may include (i) reviewing assistance applications and project bid documents, (ii) monitoring projects, and (iii) ensuring compliance with environmental review and other program requirements. Any memorandum of understanding or interagency agreement shall be approved by the United States Environmental Protection Agency.

§ 62.1-235. Deposit of money; expenditures; investments.

All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits. Money in the Fund

shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities which are considered lawful investments for public funds under the laws of the Commonwealth.

§ 62.1-236. Annual audit.

The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the accounts of the Authority, and the cost of such audit services as shall be required shall be borne by the Authority. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as considered necessary under the circumstances. The Authority shall furnish copies of such audit to the Governor and to the Board.

§ 62.1-237. Collection of money due Fund.

The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan to a local government or other entity, including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

§ 62.1-238. Loans to local governments or other entities.

Money in the Fund shall be used solely to make loans or loan subsidies to local governments or other entities to finance or refinance the cost of any project or to establish or fund an endowment fund to assist in the cost of any project. The local governments or other entities to which loans or loan subsidies are to be made, the purposes of the loan or loan subsidy, and the amount of each such loan or loan subsidy, the interest rate thereon and the repayment terms and those public health conditions deemed necessary by the Board thereof, which may vary between loan recipients, shall be designated in writing by the Board to the Authority following consultation with the Authority. No loan or loan

subsidy from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses. Except as set forth above, the Authority shall determine the terms and conditions of any loan or loan subsidy from the Fund, which may vary between local governments or other entities. Each loan shall be evidenced by appropriate bonds, notes, or agreements of the local government or other entity payable to the Fund. The bonds or notes shall have been duly authorized by the local government or other entity and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan or loan subsidy from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan or loan subsidy from the Fund, that the local government or other entity receiving the loan or loan subsidy covenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the loan from the Fund to the local government or other entity; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. With respect to a local government, levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan or loan subsidy from the Fund to the local government;

C. Create and maintain a special fund or funds for the payment of the principal of and premium, if any, and interest on the loan or loan subsidy from the Fund to the local government or other

entity and any other amounts becoming due under any agreement entered into in connection with the loan or loan subsidy, or for the operation, maintenance, repair or replacement of the project or any portions thereof or other property of the local government or other entity, and deposit into any fund or funds amounts sufficient to make any payments on the loan or loan subsidy as they become due and payable;

D. Create and maintain other special funds as required by the Authority; and

E. Perform other acts, including the conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein, to the Fund, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal of and premium, if any, and interest on the loan or loan subsidy from the Fund and to provide for the remedies of the Fund in the event of any default in the payment of the loan or loan subsidy, including, without limitation, any of the following:

1. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan or loan subsidy from any source, public or private, and the payment therefor of premiums, fees or other charges;
2. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure the loan or loan subsidy from the Fund made in connection with such combination or any part or parts thereof;
3. The maintenance, replacement, renewal and repair of the project; and
4. The procurement of casualty and liability insurance.

All local governments or other entities borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments or other entities, but may be structured as determined by the Authority

according to the needs of the contracting local governments or other entities and the Fund. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan or loan subsidy subject to guidelines adopted by the Board.

#### § 62.1-239. Grants.

Subject to any restrictions which may apply to the use of money in the Fund, the Board in its discretion may approve the use of money in the Fund to make grants or appropriations to local governments or other entities to pay the cost of any project. The Board may establish such terms and conditions on any grant as it deems appropriate. Grants shall be disbursed from the Fund by the Authority in accordance with the written direction of the Board.

#### § 62.1-239.1. Loans, loan subsidies, and grants for regional projects, etc.

In approving loans and grants, the Board shall give preference to loans, loan subsidies and grants for projects that will (i) utilize private industry in operation and maintenance of such projects where a material savings in cost can be shown over public operation and maintenance or (ii) serve two or more local governments or other entities to encourage regional cooperation or (iii) both.

#### § 62.1-240. Pledge of loans to secure bonds of Authority.

The Authority is empowered at any time and from time to time to transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of and premium, if any, and interest on any or all of the bonds (as defined in § 62.1-199) of the Authority. The interests of the Fund in any obligations so transferred shall be subordinate to the rights of the trustee under the pledge. To the extent funds are not available from other sources pledged for such purpose, any payments of principal and interest received on the assets transferred or held in trust may be applied by the trustee thereof to the payment of the principal of and premium, if any, and interest on such bonds of the Authority to which the

obligations have been pledged, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of and premium, if any, and interest on such bonds of the Authority. Any assets of the Fund transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge to secure the bonds of the Authority and shall be held by the trustee to which they are pledged until no longer required for such purpose by the terms of the pledge. On or before January 10 each year, the Authority shall transfer, or shall cause the trustee to transfer, to the Fund any assets transferred or held in trust as set forth above which are no longer required to be held in trust pursuant to the terms of the pledge.

§ 62.1-240.1. Sale of loans.

The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the fund.

§ 62.1-240.2. Powers of the Authority.

The Authority is authorized to do any act necessary or convenient to the exercise of the powers granted in this chapter or reasonably implied thereby.

§ 62.1-241. Liberal construction of chapter.

The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

Title 62.1 - Chapter 23.2 - Combined Sewer Overflow Matching Fund

§ 62.1-241.11. Definitions.

As used in this chapter, unless the context requires otherwise:

"Combined sewer overflow" or "CSO" means the discharge of untreated sanitary wastes, including industrial wastes and other wastes conveyed through a sanitary sewer system, and stormwater from combined stormwater and sanitary sewers.

§ 62.1-241.12. Combined Sewer Overflow Matching Fund established; purposes.

There is hereby established the Combined Sewer Overflow Matching Fund ("Fund") to match federal money for purposes of providing grants to localities for CSO projects. The Fund shall be established out of the sums appropriated from time to time by the General Assembly for the purpose of matching federal funds allocated to Virginia for CSO controls. The Fund, and all income from the investment of moneys held in the Fund and any other sums designated for deposit to the Fund from any source, public or private, shall be set apart as a permanent and perpetual fund, subject to liquidation only upon the solution of Virginia's combined sewer overflow problems, as may be determined by the General Assembly. The Fund shall be administered and managed by the Virginia Resources Authority, subject to the right of the State Water Control Board, following consultation with the Authority, to direct the distribution of grants from the Fund to particular local governments. The State Water Control Board may establish such terms and conditions on any grant as it deems appropriate, and grants shall be disbursed from the Fund by the Virginia Resources Authority in accordance with the written direction of the State Water Control Board.

Title 62.1 - Chapter 24 - Surface Water Management Act

§ 62.1-242. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include but are not limited to domestic

(including public water supply), agricultural, electric power generation, commercial, and industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.

"Board" means the State Water Control Board.

"Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.

"Surface water withdrawal permit" means a document issued by the Board evidencing the right to withdraw surface water.

"Surface water management area" means a geographically defined surface water area in which the Board has deemed the levels or supply of surface water to be potentially adverse to public welfare, health and safety.

"Surface water" means any water in the Commonwealth, except ground water, as defined in § 62.1-255.

§ 62.1-243. Withdrawals for which surface water withdrawal permit not required.

A. No surface water withdrawal permit shall be required for (i) any nonconsumptive use, (ii) any water withdrawal of less than 300,000 gallons in any single month, (iii) any water withdrawal from a farm pond collecting diffuse surface water and not situated on a perennial stream as defined in the United States Geological Survey 7.5-minute series topographic maps, (iv) any withdrawal in any area which has not been declared a surface water management area, or (v) any withdrawal from a wastewater treatment system permitted by the State Water Control Board or the Department of Mines, Minerals and Energy.

B. No political subdivision or investor-owned water company permitted by the Department of Health shall be required to obtain a surface water withdrawal permit for:

1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the

withdrawal has received a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

3. Any withdrawal in existence on July 1, 1989, from an instream impoundment of water used for public water supply purposes; however, during periods when permit conditions in a surface water management area are in force under regulations adopted by the Board pursuant to § 62.1-249, and when the rate of flow of natural surface water into the impoundment is equal to or less than the average flow of natural surface water at that location, the Board may require the release of water from the impoundment at a rate not exceeding the existing rate of flow of natural surface water into the impoundment.

Withdrawals by a political subdivision or investor-owned water company permitted by the Department of Health shall be affected by subdivision 3 of subsection B only at the option of that political subdivision or investor-owned water company.

To qualify for any exemption in subsection B of this section, the political subdivision making the withdrawal, or the political subdivision served by an authority making the withdrawal, shall have instituted a water conservation program approved by the Board which includes: (i) use of water saving plumbing fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water loss reduction program; (iii) a water use education program; and (iv) ordinances prohibiting waste of water generally and providing for mandatory water use restrictions, with penalties, during water shortage emergencies. The Board shall review all such water conservation programs to ensure compliance with (i) through (iv) of this paragraph.

C. No existing beneficial consumptive user shall be required to obtain a surface water withdrawal permit for:

1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared

surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

To qualify for either exemption in subsection C of this section, the beneficial consumptive user shall have instituted a water management program approved by the Board which includes: (i) use of water-saving plumbing; (ii) a water loss reduction program; (iii) a water use education program; and (iv) mandatory reductions during water shortage emergencies. However, these reductions shall be on an equitable basis with other uses exempted under subsection B of this section. The Board shall review all such water management programs to ensure compliance with (i) through (iv) of this paragraph.

D. The Board shall issue certificates for any withdrawals exempted pursuant to subsections B and C of this section. Such certificates shall include conservation or management programs as conditions thereof.

§ 62.1-244. Board may require information from persons withdrawing surface water.

The Board may require any person withdrawing surface water for any purpose in any surface water management area to furnish information with regard to such surface water withdrawal and the use thereof.

§ 62.1-245. Agreements among persons withdrawing surface water.

In the administration of this chapter, the Board shall encourage, promote and recognize voluntary agreements among persons withdrawing surface water in the same surface water management area. When the Board finds that any such agreement, executed in writing and filed with the Board, is consistent with the intent, purposes and requirements of this

chapter, the Board shall approve the agreement following a public hearing. The Board shall provide at least sixty days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies. The Board shall be a party to the agreement. The agreement, until terminated, shall control in lieu of a formal order, rule, regulation or permit issued by the Board under the provisions of this chapter, and shall be deemed to be a case decision under the Administrative Process Act (§ 9-6.14:1 et seq.). Any agreement shall specify the amount of water affected thereby.

Any agreement approved by the Board may include conditions which can result in its amendment or termination by the Board, following a public hearing, if the Board finds that it or its effect is inconsistent with the intent, purposes and requirements of this chapter. Such conditions may include (i) a determination by the Board that the agreement originally approved by the Board will not further the purposes of this chapter, (ii) a determination by the Board that circumstances have changed such that the agreement originally approved by the Board will no longer further the purposes by this chapter, or (iii) one or more parties to the agreement is not fulfilling its commitments under the agreement. The Board shall provide at least sixty days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies.

§ 62.1-246. When Board may initiate a surface water management area study proceeding; hearing required.

A. The Board upon its own motion or, in its discretion, upon receipt of a petition therefor by any county, city or town within the surface water management area in question, or any state agency, may initiate a surface water

management area proceeding whenever in its judgment there is evidence to indicate that:

1. A stream has substantial instream values as indicated by evidence of fishery, recreation, habitat, cultural or aesthetic properties; and
  2. Historical records or current conditions indicate that a low flow condition could occur which would threaten important instream uses; and
  3. Current or potential offstream uses contribute to or are likely to exacerbate natural low flow conditions to the detriment of instream values.
- B. If, after a public hearing held pursuant to § 9-6.14:7.1, or at the request of an affected person or on the Board's motion, a hearing shall be held under § 9-6.14:8, and the Board finds that the conditions required above exist and further finds that the public welfare, health and safety require that regulatory efforts be initiated, the Board shall declare the area in question to be a surface water management area. The Board shall cause notice of the surface water management area to be published in a newspaper of general circulation throughout the area, and shall mail a copy of its decision to the mayor or chairman of the governing body of each county, city or town within which any part of the area lies, or which is known by the Board to make offstream use of water from the area, and to the chief administrative officer of any federal facility known by the Board to be using water from within the area. The Board shall include in its decision a definition of the boundaries of the water management area.

§ 62.1-247. Use of surface water in surface water management area.

After an area has been declared a surface water management area by an order of the Board, no person shall withdraw or attempt to withdraw any surface water, except for withdrawals exempted under § 62.1-243 or made pursuant to a voluntary agreement approved by the Board pursuant to § 62.1-245, without a surface water withdrawal permit issued by the Board.

§ 62.1-248. Permits.

A. Any permit issued by the Board shall include a flow requirement appropriate for the protection of beneficial instream uses. In determining the level of flow in need of protection, the Board shall consider, among other things, recreational

and aesthetic factors and the potential for substantial and long-term adverse impact on fish and wildlife found in that particular surface water management area. Should this determination indicate a need to restrict water withdrawal, the Board shall consider, among other things, the availability of alternative water supplies, the feasibility of water storage or other mitigation measures, and the socioeconomic impacts of such restrictions on the potentially affected water users and on the citizens of the Commonwealth in general.

In its permit decision, the Board shall attempt to balance offstream and instream water uses so that the welfare of the citizens of the Commonwealth is maximized without imposing unreasonable burdens on any individual water user or water-using group. The decision to implement this balance may consist of approval of withdrawal without restriction, approval subject to conditions designed to protect instream uses from unacceptable adverse effects, or disapproval of the withdrawal.

Permit conditions may include, but are not limited to, the following: (i) maximum amounts which may be withdrawn, (ii) times of the day or year during which withdrawals may occur, and (iii) requirements for voluntary and mandatory conservation measures.

B. In considering whether to issue, modify, revoke, or deny a permit under this section, the Board shall consider:

1. The number of persons using a stream and the object, extent and necessity of their respective withdrawals or uses;
2. The nature and size of the stream;
3. The types of businesses or activities to which the various uses are related;
4. The importance and necessity of the uses claimed by permit applicants, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to instream or offstream water uses;
5. The effects on beneficial uses; and
6. Any other relevant factors.

C. Permits shall be transferable among users, subject to approval by the Board.

D. In developing regulations governing the issuance of permits, the Board shall prioritize among types of users. Domestic and existing uses shall be given the highest priority in the issuance of permits for other beneficial uses.

Included among existing uses shall be any projected use which has been relied upon in the development of an industrial project and for which a permit has been obtained by January 1, 1989, pursuant to § 404 of the Clean Water Act. § 62.1-248.1. When application for permit considered complete.

No application for a permit shall be considered complete unless the applicant has provided the Executive Director with notification from the governing body of the county, city or town in which the withdrawal is to take place that the location and operation of the withdrawing facility is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this section shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

§ 62.1-249. Applicability of permit conditions.

A. The Board by regulation shall determine when the level of flow is such that permit conditions in a surface water management area are in force. As a part of this regulation, the Board shall adopt a reasonable system of water-use classification according to classes of beneficial uses. The Board may include provisions for variances and alternative measures to prevent undue hardship and ensure equitable distribution of water resources.

B. The regulations may provide that the Board, or the Board's Executive Director, by order may declare that the level of flow is such that permit conditions are applicable for all or part of a surface water management area.

C. The Board may impose such restrictions on one or more classes of water uses as may be necessary to protect the surface water resources of the area from serious harm.

D. Regulations shall provide for the means for a declaration of water shortage to be rescinded.

E. When permit conditions become applicable in a surface water management area, the Board shall notify each permittee by mail or cause notice thereof to be published in a newspaper of general circulation throughout the area. Publication of such notice will serve as notice to all permit holders in the area.

§ 62.1-250. State agency review.

Prior to the creation of a surface water management area, or the issuance of a permit within one, the Board shall consult and cooperate with, and give full consideration to the written recommendations of, the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, and any other interested and affected agencies. Such consultation shall include the need for development of a means in the surface water management area for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within forty-five days after notification by the Board. The Board shall assume that if written comments are not submitted by an agency, within the time period, the agency has no comments on the proposed permits.

§ 62.1-251. Cancellation or suspension of permit.

Whenever the Board finds that the holder of a permit is willfully violating any provision of such permit or any other provision of this chapter, the Board may cancel or suspend the permit or impose conditions on its future use in order to prevent future violations. The finding of the Board shall be made in accordance with the Administrative Process Act, § 9-6.14:1 et seq.

§ 62.1-252. Penalties; injunctions.

A. Any person who violates any provision of this chapter shall be subject to a civil penalty not to exceed \$1,000 for each violation. Each day of violation shall constitute a separate offense.

B. With the consent of any person in violation of this chapter, the Board may provide, in an order issued by the Board against the person, for the payment of civil charges. These charges shall be in lieu of civil charges imposed by the court.

C. In order to protect the public interest of the Commonwealth, the Board may seek injunctive relief against any person violating any provision of this chapter.

D. The civil penalties and civil charges provided for in this section shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1.

§ 62.1-253. Riparian rights.

Nothing in this chapter shall be construed as altering, or authorizing any alteration of, any existing riparian rights except as set forth in permits issued pursuant to this chapter. The conditions in such permits shall be in force only in those times when low stream flows, or the potential therefor, result in a declaration as provided for in subsection A of § 62.1-249.

Title 62.1 - Chapter 25 - Ground Water Management Act of 1992

§ 62.1-254. Findings and purpose.

The General Assembly hereby determines and finds that, pursuant to the Groundwater Act of 1973, the continued, unrestricted usage of ground water is contributing and will contribute to pollution and shortage of ground water, thereby jeopardizing the public welfare, safety and health. It is the purpose of this Act to recognize and declare that the right to reasonable control of all ground water resources within this Commonwealth belongs to the public and that in order to conserve, protect and beneficially utilize the ground water of this Commonwealth and to ensure the public welfare, safety and health, provision for management and control of ground water resources is essential.

§ 62.1-255. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" includes, but is not limited to, domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Person" means any and all persons, including individuals, firms, partnerships, associations,

public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

§ 62.1-256. Duties of Board.

The Board shall have the following duties and powers:

1. To issue ground water withdrawal permits in accordance with regulations adopted by the Board;
2. To issue special orders as provided in § 62.1-268;
3. To study, investigate and assess ground water resources and all problems concerned with the quality and quantity of ground water located wholly or partially in the Commonwealth, and to make such reports and recommendations as may be necessary to carry out the provisions of this chapter;
4. To require any person withdrawing ground water for any purpose anywhere in the Commonwealth, whether or not declared to be a ground water management area, to furnish to the Board such information with regard to such ground water withdrawal and the use thereof as may be necessary to carry out the provisions of this chapter, excluding ground water withdrawals occurring in conjunction with activities related to exploration for and production of oil, gas, coal or other minerals regulated by the Department of Mines, Minerals and Energy;
5. To prescribe and enforce requirements that naturally flowing wells be plugged or destroyed, or be capped or equipped with valves so that flow of ground water may be completely stopped when said ground water is not currently being applied to a beneficial use;
6. To enter at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs, and to duly authorize agents to do the same, to ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish to carry out the provisions of this chapter;

7. To issue special exceptions pursuant to § 62.1-267;
8. To adopt such regulations as it deems necessary to administer and enforce the provisions of this chapter; and
9. To delegate to its Executive Director any of the powers and duties invested in it to administer and enforce the provisions of this chapter except the adoption and promulgation of rules, standards or regulations; the revocation of permits; and the issuance, modification, or revocation of orders except in case of an emergency as provided in subsection B of § 62.1-268.

§ 62.1-257. When Board may initiate a ground water management area study proceeding; hearing required.

A. The Board upon its own motion or, in its discretion, upon receipt of a petition by any county, city or town within the area in question, may initiate a ground water management area proceeding, whenever in its judgment there may be reason to believe that:

1. Ground water levels in the area are declining or are expected to decline excessively;
2. The wells of two or more ground water users within the area are interfering or may reasonably be expected to interfere substantially with one another;
3. The available ground water supply has been or may be overdrawn; or
4. The ground water in the area has been or may become polluted. Such pollution includes any alteration of the physical, chemical or biological properties of ground water which has a harmful or detrimental effect on the quality or quantity of such waters.

B. If the Board finds that any one of the conditions required above exists, and further finds that the public welfare, safety and health require that regulatory efforts be initiated, the Board shall by regulation declare the area in question to be a ground water management area. The Board shall include in its regulation a definition of the boundaries of the ground water management area. The Board shall mail a copy of the regulation to the mayor or chairman of the governing body of each county, city or town within which any part of the area lies.

§ 62.1-258. Use of ground water in ground water management area.

It shall be unlawful in a ground water management area for any person to withdraw, attempt to withdraw, or allow the withdrawal of any ground water, other than in accordance with a ground water withdrawal permit or as provided in § 62.1-259, subsections C, D and F of § 62.1-260, and subsection C of § 62.1-261.

§ 62.1-259. Certain withdrawals; permit not required.

No ground water withdrawal permit shall be required for (i) withdrawals of less than 300,000 gallons a month; (ii) temporary construction dewatering; (iii) temporary withdrawals associated with a state-approved ground water remediation; (iv) the withdrawal of ground water for use by a ground water heat pump where the discharge is reinjected into the aquifer from which it is withdrawn; (v) the withdrawal from a pond recharged by ground water without mechanical assistance; (vi) the withdrawal of water for geophysical investigations, including pump tests; (vii) the withdrawal of ground water coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of Mines, Minerals and Energy; (viii) the withdrawal of ground water coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ground water users within a ground water management area; (ix) the withdrawal of ground water in any area not declared a ground water management area; or (x) the withdrawal of ground water pursuant to a special exception issued by the Board.

§ 62.1-260. Permits for existing ground water withdrawals in existing ground water management areas.

A. Persons holding a certificate of ground water right or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to said certificate or permit shall file an application for a ground water withdrawal permit on or before December 31, 1992, in order to obtain a permit for

withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1987, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation; however, with respect to a political subdivision, an authority serving a political subdivision or a community waterworks regulated by the Department of Health, the permit shall be issued for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1980, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons holding a certificate of ground water right issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to the certificate shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1988, and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons holding a permit to withdraw ground water issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas shall not be required to apply for a ground water withdrawal permit until the expiration of the term of the permit to withdraw ground water as provided in subsection C of § 62.1-266, and may withdraw ground water pursuant to the terms and conditions of the permit to withdraw ground water. Such persons may apply for a ground water withdrawal permit allowing greater withdrawals of ground water than are allowed under an existing permit, and the Board in its discretion may issue a permit for such greater withdrawals, upon consideration of the factors set forth in § 62.1-263.

D. Persons holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore

Groundwater Management Areas, who have not withdrawn ground water prior to July 1, 1992, may initiate a withdrawal on or after July 1, 1992, pursuant to the terms and conditions of the certificate or permit. The persons shall file an application for a ground water withdrawal permit on or before December 31, 1995, and may continue withdrawing ground water under the terms and conditions of their certificate or permit until the required ground water withdrawal permit application is acted on by the Board, provided that the ground water withdrawal permit application is filed on or before December 31, 1995. The Board shall issue a ground water withdrawal permit for the total amount of ground water withdrawn and applied to a beneficial use during any consecutive twelve-month period between July 1, 1992, and June 30, 1995, together with (i) such savings as can be demonstrated to have been achieved through water conservation and (ii) such amount as the Board in its discretion deems appropriate upon consideration of the factors set forth in § 62.1-263. This subsection shall not apply to a political subdivision, or an authority serving a political subdivision, holding a permit or certificate for a public water supply well for supplemental water during drought conditions, which shall apply for a ground water withdrawal permit as provided in § 62.1-265.

E. Persons withdrawing ground water for agricultural or livestock watering purposes in the Eastern Virginia or Eastern Shore Groundwater Management Areas on or before July 1, 1992, shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1983 and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

F. Persons withdrawing ground water for agricultural or livestock watering purposes, or pursuant to certificates of ground water right or permits to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, may continue such withdrawal until the required permit application is acted on by the Board,

provided that the permit application is filed by the appropriate deadline.

G. Persons applying for a ground water withdrawal permit may request that they be permitted to withdraw more ground water than the amount to which they may be entitled based on their historic usage and water conservation as set forth in this section. The Board in its discretion may issue a permit for a greater amount than that which is based on historic usage and water conservation, upon consideration of the factors set forth in § 62.1-263.

H. Failure by any person covered by the provisions of subsection A, B, D or E to file an application for a ground water withdrawal permit prior to the expiration of the applicable period creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the Board shall consider the factors set forth in § 62.1-263.

§ 62.1-261. Permits for existing ground water withdrawals in newly established ground water management areas.

A. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The Board shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the five years preceding said declaration, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons withdrawing ground water for agricultural or livestock watering purposes in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The Board shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the ten-year period preceding such declaration, together with such

savings as can be demonstrated to have been achieved through water conservation.

C. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, may continue such withdrawal until the required permit application is acted on by the Board, provided that the permit application is filed within the six-month period following the declaration.

D. Persons applying for a ground water withdrawal permit issued pursuant to this section may request that they be permitted to withdraw more ground water than the amount to which they may be entitled based on their historic usage as set forth in this section. The Board in its discretion may issue a permit for a greater amount than that which is based on historic usage, upon consideration of factors set forth in § 62.1-263.

E. Failure by any person covered by the provisions of subsection A or B to file an application for a ground water withdrawal permit within the six months following the declaration of the ground water management area creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the Board shall consider the factors set forth in § 62.1-263.

§ 62.1-262. Permits for other ground water withdrawals.

Any application for a ground water withdrawal permit, except as provided in §§ 62.1-260 and 62.1-261, shall include a water conservation and management plan approved by the Board. A water conservation and management plan shall include: (i) use of water-saving plumbing and processes including, where appropriate, use of water-saving fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; and (iv) mandatory reductions during water-shortage emergencies including, where appropriate, ordinances prohibiting waste of water generally and providing for mandatory water-use restrictions, with penalties, during water-shortage emergencies. The Board shall approve all water conservation plans in

compliance with subdivisions (i) through (iv) of this section.

§ 62.1-263. Criteria for issuance of permits. When reviewing an application for a permit to withdraw ground water, or an amendment to a permit, the Board may consider the nature of the proposed beneficial use, the proposed use of alternate or innovative approaches such as aquifer storage and recovery systems and surface and ground water conjunctive uses, climatic cycles, unique requirements for nuclear power stations, economic cycles, population projections, the status of land use and other necessary approvals, and the adoption and implementation of the applicant's water conservation and management plan. In no case shall a permit be issued for more ground water than can be applied to the proposed beneficial use.

When proposed uses of ground water are in conflict or when available supplies of ground water are insufficient for all who desire to use them, preference shall be given to uses for human consumption, over all others.

In evaluating permit applications, the Board shall ensure that the maximum possible safe supply of ground water will be preserved and protected for all other beneficial uses.

In evaluating the available ground water with respect to permit applications for new or expanded withdrawals in the Eastern Virginia or Eastern Shore Groundwater Management Areas, the Board shall use the average of the actual historical ground water usage from the inception of the ground water withdrawals of a political subdivision or authority operating a ground water and surface water conjunctive use system and shall not use the total permit capacity of such system in determining such availability.

§ 62.1-264. Permits for public water supplies. To ensure that any ground water withdrawal permit issued for a public water supply does not impact a waterworks operation permit issued pursuant to § 32.1-172, the maximum permitted daily withdrawal shall be set by the Board at a level consistent with the requirements and conditions contained in the waterworks operation permit. This section shall not limit the authority of the Board to reduce or eliminate ground water withdrawals by a waterworks if

necessary to protect human health or the environment. In promulgating regulations to implement this section, and in administering such regulations and this chapter, the Board shall consult and cooperate with the State Health Department to the end that effective, equitable management of ground water and safeguarding of public health will be attained to the maximum extent possible.

§ 62.1-265. Drought relief wells.

A political subdivision, or an authority serving a political subdivision, holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, for the operation of a public water supply well for the purpose of providing supplemental water during drought conditions, shall file an application for a ground water withdrawal permit on or before December 31, 1992. The Board shall issue ground water withdrawal permits for supplemental drought relief wells for the amount of ground water needed annually to meet human consumption needs as documented by a water conservation and management plan approved by the Board as provided in § 62.1-262. Any ground water withdrawal permits for supplemental drought relief wells shall be issued with the condition that withdrawals may only be made at times that mandatory water use restrictions have been implemented pursuant to the water conservation and management plan.

§ 62.1-266. Ground water withdrawal permits.

A. The Board may issue any ground water withdrawal permit upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health.

B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board and shall contain such information, consistent with this chapter, as the Board deems necessary.

C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed term not to exceed ten years. The term of a ground water withdrawal permit issued by the Board shall not be extended by modification beyond the maximum duration, and the permit shall expire at the end of the term unless a

complete application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit. Any permit to withdraw ground water issued by the Board on or after July 1, 1991, and prior to July 1, 1992, shall expire ten years after the date of its issuance.

D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such savings as can be demonstrated to have been achieved through water conservation, provided that a beneficial use of the permitted ground water can be demonstrated for the following permit term.

E. Any permit issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The permittee has violated any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court, where such violation presents a hazard or potential hazard to human health or the environment or is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or in any other report or document required under this chapter or under the ground water withdrawal regulations of the Board;

3. The activity for which the permit was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the permit; or

4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of the withdrawal controlled by the permit necessary to protect human health or the environment.

F. No application for a ground water withdrawal permit shall be considered complete unless the applicant has provided the Executive Director of

the Board with notification from the governing body of the county, city or town in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground water through a single well or system of wells, including a backup well or wells, or such other means as the withdrawer specifies.

§ 62.1-267. Issuance of special exceptions.

A. The Board may issue special exceptions to allow the withdrawal of ground water in cases of unusual situations where requiring the user to obtain a ground water withdrawal permit would be contrary to the intended purpose of the Act.

B. In reviewing an application for a special exception, the Board may consider the amount and duration of the proposed withdrawal, the beneficial use intended for the ground water, the return of the ground water to the aquifer, and the effect of the withdrawal on human health and the environment. Any person requesting a special exception shall submit an application to the Board containing such information as the Board shall require by regulation adopted pursuant to this chapter.

C. Any special exception issued by the Board shall state the terms pursuant to which the applicant may withdraw ground water, including the amount of ground water that may be withdrawn in any period and the duration of the special exception. No special exception shall be issued for a term exceeding ten years.

D. A violation of any term or provision of a special exception shall subject the holder thereof to the same penalties and enforcement procedures as would apply to a violation of a ground water withdrawal permit.

E. The Board shall have the power to amend or revoke any special exception after notice and opportunity for hearing on the grounds set forth in subsection D of § 62.1-266 for amendment or revocation of a ground water withdrawal permit.

§ 62.1-268. Issuance of special orders.

A. The Board may issue special orders (i) requiring any person who has violated the terms and provisions of a ground water withdrawal permit issued by the Board to comply with such terms and provisions; (ii) requiring any person who has failed to comply with a directive from the Board to comply with such directive; or (iii) requiring any person who has failed to comply with the provisions of this chapter or any decision of the Board pertaining to ground water to comply with such provision or decision.

B. Such special orders are to be issued only after a hearing with at least thirty days' notice to the affected person of the time, place and purpose thereof, and they shall become effective not less than fifteen days after service by certified mail, sent to the last known address of such person, with the time limits counted from the date of such mailing; however, if the Board finds that any such person is grossly affecting or presents an imminent and substantial danger to (i) the public welfare, safety or health; (ii) a public water supply; or (iii) commercial, industrial, agricultural or other beneficial uses, it may issue, without advance notice or hearing, an emergency special order directing the person to cease such withdrawal immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel such emergency special order. If a person who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 62.1-269, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a withdrawal, the Board shall provide an opportunity for a hearing within forty-eight hours of the issuance of the injunction.

C. The provisions of this section notwithstanding, the Board may proceed directly under § 62.1-270 for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board pertaining

to ground water, any condition of a ground water withdrawal permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § 62.1-270. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection A of § 62.1-270 and shall not be subject to the provisions of § 2.1-127.

§ 62.1-269. Enforcement by injunction, etc. Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, standard or requirement of the Board pertaining to ground water, any provision of any ground water withdrawal permit issued by the Board, or any provision of this chapter may be compelled to obey same and to comply therewith in a proceeding instituted by the Board in any appropriate court for injunction, mandamus or other appropriate remedy. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the Board under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

§ 62.1-270. Penalties.

A. Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any order of the Board pertaining to ground water, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$25,000 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the person in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid to the State Treasurer for deposit into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1.

With the consent of any person in violation of this chapter, the Board may provide, in an order issued by the Board against the person, for the payment of civil charges. These charges shall be in lieu of the civil penalties referred to above. Such civil charges shall be deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund.

B. Any person willfully or negligently violating any provision of this chapter, any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not less than \$2,500 nor more than \$25,000, either or both. Any person who knowingly violates any provision of this chapter, any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of one million dollars or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and

imprisonment for any subsequent conviction of the same person under this subsection.

D. Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

## TITLE 30 - CHAPTER 24 - STATE WATER COMMISSION

§ 30-186. State Water Commission; membership; terms; compensation; staff.

A. The State Water Commission (the "Commission") is established in the legislative branch of state government. The Commission shall consist of fifteen members to be appointed as follows: the Chairmen of the House Committee on Conservation and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources; seven additional members of the House of Delegates at large appointed by the Speaker; four additional members of the Senate at large appointed by the Committee on Privileges and Elections; and two citizen members to be appointed by the Governor.

B. Legislative members shall serve terms coincident with their terms of office.

Gubernatorial appointees shall serve for terms of four years and may succeed themselves, but vacancies during their terms shall be filled only for the unexpired portion of the term.

C. The members of the Commission shall elect a chairman and a vice-chairman.

D. Commission members shall be compensated as specified in § [30-19.12](#), and shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § [2.2-2825](#).

E. The Division of Legislative Services shall serve as staff to the Commission.

F. All agencies of the Commonwealth shall assist the Commission upon request.

## TITLE 15.2 COUNTIES, CITIES AND TOWNS CHAPTER 9 GENERAL POWERS OF LOCAL GOVERNMENTS

§ 15.2-924. Water supply emergency ordinances. - A. Whenever the governing body of any county, city or town finds that a water supply emergency exists or is reasonably likely to occur if water conservation measures are not taken, it may adopt an ordinance restricting the use of water by the citizens of such county, city or town for the duration of such emergency or for a period of time necessary to prevent the occurrence of a water supply emergency; provided, however, such ordinance shall apply only to water supplied by a county, city or town, authority, or company distributing water for a fee or charge. Such ordinance may include appropriate penalties designed to prevent excessive use of water, including, but not limited to, a surcharge on excessive amounts used.

B. After such an emergency has been declared in any jurisdiction, any owner of a water supply system serving that jurisdiction may apply to the State Water Control Board for assistance. If the State Water Control Board confirms the existence of an emergency, and finds that such owner and such jurisdiction have exhausted available means to relieve the emergency and that the owner and jurisdiction are applying all feasible water conservation measures, and in addition finds that there is water available in neighboring jurisdictions in excess of the reasonable needs of such jurisdictions, and that there exists between such neighboring jurisdictions interconnections for the transmission of water, the Board shall so inform the Governor. The Governor, if requested jointly by the jurisdiction and the owner of the systems supplying the jurisdiction, may then appoint a committee consisting of one representative of the jurisdiction declaring the emergency, one representative of the system supplying the jurisdiction under emergency, and those two

representatives shall choose a third representative and failing to choose such third representative within seven days he shall be selected by the Governor. The committee shall have the duty and authority to allocate the water available in such jurisdictions for the period of the emergency, provided that the period of the emergency shall not exceed that determined by the jurisdiction declaring the emergency or the State Water Control Board whichever period termination is earlier, so that the best water supply possible will be provided to all water users during the emergency as previously described. Nothing in this section shall be construed as requiring the construction of pipeline interconnections between any jurisdiction or any water supply system.

C. Any water taken from one water supplier for the benefit of another shall be paid for by using the established rate schedule of the supplier for treated water. Raw water shall be furnished at rates which shall reflect all costs to the supplying jurisdiction, including, but not limited to, capital investment costs. Should there be imposed upon the supplier any additional obligation, water production costs or other capital or operating expenditures beyond those normal to the suppliers' system, then the cost of same shall be chargeable to the receiving jurisdiction by single payment or by incorporation in a special rate structure, all of the same as shall be reasonable.

D. Nothing contained in this section shall authorize any county, city or town to regulate the use of water taken from a river or any flowing stream when such water is used for industrial purposes and the approximate same quantity of water is returned to such river or stream after such industrial usage.

State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm

TITLE 32.1 HEALTH  
CHAPTER 6 ENVIRONMENTAL HEALTH SERVICES

§ 32.1-163. Definitions. - As used in this article, unless the context clearly requires a different meaning:

"Alternative discharging sewage system" means any device or system which results in a point source discharge of treated sewage for which the Board may issue a permit authorizing construction and operation when such system is regulated by the

or association which owns or proposes to own a sewerage system or treatment works.

"Review Board" means the State Sewage Handling and Disposal Appeals Review Board.

"Regulations" means the Sewage Handling and Disposal Regulations, heretofore or hereafter enacted or adopted by the State Board of Health.

"Sewage" means water-carried and non-water-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Subsurface drainfield" means a system installed within the soil and designed to accommodate treated sewage from a treatment works.

"Transportation" means the vehicular conveyance of sewage.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

§ 32.1-164. Powers and duties of Board; regulations; fees. - A. The Board shall have supervision and control over the safe and sanitary collection, conveyance, transportation treatment and disposal of sewage by onsite sewage systems and alternative discharging sewage systems, treatment works as they affect the public health and welfare. In discharging the responsibility to supervise and control the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall exercise due diligence to protect the quality of both surface water and groundwater. Upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by

the State Water Control Board, the Board of Health shall assume the responsibility for permitting alternative discharging sewage systems as defined in § 32.1-163. All such permits shall comply with the applicable regulations of the State Water Control Board and be registered with the State Water Control Board.

In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board shall require and the Department shall conduct regular inspections of alternative discharging sewage systems. The Board shall also establish requirements for maintenance contracts for alternative discharging sewage systems. The Board may require, as a condition for issuing a permit to operate an alternative discharging sewage system, that the applicant present an executed maintenance contract. Such contract shall be maintained for the life of any general Virginia Pollutant Discharge Elimination System permit issued by the State Water Control Board.

B. The regulations of the Board shall govern the collection, conveyance, transportation treatment and disposal of sewage by onsite sewage systems and alternative discharging sewage systems. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification or operation of a sewerage system or treatment works except in those instances where a permit is required pursuant to Chapter 3.1 of Title 62.1.

2. Criteria for the granting or denial of such permits.

3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works for permits issued by the Commissioner.

4. Standards governing disposal of sewage on or in soils.

5. Standards specifying the minimum distance between sewerage systems or treatment works and:

- (a) Public and private wells supplying water for human consumption,

- (b) Lakes and other impounded waters,

- (c) Streams and rivers,

- (d) Shellfish waters,

- (e) Groundwaters,

- (f) Areas and places of human habitation,
  - (g) Property lines.
  - 6. Standards as to the adequacy of an approved water supply.
  - 7. Standards governing the transportation of sewage.
  - 8. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth.
  - 9. A requirement that such residences, building, structures and other places designed for human occupancy as the Board may prescribe be provided with a sewerage system or treatment works.
  - 10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted through the then current sewage handling and disposal regulations, to treat and dispose of sewage as effectively as approved methods.
  - 11. Standards for inspections of and requirements for maintenance contracts for alternative discharging sewage systems.
  - 12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification, or operation of an alternative discharging sewage system as defined in § 32.1-163.
  - 13. Criteria for granting, denying, and revoking of permits for alternative discharge sewage systems.
  - 14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage system permits.
  - 15. Criteria for approved training courses, testing requirements, and application fees for persons wishing to be authorized onsite soil evaluators.
  - 16. Procedures for listing, removing from the list, and reinstating on the list those persons who have successfully qualified to be authorized onsite soil evaluators.
- C. A fee of \$75 shall be charged for filing an application for an onsite sewage disposal system or an alternative discharging sewage system permit with the Department. Funds received in payment of such charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this title. However, \$10 of each fee

shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose income are below the federal poverty guidelines established by the United States Department of Health and Human Services or when the application is for a pit privy or the repair of a failing onsite sewage disposal system. If the Department denies the permit for land on which the applicant seeks to construct his principal place of residence, then such fee shall be refunded to the applicant.

From such funds as are appropriated to the Department from the special fund, the Board shall apportion a share to local or district health departments to be allocated in the same ratios as provided for the operation of such health departments pursuant to § 32.1-31. Such funds shall be transmitted to the local or district health departments on a quarterly basis.

D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act. (§ 2.2-4000 et seq.)

E. Further, a fee of \$75 shall be charged for such installation and monitoring inspections of alternative discharging sewage systems as may be required by the Board. The funds received in payment of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this section. However, \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services.

F. Any owner who violates any provision of this section or any regulation of the Board of Health or the State Water Control Board relating to alternative discharging sewage systems or who fails to comply with any order of the Board of Health or

any special final order of the State Water Control Board shall be subject to the penalties provided in §§ 32.1-27 and 62.1-44.32.

In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its agent may initiate a civil action against any user or users of an alternative discharging sewage systems to recover that portion of any civil penalty imposed against the owner which directly resulted from violations by the user or users of any applicable federal, state, or local laws, regulations, or ordinances.

G. The Board shall establish a program for qualifying individuals as authorized onsite soil evaluators. The Board's program shall include, but not be limited to, approved training courses, written and field tests, application fees to cover the costs of the program, renewal fees and schedules, and procedures for listing, removing from the list, and reinstating individuals as authorized onsite soil evaluators. To contain costs, the Board shall use or enhance the written and field tests given to Department of Health sanitarians as the testing vehicle for authorized onsite soil evaluators. Until July 1, 2001, a person holding a certificate as a Virginia certified professional soil scientist from the Board of Professional Soil Scientists shall be deemed to be qualified, upon application and demonstration of the knowledge, skills, and abilities necessary to conduct onsite soil evaluations, as an authorized onsite soil evaluator without completing the Board's training courses and taking the written and field tests. The Board shall furnish the list of authorized onsite soil evaluators to all local and district health departments.

H. The Board shall establish and implement procedures for issuance of letters recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. Such letters shall state, in language determined by the Office of the Attorney General and approved by the Board, the appropriateness of the soil for a traditional septic or other onsite sewage system; no system design shall be required for issuance of such letter. The letter may be recorded in the land records of the clerk of the circuit court in the jurisdiction where all or part of the site or proposed site of the septic or other onsite sewage system is to be located so as to be a binding notice to the public, including subsequent purchases of the land in

question. Upon the sale or transfer of the land which is the subject of any letter, the letter shall be transferred with the title to the property. A permit shall be issued on the basis of such letter unless, from the date of the letter's issuance, there has been a substantial, intervening change in the soil or site conditions where the septic system or other onsite sewage system is to be located. The Board, Commissioner, and the Department shall accept evaluations from authorized onsite soil evaluators for the issuance of such letters, if they are produced in accordance with the Board's established procedures for issuance of letters. The Department shall issue such letters within 20 working days of the application filing date when evaluations produced by authorized onsite soil evaluators are submitted as supporting documentation. The Department shall not be required to do a field check of the evaluation prior to issuing such a letter or a permit based on such letter; however, the Department may conduct such field analyses as deemed necessary to protect the integrity of the Commonwealth's environment.

Applicants for such letters in lieu of onsite sewage system permits shall pay the fee established by the Board for the letters' issuance and, upon application for a septic system permit or other onsite sewage system permit, shall pay the permit application fee.

§ 32.1-164.3. Septage disposal. - Notwithstanding the provisions of Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia, the Board of Health shall have the authority to issue permits which prescribe the terms and conditions upon which septage may be disposed of by land application. Application for disposal permits shall be submitted in form and content which are satisfactory to the Board. Upon receipt of a satisfactory application, the Board shall send a copy to the State Water Control Board and comply with the provisions of § 32.1-164.2. The State Water Control Board shall review the application without delay and advise the Board within sixty days of the requirements necessary to protect state waters. The Board shall not consider the application complete until comments have been received from the State Water Control Board. The Board shall approve or disapprove the application and issue the permit as appropriate. If the application is disapproved the Board shall advise the applicant of the conditions

necessary to obtain approval. The Board may summarily revoke or amend the permit if it determines that the septage disposal is adversely affecting public health or if the State Water Control Board notifies the Board that state waters are being adversely affected.

**TITLE 45.1 MINES AND MINING  
CHAPTER 15.1 GEOTHERMAL ENERGY**

**Article 1 General Provisions**

§ 45.1-179.1. Short title; purpose. - This chapter may be cited as the Virginia Geothermal Resource Conservation Act. It is the policy of the Commonwealth of Virginia and the purpose of this law to: (i) foster the development, production, and utilization of geothermal resources, (ii) prevent waste of geothermal resources, (iii) protect correlative rights to the resource, (iv) protect existing high quality state waters, and safeguard potable waters from pollution, (v) safeguard the natural environment, (vi) promote geothermal and water resource conservation and management, and (vii) safeguard the health, safety, and welfare of the citizens of the Commonwealth.

§ 45.1-179.2. Definitions. - The following terms used in this chapter have the meanings respectively ascribed thereto unless the context clearly requires otherwise:

"Correlative rights" means the right of each geothermal owner in a geothermal system to produce without waste his just and equitable share of the geothermal resources in the geothermal system;

"Geothermal energy" means the usable energy produced or which can be produced from geothermal resources;

"Geothermal resource" means the natural heat of the earth and the energy in whatever form, present in, associated with, created by, or which may be extracted from, that natural heat, as determined by the rules and regulations of the Department;

"Geothermal system" means any aquifer, pool, reservoir, or other geologic formation containing geothermal resources; and

"Board" means the State Water Control Board.

§ 45.1-179.3. Application. - The provisions of this chapter regarding (i) permitting, well regulations,

reservoir management and allocation apply to geothermal resources at temperatures above the minimum temperature set forth by the Department pursuant to § 45.1-179.7 of this Code, (ii) leasing requirements, royalties or severance taxes apply to geothermal resource applications producing more than the volumetric rate set forth by the Department pursuant to § 45.1-179.7 of this Code.

§ 45.1-179.4. Ownership. - Ownership rights to geothermal resources shall be in the owner of the surface property underlain by the geothermal resources unless such rights have been otherwise explicitly reserved or conveyed. Nothing in this section shall divest the people or the Commonwealth of any rights, title, or interest they may have in geothermal resources.

§ 45.1-179.5. Findings; clarification of nature of resource. - Geothermal resources are found and hereby declared to be sui generis, being neither a mineral resource nor a water resource. Mineral estates shall not be construed to include geothermal resources unless explicit in the terms of the deed or other instrument of conveyance.

**Article 2  
Resource Regulation**

§ 45.1-179.6. Duties and responsibilities of Department. - The Department shall have and is hereby given jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this chapter and shall have the power and authority to make and enforce rules, regulations, and orders and do whatever may reasonably be necessary to carry out the provisions of this chapter. Any such rules and regulations adopted by the Department pursuant to the provisions of this chapter shall be promulgated in compliance with the provisions of the Administrative Process Act (Chapter 1.1:1 of Title 9, § 9-6.14:1 et seq.).

§ 45.1-179.7. Additional powers of Department. - The Department shall:

1. Consult with the Board in carrying out all of its duties and responsibilities pursuant to the provisions of this chapter;

2. Develop a comprehensive geothermal permitting system for the Commonwealth, which shall provide for the exploration and development of geothermal resources;

3. Promulgate such rules and regulations as may be necessary to provide for geothermal drilling and the exploration and development of geothermal resources in the Commonwealth; such rules and regulations shall be based on a system of correlative rights;

4. Establish minimum temperature levels and volumetric rates in order to determine Department jurisdiction over geothermal resource development. In establishing such temperature levels (i) the Department shall set minimum temperature levels for permitting, well regulations, reservoir management, and allocation of the geothermal resource; and (ii) the Department shall set minimum volumetric rates for geothermal leasing, royalties and severance taxes, as necessary. The Department shall also be responsible for reviewing the established temperature level and volumetric rate requirements biennially and revising the figures as necessary. Revision of temperature levels or volumetric rate requirements shall not occur more often than every two years and such revision shall not operate retroactively; and

5. Consult with the State Department of Health as necessary, to protect potable waters of the Commonwealth and in carrying out its duties and responsibilities pursuant to the provisions of this chapter.

§ 45.1-179.8. Reinjection policy. - The Department, the Board, and Department of Health shall jointly develop and revise as necessary, a policy on reinjection of spent geothermal fluids. Such policy shall refer to the reinjection into the ground of waters extracted from the earth in the process of geothermal development, production, or utilization.

§ 45.1-179.9. Cancellation or suspension of permit. - Whenever, after a public hearing held in conjunction with the Board, the Department determines that a holder of a permit issued pursuant to the provisions of this chapter is willfully violating any provision of such permit or any provision of this chapter, the Department may cancel or suspend such permit for cause or impose

limitations on the future use thereof in order to prevent future violations.

§ 45.1-179.10. Penalties; injunctions. - Any person who shall be adjudged to have violated any provisions of this chapter shall be guilty of a misdemeanor and shall be liable to a penalty of not less than \$10 nor more than \$250 for each violation. In addition, upon violation of any of the provisions of this chapter, or the regulations of the Department hereunder, the Department may either before or after the institution of proceedings for such violation, institute a civil action in the circuit court wherein the well is located for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper.

§ 45.1-179.11. Judicial review. - Any person aggrieved by a final decision of the Department pursuant to the provisions of § 45.1-179.9 of this Code is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

## CHAPTER 19 VIRGINIA COAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1979

### Article 3 Miscellaneous Provisions

§ 45.1-254. National pollutant discharge elimination system permits. - A. Upon request of the Director, the State Water Control Board may delegate to the Director its authority, under the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 to issue, amend, revoke and enforce national pollutant discharge elimination system permits for the discharge of sewage, industrial wastes and other wastes from coal surface mining operations. Upon receiving such delegation, the authority to issue, amend, revoke and enforce national pollutant discharge elimination system permits under the State Water Control Law for the discharge of sewage, industrial wastes and other wastes from coal surface mining operations, to the extent required under the federal Clean Water Act, P.L. 92-500, as amended, shall be vested solely in the Director, notwithstanding any provision of law

contained in Title 62.1, except as provided herein. For the purpose of enforcement under this section, the provisions of §§ 62.1-44.31 and 62.1-44.32 shall apply to permits, orders and regulations issued by the Director in accordance with this section.

B. After having received delegation of authority pursuant to subsection A of this section, the Director shall transmit to the State Water Control Board a copy of each application for a national pollutant discharge elimination system permit received by the Director, and provide written notice to the State Water Control Board of every action related to the consideration of such permit application.

C. No national pollutant elimination system permit shall be issued if, within thirty days of the date of the transmittal of the complete application and the proposed national pollution discharge elimination system permit, the State Water Control Board objects in writing to the issuance of such permit. Whenever the State Water Control Board objects to the issuance of such permit under this section, such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permits would include if it were issued by the State Water Control Board.

D. An applicant who is aggrieved by an objection made under subsection C of this section shall have the right to a hearing before the State Water Control Board pursuant to § 62.1-44.25. If the State Water Control Board withdraws, in writing, its objection to the issuance of a certificate, the Director may issue the permit. Any applicant, aggrieved by a final decision of the State Water Control Board made pursuant to this subsection, shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

E. Whenever, on the basis of any information available to it, the State Water Control Board finds that any person is in violation of any condition or limitation contained in a national pollutant discharge elimination system permit issued by the Director, it shall notify the person in alleged violation and the Director. If beyond the thirtieth day after notification by the State Water Control Board, the Director has not commenced appropriate enforcement action, the State Water Control Board may take appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23 and 62.1-44.32.

F. The Director shall promulgate such regulations as he deems necessary for the issuance, administration, monitoring and enforcement of national pollutant discharge elimination system permits for coal surface mining operations.

G. For the purpose of this section, the terms "sewage," "industrial wastes" and "other wastes" shall have the meanings ascribed to them in subdivisions (7), (8), and (9) of § 62.1-44.3, respectively.